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800 North Capitol Street, NW.
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(3 blocks north of Union Station Metro)

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Presidential Documents

Title 3—

The President

Executive Order 13182 of December 23, 2000

Adjustments of Certain Rates of Pay

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the laws cited herein, it is hereby ordered as follows:

Section 1. *Statutory Pay Systems.* The rates of basic pay or salaries of the statutory pay systems (as defined in 5 U.S.C. 5302(1)), as adjusted under 5 U.S.C. 5303(a), are set forth on the schedules attached hereto and made a part hereof:

(a) The General Schedule (5 U.S.C. 5332(a)) at Schedule 1;

(b) The Foreign Service Schedule (22 U.S.C. 3963) at Schedule 2; and

(c) The schedules for the Veterans Health Administration of the Department of Veterans Affairs (38 U.S.C. 7306, 7404; section 301(a) of Public Law 102-40) at Schedule 3.

Sec. 2. *Senior Executive Service.* The rates of basic pay for senior executives in the Senior Executive Service, as adjusted under 5 U.S.C. 5382, are set forth on Schedule 4 attached hereto and made a part hereof.

Sec. 3. *Executive Salaries.* The rates of basic pay or salaries for the following offices and positions are set forth on the schedules attached hereto and made a part hereof:

(a) The Executive Schedule (5 U.S.C. 5312-5318) at Schedule 5;

(b) The Vice President (3 U.S.C. 104) and the Congress (2 U.S.C. 31) at Schedule 6; and

(c) Justices and judges (28 U.S.C. 5, 44(d), 135, 252, and 461(a)) at Schedule 7.

Sec. 4. *Uniformed Services.* Pursuant to section 601 of Public Law 106-398, the rates of monthly basic pay (37 U.S.C. 203(a)) for members of the uniformed services and the rate of monthly cadet or midshipman pay (37 U.S.C. 203(c)) are set forth on Schedule 8 attached hereto and made a part hereof.

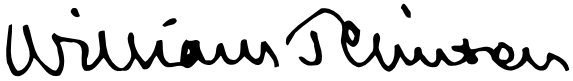
Sec. 5. *Locality-Based Comparability Payments.* (a) Pursuant to sections 5304 and 5304a of title 5, United States Code, locality-based comparability payments shall be paid in accordance with Schedule 9 attached hereto and made a part hereof.

(b) The Director of the Office of Personnel Management shall take such actions as may be necessary to implement these payments and to publish appropriate notice of such payments in the **Federal Register**.

Sec. 6. *Administrative Law Judges.* The rates of basic pay for administrative law judges, as adjusted under 5 U.S.C. 5372(b)(4), are set forth on Schedule 10 attached hereto and made a part hereof.

Sec. 7. *Effective Dates.* Schedule 8 is effective on January 1, 2001. The other schedules contained herein are effective on the first day of the first applicable pay period beginning on or

Sec. 8. *Prior Order Superseded.* Executive Order 13144 of December 21, 1999, is superseded.



THE WHITE HOUSE,
December 23, 2000.

Billing code 3195–01–P

SCHEDULE 1--GENERAL SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2001)

	1	2	3	4	5	6	7	8	9	10
GS-1	$14,244	$14,719	$15,193	$15,664	$16,139	$16,418	$16,884	$17,356	$17,375	$17,819
2	16,015	16,395	16,926	17,375	17,571	18,088	18,605	19,122	19,639	20,156
3	17,474	18,056	18,638	19,220	19,802	20,384	20,966	21,548	22,130	22,712
4	19,616	20,270	20,924	21,578	22,232	22,886	23,540	24,194	24,848	25,502
5	21,947	22,679	23,411	24,143	24,875	25,607	26,339	27,071	27,803	28,535
6	24,463	25,278	26,093	26,908	27,723	28,538	29,353	30,168	30,983	31,798
7	27,185	28,091	28,997	29,903	30,809	31,715	32,621	33,527	34,433	35,339
8	30,107	31,111	32,115	33,119	34,123	35,127	36,131	37,135	38,139	39,143
9	33,254	34,362	35,470	36,578	37,686	38,794	39,902	41,010	42,118	43,226
10	36,621	37,842	39,063	40,284	41,505	42,726	43,947	45,168	46,389	47,610
11	40,236	41,577	42,918	44,259	45,600	46,941	48,282	49,623	50,964	52,305
12	48,223	49,830	51,437	53,044	54,651	56,258	57,865	59,472	61,079	62,686
13	57,345	59,257	61,169	63,081	64,993	66,905	68,817	70,729	72,641	74,553
14	67,765	70,024	72,283	74,542	76,801	79,060	81,319	83,578	85,837	88,096
15	79,710	82,367	85,024	87,681	90,338	92,995	95,652	98,309	100,966	103,623

SCHEDULE 2--FOREIGN SERVICE SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2001)

	Class 1	Class 2	Class 3	Class 4	Class 5	Class 6	Class 7	Class 8	Class 9
1	$79,710	$64,588	$52,335	$42,407	$34,362	$30,719	$27,462	$24,550	$21,947
2	82,101	66,526	53,905	43,679	35,393	31,641	28,286	25,287	22,605
3	84,564	68,521	55,522	44,990	36,455	32,590	29,134	26,045	23,284
4	87,101	70,577	57,188	46,339	37,548	33,567	30,008	26,826	23,982
5	89,714	72,694	58,904	47,729	38,675	34,575	30,909	27,631	24,702
6	92,406	74,875	60,671	49,161	39,835	35,612	31,836	28,460	25,443
7	95,178	77,121	62,491	50,636	41,030	36,680	32,791	29,314	26,206
8	98,033	79,435	64,365	52,155	42,261	37,780	33,775	30,193	26,992
9	100,974	81,818	66,296	53,720	43,529	38,914	34,788	31,099	27,802
10	103,623	84,273	68,285	55,332	44,835	40,081	35,832	32,032	28,636
11	103,623	86,801	70,334	56,991	46,180	41,284	36,907	32,993	29,495
12	103,623	89,405	72,444	58,701	47,565	42,522	38,014	33,983	30,380
13	103,623	92,087	74,617	60,462	48,992	43,798	39,154	35,002	31,291
14	103,623	94,850	76,856	62,276	50,462	45,112	40,329	36,053	32,230

SCHEDULE 3--VETERANS HEALTH ADMINISTRATION SCHEDULES
DEPARTMENT OF VETERANS AFFAIRS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2001)

Schedule for the Office of the Under Secretary for Health
(38 U.S.C. 7306)*

Deputy Under Secretary for Health	$135,370 **
Associate Deputy Under Secretary for Health	129,659 ***
Assistant Under Secretaries for Health	125,837 ***

	Minimum	Maximum
Medical Directors	$107,365	$121,683 ***
Service Directors	93,486	116,102
Director, National Center for Preventive Health	79,710	116,102

Physician and Dentist Schedule

Director Grade	$93,486	$116,102
Executive Grade	86,324	110,017
Chief Grade	79,710	103,623
Senior Grade	67,765	88,096
Intermediate Grade	57,345	74,553
Full Grade	48,223	62,686
Associate Grade	40,236	52,305

Clinical Podiatrist and Optometrist Schedule

Chief Grade	$79,710	$103,623
Senior Grade	67,765	88,096
Intermediate Grade	57,345	74,553
Full Grade	48,223	62,686
Associate Grade	40,236	52,305

Physician Assistant and Expanded-Function Dental Auxiliary Schedule ****

Director Grade	$79,710	$103,623
Assistant Director Grade	67,765	88,096
Chief Grade	57,345	74,553
Senior Grade	48,223	62,686
Intermediate Grade	40,236	52,305
Full Grade	33,254	43,226
Associate Grade	28,616	37,202
Junior Grade	24,463	31,798

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* This schedule does not apply to the Assistant Under Secretary for Nursing Programs or the Director of Nursing Services. Pay for these positions is set by the Under Secretary for Health under 38 U.S.C. 7451.

** Pursuant to section 7404(d)(1) of title 38, United States Code, the rate of basic pay payable to this employee is limited to the rate for level IV of the Executive Schedule, which is $125,700.

*** Pursuant to section 7404(d)(2) of title 38, United States Code, the rate of basic pay payable to these employees is limited to the rate for level V of the Executive Schedule, which is $117,600.

**** Pursuant to section 301(a) of Public Law 102-40, these positions are paid according to the Nurse Schedule in 38 U.S.C. 4107(b) as in effect on August 14, 1990, with subsequent adjustments.

SCHEDULE 4--SENIOR EXECUTIVE SERVICE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2001)

ES-1	$109,100
ES-2	114,200
ES-3	119,400
ES-4	125,500
ES-5	125,700
ES-6	125,700

SCHEDULE 5--EXECUTIVE SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2001)

level I	$161,200
level II	145,100
level III	133,700
level IV	125,700
level V	117,600

SCHEDULE 6--VICE PRESIDENT AND MEMBERS OF CONGRESS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2001)

Vice President	$186,300
Senators	145,100
Members of the House of Representatives	145,100
Delegates to the House of Representatives	145,100
Resident Commissioner from Puerto Rico	145,100
President pro tempore of the Senate	161,200
Majority leader and minority leader of the Senate	161,200
Majority leader and minority leader of the House of Representatives	161,200
Speaker of the House of Representatives	186,300

SCHEDULE 7--JUDICIAL SALARIES

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2001)

Chief Justice of the United States	$186,300
Associate Justices of the Supreme Court	178,300
Circuit Judges	153,900
District Judges	145,100
Judges of the Court of International Trade	145,100

SCHEDULE 8—PAY OF THE UNIFORMED SERVICES
(Effective on January 1, 2001)

Part I—MONTHLY BASIC PAY

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 24	Over 26
COMMISSIONED OFFICERS															
O-10 **	$8,518.80	$8,818.50	$8,818.50	$8,818.50	$8,818.50	$9,156.90	$9,156.90	$9,664.20	$9,664.20	$10,356.00	$10,356.00	$11,049.30	$11,103.90	$11,334.60*	$11,737.20*
O-9	7,550.10	7,747.80	7,912.80	7,912.80	7,912.80	8,114.10	8,114.10	8,451.60	8,451.60	9,156.90	9,156.90	9,664.20	9,803.40	10,004.70	10,356.00
O-8	6,838.20	7,062.30	7,210.50	7,252.20	7,437.30	7,747.80	7,819.80	8,114.10	8,198.70	8,451.60	8,818.50	9,156.90	9,382.80	9,382.80	9,382.80
O-7	5,682.30	6,068.40	6,068.40	6,112.50	6,340.80	6,514.50	6,715.50	6,915.90	7,116.90	7,747.80	8,280.90	8,280.90	8,280.90	8,280.90	8,322.60
O-6	4,211.40	4,626.60	4,930.20	4,930.20	4,949.10	5,160.90	5,189.10	5,189.10	5,360.70	6,005.40	6,311.40	6,617.40	6,791.40	6,967.80	7,309.80
O-5	3,368.70	3,954.90	4,228.80	4,280.40	4,450.50	4,450.50	4,584.30	4,831.80	5,155.80	5,481.60	5,637.00	5,790.30	5,964.60	5,964.60	5,964.60
O-4	2,839.20	3,457.20	3,687.90	3,739.50	3,953.40	4,127.70	4,409.70	4,629.30	4,781.70	4,935.00	4,986.60	4,986.60	4,986.60	4,986.60	4,986.60
O-3 ***	2,638.20	2,991.00	3,228.00	3,489.30	3,656.40	3,839.70	3,992.70	4,189.80	4,292.10	4,292.10	4,292.10	4,292.10	4,292.10	4,292.10	4,292.10
O-2 ***	2,301.00	2,620.80	3,018.60	3,120.30	3,184.80	3,184.80	3,184.80	3,184.80	3,184.80	3,184.80	3,184.80	3,184.80	3,184.80	3,184.80	3,184.80
O-1 ***	1,997.70	2,079.00	2,512.80	2,512.80	2,512.80	2,512.80	2,512.80	2,512.80	2,512.80	2,512.80	2,512.80	2,512.80	2,512.80	2,512.80	2,512.80
COMMISSIONED OFFICERS WITH OVER 4 YEARS ACTIVE DUTY SERVICE AS AN ENLISTED MEMBER OR WARRANT OFFICER															
O-3E	-	-	-	$3,489.30	$3,656.40	$3,839.70	$3,992.70	$4,189.80	$4,355.70	$4,450.50	$4,580.40	$4,580.40	$4,580.40	$4,580.40	$4,580.40
O-2E	-	-	-	3,120.30	3,184.80	3,285.90	3,457.20	3,589.50	3,687.90	3,687.90	3,687.90	3,687.90	3,687.90	3,687.90	3,687.90
O-1E	-	-	-	2,512.80	2,684.10	2,783.10	2,884.20	2,984.10	3,120.30	3,120.30	3,120.30	3,120.30	3,120.30	3,120.30	3,120.30

* Basic pay for these officers is limited to the rate of basic pay for level III of the Executive Schedule, which is $11,141.70 per month.

** For officers serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, basic pay for this grade is calculated to be $12,950.70 per month, regardless of cumulative years of service computed under section 205 of title 37, United States Code. Nevertheless, actual basic pay for these officers is limited to the rate of basic pay for level III of the Executive Schedule, which is $11,141.70 per month.

*** Does not apply to commissioned officers who have been credited with over 4 years of active duty service as an enlisted member or warrant officer.

SCHEDULE 8—PAY OF THE UNIFORMED SERVICES (PAGE 2)

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 24	Over 26
WARRANT OFFICERS															
W-5	-	-	-	-	-	-	-	-	-	-	-	$4,640.70	$4,800.00	$4,959.90	$5,120.10
W-4	$2,688.00	$2,891.70	$2,974.80	$3,056.70	$3,197.40	$3,336.30	$3,477.00	$3,614.10	$3,756.30	$3,892.50	$4,032.00	4,168.20	4,309.50	4,448.40	4,590.90
W-3	2,443.20	2,649.90	2,649.90	2,684.10	2,793.90	2,919.00	3,084.30	3,184.80	3,294.60	3,420.30	3,545.10	3,669.90	3,794.70	3,919.80	4,045.20
W-2	2,139.60	2,315.10	2,315.10	2,391.00	2,512.80	2,649.90	2,750.70	2,851.50	2,949.60	3,058.20	3,169.50	3,280.80	3,391.80	3,503.40	3,503.40
W-1	1,782.60	2,043.90	2,043.90	2,214.60	2,315.10	2,419.20	2,523.30	2,626.80	2,731.50	2,835.90	2,940.00	3,018.60	3,018.60	3,018.60	3,018.60
ENLISTED MEMBERS															
E-9 *	-	-	-	-	-	-	$3,126.90	$3,197.40	$3,287.10	$3,392.40	$3,498.00	$3,601.80	$3,742.80	$3,882.60	$4,060.80
E-8	-	-	-	-	-	$2,622.00	2,697.90	2,768.40	2,853.30	2,945.10	3,041.10	3,138.00	3,278.10	3,417.30	3,612.60
E-7	$1,831.20	$1,999.20	$2,075.10	$2,149.80	$2,227.20	2,303.10	2,379.00	2,454.90	2,529.60	2,607.00	2,683.80	2,758.80	2,890.80	3,034.50	3,250.50
E-6	1,575.00	1,740.30	1,817.40	1,891.80	1,969.50	2,046.00	2,122.80	2,196.90	2,272.50	2,327.70	2,367.90	2,367.90	2,370.30	2,370.30	2,370.30
E-5	1,381.80	1,549.20	1,623.90	1,701.00	1,777.80	1,855.80	1,930.50	2,007.90	2,007.90	2,007.90	2,007.90	2,007.90	2,007.90	2,007.90	2,007.90
E-4	1,288.80	1,423.80	1,500.60	1,576.20	1,653.00	1,653.00	1,653.00	1,653.00	1,653.00	1,653.00	1,653.00	1,653.00	1,653.00	1,653.00	1,653.00
E-3	1,214.70	1,307.10	1,383.60	1,385.40	1,385.40	1,385.40	1,385.40	1,385.40	1,385.40	1,385.40	1,385.40	1,385.40	1,385.40	1,385.40	1,385.40
E-2	1,169.10	1,169.10	1,169.10	1,169.10	1,169.10	1,169.10	1,169.10	1,169.10	1,169.10	1,169.10	1,169.10	1,169.10	1,169.10	1,169.10	1,169.10
E-1 **	1,042.80	1,042.80	1,042.80	1,042.80	1,042.80	1,042.80	1,042.80	1,042.80	1,042.80	1,042.80	1,042.80	1,042.80	1,042.80	1,042.80	1,042.80
E-1 ***	964.80	-	-	-	-	-	-	-	-	-	-	-	-	-	-

* For noncommissioned officers serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, or Sergeant Major of the Marine Corps, basic pay for this grade is $4,893.60 per month, regardless of cumulative years of service under section 205 of title 37, United States Code.

** Applies to personnel who have served 4 months or more on active duty.

*** Applies to personnel who have served less than 4 months on active duty.

SCHEDULE 8-PAY OF THE UNIFORMED SERVICES (PAGE 3)

Part II-RATE OF MONTHLY CADET OR MIDSHIPMAN PAY

The rate of monthly cadet or midshipman pay authorized by section 203(c) of title 37, United States Code, is $600.00.

Note: As a result of the enactment of sections 602-604 of Public Law 105-85, the National Defense Authorization Act for Fiscal Year 1998, the Secretary of Defense now has the authority to adjust the rates of basic allowances for subsistence and housing. Therefore, these allowances are no longer adjusted by the President in conjunction with the adjustment of basic pay for members of the uniformed services. Accordingly, the tables of allowances included in previous orders are not included here.

SCHEDULE 9--LOCALITY-BASED COMPARABILITY PAYMENTS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2001)

Locality Pay Area[1]	Rate
Atlanta, GA	8.66%
Boston-Worcester-Lawrence, MA-NH-ME-CT-RI	12.13%
Chicago-Gary-Kenosha, IL-IN-WI	13.00%
Cincinnati-Hamilton, OH-KY-IN	10.76%
Cleveland-Akron, OH	9.17%
Columbus, OH	9.61%
Dallas-Fort Worth, TX	9.71%
Dayton-Springfield, OH	8.60%
Denver-Boulder-Greeley, CO	11.90%
Detroit-Ann Arbor-Flint, MI	13.14%
Hartford, CT	12.65%
Houston-Galveston-Brazoria, TX	16.66%
Huntsville, AL	8.12%
Indianapolis, IN	7.89%
Kansas City, MO-KS	8.32%
Los Angeles-Riverside-Orange County, CA	14.37%
Miami-Fort Lauderdale, FL	11.09%
Milwaukee-Racine, WI	8.91%
Minneapolis-St. Paul, MN-WI	10.30%
New York-Northern New Jersey-Long Island, NY-NJ-CT-PA	13.62%
Orlando, FL	7.71%
Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD	10.80%
Pittsburgh, PA	8.54%
Portland-Salem, OR-WA	10.32%
Richmond-Petersburg, VA	8.60%
Sacramento-Yolo, CA	10.73%
St. Louis, MO-IL	8.00%
San Diego, CA	11.31%
San Francisco-Oakland-San Jose, CA	16.98%
Seattle-Tacoma-Bremerton, WA	10.45%
Washington-Baltimore, DC-MD-VA-WV	10.23%
Rest of U.S.	7.68%

SCHEDULE 10-ADMINISTRATIVE LAW JUDGES

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2001)

AL-3/A	$ 82,100
AL-3/B	88,300
AL-3/C	94,700
AL-3/D	101,000
AL-3/E	107,300
AL-3/F	113,600
AL-2	120,000
AL-1	125,700

[1]Locality Pay Areas are defined in 5 CFR 531.603.

[FR Doc. 00–33450 Filed 12–28–00; 8:45 am]

Presidential Documents

Executive Order 13183 of December 23, 2000

Establishment of the President's Task Force on Puerto Rico's Status

By the authority vested in me as President by the Constitution and the laws of the United States of America, including Public Law 106-346, it is hereby ordered as follows:

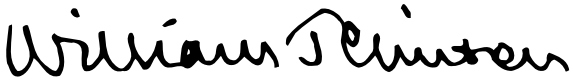
Section 1. *Policy.* It is the policy of the executive branch of the Government of the United States of America to help answer the questions that the people of Puerto Rico have asked for years regarding the options for the islands' future status and the process for realizing an option. Further, it is our policy to consider and develop positions on proposals, without preference among the options, for the Commonwealth's future status; to discuss such proposals with representatives of the people of Puerto Rico and the Congress; to work with leaders of the Commonwealth and the Congress to clarify the options to enable Puerto Ricans to determine their preference among options for the islands' future status that are not incompatible with the Constitution and basic laws and policies of the United States; and to implement such an option if chosen by a majority, including helping Puerto Ricans obtain a governing arrangement under which they would vote for national government officials, if they choose such a status.

Sec. 2. *The President's Task Force on Puerto Rico's Status.* There is established a task force to be known as ''The President's Task Force on Puerto Rico's Status'' (Task Force). It shall be composed of designees of each member of the President's Cabinet and the Co-Chairs of the President's Interagency Group on Puerto Rico (Interagency Group). The Task Force shall be co-chaired by the Attorney General's designee and a Co-Chair of the Interagency Group.

Sec. 3. *Functions.* The Task Force shall seek to implement the policy set forth in section 1 of this order. It shall ensure official attention to and facilitate action on matters related to proposals for Puerto Rico's status and the process by which an option can be realized. It shall provide advice and recommendations on such matters to the President and the Congress. It shall also provide advice and recommendations to assist the Executive Office of the President in fulfilling its responsibilities under Public Law 106-346 to transfer funding to the Elections Commission of the Commonwealth of Puerto Rico for public education on and a public choice among options for Puerto Rico's future status that are not incompatible with the Constitution and the basic laws and policies of the United States.

Sec. 4. *Report.* The Task Force shall report on its actions to the President not later than May 1, 2001, and thereafter as needed but not less than

annually on progress made in the determination of Puerto Rico's ultimate status.



THE WHITE HOUSE,
December 23, 2000.

[FR Doc. 00–33451
Filed 12–28–00; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 65, No. 251
Friday, December 29, 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

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document amends the delegations of authority from the Secretary of Agriculture to other General Officers and agency heads to delegate to the Director, Hazardous Materials Management Group authority to carry out certain duties related to hazardous materials management.

EFFECTIVE DATE: December 29, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas Fox, Attorney, Office of the General Counsel, United States Department of Agriculture, Room 3351 South Building, Washington, DC 20250, (202) 720–6715.

SUPPLEMENTARY INFORMATION: On January 15, 1999, the Secretary of Agriculture established the USDA Hazardous Materials Policy Council (Council) to direct the USDA Hazardous Materials Management and Federal Facilities Compliance Program (Program). By Memorandum dated April 14, 1999, the Secretary decided to strengthen the Program within the Department by assigning to the Counsel lead responsibility for hazardous materials management and Federal facilities compliance. Also, the Secretary directed that the executive director of the Council serve as the Director of the Hazardous Materials Management Group, the group that acts as technical and program staff to the Council. The decision was based upon the fact that the Department had a decentralized arrangement for the implementation of the program and needed to improve coordination among the agencies of the Department. This final rule delegates responsibilities to the director of the Hazardous Materials Management Group.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rule making and opportunity for comment are not required.

Further, because this rule relates to internal agency management, it is exempt from the provisions of Executive Order No. 12866 and No. 12988. In addition, this action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), and thus is exempt from provisions of that act. Finally, this action is not a rule as defined in 5 U.S.C. 804, and thus does not require review by Congress.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

Accordingly, 7 CFR Part 2 is amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for Part 2 is revised to read as follows:

Authority: 5 U.S.C. 301; Reorganization Plan No. 2 of 1953; 3 CFR 1949–1953 Comp., p. 1024.

Subpart D—Delegations of Authority to Other General Officers and Agency Heads

2. Section 2.25 is added in subpart D to read as follows:

§ 2.25 Director, Hazardous Materials Management Group.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Director, Hazardous Materials Management Group.

(1) Serve as Executive Director of the USDA Hazardous Materials Policy Council.

(2) Represent USDA is consulting or working with the Environmental Protection Agency (EPA), the Council on Environmental Quality, the Domestic Policy Council, and others to develop policies relating to hazardous materials management and Federal facilities compliance.

(3) Monitor, review, evaluate, and oversee hazardous materials management program activities and compliance Department-wide.

(4) Monitor, review, evaluate, and oversee USDA agency expenditures for hazardous materials management program accomplishments.

(5) Coordinate for the USDA Hazardous Materials Policy Council the presentation of the USDA Hazardous Waste Management appropriation budget request to the Office of Management and Budget (OMB) and Congress.

(6) Prepare for the USDA Hazardous Materials Policy Council the hazardous materials management program budget and accomplishment reports to Congress, OMB, and EPA and take a lead role in the preparation of replies to Congressional injuries.

(7) Represent USDA on the National Response Team on hazardous spills and oil spills pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9601, *et seq.*); the Clean Water Act, as amended (33 U.S.C. 1251, *et seq.*); Oil Pollution Act, as amended (33 U.S.C. 2701, *et seq.*); Executive Order 12580, 3 CFR, 1987 Comp., p. 193; Executive Order 12777, 3 CFR, 1991 Comp., p. 351, and the National Contingency Plan, 40 CFR Part 300.

(8) Approve disbursements from the New World Mine Response and Restoration Account, approve the New World Mine Response and Restoration Plan, and make quarterly reports to Congress under Sections 502(d) and (f) of Title V of the Department of the Interior and Related Agencies Appropriations Act of 1998, Public Law 105–83.

(9) Provide program leadership and oversight for USDA compliance with applicable pollution control laws and executive orders, including Executive Order 13148, Greening of the Government Through Leadership in Environmental Management.

(10) Ensure that the Hazardous Materials Management Program Department-wide is accomplished with regard to, and in compliance with, Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and low-Income Populations.

(11) Take such action as may be necessary, with the affected agency head and with the concurrence of the General

Counsel, including issuance of administrative orders and agreements with any person to perform any response action under sections 106(a) and 122 (except subsection (b)(1)) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9606(a), 9622), pursuant to sections 4(c)(3) and 4(d)(3) of Executive Order 12580, as amended by Executive Order 13016.

(12) Receive administrative support from the Assistant Secretary for Administration.

(b) [Reserved]

Dated: December 14, 2000.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 00–32405 Filed 12–28–00; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1439

RIN 0560–AG33

Livestock Indemnity Program for Contract Growers

AGENCIES: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule implements provisions of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (the 2001 Act) related to the Livestock Indemnity Program for Contract Growers (LIP–CG). That statute amended the time period during which eligible losses could have occurred and the Commodity Credit Corporation (CCC) is publishing this rule to extend the availability of benefits under LIP–CG to include benefits for livestock losses incurred during the period January 1, 2000 through February 7, 2000. Other provisions of the Act will be implemented under separate rules.

DATES: Effective December 27, 2000.

ADDRESSES: Comments should be mailed to: Sharon Biastock, Production, Emergencies, and Compliance Division, Farm Service Agency (FSA), U.S. Department of Agriculture, 1400 Independence Ave., SW., Washington, DC 20250–0540, telephone (202) 720–6336, Stop 0517; e-mail address: sharon__biastock@wdc.fsa.usda.gov. Comments can be inspected in Room 4093, South Building, U.S. Department of Agriculture, 1400 Independence Ave., SW., Washington, DC, between 7:30 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Sharon Biastock, Price Support Division, Farm Service Agency (FSA), U.S. Department of Agriculture, 1400 Independence Ave., SW., Washington, DC 20250–0540, telephone (202) 720–6336, Stop 0517; e-mail address: sharon__biastock@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Notice and Comment

CCC published a final rule implementing the LIP–CG on June 8, 2000 at 65 FR 36550, as provided by the Omnibus Consolidated Appropriations Act, 2000 (Pub. L. 106–113), which added funding to the emergency livestock assistance provided by section 802 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2000 (Pub. L. 106–78) and authorized its use for emergency assistance to contract growers during 1999. Section 824 of Public Law 106–78 required that the regulations necessary to implement the livestock assistance provisions be issued as soon as practicable and without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture (the Secretary) effective July 24, 1971 (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. The 2001 Act amended Public Law 106–113 to extend the time frame for losses compensable under LIP–CG, and thus supercedes the existing regulations. Because this rule merely amends the regulations previously published as a final rule exempt from notice and comment, Congress intended for the statutory amendment to the program and the necessary regulatory amendments to be similarly exempt. These provisions are thus issued as final.

Executive Order 12866

This rule is issued in conformance with Executive Order 12866 and has been determined to be significant and has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because USDA is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

Executive Order 12372

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

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. Before any judicial action may be brought concerning the provisions of this rule, the administrative remedies must be exhausted.

Unfunded Mandates Reform Act of 1995

The provisions of Title II of the Unfunded Mandates Reform Act of 1995 are not applicable to this rule because USDA is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule. Further, in any case, these provisions do not impose any mandates on state, local or tribal governments, or the private sector.

Small Business Regulatory Enforcement Fairness Act of 1996

As discussed in the earlier section on Notice and Comment, section 824 of Public Law 106–78 required that the regulations necessary to implement the emergency livestock assistance provisions be issued as soon as practicable and without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. Section 824 also required that the Secretary use the provisions of section 808 of the Small Business Regulatory Enforcement Fairness Act (SBREFA) (5 U.S.C. 808), which provides that a rule may take effect at such time as the agency may determine if the agency finds for good cause that public notice is impracticable, unnecessary, or contrary to the public purpose, and thus

does not have to meet SBREFA's normal requirement for a 60-day delay for Congressional review of a major rule before it can go into effect. The 2001 Act amended the LIP–CG provisions of Public Law 106–113, which authorized the program under the general emergency livestock assistance provisions of Public Law 106–78, and therefore this rule merely amends regulations previously published as a final rule for which the Secretary was required to use the ''good cause'' provision provided in § 801 of SBREFA. Congress intended for the ''good cause'' provision to be used for the statutory amendment to the program and the necessary regulations as well. Additionally, this rule is not considered a major rule under SBREFA. Accordingly, because the rule affects the incomes of agricultural producers who have been hit hard by natural disasters, it would be contrary to the public interest to delay this rule and they are issued as final and are effective immediately.

Paperwork Reduction Act

Section 824 of Public Law 106–78 required that the regulations necessary to implement livestock assistance be promulgated without regard to 44 U.S.C. chapter 35 (the Paperwork Reduction Act (PRA)). This means that the normal 60-day public comment period and OMB approval of the information collections required by this rule are not required before the regulations may be made effective. The 2001 Act amended the LIP–CG provisions of Public Law 106–113, which authorized the program under the general emergency livestock assistance provisions of Public Law 106–78, and therefore this rule merely amends regulations previously published as a final rule that were exempt from the PRA. Congress intended for these regulations to be exempt as well. However, the 60-day public comment period and OMB approval under the provisions of the PRA are still required after the rule is published.

Background

Section 805 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2000 (Pub. L. 106–78) gave the Secretary the authority to spend $325 million of CCC funds to compensate livestock producers for losses incurred during 1999. Subsequently, the Omnibus Consolidated Appropriations Act, 2000 (Pub. L. 106–113) gave the Secretary the authority to spend an additional $10 million of CCC funds to compensate ''persons who raise livestock owned by other persons for income losses sustained with respect to livestock during 1999. * * *'' CCC thus published a final rule implementing the LIP–CG on June 8, 2000 at 65 FR 36550. Subsequently, because the entire $10 million authorized by Public Law 106–113 was not spent, and because there were additional losses that occurred in January of 2000, the 2001 Act amended Public Law 106–113 by striking ''during 1999'' and inserting ''from January 1, 1999, to February 7, 2000.'' This final rule announces and carries out that statutory amendment.

For losses that occurred during 1999 the prior rule required producers to apply for benefits before May 1, 2000, and this amended rule does not affect the deadline that existed for losses that occurred during 1999. However, this rule announces a new sign-up period for the producers who suffered losses that occurred during the period of January 1, 2000, through February 7, 2000. Producers so affected will have to apply at their local USDA Service Center prior to January 26, 2001. All other program requirements remain unchanged. Accordingly, this rule announces the new loss period and the application period for those producers. This final rule also corrects the statutory authority for Part 1439.

List of Subjects in 7 CFR Part 1439

Animal feeds, Disaster assistance, Livestock, Pasture, Reporting and record keeping requirements.

For the reasons set out in the preamble, 7 CFR part 1439 is amended as set forth below.

PART 1439—EMERGENCY LIVESTOCK ASSISTANCE

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

Authority: 7 U.S.C. 1427a; 15 U.S.C. 714 et seq.; Sec 1103 Pub. L. 105–277, 112 Stat. 2681–42–44; Pub. L. 106–31, 113 Stat. 57; Pub. L. 106–78, 113 Stat. 1135; Pub. L. 106–113, 113 Stat. 1501; Sec. 257 Pub. L. 106–224, 114. Stat. 358; Secs. 802, 806, & 813 Pub. L. 106–387, 114 Stat. 1549.

Subpart E—Livestock Indemnity Program for Contract Growers

2. Revise § 1439.401 to read as follows:

§ 1439.401 Applicability.

This subpart sets forth the terms and conditions of the Livestock Indemnity Program for Contract Growers. Under Title I of the Omnibus Consolidated Appropriations Act, 2000 (Pub. L. 106–113; 113 Stat. 1501), the Secretary is specifically authorized to use $10 million to provide assistance to persons who raise livestock owned by other persons for income losses sustained with respect to livestock during 1999 if the Secretary finds that such losses are the result of natural disasters. Section 802 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (Pub. L. 106–387; 114 Stat. 1549) amended the Omnibus Consolidated Appropriations Act, 2000, to cover losses that occurred during the period January 1, 2000 through February 7, 2000. Accordingly, this subpart provides for benefits to be paid to eligible producers who sustained a loss of income directly attributed to a reduction in the production of livestock and livestock products from livestock that were entirely owned by others, due to or as a result of natural disasters that occurred from January 1 through February 7, 2000 in areas for which a Presidential or Secretarial Declaration was approved. Producers in contiguous counties that were not designated as a disaster area in their own right are not eligible for benefits under this part. Benefits will be provided with respect to eligible livestock where the death occurred in the disaster area during January 1 through February 7, 2000 where the death was reasonably related to the disaster that prompted the disaster declaration as determined by the Deputy Administrator for Farm Programs, or designee. The livestock had to be in possession of the applicant during the time in which the disaster occurred.

3. Revise § 1439.404 to read as follows:

§ 1439.404 Application period.

(a) For losses that occurred during 1999, a request for benefits under this subpart must be submitted to CCC at the county FSA office serving the county where the loss occurred. All requests for benefits and supporting documentation must be filed in the county FSA office by May 1, 2000, or such other date as established by CCC.

(b) For losses that occurred during the period January 1, 2000 through February 7, 2000, a request for benefits under this subpart must be submitted to CCC at the county FSA office serving the county where the loss occurred. All requests for benefits and supporting documentation must be filed in the county FSA office by January 26, 2001, or such other date as established by CCC.

(c) Data furnished by the applicants will be used to determine eligibility for program benefits. Furnishing the data is

voluntary; however, without such data, program benefits will not be approved or provided.

Dated: December 22, 2000.

Keith Kelly,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 00–33382 Filed 12–27–00; 11:05 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 00–079–1]

Certification of Beef From Argentina

AGENCY: Animal and Plant Health Inspection Service.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations governing the importation of fresh (chilled or frozen) beef from Argentina by adding a requirement that Argentina certify that the beef does not come from animals that have ever been in specified areas along Argentina's borders with Paraguay, Brazil, Bolivia, and Uruguay. We are taking this action as an emergency measure to protect the livestock of the United States from foot-and-mouth disease.

DATES: This interim rule was effective July 15, 2000. We invite you to comment on this docket. We will consider all comments that we receive by February 27, 2001.

ADDRESSES: Please send four copies of your comment (an original and three copies) to: Docket No. 00–079–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 00–079–1. You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Masoud Malik, Senior Staff Veterinarian, Technical Trade Services, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–8364.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of certain animals and animal products into the United States in order to prevent the introduction of various animal diseases, including rinderpest, foot-and-mouth disease (FMD), African swine fever, hog cholera, and swine vesicular disease. These are dangerous and destructive diseases of ruminants and swine. Section 94.1 of the regulations lists regions of the world that are declared free of rinderpest or free of both rinderpest and FMD. Rinderpest or FMD exists in all regions of the world not listed. Argentina is not listed in § 94.1; however, § 94.1(a)(1) references § 94.21, which provides for the importation of fresh (chilled or frozen) beef from Argentina under certain conditions. Section 94.4 provides for the importation of cured or cooked meat from regions where rinderpest or FMD exists, except for cured or cooked beef from Argentina that meets the requirements for the importation of fresh (chilled or frozen) beef as provided in § 94.21.

Prior to the effective date of this interim rule, § 94.21 allowed the importation of fresh (chilled or frozen) beef from Argentina if, among other things, FMD had not been diagnosed in Argentina within the previous 12 months. In addition, beef from Argentina that was cured or cooked other than in accordance with the provisions of § 94.4 was allowed importation into the United States if the beef met the import conditions for fresh (chilled or frozen) beef as provided in § 94.21. However, on or about July 22, 2000, cattle from a neighboring country were illegally imported into Argentina, and on August 16, 2000, Argentina confirmed that one of the imported animals was infected with FMD.

Before August 2000, the last reported case of FMD in Argentina was in April 1994. Argentina stopped vaccinating cattle for FMD in April 1999.

In response to the confirmation of the FMD diagnosis in August 2000, Argentina issued a voluntary ban on beef exports and initiated other measures to control the spread of the disease. Additionally, the United States Department of Agriculture issued a temporary hold on the importation of all beef from Argentina that had been authorized to be imported under § 94.21. During late September and early October 2000, a tripartite delegation consisting of representatives from the United States, Canada, and Mexico visited Argentina to assess the FMD situation. After extensive inspection and evaluation, the tripartite delegation concluded that Servicio Nacional de Sanidad y Calidad Agroalimentaria (SENASA) had acted promptly and effectively to eliminate the FMD infection. A copy of the site visit report is available for review in our reading room (see **ADDRESSES** for location and hours of operation) and at http://www.aphis.usda.gov/vs/reg-request.html.

Further, Veterinary Services staff members of the Animal and Plant Health Inspection Service (APHIS) produced a risk analysis document to explore the potential FMD risks associated with importing beef from Argentina under the limitations set in § 94.21. This report concluded that the August 2000 outbreak of FMD, which resulted from the illegal movement of animals into Argentina from a bordering country, had been quickly detected and contained. This report also noted that there is no evidence that Argentina is not in compliance with any of the requirements listed at § 94.21 and that Argentina is developing additional safeguards against the risks associated with the illegal movement of animals into Argentina from bordering countries. A copy of the risk analysis is available for review in our reading room (see **ADDRESSES** for location and hours of operation) and at http://www.aphis.usda.gov/vs/reg-request.html.

In consideration of SENASA's prompt action and the conclusions of the risk analysis, we plan to allow beef imports to resume from Argentina under § 94.21, with the following additional provisions contained in this interim rule. This interim rule requires an authorized veterinary official of the Government of Argentina to certify that the beef being exported to the United States is not from an animal that has ever been in specified areas along Argentina's borders with Paraguay, Brazil, Bolivia, and Uruguay. These areas are described in a new paragraph (n) of § 94.21, and maps showing the border areas may be viewed at http://www.aphis.usda.gov/vs/reg-request.html. We believe this

additional measure will ensure that beef imported from Argentina under § 94.21 continues to present a negligible risk of being contaminated with the FMD virus.

This interim rule also revises current § 94.21(l) to clarify that an authorized veterinary official must certify on the meat inspection certificate accompanying the meat that all provisions of § 94.21 have been met. Currently, § 94.21(l) specifies only ''an authorized official.'' However, we believe it is necessary for a veterinarian to certify the provisions of § 94.21 have been met.

Although we are adding a requirement that an authorized veterinary official of the Government of Argentina certify that fresh (chilled or frozen) beef exported to the United States is not from areas designated in § 94.21(n), we recognize that SENASA responded immediately to the detection of the disease by imposing restrictions on the movement of animals from the affected areas and by initiating other measures to eradicate the disease. At the time of publication of this interim rule, it appears that the outbreak is well controlled. Because of SENASA's efforts to ensure that FMD does not spread beyond the previously affected areas, we intend to reassess the situation in accordance with the standards of the Office International des Epizooties (OIE). As part of that reassessment process, we will consider all comments received on this interim rule. This future reassessment will determine whether it is necessary to revise the areas designated in § 94.21(n), and, additionally, whether it is necessary to continue requiring an authorized veterinary official of the Government of Argentina to certify that fresh (chilled or frozen) beef exported to the United States is not from areas designated in § 94.21(n), or whether we can remove this additional certification requirement.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the introduction of FMD into the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**. We are making this action effective retroactively to July 15, 2000, because we believe that an effective date that is 1 week prior to the reported illegal importation of cattle will ensure that fresh (chilled or frozen) beef imported into the United States from Argentina is not from animals that were exposed to FMD. The effective date is necessary to prevent the introduction of FMD into the United States.

We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. This document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

We are amending the regulations governing the importation of fresh (chilled or frozen) beef from Argentina by adding a requirement that Argentina certify that the beef does not come from animals that have ever been in specified areas along Argentina's borders with Paraguay, Brazil, and Bolivia. We are taking this action as an emergency measure to protect the livestock of the United States from foot-and-mouth disease.

This emergency situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a regulatory flexibility analysis.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has retroactive effect to July 15, 2000; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

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

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

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

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

Authority: Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772; 7 U.S.C. 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

2. Section 94.21 is amended by revising paragraphs (a) and (l) and by adding a new paragraph (n) to read as follows:

§ 94.21 Restrictions on the importation of beef from Argentina.

* * * * *

(a) The meat is beef from bovines that have been born, raised, and slaughtered in Argentina, but is not from any animal that has ever been in an area of Argentina listed in paragraph (n) of this section.

* * * * *

(l) An authorized veterinary official of the Government of Argentina certifies on the foreign meat inspection certificate that all of the conditions in this section have been met.

* * * * *

(n) Beef may not be imported under this section if it comes from an animal that has ever been in any of the following areas:

(1) *Province of Corrientes.* (i) That northern portion of the Province bounded by a line drawn as follows: Beginning at the intersection of National Route 12 and the Corrientes/Misiones Provincial line; then west along National Route 12 to Provincial Route 9; then northwest along Provincial Route 9 to the town of Paso de La Patria; then north to the Parana River and the international border with the Republic of Paraguay, then east along the international border with the Republic of Paraguay, including the Parana River, to the Itaembe stream; then south along the Itaembe stream and the Corrientes/Misiones Provincial line to National Route 12; and

(ii) That eastern portion of the Province bounded by a line drawn as follows: Beginning at the intersection of Provincial Route 94 and the Chirimai

stream; then southwest along Provincial Route 94 to National Route 14 at the town of Santo Tome; then southwest along National Route 14 to Provincial Route 47; then southwest along Provincial Route 47 to Provincial Route 129; then southwest along Provincial Route 129 to Provincial Route 33; then south along Provincial Route 33 to National Route 14; then south along National Route 14 to the town of Mocoreta; then southeast along the Riacho Mocoreta to the international border with the Republic of Brazil at the Uruguay River; then northeast along the international border with the Republic of Brazil and the Uruguay River to the Chirimai stream; then northwest along the Chirimai stream to Provincial Route 94.

(2) *Province of Misiones.* That portion of the Province bounded by a line drawn as follows: Beginning at the intersection of National Route 12 and the Itaembe Mini stream; then northeast along National Route 12 to Provincial Route 101; then east along Provincial Route 101 to National Route 14; then south along National Route 14 to the Mandubı stream; then southwest along the Mandubı stream to the Toro stream; then southwest along the Toro stream to Provincial Route 22; then southwest along Provincial Route 22 to the Liso stream; then southwest along the Liso stream to the Yaboti Mini stream; then south along the Yaboti Mini stream to Provincial Coastal Route 2; then south along Provincial Coastal Route 2 to the Chimirai stream; then southeast along the Chimirai stream to the international border with the Republic of Brazil and the Uruguay River; then northeast and north along the international border with the Republic of Brazil, including the Uruguay, the Pepiri Guazu, San Antonio, and Iguazu Rivers, to the international border with the Republic of Paraguay and the Paraguay River; then south and southwest along the international border with the Republic of Paraguay and the Paraguay River to the Itaembe Mini stream and Corrientes/Misiones Provincial line; then south along the Itaembe Mini stream and Corrientes/Misiones Provincial line to National Route 12.

(3) *Province of Chaco.* That portion of the Department of Bermejo bounded by a line drawn as follows: Southern limit: Riacho Guaycuru from the outlet of Riacho Ancho to Provincial Route No. 1. Western limit: Route No. 1 from its intersection with Riacho Guaycuru to its intersection with Provincial Route No. 3. Eastern limit: Paraguay River from Puerto Bermejo to the outlet of Riacho Guaycuru and Riacho Ancho, including Cerrito Island. Northern limit: Provincial Route No. 3 from its intersection with Provincial Route No. 1 to the Paraguay River (Pueblo Viejo de Puerto Bermejo).

(4) *Province of Formosa.* That portion of the Province bounded by a line drawn as follows: Beginning in the area where Provincial Route 9 meets the Bermejo River west of Colonia Cano, at the point where the local road to Paraje San Antonio begins; then north along the local road to Paraje San Antonio, past Paraje San Antonio to the intersection of the local road and the Mbigua-Marove River; then north along the Mbigua-Marove River to the town of Payagua; then north along the Ramirez River to the Herradura Lake; then north along National Route 11 to the City of Clorinda; then northwest along the Porteno River to its intersection with Provincial Route 86; then northwest along Provincial Route 86 to the town of El Solitario; then northwest along the edge of the La Estrella wetland to the Pantalon Complex canal and the Formosa/Salta Provincial line; then north along the Formosa/Salta Provincial line to the international border with the Republic of Paraguay and the Pilcomayo River; then southeast and south along the international border with the Republic of Paraguay, including the Pilcomayo and Paraguay Rivers, to the Bermejo River; then northwest along the Bermejo River to the point of beginning on Provincial Route 9.

(5) *Province of Salta.* That portion of the Province bounded by a line drawn as follows: Beginning at the intersection of the Formosa/Salta Provincial line and Provincial Route 54; then west along Provincial Route 54 to National Route 34; then south along National Route 34 to Provincial Route 50; then northwest along Provincial Route 50 to the Iruya River; then west and north along the Iruya River to Nazareno; then north along the local road from Nazareno to Provincial Route 7 in Santa Victoria Oeste; then west along Provincial Route 7; then west along Provincial Route 7 to the Salta/Jujuy Provincial border; then north along the Salta/Jujuy Provincial border to the international border with the Republic of Bolivia; then east along the international borders with the Republic of Bolivia (including the Bermejo, Grande de Tarija, and Itau Rivers) and the Republic of Paraguay (including the Pilcomaya River) to the Formosa/Salta Provincial line; then south along the Formosa/Salta Provincial line to Provincial Route 54.

(6) *Province of Jujuy.* That portion of the Province bounded by a line drawn as follows: Beginning at the intersection of the Salta/Jujuy Provincial border and Provincial Route 5; then west along Provincial Route 5 to Santa Catalina and Provincial Route 65; then south along Provincial Route 65 to Timon Cruz; then west along the San Juan de Mayo River to the Granadas River; then southwest along the Granadas River to Pululos Lake; then west along a mountain road to Cajal Lake; then southwest from Cajal Lake to the Zapaleri River; then southwest along the Zapaleri River to the border of the Province of Jujuy and the Republic of Chile; then northwest along the border of the Province of Jujuy and the Republic of Chile to the international border with the Republic of Bolivia; then northeast, southeast, and east along the international border of Bolivia to the Salta/Jujuy Provincial border; then south along the Salta/Jujuy Provincial border to Provincial Route 5.

Done in Washington, DC, this 22nd day of December 2000.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–33400 Filed 12–27–00; 10:55 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–SW–07–AD; Amendment 39–12044; AD 2000–25–09]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. Model A109E Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) for Agusta S.p.A. (Agusta) Model A109E helicopters that currently requires inspecting the exhaust ejector locking system, clamp, and dampers for each engine. The existing AD also requires verifying the torque of the metallic clamps and installing safety wire on the metallic clamps; inspecting and modifying the ejector saddles and the locking metallic clamps; and inspecting the metallic clamps, locking mechanisms, and dampers. This amendment requires modifying the engine exhaust ejectors. This amendment is prompted by the development of a kit to modify the engine exhaust ejectors to provide terminating action from the requirements of the current AD. The

actions specified by this AD are intended to prevent loss of the metallic clamp or the engine exhaust ejector, damage to the main or tail rotor system and subsequent loss of control of the helicopter.

DATES: Effective February 2, 2001.

The incorporation by reference of Agusta Technical Bulletin No. 109EP–5, dated December 22, 1999, as listed in the regulations, is approved by the Director of the Federal Register as of February 2, 2001.

The incorporation by reference of Agusta Bollettino Tecnico No. 109EP–3, dated December 22, 1998, listed in the regulations, was previously approved by the Director of the Federal Register as of April 5, 1999 (64 FR 13502, March 19, 1999).

ADDRESSES: The service information referenced in this AD may be obtained from Agusta, 21017 Cascina Costa di Samarate (VA) Italy, Via Giovanni Agusta 520, telephone 39 (0331) 229111, fax 39 (0331) 229605–222595. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Paul Madej, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5125, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 99–03–10, Amendment 39–11080 (64 FR 13502), which is applicable to Agusta Model A109E helicopters, was published in the **Federal Register** on September 22, 2000 (65 FR 57298). That action proposed to require modifying the engine exhaust ejectors, P/N 109–0601–51, by installing a kit, P/N 109–0822–94.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 13 helicopters of U.S. registry will be affected by this AD, that it will take approximately 12 work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. The manufacturer has stated that 12 work hours labor costs at $40 per hour and the kit will be provided under warranty if requested prior to December 31, 2000. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,120, assuming that all operators take full advantage of the warranty coverage stated by the manufacturer.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11080 (64 FR 13502, March 19, 1999), and by adding a new airworthiness directive (AD), Amendment 39–12044, to read as follows:

2000–25–09 Agusta S.p.A.: Amendment 39–12044. Docket No. 2000–SW–07–AD. Supersedes AD 99–03–10, Amendment 39–11080, Docket No. 99–SW–10–AD.

Applicability: Model A109E helicopters, up to and including serial numbers 11057, excluding serial numbers 11001, 11005, 11047, 11049, 11055 and 11056, with engine exhaust ejectors, part number 109–0601–51, installed, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously. To prevent loss of the metallic clamp or the engine exhaust ejector, damage to the main or tail rotor system, and subsequent loss of control of the helicopter, accomplish the following:

(a) Prior to further flight, in accordance with Part I of the Compliance Instructions in Agusta Bollettino Tecnico No. 109EP–3, dated December 22, 1998 (Technical Bulletin), inspect the exhaust ejector to ejector saddle locking system, the dampers at the bottom of the ejector saddle, and the torque of the metallic clamp, and install safety wire on the metallic clamp. If any damage is found as a result of the inspection, accomplish Part II of the Compliance Instructions in the Technical Bulletin prior to further flight.

(b) Within the next 10 hours time-in-service (TIS), inspect the dampers and metallic clamps, and reposition and modify the ejector saddle and the locking metallic clamp in accordance with Part II of the Compliance Instructions in the Technical Bulletin.

(c) Thereafter, at intervals not to exceed 25 hours TIS, inspect the metallic clamp, locking mechanism, and dampers in accordance with Part III of the Compliance Instructions in the Technical Bulletin.

(d) Before further flight after December 31, 2000, modify the engine exhaust ejectors, part number (P/N) 109–0601–51, by installing a kit, P/N 109–0822–94, in accordance with the Compliance Instructions in Agusta Technical Bulletin No. 109EP–5, dated December 22, 1999.

(e) Installing a kit, P/N 109–0822–94, is terminating action for the requirements of this AD.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through a FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

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

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

(h) The inspections shall be done in accordance with Parts I, II, and III of the Compliance Instructions in Agusta Bollettino Tecnico No. 109EP–3, dated December 22, 1998. The incorporation by reference of that document was approved previously by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of April 5, 1999 (64 FR 13502, March 19, 1999). The modification shall be done in accordance with the Compliance Instructions in Agusta Technical Bulletin No. 109EP–5, dated December 22, 1999. The incorporation by reference of that document was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Agusta, 21017 Cascina Costa di Samarate (VA) Italy, Via Giovanni Agusta 520, telephone 39 (0331) 229111, fax 39 (0331) 229605–222595. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on February 2, 2001.

Note 3: The subject of this AD is addressed in Ente Nazionale per l'Aviazione Civile (Italy) AD No. 2000–001, dated January 4, 2000, and 2000–088, dated February 10, 2000.

Issued in Fort Worth, Texas, on December 6, 2000.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–32551 Filed 12–28–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–226–AD; Amendment 39–12055; AD 2000–26–05]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737, 747, 757, and 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737, 747, 757, and 767 series airplanes, that requires rework of certain duct assemblies of the environmental control system (ECS) or replacement of the duct assemblies with new or reworked duct assemblies. This action is necessary to prevent potential ignition of fiberglass insulation material installed on the outside of the ECS ducts, which could propagate a small fire and lead to a larger fire. This action is intended to address the identified unsafe condition.

DATES: Effective February 2, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 2, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Cashdollar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2785; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 737, 747, 757, and 767 series airplanes was published in the **Federal Register** on August 10, 2000 (65 FR 48947). That action proposed to require rework of certain duct assemblies of the environmental control system (ECS) or replacement of the duct assemblies with new or reworked duct assemblies.

Comments Received

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

Support for the Proposal

Two commenters support the proposed rule.

Requests to Revise Compliance Time

Several commenters request an extension of the proposed compliance time. Generally, the commenters claim that the proposed five-year compliance time will result in a need to accomplish the proposed requirements on some airplanes before the next scheduled heavy maintenance visit, which would cause significant airplane down time, and would impose a substantial cost penalty. Individual comments are presented below.

One of the commenters suggests that an extension of the compliance time to six years for all aircraft types would not compromise safety any further. Another commenter requests that the compliance time be stated as follows: "* * * within five years after the effective date of the AD, or at the next scheduled heavy maintenance visit, whichever occurs later, not to exceed eight years after the effective date." This commenter performs segmented "C" checks approximately every two years, and it takes four such checks to reach all areas of the airplane. Therefore, under that commenter's maintenance program, access to the specific areas affected may not occur for eight years.

The Air Transport Association (ATA) of America, on behalf of its members, states that the compliance time should be stated as follows: "* * * within five years after the effective date of this AD, or at the next scheduled heavy maintenance visit, whichever occurs later, not to exceed six years after the effective date." The ATA contends that this compliance time "would preclude the press associated with significant, unscheduled maintenance visits"; in practical terms, this would affect the installation time of less than 20 percent of the applicable airplanes. The ATA believes that its suggested compliance time would achieve a level of safety equivalent to that intended by the proposed AD.

Another commenter states that it participated in a Boeing-hosted meeting on the subject ECS ducting flammability concerns and asked Boeing to recommend to the FAA that the actions be required during a heavy maintenance visit. The commenter notes that Boeing did indeed make this recommendation to the FAA in the referenced FAA-approved service bulletins. The commenter says that six years would facilitate making use of the first heavy maintenance visit under current maintenance programs. The commenter adds that compliance periods that intend to make use of scheduled down time per an approved maintenance program should reflect an interval taking into account such approved maintenance programs.

Another commenter states that a moderate escalation of the compliance time to 6 years would avoid burdening the operators with excessive costs, and would allow accomplishment of the modification at a heavy maintenance visit. Retaining the proposed 5-year compliance time for Model 757 series

airplanes would require that approximately 17 percent of the fleet (15 airplanes) undergo the modifications at a light or special maintenance visit, which would impose an undue financial burden on some operators.

The commenter adds that a comparison between the compliance time specified in this proposed rule to that given in two previously issued AD's that address similar unsafe conditions cannot be used as a basis for the choice of a compliance time for this proposed rule. [The AD's referenced by the commenter are AD 2000–11–01, amendment 39–11749 (65 FR 34322, May 26, 2000), and AD 2000–11–02, amendment 39–11750 (65 FR 34341, May 26, 2000). Those AD's require replacement of metallized Mylar insulation blankets with new blankets made of more flame-resistant material on certain McDonnell Douglas airplanes.] Based on information about various heavy maintenance intervals provided by the commenter, the operators of airplanes affected by AD 2000–11–01 and AD 2000–11–02 would not be subjected to excessive modification costs since all of the affected airplanes could be modified during a heavy maintenance visit within the 5-year compliance time specified in those two AD's.

The FAA concurs that the compliance time can be extended somewhat. The FAA has closely reviewed the rationale presented by the commenters. In addition, the FAA has examined related comments to AD 2000–11–01 and AD 2000–11–02. In those AD's, the compliance time was extended from four to five years in the final rules.

The FAA acknowledges that a compliance time of six years will more closely align with heavy maintenance visits. Paragraph (a) of the final rule has been revised accordingly. For any operator that performs segmented ''C'' checks every two years, the revised compliance time should allow enough time to schedule the ducting rework or replacement during one of the next three such checks. The extension of the compliance time also will minimize the amount of unscheduled work and associated down time. The FAA considers that this extension of the compliance time will not adversely affect safety.

Request for Sampling Program

One commenter requests that a sampling program be incorporated for all fleet types affected to determine if BAC 5010, Type 97 adhesive was used on specific airplanes and to establish the requirements for replacing the ECS ducts. The commenter states that neither Boeing nor the FAA has provided concrete evidence that BAC 5010, Type 97 adhesive was used in the assembly of all the ECS ducts. The commenter adds that the applicable service bulletins and proposed rule are based purely on conjecture. The commenter suggests that negative findings in such a sampling program would offer terminating action for the proposed rule.

The FAA does not concur. The FAA finds that there is a significant amount of evidence pointing to widespread use of unsafe adhesives (that is, material and adhesive combinations that are easily ignited and consequently able to propagate a small fire) on Model 737, 747, 757, and 767 series airplanes. Determining which ECS ducts are affected has already been accomplished to a great extent through the efforts of Boeing. The scope of the parts and airplanes affected by the final rule has been significantly reduced through Boeing's efforts in surveying its duct suppliers. Only airplanes having parts that were made by suppliers that used unsafe adhesives in their manufacturing processes have been included in the applicability of this final rule. Although it is possible that some parts may have been manufactured using compliant adhesives, the FAA expects that almost all were manufactured using the BAC 5010, Type 97 adhesive because it is much easier to apply than other types of adhesives. Therefore, the FAA has determined that an option for a sampling program would not provide sufficient value and has not included such an option in this final rule.

However, an operator may request approval of an alternative method of compliance in accordance with the provisions of paragraph (b) of this final rule, provided that evidence is submitted to show that no unsafe adhesive was used in the construction of the ECS ducting on the airplanes in its fleet.

Request for Clarification of Discussion Section

One commenter requests that certain portions of the Discussion section of the proposed rule be rewritten. The commenter specifically asks that this section include the FAA's actual safety concerns, which are that the material is too easy to ignite and is not self-extinguishing. The commenter also asks that the section include a statement indicating that a small electrical arc would be sufficient to ignite the fiberglass insulation material, if this is indeed the case.

Although the Discussion section of the proposed rule is not restated in the final rule, the FAA acknowledges that the commenter's statements are correct. The purpose for issuing this AD is to prevent ignition of insulation material by a small arc, which would then not self-extinguish, but would instead propagate a fire.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 1,162 airplanes of the affected design in the worldwide fleet. The FAA estimates that 403 airplanes of U.S. registry will be affected by this AD. The following table shows the estimated cost impact of the required actions for airplanes affected by this AD. The average labor rate is $60 per work hour. The estimated total cost for all airplanes affected by this AD is $2,552,996.

COST IMPACT

Model	U.S.-Registered airplanes	Estimated work hours	Estimated labor cost	Estimated parts cost	Estimated fleet cost
737	113	32	$1,920	$732	$299,676
747	23	336	20,160	2,800	528,080
757	199	47	2,820	360	632,820
767	68	238	14,280	1,785	1,092,420

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

The manufacturer has advised the FAA that warranty remedies may be available for parts and labor costs associated with accomplishing the actions that are required by this AD. Therefore, the future economic cost impact of this rule on U.S. operators may be less than the cost impact figures indicated above.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–26–05 Boeing: Amendment 39–12055. Docket 2000–NM–226–AD.

Applicability: Model 737–300, 737–400, 737–500, 747, 757–200, 757–300, 767–200, 767–300, and 767–300F sries airplanes, certificated in any category, having the line numbers listed in the following table:

APPLICABILITY

Model	Affected line numbers (L/N)	Except L/N
737–300, -400, -500,	2591, 2601, 2720, 2723, 2730, 2733, 2734, 2736 through 2850 inclusive, 2852 through 3126 inclusive.	N/A
747	1011 through 1233 inclusive	1012, 1174, 1216
757–200, -300	580 through 895 inclusive	581, 583 through 586 inclusive, 589, 595, 609, 613, 615, 622, 624, 626, 669, 674
767–200, -300, -300F	521 through 767 inclusive,	522, 525, 718, 758 770

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

Compliance: Required as indicated, unless accomplished previously.

To prevent potential ignition of fiberglass insulation in the environmental control system (ECS) ducts, which could propagate a small fire and lead to a larger fire, accomplish the following:

Rework or Replacement

(a) Within 6 years after the effective date of this AD, rework ECS duct assemblies or replace existing duct assemblies with new or reworked duct assemblies, in accordance with Boeing Alert Service Bulletins 737–21A1129, 747–21A2416, 757–21A0084, 757–21A0085, or 767–21A0158; all including Appendices A and B; all dated June 29, 2000; as applicable.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(d) The actions shall be done in accordance with Boeing Alert Service Bulletin 737–21A1129, including Appendices A and B; dated June 29, 2000; Boeing Alert Service Bulletin 747–21A2416, including Appendices A and B; dated June 29, 2000; Boeing Alert Service Bulletin 757–21A0084, including Appendices A and B; dated June 29, 2000; Boeing Alert Service Bulletin 757–21A0085, including Appendices A and B; dated June 29, 2000; or Boeing Alert Service Bulletin 767–21A0158; including Appendices A and B; dated June 29, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group,

P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on February 2, 2001.

Issued in Renton, Washington, on December 20, 2000.

John J. Hickey,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–33018 Filed 12–28–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–217–AD; Amendment 39–12054; AD 2000–26–04]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747, 757, 767 and 777 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747, 757, 767 and 777 series airplanes, that requires modification of certain drip shields located on the flight deck, and follow-on actions. This action is necessary to prevent potential ignition of the moisture barrier cover of the drip shield, which could propagate a small fire that results from an otherwise harmless electrical arc, leading to a larger fire. This action is intended to address the identified unsafe condition.

DATES: Effective February 2, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 2, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Cashdollar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2785; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747, 757, 767 and 777 series airplanes was published in the **Federal Register** on August 10, 2000 (65 FR 48950). That action proposed to require modification of certain drip shields located on the flight deck, and follow-on actions.

Comments Received

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

Support for the Proposal

One commenter supports the proposed rule.

Requests to Revise Compliance Time

Several commenters request an extension of the proposed compliance time. Generally, the commenters claim that the proposed five-year compliance time will result in a need to accomplish the proposed requirements on some airplanes before the next scheduled heavy maintenance visit, which would cause significant airplane down time, and would impose a substantial cost penalty. Individual comments are presented below.

One of the commenters suggests a compliance time of six years for Model 747, 757, and 767 series airplanes, and seven years for Model 777 series airplanes. The commenter states that such an extension will not compromise safety. Another commenter requests that the compliance time be stated as follows: ''* * * within five years after the effective date of the AD, or at the next scheduled heavy maintenance visit, whichever occurs later, not to exceed eight years after the effective date.'' This commenter performs segmented ''C'' checks approximately every two years, and it takes four such checks to reach all areas of the airplane. Therefore, under that commenter's maintenance program, access to the specific areas affected may not occur for eight years.

The Air Transport Association (ATA) of America, on behalf of its members, states that the compliance time should be stated as follows: ''* * * within five years after the effective date of this AD, or at the next scheduled heavy maintenance visit, whichever occurs later, not to exceed six years after the effective date.'' The ATA contends that its suggested compliance time ''would preclude the press associated with significant, unscheduled maintenance visits''; in practical terms, this would affect the installation time of less than 20 percent of the applicable airplanes. The ATA believes that its suggested compliance time would achieve a level of safety equivalent to that intended by the proposed AD.

Another commenter states that it participated in a Boeing-hosted meeting on the subject drip shield flammability concerns and asked Boeing to recommend to the FAA that the actions be required during a heavy maintenance visit. The commenter notes that Boeing did indeed make this recommendation to the FAA in the referenced FAA-approved service bulletins. The commenter says that six years would facilitate making use of the first heavy maintenance visit under current maintenance programs. The commenter adds that compliance periods that intend to make use of scheduled down time per an approved maintenance program should reflect an interval taking into account such approved maintenance programs.

The FAA concurs that the compliance time can be extended somewhat. The FAA has closely reviewed the rationale presented by the commenters. In addition, the FAA has examined related comments to two AD's that require replacement of metallized Mylar insulation blankets with new blankets made of more flame-resistant material on certain McDonnell Douglas airplanes [AD 2000–11–01, amendment 39–11749 (65 FR 34321, May 26, 2000), and AD 2000–11–02, amendment 39–11750 (65 FR 34341, May 26, 2000)]. In those AD's, the compliance time was extended from four to five years in the final rules.

The FAA acknowledges that a compliance time of six years will more closely align with heavy maintenance visits. Paragraph (a) of the final rule has been revised accordingly. For any operator that performs segmented ''C'' checks every two years, the revised compliance time should allow enough time to schedule the drip shield rework during one of the next three such checks. The extension of the compliance time also will minimize the amount of unscheduled work and associated down time. The FAA considers that this extension of the compliance time will not adversely affect safety.

Request for Sampling Program

One commenter requests that a sampling program be incorporated for all fleet types affected to establish the requirements to replace the drip shields. (The proposed rule allows sampling of Model 747 and 767 fleets to establish if individual airplanes have unsafe adhesives.) The commenter states that neither Boeing nor the FAA has provided concrete evidence that BAC 5010, Type 97 adhesive was used in the assembly of all the drip shields. The commenter adds that the applicable service bulletins and proposed rule are based purely on conjecture. The commenter suggests that a sampling program would offer terminating action for the proposed rule.

The FAA does not concur. The FAA finds that there is a significant amount of evidence pointing to widespread use of unsafe adhesives (that is, material and adhesive combinations that are easily ignited and consequently able to propagate a small fire) on Model 747, 757, 767, and 777 series airplanes. This evidence is supported by the fact that unsafe adhesives were stocked in the manufacturing facilities where the drip shields were constructed. The FAA concludes that there is a high probability that unsafe adhesives were used in the construction of all drip shields on Model 757 and 777 series airplanes, as well as in the construction of the drip shields on certain Model 747 and 767 series airplanes. These conclusions are based on information provided by Boeing, interviews conducted with manufacturing personnel, and the materials (*i.e.,* adhesives) that were and were not available in the manufacturing facilities.

The FAA did not propose sampling for Model 757 and 777 series airplanes because all Model 757 and 777 series airplanes are subject to the unsafe condition. In contrast, not all Model 747 and 767 series airplanes are subject to the unsafe condition because the unsafe adhesives were not always available in the manufacturing facilities that constructed the drip shields used on those airplanes.

No change to the final rule is necessary in this regard. However, an operator may request approval of an alternative method of compliance in accordance with the provisions of paragraph (d) of this final rule, provided that evidence is submitted to show that no unsafe adhesive was used in the construction of the drip shields on the airplanes in its fleet.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 3,137 airplanes of the affected design in the worldwide fleet. The FAA estimates that 999 airplanes of U.S. registry will be affected by this AD. The following table shows the estimated cost impact for airplanes affected by this AD. The average labor rate is $60 per work hour. The estimated maximum cost impact of the AD on U.S. operators of all airplanes affected by this AD is $3,695,460. Table 1 is as follows:

TABLE 1.—COST IMPACT

Model	U.S.-Registered airplanes	Work hours (estimated)	Labor cost (estimated)	Parts cost (estimated)	Maximum fleet cost (estimated)
747	194	39	$2,340	[1]	$1,132,960
757	491	26	1,560	$1,700	1,600,660
767	258	17	1,020	2,300	856,560
777	56	3	180	1,700	105,280

[1] $2,300 to $3,500.

For Model 747 and 767 series airplanes listed in Group 1 in the applicable service bulletin, in lieu of accomplishment of the modification of the drip shields, this AD provides an option to take samples of the drip shields to determine if the modification is necessary. Therefore, the cost impact of this AD as presented above may be reduced if some airplanes do not need the modification. For airplanes that accomplish the sampling, it will take approximately 18 work hours, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the sampling on affected U.S. operators is estimated to be $1,080 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

The manufacturer has advised the FAA that warranty remedies may be available for parts and labor costs associated with accomplishing the actions that are required by this AD. Therefore, the future economic cost impact of this AD on U.S. operators may be less than the cost impact figures indicated above.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–26–04 Boeing: Amendment 39–12054. Docket 2000–NM–217–AD.

Applicability: Model 747, 757, 767, and 777 series airplanes having the line numbers listed below; certificated in any category.

Model	Affected line numbers (L/N)	Except L/N
747	1 through 1234 inclusive	1174, 1216
757	2 through 895 inclusive	870, 886, 894
767	1 through 768 inclusive	758
777	2 through 254 inclusive	120, 219, 230, 235, 242, 245, 249

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

Compliance: Required as indicated, unless accomplished previously.

To prevent potential ignition of the moisture barrier cover of the drip shield, which could propagate a small fire that results from an otherwise harmless electrical arc, leading to a larger fire, accomplish the following:

Modification

(a) Within 6 years after the effective date of this AD, accomplish paragraphs (a)(1), (a)(2), and (a)(3) of this AD; in accordance with Boeing Service Bulletin 747–25–3253, 767–25–0290, or 777–25–0164; all including Appendices A, B, and C; all dated June 29, 2000; or 757–25–0226 or 757–25–0228; both including Appendices A, B, and C; both dated July 3, 2000; as applicable; except as provided by paragraph (b) of this AD.

(1) Modify drip shields located on the flight deck by installing fire blocks.

(2) Prior to further flight following accomplishment of paragraph (a)(1) of this AD, perform a functional test of any system disturbed by the modification, in accordance with the applicable service bulletin or the Airplane Maintenance Manual (AMM), as applicable. If any functional test fails, prior to further flight, isolate the fault, correct the discrepancy in accordance with the applicable AMM, and repeat the failed test until it is successfully accomplished.

(3) Prior to further flight following the accomplishment of paragraphs (a)(1) and (a)(2) of this AD, install placards on all modified drip shields.

(b) If any wires or equipment are installed on the outboard surface of the drip shield (that is, between the drip shield and the airplane structure), modify that area in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

Optional Sampling (Certain Model 747 and 767 Series Airplanes)

(c) For Model 747 and 767 series airplanes listed in Group 1 in Boeing Service Bulletins 747–25–3253 and 767–25–0290: In lieu of accomplishment of paragraph (a) of this AD, within 6 years after the effective date of this AD, collect samples of the insulation and adhesive of the drip shields, and submit the samples to the manufacturer for testing, in accordance with Boeing Service Bulletin 747–25–3253 or 767–25–0290; both including Appendices A, B, and C; both dated June 29, 2000; as applicable.

(1) If the test on all samples is positive, no further action is required by this AD.

(2) If the test on any sample is negative, accomplish paragraph (a) of this AD before the compliance time specified in that paragraph.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(f) Except as provided by paragraph (b) of this AD, the actions shall be done in accordance with Boeing Service Bulletin 747–25–3253, including Appendices A, B, and C, dated June 29, 2000; Boeing Service Bulletin 767–25–0290, including Appendices A, B, and C, dated June 29, 2000; Boeing Service Bulletin 777–25–0164, including Appendices A, B, and C, dated June 29, 2000; Boeing Service Bulletin 757–25–0226, including Appendices A, B, and C, dated July 3, 2000; or Boeing Service Bulletin 757–25–0228, including Appendices A, B, and C, dated July 3, 2000; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on February 2, 2001.

Issued in Renton, Washington, on December 20, 2000.

John J. Hickey,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–33017 Filed 12–28–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–SW–58–AD; Amendment 39–12061; AD 2000–26–11]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. Model A109E Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for

Agusta S.p.A. (Agusta) Model A109E helicopters. This action requires replacing certain tail rotor blades with airworthy tail rotor blades. This amendment is prompted by a tail rotor blade (blade) failure that caused a high vibration level in the helicopter. Investigation revealed that the failure was due to a change in the manufacturing process for an identified production lot of blades. This condition, if not corrected, could result in a failure of a blade and subsequent loss of control of the helicopter.

DATES: Effective January 16, 2001.

Comments for inclusion in the Rules Docket must be received on or before February 27, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–58–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9-asw-adcomments@faa.gov.

FOR FURTHER INFORMATION CONTACT: Richard Monschke, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5116, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Ente Nazionale per l'Aviazione Civile (ENAC), the airworthiness authority for Italy, notified the FAA that an unsafe condition may exist on Agusta Model A109E helicopters. Investigation revealed that the blade failure was due to a change in the skin bonding manufacturing process for an identified production lot of blades.

Agusta issued Alert Bollettino Tecnico No. 109EP–13, dated August 3, 2000, which specifies, within 10 hours time-in-service (TIS) or with any abnormal increase in vibratory level, replacing blades, part number (P/N) 109–8132–01–109, serial number (S/N) A5–0130, A5–0131, A5–0224 to A5–0253, excluding A5–0247 and A5–0248, with blades, P/N 109–8132–01–109 or 109–8132–01–107, to ensure the continued airworthiness of these helicopters in Italy. ENAC classified this service bulletin as mandatory and issued AD 2000–393, dated August 8, 2000, to ensure the continued airworthiness of these helicopters in Italy.

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

Since we have identified an unsafe condition that is likely to exist or develop on other Agusta Model A109E helicopters of the same type design registered in the United States, this AD is being issued to prevent failure of a blade. This AD requires replacing certain blades. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability and structural integrity of the helicopter. Therefore, replacing each blade, P/N 109–8132–01–109, S/N A5–0130, A5–0131, A5–0224 through A5–0246, and A5–0249 through A5–0253, with a blade P/N 109–8132–01–109 or P/N 109–8132–01–107, is required within 10 hours time-in-service, and this AD must be issued immediately.

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

The FAA estimates that 20 helicopters will be affected by this AD, that it will take approximately 4 work hours to replace the blades, and that the average labor rate is $60 per work hour. Required parts will cost approximately $10,000 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $204,800 based on replacing both blades on all 20 helicopters.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2000–SW–58–AD.'' The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–26–11 Agusta S.p.A.: Amendment 39–12061. Docket No. 2000–SW–58–AD.

Applicability: Model A109E helicopters with tail rotor blade (blade), part number (P/N) 109–8132–01–109, serial number (S/N) A5–0130, A5–0131, A5–0224 through A5–0246, or A5–0249 through A5–0253, installed, certificated in any category.

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

Compliance: Required within 10 hours time-in-service, unless accomplished previously.

To prevent a blade failure and subsequent loss of control of the helicopter, accomplish the following:

(a) Replace each affected blade with an airworthy blade, P/N 109–8132–01–109 or P/N 109–8132–01–107, with an S/N other than those listed in the applicability section of this AD.

Note 2: Agusta Bollettino Tecnico No. 109EP–13, dated August 3, 2000, pertains to the subject of this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

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

(d) This amendment becomes effective on January 16, 2001.

Note 4: The subject of this AD is addressed in Ente Nazionale per l'Aviazione Civile (Italy) AD 2000–393, dated August 8, 2000.

Issued in Fort Worth, Texas, on December 21, 2000.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–33335 Filed 12–28–00; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Regulations No. 4 and 16]

RIN 0960–AF12

Old-Age, Survivors, and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled; Substantial Gainful Activity Amounts; ''Services'' for Trial Work Period Purposes—Monthly Amounts; Student Child Earned Income Exclusion

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: We are revising the rules to automatically adjust each year, based on any increases in the national average wage index, the average monthly earnings guideline we use to determine whether work done by persons with impairments other than blindness is substantial gainful activity; provide that we will ordinarily find that an employee whose average monthly earnings are not greater than the ''primary substantial gainful activity amount,'' has not engaged in substantial gainful activity without considering other information beyond the employee's earnings; increase the minimum amount of monthly earnings and the minimum number of self-employed work hours in month that we consider shows that a person receiving title II Social Security benefits based on disability is performing or has performed ''services'' during a trial work period, and automatically adjust the earnings amount each year thereafter; increase the maximum monthly and yearly Student Earned Income Exclusion amounts we use in determining Supplemental Security Income (SSI) Program eligibility and payment amounts for student children, and automatically adjust the monthly and yearly exclusion amounts each year thereafter.

We are revising these rules as part of our efforts to encourage individuals with disabilities to test their ability to work and keep working. We expect that these changes will provide greater incentives for many beneficiaries to attempt to work or, if already working, to continue to work or increase their work effort.

EFFECTIVE DATE: These rules are effective January 29, 2001.

FOR FURTHER INFORMATION CONTACT: For information specifically about these final rules, contact Ray Marzoli, Office of Employment Support Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–9826 or TTY (410) 966–6210. For information about eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet web site, *Social Security Online, www.ssa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Social Security and the SSI programs (titles II and XVI of the Social Security Act (the Act)) provide benefits to disabled and blind individuals. Disability is generally defined under both programs as, ''* * * inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment * * *.'' The Medicare and Medicaid programs (titles XVIII and XIX of the Act) provide related medical benefits to disabled and blind individuals.

We published a notice of proposed rulemaking (NPRM) in the **Federal Register** on August 11, 2000 (65 FR 49208). We are including all of the proposals contained in the NPRM in these final rules, which are discussed in detail below. We are including one additional change in response to several comments we received about the NPRM.

For a detailed discussion of how we calculate annual automatic adjustments that affect Social Security benefits, see our notice regarding cost-of-living increases and other determinations for the year 2001 that was published in the **Federal Register** for October 24, 2000 (65 FR 63663). We are required by statute to publish in the **Federal Register** every October an updated version of this notice. Future versions will include the annual adjustments provided under these final rules.

The Substantial Gainful Activity Amount

Under 20 CFR 404.1572 and 416.972, the term ''substantial gainful activity'' means work activity that involves significant physical or mental effort and that is done for pay or profit. Work activity is gainful if it is the kind of work usually performed for pay or profit, whether or not profit is realized. Sections 223(d)(4)(A) and 1614(a)(3)(E)

of the Act require the Commissioner to prescribe by regulations the criteria for determining when earnings demonstrate ability to engage in substantial gainful activity for a person who has an impairment other than blindness.

In evaluating initial claims for disability, we make a determination whether an applicant for either Social Security benefits or SSI benefits is engaging in substantial gainful activity. We find applicants not to be disabled if they are working and performing substantial gainful activity, regardless of their medical condition. In addition, after an individual becomes entitled to title II Social Security benefits based on disability, we consider whether a person's earnings demonstrate the ability to engage in substantial gainful activity in determining ongoing entitlement to disability benefits. (We do not use substantial gainful activity as a measure for continuing eligibility for SSI benefits.) Since July 1999, if an individual's average monthly earnings were more than $700, we would ordinarily consider that the person engaged in substantial gainful activity. This earnings guideline level applies to all employees including those in sheltered workshops or comparable facilities and, in certain circumstances, to the self-employed.

We use earnings guidelines to evaluate a person's work activity to determine whether the work activity is substantial gainful activity and, therefore, whether that person may be considered disabled under the law. We are revising our rules to provide for annual indexing of this level after reassessing the current earnings guidelines as part of our effort to improve incentives to encourage individuals with disabilities to work. A consistent method of adjusting substantial gainful activity earnings guidelines will benefit applicants and beneficiaries in future years. The national average wage index is a measure of wage growth and, therefore, provides a logical basis for adjusting the earnings guidelines used to indicate ability to work. Indexing ensures that the substantial gainful activity amount is a uniformly representative indicator over time of an individual's ability to work.

Under the revised rules, we will adjust annually the substantial gainful activity amount for people with impairments other than blindness. Beginning January 2001, the guideline will be the larger of the previous year's amount or an increased amount based on the Social Security national average wage index (see section 209(k)(1) of the Act). The annual adjusted guideline will apply to earnings from work activity in months beginning with the month in which the adjusted guideline goes into effect. This means that the first increased amount will apply to earnings in months after December 2000.

Under this revised rule, the substantial gainful activity amount will never be lower than the previous year's amount. However, there may be years when no increase results from the calculation.

Under the calculation provided by this revised rule, we determine the ratio of the national average wage index for 1999 ($30,469.84) to that for 1998 ($28,861.44), which is 1.0557283, and multiply it by the calendar year 2000 monthly-earnings guideline amount of $700, yielding the amount of $739.01. This $739.01 amount is rounded to the nearest multiple of $10, which is $740. Because $740 is larger than the corresponding 2000 amount of $700, the new earnings guideline is $740. This amount is effective for months of work activity beginning January 2001. Beginning 2002, the guideline will be the larger of $740, or the $700 amount multiplied by the ratio of the national average wage index for 2000 to that for 1998 rounded to the nearest multiple of $10. Any new amount that goes into effect January 2002 will be used only to evaluate earnings from work activity in months beginning with January 2002.

The "Secondary Substantial Gainful Activity Amount"

Since January 1990, if an employee's earnings from work activities averaged less than $300 a month, we generally would have considered that that employee had not been engaging in substantial gainful activity. We referred to this $300 earnings guideline as the "secondary substantial gainful activity amount" to distinguish it from the "primary substantial gainful activity amount" discussed in the previous section.

We would not have further evaluated work activity below the secondary substantial gainful activity amount unless there was evidence to the contrary showing that the person might have been engaging in substantial gainful activity (e.g., an employee might be in a position to defer or suppress earnings). We would have examined further the work activity of employees who earned between these two levels (the primary and secondary substantial gainful activity levels) because the rules provided that such earnings were neither high nor low enough to determine if substantial gainful activity existed. Additional evidence would have been developed. (A different rule applied to individuals employed in sheltered workshops or comparable facilities. For these people, earnings not greater than the *primary* substantial gainful activity amount ordinarily would establish that the work was not substantial gainful activity.)

Because our experience suggests that the secondary substantial gainful activity amount has not been as useful a tool as we would have liked, we are discontinuing its use. With this rule change, we ordinarily will consider that an employee is not engaging in substantial gainful activity if his or her earnings are equal to or less than the primary substantial gainful activity amount ($740 for months beginning January 2001). We will perform additional development beyond looking at earnings only when circumstances indicate that such an employee may be engaging in substantial gainful activity or might be in a position to defer or suppress earnings. This change does not affect our evaluation guidelines for the self-employed.

Our experience suggests that few applicants and beneficiaries will be affected by this change because few employees have been found to have performed substantial gainful activity on the basis of these secondary rules unless they were also in a position to defer or suppress earnings. Discontinuing these complex secondary guidelines will help simplify our rules and facilitate public understanding of the Social Security disability program as well as improve our work efficiency.

Services for the Trial Work Period

The trial work period is a work incentive. During the trial work period, a title II beneficiary may test his or her ability to work and still be considered disabled. We do not consider services performed during the trial work period as showing that the disability has ended until services have been performed in at least 9 months (not necessarily consecutive) in a rolling 60-month period.

Section 222(c)(2) of the Act provides that, for purposes of the trial work period, "the term 'services' means activity (whether legal or illegal) which is performed for remuneration or gain or is determined by the Commissioner of Social Security to be of a type normally performed for remuneration or gain." As established in regulations, § 404.1592(b), we have considered any month in which an employee earns more than $200 from his or her work to be a month of services for the trial work period.

We are increasing the monthly amount of earnings we consider to be

''services'' in a trial work period from $200 to $530 for earnings in months beginning January 2001. Beginning 2002, and for each year thereafter, we will adjust this amount to the higher of the previous year's amount or an increased amount based on the Social Security national average wage index. We are making these changes as part of our effort to improve incentives to encourage individuals with disabilities to work.

Although the dollar amount that ordinarily represents substantial gainful activity was increased from $500 to $700 in 1999, the $200 amount that represents a month of trial work period services has remained the same since 1990. Beneficiaries have been faced with exhausting months of a trial work period while earning as little as $200 a month, even on an intermittent basis. As a result, when beneficiaries were finally able to reach a higher earnings level, they may have already used up many or all of their 9 months of trial work. Increasing the trial work period services amount to $530 should allow more beneficiaries with disabilities to more realistically test their ability to work and will likely lead to work at levels closer to or at substantial gainful activity.

Automatic indexing will allow the trial work period services amount to be a uniformly representative indicator over time of a trial work attempt. We will calculate the adjustments in essentially the same manner as we will for increasing the substantial gainful activity amount. The trial work period amount will never be lower than the previous year's amount. However, there may be years when no increase results from the calculation.

The legislative history of the trial work period provision indicates that Congress did not intend to link the trial work period level to the amount that constitutes substantial gainful activity. Congress enacted the trial work period as part of the Social Security Amendments of 1960. The accompanying House Ways and Means Committee report states, ''Your committee intends that any months in which a disabled person works for gain, or does work of a nature generally performed for gain, be counted as a month of trial work. Thus the services rendered in a month need not constitute substantial gainful activity in order for the month to be counted as part of the trial-work effort.'' H.R. Rep. No. 86–1799, at 13 (1960). This change we are making maintains the distinction between the trial work period services amount and the substantial gainful activity amount intended by Congress while providing disabled beneficiaries with greater incentives to test their ability to work.

Several comments we received from the public about our proposed changes stated that we did not sufficiently address trial work period issues for the self-employed. We revisited that issue and, as a result of our analysis, in our final rules, we are increasing the number of hours of self-employed work in a business in a month that we will consider shows that the self-employed person performed services in that month. Since 1990, even if a self-employed person had earnings of $200 or less in a month, we would consider that services were performed in that month if the person worked more than 40 hours in the business. Under this revised rule, if a self-employed person has earnings that are equal to or less than the dollar threshold for services, we will consider that services were performed if the self-employed person works more than 80 hours in a month in his or her business. This change will encourage beneficiaries with disabilities to more realistically test their ability to work with respect to self-employment activities.

The Student Earned Income Exclusion

Section 1612 of the Social Security Act establishes the definition of ''*income*'' for purposes of the SSI program. This section also states what is excluded from income. Section 1612(b)(1) provides an exclusion from earned income, subject to the limitations (as to amount or otherwise) prescribed by the Commissioner, for a child who is a student regularly attending a school, college, or university, or a course of vocational or technical training designed to prepare him or her for gainful employment. With this section, Congress recognized that students with disabilities incur special expenses to go to school. Under our prior regulations, those SSI child beneficiaries who are students have been able to exclude up to $400 a month of earned income with an annual limit of $1,620. By being excluded, this earned income has no effect on eligibility or cash benefit amounts under the SSI program. These monthly and annual amounts have been in place since 1974 when the SSI program began.

In response to increases in school expenses since that time, we are revising these amounts as part of our effort to help SSI child beneficiaries who are students finance their school attendance and encourage them to work. We are increasing the earned income exclusion amount, beginning with earned income for January 2001, to $1,290 a month with an annual limit of $5,200. We also will make automatic adjustments to these amounts each year thereafter to the higher of the previous year's amounts or increased amounts based on the changes in cost-of-living.

The cost-of-living adjustments will ensure that the amounts account for price inflation. We will use a similar method to that currently used to calculate annual cost-of-living adjustments in the SSI program Federal benefit rates. The only differences are that this new calculation will use the calendar year 2001 amounts as the base amounts and any increases in these amounts will be rounded up to the nearest $10. These amounts will never be lower than the previous year's amounts. However, there may be years when no increases result from the calculation.

Public Comments

We received almost 600 comments in response to our proposals. Commenters included many advocates for people with disabilities, State and local government entities, attorneys, employees from SSA field offices, two members of Congress, and private citizens. The comments we received were overwhelmingly in support of the proposals. About 40% also included substantive assessments of the proposals or related suggestions. We have summarized these comments, grouped them by subject, and discuss them below.

Comment: Of the 600 comments received, only 13 expressed opinions not in favor of the proposals. Of those not in favor, three believed that the current SGA, TWP service months, and student earned income exclusion amounts were adequate to encourage someone who has a disability to work. One thought that the changes were too liberal and would have the effect of changing the various benefits paid by the Social Security Administration into another welfare system. Another thought that encouraging people who have a disability to work themselves off the rolls is not in their best interests. Rather than helping, this commenter stated that working would eventually cause these individuals to become destitute because, without their cash and medical benefits, these individuals would not be able to earn enough consistently to adequately provide for themselves. One other thought that liberalizing work incentives further would be useless. This commenter viewed work incentives as a failure because beneficiaries can control their earnings so as not to come off the rolls. Seven others thought the proposals

would adversely affect the solvency of the Social Security trust funds or the U.S. treasury funds.

Response: We appreciate the fact that virtually all the commenters favored the proposal. The Office of the Chief Actuary for SSA estimates that the costs of these proposals are negligible. As such, these changes should not affect the trust funds or the government's expenditures, or promote a welfare system. Advocates for the disabled have long argued that people with disabilities want to work, but to do so they must be provided necessary accommodations and safeguards for their cash benefits and health coverage. The provisions of the Ticket to Work and Work Incentives Improvement Act of 1999, in conjunction with prior work incentives, should provide additional safeguards to prevent any dire consequences resulting from people with disabilities attempting to work. We believe these changes will provide another important step to ensuring these needs are met and thus will promote work efforts.

Comment: Almost all of the other comments that included substantive assessments or suggestions stated that the SGA amount should be indexed using a base amount higher than $700. Many stated that a figure of $900 or an amount equal to that used for statutorily blind individuals for SGA purposes, $1,170, should be used.

Response: The Act provides that the Commissioner is to prescribe by regulation the criteria for determining when earnings demonstrate the ability to engage in SGA for the non-blind. Thus, we designed the SGA guidelines as a way of measuring an individual's ability to work and not as a measure of an individual's need for income. The historical relationship between the SGA amount and average wage growth was roughly consistent between 1961 (when the SGA guideline was first issued by regulation) and 1980. In 1990, we raised the SGA amount to $500 from $300 to coincide to some degree with the growth of the average wage during the 1980s. The increase in the SGA amount in July 1999 to $700 approximately corresponded to the increase in the average wage since 1990. Indexing this SGA amount to average wage growth by regulation maintains the historical relationship.

Before 1977, section 223(d) of the Act authorized the Commissioner to prescribe the level of earnings that demonstrate SGA for all title II applicants and beneficiaries and all title XVI applicants. In 1977, Congress amended the Act to provide a different criterion for setting the SGA level for people who are blind. Congress consciously made this distinction between people who are blind and those with impairments other than blindness. The House and Senate conference report accompanying the Social Security amendments of 1977 clearly stated that a different SGA amount was being established for blind persons, and that the conferees did not intend that the amount be applied to people with impairments other than blindness.

Comment: Many commenters suggested that, since we proposed increasing the monthly earnings amount that we consider to be ''services'' during the trial work period, we consider making services for purposes of the trial work period (TWP) an amount equal to the SGA level, $700. Two commented that despite the proposed increase in the service amount to $530, it is still much too low for persons with blindness whose SGA amount is $1,170.

Response: As we noted earlier, the legislative history of the trial work period provision makes it clear that Congress did not intend to link the trial work period level to the amount that constitutes SGA. The change we proposed maintains the distinction between the trial work period services amount and the substantial gainful activity amount as Congress intended while still providing beneficiaries with disabilities a more realistic opportunity to test their ability to work. Although Congress provided a different criterion for determining the SGA for individuals who are blind, Congress did not provide different criteria for the blind for determining service months for the TWP.

Comment: A few commenters stated that we did not address TWP service months with respect to self-employed beneficiaries. One suggested increasing the number of hours from 40 to 60, while another suggested doubling the hours.

Response: As we stated earlier, we revisited the issue in response to these comments. As a result of our analysis, we are increasing the minimum number of self-employed hours that we consider shows a person has performed services from more than 40 to more than 80 hours a month.

Comment: Two commenters suggested that the TWP and SGA should vary according to type of impairment particularly those types of impairments, such as chronic fatigue and immune dysfunction syndrome and severe mental illness, that make sustained work efforts very difficult. Persons with these conditions fear losing benefits as the result of sporadic work. One suggested that we use net rather than gross wages for purposes of TWP and SGA.

Response: The issues addressed by these comments are outside the scope of these specific rules changes. We will consider these comments regarding possible future regulatory or legislative changes.

Comment: A number of commenters suggested that we stop using the TWP and SGA to evaluate the work activity of beneficiaries. Some recommended that we use an earnings offset formula to reduce cash benefits gradually as earnings rise (similar to the earned income exclusion currently under title XVI). Several others suggested that there should be no earnings limits for beneficiaries with disabilities similar to beneficiaries who have reached full retirement age, currently age 65. Another suggested that the TWP should be 9 consecutive months of work since sporadic work of a couple of months, now and then, in a 60-month period should not count against an indicator intended to measure the ability to sustain competitive work.

Response: These suggested changes would require new legislation and we cannot implement them by regulation alone. Sections 302 and 303 of the Ticket to Work and Work Incentives Improvement Act of 1999 provide for our conducting a demonstration project to test an earnings-offset formula for title II beneficiaries who try to work.

Comment: Several commenters suggested that we eliminate the age restriction for the SSI student earned income exclusion. A few other commenters urged us to consider changes to the SSI eligibility rules, such as increasing the resource limit ($2,000 for an individual or $3,000 for a couple).

Response: These suggested changes also would require new legislation and we cannot implement them by regulation alone.

Comment: Numerous commenters stated that our efforts have been poor with respect to tracking income and earnings. They believe that this deficiency will become more apparent as more people take advantage of these changes and the provisions of the Ticket to Work and Work Incentives Improvement Act of 1999, allowing more overpayments to occur which can derail the work efforts of our beneficiaries.

Response: A number of initiatives are underway to improve the accuracy and timely reporting of earnings. We are improving and extending our interfacing capabilities with federal, state and local databases to gather earnings information quickly and correctly. These efforts are being implemented incrementally, with

careful attention to the privacy concerns of our beneficiaries. In addition, we are in the process of establishing a corps of specially trained staff who can facilitate the gathering of such information. We are currently testing this position, the employment support representative, in 32 sites around the country.

Comment: Many commenters stated that we should improve our collaboration with other federal agencies so that our programs and services complement other federal programs.

Response: While this suggestion addresses an area outside the scope of these specific rule changes, we have been working with other federal agencies, principally in joint committees and task forces, to better mesh our programs and services to theirs.

Comment: One commenter urged us to improve the process for homeless people to apply for disability benefits.

Response: This suggestion is outside the scope of these specific rule changes. Unrelated to these rule changes, however, we have undertaken recently several initiatives to improve our application processes.

Comment: One commenter stated that our proposals were difficult to understand and that examples are needed.

Response: We will be mindful of the need to provide more examples in future proposals.

Final Regulations

We are revising §§ 404.1574(b)(2) and (4), and 416.974(b)(2) and (4) to adjust annually the earnings guidelines that we use to determine whether a non-blind employee is engaged in substantial gainful activity. Beginning January 2001, the guideline will be the higher of the previous year's amount or an increased amount based on the Social Security national average wage index. Under this revised rule, the monthly earnings guideline will increase from $700 to $740 for 2001. (This standard also applies to the self-employed in certain circumstances by cross-references that have been and continue to be present in §§ 404.1575 and 416.975.)

We also are revising §§ 404.1574(b)(3) and (6), and 416.974(b)(3) and (6) to provide, effective for months of work activity beginning January 2001, that we will ordinarily find that an employee whose average monthly earnings are equal to or less than the ''primary substantial gainful activity amount'' set forth in §§ 404.1574(b)(2) and 416.974(b)(2) has not engaged in substantial gainful activity without considering other information beyond the employee's earnings. We also are making conforming changes to §§ 404.1574(b)(4) and 416.974(b)(4).

We also are revising § 404.1592 to increase from $200 to $530 the minimum amount of monthly earnings above which we consider shows that a person is performing or has performed ''services'' for counting trial work period months, effective for months of earnings beginning January 2001. We will adjust the amount annually to the higher of the previous year's amount or an increased amount based on the Social Security national average wage index, beginning January 2002. Also, effective January 2001, for a self-employed person with earnings equal to or less than the dollar threshold for services, we are increasing the number of hours of self-employed work in a business each month that we will consider shows services are performed from more than 40 hours to more than 80 hours.

We also are revising § 416.1112(c)(3) to increase the maximum amount of the student earned income exclusion to $1,290 a month, not to exceed $5,200 per year, effective for earned income beginning January 2001. We also will adjust these amounts annually to the higher of the previous year's amounts or increased amounts calculated in essentially the same manner as the annual cost-of-living adjustments to the SSI Program federal benefit rates, beginning January 2002. This calculation will use the 2001 amounts as the base amounts and any increases in these amounts will be rounded to the nearest $10.

Electronic Version

The electronic file of this document is available on the Internet at *www.access.gpo.gov/nara.* This document also is available on our Internet web site, *Social Security Online, www.ssa.gov.*

Regulatory Procedures

Paperwork Reduction Act

These regulations impose no new reporting/recordkeeping requirements necessitating clearance by the Office of Management and Budget (OMB).

Executive Order 12866

Based on the costs associated with these final rules, the Social Security Administration has determined that they do not require an assessment of costs and benefits to society per Executive Order 12866 because they do not meet the definition of a ''significant regulatory action.'' These final rules also do not meet the definition of a ''major rule'' under 5 U.S.C. 801ff because the Social Security Administration's budget baseline assumes that substantial gainful activity amounts will keep pace with growth in average wages, and other provisions do not result in costs that exceed the threshold for what constitutes a ''major rule.'' In addition, the Social Security Administration has determined, as required under the aforementioned statute, that these regulations do not create any unfunded mandates for State or local entities under sections 202–205 of the Unfunded Mandates Act of 1995. OMB has reviewed these final rules.

We have also determined that these rules meet the plain language requirement of Executive Order 12866 and the President's memorandum of June 1, 1998.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect individuals who are applying for or receiving title II or title XVI benefits because of blindness or disability, and States which administer the Medicaid program and/or pay supplemental benefits to SSI eligible individuals.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income.

Dated: November 9, 2000.

Kenneth S. Apfel,

Commissioner of Social Security.

For the reasons stated in the preamble, the Social Security Administration is amending parts 404 and 416 of chapter III of title 20 of the Code of Federal Regulations as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189.

2. Section 404.1574 is amended by revising paragraphs (b)(2), (b)(3), (b)(4), and (b)(6) to read as follows:

§ 404.1574 Evaluation guides if you are an employee.

* * * * *

(b) * * *

(2) *Earnings that will ordinarily show that you have engaged in substantial gainful activity.* We will consider that your earnings from your work activity as an employee (including earnings from sheltered work, see paragraph (b)(4) of this section) show that you engaged in substantial gainful activity if:

(i) *Before January 1, 2001,* they averaged more than the amount(s) in Table 1 of this section for the time(s) in which you worked.

(ii) *Beginning January 1, 2001,* and each year thereafter, they average more than the larger of:

(A) The amount for the previous year, or

(B) An amount adjusted for national wage growth, calculated by multiplying $700 by the ratio of the national average wage index for the year 2 calendar years before the year for which the amount is being calculated to the national average wage index for the year 1998. We will then round the resulting amount to the next higher multiple of $10 where such amount is a multiple of $5 but not of $10 and to the nearest multiple of $10 in any other case.

TABLE 1

For months:	Your monthly earnings averaged more than:
In calendar years before 1976	$200
In calendar year 1976	230
In calendar year 1977	240
In calendar year 1978	260
In calendar year 1979	280
In calendar years 1980–1989 ...	300
January 1990–June 1999	500
July 1999–December 2000	700

(3) *Earnings that will ordinarily show that you have not engaged in substantial gainful activity.* If your earnings for months beginning January, 2001, are equal to or less than the amount(s) determined under paragraph (b)(2)(ii) of this section for the year(s) in which you work, we will generally consider that the earnings from your work as an employee will show that you have not engaged in substantial gainful activity. If your earnings for months before January, 2001, were less than the amount(s) in Table 2 of this section for the year(s) in which you worked, we will generally consider that the earnings from your work as an employee will show that you have not engaged in substantial gainful activity.

TABLE 2

For months:	Your monthly earnings averaged less than:
In calendar years before 1976	$130
In calendar year 1976	150
In calendar year 1977	160
In calendar year 1978	170
In calendar year 1979	180
In calendar years 1980–1989 ...	190
In calendar years 1990–2000 ...	300

(4) *Before January 1, 2001, if you worked in a sheltered workshop.* Before January 1, 2001, if you worked in a sheltered workshop or a comparable facility especially set up for severely impaired persons, we will ordinarily consider that your earnings from this work show that you have engaged in substantial gainful activity if your earnings averaged more than the amounts in table 1 of paragraph (b)(2) of this section. Average monthly earnings from a sheltered workshop or a comparable facility that are equal to or less than those amounts indicated in table 1 of paragraph (b)(2) of this section will ordinarily show that you have not engaged in substantial gainful activity without the need to consider other information, as described in paragraph (b)(6) of this section, regardless of whether they are more or less than those indicated in paragraph (b)(3) of this section. When your earnings from a sheltered workshop or comparable facility are equal to or less than those amounts indicated in table 1 of paragraph (b)(2), we will consider the provisions of paragraph (b)(6) of this section only if there is evidence showing that you may have engaged in substantial gainful activity. For work performed in a sheltered workshop in months beginning January 2001, the rules of paragraph (b)(2), (3), and (6) apply the same as they do to any other work done by an employee.

* * * * *

(6) *Earnings that are not high enough to ordinarily show that you engaged in substantial gainful activity.*

(i) *Before January 1, 2001,* if your average monthly earnings were between the amounts shown in paragraphs (b)(2) and (3) of this section, we will generally consider other information in addition to your earnings (see paragraph (b)(6)(iii) of this section). This rule generally applies to employees who did not work in a sheltered workshop or a comparable facility, although we may apply it to some people who work in sheltered workshops or comparable facilities (see paragraph (b)(4) of this section).

(ii) *Beginning January 1, 2001,* if your average monthly earnings are equal to or less than the amounts determined under paragraph (b)(2) of this section, we will generally not consider other information in addition to your earnings unless there is evidence indicating that you may be engaging in substantial gainful activity or that you are in a position to defer or suppress your earnings.

(iii) *Examples* of other information we may consider include, whether—

(A) Your work is comparable to that of unimpaired people in your community who are doing the same or similar occupations as their means of livelihood, taking into account the time, energy, skill, and responsibility involved in the work, and

(B) Your work, although significantly less than that done by unimpaired people, is clearly worth the amounts shown in paragraph (b)(2) of this section, according to pay scales in your community.

* * * * *

3. Section 404.1592 is amended by revising paragraph (b) to read as follows:

§ 404.1592 The trial work period.

* * * * *

(b) *What we mean by services.* When used in this section, *services* means any activity (whether legal or illegal), even though it is not substantial gainful activity, which is done in employment or self-employment for pay or profit, or is the kind normally done for pay or profit. We generally do not consider work done without remuneration to be *services* if it is done merely as therapy or training or if it is work usually done in a daily routine around the house or in self-care. We will not consider work you have done as a volunteer in the federal programs described in section 404.1574(d) in determining whether you have performed services in the trial work period.

(1) *If you are an employee.* We will consider your work as an employee to be *services* if:

(i) *Before January 1, 2002*, your earnings in a month were more than the amount(s) indicated in Table 1 for the year(s) in which you worked.

(ii) *Beginning January 1, 2002*, your earnings in a month are more than an amount determined for each calendar year to be the larger of:

(A) Such amount for the previous year, or

(B) An amount adjusted for national wage growth, calculated by multiplying $530 by the ratio of the national average wage index for the year 2 calendar years before the year for which the amount is being calculated to the national average wage index for 1999. We will then round the resulting amount to the next higher multiple of $10 where such amount is a multiple of $5 but not of $10 and to the nearest multiple of $10 in any other case.

(2) *If you are self-employed.* We will consider your activities as a self-employed person to be *services* if:

(i) *Before January 1, 2002*, your net earnings in a month were more than the amount(s) indicated in Table 2 of this section for the year(s) in which you worked, or the hours you worked in the business in a month are more than the number of hours per month indicated in Table 2 for the years in which you worked.

(ii) *Beginning January 1, 2002*, you work more than 80 hours a month in the business, or your net earnings in a month are more than an amount determined for each calendar year to be the larger of:

(A) Such amount for the previous year, or

(B) An amount adjusted for national wage growth, calculated by multiplying $530 by the ratio of the national average wage index for the year 2 calendar years before the year for which the amount is being calculated to the national average wage index for 1999. We will then round the resulting amount to the next higher multiple of $10 where such amount is a multiple of $5 but not of $10 and to the nearest multiple of $10 in any other case.

TABLE 1.—FOR EMPLOYEES

For months	You earn more than
In calendar years before 1979	$50
In calendar years 1979–1989	75
In calendar years 1990–2000	200
In calendar year 2001	530

TABLE 2.—FOR THE SELF-EMPLOYED

For months	Your net earnings are more than	Or you work in the business more than
In calendar years before 1979	$50	15 hours.
In calendar years 1979–1989	75	15 hours.
In calendar years 1990–2000	200	40 hours.
In calendar year 2001	530	80 hours.

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND AND DISABLED

1. The authority citation for Subpart I of Part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1611, 1614, 1619, 1631(a), (c) and (d)(1), and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c) and (d)(1), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a) and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, 1382h note).

2. Section 416.974 is amended by revising paragraphs (b)(2), (b)(3), (b)(4) and (b)(6) to read as follows:

§ 416.974 Evaluation guides if you are an employee.

* * * * *

(b) * * *

(2) *Earnings that will ordinarily show that you have engaged in substantial gainful activity.* We will consider that your earnings from your work activity as an employee (including earnings from sheltered work, see paragraph (b)(4) of this section) show that you engaged in substantial gainful activity if:

(i) *Before January 1, 2001*, they averaged more than the amount(s) in Table 1 of this section for the time(s) in which you worked.

(ii) *Beginning January 1, 2001*, and each year thereafter, they average more than the larger of:

(A) The amount for the previous year, or

(B) An amount adjusted for national wage growth, calculated by multiplying $700 by the ratio of the national average wage index for the year 2 calendar years before the year for which the amount is being calculated to the national average wage index for the year 1998. We will then round the resulting amount to the next higher multiple of $10 where such amount is a multiple of $5 but not of $10 and to the nearest multiple of $10 in any other case.

TABLE 1

For months:	Your monthly earnings averaged more than:
In calendar years before 1976	$200
In calendar year 1976	230
In calendar year 1977	240
In calendar year 1978	260
In calendar year 1979	280
In calendar years 1980–1989	300
January 1990–June 1999	500
July 1999–December 2000	700

(3) *Earnings that will ordinarily show that you have not engaged in substantial gainful activity.* If your earnings for months beginning January, 2001, are equal to or less than the amount(s) determined under paragraph (b)(2)(ii) of this section for the year(s) in which you work, we will generally consider that the earnings from your work as an employee will show that you have not engaged in substantial gainful activity. If your earnings for month before January, 2001, were less than the amount(s) in Table 2 of this section for the year(s) in which you worked, we will generally consider that the earnings from your work as an employee will show that you have not engaged in substantial gainful activity.

TABLE 2

For months:	Your monthly earnings averaged less than:
In calendar years before 1976	$130
In calendar year 1976	150
In calendar year 1977	160
In calendar year 1978	170
In calendar year 1979	180
In calendar years 1980–1989	190
In calendar years 1990–2000	300

(4) *Before January 1, 2001, if you worked in a sheltered workshop.* Before January 1, 2001, if you worked in a sheltered workshop or a comparable facility especially set up for severely impaired persons, we will ordinarily consider that your earnings from this work show that you have engaged in substantial gainful activity if your earnings averaged more than the amounts in the table in paragraph (b)(2) of this section. Average monthly earnings from a sheltered workshop or a comparable facility that are equal to or less than those amounts indicated in table 1 of paragraph (b)(2) of this section will ordinarily show that you have not engaged in substantial gainful activity without the need to consider other information, as described in paragraph (b)(6) of this section, regardless of whether they are more or less than those indicated in paragraph (b)(3) of this section. When your earnings from a sheltered workshop or comparable facility are equal to or less than those amounts indicated in table 1 of paragraph (b)(2), we will consider the provisions of paragraph (b)(6) of this section only if there is evidence showing that you may have engaged in substantial gainful activity. For work performed in a sheltered workshop in months beginning January 2001, the rules of paragraphs (b)(2), (3), and (6) apply the same as they do to any other work done by an employee.

* * * * *

(6) *Earnings that are not high enough to ordinarily show that you engaged in substantial gainful activity.*

(i) *Before January 1, 2001,* if your average monthly earnings were between the amounts shown in paragraphs (b)(2) and (3) of this section, we will generally consider other information in addition to your earnings (see paragraph (b)(6)(iii) of this section). This rule generally applies to employees who did not work in a sheltered workshop or a comparable facility, although we may apply it to some people who work in sheltered workshops or comparable facilities (see paragraph (b)(4) of this section).

(ii) *Beginning January 1, 2001,* if your average monthly earnings are equal to or less than the amounts determined under paragraph (b)(2) of this section, we will generally not consider other information in addition to your earnings unless there is evidence indicating that you may be engaging in substantial gainful activity or that you are in a position to defer or suppress your earnings.

(iii) *Examples* of other information we may consider include, whether—

(A) Your work is comparable to that of unimpaired people in your community who are doing the same or similar occupations as their means of livelihood, taking into account the time, energy, skill, and responsibility involved in the work, and

(B) Your work, although significantly less than that done by unimpaired people, is clearly worth the amounts shown in paragraph (b)(2) of this section, according to pay scales in your community.

* * * * *

3. The authority citation for Subpart K of Part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383); sec. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

4. Section 416.1112 is amended by revising paragraph (c)(3) to read as follows:

§ 416.1112 Earned income we do not count.

* * * * *

(c) * * *

(3) If you are a blind or disabled child who is a student regularly attending school as described in § 416.1861:

(i) *For earned income beginning January 1, 2002,* monthly and yearly maximum amounts that are the larger of:

(A) The monthly and yearly amounts for the previous year, or

(B) Monthly and yearly maximum amounts increased for changes in the cost-of-living, calculated in the same manner as the Federal benefit rates described in § 416.405, except that we will use the calendar year 2001 amounts as the base amounts and will round the resulting amount to the next higher multiple of $10 where such amount is a multiple of $5 but not of $10 and to the nearest multiple of $10 in any other case.

(ii) *For earned income before January 1, 2002,* the amounts indicated in Table 1 of this section.

TABLE 1

For months	Up to per month	But not more than in a calendar year
In calendar years before 2001	$400	$1,620
In calendar year 2001	1,290	5,200

[FR Doc. 00–33271 Filed 12–28–00; 8:45 am]

BILLING CODE 4191–02–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Decoquinate and Monensin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Alpharma, Inc. The NADA provides for use of approved, single-ingredient decoquinate and monensin Type A medicated articles to make two-way combination drug Type B and Type C medicated feeds used for prevention of coccidiosis and improved feed efficiency in cattle fed in confinement for slaughter.

DATES: This rule is effective December 29, 2000.

FOR FURTHER INFORMATION CONTACT: Janis R. Messenheimer, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7578.

SUPPLEMENTARY INFORMATION: Alpharma Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, filed NADA 141–148 that provides for use of DECCOX® (27.2 gram per pound (g/lb) decoquinate) and Rumensin® (20, 30, 45, 60, 80, or 90.7 g/lb monensin activity as monensin sodium) Type A medicated articles to make two-way combination Type B and Type C medicated feeds. The Type C medicated feeds contain 13.6 to 27.2 g/ton decoquinate and 5 to 30 g/ton monensin, and are used for prevention of coccidiosis caused by *Eimeria bovis* and *E. zuernii*, and improved feed efficiency in cattle fed in confinement for slaughter. The NADA is approved as of November 16, 2000, and the regulations in 21 CFR 558.195 and 558.355 are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

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

a.m. and 4 p.m., Monday through Friday.

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

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

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

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

2. Section 558.195 is amended in the table in paragraph (d) by adding an entry following ''13.6 to 27.2 (0.0015 to 0.003 pct)'' and before ''Chlortetracycline approximately 400'' to read as follows:

§ 558.195 Decoquinate.

* * * * *

(d) * * *

Decoquinate in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
*	*	*	*	*
	Monensin 5 to 30	Cattle fed in confinement for slaughter; for prevention of coccidiosis caused by *Eimeria bovis* and *E. zuernii*, and improved feed efficiency.	Feed only to cattle fed in confinement for slaughter. Feed continuously as the sole ration to provide 22.7 mg of decoquinate per 100 lb body weight per day and 50 to 360 mg of monensin per head per day. Feed at least 28 days during period of exposure to coccidiosis or when it is likely to be a hazard. Do not feed to animals producing milk for food. Also see (c)(1) of this paragraph and § 558.355(d)(8). Monensin as monensin sodium provided by 000986 in § 510.600(c) of this chapter.	046573
*	*	*	*	*

3. Section 558.355 is amended by adding paragraph (f)(7) to read as follows:

§ 558.355 Monensin.

* * * * *

(f) * * *

(7) Monensin may also be used in combination with decoquinate as in § 558.195.

Dated: December 20, 2000.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 00–33217 Filed 12–28–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 777

[FHWA Docket No. FHWA–97–2514; 96–8]

RIN 2125–AD78

Mitigation of Impacts to Wetlands and Natural Habitat

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This document revises the rule concerning the eligibility for Federal-aid transportation funding of activities to mitigate impacts to wetlands and natural habitats due to highway projects funded pursuant to provisions of title 23, U.S. Code. It updates the FHWA's wetlands regulation to conform with wetland and natural habitat mitigation provisions contained in the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and the Transportation Equity Act for the 21st Century (TEA–21), which allow increased flexibility for Federal funding participation under title 23, U.S. Code, in mitigation measures for impacts of federally funded highway projects to wetlands and natural habitats

EFFECTIVE DATE: January 29, 2001.

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SUPPLEMENTARY INFORMATION:

Electronic Access

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A. Background

The FHWA issued a notice of proposed rulemaking (NPRM) June 17, 1996, at 61 FR 30553, and supplementary notices of proposed rulemaking (SNPRMs) June 18, 1997, at 62 FR 33047, and April 7, 1999, at 64 FR 16870.

This final rule establishes the following:

1. The criteria for participation with Federal highway funds (title 23, U.S. Code) in costs of mitigation of impacts to wetlands and natural habitats;

2. A preference in compensatory mitigation of wetlands and natural habitats impacts due to highway projects funded pursuant to title 23, U.S. Code, for mitigation banks, where the impacts are within the service area of the bank, and the bank has been properly permitted; and

3. The requirements for evaluation of wetlands impacts due to such projects and implementation of mitigation consistent with current technology and wetlands science.

This regulation does not establish a requirement to implement mitigation of impacts to resources regulated under the Clean Water Act (33 U.S.C. 1344), the Section 404 regulatory program, or to other resources regulated under other Federal, State, or local regulations, or to unregulated natural habitat resources. It establishes requirements for eligibility of such actions for Federal funding participation and the banking preference only.

Approximately 50 percent of our nation's wetlands have been lost in the last two hundred years. Section 404 of the Clean Water Act (CWA) established the regulatory program of the U.S. Army Corps of Engineers (33 CFR Parts 320–330) to permit discharges of dredged and fill material in wetlands and other waters of the United States, and helps to protect the nation's wetlands resources, functions, and values by requiring environmental review for the issuance of such permits. The permit review process requires a sequencing analysis of alternatives to avoid and minimize wetlands impacts as much as practicable in accordance with 40 CFR 230.10(a) (the Section 404 (b)(1) guidelines), and consideration of compensatory mitigation for unavoidable impacts.

Executive Order 11990, Protection of Wetlands, (42 FR 26961; 3 CFR, 1977 comp., p. 121) directs Federal agencies to avoid to the extent possible adverse impacts associated with the destruction or modification of wetlands, and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative. Other Federal programs designed to conserve and protect wetlands include the Emergency Wetlands Protection Resources Act of 1986 (16 U.S.C. 3921–3931), the North American Waterfowl Management Plan (16 U.S.C. 4401(a)(12)), and the Wetlands Reserve Program (16 U.S.C. 3837). Private organizations, such as Ducks Unlimited, have been established to help conserve, restore, and protect wetlands as waterfowl habitat. In addition, there are State and local wetlands protection programs and regulations that must be met when planning and building highway projects.

The FHWA implements the regulatory and national policy requirements stated above. The ISTEA (Pub. L. 102–240, 105 stat. 1914), and the TEA–21 (Public Law 105–178, 112 Stat. 107), both recognized changes in wetlands management regulations, procedures and processes, and included important new authorities for participation in costs of wetlands mitigation with Federal transportation funds. Accordingly, the FHWA decided to update and revise its regulation concerning mitigation of wetlands. At the same time, in accordance with new language in the TEA–21, eligibility for use of Federal transportation funds was established for mitigation of impacts to natural habitats.

In the NPRM published on June 17, 1996 (61 FR 30553), the FHWA proposed to amend 23 CFR Part 777, Mitigation of Impacts to Privately-owned Wetlands, in order to update the previous, obsolete regulation in light of changes brought about by the ISTEA. The ISTEA significantly altered the range and timing of alternatives eligible for Federal-aid participation for mitigation of wetland impacts due to Federal-aid highway projects. Accordingly, the June 17, 1996, NPRM revised the current regulation to conform to the ISTEA's requirements, providing more flexibility to State highway agencies in determining eligibility of alternatives for Federal participation. This proposal also broadened the scope of the current regulation to encompass all wetlands mitigation projects eligible for Federal participation, not just those involving privately-owned wetlands.

Subsequently, the FHWA determined that certain language in the regulation proposed in the NPRM, which was carried over from the original rulemaking published in 1980, could be interpreted in an unnecessarily restrictive manner. Part 777, as then written, stated that it applied to ''the evaluation and mitigation of adverse environmental impacts to privately owned wetlands caused by new construction of Federal-aid highway projects.'' (23 CFR 777.1). The NPRM retained this language, with the exception of the words ''privately owned.'' The FHWA believed this provision was unnecessarily restrictive, because under current law Federal-aid funds may be used to improve or restore wetlands affected by past Federal-aid highway projects, even when no current Federal-aid project is taking place in the vicinity.

Four provisions of title 23, U.S. Code, sanction such ''historic wetlands'' restoration projects. First, both the National Highway System and Surface Transportation Programs, created by the ISTEA, allow States to use Federal-aid funds for wetlands mitigation activities. 23 U.S.C. 103(b)(6)(m) and 133(b)(11). These provisions are identically worded, and allow the expenditure of Federal-aid highway funds towards efforts to conserve, restore, enhance, and create wetlands. Both provisions state that contributions to such mitigation efforts may take place concurrent with or in advance of project construction. The FHWA believes this phrase may be fairly interpreted as permissive, rather than restrictive and, therefore, States are permitted by these two provisions to use Federal-aid funds for the stated purposes concurrent with or in advance of project construction. Nothing in the language of sections 103(b)(6)(M) or 133(b)(11) forbids States from doing so after a project has been completed. No specific prohibition having been written into these provisions, the FHWA does not believe one is to be implied.

Two other provisions of title 23, U.S. Code, when read together, also provide a basis for funding so-called historic wetlands restoration projects. The first is 23 U.S.C. 133(b)(1), which permits Surface Transportation Program (STP) funds to be spent for ''mitigation of damage to wildlife, habitat, and ecosystems caused by a transportation project funded under this title.'' Under 23 U.S.C. 101, the term ''project'' means ''an undertaking to construct a particular portion of a highway, or if the context so implies, the particular portion of a highway so constructed.'' This definition is broad enough to encompass not just new or even recent projects, but any highway that has been constructed using title 23, U.S. Code, funds.

A final category of funding for which historic wetlands projects may be eligible is that available under the STP for transportation enhancement activities (TEAs) (23 U.S.C. 133(e)(5)). The definition of TEAs (23 U.S.C. 101) does not limit them to those related to particular ''projects'' (as defined in section 101), and does not specify any particular time frame in which they must take place. Historic wetlands projects could qualify for STP funds if legitimately tied to one of the categories of TEAs set forth in the definition, such as, scenic beautification, mitigation of water pollution due to highway runoff, or maintaining habitat connectivity while reducing wildlife mortality due to motor vehicles.

Accordingly, the FHWA issued an SNPRM, dated June 18, 1997 (62 FR 33047), which further amended Part 777 by revising § 777.1 to read: ''To provide policy and procedures for evaluation and mitigation of adverse environmental impacts to wetlands resulting from projects funded pursuant to the provisions of title 23, United States Code.''

That SNPRM also made a technical amendment to the text of the June 17, 1996, NPRM, and revised the heading of the regulation to read, ''Mitigation of Impacts to Wetlands.''

The TEA–21 established a preference for use of mitigation banks to provide compensatory mitigation for unavoidable wetlands impacts caused by federally funded highway projects, and for impacts to natural habitat. The TEA–21 provides that, for projects funded under title 23, U.S. Code, having a wetland impact within the service area of a mitigation bank, to the maximum extent practicable preference shall be given to the use of the mitigation bank, if the bank contains sufficient credits to offset the impact and is approved in accordance with the Federal Guidance for the Establishment, Use, and Operation of Mitigation Banks (60 FR 58605, November 28, 1995) (Federal Guidance). The Federal Guidance presents guidance for the use of ecological mitigation banks as compensatory mitigation in the Section 404 regulatory program for unavoidable impacts to wetlands and other aquatic resources.

B. Who Is Affected by the New Regulation?

The new regulation addresses the eligibility of mitigation activities for impacts to wetlands and natural habitats for funding under title 23, U.S. Code. The FHWA and State departments of transportation (DOTs), who are responsible for administering title 23, U.S. Code, funds and implementing highway projects, are the primary agencies affected by the new regulation. State departments of transportation will have increased flexibility in planning and implementing mitigation for impacts to wetlands and other waters of the United States, and to natural habitats caused by highway projects funded pursuant to title 23, U.S. Code. This increased flexibility will affect advance planning for wetlands conservation by other agencies as well through interagency coordination and cooperative projects. Providers of services to mitigate wetlands impacts, such as private wetlands mitigation banking companies, and wetland regulatory agencies, including the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, and State regulatory agencies, will also be affected by the regulation through the increased flexibility and the mitigation banking preference. The changes in the new regulation should reduce the permit review times for the Section 404 regulatory program by increasing the flexibility offered to State highway agencies in mitigating impacts to wetlands, facilitate project development, and result in greater efficiency in providing mitigation for unavoidable impacts.

C. What Does the Rule Do and What Changes Were Made in the Final Rule Due to Comments Received on the Proposed Rule?

The final rule establishes a preference for wetland mitigation banking in mitigating wetlands impacts caused by projects funded under title 23, U.S. Code, broadens the regulation to provide eligibility for use of title 23 Federal highway funds to mitigate for impacts to wetlands caused by current or past highway projects funded under title 23, U.S. Code, and to mitigate impacts to natural habitat. The NPRM did not address mitigation of impacts to natural habitat, however, this issue was discussed in the SNPRM April 7, 1999 at 64 FR 16870. The final rule also recognizes the eligibility of environmental restoration activities established in the TEA–21 on highway projects funded pursuant to title 23, U.S. Code.

Specific changes in the final rule from those published in the NPRM and the SNPRMs are the following:

Section 777.2 Definitions

In the definition of ''compensatory mitigation,'' the phrase ''Activities such as'' is deleted in order to limit the definition to the specific activities cited.

The definition of ''ecologically desirable'' is deleted in response to comments recommending its removal. The banking preference in the TEA–21 is not restricted to the most ecologically desirable mitigation alternative; therefore, the definition is not needed.

The definition of natural habitat is changed to add the word ''currently'' in the phrase ''not currently subject to cultivation.'' Also, a new sentence is added at the end of the definition. These changes were made to more clearly define the scope of the term.

The definition for ''net gain of wetlands'' is changed to make it more consistent with the Federal Guidance and Section 404(b)(1) guidelines. The phrase ''at a ratio greater than 1:1'' is added to clarify the definition.

A definition for ''practicable'' is added to make this regulation consistent with the regulatory program language found at 33 CFR Parts 320–330 and 40 CFR Part 240.

The definition for ''wetland or habitat enhancement'' is revised to make it consistent with the Federal Guidance and to broaden the definition with respect to control and management of pests necessary for enhancement.

The definition for ''wetland or habitat establishment period'' is changed in response to comments to clarify the distinction between establishment and maintenance of wetland mitigation sites. Maintenance activities are not eligible for participation with Federal-aid highway funds (23 U.S.C. 116(a)), whereas certain activities for wetland or habitat establishment for the purpose of project mitigation have been identified as eligible.

A definition for ''wetland or habitat preservation'' is added to make this regulation consistent with the Federal Guidance.

The definition for ''wetland or habitat restoration'' is changed in response to

comments to make it consistent with the Federal Guidance.

The definition of ''wetlands and habitat banking and related measures'' is changed in response to a commenter's request to make it consistent with the Federal Guidance. The definition is now titled ''mitigation bank.''

The definition of ''wetlands or habitat mitigation credit'' is changed in response to comments to make it consistent with the Federal Guidance.

Section 777.3 Background

This section is revised for clarity and to add regulatory references. Paragraph (b) is added to make the references to title 23, U.S. Code, formerly in paragraph (a), more clear. Paragraphs (c), (d), and (e) are added to provide reference to Federal regulations and guidance pertinent to wetlands and habitat mitigation activities, at the request of several commenters.

Section 777.7 Evaluation of Impacts

Paragraph (a) is revised to use appropriate regulatory language (''shall'' rather than ''should'') and to clarify the applicability of the regulation relative to participation with title 23, U.S. Code, funds. Paragraph (b) is revised to make it clearer. Paragraph (c) is revised to emphasize concurrent environmental analyses and processes, and to incorporate a reference to regulatory guidance relative to recognized wetlands functions and mitigation of impacts found at 33 CFR 320.4.

Section 777.9 Mitigation of Impacts

Paragraph (a) is revised to make it clearer that this section applies to mitigation activities eligible for participation with Federal-aid highway (title 23) funds and to remove requirements not found in the TEA–21, but stated elsewhere (at 40 CFR Part 230). Paragraph (b) is revised to remove a perceived bias against commercial wetlands banks in the proposed regulation. Paragraphs (c) and (d) are added to make the regulation more consistent with guidance on wetlands and natural habitat mitigation in the TEA–21 and to incorporate the FHWA's current legal interpretation on eligibility of mitigation activities for participation with title 23, U.S. Code, funds.

Section 777.11 Other Considerations

Paragraphs (b) and (c) are revised to make them consistent and clearer, and to include performance bonds as a sufficient assurance that a mitigation site would be properly maintained as a wetland or natural habitat. Paragraph (g) is changed to eliminate unnecessary language outside the authority of title 23, U.S. Code.

D. Why Did the FHWA Change the Rule?

This rule was changed to implement new authority for participation with Federal highway funds in mitigation for wetlands and natural habitat impacts due to federally funded highway projects. It also recognizes new needs, requirements, and methods to successfully implement compensatory mitigation, and implements changes in interpretation of existing regulations to allow restoration or mitigation of such impacts due to already-completed projects which were not mitigated when the projects were built.

E. Discussion of Comments

All comments received on the NPRM were carefully considered in the decision to publish a final rule. A total of 33 comments were received: 3 from Federal agencies, 22 from State agencies, 1 from a State legislature, 3 from non-governmental organizations, 3 from private wetland banking organizations or companies, and 1 from 3 U.S. Senators.

Comments in general supported the increased flexibility provided by changes in the regulation to conform with new authority established in the ISTEA and the TEA–21 for mitigating impacts to wetlands and natural habitat. However, concerns were expressed that this new authority: (1) Might become a requirement with respect to unregulated resources; (2) might lead to inappropriate use of permits and compensatory mitigation; (3) might de-emphasize the Section 404(b)(1) guidelines; and (4) might lead to lack of emphasis on the National Environmental Policy Act (NEPA) in the project development process.

As previously stated, this regulation does not establish any requirement to mitigate impacts to wetlands, waters of the United States, or natural habitats, or to carry out environmental restoration of historic or past impacts to such resources. It establishes requirements for participation with title 23, U.S. Code, Federal-aid highway funds in costs of mitigation activities (avoidance, minimization, rectification, reduction, compensation (40 CFR 1508.20)) or environmental restoration activities authorized under the TEA–21 associated with highway projects funded under title 23, U.S. Code, only. Part 771 of title 23, CFR, establishes the general project environmental process, impact review requirements, and mitigation policy under NEPA for federally funded highway projects. Specific mitigation requirements for wetlands and waters of the United States are established at 33 CFR Part 320, 40 CFR Part 230, and by other applicable State or local regulations. Federal requirements for conservation measures for habitat of federally listed species are found in 50 CFR Part 402—Interagency Cooperation—Endangered Species Act of 1973, as amended, and related guidance, and State regulations as applicable.

Part 771 is the FHWA regulation implementing NEPA; it addresses appropriate analysis of impacts to the natural and human environment, and use of title 23, U.S. Code, funds for mitigation of impacts in general. Other Federal guidance and regulations regarding mitigation for impacts to wetlands and aquatic resources include: the U.S. Fish and Wildlife Service (USFWS) draft regulations concerning compatible uses of Federal wildlife refuges, found at 64 FR 49055 (September 9, 1999); the USFWS policy on mitigation, found at 46 FR 7644 (January 23, 1981); the Federal Guidance; and the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR Part 1508).

Since the ISTEA was passed, the FHWA has implemented the additional flexibility that the ISTEA provided to participate in wetland mitigation that was not found in the old regulation through internal memoranda and technical guidance. The FHWA has encouraged progressive approaches to wetlands mitigation, including development of mitigation banking agreements and restoration of past impacts which were not mitigated when the highway projects were constructed. State DOTs have been allowed all possible flexibility in developing compensatory mitigation approaches for unavoidable wetlands impacts with Federal highway funds, and have been encouraged to seek out new methods and technology for mitigation. The FHWA has participated in wetland technical workshops, and published a technical manual on mitigation of wetlands, National Cooperative Highway Research Program (NCHRP) Report 379, ''Guidelines for the Development of Wetland Replacement Areas,'' [1] to improve the value and performance of compensatory mitigation.

[1] Report 379 dated 1996 is available for purchase at a cost of $65 from the Transportation Research Board bookstore at 2001 Wisconsin Avenue, NW., Green Building, Room 346, Washington, DC 20007, (202) 334–3213; or online at: *http://www.nas.edu/trb*. It is available for inspection and copying as provided in 49 CFR Part 7.

In addition to supporting the increased flexibility in participation with Federal transportation funds for mitigation, several comments also generally supported mitigation banking for mitigation of highway impacts. Highway projects are linear, often resulting in many, small, incremental impacts. On-site mitigation sometimes results in isolated wetlands that might not provide benefits commensurate with costs and time required to establish wetland functions. Due to the presumed larger size of the mitigation wetlands established through banking, and the controls that are recommended by the Federal Guidance under the Section 404 permit authority, wetlands banks could provide more wetland values and benefits per acre and should receive sufficient management to ensure their functions will be sustained into the future.

Additional comments and responses are as follows:

Several commenters requested that a citation to the Section 404(b)(1) guidelines (40 CFR Part 230) be included; others thought it was not necessary. The Section 404(b)(1) guidelines are regulatory in nature and apply to environmental review and mitigation of impacts under Section 404 permit authority. The citation is now provided in § 777.3.

Several commenters requested citation of the Environmental Quality Council National Environmental Policy Regulations (40 CFR Parts1500–1508). These regulations are now cited in § 777.7.

One commenter requested information on the location and cost of mitigation banks established with Federal highway funds or by State Departments of Transportation (DOTs). The FHWA does not collect or maintain this data.

Several commenters requested preparation of an environmental impact statement (EIS) on this rulemaking. Typically, promulgation of rules by the FHWA is a categorical exclusion (23 CFR 771.117(c)(20)). Further, this rulemaking is not a proposal for a major Federal action significantly affecting the environment. Impacts to wetlands and waters of the United States due to federally funded highway projects, and the appropriateness of the mitigation provided for those impacts, are assessed for each project under NEPA through two paths. One is the NEPA process by the State DOT and the FHWA (23 CFR Part 771), and a second is through the public interest review process for Section 404 permits as required under NEPA by the U.S. Army Corps of Engineers (33 CFR 320.4).

This rulemaking does not establish additional mandatory mitigation requirements for wetlands or natural habitats, nor does it alter the Section 404 Regulatory Program or the requirements of the Section 404(b)(1) guidelines to avoid and minimize wetlands impacts. The U.S. Army Corps of Engineers has revised the nationwide permit (NWP) program under Section 404 (65 FR 12817), effective June 5, 2000. Requirements for notice and mitigation of impacts on NWPs have been strengthened, not relaxed. Therefore, the FHWA does not agree that promulgation of this final rule requires the preparation of an EIS.

One non-governmental organization stated that the Federal highway program caused the loss of ''thousands of acres of wetland.'' Losses of wetlands due to Federal highway projects which involved individual Section 404 permits have averaged about 2,000 acres per year on a program-wide basis over the past three years. During the same period, compensatory mitigation for these unavoidable impacts has been provided at a ratio of approximately 2:1 on a program wide basis. The FHWA will continue to pursue a goal of providing compensatory mitigation sufficient to help reach the national goal of a net gain in wetlands functions and values.

One commenter asserted that this rule will encourage greater use of Section 404 general permits through participation in mitigation with Federal highway funds, and will result in more wetlands losses. The recent changes to the nationwide permit program do not broaden the use of general permits, instead they strengthen the requirements for use of such permits which apply to highway projects, and increase the level of environmental review and mitigation required. Therefore, the FHWA does not believe that this rule will encourage wetland losses. However, it will enable better mitigation on highway projects; not just compensatory mitigation, but also avoidance and minimization, and will result in an improvement in the performance of compensatory mitigation sites.

Numerous comments were received on the definitions (§ 777.2). Several commenters suggested revision of the definition of compensatory mitigation to delete ''wetland buffer areas,'' ''usually occurs,'' and ''Compensatory mitigation * * * after such impacts in special circumstances.'' Most of these commenters emphasized avoidance and minimization of adverse wetlands impacts to the maximum extent practicable, and implementation of compensatory mitigation before impacts occur to avoid temporal (temporary) loss of wetlands functions and values. Some commenters opposed allowing the use of mitigation banks or off-site compensatory mitigation.

The Congress, in the ISTEA, made use of wetland mitigation banks eligible for Federal funding on National Highway System and Surface Transportation Program projects (23 U.S.C. 133). Further, the TEA–21 establishes a preference for the use of mitigation banks to offset unavoidable losses due to Federal-aid highway projects. Therefore, the FHWA cannot disallow their use.

The U.S. Army Corps of Engineers, in its recent notice regarding revision of the Nationwide Permit Program (64 FR 39252, July 21, 1999), stated: ''The establishment and maintenance of vegetated buffers adjacent to open waters and streams will protect, restore, and enhance water quality and aquatic habitat. Vegetated buffers can be used to provide out-of-kind compensatory mitigation for wetland impacts where the District Engineer determines that such mitigation for wetland impacts is the best, ecologically, for the aquatic environment.'' This approach is consistent with watershed management concepts in wetlands and aquatic resource protection and conservation currently being advanced by the Administration (Protecting America's Wetlands: A Fair, Flexible, and Effective Approach, White House Office for Environmental Policy, 1993) and many State resource agencies.

Off-site compensatory mitigation has been accepted by the U.S. Army Corps of Engineers as a means of obtaining replacement of lost wetlands functions and values where it is determined to be suitable. In some cases, on-site mitigation is not available or practicable. Off-site alternatives might provide the opportunity to re-establish wetlands functions where other alternatives cannot be implemented or would be ineffective.

One commenter asserted that allowing compensatory mitigation to ''occur after such impacts under special circumstances,'' invites abuse of flexibility and is not consistent with the Federal Guidance. In fact, the Federal Guidance states: ''Compensatory mitigation is typically implemented and functioning in advance of project impacts, * * *.'' The FHWA recognizes that it is preferable for compensatory mitigation to be accomplished before or concurrently with impacts. However, our current interpretation of eligibility of mitigation activities for participation with Federal highway funds, based on

provisions in the ISTEA and the TEA–21, allows mitigation of project impacts after the fact, to the extent that mitigation and environmental restoration projects related to transportation projects can be undertaken well after the highway construction project has been completed and is in use, and there is no active federally funded highway construction project in the vicinity. Therefore, we are leaving the definition as written.

Comments by Federal agencies were submitted concerning the definition of mitigation banks for wetlands and natural habitats, to the effect that the definition should be consistent with the Federal Guidance. We agree with this comment, and therefore have changed the definition of mitigation bank to agree with that found in the Federal Guidance, with the addition that the definition also applies to natural habitat. A comment was also submitted requesting that ''related measures'' be defined separately from ''mitigation bank.'' Upon review of section 1106 of the TEA–21 (23 U.S.C. 103), no mention of the term ''related measures'' was found. The FHWA believes that this term falls within a range of activities that would normally be associated with other definitions in the regulation. Therefore, no definition is included for ''related measures,'' and the term is removed from the definition and other sections where it appeared.

Several State departments of transportation commented on the definition of natural habitat to exclude highway rights-of-way from the definition in accordance with 23 CFR 1.2. The FHWA agrees with these comments. Once established through title or easement, highway rights-of-way are excluded from the definition of natural habitat. Their primary purposes are transportation related. This is not intended to preclude the use of rights-of-way for purposes of maintaining wildlife passage across highways by structures or other means, or for enhancing natural habitats, when consistent with transportation uses.

Comment was also made that the definition of natural habitat could be interpreted as precluding the restoration of cultivated or artificially landscaped areas to natural habitat conditions. All cultivated or landscaped areas were at one time occupied by naturally occurring, native vegetation. They usually can be restored to natural habitat through deliberate restoration processes.

Several commenters suggested changes to the definition of ''Net gain of wetlands'' (1) To exclude preservation as a means of achieving a net gain, (2) to delete the phrase ''at a ratio greater than 1:1,'' and (3) to include natural habitat in a net gain definition and policy. The FHWA agrees that preservation is not capable of achieving a net gain of wetland area. However, the FHWA believes that, under exceptional circumstances, preservation can protect existing, high value wetlands that are at risk of development, degradation, or loss, and result in a gain in wetlands' functional capacity in the long run. Preservation is also permitted under the Federal Guidance and Section 404(b)(1) guidelines. Deleting the phrase ''at a ratio greater than 1:1'' will not substantively change the meaning or interpretation of the definition. We also maintain that this definition is confined to eligibility of mitigation activities funded pursuant to title 23, U.S. Code; in other words, the federally funded highway program. Wetlands have been identified through special national programs and policies for particular management attention and protection as unique and critical national resources, for example the National Clean Water Action Plan has specific wetland elements included. In addition, the FHWA has established specific performance objectives in its National Strategic Plan and Performance Plan for conservation of wetlands.

The FHWA also recognizes the mandate to conserve and protect the habitat of species listed as threatened or endangered under the Federal Endangered Species Act (ESA) (16 U.S.C. 1531 *et seq.*) and other biological species of special concern under NEPA and other related regulations and policies. Through participation in the ESA Section 7 process (16 U.S.C. 1536), conservation measures for protection and recovery of listed species on Federal highway projects are implemented. Part 771 provides for the mitigation of significant, adverse impacts of Federal highway projects. Neither FHWA policy nor regulations preclude participation with Federal transportation funds in mitigation for impacts to natural habitat which would provide compensation ratios greater than 1:1 where appropriate. This regulation does not prohibit such appropriate compensation for natural habitat losses, and the FHWA believes that the ESA and other conservation objectives are adequately met under those policies and requirements. Therefore, the definition is left as it is.

One commenter objected to the use of the definition for ''service area'' provided in the Federal Guidance. This definition has been generally accepted in the Section 404 regulatory program and provides sufficient flexibility to obtain useful, timely, cost-effective mitigation. In the interest of consistency, the definition used in the Federal Guidance will be retained in this regulation.

Several commenters suggested revision or deletion of the definition of ''wetland or habitat enhancement.'' We agree that the written definition was not as clear as we would like, and therefore have partially replaced it with the definition of ''enhancement'' from the Federal Guidance. However, we have left examples of activities which can be carried out to enhance wetlands for purposes of determining eligibility for Federal participation with Federal highway funds.

One commenter expressed a concern with the definition of ''wetland or habitat enhancement,'' saying that allowing enhancement or improvement of areas surrounding wetlands (i.e., buffer zones) should not be considered mitigation and should not receive credit for mitigating impacts to wetlands. The TEA–21 provides for participation with Federal highway funds to mitigate impacts to wetlands and other, non-wetland, habitats. Mitigation of impacts to wetlands are required as a condition of permits issued under Section 404 of the CWA, and the appropriate mitigation credits granted to a mitigation project are determined by the U.S. Army Corps of Engineers through that process. The definition as written allows for the use of Federal highway funds for mitigation of impacts of federally funded highway projects to wetland and non-wetland habitats, is accurate, and has not been changed.

One non-governmental organization requested that the term ''pest control'' be replaced with ''integrated pest management.'' We agree with this last comment, and have changed the section to that effect.

One commenter complained that the definition of ''wetland or habitat establishment period'' was too vague. Therefore, the definition has been changed to indicate more of the purpose. The intent of defining an establishment period is to allow participation with Federal highway funds in corrective measures necessary to fully establish compensatory mitigation. The definition is necessary and remains in the regulation.

One commenter requested that the definition of ''wetland or habitat functional capacity'' be deleted. Section 404 regulations require that functions of wetlands being impacted in a proposed action or project permitted under Section 404 authority be assessed to determine the extent of impacts on waters of the United States and to

evaluate the importance of the wetlands being impacted. The concept of functional capacity is implicit in the Section 404 Regulatory Program, is an essential element in the hydrogeomorphic functional assessment approach (HGM) being developed by the U.S. Army Corps of Engineers (62 FR 33607, June 20, 1997), and is defined therein. The FHWA supports the development and application of HGM to highway projects where it is practicable. Therefore, this definition remains in the regulation.

One commenter asked for a definition of ''scientific functional assessment.'' Functional assessment of wetlands is defined by the U.S. Army Corps of Engineers as ''a process by which the capacity of a wetland to perform a function is measured.'' (Technical Report WRP–DE–9, U.S. Army Corps of Engineers, 1995). This definition is expanded and further refined in the Section 404(b)(1) guidelines (40 CFR 230.20–230.50). Both of these definitions are science-based in that they refer to or require factual data concerning the observation and measurement of conditions that exist in wetlands and the processes which occur there. This is the type of analysis to which the FHWA refers in the term ''scientific functional assessment.'' This process is required by the public interest review when a Section 404 permit is issued for compliance with the Section 404(b)(1) guidelines. The Section 404(b)(1) guidelines are ''substantive environmental standards by which all 404 permit applications are evaluated.'' (Joint Memorandum to the Field, USEPA and USACE; Appropriate Level of Analysis Required for Evaluating Compliance with the Section 404(b)(1) Guidelines Alternatives Requirements (August 23, 1993)).

One commenter suggested changing the definition for ''wetland or habitat mitigation credit'' to that found in the Federal Guidance; another suggested that this definition be deleted. The hydrogeomorphic approach developed by the U.S. Army Corps of Engineers facilitates using the concept of mitigation credits by presenting an area-based functional capacity index which can be used to determine appropriate ratios of compensation. Thus, the concept of mitigation credits can be applied to on-site, project-specific mitigation as well as to mitigation banks. Therefore, we have left the definition as it was, and added a statement that, with respect to mitigation banks, the definition means the same as that in the Federal Guidance.

A Federal agency commented on the definition for ''wetland or habitat restoration,'' suggesting removal of the phrase ''but have essentially been eliminated.'' We agree that this phrase is unnecessary, and have eliminated it.

The remaining comments apply to the body of the regulation, §§ 777.3 through 777.11.

One commenter requested that a paragraph referring to the Section 404 regulatory program be included in § 777.3, background. We agree with this comment and have included a reference to the U.S. Army Corps of Engineers Regulatory Program, 33 CFR Parts 320–330.

One commenter requested that a description of the preference for the use of mitigation banks for compensatory mitigation of impacts related to projects funded pursuant to title 23, U.S. Code, as stated in the TEA–21, be included in § 777.3. That preference relates to participation in mitigation costs on such projects, and is stated in § 777.9, Mitigation of Impacts.

One commenter requested that monitoring of mitigation projects be included in § 777.5, Federal Participation, paragraph (b). Monitoring of mitigation activities and results is an essential activity to ensure successful completion of mitigation. Therefore, the section is changed to specifically include monitoring as an eligible activity.

Several commenters requested § 777.5(a) require consultation by the State DOTs with Federal and State resource agencies to determine what measures are needed to fully mitigate adverse impacts to wetlands. Consultation with resource agencies is carried out under the requirements of the Section 404 public interest review process on all permits which have greater than minimal effects on waters of the United States. The Section 404(b)(1) guidelines are likewise universally applied to the Section 404 Permit process. The interagency review process is also referenced in §§ 777.7 and 777.11.

One commenter asked that a requirement for compliance with Section 404 of the CWA, requirements and other relevant statutes be added to § 777.7, Evaluation of impacts. The FHWA agrees, therefore a paragraph is added to that effect. A commenter also recommended that indirect and cumulative impacts be added to the statement in this section. The evaluation of such long term impacts is addressed in § 777.7(c).

Several State departments of transportation commented in reference to § 777.7, that the cost of mitigation often exceeded the ''value'' of the wetland resource impacted, and that the area of mitigation required to satisfy a Section 404 permit condition far exceeded the area of wetland impacted. 33 CFR 320.4(r)(2) states:

> All compensatory mitigation will be for significant resource losses which are specifically identifiable, reasonably likely to occur, and of importance to the human or aquatic environment. Also, all mitigation will be directly related to the impacts of the proposal, appropriate to the scope and degree of those impacts, and reasonably enforceable * * *.

Natural resource values are very difficult to determine, since common practice in our society is to assign value to a service, an object, or a parcel of land, in monetary terms. Natural resources that do not receive or encourage direct public or private ''use'' in some manner, for instance recreation or economic gain, are typically valued very low in monetary terms, lower than their importance to a healthy ecosystem might be. Means of valuing resources include ''replacement cost,'' ''willingness to pay'' for use or access, and ''user economic expenditures'' value, wherein the economic benefit is calculated based on average expenditures for those uses. None of these approaches effectively measures the importance of a particular ecological element to the healthy, normal, functioning of ecosystems. They do approach some measure of the economic significance of the resource. However, wetlands have been identified as being of national importance and significance by law, executive order, and regulation. Therefore, we assume that they are significant in the functioning of the ecosystems within which they occur, despite our inability at this time to put an ''appraised'' dollar value or significance rating on their ecosystem relationships. For this reason, FHWA policy is that reasonable costs of mitigation, in all its forms, are eligible for participation with Federal highway funds, and are consistent with agency and national resource conservation objectives, as exemplified by such programs as the National Clean Water Action Plan, Wetlands Reserve Program, and North American Waterfowl Management Plan.

Several commenters requested clarification of the applicability of § 777.9, Mitigation of impacts, to the TEA–21, section 1108(a)(7), Surface Transportation Program, Eligibility of projects (23 U.S.C. 133(b)(14)). This section of the TEA–21 adds the following to the list of activities eligible for Federal transportation funds under this section:

(14) Environmental restoration and pollution abatement projects (including the retrofit or construction of storm water treatment systems) to address water pollution or environmental degradation caused or contributed to by transportation facilities, which projects shall be carried out when the transportation facilities are undergoing reconstruction, rehabilitation, resurfacing, or restoration; except that the expenditure of funds under this section for any such environmental restoration or pollution abatement project shall not exceed 20 percent of the total cost of the reconstruction, rehabilitation, resurfacing, or restoration project.

The commenters raised the question whether or not the 20 percent limit applied to mitigation of current impacts due to projects funded under Title 23. The FHWA's interpretation of this section is that the 20 percent limit for ''four r'' projects (reconstruction, rehabilitation, resurfacing, or restoration) applies to past or existing impacts or pollution caused by the original highway project or subsequent construction projects on the highway, not to mitigation of impacts anticipated by a proposed new activity.

Several commenters also recommended that if the participation of Federal highway funds in mitigation of past wetlands impacts were allowed, a specific pool of funds be set aside for such ''wetland mitigation retrofit activities'' with a specific funding limit.

''Wetland mitigation retrofit'' we take to mean the mitigation of historical or past wetlands impacts due to highway projects which were not successfully compensated or mitigated at the time of construction. The TEA–21 does not subdivide Transportation Enhancement (TE) funds into separate accounts that can only be used for specified TE projects. Wetland mitigation retrofit projects are treated like any other TE project and are eligible for TE funding on a case-by-case basis.

One commenter requested that the term ''wetland'' in § 777.9(a)(1) be changed to ''waters of the United States,'' and that the following phrase, ''avoidance and minimization must be given first consideration in mitigating wetlands impacts' be replaced with ''impacts to wetlands and other waters of the United States must be avoided and minimized to the maximum extent practicable, prior to consideration of compensatory mitigation measures.''

One of the reasons this regulation is being revised is specific authority in the TEA–21, which refers to ''natural habitats and wetlands* * *.'' Therefore, the regulation will retain references to wetlands, and not waters of the United States. However, the FHWA recognizes that the Section 404 regulatory program (33 CFR Parts 320–330) regulates discharges in ''waters of the United States'' (33 CFR 328.3), which include aquatic resources other than wetlands. Eligibility of funding for mitigation of these impacts is addressed under Part 771. The FHWA recognizes the need to satisfy the requirements for mitigation established in the Section 404(b)(1) guidelines in permitting projects, and also established in section 1106 of the TEA–21, which amended 23 U.S.C. 103(b)(6)(M) in part, as follows : ''In accordance with all applicable Federal law (including regulations), participation in natural habitat and wetland mitigation efforts* * *.'' We interpret this as a reference to 33 CFR Part 320, General Regulatory Policy, 40 CFR Part 230, Section 404(b)(1) guidelines, and other Federal regulations related to wetlands and natural habitats. It is not the intent of the FHWA to duplicate regulatory requirements in this regulation that have been independently established. Therefore, this reference and the accompanying language are removed from the section and have been placed in § 777.3, Background.

A commenter suggested that § 777.9(a)(2) specify that the compensatory wetland mitigation implemented must be the most preferred environmentally in accordance with the Section 404(b)(1) guidelines. This change is beyond the scope and intent of this regulation, therefore, the requested change was not made.

Several commenters suggested that the service area of a mitigation bank (§ 777.9(a)(4)) be defined as the USGS hydrologic unit in which it occurs. This is not consistent with the Federal Guidance. Further changes were also requested specifying the proximity of mitigation to impacts. These decisions are made by the U.S. Army Corps of Engineers, in conditioning Section 404 permits, and are not within the scope of this regulation.

A commenter also suggested, in reference to § 777.9(a)(4), that compensatory mitigation be allowed only within the same hydrologic unit, and that out-of-kind mitigation should be acceptable only if specifically recommended by resource agencies. Such a requirement is beyond the scope of the statute and this regulation. General guidelines for siting of mitigation banks are found in Section II.B(2) of the Federal Guidance. Requirements for siting of compensatory mitigation are determined by the U. S. Army Corps of Engineers as conditions to the issuance of a permit in accordance with the Section 404(b)(1) guidelines. Therefore we are not changing the language in this section.

A commenter recommended that § 777.9 include sequencing requirements for non-wetland, natural habitats, similar to that required by 40 CFR 230 for wetlands. Sequencing, as defined in the Section 404(b)(1) guidelines, is the requirement to avoid or minimize impacts before considering compensatory mitigation. Such a requirement is beyond the scope of this regulation and the TEA–21 authorities. Therefore, a sequencing requirement for natural habitat was not added to the regulation.

Comment was made on this section requesting that clarification be provided in the final rule for the language in the TEA–21 which states a preference for the use of mitigation banks, to the effect that an eligible bank (impacts within service area, credits available, approved and permitted by the COE in accordance with the Federal Guidance) be used to the maximum extent practicable to mitigate some of the wetland impacts on a highway project, even if the bank does not have sufficient credits available to mitigate all the project's impacts.

The TEA–21, section 1106 (23 U.S.C. 103(b)(6)(M)) states:

In accordance with all applicable Federal law (including regulations) participation in natural habitat and wetland mitigation efforts related to projects funded under this title, which may include participation in natural habitat and wetland mitigation banks, contributions to statewide and regional efforts to conserve, restore, enhance, and create natural habitats and wetlands, and development of statewide and regional natural habitat and wetland conservation and mitigation plans, including any such banks, efforts, and plans authorized under the Water Resources Development Act of 1990 (Public Law 101–640) (including crediting provisions). Contributions to the mitigation efforts described in the preceding sentence may take place concurrent with or in advance of project construction; except that contributions in advance of project construction may occur only if the efforts are consistent with all applicable requirements of Federal law (including regulations) and State transportation planning processes. With respect to participation in a natural habitat or wetland mitigation effort related to a project funded under this title that has an impact within the service area of a mitigation bank, preference shall be given, to the maximum extent practicable, to the use of the mitigation bank if the bank contains sufficient credits to offset the impact and the bank is approved in accordance with the Federal Guidance for the Establishment, Use, and Operation of Mitigation Banks (60 FR 58605) or other applicable Federal law (including regulations).

The U.S. Army Corps of Engineers, as the agency administering the Section 404 regulatory program, has the primary

responsibility to determine the most appropriate compensatory mitigation approach for unavoidable impacts to wetlands and waters of the United States, including the use of a mitigation bank, under Section 404, CWA, 33 CFR Part 320, and 40 CFR Part 230. 33 CFR 320.4(r) presents the regulatory guidance for mitigation of impacts to waters of the United States in the Section 404 permit process.

The FHWA, in determining eligibility for participation with Federal-aid funds for mitigation costs, sees no reason why the use of a permitted mitigation bank as partial mitigation for project impacts should not be an eligible expense when approved as a condition for issuance of a Section 404 permit. Ultimately, the decision upon which compensatory mitigation approach to use for unavoidable impacts rests with the U.S. Army Corps of Engineers under the Section 404 permit program authority and U.S. Environmental Protection Agency under the provisions of Section 404(c).

One commenter suggested that § 777.9(a)(4) explicitly require mitigation banks to be certified as functioning before credits can be issued against project impacts. This comment is appropriate to the Federal Guidance and the Section 404 regulatory program, but beyond the scope of this regulation. Therefore § 777.9(a)(4) was not changed in this regard.

A wetlands mitigation banker commented on § 777.9(b), objecting to the phrase ''is determined to be the most ecologically desirable and practicable alternative for compensatory mitigation.'' Upon reviewing the regulatory process, and in light of the other qualifying statements in the TEA–21, the FHWA believes that the phrase is unnecessary, and therefore it is deleted from the final rule. It should be clear under the Section 404 regulations, including the Section 404(b)(1) Guidelines, that a cooperative impact and functional assessment process using science-based information will be employed as necessary to determine the appropriate compensatory mitigation approach.

One commenter requested clarification of § 777.9(c), Contributions to statewide and regional efforts to conserve, restore, enhance and create wetlands or natural habitats, with respect to the eligibility of ''in-lieu-fee'' mitigation programs for participation with Federal-aid highway funds. In-lieu-fee programs are those in which funds are collected in specific amounts per unit of impact and are then administered by the regulatory agency to pay for compensatory mitigation according to pre-established objectives and plans. The FHWA has not developed specific guidance for participation with Federal-aid highway funds in in-lieu-fee programs at this time. However, in so far as in-lieu-fee programs are defined within the guidelines provided in the TEA–21, comply with other applicable Federal and State laws (including regulations), and are not contrary to the public interest, they are eligible for participation. The TEA–21 implicitly states that in-lieu-fee mitigation programs are eligible for Federal participation, as follows (section 1106; 23 U.S.C. 103 (b)(6)(M)):

> * * * participation in natural habitat and wetland mitigation banks, contributions to statewide and regional efforts to conserve, restore, enhance, and create natural habitat and wetland, and development of regional natural habitat and wetland conservation and mitigation plans, * * *

Accordingly, this regulation makes no specific prohibition against participation in in-lieu-fee programs, other than the existing stipulation that they be in accordance with other applicable Federal laws (including implementing regulations and guidance) and State transportation planning processes. It is in the public interest that the FHWA ensure, through appropriate documentation, cooperative agreements, and performance contracts, as well as direct monitoring and oversight where appropriate, that in-lieu-fee programs having participation with Federal highway funds provide effective compensation for unavoidable impacts due to federally funded highway projects.

A Federal agency expressed concern about the use of ''public lands'' for compensatory wetland mitigation (§ 777.9(b)). The intent of the FHWA's mitigation policy and this regulation concerning the siting of mitigation is to achieve the highest possible balance of ecological values and public benefits within available mitigation opportunities, costs, and legal authorities. It is not the intent of the FHWA to establish a policy which preempts management of public lands by the responsible agency, nor place unnecessary constraints on compensatory mitigation alternatives. Therefore, the reference to public lands has been removed from the regulation. We have established no prohibition against alternatives for compensatory mitigation on private lands, nor any requirement to mitigate on publicly-owned lands.

The Federal Guidance states the following in Section II B(1) ''The overall goal of a mitigation bank is to provide economically efficient and flexible mitigation opportunities, while fully compensating for wetland and other aquatic resource losses in a manner that contributes to the long term functioning of a watershed . . . Banks may be sited on public or private lands. Cooperative arrangement between public and private entities to use public lands for mitigation banks may be acceptable. In some circumstances, it may be appropriate to site banks on Federal, State, tribal, or locally-owned resource management areas(. . .). The siting of banks on such lands may be acceptable if the internal policies of the public agency allow use of its land for such purposes, and the public agency grants approval. Mitigation credits generated by banks of this nature should be based solely on those values in the bank that are supplemental to the public programs already planned or in place, . . .''

One State department of transportation suggested that § 777.9(d) disallow the eligibility of Federal highway funds for mitigation or restoration of impacts to wetlands from historical or past highway projects without promulgation of additional specific and proscriptive guidelines for implementation. The concern was that this eligibility would result in requirements for such mitigation from regulatory agencies without legal authority.

The TEA–21 authorizes the use of Federal highway construction funds (title 23, U.S. Code) to mitigate or restore current or past wetlands losses caused by federally funded highway projects, but establishes no requirements in this regard. This final rule addresses the eligibility of wetland mitigation activities for Federal highway funding participation, and does not establish requirements for mitigation or ecological restoration of any type or extent. 33 CFR 320.4(r)(2) clearly states that mitigation required under a Section 404 permit issued for a current project is meant to address direct impacts of the permitted project, and not the impacts due to prior or other current activities or projects, as follows: ''All compensatory mitigation will be for significant resource losses which are specifically identifiable, reasonably likely to occur, and of importance to the human or aquatic environment. Also, all mitigation will be directly related to the impacts of the proposal, appropriate to the scope and degree of those impacts, and reasonably enforceable.'' The FHWA opposes extensions of requirements for mitigation which are not properly authorized by regulation or law.

A non-governmental conservation organization requested § 777.9(d) require mitigation to meet specific conditions for participation with Federal transportation funds. The conditions suggested were that mitigation must: (1) improve ecological conditions of the regional watershed, (2) be scientifically measurable as compensation, (3) be accompanied by a long term management plan, (4) have established success criteria, and (5) have a specific time frame for implementation. While the FHWA agrees with the intent of these conditions, we do not believe it necessary that they be added to this regulation since they can be stipulated under the Section 404 permit conditions.

One commenter requested that § 777.11(a) be changed to state that consultation with State and Federal resource agencies ''must'' occur, rather than ''should'' occur. The FHWA believes that ''shall'' is the appropriate language for this regulation, and therefore § 777.11(a) is changed to use ''shall.''

One commenter requested clarification of the term ''sufficient assurances'' in § 777.11(b). By this the FWHA means legally recognized documents or agreements, such as easements, title restrictions, or, mitigation banking instruments legally approved under Section 404 authority. Another commenter suggested that ''sufficient assurances'' include a performance bond. We agree with this comment and have changed § 777.11(b) to include performance bonds in the examples of ''sufficient assurances.''

One commenter recommended that § 777.11(b) include a bonding requirement for private mitigation banks. The U.S. Army Corps of Engineers has the authority to establish bonding requirements for mitigation banks approved in accordance with the Federal Guidance. State DOTs can require performance bonding of private banks where consistent with State law, and bonding in some cases is suggested to ensure completion of mitigation. Additional bonding authority to require bonding is unnecessary. Therefore, this regulation will not establish a universal bonding requirement for participation in mitigation banks with title 23 Federal highway funds.

Several commenters recommended that § 777.11(b) not include a reference to net gain of wetlands, or that the net gain statement be further qualified. A net gain of wetlands nationally over the next decade has been made a goal of the National Clean Water Action Plan, and the FHWA has established a goal in the Plan of providing a compensatory mitigation ratio of 1.5 :1 or greater on a program-wide basis. In addition, the FHWA has established a goal of a net gain of wetlands in the FHWA Performance Plan. For the past three years the average ratio of mitigation provided to wetlands impacted has been two to one or greater. The FHWA is aware that many of the wetlands impacted by highway projects are small, isolated areas that have been degraded or are of relatively low value, and has worked with the U.S. Army Corps of Engineers to develop appropriate assessment methodology to reflect the relatively low value and benefits of these wetlands where such is the case. The FHWA also recognizes that in some parts of the country, such as the arid west, there are additional constraints on creating new wetlands acreage above what would naturally exist. Among these constraints is the availability of sufficient water and legal water rights issues. The FHWA emphasizes that the net gain of wetlands goal is a national objective in the federally funded highway program, and is not to be applied on a project-by-project basis, or even within a State Federal-aid highway program.

However, wetlands are nationally recognized in the Clean Water Act and other programs as important natural resources which need special management to ensure that their significant benefits are protected and preserved. Therefore, the FHWA believes that a net gain goal for the Federal highway program is a significant and worthwhile objective, and will provide important future ecological and societal benefits. Therefore, the net gain objective remains in the regulation as stated.

One commenter requested that § 777.11(c) be modified to allow the use of Federal highway funds to acquire mitigation credits in accordance with the terms of an approved mitigation banking instrument. The FHWA agrees that a mitigation banking instrument, approved by the appropriate regulatory authority, should provide sufficient assurances that the site will be maintained as a wetland as suggested in the Federal Guidance. However, this section deals with mitigation approaches other than banks. Therefore, the existing language will remain, with the following change: ''. . . legally recognized instrument, such as permanent easement, deed restriction, or legally approved mitigation banking instrument, which provides for the protection and permanent continuation of the wetland or natural habitat nature of the mitigation.''

A Federal agency pointed out the value of interdisciplinary, interagency, coordination highlighted in §§ 777.7 and 777.11, and encouraged State departments of transportation to take advantage of planning and design services provided by the State resource managers in evaluating resource values and project impacts and implementing effective mitigation. The FHWA concurs with these comments and encourages interdisciplinary approaches to wetlands assessment and mitigation.

Two commenters expressed additional concerns regarding mitigation banking and locating compensatory mitigation on public lands. One commenting agency, while aware of the potential advantages of mitigation banking, was concerned about the efficacy of wetland banks, which are unproven in its region. The recommendation was made that mitigation banks be fully coordinated and reviewed by State resource agencies before being implemented as mitigation. The importance of legally binding banking instruments was emphasized. The dynamic nature of natural wetlands was also emphasized by this commenter, which noted that the legal nature of wetland banks requires them to be stable in ecological character and functions over time, whereas natural wetlands are by nature dynamic and often subject to rapid and radical change by natural hydrologic change and biological succession. This comment points out the need for more knowledge about the dynamic processes which characterize the nature of wetlands and their successional changes in response to landscape and climatic processes.

It is incumbent on the banking proponent to be aware of potential stability problems associated with a particular bank, and be prepared to effectively establish and maintain the bank to provide the benefits and functions which are intended over the lifetime of the legal obligation. It is also important that regulators and resource managers consider the relative stability of the banked wetland resources, and make decisions about requirements for and certification of the use of banks within that context.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above were considered and are available for examination in the docket at the above address. Comments received after the comment closing date were placed in the docket and were considered to the extent practicable. In addition to late comments, the FHWA will also

continue to file in the docket relevant information that became available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review and DOT Regulatory Policies and Procedures)

The FHWA has considered the impact of this document and has determined that it is neither a significant rulemaking action within the meaning of Executive Order 12866 nor a significant rulemaking under the regulatory policies and procedures of the Department of Transportation. This rulemaking amends the FHWA's regulations regarding mitigation of impacts to wetlands, which have become outdated because of provisions in sections 1006 and 1007 of the ISTEA and sections 1107 and 1109 of the TEA–21 authorizing greater flexibility for Federal participation in mitigating impacts to wetlands and natural habitats. These amendments have been codified at 23 U.S.C. 103 and 133. The recently enacted TEA–21 added the term ''natural habitat'' to the eligibility provisions of 23 U.S.C. 103 and 133, and added a preference for the use of established mitigation banks for wetland mitigation activities.

This rule does not cause any significant changes to the amount of funding available to the States under the STP or NHS programs or add to the process by which States receive funding. The provisions of this final rule do not require the additional expenditure of Federal-aid or State highway funds. Instead, this rule merely clarifies the scope of the FHWA's wetlands regulations by specifying that they apply to mitigation of all wetlands impacts due to projects funded pursuant to title 23, United States Code, not just privately owned wetlands, that mitigation of impacts to natural habitat due to projects funded pursuant to title 23 is eligible for Federal participation, and that mitigation banks are to receive preference in mitigating such impacts. Thus, it is concluded that the economic impact of this final rule is minimal. In addition, it does not create a serious inconsistency with any other agency's action or materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs; nor will amendment of this regulation raise any novel legal or policy issues. Therefore, a full regulatory evaluation was not performed and is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this final rule on small entities and has determined it would not have a significant economic impact on a substantial number of small entities. This final rule does not affect the amount of funding available to the States through the STP or NHS programs, or the procedures used to select the States eligible to receive these funds. Furthermore, States are not included in the definition of ''small entity'' set forth in 5 U.S.C. 601. For these reasons, and for those set forth in the analysis of Executive Order 12866, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and it has been determined this action does not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation.

Executive Order 12372 (Intergovernmental Review)

Catalog of Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act of 1995

This action does not create a collection of information requirement for the purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The FHWA has analyzed this rulemaking for the purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347). This rule does not, in and of itself, constitute a major Federal action significantly affecting the quality of the human environment. Instead, it amends the scope of the existing FHWA regulation on wetland mitigation to conform with authorities in the ISTEA and the TEA–21, which increases the flexibility available to States when deciding how to mitigate impacts to wetlands and natural habitats resulting from projects funded pursuant to the provisions of title 23. In addition, the passage of the TEA–21, with its addition of the term ''natural habitat'' to the wetlands mitigation banking provisions of title 23, made this rule necessary. Such impacts to wetlands and natural habitat and appropriate mitigation measures would be evaluated pursuant to NEPA on a project-by-project basis by the States and the FHWA. Accordingly, promulgation of this rule does not require the preparation of an environmental impact statement.

Unfunded Mandates Reform Act of 1995

This rule does not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. (2 U.S.C. 1531 *et seq.*).

Executive Order 12630 (Taking of Private Property)

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

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to healthy or safety that may disproportionately affect children.

Regulatory Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 777

Flood plains, Grant programs—Transportation, Highways and Roads, Wetlands.

Issued on: December 21, 2000.

Kenneth R. Wykle,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA revises 23 CFR Part 777 to read as follows:

PART 777—MITIGATION OF IMPACTS TO WETLANDS AND NATURAL HABITAT

Sec.
777.1 Purpose.
777.2 Definitions.
777.3 Background.
777.5 Federal participation.
777.7 Evaluation of impacts.
777.9 Mitigation of impacts.
777.11 Other considerations.

Authority: 42 U.S.C. 4321 *et seq.*; 49 U.S.C. 303; 23 U.S.C. 101(a), 103, 109(h), 133(b)(1), (b)(11), and (d)(2), 138, 315; E.O. 11990; DOT Order 5660.1A; 49 CFR 1.48(b).

§ 777.1 Purpose.

To provide policy and procedures for the evaluation and mitigation of adverse environmental impacts to wetlands and natural habitat resulting from Federal-aid projects funded pursuant to provisions of title 23, U.S. Code. These policies and procedures shall be applied by the Federal Highway Administration (FHWA) to projects under the Federal Lands Highway Program to the extent such application is deemed appropriate by the FHWA.

§ 777.2 Definitions.

In addition to those contained in 23 U.S.C. 101(a), the following definitions shall apply as used in this part:

Biogeochemical transformations means those changes in chemical compounds and substances which naturally occur in ecosystems. Examples are the carbon, nitrogen, and phosphorus cycles in nature, in which these elements are incorporated from inorganic substances into organic matter and recycled on a continuing basis.

Compensatory mitigation means restoration, enhancement, creation, and under exceptional circumstances, preservation, of wetlands, wetland buffer areas, and other natural habitats, carried out to replace or compensate for the loss of wetlands or natural habitat area or functional capacity resulting from Federal-aid projects funded pursuant to provisions of title 23, U.S. Code. Compensatory mitigation usually occurs in advance of or concurrent with the impacts to be mitigated, but may occur after such impacts in special circumstances.

Mitigation bank means a site where wetlands and/or other aquatic resources or natural habitats are restored, created, enhanced, or in exceptional circumstances, preserved, expressly for the purpose of providing compensatory mitigation in advance of authorized impacts to similar resources. For purposes of the Clean Water Act, Section 404 (33 U.S.C. 1344), use of a mitigation bank can only be authorized when impacts are unavoidable.

Natural habitat means a complex of natural, primarily native or indigenous vegetation, not currently subject to cultivation or artificial landscaping, a primary purpose of which is to provide habitat for wildlife, either terrestrial or aquatic. For purposes of this part, habitat has the same meaning as natural habitat. This definition excludes rights-of-way that are acquired with Federal transportation funds specifically for highway purposes.

Net gain of wetlands means a wetland resource conservation and management principle under which, over the long term, unavoidable losses of wetlands area or functional capacity due to highway projects are offset by gains at a ratio greater than 1:1, through restoration, enhancement, preservation, or creation of wetlands or associated areas critical to the protection or conservation of wetland functions. This definition specifically excludes natural habitat, as defined in this section, other than wetlands.

On-site, in-kind mitigation means compensatory mitigation which replaces wetlands or natural habitat area or functions lost as a result of a highway project with the same or like wetland or habitat type and functions adjacent or contiguous to the site of the impact.

Practicable means available and capable of being done after taking into consideration cost, existing technology, and logistics, in light of overall project purposes.

Service area of a mitigation bank means that the service area of a wetland or natural habitat mitigation bank shall be consistent with that in the Federal Guidance for the Establishment, Use and Operation of Mitigation Banks (60 FR 58605, November 28, 1995), i.e., the designated area (e.g., watershed, county) wherein a bank can be expected to provide appropriate compensation for impacts to wetlands and/or other aquatic or natural habitat resources.

Wetland or habitat enhancement means activities conducted in existing wetlands or other natural habitat to achieve specific management objectives or provide conditions which previously did not exist, and which increase one or more ecosystem functions. Enhancement may involve tradeoffs between the resource structure, function, and values; a positive change in one may result in negative effects to other functions. Examples of activities which may be carried out to enhance wetlands or natural habitats include, but are not limited to, alteration of hydrologic regime, vegetation management, erosion control, fencing, integrated pest management and control, and fertilization.

Wetland or habitat establishment period means a period of time agreed to by the FHWA, State DOT, and U.S. Army Corps of Engineers, as necessary to establish wetland or natural habitat functional capacity in a compensatory mitigation project sufficient to compensate wetlands or habitat losses due to impacts of Federal-aid highway projects. The establishment period may vary depending on the specific wetland or habitat type being developed.

Wetland or habitat functional capacity means the ability of a wetland or natural habitat to perform natural functions, such as provide wildlife habitat, support biodiversity, store surface water, or perform biogeochemical transformations, as determined by scientific functional assessment. Natural functions of wetlands include, but are not limited to, those listed by the U.S. Army Corps of Engineers at 33 CFR 320.4(b)(2)(i) through (viii).

Wetland or habitat preservation means the protection of ecologically important wetlands, other aquatic resources, or other natural habitats in perpetuity through the implementation of appropriate legal and physical mechanisms. Preservation of wetlands for compensatory mitigation purposes may include protection of upland areas adjacent to wetlands as necessary to ensure protection and/or enhancement of the aquatic ecosystem.

Wetland or habitat restoration means the reestablishment of wetlands or natural habitats on a site where they formerly existed or exist in a substantially degraded state.

Wetland or wetlands means those areas that are inundated or saturated by surface or ground water at a frequency and duration to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

Wetlands or habitat mitigation credit means a unit of wetlands or habitat mitigation, defined either by area or a measure of functional capacity through application of scientific functional assessment. With respect to mitigation banks, this definition means the same as that in the Federal Guidance for the

Establishment, Use, and Operation of Mitigation Banks.

§ 777.3 Background.

(a) Executive Order 11990 (42 FR 26961, 3 CFR, 1977 Comp., p. 121) Protection of Wetlands, and DOT Order 5660.1A,[1] Preservation of the Nation's Wetlands, emphasize the important functions and values inherent in the Nation's wetlands. Federal agencies are directed to avoid new construction in wetlands unless the head of the agency determines that:

(1) There is no practicable alternative to such construction, and

(2) The proposed action includes all practicable measures to minimize harm to wetlands which may result from such use.

(b) Sections 103 and 133 of title 23, U.S. Code, identify additional approaches for mitigation and management of impacts to wetlands and natural habitats which result from projects funded pursuant to title 23, U.S. Code, as eligible for participation with title 23, U.S. Code, funds.

(c) 33 CFR parts 320 through 330, Regulatory Program, U.S. Army Corps of Engineers; Section 404, Clean Water Act and 40 CFR part 230, Section 404(b)(1) Guidelines for the Specification of Disposal Sites for Dredged or Fill Material, establish requirements for the permitting of discharge of dredge or fill material in wetlands and other waters of the United States.

(d) Federal Guidance for the Establishment, Use, and Operation of Mitigation Banks presents guidance for the use of ecological mitigation banks as compensatory mitigation in the Section 404 Regulatory Program for unavoidable impacts to wetlands and other aquatic resources.

(e) Interagency Cooperation—Endangered Species Act of 1973, as amended (50 CFR part 402), presents regulations establishing interagency consultation procedures relative to impacts to species listed under the authority of the Act and their habitats as required by Section 7, Interagency Coordination, of the Endangered Species Act of 1973 (16 U.S.C. 1536).

§ 777.5 Federal participation.

(a) Those measures which the FHWA and a State DOT find appropriate and necessary to mitigate adverse environmental impacts to wetlands and natural habitats are eligible for Federal participation where the impacts are the result of projects funded pursuant to title 23, U.S. Code. The justification for the cost of proposed mitigation measures should be considered in the same context as any other public expenditure; that is, the proposed mitigation represents a reasonable public expenditure when weighed against other social, economic, and environmental values, and the benefit realized is commensurate with the proposed expenditure. Mitigation measures shall give like consideration to traffic needs, safety, durability, and economy of maintenance of the highway.

(b) It is FHWA policy to permit, consistent with the limits set forth in this part, the expenditure of title 23, U.S. Code, funds for activities required for the planning, design, construction, monitoring, and establishment of wetlands and natural habitat mitigation projects, and acquisition of land or interests therein.

§ 777.7 Evaluation of impacts.

(a) The reasonableness of the public expenditure and extent of Federal participation with title 23, U.S. Code, funds shall be directly related to:

(1) The importance of the impacted wetlands and natural habitats;

(2) The extent of highway impacts on the wetlands and natural habitats, as determined through an appropriate, interdisciplinary, impact assessment; and

(3) Actions necessary to comply with the Clean Water Act, Section 404, the Endangered Species Act of 1973, and other relevant Federal statutes.

(b) Evaluation of the importance of the impacted wetlands and natural habitats shall consider:

(1) Wetland and natural habitat functional capacity;

(2) Relative importance of these functions to the total wetland or natural habitat resource of the area;

(3) Other factors such as uniqueness, esthetics, or cultural values; and

(4) Input from the appropriate resource management agencies through interagency coordination.

(c) A determination of the highway impact should focus on both the short- and long-term affects of the project on wetland or natural habitat functional capacity, consistent with 40 CFR part 1500, 40 CFR 1502.16, 33 CFR 320.4, and the FHWA's environmental compliance regulations, found at 23 CFR part 771.

§ 777.9 Mitigation of impacts.

(a) Actions eligible for Federal funding. There are a number of actions that can be taken to minimize the impact of highway projects on wetlands or natural habitats. The following actions qualify for Federal-aid highway funding:

(1) Avoidance and minimization of impacts to wetlands or natural habitats through realignment and special design, construction features, or other measures.

(2) Compensatory mitigation alternatives, either inside or outside of the right-of-way. This includes, but is not limited to, such measures as on-site mitigation, when that alternative is determined to be the preferred approach by the appropriate regulatory agency; improvement of existing degraded or historic wetlands or natural habitats through restoration or enhancement on or off site; creation of new wetlands; and under exceptional circumstances, preservation of existing wetlands or natural habitats on or off site. Restoration of wetlands is generally preferable to enhancement or creation of new wetlands.

(3) Improvements to existing wetlands or natural habitats. Such activities may include, but are not limited to, construction or modification of water level control structures or ditches, establishment of natural vegetation, re-contouring of a site, installation or removal of irrigation, drainage, or other water distribution systems, integrated pest management, installation of fencing, monitoring, and other measures to protect, enhance, or restore the wetland or natural habitat character of a site.

(4) Mitigation banks. In accordance with all applicable Federal law (including regulations), with respect to participation in compensatory mitigation related to a project funded under title 23, U.S. Code, that has an impact on wetlands or natural habitat occurring within the service area of a mitigation bank, preference shall be given, to the maximum extent practicable, to the use of the mitigation bank, if the bank contains sufficient available credits to offset the impact and the bank is approved in accordance with the Federal Guidance for the Establishment, Use, and Operation of Mitigation Banks, or other agreement between appropriate agencies.

(b) Mitigation banking alternatives eligible for participation with Federal-aid funds including such measures as the following:

(1) Mitigation banks in which mitigation credits are purchased by State DOTs to mitigate impacts to wetlands or natural habitats due to projects funded under title 23, U.S. Code, including privately owned banks or those established with private funds to mitigate wetland or natural habitat losses.

[1] DOT Order 5660.1A is available for inspection and copying from FHWA headquarters and field offices as prescribed at 49 CFR part 7.

(2) Single purpose banks established by and for the use of a State DOT with Federal-aid participation; or multipurpose publicly owned banks, established with public, non-title 23 Federal highway funds, in which credits may be purchased by highway agencies using title 23 highway funds on a per-credit basis.

(c) Contributions to statewide and regional efforts to conserve, restore, enhance and create wetlands or natural habitats. Federal-aid funds may participate in the development of statewide and regional wetlands conservation plans, including any efforts and plans authorized pursuant to the Water Resources Development Act of 1990 (Pub. L. 101–640, 104 Stat. 4604). Contributions to these efforts may occur in advance of project construction only if such efforts are consistent with all applicable requirements of Federal law and regulations and State transportation planning processes.

(d) Mitigation or restoration of historic impacts to wetlands and natural habitats caused by past highway projects funded pursuant to title 23, U.S. Code, even if there is no current federally funded highway project in the immediate vicinity. These impacts must be related to transportation projects funded under the authority of title 23, U.S. Code.

§ 777.11 Other considerations.

(a) The development of measures proposed to mitigate impacts to wetlands or natural habitats shall include consultation with appropriate State and Federal agencies.

(b) Federal-aid funds shall not participate in the replacement of wetlands or natural habitats absent sufficient assurances, such as, but not limited to, deed restrictions, fee ownership, permanent easement, or performance bond, that the area will be maintained as a wetland or natural habitat.

(c) The acquisition of proprietary interests in replacement wetlands or natural habitats as a mitigation measure may be in fee simple, by easement, or by other appropriate legally recognized instrument, such as a banking instrument legally approved by the appropriate regulatory agency. The acquisition of mitigation credits in wetland or natural habitat mitigation banks shall be accomplished through a legally recognized instrument, such as permanent easement, deed restriction, or legally approved mitigation banking instrument, which provides for the protection and permanent continuation of the wetland or natural habitat nature of the mitigation.

(d) A State DOT may acquire privately owned lands in cooperation with another public agency or third party. Such an arrangement may accomplish greater benefits than would otherwise be accomplished by the individual agency acting alone.

(e) A State DOT may transfer the title to, or enter into an agreement with, an appropriate public natural resource management agency to manage lands acquired outside the right-of-way without requiring a credit to Federal funds. Any such transfer of title or agreement shall require the continued use of the lands for the purpose for which they were acquired. In the event the purpose is no longer served, the lands and interests therein shall immediately revert to the State DOT for proper disposition.

(f) The reasonable costs of acquiring lands or interests therein to provide replacement lands with equivalent wetlands or natural habitat area or functional capacity associated with these areas are eligible for Federal participation.

(g) The objective in mitigating impacts to wetlands in the Federal-aid highway program is to implement the policy of a net gain of wetlands on a program wide basis.

(h) Certain activities to ensure the viability of compensatory mitigation wetlands or natural habitats during the period of establishment are eligible for Federal-aid participation. These include, but are not limited to, such activities as repair or adjustment of water control structures, pest control, irrigation, fencing modifications, replacement of plantings, and mitigation site monitoring. The establishment period should be specifically determined by the mitigation agreement among the mitigation planners prior to beginning any compensatory mitigation activities.

[FR Doc. 00–33194 Filed 12–28–00; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8915]

RIN 1545–AX71

Tiered Structures—Electing Small Business Trusts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations amending the temporary regulations under section 444 of the Internal Revenue Code (Code) relating to the election of a taxable year other than the required taxable year. The temporary regulations provide that solely with respect to an S corporation shareholder, an electing small business trust (ESBT) and a trust that is described in section 401(a) or section 501(c)(3) and is exempt from taxation under section 501(a) is not a deferral entity for purposes of § 1.444–2T. The temporary regulations affect S corporations, ESBTs that own S corporation stock, and trusts that are described in section 401(a) or section 501(c)(3) and exempt from taxation under section 501(a) that own S corporation stock. The text of these temporary regulations serves as the text of the proposed regulations set forth in the notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective December 29, 2000.

Applicability Dates: For dates of applicability, see § 1.444–4T of these regulations.

FOR FURTHER INFORMATION CONTACT: Bradford Poston and James A. Quinn (202) 622–3060 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR Part 1) relating to the election of a taxable year other than the required taxable year under section 444. Section 444(d)(3) and § 1.444–2T generally prohibit an S corporation that is a member of a tiered structure from making an election under section 444 for taxable years beginning after December 31, 1986. An S corporation is considered to be a member of a tiered structure if the S corporation owns any portion of a deferral entity, or a deferral entity owns any portion of an S corporation. Section 1.444–2T(b)(2) defines deferral entity to include any entity that is a trust with the exception of certain grantor trusts (including qualified subchapter S trusts within the meaning of section 1361(d)(1)(A)).

Section 1302 of the Small Business Job Protection Act of 1996, Public Law 104–188 (110 Stat. 1755) (August 20, 1996), modified sections 641 and 1361 of the Internal Revenue Code (Code) to permit an electing small business trust (ESBT) to be an S corporation shareholder and also modified section 1361 to allow an organization (including a trust) that is described in section 401(a) or section 501(c)(3) and that is

exempt from taxation under section 501(a) to be a shareholder of an S corporation. The temporary regulations under section 444 are also being issued as proposed regulations published elsewhere in this issue of the **Federal Register**.

Explanation of Provisions

The temporary regulations modify the temporary regulations under section 444 to provide that an ESBT and a trust that is described in section 401(a) or section 501(c)(3) that is exempt from taxation under section 501(a) is not a deferral entity for purposes of § 1.444–2T. Therefore, an S corporation with a section 444 election may have an ESBT or a trust that is described in section 401(a) or section 501(c)(3) that is exempt from taxation under section 501(a) as a shareholder. An ESBT is not a deferral entity within the meaning of § 1.444–2T because under section 641(c) the portion of the ESBT consisting of stock in one or more S corporations is taxed to the deemed owner under subpart E, part I, subchapter J of the Code or is subject to taxation at the trust level without a deduction for amounts distributed or required to be distributed from that portion of the trust. A trust described in section 401(a) (other than an employee stock ownership plan described in section 4975(e)(7)), or a trust described in section 501(c)(3) that is exempt from taxation under section 501(a) is not a deferral entity within the meaning of § 1.444–2T because with respect to such trust all items of income, loss, or deduction taken into account under section 1366(a) and any gain or loss on the disposition of the stock in the S corporation is treated as unrelated business taxable income of such trust under section 512(e)(1) and is subject to taxation under section 511. A trust described in section 401(a) that is an employee stock ownership plan described in section 4975(e)(7) is not a deferral entity within the meaning of § 1.444–2T because such trust does not defer taxation but rather is exempt from taxation under section 501(a) and is not treated as having unrelated business taxable income pursuant to section 512(e)(3).

The temporary regulations are effective as of December 29, 2000. However taxpayers may voluntarily apply these temporary regulations to taxable years of S corporations beginning after December 31, 1996, for S corporations that have ESBTs as shareholders, and for taxable years beginning after December 31, 1997, for S corporations that have trusts described in section 401(a) or section 501(c)(3) that are exempt from taxation under section 501(a) as shareholders.

Special Analyses

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

Drafting Information

The principal authors of these regulations are Bradford Poston and James A. Quinn of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.444–4T is also issued under 26 U.S.C. 444(g). * * *

Par. 2. Section 1.444–4T is added under the undesignated centerheading ''Accounting Periods'' to read as follows:

§ 1.444–4T Tiered structure (temporary).

(a) *Electing small business trusts.* For purposes of § 1.444–2T, solely with respect to an S corporation shareholder, the term *deferral entity* does not include a trust that is treated as an electing small business trust under section 1361(e). An S corporation with an electing small business trust as a shareholder may make an election under section 444. This paragraph (a) is applicable beginning December 29, 2000, however taxpayers may voluntarily apply it to taxable years of S corporations beginning after December 31, 1996.

(b) *Certain tax-exempt trusts.* For purposes of § 1.444–2T, solely with respect to an S corporation shareholder, the term *deferral entity* does not include a trust that is described in section 401(a) or section 501(c)(3) that is exempt from taxation under section 501(a). An S corporation with a trust that is described in section 401(a) or section 501(c)(3) that is exempt from taxation under section 501(a) as a shareholder may make an election under section 444. This paragraph (b) is applicable beginning December 29, 2000, however taxpayers may voluntarily apply it to taxable years of S corporations beginning after December 31, 1997.

Approved: December 13, 2000.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 00–32190 Filed 12–28–00; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301093; FRL–6760–9]

RIN 2070–AB78

Fludioxonil; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of fludioxonil 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile in or on grapes, strawberries, dry bulb onions, and green onions. Novartis Crop Protection, Inc. and the Inter-Regional Project Number (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective December 29, 2000. Objections and requests for hearings, identified by docket control number OPP–301093, must be received by EPA on or before February 27, 2001.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301093 in

the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT By mail: Mary Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9354; and e-mail address: waller.mary@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

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

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'', ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—-Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at http://www.epa.gov/opptsfrs/home/guidelin.htm.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–301093. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of August 26, 1998 (63 FR 45497) (FRL–6023–4), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition (PP) for tolerances for fludioxonil on grapes by Novartis Crop Protection, Inc, 410 Swing Road, Greensboro, NC 27419. This notice included a summary of the petition prepared by Novartis Crop Protection, Inc, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.516 be amended by establishing tolerances for residues of the fungicide fludioxonil, 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile, in or on grapes at 1.0 ppm.

In the **Federal Register** of March 29, 2000 (65 FR 45498) (FRL–6495–5), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a as amended by the FQPA announcing the filing of a pesticide petition (PP) for tolerances for fludioxonil on strawberries, bulb vegetables, and stone fruit by the Interregional Research Project Number 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903. This notice included a summary of the petition prepared by the Interregional Research Project Number 4 (IR–4), the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.516 be amended by establishing tolerances for residues of the fungicide fludioxonil, 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile, in or on strawberries at 2.0 ppm; dry bulb onion; great-headed garlic; shallot; and welsh onion at 0.2 ppm; green onion and leek at 7.0 ppm; and stone fruit group at 2.0 ppm.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of fludioxonil on grapes at 1.0 ppm, strawberries at 2.0 ppm, dry bulb onions at 0.20 ppm, and green onions at 7.0 ppm. Tolerances are not being established for stone fruit at this time due to additional preliminary residue chemistry data (not yet available to the Agency for review) that indicate that a tolerance of 2.0 ppm may be too low for stone fruit. The Agency will not establish a stone fruit tolerance until the

final set of residue chemistry data are submitted and reviewed. EPA's assessment of exposures and risks associated with establishing the tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by fludioxonil are discussed in the following Table 1 as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed.

TABLE 1.— SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100a	90–Day oral toxicity in rats	NOAEL = 64 mg/kg/day (M) and 70 mg/kg/day (F) LOAEL = 428 mg/kg/day (M) and 462 mg/kg/day (F) based on decreased weight gain (both sexes), chronic nephropathy (M) and centrilobular hepatocyte hypertrophy (F).
870.3100b	90–Day oral toxicity in mice	NOAEL = 445 mg/kg day (M) and 559 mg/kg/day (F) LOAEL = 1052 mg/kg/day (M) and 1307 mg/kg/day (F) based on decreased body weight gain (F), increased alkaline phosphatase (M), increased relative liver weight, increased incidence of nephropathy and centrilobular hypertrophy (both sexes)
870.3100c	90–Day oral toxicity in dogs	NOAEL = 5 mg/kg/day (both sexes) LOAEL = 50 mg/kg/day based on an increased incidence of diarrhea (both sexes).
870.3200	21/28– Day dermal toxicity	NOAEL≥1,000 mg/kg/day for both sexes
870.3250	90–Day dermal toxicity	N/A
870.3465	90–Day inhalation toxicity	N/A
870.3700a	Prenatal developmental in rodents	Maternal NOAEL = 100 mg/kg/day LOAEL = 1,000 mg/kg/day based on reduction in corrected weight gain Developmental NOAEL = 100 mg/kg/day LOAEL = 1,000 mg/kg/day based on increase in the fetal incidence and litter incidence of dilated renal pelvis and dilated ureter.
870.3700b	Prenatal developmental in nonrodents	Maternal NOAEL = 10 mg/kg/day LOAEL = 100 mg/kg/day based on decreased body weight gain and decreased food efficiency Developmental NOAEL ≥ 300 mg/kg/day
870.3800	Reproduction and fertility effects	Parental/Systemic NOAEL = 22.13 mg/kg/day (M) and 24.24 mg/kg/day (F) LOAEL = 221.61mg/kg/day (M) and 249.67 mg/kg/day (F) based on increased clinical signs, decreased body weights, decreased weight gain, and decreased food consumption in both sexes Reproductive/Offspring NOAEL = 22.13 mg/kg/day (M) and 24.24 mg/kg/day (F) LOAEL = 221.61 mg/kg/day (M) and 249.67 mg/kg/day (F) based on reduced pup weights during lactation
870.4100b	Chronic toxicity dogs	NOAEL = 3.3 mg/kg/day (F) and 33.1 mg/kg/day (M). LOAEL = 35.5 mg/kg/day (F) and 297.8 mg/kg/day (M) based upon decreased weight gain (F) and decreased body weight, reduction in hematological parameters (platelets), increase in cholesterol and alkaline phosphatase, and increased relative liver weight (M)
870.4300	Combined Chronic Toxicity/Carcinogenicity in rats	NOAEL = 37 mg/kg/day (M) and 44 mg/kg/day (F) LOAEL = 113 mg/kg/day (M) and 141 mg/kg/day (F) based on decreased mean body weight gain, slight anemia (F), and increased incidence and severity of liver lesions (degeneration) in both sexes. There was no evidence of carcinogenicity in male rats, but there was a statistically significant increase, both trend and pairwise, of combined hepatocellular tumors in female rats. Classified as ''Group D'' by OPP Cancer Peer Review Committee.
870.4300	Carcinogenicity mice	NOAEL = 11.3 mg/kg/day (M) and 133 mg/kg/day (F)

TABLE 1.— SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
		LOAEL = 112 mg/kg/day (M) and 417 mg/kg/day (F) based on the increased incidence of mice convulsing when handled (M) and increased absolute liver weight and grossly enlarged livers (F). Statistically significant trend for malignant lymphomas in females.
870.5100	Gene mutation in bacteria	Strains TA 98, 100, 1535, 1537 of *S. typhimurium*, and strain WP2uvrA of E. coli were negative for mutagenic activity when tested from 20 to 5,000 µg/plate in absence and presence of metabolic activation.
870.5300	Gene mutation in mammalian cells in culture	Chinese hamster V79 ovary cells were tested from 0.50 to 60 µg/mL. Negative up to limit of solubility and cytotoxicity.
870.5375	*In vitro* Chromosome aberration	Chinese hamster ovary cells were tested with and without metabolic activation from 1.37 to 700 µg/mL. Positive for nondisjunction of chromosomes both in the presence and absence of activation.
870.5385	Bone marrow chromosome aberrations assay	Chinese hamsters were orally dosed at levels from 1,250 to 5,000 mg/kg. There was no significant increase in the frequency of chromosome aberrations in bone marrow at any dose tested.
870.5395	*In vivo* Mouse micronucleus assay	Both sexes of NMRI mice were dosed up to 5,000 mg/kg/day. There were no significant increases in the number or percentage of micronucleated polychromatic erythrocytes.
870.5395	*In vivo* Rat hepatocyte micronucleus assay	Male rats were orally dosed 1250, 2500 and 5,000 mg/kg and hepatocytes were harvested. Micronucleated hepatocytes were found in Phase II at the low and mid dose levels but not at the high dose level and not in Phase I. Positive for mutagenicity in hepatocytes exposed *in vivo*.
870.5550	*In vitro* unscheduled DNA synthesis assay	There was no evidence of unscheduled DNA synthesis in rat hepatocytes at doses from 4.1 to 5,000 µg/mL.
870.5450	Dominant lethal assay in mice	Male mice singly dosed at 0, 1,250, 2,500, or 5,000 mg/kg/day and mated for 8 consecutive weeks had no evidence of a dominant lethal mutation
870.6200a	Acute neurotoxicity screening battery	Available data do not indicate a need for acute or subchronic neurotoxicity studies
870.6200b	Subchronic neurotoxicity screening battery	Available data do not indicate a need for acute or subchronic neurotoxicity studies
870.6300	Developmental neurotoxicity	Available data do not indicate a need for acute or subchronic neurotoxicity studies
870.7485	Metabolism and pharmacokinetics	C^{14}-Fludioxonil given by gavage and bile duct-cannulation to groups of male and female rats. Absorption was estimated to be between 67–91%. Terminal tissue distribution showed that terminal residues were below the limit of detection for most tissues except the liver, kidneys, blood, and lungs, which showed low levels. The major route of excretion was the feces, with approximately 80% of the administered radioactivity excreted by this route in male and female rats at both the low and high dose. The remaining radioactivity was excreted through urine. In bile duct-cannulated rats, approximately 70% of an administered radioactive dose was excreted via this route, supporting the bile as the origin of the fecal radioactivity. There were no apparent sex- or dose-related differences in the routes of excretion for fludioxonil. Examination of urine for metabolites of fludioxonil showed at least 20 metabolites, each comprising a minor fraction of the administered dose (0.1–3.1%).
870.7600	Dermal penetration	N/A
N/A	Special studies	N/A

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to

calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for fludioxonil used for human risk assessment is shown in the following Table 2:

TABLE 2.—SUMMARY OF TOXICOLOGICAL ENDPOINTS USED FOR HUMAN RISK ASSESSMENT*

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary females 13–50	NOAEL = 100 mg/kg/day; UF = 100; Acute RfD = 1.0 mg/kg/day	FQPA SF = 1X; aPAD = acute RfD/FQPA SF = 1.0 mg/kg/day	Developmental Toxicity Study - rat Developmental LOAEL = 1,000 mg/kg/day based on increased incidence of fetuses and litters with dilated renal pelvis and dilated ureter
Chronic Dietary all populations	NOAEL= 3.3 mg/kg/day; UF = 100; Chronic RfD = 0.03 mg/kg/day	FQPA SF = 1X; cPAD = chronic RfD/FQPA SF = 0.03 mg/kg/day	One year chronic toxicity study - dog LOAEL = 35.5 mg/kg/day based on decreased weight gain in female dogs
Short-Term Dermal (1–7 days) (Occupational/Residential)	none	No systemic toxicity was seen at the limit dose (1,000 mg/kg/day) in the 28–day dermal toxicity study in rats. This risk assessment is not required.	Endpoint was not selected
Intermediate-Term (1 week - several months) Dermal (Occupational/Residential)	Oral study NOAEL= 64 mg/kg/day (dermal penetration = 40%)	LOC for MOE = 100 (Occupational); LOC for MOE = 100 (Residential)	13 Week Oral Feeding Study - rat Systemic LOAEL = 428 mg/kg/day based on decreased body weight gain in both sexes, chronic nephropathy in males, and centrilobular hepatocyte hypertrophy in females
Long-Term (several months-lifetime) Dermal (Occupational/Residential)	Oral study NOAEL = 3.3 mg/kg/day (dermal penetration = 40%)	LOC for MOE = 100 (Occupational) LOC for MOE = 100 (Residential)	one year chronic toxicity study - dog LOAEL = 35.5 mg/kg/day based on decreased weight gain in female dogs
Short-Term (1–7 Days) Inhalation (Occupational/Residential)	NOAEL = 64 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Occupational); LOC for MOE = 100 (Residential)	13 Week Oral Feeding Study - rat Systemic LOAEL = 428 mg/kg/day based on decreased body weight gain in both sexes, chronic nephropathy in males, and centrilobular hepatocyte hypertrophy in females
Intermediate-term (1 week - several months) Inhalation (Occupational/Residential)	NOAEL = 64 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Occupational) LOC for MOE = 100 (Residential)	13 Week Oral Feeding Study - rat Systemic

TABLE 2.—SUMMARY OF TOXICOLOGICAL ENDPOINTS USED FOR HUMAN RISK ASSESSMENT*—Continued

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
			LOAEL = 428 mg/kg/day based on decreased body weight gain in both sexes, chronic nephropathy in males, and centrilobular hepatocyte hypertrophy in females
Long-Term (several months-lifetime) Inhalation (Occupational/Residential)	NOAEL = 3.3 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Occupational); LOC for MOE = 100 (Residential)	one year chronic toxicity study - dog LOAEL = 35.5 mg/kg/day based on decreased weight gain in female dogs
Cancer (oral, dermal, inhalation)	''Group D''- not classifiable as to human carcinogenicity via relevant routes of exposure	not applicable	Acceptable oral rat and mouse carcinogenicity studies; evidence of carcinogenic and mutagenic potential.

* UF = uncertainty factor, FQPA SF = FQPA safety factor, NOAEL = no observed adverse effect level, LOAEL = lowest observed adverse effect level, PAD = population adjusted dose (a = acute, c = chronic) RfD = reference dose, MOE = margin of exposure, LOC = level of concern. The FQPA factor being referenced is the factor unique to the FQPA and does not include FQPA factors related to data uncertainty.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.516) for the residues of fludioxonil, in or on a variety of raw agricultural commodities. Fludioxonil is the active ingredient in registered products used as a seed treatment for many crops (with the exception of tree crops and berries). In addition, several Section 18 emergency exemptions for use as a foliar spray on strawberries, caneberries and as a post-harvest spray treatment on apricots, nectarines, peaches, and plums have been approved. Risk assessments were conducted by EPA to assess dietary exposures from fludioxonil in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. The Dietary Exposure Evaluation Model (DEEM® analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The acute analysis was performed for the females 13–50 years old population subgroup using published and proposed tolerance levels, default concentration factors, and 100% CT assumptions for all commodities. The acute dietary exposure estimate at the 95th percentile of exposure for females 13–50 years old is 0.004512 mg/kg/day, representing 0.5% of the aPAD.

For acute dietary risk estimates, EPA's level of concern is >100% aPAD. The results of the acute analysis indicate that at the 95th percentile of exposure, the acute dietary risk associated with the proposed uses of fludioxonil is below EPA's level of concern.

ii. *Chronic exposure.* The chronic DEEM® analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–92 nationwide CSFII and accumulated exposure to the chemical for each commodity using published and proposed tolerance levels, default concentration factors, and 100% crop treated (CT) assumptions for all commodities. Chronic dietary exposure estimates ranged from 0.000609 mg/kg/day (2.0% of the cPAD) for males 13–19 years old, up to 0.003506 mg/kg/day (12% of the cPAD) for all infants (< 1 year old). All other population subgroups fell in between these two figures, including the U.S. population (0.001107 mg/kg/day; 3.7% of the cPAD), children 1–6 years old (0.002934 mg/kg/day; 9.8% of the cPAD), children 7–12 years old (0.001522 mg/kg/day; 5.1% of the cPAD), females 13–50 years old (0.000823 mg/kg/day; 2.7% of the cPAD), males 20+ years old (0.000726 mg/kg/day; 2.4% of the cPAD), and seniors 55+ years old (0.000961 mg/kg/day; 3.2% of the cPAD).

Since the FQPA factor was reduced to 1x for all population subgroups, the Agency's level of concern is 100% cPAD = 100% cRfD. The results of this analysis indicate that the chronic dietary risk associated with the existing uses and the proposed uses of fludioxonil is below EPA's level of concern.

iii. *Cancer.* EPA has classified Fludioxonil as a Group D - not classifiable as to human carcinogenicity. The evidence is inadequate and cannot be interpreted as showing either the presence or absence of a carcinogenic effect. In one mouse study, there was a significant trend for malignant lymphomas in female mice up to 3,000 ppm. However, in a second study up to 7,000 ppm, the limit dose, there was no evidence of carcinogenicity for either sex. In rats, fludioxonil produced a significant trend and pair-wise increase in hepatocellular tumors, combined, in female rats at doses adequate to assess carcinogenicity. EPA determined that based on the increase in liver tumors in female rats that was statistically significant for combined adenoma/carcinoma only, the lack of tumorogenic response in male rats or in either sex of mice, and the need for additional mutagenicity studies, a Group D classification was appropriate.

Fludioxonil was not mutagenic in the tests for gene mutations. However, because of the powerful induction of polyploidy in the *in vitro* Chinese hamster ovary cell cytogenetic assay and the suggestive evidence of micronuclei induction in rat hepatocytes *in vivo*, additional mutagenicity testing was performed in an *in vivo* study specifically designed for aneuploidy analysis.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for fludioxonil in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates

are made by reliance on simulation or modeling taking into account data on the physical characteristics of fludioxonil.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/ Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and SCI-GROW, which predicts pesticide concentrations in groundwater. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/EXAMS (a tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/ EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead, drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to fludioxonil they are further discussed in the aggregate risk sections below.

Based on the GENEEC and SCI-GROW models the estimated environmental concentrations (EECs) of fludioxonil for acute exposures are estimated to be 46 parts per billion (ppb) for surface water and 0.35 ppb for ground water. The EECs for chronic exposures are estimated to be 32 ppb for surface water and 0.35 ppb for ground water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Fludioxonil is not currently registered for residential (outdoor, non-food) uses. The registrant is seeking registration for the use of fludioxonil by commercial applicators on residential lawns.

There is potential residential postapplication exposure to adults and children entering residential areas treated with fludioxonil. Since the Agency did not select a short-term endpoint for dermal exposure, only intermediate-term dermal exposures were considered. Based on the residential use pattern, no long-term post-application residential exposure is expected. Short-term non-dietary oral exposures for toddlers were not assessed since the acute dietary endpoint for fludioxonil is only relevant for females 13–50 years old. Intermediate-term, non-dietary ingestion exposure for toddlers is possible and was assessed using the intermediate-term dose and endpoint identified from the 13 week oral feeding study in rats. Intermediate-term exposure is not expected from the proposed ornamental uses of fludioxonil.

There are no chemical-specific data available to determine the potential risks from post-application activities associated with the proposed uses of fludioxonil. The exposure estimates are based on assumptions and generic data as specified by the newly proposed Residential SOPs. The MOEs for postapplication exposures from full lawn uses are 2,000 and 1,200 for adults and children, respectively. The dermal MOE for postapplication exposure for the hand to mouth scenario is 13,000. The aggregate intermediate MOE for postapplication residential exposure to toddlers is 1,100. These estimates indicate that the potential intermediate-term risks from residential uses of fludioxonil do not exceed the Agency's level of concern. The Agency's level of concern is for MOEs below 100.

4. *Cumulative exposure to substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether fludioxonil has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, fludioxonil does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that fludioxonil has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

Safety factor for infants and children—i. *In general*. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

ii. *Prenatal and postnatal sensitivity*. The rat and rabbit developmental toxicity studies were tested at doses that produced maternal toxicity. There were no developmental findings in rabbits. The findings in the rat developmental toxicity studies were considered to be related to maternal toxicity, rather than an indication of increased susceptibility. In the reproductive study, maternal and reproductive/ offspring toxicity occurred at the same dose indicating no evidence of susceptibility.

iii. *Conclusion*. There is a complete toxicity data base for fludioxonil and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. Accordingly, taking into account the data on pre- and post-natal toxicity, EPA determined that an additional tenfold safety factor was not necessary to protect infants and children.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and groundwater are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* The acute dietary exposure estimate at the 95th percentile of exposure for females 13–50 years old is 0.004512 mg/kg/day, representing 0.5% of the aPAD. An acute dose and endpoint was not selected for the U. S. population (including infants and children) because there were no effects of concern observed in oral toxicology studies, including maternal toxicity in the developmental toxicity studies in rats and rabbits, that are attributable to a single exposure dose. In addition, there is potential for acute dietary exposure to fludioxonil in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO FLUDIOXONIL

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
Females 13–50 years old	1.0	0.5%	46	0.35	30,000

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to fludioxonil from food will utilize 3.7% of the cPAD for the U.S. population, 12% of the cPAD for all infants (< 1 year old) and 9.8% of the cPAD for children 1–6 years old. Based the use pattern, chronic residential exposure to residues of fludioxonil is not expected. In addition, there is potential for chronic dietary exposure to fludioxonil in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 4:

TABLE 4.— AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO FLUDIOXONIL

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)*	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population	0.3	3.7	11	0.35	1,000
All infants (<1 year old)	0.3	12	11	0.35	260
Children 1–6 years old	0.3	9.8	11	0.35	270
Children 7–12 years old	0.3	5.1	11	0.35	280
Females 13–50 years old	0.3	2.7	11	0.35	880
Males 13–19 years old	0.3	2.0	11	0.35	1,000
Males 20 + years old	0.3	2.4	11	0.35	1,000
Seniors 55 + years old	0.3	3.2	11	0.35	1,000

*GENEEC model estimated 56–day (average) concentration was divided by a factor of 3 prior to comparison with the DWLOC; 32/3 = 11.

3. *Short-term risk*. In aggregating short-term risk, the Agency considers background chronic dietary exposure (food + drinking water) and short-term inhalation and dermal exposures from residential uses. EPA did not identify a dermal endpoint of concern for the short-term duration. Short-term inhalation endpoints were identified, however, they are not relevant for the short-term aggregate risk since homeowners would not be applying fludioxonil. The registrant indicated that the requested residential uses are only for professional applications. Therefore, the short-term aggregate risk assessment is not required.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

For adults, post-application exposures may result from dermal contact with treated turf. For toddlers, dermal and non-dietary oral post-application exposures may result from dermal contact with treated turf as well as hand-to-mouth transfer of residues from turfgrass.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 1,200 for the U.S. population and 530 for infants/children. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, intermediate-term DWLOCs were calculated and compared to the EECs for chronic exposure of fludioxonil in ground and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect intermediate-term aggregate exposure to exceed the Agency's level of concern, as shown in the following Table 5:

TABLE 5.—AGGREGATE RISK ASSESSMENT FOR INTERMEDIATE-TERM EXPOSURE TO FLUDIOXONIL

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Inter-mediate-Term DWLOC (ppb)
U.S. Population	1,200	100	11	0.35	1,100
Infants/Children	530	100	11	0.35	220

5. *Aggregate cancer risk for U.S. population*. The EPA classified Fludioxonil as a Group D - not classifiable as to human carcinogenicity. The evidence is inadequate and cannot be interpreted as showing either the presence or absence of a carcinogenic effect. In one mouse study, there was a significant trend for malignant lymphomas in female mice up to 3,000 ppm. However, in a second study up to 7,000 ppm, the limit dose, there was no evidence of carcinogenicity for either sex. In rats, fludioxonil produced a significant trend and pair-wise increase in hepatocellular tumors, combined, in female rats at doses adequate to assess carcinogenicity. The EPA determined that based on the increase in liver tumors in female rats that was statistically significant for combined adenoma/carcinoma only, the lack of tumorogenic response in male rats or in either sex of mice, and the need for additional mutagenicity studies, a Group D classification was appropriate.

However, the Agency has since received the additional mutagenicity studies and based on the negative preliminary findings of the studies, the fact that the statistical increase in liver tumors in female rats occurred only at the highest dose, the lack of tumorigenic response in male rats and mice, the Agency has concluded that fludioxonil does not pose a significant cancer risk.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to fludioxonil residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

The registrant has proposed high performance liquid chromatography using ultraviolet detection Method AG–597B as the analytical enforcement method. This method is a reissue of Method(s) AG–597/AG–597A which has successfully undergone an ILV trial as well as Agency petition method validation (PMV). The original method is available for enforcement purposes until the new method is validated. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington DC 20460. Office location and telephone number: Rm. 101FF, CM # 2, 1921 Jefferson Davis Hwy, Arlington, VA, (703) 305-5229.

B. International Residue Limits

There are no Codex Maximum Residue Limits (MRLs) for fludioxonil. Therefore, international harmonization is not an issue at this time.

C. Conditions

Registration is conditional upon submission of the two dry bulb onion residue trials in Regions 5 and 12.

V. Conclusion

Therefore, the tolerance is established for residues of fludioxonil 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrilein or on grapes at 1.0 ppm, strawberries at 2.0 ppm, dry bulb onions at 0.20 ppm, and green onions at 7.0 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301093 on the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before February 27, 2001.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301093, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various

levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

VIII. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 18, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.516 is amended by alphabetically adding commodities to the table in paragraph (a) to read as follows:

§ 180.516 Fludioxonil; tolerances for residues.

(a) *General.* A tolerance is established for residue of the fungicide fludioxonil, 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile) in or on the following food commodities:

Commodity	Parts per million
* * * * *	
Grape	1.0
* * * * *	
Onion, dry bulb	0.20
Onion, green	7.0
* * * * *	
Strawberry	2.0
* * * * *	

* * * * *

[FR Doc. 00–33168 Filed 12–28–00; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301098; FRL–6762–7]

RIN 2070–AB78

Extension of Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends time-limited tolerances for the pesticides listed in Unit II of this document. These actions are in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of these pesticides. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA.

DATES: This regulation is effective December 29, 2000. Objections and requests for hearings, identified by docket control number OPP–301098, must be received by EPA on or before February 27, 2001.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301098 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: See the listing below for the name of a specific contact person. The following information applies to all contact persons: Emergency Response Team, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9366.

Pesticide/CFR cite	Contact person
2,4-D (§ 180.142)	Beth Edwards
Paraquat (§ 180.205)	Libby Pemberton
Lambda-cyhalothrin (§ 180.438).	Andrew Ertman
Bifenthrin and difenoconazole (§ 180.442 and § 180.475, respectively).	Andrea Conrath
Fenbuconazole (§ 180.480).	Dan Rosenblatt
Sulfentrazone and imazamox (§ 180.498 and § 180.508, respectively).	Barbara Madden

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

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

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.*You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,''' Regulations

and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–301098. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA has previously issued a final rule for each chemical/commodity which were published in the **Federal Register** on the date listed in the summary for each chemical/commodity listed below. The initial issuance of these final rules announced that EPA, on its own initiative, under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) was establishing time-limited tolerances. EPA established the tolerances because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Such tolerances can be established without providing notice or time for public comment.

EPA received requests to extend the use of these chemicals for this year's growing season. After having reviewed these submissions, EPA concurs that emergency conditions exist. EPA assessed the potential risks presented by residues for each chemical/commodity. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule originally published to support these uses. Based on that data and information considered, the Agency reaffirms that extension of these time-limited tolerances will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerances are extended until the date listed below. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations (CFR). Although these tolerances will expire and are revoked on the date listed, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on the commodity after that date will not be unlawful, provided the residue is present as a result of an application or use of a pesticide at a time and in a manner that was lawful under FIFRA, the tolerance was in place at the time of the application, and the residue does not exceed the level that was authorized by the tolerance. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Tolerances for the use of the following pesticide chemicals on specific commodities are being extended:

1. *2,4-D*. EPA has authorized under FIFRA section 18 the use of 2,4-D on wild rice for control of common water plantain in Minnesota. This regulation extends a time-limited tolerance for residues of the herbicide 2,4-dichlorophenoxyacetic acid in or on wild rice at 0.1 ppm for an additional 2–year period. This tolerance will expire and is revoked on December 31, 2002. A time-limited tolerance was originally published in the **Federal Register** on September 5, 1997 (62 FR 46900) (FRL–5738–9).

2. *Paraquat*. EPA has authorized under FIFRA section 18 the use of paraquat on artichokes for control of weeds in California. This regulation extends a time-limited tolerance for residues of the herbicide paraquat in or on artichokes at 0.05 ppm for an additional 2–year period. This tolerance will expire and is revoked on December 31, 2002. A time-limited tolerance was originally published in the **Federal Register** on November 22, 1999 (64 FR 63714) FRL–6392–9).

3. *Lambda-cyhalothrin*. EPA has authorized under FIFRA section 18 the use of lambda-cyhalothrin on barley for control of Russian wheat aphid in Wyoming, Montana, Idaho, and Colorado and sugarcane for the control of the sugarcane borer in Louisiana. This regulation extends time-limited tolerances for combined residues of the insecticide lambda-cyhalothrin and its epimer in or on barley, bran at 0.2 ppm; barley, grain at 0.05 ppm; barley, hay at 2.0 ppm; barley, straw at 2.0 ppm, and sugarcane at 0.03 ppm for an additional 2–year period. These tolerances will expire and are revoked on December 31, 2002. Time-limited tolerances were originally published in the **Federal Register** on January 29, 1999 (64 FR 4584–4590) (FRL–6056–2).

4. *Bifenthrin*. EPA has authorized under FIFRA section 18 the use of bifenthrin on citrus for control of Diaprepes root weevil in Florida. This regulation extends time-limited tolerances for residues of the insecticide bifenthrin in or on citrus, whole fruit; citrus, oil; and, citrus, dried pulp at 0.05, 0.3, and 0.3 ppm, respectively, for an additional 2–year period. These tolerances will expire and are revoked on December 31, 2002. Time-limited tolerances were originally published in the **Federal Register** on December 16, 1998 (63 FR 69200) (FRL–6048–1).

5. *Difenoconazole*. EPA has authorized under FIFRA section 18 the use of difenoconazole on sweet corn grown for seed for control of fungal pathogens in Florida. This regulation extends time-limited tolerances for residues of the fungicide difenoconazole in or on Corn, sweet (kernel + corn with husk removed); Corn, sweet, forage; and Corn, sweet, stover at 0.1 ppm for an additional 2–year period. These tolerances will expire and are revoked on 12/31/02. Time-limited tolerances were originally published in the **Federal Register** on September 1, 1999 (64 FR 47680) (FRL–6094–3).

6. *Fenbuconazole*. EPA has authorized under FIFRA section 18 the use of fenbuconazole on blueberries for control of mummy berry disease in Georgia. This regulation extends a time-limited tolerance for combined residues of the fungicide fenbuconazole alpha-2-(4-chlorophenyl)-ethyl-alpha-phenyl-3-(1*H*-1,2,4-triazole)-1-propanenitrile and its metabolites cis-5-(4-chlorophenyl)-dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl)-2-3*H*-furanone and trans-5-(4-chlorophenyl)dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl-2-3H-furanone expressed as fenbuconazole in or on blueberries at 1.0 ppm for an additional 2–year period. This tolerance will expire and is revoked on December 31,

2002. A time-limited tolerance was originally published in the **Federal Register** on June 10, 1998 (63 FR 31633) (FRL–5791–5).

7. *Sulfentrazone*. EPA has authorized under FIFRA section 18 the use of sulfentrazone on cowpea and lima bean for control of hophornbeam copperleaf in Tennessee and on sunflower for control of weeds in North Dakota. This regulation extends a time-limited tolerance for residues of the herbicide sulfentrazone, *N*-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1-y-l]phenyl] methanesulfonamide in or on bean, succulent seed without pod (lima beans and cowpeas) and sunflower at 0.1 ppm for an additional 2–year period. These tolerances will expire and are revoked on December 31, 2002. A time-limited tolerance was originally published in the **Federal Register** on September 21, 1999 (64 FR 51060) (FRL–6097–8).

8. *Imazamox*. EPA has authorized under FIFRA section 18 the use of imazamox on canola for control of wild mustard in Minnesota and North Dakota. This regulation extends a time-limited tolerance for residues of the herbicide imazamox, 2-4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl-5-methoxymethyl-3-pyridine-carboxylic acid, applied as the free acid or ammonium salt in or on canola at 0.05 ppm for an additional 17–month period. This tolerance will expire and is revoked on December 31, 2003. A time-limited tolerance was originally published in the **Federal Register** on July 14, 1999 (64 FR 37855) (FRL–6086–5).

III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301098 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before February 27, 2001.

1. *Filing the request*. Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment*. If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301098, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IV. Regulatory Assessment Requirements

This final rule establishes time-limited tolerances under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types

of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established under FFDCA section 408(l)(6) in response to an exemption under FIFRA section 18, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

V. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 22, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.142 [Amended]

2. In § 180.142, in the table to paragraph (b), amend the entry for ''Wild rice'' by revising the expiration date ''12/31/00'' to read ''12/31/02''.

§ 180.205 [Amended]

3. In § 180.205, in the table to paragraph (b), amend the entry for ''Artichokes'' by revising the expiration date ''12/31/00'' to read ''12/31/02''.

§ 180.438 [Amended]

4. In § 180.438, in the table to paragraph (b) amend the entries for ''Barley, bran''; ''Barley, grain''; ''Barley, hay''; ''Barley straw''; and ''Sugarcane'' by revising the expiration date ''12/31/00'' to read ''12/31/02''.

§ 180.442 [Amended]

5. In § 180.442, in the table to pararaph (b) amend the entries for ''Citrus, whole fruit''; ''Citrus oil''; and ''Citrus, dried pulp'' by revising the expiration dates ''12/31/00'' to read ''12/31/02''.

6. In § 180.475, revise the table in paragraph (b) to read as follows:

§ 180.475 Difenoconazole; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/ Revocation date
Corn, sweet (kernel + corn with husk removed)	0.1	12/31/02
Corn, sweet, forage	0.1	12/31/02
Corn, sweet, stover	0.1	12/31/02

* * * * *

§ 180.480 [Amended]

7. In § 180.480, in the table to paragraph (b) amend the entry for ''Blueberries'' by revising the expiration date ''12/31/00'' to read ''12/31/02''.

§ 180.498 [Amended]

8. In § 180.498, in the table to paragraph (b) amend the entries for ''Bean, succulent seed without pod (lima beans and cowpeas)'' and

''Sunflower'' by revising the expiration date ''12/30/00'' to read ''12/31/02''.

§ 180.508 [Amended]

9. In § 180.508, in the table to paragraph (b) amend the entry for ''Canola'' by revising the expiration date ''7/15/01'' to read ''12/31/03''.

FR Doc. 00–33292 Filed 12–27–00; 1:00 pm

BILLING CODE 6560–50–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration Centers for Disease Control and Prevention

42 CFR Part 493

[HCFA–2024–FC2]

RIN 0938–AI94

Medicare, Medicaid, and CLIA Programs; Extension of Certain Effective Dates for Clinical Laboratory Requirements Under CLIA

AGENCY: Centers for Disease Control and Prevention (CDC) and Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: This final rule extends certain effective dates for clinical laboratory requirements in regulations published on February 28, 1992, that implemented provisions of the Clinical Laboratory Improvement Amendments of 1988 (CLIA). This rule extends the phase-in date of the quality control requirements applicable to moderate and high complexity tests and extends the date by which an individual with a doctoral degree must possess board certification to qualify as a director of a laboratory that performs high complexity testing.

These effective dates are extended to allow the Department to revise quality control requirements and establish the qualification requirements necessary for individuals with doctoral degrees to serve as directors of laboratories performing high complexity testing. These effective date extensions do not reduce the current requirements for quality test performance.

DATES: *Effective Date:* December 29, 2000.

Comment Date: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on February 27, 2001.

ADDRESSES: Mail written comments (one original and three copies) to the following addresses:

Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–2024–FC2, P.O. Box 8018, Baltimore, MD 21244–8018; and

Centers for Disease Control and Prevention, Department of Health and Human Services, Attention: HCFA–2024–FC2, 4770 Buford Hwy., N.E., MS F11, Atlanta, Georgia 30341–3724.

To ensure that mailed comments are received in time for us to consider them, please allow for possible delays in delivering them.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–16–03, 7500 Security Boulevard, Baltimore, MD 21244–8018.

Comments mailed to the above addresses may be delayed and received too late for us to consider them.

Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–2024–FC2. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's office at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 to 5 p.m. (phone: (202) 690–7890). For information on ordering copies of the **Federal Register** containing this document and on electronic access, see the beginning of **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Rhonda S. Whalen (CDC), (770) 488–8155, Cecelia Hinkel (HCFA), (410) 786–3531.

SUPPLEMENTARY INFORMATION:

Availability of Copies, and Electronic Access

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–7800 (or toll free at 1–888–293–6498) or by faxing to (202) 512–2250. The cost for each copy is $8.00. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

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I. Background

On February 28, 1992, we published in the **Federal Register** (57 FR 7002) final regulations with an opportunity for public comment. These regulations set forth the requirements for laboratories that are subject to CLIA. These regulations established uniform requirements for all laboratories regardless of location, size, or type of testing performed. In developing the regulations, we included requirements that would ensure the quality of laboratory services and be in the best interest of the public health. We recognized that a rule of this scope required time for laboratories to understand and implement the new requirements. Therefore, certain requirements were phased-in and given prospective effective dates. We also planned to address the comments we received on the February 28, 1992 rule and make modifications, if necessary, in the subsequent final rule.

On December 6, 1994, May 12, 1997, and October 14, 1998, we published in the **Federal Register** (59 FR 62606, 62 FR 25855, and 63 FR 55031, respectively) final rules with opportunity for comment. These rules extended the phase-in of the quality control requirements applicable to moderate and high complexity tests and the date by which an individual with a doctoral degree must possess board certification to qualify as a director of a laboratory that performs high complexity testing. These changes were made due to the resource constraints

that had prevented the Department of Health and Human Services from establishing a review process for manufacturers' test system quality control instructions for CLIA compliance and the inability of many laboratory directors to complete certification requirements within the time period originally specified.

II. Revisions to the Regulations

The date extensions provided by the October 14, 1998 rule have proven to be inadequate for the reasons set forth below. In addition, based on our evaluation of comments submitted in response to the May 12, 1997 rule, advice from the Clinical Laboratory Improvement Advisory Committee (CLIAC) concerning the quality control requirements appropriate to ensure quality testing, and the qualification requirements for laboratory directors, we have found it necessary to make the following revisions to our regulations:

- We are extending from December 31, 2000, to December 31, 2002, the current phase-in quality control requirements for moderate and high complexity tests. The phase-in quality control requirements for unmodified, moderate complexity tests cleared by the Food and Drug Administration (FDA) (through 510(k) or premarket approval processes, unrelated to CLIA) are less stringent than the requirements applicable to high complexity and other moderate complexity tests.
- We are extending from December 31, 2000, to December 31, 2002, the date for laboratories to meet certain CLIA quality control requirements by following manufacturers' FDA CLIA-cleared test system instructions.
- We are extending from December 31, 2000, to December 31, 2002, the date by which individuals with doctoral degrees must obtain board certification to qualify as directors of laboratories that perform high complexity tests.

These revisions are discussed in more detail below.

A. Quality Control Requirements

42 CFR 493.1202 contains the quality control requirements applicable to moderate and high complexity tests and allows a laboratory that performs tests of moderate complexity, using test systems cleared by the FDA through the section 510(k) or premarket approval processes, until December 31, 2000, to comply with the quality control provisions of part 493, subpart K, by meeting less stringent quality control requirements, as long as the laboratory has not modified the instrument, kit, or test system's procedure.

Section 493.1203, effective beginning December 31, 2000, establishes a mechanism for laboratories using commercial, unmodified tests to fulfill certain quality control requirements by following manufacturers' test system instructions that have been reviewed and determined by the FDA to meet applicable CLIA quality control requirements. Implementation of this review process, however, depended upon the availability of sufficient additional resources necessary to meet the projected workload. These resources were not available due to financial and other constraints of the program.

Following the publication of some of the previous extensions, we received comments that the current quality control requirements are not appropriate for some test methodologies, and that a comprehensive quality control regulation should be developed to address current quality control needs. A final rule addressing quality control issues raised by these commenters is close to completion; however, it will not be published by December 31, 2000. Commenters also raised issues that stressed the need to ensure that the quality control requirements are practical and flexible enough to accommodate different testing sites and test systems that range from current methodologies to new and emerging technologies, in order to not impede access. We must also, as the commenters suggest, base the requirements on technical considerations as well as their impact on patient care.

To assist us in determining the types of quality control requirements necessary to monitor laboratory test performance, we also considered advice provided by the CLIAC, as well as information obtained from a public meeting held in September 1996 for manufacturers and others to make presentations on quality control.

Due to the complexity of the issues that must be addressed, we are extending the December 31, 2000 sunset date for quality control standards in § 493.1202 to December 31, 2002, and extending the effective date for § 493.1203 from December 31, 2000 to December 31, 2002, to allow laboratories to continue to meet current regulations until we make further determinations regarding quality control issues. We are extending the effective date for these sections to ensure that we have sufficient time to develop final rules concerning quality control that address new technology, including point-of-care testing, molecular methods and advances in testing in the specialties and subspecialties. Subsequent to the publication of the final regulations and prior to the actual implementation of the revised requirements, we must develop new surveyor guidelines, design new survey forms, reprogram the CLIA data system, conduct surveyor training, and inform and educate the laboratory community, State programs with CLIA-exempt laboratories and HCFA-approved accreditation organizations. Time must be allocated for HCFA-approved State licensure programs and HCFA-approved accreditation organizations to review their requirements and determine whether they must make changes to maintain their overall equivalency with the CLIA requirements. State programs with CLIA-exempt laboratories may need to make changes to their State laws and implementing regulations. Accreditation organizations may also need time to revise policies and requirements and have them approved by their organizations for adoption. An implementation period will provide States and accreditation organizations the time needed to make changes to their program requirements and for their subsequent review by CDC and HCFA. Failure to provide sufficient time for education and implementation could cause confusion and interfere with laboratories' continued compliance with CLIA requirements and jeopardize the continued equivalency of State programs with CLIA-exempt laboratories and accreditation organizations.

B. Laboratory Director Qualifications

Section 493.1443(b)(3) provides that a director of a laboratory performing high complexity testing, who has an earned doctoral degree in a chemical, physical, biological, or clinical laboratory science from an accredited institution, must be certified by a board recognized by the Department as of December 31, 2000. The phase-in was designed to allow the Department adequate time to review requests for approval of certification programs and to ensure that a laboratory director with a doctoral degree had sufficient time to successfully complete the requirements for board certification.

As stated previously in the preamble to the December 1994 final rule, a number of comments to the February 1992 final rule suggested that board certification not be a mandatory requirement for currently employed individuals. In addition, CLIAC suggested the development of alternative provisions to qualify currently employed individuals with a doctoral degree on the basis of laboratory training or experience, in lieu of requiring board certification.

We are extending the date by which an individual with a doctoral degree must possess board certification to qualify as a director of a laboratory that performs high complexity testing to December 31, 2002. This extension will allow time for review of the qualifications required for laboratory director to determine whether modifications should be made for inclusion in the final rule being developed.

In summary, we are extending the phase-in period in § 493.1443(b)(3) from December 31, 2000, to December 31, 2002.

III. Waiver of Proposed Rulemaking and Delayed Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on proposed rules. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed and the terms and substance of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued.

The revisions in this final rule are essential, because if the dates for quality control requirements are not extended, many laboratories performing moderate complexity testing will be faced unnecessarily with meeting more stringent and burdensome quality control requirements at a time when we are actively working to revise these same quality control requirements. While this activity is nearly complete, the issues we are addressing are many and complex, particularly in light of changing technologies. Since we will be revising the quality control requirements in the reasonably near future, to impose more stringent requirements now is unreasonable, unnecessary, and confusing. With respect to the personnel standards addressed in this rule, if the date is not extended, those individuals currently qualified as laboratory directors under the phase-in requirements based on their doctoral degree and laboratory training and work experience would no longer qualify to serve as directors of laboratories performing high complexity testing. Since we are contemplating revisions that would allow individuals with a doctoral degree to qualify under alternative provisions that would recognize their laboratory training and experience, we would not want to disenfranchise these currently employed directors at this time. Extending the dates governing laboratory director qualifications will provide the opportunity for individuals with a doctoral degree who have laboratory training and experience, but do not have board certification to continue to qualify as laboratory directors of high complexity testing while we consider appropriate revisions to the CLIA regulations.

Accordingly, we believe that it is impracticable, unnecessary, and not in the public interest to engage in proposed rulemaking and believe there is good cause for not doing so and are therefore issuing this final rule with a 60-day comment period. To do otherwise would create confusion among laboratories in understanding the requirements they must meet with respect to quality control and laboratory director qualifications. It could also impose unnecessary burdens on laboratories and hardships on persons affected by these requirements. Because current regulations will expire on December 31, 2000, additional urgency has been placed on the implementation of this rule. We, therefore, believe there is good cause to waive a delay in the effective date of this rule. To do otherwise would create unnecessary confusion among laboratories in understanding the requirements they must meet with respect to quality control and laboratory director qualifications. It could also impose unnecessary burdens on laboratories and hardships on individuals affected by these requirements.

IV. Regulatory Impact Statement

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare a regulatory flexibility analysis unless we certify that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all laboratories are considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. That analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

Extending the phase-in periods will continue the quality control and personnel requirements in effect prior to December 31, 2000, allow adequate time for addressing all concerns with respect to revising quality control requirements, and not change costs, savings, burden, or opportunities to manufacturers, laboratories, individuals performing tests, or patients undergoing the tests.

For these reasons, we have determined, and the Secretary certifies, that this regulation does not result in a significant impact on a substantial number of small entities and does not have a significant effect on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act.

The Unfunded Mandates Reform Act of 1995 also requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits for any rule that may result in annual expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million. The final rule has no consequential effect on State, local, or tribal governments. We believe the private sector costs of this rule fall below these thresholds, as well.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

V. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the major comments in the preamble to that document.

List of Subjects in 42 CFR Part 493

Grant programs-health, Health facilities, Laboratories, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR chapter IV, part 493 is amended as set forth below:

PART 493—LABORATORY REQUIREMENTS

1. The authority citation for part 493 continues to read as follows:

Authority: Sec. 353 of the Public Health Service Act, secs. 1102, 1861(e), and the sentence following sections 1861(s)(11) through 1861(s)(16) of the Social Security Act (42 U.S.C. 263a, 1302, 1395x(e), and the sentence following 1395x(s)(11) through 1395x(s)(16)).

§ 493.1202 [Amended]

2. In § 493.1202, in the section heading, remove ''December 31, 2000'' and add in its place ''December 31, 2002''.

§ 493.1203 [Amended]

3. In § 493.1203, in the section heading, remove ''December 31, 2000'' and add in its place ''December 31, 2002''.

§ 493.1443 [Amended]

4. Section 493.1443 is amended as set forth below:

a. In § 493.1443(b)(3)(ii) introductory text, remove ''December 31, 2000,'' and add in its place ''December 31, 2002,''.

b. In § 493.1443(b)(3)(ii)(C), remove ''December 31, 2000,'' and add in its place ''December 31, 2002,''.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 20, 2000.

Jeffrey P. Koplan,

Director, Centers for Disease Control and Prevention.

Dated: November 28, 2000.

Michael M. Hash,

Acting Administrator, Health Care Financing Administration.

Dated: December 18, 2000.

Donna E. Shalala,

Secretary.

[FR Doc. 00–33288 Filed 12–26–00; 1:13 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Parts 160 and 164

RIN 0991–AB08

Technical Corrections to the Standards for Privacy of Individually Identifiable Health Information Published December 28, 2000

AGENCY: Office of the Assistant Secretary for Planning and Evaluation, DHHS.

ACTION: Technical corrections to final rule.

SUMMARY: These technical corrections address changes that inadvertently were excluded from the preamble of the Standards for Privacy of Individually Identifiable Health Information published December 28, 2000.

DATES: The effective date of these changes is February 26, 2001, the same as the effective date of the Standards for Privacy of Individually Identifiable Health Information published December 28, 2000.

FOR FURTHER INFORMATION CONTACT: Kimberly Coleman, 1–866–OCR–PRIV (1–866–627–7748) or TTY 1–866–788–4989.

Technical Corrections

Correction 1: In the section-by-section description of the rule provisions, under the description of section 164.510(a)—Use and Disclosure for Facility Directories, paragraphs seven and eight beginning ''We believe that allowing clergy . . .,'' and ''More specifically, . . .,'' are deleted and replaced with the following:

We believe that allowing clergy access to patient information pursuant to this section does not violate the Establishment Clause because the exemption from the final rule's authorization requirement for disclosure to clergy of the specified protected health information is a permissible religious accommodation. The purpose and effect of this provision is to alleviate significant governmental interference with the exercise of religion, and we anticipate that the exemption would rarely, if ever, impose any significant burdens on patients or other individuals.

Without this exemption, covered entities would have to obtain authorizations before disclosing the limited protected health information to clergy, thereby making is more difficult than it commonly has been for clergy to provide services to patients. Accordingly, the clergy exemption permitting limited disclosure of protected health information in the circumstances noted above is ''rationally related to the legitimate purpose of alleviating significant governmental interference with the ability of religious organizations to define and carry out their religious missions.'' *Corporation of the Presiding Bishop of Jesus Christ of Latter-Day Saints* v. *Amos*, 483 U.S. 327, 339 (1987). Moreover, in certain cases the clergy exemption might also alleviate significant governmental interference with patients' religious exercise that the final rule's authorization requirement otherwise would impose—for example, by eliminating delay that might inhibit the ability of a patient to obtain sacraments provided during last rights.

Correction 2: In the section-by-section discussion of comments, under the discussion of section 164.534—EFFECTIVE DATE AND COMPLIANCE DATE, the last sentence of the second paragraph should be replaced with the following language. Although the regulation is effective as of 60 days from publication in the **Federal Register**, section 1175 of HIPAA makes clear that no covered entity shall be required to comply with any standard or implementation specification for 24 months (or 36 months for small health plans). We will not enforce the regulation prior to those dates, and the regulation's provisions will not preempt or otherwise alter state or other law prior to those dates. A covered entity may, or course, voluntarily implement policies that would comply with the regulation prior to those dates, but the regulation itself will neither compel disclosure nor provide a basis to refuse disclosure. We intend, therefore, for all of the provisions of the rule to come into force in 24 months (or 36 months for small health plans).

Dated: December 27, 2000.

LaVerne Burton,

Executive Secretary.

[FR Doc. 00–33444 Filed 12–27–00; 1:33 pm]

BILLING CODE 4150–04–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 980414095-8240-02; I.D. 121800D]

Fisheries of the Northeastern United States; Dealer Reporting Requirements

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

ACTION: Notification of termination of the deferral of Interactive Voice Response (IVR) System reporting requirements for Atlantic cod and haddock purchases.

SUMMARY: NMFS announces that it is terminating the current deferral of IVR reporting requirements of Atlantic cod and haddock beginning January 28, 2001. One of the management measures for Atlantic cod includes two conditional 1-month closures in the Gulf of Maine (GOM) when the trigger of 1.67 million lbs (759 mt) is reached. One management measure for haddock is an adjustment to the daily landing limit as specified in Framework 33 to the Northeast Multispecies Fishery Management Plan (FMP) to provide the industry with the opportunity to harvest

at least 75 percent of the total allowable catch (TAC) for the 2000-2001 fishing year (TAC=6,252 mt, 75 percent TAC=4,689 mt). If the Regional Administrator, Northeast Regional Office, NMFS (RA) projects that less than 75 percent of the TAC for haddock will be harvested by the end of the fishing year NMFS may adjust, through publication of a notification in the **Federal Register**, the trip limit per DAS and/or the maximum trip limit to an amount that is determined to be sufficient to allow harvesting of at least 75 percent of the target TAC, but not to exceed the target TAC. This termination of deferral for Atlantic cod and haddock is necessary to collect accurate data on a real-time basis to ensure that these fisheries are maintained at sustainable levels. Any dealer issued a Northeast (NE) Multispecies permit must submit, through the IVR system, a weekly summary of Atlantic cod and haddock purchased beginning January 28, 2001.

DATES: Effective January 28, 2001.

FOR FURTHER INFORMATION CONTACT: Sandra Arvilla, (978) 281-9255 or Gregory Power, (978) 281-9304.

SUPPLEMENTARY INFORMATION: To effectively monitor landings of quota-managed species on a timely basis, NMFS issued a final rule (63 FR 52639, October 1, 1998) requiring federally-permitted dealers to submit a weekly summary of purchases of quota-managed species through the IVR system within 3 days of the end of the reporting week. To minimize the burden of dealer reporting requirements, the regulations implementing the use of an IVR system also include authorization (50 CFR 648.7(a)(ii)) for the RA to defer the IVR reporting requirements for any species if landings are not expected to reach levels that would cause the applicable target exploitation rate specified in the FMP for that species to be achieved, resulting in specific management changes. At that time the RA deferred IVR reporting requirements for Atlantic mackerel, butterfish and, regulated NE Multispecies, which included Atlantic cod and haddock.

In order to effectively monitor Atlantic cod and haddock landings relative to the trigger and TAC, NMFS is requiring any dealer issued a NE Multispecies permit to submit, through the IVR system, a weekly summary of Atlantic cod and haddock purchases beginning January 28, 2001. IVR reports must be submitted within 3 days of the end of the reporting week. If the RA determines that weekly IVR reports of Atlantic cod and haddock purchases are no longer necessary, notification of deferral will be published in the **Federal Register**.

Dealers must continue to report through the IVR system, their purchases of the species specified in 50 CFR 648.7(a) for which IVR reporting requirements have not been deferred. Currently, these species are summer flounder, scup, black sea bass, *Illex* squid and *Loligo* squid, spiny dogfish, and Atlantic bluefish. If no purchases of any quota-managed species are made during the reporting week, a negative report, so stating, must be submitted.

As specified in 50 CFR 648.7(a)(1), dealers must continue to report purchases of all species, including those species for which IVR reporting has been deferred, on the detailed written reports.

Classification

This action is authorized by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: December 22, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–33223 Filed 12–28–00; 8:45 am]

BILLING CODE: 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 000119014–0137–02; I.D. 080700C]

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Adjustments to the 2000 Summer Flounder, Scup and Black Sea Bass Commercial Quotas

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

ACTION: Commercial quota adjustment for 2000; correction.

SUMMARY: NMFS publishes additional adjustments to the 2000 commercial summer flounder and black sea bass quotas. This action complies with the regulations that implement the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP), which specifies that summer flounder landings in excess of a given state's individual commercial quota be deducted from that state's quota for the following year. Similarly, for black sea bass, the FMP specifies that landings in excess of a quota for a given quarter be deducted from the quota for the same quarter in the following year. The intent of this action is to account for additional 1999 summer flounder landings reported in Massachusetts, New Jersey, and Maryland, and to correct Delaware landings downward and the black sea bass landings data for 1999 Quarters 2, 3, and 4.

DATES: Effective December 29, 2000, through December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fisheries Policy Analyst, (978) 281–9273, fax 978–281–9135, e-mail paul.h.jones@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

At 65 FR 33486, May 24, 2000, NMFS published final specifications for the 2000 summer flounder, scup, and black sea bass fisheries, which included preliminary 1999 landings and quota adjustments. At 65 FR 50463, August 18, 2000, and corrected at 65 FR 69886, November 21, 2000, NMFS announced adjustments to the 2000 summer flounder, scup, and black sea bass commercial quotas based on updated 1999 landings data. Additional adjustments are necessary through this notification due to the receipt of late 1999 summer flounder landings data from the Commonwealth of Massachusetts, and the States of New York, New Jersey, Maryland, and Delaware. In addition, some black sea bass landings reported by the State of Delaware in 1999 were double-counted, and landings from non-limited access black sea bass vessels that landed south of Cape Hatteras Light, North Carolina, were incorrectly counted, meaning that the final 1999 landings were lower than announced in the August 18, 2000, **Federal Register**.

Summer Flounder

The 1999 quota, preliminary 1999 landings, and the resulting 1999 overages for all states for summer flounder are given in Table 1. The following states recorded landings of summer flounder different from those reported in the August 18, 2000, and November 21, 2000, **Federal Register**: MA, +7,357 lb (3,337 kg); NY, +145 lb (66 kg); NJ, +241 lb (109 kg); DE, -376 lb (171 kg); and MD, +16 lb (7 kg).

The resulting adjusted 2000 commercial quota for each state is given in Table 2, taking into account both the 1999 quota overages published in the August 18, 2000, and November 21, 2000, **Federal Register** and the additional landings previously noted.

Black Sea Bass

The 1999 quotas (by quarter), preliminary 1999 landings (by quarter) and resulting overages for black sea bass for all quarters are given in Table 5. Changes in landings from those reported in the August 18, 2000, **Federal Register** are as follows: Quarter 1, -3,792 lb (1,720 kg); Quarter 2, -26,088 lb (11,834 kg); Quarter 3, -18,104 lb (8,212 kg); and Quarter 4, -39,377 lb (17,861 kg).

Corrections

In the document published at 65 FR 50643, August 18, 2000 [FR Doc. 00-21100] the following corrections are made.

On page 50464, Tables 1 and 2 are replaced in their entirety as follows.

TABLE 1. SUMMER FLOUNDER PRELIMINARY 1999 LANDINGS AND OVERAGES BY STATE

State	1999 Quota		Preliminary 1999 Landings		1999 Overage	
	Lb	Kg[1]	Lb	Kg[1]	Lb	Kg[1]
ME	4,450	2,018	5,778	2,621	1,328	602
NH	51	23	0	0	0	0
MA	757,842	343,751	812,540	368,568	54,698	24,811
RI	1,742,583	790,422	1,636,528	742,317	0	0
CT	238,516	108,189	245,219	111,229	6,703	3,040
NY	860,006	390,099	804,048	364,716	0	0
NJ	1,853,926	840,927	1,917,973	869,993	64, 047	29,052
DE	(25,739)[2]	(11,675)[2]	7,541	3,421	(33,280)[2]	(15,096)[2]
MD	202,354	91,786	201,013	91,180	0	0
VA	2,120,696	961,932	2,195,832	996,012	75,136	34,081
NC	2,974,589	1,349,274	2,800,749	1,270,398	0	0
Total[3]	10,755,013	4,866,746	10,627,221	4,820,455		

[1]Kilograms are as converted from pounds, and the column may not total correctly due to rounding.[2]Parentheses indicate a negative number. [3]Total quota is the sum of all states having allocation. A state with a negative number has an allocation of zero. Total quota and total landings do not equal overage because they reflect positive quota balances in several states.

TABLE 2. SUMMER FLOUNDER PRELIMINARY ADJUSTED 2000 QUOTAS BY STATE

State	2000 Initial Quota		2000 Adjusted Quota	
	Lb	Kg[1]	Lb	Kg[1]
ME	5,284	2,397	3,956	1,794
NH	51	23	51	23
MA	757,834	343,748	703,136	318,943
RI	1,742,566	790,041	1,742,566	790,415
CT	250,788	113,756	244,085	110,715
NY	849,672	385,405	849,672	385,404
NJ	1,858,346	842,931	1,794,299	813,894
DE	1,977	897	(31,303)[2]	(14,199)[2]
MD	226,568	102,770	226,568	102,771
VA	2,368,546	1,074,354	2,293,410	1,040,273
NC	3,049,560	1,383,257	3,049,560	1,383,257
Total[3]	11,109, 214	5,039,055	10,876,000	4,947,489

[1]Kilograms are as converted from pounds, and the column may not total correctly due to rounding.[2] Parentheses indicate a negative number. [3]Total quota is the sum of all states having allocation. A state with a negative number has an allocation of zero.

On page 50465, Tables 5 and 6 are replaced in their entirety as follows.

TABLE 5. BLACK SEA BASS PRELIMINARY 1999 LANDINGS AND OVERAGES BY QUARTER

Quarter	1999 Quota [1]		Preliminary 1999 Landings		1999 Overage	
	Lb	Kg [2]	Lb	Kg [2]	Lb	Kg [2]
1. (Jan –Mar)	1,168,860	530,186	712,196	323,052		
2. (Apr –Jun)	885,115	401,481	1,036,067	469,960	150,952	68,472
3. (Jul –Sep)	372, 983	169,182	507,139	230,038	134,156	60,853
4. (Oct –Dec)	598,043	271,268	705,996	320,240	107,953	48,968
Total	3,025,000	1,372,117	2,961,398	1,343,290		

[1] Reflects quotas as published on August 26, 1999 (64 FR 46596). [2] Kilograms are as converted from pounds, and the column may not total correctly due to rounding.

TABLE 6. BLACK SEA BASS PRELIMINARY ADJUSTED 2000 QUOTAS BY QUARTER

Quarter	2000 Initial Quota		2000 Adjusted Quota	
	Lb	Kg [1]	Lb	Kg [1]
1. (Jan –Mar)	1,168,760	530,141	1,168,760	530,141
2. (Apr –Jun)	885,040	401,447	734,088	332,982
3. (Jul –Sep)	372, 951	169,168	238,795	108,317
4. (Oct –Dec)	597,991	271,244	490,038	222,281
Total	3,024,742	1,372,000	2,631,681	1,193,721

[1]Kilograms are as converted from pounds, and the column may not total correctly due to rounding.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: December 21, 2000.

Clarence Pautzke,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–33221 Filed 12–28–00; 8:45 am]

BILLING CODE: 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 000927275-0347-02; I.D. 082800F]

RIN 0648-AO31

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Amendment 12

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

ACTION: Final rule; announcement of approval of an amendment to a fishery management plan, and announcement of disapproval of overfished species rebuilding plans.

SUMMARY: NMFS issues this final rule to remove references to foreign and joint venture fishing in the West Coast groundfish regulations. The Pacific Fishery Management Council (Council) prepared Amendment 12 to the Pacific Coast groundfish Fishery Management Plan (FMP) to provide framework procedures for developing overfished species rebuilding plans, for setting guidelines for rebuilding plan contents, and for sending rebuilding plans to NMFS for review and approval/disapproval. This action also announces NOAA approval of Amendment 12, and revocation of NMFS prior approval for the overfished species rebuilding plans for West Coast lingcod, bocaccio, and Pacific ocean perch (POP).

DATES: Effective January 29, 2001.

ADDRESSES: Copies of Amendment 12 to Pacific Coast Groundfish FMP, and the Environmental Assessment/Regulatory Impact Review are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201. Send comments regarding the reporting burden estimate or any other aspect of the collection-of-information requirements in this final rule, including suggestions for reducing the burden, to one of the NMFS addresses and to the Office of Management and Budget (OMB), Washington, D.C. 20503 (ATTN: NOAA Desk Officer). Send comments regarding any ambiguity or unnecessary complexity arising from the language used in this rule to Donna Darm or Rebecca Lent.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier or Becky Renko at: phone, 206-526-6140; fax, 206-526-6736, and email, yvonne.dereynier@noaa.gov or becky.renko@noaa.gov; or Svein Fougner at: phone, 562-980-4000; fax, 562-980-4047; and email, svein.fougner@noaa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is also accessible via the internet at the website of the Office of the Federal Register: *http://www.access.gpo.gov/su-docs/aces/aces 140.html.*

Background

The Council prepared Amendment 12 to provide a framework within the Pacific Coast Groundfish FMP to set guidelines and requirements for overfished species rebuilding plans. This framework integrates the rebuilding plan development process into the Council's current stock assessment and annual specifications processes, to accommodate the complexities of the fishery and to ensure that rebuilding measures for overfished species may begin as soon as possible after the initial determination that a species is overfished. Amendment 12 also declares the West Coast groundfish resource to be fully utilized by domestic harvesting and processing entities.

The notice of availability for Amendment 12 was published on September 8, 2000 (65 FR 54475), and NMFS requested public comments on Amendment 12 through November 7, 2000. A proposed rule to implement Amendment 12 was published on October 6, 2000 (65 FR 59814). NMFS requested public comment on the proposed rule through November 20, 2000. During the comment period on the notice of availability for Amendment 12, NMFS received two letters of comment, which are addressed later in the preamble to this final rule. NMFS received no letters of comment on the proposed rule itself.

Approval of Amendment 12; Revocation of Approval of Overfished Species Rebuilding Plans

The Council first dealt with overfished species rebuilding issues in Amendment 11 to the FMP, which was approved on March 9, 1999. Following its work on Amendment 11, the Council determined that it needed to provide a framework within the FMP that would set guidelines and requirements for overfished species rebuilding plans that are required by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). During Amendment 12 development, the Council was also developing rebuilding plans for the first three groundfish species to be declared overfished, which were lingcod, bocaccio, and POP.

West Coast groundfish management has undergone significant changes since the October 1996 passage of the Sustainable Fisheries Act, which amended the Magnuson-Stevens Act. In addition to addressing new legislative requirements, the Council has had to revise groundfish management to account for recent scientific information that shows that West Coast groundfish stocks are less productive than similar groundfish species around the world, and less productive than prevailing scientific studies had predicted in 1998 and prior years. This new information on the lower productivity of West Coast groundfish has made evident the need for more conservative groundfish management to both buffer against future stock declines and make up for historic, unintentional over-harvest. Based on these scientific revelations, the Council initially assumed that implementing the Magnuson-Stevens Act for West Coast groundfish fisheries would result in several species being declared overfished. Amendment 12's overfished species rebuilding plan framework was designed to ensure that rebuilding measures for overfished species could begin as soon as possible after official determination of a species as overfished and to recognize the complexity of the fishery and the possible interaction of management measures for different species. Amendment 12 was also intended to provide the Council with overarching guidance on rebuilding plans for a fishery in which multiple rebuilding plans would be required at the same time.

During the Council's development phase for Amendment 12, the Council was also crafting its first rebuilding plans for lingcod, bocaccio, and POP. These plans were implemented for the year 2000 through the annual specifications and management measures, and were submitted for NMFS approval in March 2000. NMFS announced approval of the rebuilding plans on September 5, 2000 (65 FR 53646). Shortly afterward, on September 8, 2000 (65 FR 54475), NMFS announced availability of Amendment 12 for public review, and accepted comments through November 7, 2000.

Amendment 12 revised the FMP to define standards and the process for developing rebuilding plans for overfished species. Among other things, Amendment 12 requires that the Council submit rebuilding plans in the same time frame as the annual groundfish specifications and management measures process; requires that optimum yield (OY) recommendations within the annual specifications process be consistent with the goals and objectives of rebuilding plans; allows revision of species-specific allocations between the open access and limited entry fisheries to protect overfished stocks; sets goals and objectives for all rebuilding plans; and describes contents of rebuilding plans.

During the public comment period for Amendment 12, NMFS considered whether to approve or disapprove Amendment 12, and considered whether the earlier-approved rebuilding plans for lingcod, bocaccio, and POP met the guidelines of Amendment 12. On December 7, 2000, NMFS approved Amendment 12 to the Pacific Coast Groundfish FMP, and based on that amendment, revoked prior approval of overfished species rebuilding plans for lingcod, bocaccio, and POP. NMFS determined that while the three rebuilding plans specify adequately protective harvest limits for these three species, the rebuilding plans do not meet all of the rebuilding plan requirements described in Amendment 12, and are not adequately explained and analyzed. The groundfish fisheries will continue to operate under measures implementing the rebuilding plans for lingcod, bocaccio, and POP in 2001; however, the Council has been instructed to re-submit rebuilding plans for these three species for the 2002 fishing year cycle and beyond, which begins January 1, 2002. NMFS rationale for approving Amendment 12 is further described in the responses to comments received on Amendment 12, which follows.

NMFS received two letters of comment on Amendment 12 during the 60-day public comment period for Amendment 12, as established by the Notice of Availability (65 FR 54475, September 8, 2000). NMFS received no letters of comment on the proposed rule to implement Amendment 12, nor did the letters commenting on Amendment 12 address the issues associated with proposed regulatory changes. Both of the letters of comment were received from environmental organizations. Comments received on Amendment 12 are summarized as follows:

The main concern from the commenters is that Amendment 12 does not require rebuilding plans to be plan amendments or regulations, and that the plans do not meet all of the requirements of the Magnuson-Stevens Act. NMFS believes the format of Amendment 12 is appropriate, and because of the complexity of the groundfish fishery, the flexibility of the framework process makes sense for rebuilding plans, just as it does for other aspects of the FMP. While the plans themselves will not be amendments or regulations, the process and standards for plans is established by plan amendment. Furthermore, the requirements of rebuilding plans will be as binding as the requirements of a plan amendment, and the rebuilding plans will be implemented through regulations (annual OY determinations, annual management measures, and possibly other regulations appropriate for the purpose).

The framework for rebuilding plans is similar to the framework for other management measures in this and other FMPs. Many management measures are not specifically established in the FMP; rather they are authorized by, and developed under, procedures set up in the FMP. Nonetheless, management measures still must comply with the requirements of the statute and other applicable law. The same will apply for the rebuilding framework. The rebuilding plans will need to be developed in accordance with Amendment 12, and after approval by NMFS, all management measures implementing the FMP must be consistent with the Magnuson-Stevens

Act, the FMP, and the approved rebuilding plans.

The process NMFS anticipates under Amendment 12 is more complex and more transparent than the process used for the initial three rebuilding plans. NMFS expects the Council to begin the process earlier, so there will be more time during the Council process in which to develop alternative rebuilding strategies, and the possible management measures to achieve rebuilding and assess the risks and benefits of these strategies and management measures. This will include more time for public review and comment during the Council development and adoption phase. In addition, NMFS will provide an opportunity for public comment after it receives the rebuilding plan from the Council before it makes the approval/disapproval decision.

While the plan itself that would be approved by NMFS may not contain a specific measure that will remain in place for the duration of the rebuilding plan, it would explain the types of measures that could achieve rebuilding. In addition, the Council must forward, along with the plan, its recommendations on how to initially implement the plan. These could be as simple as an initial OY level, and initial trip limit levels for specific species. Or, for other species, the initial implementing regulations could include new allocation schemes, closed areas, or closure of specific fisheries. There may be a variety of management measures that could affect rebuilding of specific stocks. The most logical rebuilding measure may change as the health and abundance of other related stocks change because of the interaction of management measures for different species. Therefore, under Amendment 12, the implementing management measures could change consistent with changes in the fishery, as long as they remain consistent with the approved rebuilding plans.

In short, a rebuilding plan must demonstrate how it will meet the rebuilding requirements of the Magnuson-Stevens Act. Once a rebuilding plan is approved, management measures under the FMP must be consistent with the rebuilding plan.

Comments and Responses

Comment 1: There is no need for Amendment 12, because it provides guidance on overfished species rebuilding plans when such guidance is already provided in the Magnuson-Stevens Act, NMFS national standard guidelines (50 CFR part 600) and in NMFS Technical Guidance for complying with National Standard 1.

Response: NMFS disagrees. While the Magnuson-Stevens Act, NMFS national standard guidelines (50 CFR part 600) and NMFS Technical Guidance for complying with National Standard 1 do provide guidance on implementing National Standard 1, they do not provide a process for developing rebuilding plans that is tailored to the needs of the Pacific Coast groundfish fishery or its management challenges. FMPs and FMP amendments have traditionally served the purpose of providing fishery-specific goals, objectives, and guidance for Councils working to meet the requirements of the Magnuson-Stevens Act.

Comment 2: Amendment 12 violates the Magnuson-Stevens Act because it does not require that rebuilding plans take the form of an FMP, FMP amendment, or proposed regulations.

Response: NMFS disagrees. An FMP is not necessary for West Coast groundfish rebuilding plans because there already exists a West Coast Groundfish FMP. Amendment 12 does not contemplate FMP amendments for each rebuilding plan, because the time-consuming process and lack of flexibility associated with FMP amendments would hamper the Council's ability to implement appropriately conservative rebuilding measures as quickly and efficiently as possible. Under the rebuilding plan process described in Amendment 12, rebuilding plans will evolve swiftly out of the annual stock assessment process, and then regulations to implement those plans will be set in place as part of the annual groundfish specifications and management measures or through a separate rulemaking, as necessary. NMFS approves of this process for a large, multi-species FMP, where the Council is systematically developing information on depleted stocks to determine whether such stocks are ''overfished.'' With 82 groundfish species managed under the FMP, NMFS supports a Council process to quickly identify overfished stocks and implement rebuilding measures for those stocks that can take into account the interaction of rebuilding measures for all overfished stocks.

Amendment 12 requires that rebuilding plans, among other things, ''develop harvest sharing plans for the rebuilding period and for when rebuilding is completed, and set harvest levels that will achieve the specified rebuilding schedule.'' Under Amendment 12, long-term harvest levels or rates would be specified in each rebuilding plan, and annual harvest levels would be implemented through annual specifications and management measures. A wide variety of other regulatory changes may also result from rebuilding plans, depending on the life history characteristics of the particular protected stock. For example, in the cowcod rebuilding plan adopted by the Council in November 2001, the Council recommended closing all groundfish fishing within certain areas of high cowcod abundance.

The concern that rebuilding plans be an FMP, FMP amendment, or regulation relates to NMFS's ability to make sure that the Council complies with Magnuson-Stevens Act requirements. NMFS believes that rebuilding plans and implementing measures must comply with the Magnuson-Stevens Act and provisions under the framework of Amendment 12. NMFS will review the annual specifications and management measures and other regulations recommended by the Council each year to make sure they fully meet the requirements of each rebuilding plan.

Comment 3: Rebuilding plans must modify the FMP to incorporate rebuilding optimum yields (OYs). There is no discussion in Amendment 12 as to how rebuilding plans will be set consistent with the OY definition in the Magnuson-Stevens Act. Nothing in Amendment 12 requires that a rebuilding plan specify constraints on fishing (or other activities) in order to rebuild a stock from its overfished condition.

Response: Amendment 11 to the FMP provided a definition of OY that matches the Magnuson-Stevens Act definition of that term, ''Optimum yield means the amount of fish which will provide the greatest overall benefit to the U.S., particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems, is prescribed as such on the basis of the maximum sustainable yield from the fishery as reduced by any relevant economic, social, or ecological factor; and in the case of an overfished fishery, provides for rebuilding to a level consistent with producing the maximum sustainable yield in such fishery.'' Amendment 11 also defined the biomass level (generally B25%) at which a West Coast groundfish stock is considered to be overfished, and the harvest rate at which overfishing is considered to occur.

Section 5.3.2 of the FMP reads in part, ''Reduction in catches or fishing rates for either precautionary or rebuilding purposes is an important component of converting values of ABC to values of OY.'' Additionally, at Section 5.3.6, the

FMP reads, ''As required by the Magnuson-Stevens Act, within 1 year of being notified by the Secretary [of Commerce] that a stock is overfished or approaching a condition of being overfished, the Council will prepare a recommendation to end the overfished condition and rebuild the stock(s) or to prevent the overfished condition from occurring.''

In short, Amendment 12 does not need to specifically address OY as suggested in the comment, because Amendment 11 of the FMP and the Magnuson-Stevens Act have done so and provide adequate guidance and constraints. NMFS annually reviews OY recommendations for all species, to ensure that they are consistent with the Magnuson-Stevens Act.

Amendment 12, as part of the Groundfish FMP, does require constraints on fishing in order to rebuild a stock from its overfished condition. Amendment 12 states that OYs will be consistent with rebuilding plans. Fishery management, under the Magnuson-Stevens Act, must achieve OY and rebuild the fishery. As explained above, NMFS' view is that management measures must be consistent with approved rebuilding plans.

Comment 4: Amendment 12 does not require that conservation measures be included in rebuilding plans.

Response: NMFS disagrees. Among other things, Amendment 12 requires that the rebuilding plan, ''identify the types of management measures that will likely be imposed to ensure rebuilding in the specified period.'' This requirement is particularly useful for species that may benefit from a combination of different management revisions designed to rebuild that stock. Amendment 12, as part of the Groundfish FMP, does require constraints on fishing in order to rebuild a stock from its overfished condition. Amendment 12 states that OYs will be consistent with rebuilding plans. Fishery management, under the Magnuson-Stevens Act, must achieve OY and rebuild the fishery. As explained earlier, NMFS' view is that management measures must be consistent with approved rebuilding plans.

One of the main reasons for the flexibility of having a framework process for groundfish rebuilding plans is the complexity of the fishery and the interaction of different species and the different effects of different types of harvest. For example, for some overfished stocks, the main rebuilding response is to lower the OY, and to lower trip limits and bag limits for the overfished stock. For other stocks, the types of management measures needed to achieve rebuilding involve harvest of associated species, and the appropriate measures may change depending on the level of abundance and location of the associated species. Or, different combinations of management measures could be used to achieve the rebuilding targets. The rebuilding plan must discuss the possible ways to achieve rebuilding targets (which could be one method, or a combination of methods), and the Council's overall management scheme must achieve the rebuilding target through OYs and associated management measures. NMFS has advised the Council that rebuilding plans must explain how rebuilding could be accomplished, and be accompanied with appropriate management measures. Under the process, the rebuilding plan could stay in place if the underlying science does not call for an amendment, but the method of implementation could change through regulatory changes if appropriate.

Comment 5: Amendment 12 does not prevent overfishing.

Response: Prevention of overfishing was addressed in Amendment 11. Amendment 11 to the FMP includes the Magnuson-Stevens Act definition of ''overfishing,'' and adds that for any groundfish stock or stock complex, the maximum allowable mortality rate will be set at a level not to exceed the corresponding MSY rate (Fmsy) or its proxy. As discussed earlier, the Council revised its default (proxy) exploitation rates for 2001 and beyond to more conservative levels that take into account recent information on the relatively low productivity of West Coast groundfish stocks. No acceptable biological catch (ABC) for any groundfish species is set higher than Fmsy or its proxy, nor is any species OY set higher than its ABCs. Management measures such as landings limits, size limits, bag limits, time/area closures, seasons, and other measures are annually designed to keep harvest levels within specified OYs. Before Amendment 12 was developed, the FMP already required that groundfish management measures prevent overfishing.

Comment 6: Amendment 12 illegally allows for the mixed-stock exception and allows overfishing.

Response: NMFS disagrees. Amendment 12 does allow the Council to use the mixed-stock exception to adjust OYs for overfished species in appropriate circumstances. However, the mixed-stock exception is not illegal. NMFS National Standard guidelines at 50 CFR 600.310(d)(6) state:

> Harvesting one species of a mixed-stock complex at its optimum level may result in the overfishing of another stock component in the complex. A Council may decide to permit this types of overfishing only if all of the following conditions are satisfied: (i) It is demonstrated by analysis that such action will result in long-term net benefits to the Nation. (ii) It is demonstrated by analysis that mitigating measures have been considered and that a similar level of long-term net benefits cannot be achieved by modifying fleet behavior, gear selection/configuration, or other technical characteristic in a manner such that no overfishing would occur. (iii) The resulting rate or level of fishing mortality will not cause any species or evolutionarily significant unit thereof to require protection under the ESA.

Amendment 12 only allows the mixed-stock exception to be used if: (1) National Standards guidelines can be met, and (2) any applicable rebuilding plan's goals and objectives can be met. Thus far, the Council has not invoked the mixed-stock exception in managing groundfish. Instead, it has used a ''weak-stock management'' approach, in which harvest of healthy stocks is curtailed to protect depleted stocks.

Comment 7: Amendment 12 fails to require rebuilding plans to meet the bycatch-related requirements of the Magnuson-Stevens Act.

Response: NMFS disagrees. Amendment 12 requires, among other things, that rebuilding plans ''promote innovative methods to reduce bycatch and bycatch mortality of the overfished stock.'' For overfished stocks at extremely low biomass levels, all harvest management is bycatch management, because these stocks cannot sustain directed fishing. Amendment 12 also deals with overfished species as bycatch by requiring that the Council address harvest allocation for overfished species. Each fishery with incidental harvest of a particular overfished species will be constrained to reduce sector-specific bycatch mortality of that species.

The Council originally dealt with Magnuson-Stevens Act bycatch provisions in Amendment 11 to the FMP; however, NMFS disapproved Amendment 11's bycatch provisions. In June 2000, the Council approved Amendment 13, which specifically addresses the Council's groundfish bycatch issues. NMFS published a Notice of Availability for Amendment 13 on September 22, 2000 (65 FR 57308), and the amendment is currently under NOAA consideration for approval/disapproval. Amendment 13 builds on Amendment 12 by giving the Council the authority to introduce new

management measures into the annual specifications process (commercial trip limits that are different by gear type, time/area closures, recreational bag limits, size limits, hook limits, boat limits, and dressing requirements) where those measures are needed to protect overfished species. In 2000, the Council used several of these measures by emergency authority to prevent incidental harvest and mortality of overfished species. For example, the Council limited the trawl harvest of many species to vessels using small footrope trawls or mid-water trawl. This measure was designed to reduce bocaccio and canary rockfish bycatch by moving trawlers away from the rocky habitats of those species. If Amendment 13 is approved, rebuilding plans and implementing measures will be subject to the requirements and provisions in Amendment 13, just as they are subject to the rest of the FMP. In any event, the plan and management regime as a whole must conform to Magnuson-Stevens Act requirements.

Comment 8: Amendment 12 fails to meet the Magnuson-Stevens Act requirements that rebuilding plans assess and minimize the effects of fishing gear on essential fish habitat (EFH).

Response: NMFS disagrees. One of Amendment 12's goals for rebuilding plans is that they, ''protect the quantity and quality of habitat necessary to support the stock at healthy levels in the future.'' Further, Amendment 12 requires that rebuilding plans, ''identify any critical or important habitat areas and implement measures to ensure their protection.''

Thus far, the Council's recommended measures to protect overfished and depleted species have focused on reducing directed and incidental harvest of those species through either moving the fisheries out of areas where directed and incidental harvest is likely to occur, or reducing harvest levels for healthy stocks that are associated with rebuilding stocks. These measures have minimized opportunities for trawl vessels to use large footrope gear on rocky bottom, and have revised harvest strategies for several species that co-occur with overfished species so that those healthy stocks (yellowtail rockfish, chilipepper rockfish) are harvested by mid-water trawl gear. New measures for 2001 close large areas off southern California to protect cowcod from incidental catch. While all of these measures are primarily designed to ensure reduced incidental interception of overfished species, they also have the effect of reducing fishing gear interaction with EFH. As stated in the response to Comment 6, the plan and management regime as a whole must conform to Magnuson-Stevens Act requirements.

Comment 9: The Environmental Assessment (EA) on Amendment 12 fails to comply with the National Environmental Policy Act (NEPA) because it fails to consider an adequate range of alternatives, and because it fails to adequately analyze the likelihood that sufficient measures to rebuild overfished species will actually take place as part of the annual specifications process.

Response: The Council did consider a range of alternatives for addressing overfished species rebuilding plans, but narrowed the discussions in the EA to alternatives that would accommodate the complexity of the fishery and the groundfish management cycle. As discussed earlier in the response to Comment 2, the Council rejected the option to amend the FMP with each new rebuilding plan primarily because it knew that several rebuilding plans would be forthcoming in the near future, and that requiring an FMP amendment for each rebuilding plan would create a time burden that would ultimately slow the implementation of rebuilding plans and reduce the Council's flexibility to rapidly implement and/or adjust management measures.

Because Amendment 12 creates a framework for rebuilding plans, it could not analyze the likelihood that all future rebuilding measures implemented through the annual specifications process or other regulatory mechanisms would adequately meet rebuilding plan goals. However, the Amendment 12 EA recognized the need for analysis of rebuilding proposals by providing an example of how rebuilding measures implemented in 2000 for lingcod, bocaccio, and canary rockfish could be expected to affect the human environment. Under Amendment 12, each rebuilding plan would include alternative rebuilding targets and measures for each species, and a discussion of how the recommended management measures could be expected to meet rebuilding plan goals. The plans will be accompanied by appropriate NEPA documents, as will implementing management measures. Any rebuilding plans must meet other statutory requirements in order to be approved.

Comment 10: We are opposed to using the framework process for preparing rebuilding plans because that process does not allow for adequate public notice and comment.

Response: While NMFS believes the Amendment 12 process allows adequate public comment and participation, NMFS agrees with the need to formalize the NMFS/NOAA review process for rebuilding plans and provide additional opportunity for public comment on those plans. NMFS will use the following procedure for future public review of rebuilding plans:

(1) The Council will submit each rebuilding plan within a year of initial NMFS declaration that a particular species is considered overfished, generally in January of each year.

(2) Upon receipt of the rebuilding plan from the Council, NMFS will review the rebuilding plan for compliance with the Magnuson-Stevens Act and Amendment 12, and work with the Council to expand the rebuilding plan as needed. NMFS will announce the availability of each rebuilding plan for public comment in the Federal Register.

(3) Rebuilding plans will have a 30-day public comment period, immediately following the date of the **Federal Register** announcement of rebuilding plan availability. (4) NMFS will respond to public comments on rebuilding plans by a second notice in the **Federal Register**, including an announcement of whether the rebuilding plans have been approved, disapproved, or partially approved. If the agency has determined that the Council needs to make further revisions to a particular rebuilding plan, those revisions will be discussed in that second **Federal Register** notice and in a letter to the Council requesting the changes be made.

In addition, NMFS has advised the Council that it should lengthen its rebuilding plan development process by beginning development of rebuilding plans earlier than it has in the past. The Council should begin the rebuilding analysis as soon as a stock assessment makes it clear that a stock will likely be designated as overfished (that is, even before NMFS has formally advised the Council the stock is overfished). This analysis, with its possible rebuilding targets, will then be available to the Council and the public much earlier. The Council will be able to begin developing measures necessary for rebuilding, and considering the social and economic impacts and the biological benefits and risks of the alternative measures earlier. As a result, the public should have greater opportunity for comment during the Council development process, as well as during the Secretarial review process described above.

Comment 11: NMFS should invalidate existing rebuilding plans for bocaccio, lingcod, and POP, based on objections to Amendment 12 (described above in Comments 2-7).

Response: NMFS is approving Amendment 12. In considering this approval and the comments provided on Amendment 12 and on the rebuilding plans for lingcod, bocaccio, and POP, NMFS has concluded that the rebuilding plans for those three species do not comply with Amendment 12.

NMFS and the Council have spent the past year and a half trying to create a standardized structure for rebuilding plans. Amendment 12 provides that structure, but the ideas and requirements in Amendment 12 were not fully developed by the time the Council had to submit rebuilding plans for lingcod, bocaccio, and POP. When NMFS announced approval of the rebuilding plans, the Council was just ready to send Amendment 12 out for NMFS review and approval. These two separate but connected processes were constrained by timing requirements in the Magnuson-Stevens Act, but now the three rebuilding plans must be reconciled with Amendment 12. To ensure that the rebuilding plans for these three species meet the requirements of Amendment 12 described earlier, NMFS will revoke its approval of the plans and return them back to the Council with specific guidance for revision. Revised rebuilding plans for lingcod, bocaccio, and POP will be due back to NMFS on January 1, 2002. Groundfish fisheries will operate under the rebuilding measures set out in the initial rebuilding plans until the new rebuilding plans are complete.

The final rule revises the West Coast groundfish regulations by removing references to foreign and joint venture fishing. No changes were made from the proposed rule.

Classification

The Administrator, Northwest Region, NMFS, determined that Amendment 12 to the FMP is necessary for the conservation and management of the West Coast groundfish fishery, and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

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 this rule, if adopted as proposed, would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

NMFS issued Biological Opinions (BOs) under the ESA on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999, pertaining to the effects of the groundfish fishery on chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal, Oregon coastal), chum salmon (Hood Canal, Columbia River), sockeye salmon (Snake River, Ozette Lake), steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south-central California, southern California), and cutthroat trout (Umpqua River, southwest Washington/Columbia River). NMFS has concluded that implementation of the FMP for the Pacific Coast groundfish fishery is not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat. NMFS has re-initiated consultation on the Pacific whiting fishery associated with the BO issued on December 15, 1999. During the 2000 whiting season, the whiting fisheries exceeded the chinook bycatch amount specified in the BO's incidental take statement's incidental take estimates, 11,000 fish, by approximately 500 fish. The re-initiation will focus primarily on additional actions that the whiting fisheries would take to reduce chinook interception, such as time/area management. NMFS expects that the re-initiated BO will be complete by May 2001. During the reinitiation, fishing under the FMP is within the scope of the December 15, 1999 BO, so long as the annual incidental take of chinook stays under the 11,000 fish bycatch limit. NMFS has concluded that implementation of the FMP for the Pacific Coast groundfish fishery is not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat. This action establishes a framework for implementing rebuilding plans, and declares the United States groundfish fishery fully utilized by United States fishermen and processors. It does not authorize fishing beyond the scope of the existing FMP, and is within the scope of these consultations.

This rule restates a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648-0243. Public reporting burden for responding to telephone surveys on whiting availability is estimated to average 5 minutes 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 this data collection, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

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

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this rule (see **ADDRESSES**).

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: December 21, 2000.

William T. Hogarth,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

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

2. In § 660.302, the definitions for ''Reserve'' and ''Specification'' are revised to read as follows:

§ 660.302 Definitions.

* * * * *

Reserve means a portion of the harvest guideline or quota set aside at the beginning of the year to allow for uncertainties in preseason estimates.

Specification is a numerical or descriptive designation of a management objective, including but not limited to: ABC; optimum yield; harvest guideline; quota; limited entry or open access allocation; a setaside or allocation for a recreational or treaty Indian fishery; an apportionment of the above to an area, gear, season, fishery, or other subdivision.

* * * * *

3. In § 660.303, paragraph (a) is revised to read as follows:

§ 660.303 Reporting and recordkeeping.

(a) This subpart recognizes that catch and effort data necessary for implementing the PCGFMP are collected by the States of Washington, Oregon, and California under existing state data collection requirements. Telephone surveys of the domestic industry may be conducted by NMFS to determine amounts of whiting that may be available for reallocation under 50 CFR 660.323 (a)(4)(v). No Federal reports are required of fishers or processors, so long as the data collection and reporting systems operated by state agencies continue to provide NMFS with statistical information adequate for management.

* * * * *

[FR Doc. 00–33224 Filed 12–28–00; 8:45 am]

BILLING CODE: 3510–22–S

Proposed Rules

Federal Register
Vol. 65, No. 251
Friday, December 29, 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 39

[Docket No. 98–CE–57–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company 150, 172, 175, 180, 182, 185, 206, 210, and 336 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Cessna Aircraft Company (Cessna) 150, 172, 175, 180, 182, 185, 206, 210, and 336 series airplanes. The proposed AD would affect those airplanes equipped with 0513166 series plastic control wheels. The proposed AD would require you to repetitively inspect these wheels for cracks, conduct a pull test on these wheels, and replace any control wheel with a crack or that does not pass the pull test. Replacement of the control wheels would be with ones that are FAA-approved and are not 0513166 series plastic control wheels. The proposed AD is the result of many incidents of control wheels cracking or breaking on the above-referenced airplanes. The actions specified by the proposed AD are intended to detect and correct cracked or defective control wheels, which could result in loss of control of the airplane during takeoff, landing, or ground operations.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule by February 2, 2001.

ADDRESSES: Send comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–57–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may inspect comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except holidays.

You may get the service information referenced in the proposed AD from Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006. You may examine this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Eual Conditt, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4128; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? We invite your comments on the proposed rule. You may send whatever written data, views, or arguments you choose. You need to include the rule's docket number and send your comments in triplicate to the address named under the caption **ADDRESSES**. We will consider all comments received by the closing date named above, before acting on the proposed rule. We may change the proposals contained in this notice because of the comments received.

Are there any specific portions of the proposed AD I should pay attention to? The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the proposed rule that might call for a need to change the proposed rule. You may look at all comments we receive. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this proposal.

The FAA is reexamining the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on the ease of understanding this document, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at *http://www.faa.gov/language/.*

How can I be sure FAA receives my comment? If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 98–CE–57–AD.'' We will date stamp and mail the postcard back to you.

Discussion

What events have caused this proposed AD? The FAA has received reports of many incidents of control wheels cracking or breaking on Cessna 150, 172, 175, 180, 182, 185, 206, 210, and 336 series airplanes. The problem control wheels are 0513166 series plastic control wheels.

The cause of this problem is because of temperature variations in the molding process during manufacture of the control wheels and deterioration with age and temperature extremes.

What are the consequences if the condition is not corrected? This condition could result in the control wheels breaking while the airplane is in operation. A consequent loss of control of the airplane during takeoff, landing, or ground operations could occur.

Relevant Service Information

What service information applies to this subject? Cessna Service Letter 64–8, dated February 14, 1964, contains information that applies to this subject.

What are the provisions of this service bulletin? The service letter describes procedures for inspecting and pull testing the control wheels.

The FAA's Determination and an Explanation of the Provisions of the Proposed AD

What has FAA decided? After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

- The unsafe condition referenced in this document exists or could develop on other Cessna 150, 172, 175, 180, 182, 185, 206, 210, and 336 series airplanes of the same type design that are equipped with 0513166 series plastic control wheels;
- These airplanes should have the actions specified in the above service letter incorporated; and
- The FAA should take AD action to correct this unsafe condition.

What does this proposed AD require? This proposed AD would require you to:

- Repetitively inspect and pull test the 0513166 series control wheels; and
- if necessary, replace any control wheels that fail the inspection or pull test.

What are the differences between the service bulletin and the proposed AD? The Cessna service letter specifies inspecting and testing the control wheels as soon as possible and positively by the next 100-hour inspection. We propose that you inspect and pull test the control wheels and replace (if necessary) the control wheels within 100 hours time-in-service (TIS) after the effective date of this proposed AD, and then at intervals not to exceed 12 months until the control wheels are replaced.

We believe that these compliance times will give the owners or operators of the affected airplanes enough time to have the proposed actions performed without compromising the safety of the airplanes.

Cost Impact

How many airplanes would this proposed AD impact? We estimate the proposed AD would affect 12,592 airplanes in the U.S. registry.

What would be the cost impact of the proposed AD on owners/operators of the affected airplanes? We estimate the following costs to do the proposed inspection and pull test:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 hour at $60 each hour	No parts are required.	1 hour × $60 = $60	12,592 airplanes × $60 for each airplane = $755,520.

We estimate the following costs to do any necessary control wheel replacements that would be required based on the results of the proposed inspection and pull test. We have no way of determining the number of airplanes that may need such control wheel replacement:

Labor cost	Parts cost	Total cost per airplane
1 hour at $60 for each hour	$597 for each control wheel	$60 + $597 = $657.

These figures only consider the cost of the first inspection and test and do not account for repetitive inspections and tests. We do not have any means of finding out the number of repetitive inspections and tests the owner/operator would incur over the life of an affected airplane.

Regulatory Impact

How would this proposed AD impact various entities? The proposed regulations would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have determined that this proposed rule would not have federalism implications under Executive Order 13132.

Does this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if put into effect, will not have a significant economic impact, positive or negative, on a large number of small entities under the criteria of the Regulatory Flexibility Act. We have placed a copy of the draft regulatory evaluation prepared for this action in the Rules Docket. You may get a copy of it by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Cessna Aircraft Company: Docket No. 98–CE–57–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following airplanes that are certificated in any category and incorporate at least one 0513166 series plastic control wheel:

Model	Serial numbers
150	17684 through 17999, 59001 through 59018 and 617.
150A	15059019 through 15059350 and 628.
150B	15059351 through 15059700.
150C	15060088 through 15060772.
172A	46755 through 47746; 622 and 625.
172B	17247747 through 17248734 and 630.
172C	17248735 through 17249544.
172D	17249545 through 17250572.
172E	17259573 through 17250872 and 639.
P172	P17257120 through P17257188.
175A	56239 through 56777 and 619.
175B	17556778 through 17557002.
175C	17557003 through 17557119.

Model	Serial numbers
180C	50662 through 50911 and 624.
180D	18050912 through 18051063.
180E	18051064 through 18051183.
180F	18051184 through 18051312.
180G	18051313 through 18051329.
182C	52359 through 53007 and 631.
182D	18253008 through 18253598 and 51623.
182E	18253599 through 18254423.
182F	18254424 through 18255058.
182G	18255059 through 18255113.
185	185–0001 through 185–0237 and 632.
185A	185–0238 through 185–0512.
185B	185–0513 through 185–0653.
185C	185–0654 through 185–0663.
206	206–0001 through 206–0062.
210	57001 through 57575 and 618.
210A	21057576 through 21057840 and 616.
210B	21057841 through 21058085.
210C	21058086 through 21058220.
210D	21058221 through 21058240.
210–5 (205)	205–0001 through 205–0480 and 641.
210–5A (205A)	205–0481 through 205–0520.
336	336–0001 through 336–0195.

Note 1: Serial numbers 616 through 619; 622, 624, 625, 628, 630 through 632, 639, 641, and 51623 are engineering-fabricated prototype airplanes that were used for prototypes and then sold as normally licensed airplanes. These airplanes carry serial numbers that are not in the normal sequence and have unique serials.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct cracked or defective control wheels, which could result in loss of control of the airplane during takeoff, landing, or ground operations.

(d) *What must I do to address this problem?* To address this problem, you must do the following actions:

Actions	Compliance times	Procedures
(1) Check your maintenance records to determine whether this AD applies to your airplane by doing the following: (i) Check the maintenance records to determine whether a 0513166 series plastic control wheel is installed. The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may check the maintenance records. (ii) If, by checking the maintenance records, the pilot can positively show that no 0513166 series plastic control wheels are installed, then the inspection, testing, and replacement requirements of this AD do not apply. The AD is complied with after you make an entry into the aircraft records that shows compliance with this portion of the AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).	Required within 100 hours time-in-service (TIS) after the effective date of this AD.	No special procedures required to check the maintenance records
(2) For any affected airplane where at least one 0513166 series plastic control wheel is installed, do the following: (i) inspect each control wheel for cracks; and (ii) conduct a pull test on each control wheel	Before further flight after the maintenance records check or within 100 hours TIS after the effective date of this AD, and reinspect afterward at intervals not to exceed 12 months until all control wheels are replaced with FAA-approved control wheels that are not 0513166 series plastic control wheels.	Do this following the instructions of Cessna Service Letter No. 64–8, dated February 14, 1964
(3) Replace any cracked control wheel or any control wheel that does not pass any pull test, with an FAA-approved control wheel that is not a 0513166 series plastic control wheel.	Do this replacement before further flight after the inspection where the cracked or failed control wheel is found.	Do the replacements following the instructions in the applicable maintenance or service manual
(4) Do not install, on any affected airplane, a 0513166 series plastic control wheel.	As of the effective date of this AD	Not Applicable

Actions	Compliance times	Procedures
(5) You may replace all control wheels with wheels that are not part number 0513166, as terminating action for the repetitive inspection and test requirement of this AD.	You may replace all control wheels at any time, except for those control wheels that are cracked or do not pass a pull test. Such wheels must be replaced prior to further flight, as required by paragraph (d)(3) of this AD.	Do the replacements following the instructions in the applicable maintenance or service manual

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Send your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. You should include in the request an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Eual Conditt, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4128; facsimile: (316) 946–4407.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get the service information referenced in the AD from Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; or you may examine this document at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on December 19, 2000.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–33230 Filed 12–28–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–308–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–300, 737–400, 737–500, 737–600, 737–700, 737–800, 757–200, 757–200PF, 757–200CB, and 757–300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that would apply to certain Boeing Model 737–300, 737–400, 737–500, 737–600, 737–700, 737–800, 757–200, 757–200PF, 757–200CB, and 757–300 series airplanes. This proposal would require a test of the two electrical circuits that close the fuel shutoff valve on the wing spar, and repair, if necessary. This action is necessary to prevent inability to shut off the flow of fuel to an engine after an uncontained engine failure, which could result in a fire spreading to other parts of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by February 12, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–308–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–308–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Kathrine Rask, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1547; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–308–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–308–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that the functional test performed during production of certain Boeing Model 737–300, 737–400, 737–500, 737–600, 737–700, 737–800, 757–200, 757–200PF, 757–200CB, and 757–300 series airplanes is not adequate to ensure that two electrical circuits that close the fuel shutoff valve on the wing spar can both supply electrical power to the fuel shutoff valve. Investigation revealed three airplanes in service that had wiring problems. The functional test only verifies that the fuel shutoff valve operates correctly, and only one of the two circuits needs to supply power for the fuel shutoff valve to operate correctly. The design incorporates two separate electrical circuits that close the fuel shutoff valve to ensure that, if one circuit is severed by debris from an uncontained engine failure, one circuit will still be available so that fuel can be shut off from the failed engine. However, if only one of the two electrical circuits that close the fuel shutoff valve is supplying power, and it is severed as a result of an uncontained engine failure, the flight crew will be unable to shut off the flow of fuel to the failed engine. This condition, if not corrected, could result in a fire spreading to other parts of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Special Attention Service Bulletin 737–28–1164, dated August 24, 2000, which applies to certain Boeing Model 737–300, 737–400, and 737–500 series airplanes. That service bulletin describes a one-time test of the two electrical circuits that close the fuel shutoff valve on each wing spar to determine if there is continuity. The service bulletin also notes what procedures to use to locate and repair any discontinuity.

The FAA has also reviewed and approved the following service bulletins, all dated October 26, 2000:

- Boeing Special Attention Service Bulletin 737–28–1160, Revision 1 (which applies to certain Boeing Model 737–600, 737–700, and 737–800 series airplanes).
- Boeing Special Attention Service Bulletin 757–28–0060, Revision 1 (which applies to certain Boeing Model 757–200, 757–200PF, and 757–200CB series airplanes).
- Boeing Special Attention Service Bulletin 757–28–0061, Revision 1 (which applies to certain Boeing Model 757–300 series airplanes).

These service bulletins describe procedures for a one-time test to measure the voltage of the two electrical circuits that close the fuel shutoff valve on the wing spar, and specify appropriate procedures to be used if inappropriate voltage is found.

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the applicable service bulletin described previously.

Cost Impact

There are approximately 3,403 airplanes of the affected design in the worldwide fleet.

The FAA estimates that this proposed AD would affect 795 Model 737–300, –400, and –500 airplanes of U.S. registry. The proposed test would take approximately 1 work hour on each of these airplanes, at an average labor rate of $60 per work hour. Based on these figures, the FAA estimates the cost impact of the proposed AD on U.S. operators of these airplanes to be $47,700, or $60 per airplane.

The FAA estimates that this proposed AD would affect 820 Model 737–600, 737–700, 737–800, 757–200, 757–200PF, 757–200CB, and 757–300 airplanes of U.S. registry. The proposed test would take approximately 3 work hours on each of these airplanes, at an average labor rate of $60 per work hour. Based on these figures, the FAA estimates the cost impact of the proposed AD on U.S. operators of these airplanes to be $147,600, or $180 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 2000–NM–308–AD.

Applicability: The following models and series of airplanes as listed in the service bulletins below, certificated in any category:

Airplane model	Boeing special attention service bulletin
737–300, 737–400, 737–500	737–28–1164, dated August 24, 2000.
737–600, 737–700, 737–800	737–28–1160, Revision 1, dated October 26, 2000.
757–200, 757–200PF, 757–200CB	757–28–0060, Revision 1, dated October 26, 2000.
757–300	757–28–0061, Revision 1, dated October 26, 2000.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent inability to shut off the flow of fuel to an engine after an uncontained engine failure, which could result in a fire spreading to other parts of the airplane, accomplish the following:

Test and Repair

(a) Within 6 months after the effective date of this AD, perform a test to determine if there is continuity or to measure voltage, as applicable, of the two electrical circuits that close the fuel shutoff valve on the wing spar. Do the test per Boeing Special Attention Service Bulletin 737–28–1164, dated August 24, 2000 (for Boeing Model 737–300, 737–400, and 737–500 series airplanes); or Boeing Special Attention Service Bulletin 737–28–1160, Revision 1 (for Boeing Model 737–600, 737–700, and 737–800 series airplanes); Boeing Special Attention Service Bulletin 757–28–0060, Revision 1 (for Boeing Model 757–200, 757–200PF, and 757–200CB series airplanes); or Boeing Special Attention Service Bulletin 757–28–0061, Revision 1 (for Boeing Model 757–300 series airplanes); all dated October 26, 2000; as applicable.

(1) For Boeing Model 737–300, 737–400, and 737–500 series airplanes: If any discontinuity is detected, prior to further flight, repair per Boeing Special Attention Service Bulletin 737–28–1164.

(2) For airplane models other than those listed in paragraph (a)(1) of this AD: If any measurement is not between 21 and 34 volts DC, prior to further flight, repair per the applicable service bulletin.

Note 2: Tests accomplished per Boeing Special Attention Service Bulletin 737–28–1160 (for Boeing Model 737–600, 737–700, and 737–800 series airplanes), dated June 5, 2000; Boeing Special Attention Service Bulletin 757–28–0060 (for Boeing Model 757–200, 757–200PF, and 757–200CB series airplanes), dated June 15, 2000; or Boeing Special Attention Service Bulletin 757–28–0061, dated June 15, 2000 (for Boeing Model 757–300 series airplanes); as applicable; are acceptable for compliance with paragraph (a) of this AD.

Alternative Methods of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Issued in Renton, Washington, on December 22, 2000.

John J. Hickey,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–33344 Filed 12–28–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–147–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 777–200 series airplanes. This proposal would require replacement of certain existing bushings of the aft trunnion of the outer cylinder of the main landing gear (MLG) with new bushings, and replacement of grease in an undercut on the aft trunnion, if necessary. This action is necessary to prevent stress corrosion cracking and consequent fracture of the aft trunnion of the outer cylinder of the MLG, which could result in collapse of the MLG. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by February 12, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–147–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–147–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stan Wood, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2772; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as

they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–147–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–147–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received several reports of cracking of the aft trunnion of the outer cylinder of the main landing gear (MLG) on certain Boeing Model 767 series airplanes. The aft trunnion is attached to the MLG beam by the aft trunnion pin. Bushings are installed in the aft trunnion at the place where a cross bolt retains the aft trunnion pin. Moisture can enter the aft trunnion in the area of these bushings. There is also an undercut on the aft trunnion in the area of the cross bolt, which is filled with grease during assembly of the MLG. This grease in the undercut can dry out over time, which may allow moisture to enter the aft trunnion and undercut areas. The accumulation of moisture can result in the formation of corrosion pits on the aft trunnion, which can lead to stress corrosion cracking and consequent fracture of the aft trunnion. This condition, if not corrected, could result in collapse of the MLG.

The design of the aft trunnion of the outer cylinder of the MLG on certain Boeing Model 777–200 series airplanes is similar to that on the affected Model 767 series airplanes. Therefore, those Model 777–200 series airplanes are subject to the same unsafe condition found on the Model 767 series airplanes.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 777–32A0025, dated April 6, 2000, which describes procedures for replacement of certain existing bushings of the aft trunnion of the outer cylinder of the MLG with new bushings installed with corrosion-inhibiting compound. The procedures include removing the existing bushings, performing a detailed visual inspection of the aft trunnion area for corrosion or other damage, removing corrosion, if necessary, and installing new bushings with corrosion-inhibiting compound. For airplanes listed under Group 1 in the service bulletin, the service bulletin also includes instructions for replacing grease in the undercut of the aft trunnion with corrosion-inhibiting compound. These actions will prevent moisture from entering the aft trunnion and undercut areas, where such moisture can lead to the formation of corrosion pits. (Airplanes listed under Group 2 do not have an undercut area.) Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

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

Differences Between Service Bulletin and This AD

Operators should note that, although the effectivity listing of the service bulletin includes airplanes having line numbers (L/N) 2 through 29 inclusive; except L/N's 10, 14, and 18; this proposed AD would apply to airplanes having L/N's 1 through 29 inclusive, except L/N's 10, 14, and 18. The FAA has determined that the subject area on the airplane with L/N 1 is identical to the subject areas on the Model 777–200 series airplanes listed in the service bulletin; therefore, the airplane with L/N 1 is also subject to the identified unsafe condition. Also, Note 3 has been included in this proposed AD to clarify that L/N 1 has the configuration of a Group 1 airplane.

Operators also should note that, although the service bulletin specifies that the manufacturer may be contacted for instructions on repair of certain conditions, this AD requires the repair of those conditions to be accomplished in accordance with a method approved by the FAA, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Cost Impact

There are approximately 26 airplanes of the affected design in the worldwide fleet. The FAA estimates that 12 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 36 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $13,228 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $184,656, or $15,388 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore,

it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 2000–NM–147–AD.

Applicability: Model 777–200 series airplanes; line numbers (L/N) 1 through 29 inclusive, except L/N's 10, 14, and 18; certificated in any category; except those on which the outer cylinder of the main landing gear (MLG) has been replaced in accordance with Boeing Service Bulletin 777–32–0003, dated October 9, 1997.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent stress corrosion cracking and consequent fracture of the aft trunnion of the outer cylinder of the MLG, which could result in collapse of the MLG, accomplish the following:

Replacement of Bushings

(a) Within 5 years and 300 days since date of manufacture of the airplane, or within 1 year after the effective date of this AD, whichever occurs later, replace bushings in the aft trunnion of the outer cylinder with new bushings by doing paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this AD; as applicable; in accordance with Boeing Alert Service Bulletin 777–32A0025, dated April 6, 2000.

(1) Remove bushings in the aft trunnion of the outer cylinder of the MLG.

(2) Perform a one-time detailed visual inspection of the aft trunnion area for corrosion or other damage.

(3) For airplanes listed in Group 1 of the service bulletin and the airplane having L/N 1: Replace grease in the undercut of the aft trunnion with corrosion-inhibiting compound.

(4) Install new bushings with corrosion-inhibiting compound.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Note 3: For the purposes of this AD, the airplane having L/N 1 is considered to have the configuration of a Group 1 airplane.

Corrective Action

(b) If any corrosion or other damage is found during the inspection required by paragraph (a)(2) of this AD: Prior to further flight, repair in accordance with Boeing Alert Service Bulletin 777–32A0025, dated April 6, 2000; except, where the service bulletin specifies to contact Boeing for instructions, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Issued in Renton, Washington, on December 22, 2000.

John J. Hickey,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–33343 Filed 12–28–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM96–1–015]

Standards for Business Practices of Interstate Natural Gas Pipelines

December 21, 2000.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of staff technical conference.

SUMMARY: In Order No. 587–M, 65 FR 7728 (Dec. 11, 2000), the Federal Energy Regulatory Commission directed its staff to convene a technical conference concerning standards to permit shippers to designate and rank the contracts under which gas will flow on a pipeline's system. This notice establishes the date for the conference and the procedures by which interested parties can seek to participate in the conference.

DATES: The conference will be held February 27, 2001. Those interested in making presentations or participating in discussions should indicate their interest by January 16, 2001 by a letter addressed to the Secretary, Federal Energy Regulatory Commission.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC, 20426.

FOR FURTHER INFORMATION CONTACT: Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

SUPPLEMENTARY INFORMATION:

Take notice that on February 27, 2001, the Staff of the Federal Energy Regulatory Commission will hold a public conference to discuss cross-contract ranking and confirmation standards as directed by the Commission in Order No. 587–M.[1] The conference will begin at 9:30 a.m. at the Commission's offices, 888 First Street, N.E., Washington, DC. All interested persons are invited to attend.

Cross-contract ranking refers to the ability of shippers to allocate gas supplies across transportation contracts so that the shipper can choose the contract which provides for the most economical transportation. The Gas Industry Standards Board (GISB) had considered a standard for cross-contract ranking which relied on entity-to-entity confirmation, but a number of parties raised objections to using this method of confirmation. As set forth in Order No. 587–M, the purpose of this conference is to obtain additional information about how confirmation is now conducted, to clarify what issues are in dispute, and to determine if common ground between the parties can be found. Among the issues identified by the Commissions to be considered at the conference are:

- How confirmation takes place using entity-to-entity confirmation and contract confirmation.
- How package identification currently is used in nomination and confirmation processes.
- How the issues relating to cross-contract ranking differ depending on the nomination model used by the pipeline, *i.e.,* pathed, non-pathed, or pathed non-threaded.
- Whether cross-contract ranking can be achieved efficiently without entity-to-entity confirmation.
- Whether verification of a shipper's contractual priority needs to occur on a daily basis through the confirmation process or whether priority can be verified in other ways, for example, by examining the shipper's contract or using the Index of Customers.
- Whether a uniform resolution of the need for supplemental information is needed or whether this issue can be resolved on a case-by-case basis, for example, by requiring those pipelines that previously provided contract information to continue that practice, while not imposing additional burdens on other pipelines.
- Whether, if confirmation of transportation priority is needed, a priority indicator would be a reasonably burden-free method of transmitting the information.[2]
- Whether entity-to-entity confirmation has value in simplifying the confirmation process or whether further disaggregation to the gas package identification level is necessary.
- Whether gas package identification would protect customers against the possibility that the seller will allocate all gas supplies to the highest price contract or whether such protection can be better achieved through the contract between buyer and seller. For instance, even if confirmation was at the package identification level, the seller would still rank the most expensive package first.
- Whether limiting confirmations to producers, rather than working interest owners, meaningfully reduces the confirmation burden.
- Whether producers can use independent third-parties, as opposed to commercially interested point operators, to handle the confirmation process with respect to that information considered the most sensitive.

In order to understand the issues raised by the parties, information is needed on the methods by which pipelines currently conduct nominations and confirmations. The conference, therefore, will be organized in two stages. The first stage will consist of presentations of factual information describing how the current nomination and confirmation process operates. The second will involve discussions among market participants as to the issues raised with respect to whether and how to standardize the confirmation process to permit cross-contract ranking.

The presentations should provide perspective on the ways in which pipelines across the grid now conduct nominations and confirmations. Such information should include: how different pipelines confirm, whether using the contract and entity-to-entity models or other models; how nominations and confirmations differ depending on whether the pipeline uses the pathed, non-pathed, or pathed non-threaded model; how package IDs are used; and the different confirmation models used in the production area.

Persons interested in making presentations or participating in the discussions should indicate their interest by January 16, 2001, by a letter addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, and should refer to Docket No. RM96–1–015. Each request to participate must include a contact person, telephone number and E-mail address.

Each request also must indicate whether the person is interested in making a presentation or participating in the issue discussion. For those interested in making presentations, the request should indicate what topics the presentation will cover and how broadly the speaker can address nomination and confirmation practices with respect to multiple pipelines. Because of the need to limit the number of presentations, those with common interests are encouraged to choose a single spokesperson to represent their interests. Those interested in participating in the issue discussion should indicate what topics they are interested in discussing.

After receipt of the requests, a subsequent notice will be issued setting forth the conference format. Depending on the number of presentations, it may be necessary for presenters to meet with staff prior to the conference or through conference calls to coordinate the presentations.

The conference will be transcribed, so those not attending can review the proceedings. Additional comments on the issues raised by the conference can be filed within 30 days of the conference.

The Capitol Connection offers all Open and special FERC meetings live over the Internet as well as via telephone and satellite. For a reasonable fee, you can receive these meetings in your office, at home or anywhere in the world. To find out more about The Capitol Connection's live Internet, phone bridge, or satellite coverage, contact David Reininger or Julia Morelli at (703) 993–3100 or visit the website (*www.capitolconnection.gmu.edu*). The Capitol connection also offers FERC Open Meetings through its Washington, DC area television service.

In addition, National Narrowcast Network's Hearing-On-The-Line service covers all FERC meetings live by telephone so that interested persons can listen at their desks, from their homes, or from any phone, without special equipment. Billing is based on time on-line. Call (202) 966–2211.

Those interested in obtaining transcripts of the conference need to contact Ace Federal Reporters, at 202–347–3700. Anyone interested in purchasing videotapes of the meeting should call VISCOM at (703) 715–7999.

[1] Standards for Business Practices of Interstate Natural Gas Pipelines, Order No. 587–M, 65 FR 77285(Dec. 11, 2000), 93 FERC ¶ 61,223 (November 30, 2000), III FERC Stats. & Regs. Regulations Preambles ¶ _(Nov. 30, 2000).

[2] See Comments on Proposed Rule of National Fuel Gas Distribution Corporation, Docket No. RM96–1–015, at 8 (filed August 7, 2000) (proposing use of capacity-type indicator to transmit information about transportation priorities).

Questions about the conference should be directed to: Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426; 202–208–2294, michael.goldenberg@ferc.fed.us.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–33324 Filed 12–28–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–251701–96]

RIN 1545–AU76

Electing Small Business Trust

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; notice of proposed rulemaking by cross reference to temporary regulations; and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the qualification and treatment of electing small business trusts (ESBTs). The proposed regulations interpret the rules added to the Internal Revenue Code (Code) by section 1302 of the Small Business Job Protection Act of 1996 and section 1601 of the Taxpayer Relief Act of 1997. In addition, the text of the temporary regulations published elsewhere in this issue of the **Federal Register** also serves as the text of these proposed regulations with respect to an ESBT or a trust described in section 401(a) or section 501(c)(3) that is exempt from taxation under section 501(a) not being treated as a deferral entity for purposes of § 1.444–2T. The proposed regulations affect S corporations and certain trusts that own S corporation stock. This document also provides notice of a public hearing on these regulations.

DATES: Written or electronic comments must be received by April 4, 2001. Requests to speak (with outlines of oral comments to be discussed) at a public hearing scheduled for April 25, 2001, at 10 a.m. must be received by April 4, 2001.

ADDRESSES: Send submissions to: CC:M&SP:RU (REG–251701–96), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:M&SP:RU (REG–251701–96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at *http://www.irs.gov/tax_regs/regslist.html*. The public hearing will be held in the Internal Revenue Building Auditorium, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Bradford Poston or James A. Quinn, (202) 622–3060; concerning submissions and the hearing, Sonya M. Cruz, (202) 622–7190; (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information in this notice of proposed rulemaking have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control numbers 1545–1523 and 1545–1591.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

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

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) relating to S corporations and electing small business trusts (ESBTs). Section 1302 of the Small Business Job Protection Act of 1996, Public Law 104–188 (110 Stat. 1755) (August 20, 1996) (the 1996 Act), amended sections 641 and 1361 of the Code to permit an ESBT to be an S corporation shareholder. Further amendments were made to section 1361(e) by the Taxpayer Relief Act of 1997, Public Law 105–34 (111 Stat. 1601(c)(1)) (August 5, 1997). Prior section 641(d) was redesignated as section 641(c) by the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105–206 (112 Stat. 6007(f)(2)) (July 22, 1998).

Explanation of Provisions

Overview

Prior to the 1996 Act, the only trusts that were permitted S corporation shareholders were wholly-owned grantor trusts, voting trusts, certain grantor trusts after the grantor's death, and qualified subchapter S trusts (QSSTs). These trusts are not taxed at the trust level, and the deemed owner or owners are taxed directly on the tax items of the trusts, except for certain testamentary trusts described in § 1.1361–1(j)(7)(ii). QSSTs are required to have a single income beneficiary, and all of the income must be currently distributed to such beneficiary. The 1996 Act created ESBTs to allow more flexibility in the types of trusts that are permitted S corporation shareholders and, in particular, to facilitate family financial planning. H. Rep. No. 586, 104th Cong., 2d Sess. 82 (1996), S. Rep. No. 281, 104th Cong., 2d Sess. 46 (1996). Unlike a QSST, an ESBT may have multiple beneficiaries and may also accumulate trust income.

Section 1361(e)(1) defines the term *electing small business trust* as any trust if: (1) The trust does not have as a beneficiary any person other than an individual, an estate, or an organization described in section 170(c)(2) through (5); (2) no interest in the trust was acquired by purchase; and (3) an election has been made with respect to the trust.

Section 1361(c)(2)(B)(v) provides that, for purposes of section 1361(b)(1) (the S corporation shareholder limitations), each potential current beneficiary of an ESBT will be treated as a shareholder. During any period that there is no potential current beneficiary of an ESBT, the trust shall be treated as the shareholder.

ESBT Beneficiaries

Notice 97–49 (1997–2 C.B. 304) clarifies the definitions of beneficiary (for purposes of section 1361(e)(1)(A)(i)) and potential current beneficiary (for purposes of section 1361(e)(2)) and also clarifies the treatment of ESBT distributions. The proposed regulations, when finalized, will modify and replace the rules of Notice 97–49.

Beneficiary

The proposed regulations provide guidance as to who is an ESBT beneficiary. Generally, a beneficiary includes any person who has a present, remainder, or reversionary interest in the trust other than a remote, contingent interest. If an ESBT makes distributions to another trust (the distributee trust), the distributee trust is not treated as a

beneficiary of the ESBT. However, the beneficiaries of the distributee trust will be counted as beneficiaries of the ESBT. Persons whose future beneficial interest is so remote as to be negligible are not beneficiaries. Generally, when the probability that a person will receive any distribution from the trust is less than 5 percent, at a particular time, that person's interest would be so remote as to be negligible. Finally, the term beneficiary does not include a person in whose favor a power of appointment may be exercised until the power is actually exercised.

Interests Acquired by Purchase

The proposed regulations provide guidance regarding the prohibition on acquiring an interest in an ESBT by purchase. The proposed regulations provide that the prohibition applies if any portion of a beneficiary's basis in the beneficiary's interest is determined under section 1012. Thus, a part-gift, part-sale of a beneficial interest will terminate the trust's status as an ESBT. Beneficiaries may not purchase interests in the trust, but the ESBT itself is allowed to purchase S corporation stock.

Grantor Trusts

The proposed regulations provide that a trust, all or a portion of which is treated as owned by an individual under subpart E, part I, subchapter J, chapter 1 of the Internal Revenue Code (Code) (a grantor trust), may elect to be an ESBT. The Treasury Department and the IRS believe that Congress did not intend to preclude this type of trust, which is a common family estate planning tool, from electing ESBT status. The proposed regulations provide rules for the treatment of grantor trusts electing ESBT status.

Potential Current Beneficiaries

The proposed regulations provide that the term *potential current beneficiary* means, with respect to any period, any person who at any time during such period is entitled to, or at the discretion of any person may receive, a distribution from the principal or income of the trust. In general, a person who may receive a distribution from the ESBT under a currently exercisable power of appointment is a potential current beneficiary. In addition, in the case of an ESBT that is a grantor trust, the proposed regulations provide that the deemed owner of the grantor trust is also to be treated as a potential current beneficiary.

Under the definitions set forth in the proposed regulations, a potential current beneficiary is not necessarily a beneficiary of the trust and vice versa. For example, a person in whose favor property could currently be appointed, but to whom no such appointment has been made, is a potential current beneficiary, but not a beneficiary. Conversely, a person who is a non-contingent remainder beneficiary of a non-grantor trust is a beneficiary, but not a potential current beneficiary.

The proposed regulations provide special rules if current distributions can be made to a distributee trust. If the distributee trust does not qualify to be a shareholder of an S corporation under section 1361(c)(2)(A), then the trust is considered the potential current beneficiary and thus a shareholder. In that case, the corporation's S election terminates because the corporation has an ineligible shareholder. For this purpose, a trust is deemed to qualify to be a shareholder of an S corporation under section 1361(c)(2)(A) if it would be eligible to make a QSST or ESBT election if it owned S corporation stock.

If the distributee trust does qualify to be a shareholder of an S corporation under section 1361(c)(2)(A), in general, the potential current beneficiaries of the distributing ESBT will include the potential current beneficiaries of the distributee trust. However, if the distributee trust is a former grantor trust prior to the owner's death (that is, a trust described in section 1361(c)(2)(A)(ii)), or is a trust receiving a distribution of S stock from a decedent's estate (that is, a trust described in section 1361(c)(2)(A)(iii)), the estate of the decedent is treated as the only potential current beneficiary of the trust . In no case will the same person be counted twice when determining the number of S corporation shareholders.

ESBT Election

Notice 97–12 (1997–1 C.B. 385) provides the procedures for making the ESBT election. Under that notice, the ESBT election is required to contain certain information and representations, and is required to be filed with the service center where the S corporation files its income tax returns. These proposed regulations, when finalized, will modify and replace the rules in Notice 97–12.

Under the proposed regulations, the trustee of an ESBT makes a single ESBT election by filing a statement with the service center where the ESBT files its Form 1041, U.S. Income Tax Return for Estates and Trusts. This procedure will be more convenient for taxpayers than the procedures of Notice 97–12 if the ESBT holds stock in more than one S corporation. No trust documents are required to be attached to the election statement.

The proposed regulations provide that if a trust satisfies the ESBT requirements and makes an ESBT election, the trust will be treated as an ESBT for federal income tax purposes as of the effective date of the ESBT election. These effective dates generally follow the rules of § 1.1361–1(j)(6)(iii) for qualified subchapter S trust (QSST) elections. Protective ESBT elections, which are intended to become effective only if the trust fails to satisfy the requirements for a trust described in section 1361(c)(2)(A)(i) through (iv), are prohibited. Unlike a protective QSST election, a protective ESBT election could result in a change in the incidence of taxation from the owner of the trust to the trust itself. If a trust fails to qualify as an eligible S corporation shareholder under section 1361(c)(2), and consequently the S corporation election is ineffective or terminated, relief may be available under section 1362(f) for an inadvertent ineffective S corporation election or an inadvertent S corporation termination.

Conversions of QSSTs and ESBTs

Rev. Proc. 98–23 (1998–1 C.B. 662) provides procedures for the conversion of a QSST to an ESBT and an ESBT to a QSST. The proposed regulations, when finalized, will modify and replace the procedures of Rev. Proc. 98–23 and provide rules with respect to these conversions.

The conversion procedure provided in the proposed regulations differs from that provided in Rev. Proc. 98–23, in that the election must be filed with the service center where the trust files its income tax return, as well as with the service center where the S corporation files its income tax return. The election must be filed in both service centers if the service center for the trust is different from the service center for the S corporation because QSST elections are filed with the service center where the S corporation files its income tax return and ESBT elections will be filed where the trust files its income tax return under the new procedures set forth in these proposed regulations, when finalized. The IRS and the Treasury Department specifically request comments on whether the rules for filing QSST elections similarly should be changed to permit the filing of a QSST election with the service center where the trust files its return rather than with the service center for the S corporation(s).

Consent to the S Corporation Election

Notice 97–12 provides that, for purposes of the ESBT's consent to the S corporation election under section 1362(a), only the trustee needs to consent to the S corporation election because the ESBT is taxed on the S corporation's income and the trustee makes the ESBT election. These proposed regulations, when finalized, will modify and replace the rules in Notice 97–12.

Under the proposed regulations, if the ESBT is also a grantor trust, the deemed owner must also consent to the S corporation election because such owner will be taxed on all or a portion of the S corporation's income. If there is more than one trustee, the trustee or trustees with authority to legally bind the trust must consent to the S corporation election.

ESBT Taxation

The proposed regulations provide that, for federal income tax purposes, an ESBT consists of an S portion, a non-S portion, and in some instances a grantor portion. The items of income, deduction, and credit attributable to any portion of the ESBT treated as owned by a person under the grantor trust rules of subpart E, including S corporation stock and other property (the grantor portion), are taken into account on that individual's tax return pursuant to the normal rules applicable to grantor trusts. Other items of income, deduction, and credit are, pursuant to these proposed regulations, attributed to either the S portion, which includes the S corporation stock, or the non-S portion, which includes all other assets of the trust. The S portion is subject to tax under the special rules of section 641(c), while the non-S portion is subject to the normal trust taxation rules of subparts A through D of subchapter J.

The proposed regulations provide that if an otherwise allowable deduction of the S portion is attributable to a charitable contribution paid by the S corporation, the contribution will be deemed to be paid by the S portion pursuant to the terms of the trust's governing instrument within the meaning of section 642(c)(1). The other requirements of section 642(c)(1) must also be met for the contribution to be deductible by the S portion, and the deduction is limited to the amount of the gross income of the S portion. If a payment is made to a charitable organization by the ESBT pursuant to the terms of its governing instrument, such payment is deductible, subject to the provisions of section 642(c)(1), to the extent it is paid from the gross income of the non-S portion of the trust. Thus, if the ESBT contributes S corporation stock to a charitable organization, no deduction is allowed under section 642(c)(1) because the contribution is not paid out of the gross income of the non-S portion.

The proposed regulations provide guidance regarding the treatment of proceeds received by an ESBT from the sale of S corporation stock when income from the sale is reported on the installment method under section 453. The income recognized with respect to the installment proceeds is taken into account by the S portion. The interest on the installment obligation is taken into account by the non-S portion.

The proposed regulations provide that if a trust holds S corporation stock and is already an eligible S corporation shareholder and the trust makes an ESBT election during the trust's taxable year, the electing trust will be treated as a separate taxpayer for purposes of allocating S corporation items under section 1377(a)(1). However, the ESBT election does not result in the prior trust being treated as terminating its entire interest in its S corporation stock for purposes of § 1.1377–1(b), unless the prior trust is one described in section 1361(c)(2)(A)(ii) or (iii). Therefore, the S corporation is generally not permitted to make the election to terminate the taxable year under section 1377(a)(2). The trust will be treated as a single taxpayer for purposes of determining the taxation of distributions from the trust. Thus, distributions made after the effective date of the ESBT election may still carry out distributable net income of the trust earned during the taxable year before the effective date of the ESBT election.

The proposed regulations provide that for purposes of determining whether the exception to estimated taxes under section 6654(d)(1)(B) applies, the trust will not be considered a different taxpayer as a result of the ESBT election. Therefore, if the ESBT makes estimated tax payments equal to 100 percent of the prior year's tax liability, no penalties will apply.

The proposed regulations provide that interest expenses paid on loans used to purchase the S corporation stock must be allocated to the S portion of the ESBT but are not deductible by the S portion because they are not administrative expenses.

ESBT Terminations

The proposed regulations provide that generally a trustee must seek the consent of the Commissioner to revoke its ESBT election by obtaining a private letter ruling. However, the Commissioner's consent is granted for revocations that occur on the conversion of an ESBT to a QSST under the procedures set forth in the proposed regulations.

The proposed regulations provide that if an ESBT fails to meet the definitional requirements of an ESBT under section 1361(e), the trust's ESBT status terminates immediately upon such failure to qualify. However, if an ESBT acquires an ineligible potential current beneficiary, the ESBT has 60 days in which to dispose of all of its S corporation stock to prevent termination of the S corporation election. If the S corporation stock is not disposed of within the 60-day period, then the S corporation election will terminate as of the first day that the ineligible person became a potential current beneficiary.

Finally, the proposed regulations provide that an ESBT election generally is terminated if the ESBT fails to hold any S corporation stock. However, a trust will continue to be treated as an ESBT if it is reporting income from the sale of S corporation stock under the installment method of section 453.

Section 444 Elections

The text of the temporary regulations published elsewhere in this issue of the **Federal Register** serves as the text of these proposed regulations with respect to an ESBT and a trust described in section 401(a) or section 501(c)(3) that is exempt from taxation under section 501(a). These temporary regulations provide that an ESBT and a trust described in section 401(a) or section 501(c)(3) that is exempt from taxation under section 501(a) are not deferral entities for purposes of § 1.444–2T.

Proposed Effective Date

The regulations regarding ESBTs under § 1.641–1(d) through (k), § 1.1361–1(h)(1)(vi), (h)(3)(i)(F), (j)(12), and (m), § 1.1362–6(b)(2)(iv), § 1.1377–1(a)(2)(iii) and (c) *Example 3* are proposed to apply on and after the date the final regulations are published in the **Federal Register**. The IRS and the Treasury Department have become aware of potentially abusive transactions involving ESBTs that assume the applicability of the rules of section 641(c) to the taxation of the grantor portion of such trusts. See Notice 2000–61, 2000–49 I.R.B. 1. Thus, the regulations regarding taxation of ESBTs under § 1.641(c)–1(a), (b) and (c) are proposed to be applicable for taxable years of ESBTs that end on and after the proposed regulations are published in the **Federal Register**.

Effect on Other Documents

The following documents would be superseded as of the date the final regulations are published in the **Federal Register:**

Notice 97–12 (1997–1 C.B. 385).
Notice 97–49 (1997–2 C.B. 304).
Rev. Proc. 98–23 (1998–1 C.B. 662).

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that the collection of information in the regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the estimated average burden per trust in complying with the collections of information in § 1.1361–1(m) is 1 hour. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are timely submitted to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for April 25, 2001, at 10:00 a.m. in the Internal Revenue Building Auditorium, 1111 Constitution Avenue NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by April 4, 2001, and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by April 4, 2001.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Bradford Poston and James A. Quinn of the Office of Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.444–4 is also issued under 26 U.S.C. 444(g).

Par. 2. Section 1.444–4 is added to read as follows:

§ 1.444–4 Tiered structure.

[The text of this proposed section is the same as the text of § 1.444–4T published elsewhere in this issue of the **Federal Register**].

Par. 3. Sections 1.641(c)–0 and 1.641(c)–1 are added to read as follows:

§ 1.641(c)–0 Table of contents.

This section lists the following captions contained in § 1.641(c)–1:

§ 1.641(c)–1 Electing small business trust.

(a) In general.
(b) Definitions.
  (1) Grantor portion.
  (2) S portion.
  (3) Non-S portion.
(c) Taxation of grantor portion.
(d) Taxation of S portion.
  (1) In general.
  (2) Section 1366 amounts.
  (3) Gains and losses on disposition of S stock.
  (4) State and local income taxes and administrative expenses.
(e) Tax rates and exemption of S portion.
  (1) Income tax rate.
  (2) Alternative minimum tax exemption.
(f) Taxation of non-S portion.
  (1) In general.
  (2) Dividend income under section 1368(c)(2).
  (3) Interest on installment obligations.
  (4) Charitable deduction.
(g) Allocation of state and local income taxes and administration expenses.
(h) Treatment of distributions from the trust.
(i) Termination or revocation of ESBT election.
(j) Effective date.
(k) Examples.

§ 1.641(c)–1 Electing small business trust.

(a) *In general.* An electing small business trust (ESBT) within the meaning of section 1361(e) is treated as two separate trusts for purposes of determining income tax. The portion of an ESBT that consists of stock in one or more S corporations (the S portion) is treated as one trust. The portion of an ESBT that consists of all the other assets in the trust is treated as a separate trust. The grantor or another person may be treated as the owner of all or a portion of either or both such trusts under subpart E, part I, subchapter J, chapter 1 of the Internal Revenue Code. In addition, the non-S portion may consist of more than one share pursuant to section 663(c). See § 1.1361–1(m) for the treatment of an ESBT as a single trust for administrative purposes.

(b) *Definitions*—(1) *Grantor portion.* The grantor portion of an ESBT is the portion of the trust that is treated as owned by the grantor or another person under subpart E.

(2) *S portion.* The S portion of an ESBT is the portion of the trust that consists of S corporation stock and that is not treated as owned by the grantor or another person under subpart E.

(3) *Non-S portion.* The non-S portion of an ESBT is the portion of the trust that consists of all assets other than S corporation stock and that is not treated as owned by the grantor or another person under subpart E.

(c) *Taxation of grantor portion.* The grantor or another person who is treated as the owner of a portion of the ESBT includes in computing taxable income items of income, deductions, and credits against tax attributable to that portion of the ESBT under section 671.

(d) *Taxation of S portion*—(1) *In general.* The taxable income of the S portion is determined by taking into account only the items of income, loss, deduction, or credit specified in paragraphs (d)(2), (3), and (4) of this section, to the extent not attributable to the grantor portion.

(2) *Section 1366 amounts*—(i) *In general.* The S portion takes into account the items of income, loss, deduction, or credit that are taken into account by an S corporation shareholder pursuant to section 1366 and the regulations thereunder. Normal rules applicable to trusts apply in determining the extent to which any

loss, deduction, or credit may be taken into account in determining the taxable income of the S portion. See § 1.1361–1(m)(3)(iv) for allocation of those items in the taxable year in which the ESBT election is made if, before the effective date of the election, the trust was a shareholder of the S corporation.

(ii) *Special rule for charitable contributions.* If a deduction described in paragraph (d)(2)(i) of this section is attributable to a charitable contribution paid by the S corporation, the contribution will be deemed to be paid by the S portion pursuant to the terms of the trust's governing instrument within the meaning of section 642(c)(1). The other requirements of section 642(c)(1) must also be met for the contribution to be deductible in computing the taxable income of the S portion. Such a deduction cannot exceed the amount of gross income of the S portion.

(iii) *Multiple S corporations.* If an ESBT owns stock in more than one S corporation, items of income, loss, deduction, or credit from all the S corporations are aggregated for purposes of determining the S portion's taxable income.

(3) *Gains and losses on disposition of S stock*—(i) *In general.* The S portion takes into account any gain or loss from the disposition of S corporation stock. No deduction is allowed under section 1211(b)(1) and (2) for capital losses that exceed capital gains.

(ii) *Installment method.* If income from the sale or disposition of stock in an S corporation is reported by the trust on the installment method, the income recognized under this method is taken into account by the S portion. See paragraph (f)(3) of this section for the treatment of interest on the installment obligation. See § 1.1361–1(m)(5)(ii) regarding treatment of a trust as an ESBT upon the sale of all S corporation stock using the installment method.

(iii) *Distributions in excess of basis.* Gain recognized under section 1368(b)(2) from distributions in excess of the ESBT's basis in its S corporation stock is taken into account by the S portion.

(4) *State and local income taxes and administrative expenses*—(i) *In general.* State and local income taxes and administrative expenses directly related to the S portion and those allocated to that portion in accordance with paragraph (g) are taken into account by the S portion.

(ii) *Special rule for certain interest.* Interest paid by the trust on money borrowed by the trust to purchase stock in an S corporation is allocated to the S portion but is not a deductible administrative expense for purposes of determining the taxable income of the S portion.

(e) *Tax rates and exemption of S portion*—(1) *Income tax rate.* Except for capital gains, the highest marginal trust rate provided in section 1(e) is applied to the taxable income of the S portion. See section 1(h) for the rates that apply to the S portion's net capital gain.

(2) *Alternative minimum tax exemption.* The exemption amount of the S portion under section 55(d) is zero.

(f) *Taxation of non-S portion*—(1) *In general.* The taxable income of the non-S portion is determined by taking into account all items of income, deduction, and credit to the extent not taken into account by either the grantor portion or the S portion. The items attributable to the non-S portion are taxed under subparts A through D of part I, subchapter J, chapter 1 of the Internal Revenue Code.

(2) *Dividend income under section 1368(c)(2).* Any dividend income within the meaning of section 1368(c)(2) is includible in the gross income of the non-S portion.

(3) *Interest on installment obligations.* If income from the sale or disposition of stock in an S corporation is reported by the trust on the installment method, the interest on the installment obligation is includible in the gross income of the non-S portion. See paragraph (d)(3)(ii) of this section for the treatment of income from such a sale or disposition.

(4) *Charitable deduction.* For purposes of applying section 642(c)(1) to payments made by the trust for a charitable purpose, the amount of gross income of the trust is limited to the gross income of the non-S portion. See paragraph (d)(2)(ii) of this section for special rules concerning charitable contributions paid by the S corporation that are deemed to be paid by the S portion.

(g) *Allocation of state and local income taxes and administration expenses.* Whenever state and local income taxes or administration expenses relate to more than one portion of an ESBT, they must be allocated between or among the portions to which they relate. These items may be allocated in any manner that is reasonable in light of all the circumstances, including the terms of the governing instrument, local law, and the practice of the trustee with respect to the trust if it is reasonable and consistent. The taxes and expenses apportioned to each portion of the ESBT are taken into account by that portion.

(h) *Treatment of distributions from the trust.* Distributions to beneficiaries from the S portion or the non-S portion, including distributions of the S corporation stock, are deductible under section 651 or 661 in determining the taxable income of the non-S portion, and are included in the gross income of the beneficiaries under section 652 or 662. However, the amount of the deduction or inclusion cannot exceed the amount of the distributable net income of the non-S portion. Items taken into account by the grantor portion or the S portion are excluded for purposes of determining the distributable net income of the non-S portion of the trust.

(i) *Termination or revocation of ESBT election.* If the ESBT election of the trust terminates pursuant to § 1.1361–1(m)(5) or the ESBT election is revoked pursuant to § 1.1361–1(m)(6), the rules contained in this section are thereafter not applicable to the trust. If, upon termination or revocation, the S portion has a net operating loss under section 172; a capital loss carryover under section 1212; or deductions in excess of gross income; then any such loss, carryover, or excess deductions shall be allowed as a deduction, in accordance with the regulations under section 642(h), to the trust, or to the beneficiaries succeeding to the property of the trust if the entire trust terminates.

(j) *Effective date.* This section generally is applicable on and after the date the final regulations are published in the **Federal Register**. However, paragraphs (a), (b) and (c) of this section are applicable for taxable years of ESBTs that end on and after December 29, 2000.

(k) *Examples.* The following examples illustrate the rules of this section:

Example 1. Comprehensive example. (i) Trust has a valid ESBT election in effect. Under section 678, *B* is treated as the owner of a portion of Trust consisting of a 10% undivided fractional interest in Trust. No other person is treated as the owner of any other portion of Trust under subpart E, part I, subchapter J. Trust owns stock in *X,* an S corporation, and in *Y,* a C corporation. During 2000, Trust receives a distribution from *X* of $5,100, of which $5,000 is applied against Trust's adjusted basis in the *X* stock in accordance with section 1368(c)(1) and $100 is a dividend under section 1368(c)(2). Trust makes no distributions to its beneficiaries during the year.

(ii) For 2000, Trust has the following items of income and deduction:

Ordinary income attributable to *X* under section 1366	$5,000
Dividend income from *Y*	900
Dividend from *X* representing C corporation earnings and profits	100
Total trust income	6,000

Charitable contributions attributable to *X* under section 1366	300
Trustee fees	200
State and local income taxes	100

(iii) Trust's items of income and deduction are divided into a grantor portion, an S portion, and a non-S portion for purposes of determining the taxation of those items. Income is allocated to each portion as follows:

B must take into account the items of income attributable to the grantor portion, that is, 10% of each item, as follows:

Ordinary income from *X*	$500
Dividend income from *Y*	90
Dividend income from *X*	10
Total grantor portion income	600

The total income of the S portion is $4,500, determined as follows:

Ordinary income from *X* $	$5,000
Less: Grantor portion	(500)
Total S portion income	4,500

The total income of the non-S portion is $900 determined as follows:

Dividend income from *Y* (less grantor portion)	$810
Dividend income from *X* (less grantor portion)	90
Total non-S portion income	900

(iv) The administrative expenses and the state and local income taxes relate to all three portions and under state law would be allocated ratably to the $6,000 of trust income. Thus, these items would be allocated 10% (600/6000) to the grantor portion, 75% (4500/6000) to the S portion and 15% (900/6000) to the non-S portion.

(v) *B* must take into account the following deductions attributable to the grantor portion of the trust:

Charitable contributions from *X*	$30
Trustee fees	20
State and local income taxes	10

(vi) The taxable income of the S portion is $4,005, determined as follows:

Ordinary income from *X*	$4,500
Less: Charitable contributions from *X* (less grantor portion)	(270)
75% of trustee fees	(150)
75% of state and local income taxes	(75)
Taxable income of S portion	4,005

(vii) The taxable income of the non-S portion is $755, determined as follows:

Dividend income from *Y*	$810
Dividend income from *X*	90
Total non-S portion income	900
Less: 15 % of trustee fees	(30)
15% state and local income taxes	(15)
Personal exemption	(100)
Taxable income of non-S portion	755

Example 2. Sale of S stock. Trust has a valid ESBT election in effect and owns stock in *X,* an S corporation. No person is treated as the owner of any portion of Trust under subpart E, part I, subchapter J. In 2001, Trust sells all of its stock in *X* and recognizes a capital gain of $5,000. This gain is taken into account by the S portion and is taxed using the appropriate capital gain rate found in section 1(h).

Example 3. (i) *Sale of S stock for an installment note.* Assume the same facts as in *Example 2,* except that Trust sells its stock in *X* for a $400,000 installment note payable with stated interest over ten years. After the sale, Trust does not own any S corporation stock.

(ii) *Loss on installment sale.* Assume Trust's basis in its *X* stock was $500,000. Therefore, Trust sustains a capital loss of $100,000 on the sale. Upon the sale, the S portion terminates and the excess loss, after being netted against the other items taken into account by the S portion, is made available to the entire trust as provided in section 641(c)(4).

(iii) *Gain on installment sale.* Assume Trust's basis in its *X* stock was $300,000 and that the $100,000 gain will be recognized under the installment method of section 453. Interest income will be recognized annually as part of the installment payments. The portion of the $100,000 gain recognized annually is taken into account by the S portion. However, the annual interest income is includible in the gross income of the non-S portion.

Example 4. Charitable lead annuity trust. Trust is a charitable lead annuity trust which is not treated as owned by the grantor or another person under subpart E. Trust acquires stock in *X,* an S corporation, and elects to be an ESBT. During the taxable year, pursuant to its terms, Trust pays $10,000 to a section 170(c)(2) charitable organization. The non-S portion of Trust receives an income tax deduction for the charitable contribution under section 642(c) only to the extent the amount is paid out of the gross income of the non-S portion. To the extent the amount is paid from the S portion, no charitable deduction is available to the S portion.

Example 5. ESBT distributions. (i) As of January 1, 2000, Trust owns stock in *X,* a C corporation. No portion of Trust is treated as owned by the grantor or another person under subpart E. *X* elects to be an S corporation effective January 1, 2001, and Trust elects to be an ESBT effective January 1, 2001. For 2001, Trust's share of *X*'s section 1366 items is $5,000 of ordinary income. For the year, Trust has no other income and no expenses or state or local taxes. On February 1, 2001, *X* makes an $8,000 distribution to Trust, of which $3,000 is treated as a dividend from accumulated earnings and profits under section 1368(c)(2) and the remainder is applied against Trust's basis in the *X* stock under section 1368(b). The trustee of Trust makes a distribution of $4,000 to Beneficiary during 2001.

(ii) For 2001, Trust has $5,000 of taxable income in the S portion. This income is taxed to Trust at the maximum rate provided in section 1(e). Trust also has $3,000 of distributable net income (DNI) in the non-S portion. The non-S portion of Trust receives a distribution deduction under section 661(a) of $3,000, which represents the amount distributed to the beneficiary during the year ($4,000), not to exceed the amount of DNI ($3,000). The beneficiary must include this amount in gross income under section 662(a). As a result, the non-S portion has no taxable income.

Par. 4. Section 1.1361–0 is amended by adding entries for § 1.1361–1(j)(12) and (m) to read as follows:

§ 1.1361–0 Table of contents.

* * * * *

§ 1.1361–1 S corporation defined.

* * * * *

(j) * * *

(12) Converting a QSST to an ESBT.

* * * * *

(m) Electing small business trust (ESBT).

(1) Definition.

(2) ESBT election.

(3) Effect of ESBT election.

(4) Potential current beneficiaries.

(5) ESBT terminations.

(6) Revocation of ESBT election.

(7) Converting an ESBT to a QSST.

(8) Effective date.

(9) Examples.

* * * * *

Par. 5. Section 1.1361–1 is amended by:

1. Adding paragraphs (h)(1)(vi), (h)(3)(i)(F), and (j)(12).

2. Adding a sentence to the end of paragraph (k)(2)(i).

3. Adding paragraph (m).

The additions read as follows:

§ 1.1361–1 S corporation defined.

* * * * *

(h) * * * (1) * * *

(vi) *Electing small business trusts.* An electing small business trust (ESBT) under section 1361(e). See paragraph (m) of this section for rules concerning ESBTs including the manner of making the election to be an ESBT under section 1361(e)(3).

* * * * *

(3) * * * (i) * * *

(F) If S corporation stock is held by an ESBT, each potential current beneficiary is treated as a shareholder. However, if for any period there is no potential current beneficiary of the ESBT, the ESBT is treated as the shareholder during such period. See paragraph (m)(4) of this section for the definition of potential current beneficiary.

* * * * *

(j) * * *

(12) *Converting a QSST to an ESBT.* For a trust that wishes to convert from a QSST to an ESBT, the consent of the Commissioner is hereby granted to revoke the QSST election as of the effective date of the ESBT election, if all the following requirements are met:

(i) The trust meets all of the requirements to be an ESBT under

paragraph (m)(1) of this section except for the requirement under paragraph (m)(1)(iv)(A) of this section that the trust not have a QSST election in effect.

(ii) The trustee and the current income beneficiary of the trust sign the ESBT election. The ESBT election must be filed with the service center where the S corporation files its income tax return and also with the service center where the trust files its income tax return. This ESBT election must state at the top of the document ''ATTENTION ENTITY CONTROL—CONVERSION OF A QSST TO AN ESBT PURSUANT TO SECTION 1.1361–1(j)'' and include all information otherwise required for an ESBT election under paragraph (m)(2) of this section. A separate election must be made with respect to the stock of each S corporation held by the trust.

(iii) The trust has not converted from an ESBT to a QSST within the 36-month period preceding the effective date of the new ESBT election.

(iv) The date on which the ESBT election is to be effective cannot be more than 15 days and two months prior to the date on which the election is filed and cannot be more than 12 months after the date on which the election is filed. If an election specifies an effective date more than 15 days and two months prior to the date on which the election is filed, it will be effective 15 days and two months prior to the date on which it is filed. If an election specifies an effective date more than 12 months after the date on which the election is filed, it will be effective 12 months after the date it is filed.

(k) * * *

(2) * * * (i) * * * Paragraphs (h)(1)(vi), (h)(3)(i)(F), and (j)(12) of this section are applicable on and after the date the final regulations are published in the **Federal Register**.

* * * * *

(m) *Electing small business trust (ESBT)*—(1) *Definition*—(i) *General rule.* An electing small business trust (ESBT) means any trust if it meets the following requirements: the trust does not have as a beneficiary any person other than an individual, an estate, or an organization described in section 170(c)(2) through (5); no interest in the trust has been acquired by purchase; and the trustee of the trust makes a timely ESBT election for the trust.

(ii) *Qualified beneficiaries*—(A) *In general.* For purposes of this section, a beneficiary includes a person who has a present, remainder, or reversionary interest in the trust other than a remote, contingent interest within the meaning of paragraph (m)(1)(ii)(D) of this section.

(B) *Distributee trusts.* Any person who has a beneficial interest in a distributee trust is a beneficiary of the ESBT. However, if the distributee trust is an organization described in section 170(c)(2) or (3), the distributee trust itself is the beneficiary of the ESBT. A distributee trust is a trust that is receiving or may receive a distribution from an ESBT, whether the rights to receive the distribution are fixed or contingent, or immediate or deferred.

(C) *Powers of appointment.* A person in whose favor a power of appointment could be exercised is not a beneficiary of an ESBT until the holder of the power of appointment actually exercises the power in favor of such person.

(D) *Remote beneficiaries.* A person whose interest in the trust is so remote as to be negligible is not a beneficiary of an ESBT. With respect to any portion of the trust, a person's interest in either the corpus or the income therefrom is, at any time, so remote as to be negligible when the probability that such person will ever receive a distribution from the trust is less than 5 percent, taking into consideration the interests of other entities and other individuals living at that time.

(E) *Nonresident aliens.* A nonresident alien as defined in section 7701(b)(1)(B) is an eligible beneficiary of an ESBT. However, see paragraph (m)(5)(iii) of this section if the nonresident alien is a potential current beneficiary of the ESBT.

(iii) *Interests acquired by purchase.* A trust does not qualify as an ESBT if any interest in the trust has been acquired by purchase. If any portion of a beneficiary's basis in the beneficiary's interest in the trust is determined under section 1012, such interest has been acquired by purchase. The trust itself may acquire S corporation stock by purchase.

(iv) *Ineligible trusts.* An ESBT does not include—

(A) Any qualified subchapter S trust (as defined in section 1361(d)(3)) if an election under section 1361(d)(2) applies with respect to any corporation the stock of which is held by the trust;

(B) Any trust exempt from tax or not subject to tax under subtitle A; or

(C) Any charitable remainder annuity trust or charitable remainder unitrust (as defined in section 664(d)).

(2) *ESBT election*—(i) *In general.* The trustee of the trust must make the ESBT election by signing and filing, with the service center where the trust files its income tax return, a statement that meets the requirements of paragraph (m)(2)(ii) of this section. If there is more than one trustee, the trustee or trustees with authority to legally bind the trust must sign the election statement. Only one ESBT election is made for the trust, regardless of the number of S corporations whose stock is held by the ESBT.

(ii) *Election statement.* The election statement must include—

(A) The name, address, and taxpayer identification number of the trust, the potential current beneficiaries, and the S corporations in which the trust currently owns stock;

(B) An identification of the election as an ESBT election made under section 1361(e)(3);

(C) The first date on which the trust owned stock in each S corporation;

(D) The date on which the election is to become effective (not earlier than 15 days and two months before the date on which the election is filed); and

(E) Representations signed by the trustee stating that—

(*1*) The trust meets the definitional requirements of section 1361(e)(1); and

(*2*) All potential current beneficiaries of the trust meet the shareholder requirements of section 1361(b)(1).

(iii) *Due date for ESBT election.* The ESBT election must be filed within the time requirements prescribed in paragraph (j)(6)(iii) of this section for filing a qualified subchapter S trust (QSST) election. If the trust and the corporation file their tax returns with the same service center, the trustee may attach the ESBT election to the Form 2553, ''Election by a Small Business Corporation,'' in the case of a newly electing S corporation.

(iv) *Election by a trust described in section 1361(c)(2)(A)(ii) or (iii).* A trust that is a qualified S corporation shareholder under section 1361(c)(2)(A)(ii) or (iii) may elect ESBT treatment at any time during the 2-year period described in those sections or the 16-day-and-2-month period beginning on the date after the end of the 2-year period. If the trust makes an ineffective ESBT election, the trust will continue to qualify as an eligible S corporation shareholder for the remainder of the period described in section 1361(c)(2)(A)(ii) or (iii).

(v) *No protective election.* A trust cannot make a protective ESBT election that would be effective in the event the trust fails to meet the requirements for an eligible trust described in section 1361(c)(2)(A)(i) through (iv). If a trust attempts to make a protective ESBT election and fails to qualify as an eligible S corporation shareholder under section 1361(c)(2)(A)(i) through (iv), the S corporation election will be ineffective or will terminate because the corporation will have an ineligible shareholder. Relief may be available under section 1362(f) for an inadvertent ineffective S corporation election or an

inadvertent S corporation election termination.

(3) *Effect of ESBT election*—(i) *General rule.* If a trust makes a valid ESBT election, the trust will be treated as an ESBT for purposes of chapter 1 of the Internal Revenue Code as of the effective date of the ESBT election.

(ii) *Employer Identification Number.* An ESBT has only one employer identification number (EIN). If an existing trust makes an ESBT election, the trust continues to use the EIN it currently uses.

(iii) *Taxable year.* If an ESBT election is effective on a day other than the first day of the trust's taxable year, the ESBT election does not cause the trust's taxable year to close. The trust files one tax return for the taxable year.

(iv) *Allocation of S corporation items.* If an ESBT election is effective on a day other than the first day of the trust's taxable year, and the trust held S corporation stock and was an eligible S corporation shareholder under section 1361(c)(2)(A)(i) through (iv) prior to the effective date of the ESBT election, the S corporation items are allocated between the two eligible trusts under section 1377(a). For purposes of section 1377(a), the first day the ESBT is a shareholder is the effective date of the ESBT election, and the last day the other trust is a shareholder is the day before the effective date of the ESBT election. See § 1.1377–1(a)(2)(iii).

(v) *Estimated taxes.* If an ESBT election is effective on a day other than the first day of the trust's taxable year, the trust is considered one trust for purposes of estimated taxes under section 6654.

(4) *Potential current beneficiaries*—(i) *In general.* For purposes of determining whether a corporation is a small business corporation within the meaning of section 1361(b)(1), each potential current beneficiary of an ESBT generally is treated as a shareholder of the corporation. Subject to the provisions of this section (m)(4), a potential current beneficiary generally is, with respect to any period, any person who at any time during such period is entitled to, or in the discretion of any person may receive, a distribution from the principal or income of the trust.

(ii) *Grantor trusts.* If all or a portion of an ESBT is treated as owned by a person under subpart E, part I, subchapter J, chapter 1 of the Internal Revenue Code, such owner is a potential current beneficiary in addition to persons described in paragraph (m)(4)(i) of this section.

(iii) *Special rule for dispositions of stock.* Notwithstanding the provisions of paragraph (m)(4)(i) of this section, if a trust disposes of all of its S corporation stock, any person who first met the definition of a potential current beneficiary during the 60-day period ending on the date of such disposition is not a potential current beneficiary with respect to that corporation.

(iv) *Distributee trusts*—(A) *In general.* This paragraph (m)(4)(iv) contains the rules for determining who are the potential current beneficiaries of an ESBT if a distributee trust becomes entitled to, or at the discretion of any person may receive, a distribution from principal or income of an ESBT. A distributee trust does not include a trust that is not currently in existence. For this purpose, a trust is not currently in existence if the trust has no assets and no items of income, loss, deduction, or credit. Thus, if a trust instrument provides for a trust to be funded at some future time, the future trust is not a distributee trust.

(B) If the distributee trust is not a trust described in section 1361(c)(2)(A), then the distributee trust is the potential current beneficiary of the ESBT and the corporation's S corporation election terminates.

(C) If the distributee trust is a trust described in section 1361(c)(2)(A), the persons who would be its potential current beneficiaries (as defined in paragraph (m)(4)(i) and (ii) of this section) if the distributee trust were an ESBT are treated as the potential current beneficiaries of the ESBT. Notwithstanding the preceding sentence, however, if the distributee trust is a trust described in section 1361(c)(2)(A)(ii) or (iii), the estate described in section 1361(c)(2)(B) (ii) or (iii) is treated as the potential current beneficiary of the ESBT for the 2-year period for which such trust is permitted as a shareholder.

(D) For the purposes of paragraph (m)(4)(iv)(C) of this section, a trust will be deemed to be described in section 1361(c)(2)(A) if such trust would be eligible to make a QSST election under section 1361(d) or an ESBT election under section 1361(e) if it owned S corporation stock.

(v) *Contingent distributions.* A person who is entitled to receive a distribution only after a specified time or upon the occurrence of a specified event (such as the death of the holder of a power of appointment) is not a potential current beneficiary until such time or the occurrence of such event.

(vi) *Current powers of appointment.* A person to whom a distribution is or may be made during a period pursuant to a power of appointment is a potential current beneficiary. Thus, if any person has a general lifetime power of appointment over the trust, the corporation's S corporation election will terminate because the number of potential current beneficiaries will exceed the 75-shareholder limit of section 1361(b)(1)(A).

(vii) *Number of shareholders.* Each potential current beneficiary of the ESBT, as defined in paragraphs (m)(4)(i) through (vi) of this section, is counted as a shareholder of any S corporation whose stock is owned by the ESBT. During any period in which the ESBT has no potential current beneficiaries, the ESBT is counted as the shareholder. A person is counted as only one shareholder of an S corporation even though that person may be treated as a shareholder of the S corporation by direct ownership and through one or more eligible trusts described in section 1361(c)(2)(A). Thus, for example, if a person owns stock in an S corporation and is a potential current beneficiary of an ESBT that owns stock in the same S corporation, that person is counted as one shareholder of the S corporation. Similarly, if a husband owns stock in an S corporation and his wife is a potential current beneficiary of an ESBT that owns stock in the same S corporation, such husband and wife will be counted as one shareholder of the S corporation.

(viii) *Miscellaneous.* Payments made to a third party on behalf of a beneficiary are considered to be payments made directly to the beneficiary. The right of a beneficiary to assign the beneficiary's interest to a third party does not result in the third party being a potential current beneficiary until that interest is actually assigned.

(5) *ESBT terminations*—(i) *Ceasing to meet ESBT requirements.* A trust ceases to be an ESBT on the first day the trust fails to meet the definition of an ESBT under section 1361(e). The last day the trust is treated as an ESBT is the day before the date on which the trust fails to meet the definition of an ESBT.

(ii) *Disposition of S stock.* In general, a trust ceases to be an ESBT on the first day following the day the trust disposes of all S corporation stock. However, if the trust is using the installment method to report income from the sale or disposition of its stock in an S corporation, the trust ceases to be an ESBT on the day following the earlier of the day the last installment payment is received by the trust or the day the trust disposes of the installment obligation.

(iii) *Potential current beneficiaries that are ineligible shareholders.* If a potential current beneficiary of an ESBT is not an eligible shareholder of a small business corporation within the

meaning of section 1361(b)(1), the S corporation election terminates. For example, the S corporation election will terminate if a nonresident alien becomes a potential current beneficiary of an ESBT. Such a potential current beneficiary is treated as an ineligible shareholder beginning on the day such person becomes a potential current beneficiary, and the S corporation election terminates on that date. However, see the special rule of paragraph (m)(4)(ii) of this section. If the S corporation election terminates, relief may be available under section 1362(f).

(6) *Revocation of ESBT election.* An ESBT election may be revoked only with the consent of the Commissioner. The application for consent to revoke the election must be submitted to the Internal Revenue Service in the form of a letter ruling request under the appropriate revenue procedure.

(7) *Converting an ESBT to a QSST.* For a trust that wishes to convert from an ESBT to a QSST, the consent of the Commissioner is hereby granted to revoke the ESBT election as of the effective date of the QSST election, if all the following requirements are met:

(i) The trust meets all of the requirements to be a QSST under section 1361(d).

(ii) The trustee and the current income beneficiary of the trust sign the QSST election. The QSST election must be filed with the service center where the S corporation files its income tax return and also with the service center where the trust files its income tax return. This QSST election must state at the top of the document ''ATTENTION ENTITY CONTROL—CONVERSION OF AN ESBT TO A QSST PURSUANT TO SECTION 1.1361–1(m)'' and include all information otherwise required for a QSST election under § 1.1361–1(j)(6). A separate election must be made with respect to the stock of each S corporation held by the trust.

(iii) The trust has not converted from a QSST to an ESBT within the 36-month period preceding the effective date of the new QSST election.

(iv) The date on which the QSST election is to be effective cannot be more than 15 days and two months prior to the date on which the election is filed and cannot be more than 12 months after the date on which the election is filed. If an election specifies an effective date more than 15 days and two months prior to the date on which the election is filed, it will be effective 15 days and two months prior to the date on which it is filed. If an election specifies an effective date more than 12 months after the date on which the election is filed, it will be effective 12 months after the date it is filed.

(8) *Effective date.* This paragraph (m) is applicable on and after the date the final regulations are published in the **Federal Register**.

(9) *Examples.* The provisions of this paragraph (m) are illustrated by the following examples in which it is assumed, unless otherwise specified, that all noncorporate persons are citizens or residents of the United States:

Example 1. (i) *ESBT election with section 663(c) separate shares.* On January 1, 2000, *M* contributes S corporation stock to Trust for the benefit of *M*'s three children *A, B,* and *C.* Pursuant to section 663(c), each of Trust's separate shares for *A, B,* and *C* will be treated as separate trusts for purposes of determining the amount of distributable net income (DNI) in the application of sections 661 and 662. On January 15, 2000, the trustee of Trust files a valid ESBT election for Trust effective January 1, 2000. Trust will be treated as a single ESBT and will have a single S portion taxable under section 641(c).

(ii) *ESBT acquires stock of an additional S corporation.* On February 15, 2000, Trust acquires stock of an additional S corporation. Because Trust is already an ESBT, Trust does not need to make an additional ESBT election.

(iii) *Section 663(c) shares of ESBT convert to separate QSSTs.* Effective January 1, 2001, *A, B, C,* and Trust's trustee elect to convert each separate share of Trust into a separate QSST pursuant to paragraph (m)(7) of this section. They file a separate election for each S corporation the stock of which is held by Trust for each separate share. Each separate share will be treated as a separate QSST.

Example 2. (i) *Invalid potential current beneficiary.* Effective January 1, 2000, Trust makes a valid ESBT election. On January 1, 2001, *A,* a nonresident alien, becomes a potential current beneficiary of Trust. Trust does not dispose of all of its S corporation stock within 60 days after January 1, 2001. As of January 1, 2001, *A* is a potential current beneficiary of Trust, and therefore is treated as a shareholder of the S corporation. Because *A* is not an eligible shareholder of an S corporation under section 1361(b)(1), the S corporation election of any corporation in which Trust holds stock terminates effective January 1, 2001. Relief may be available under section 1362(f).

(ii) *Invalid potential current beneficiary and disposition of S stock.* Assume the same facts as in *Example 2* (i) except that within 60 days after January 1, 2001, trustee of Trust disposes of all Trust's S corporation stock. *A* is not considered a potential current beneficiary of Trust and therefore is not treated as an S corporation shareholder of any S corporation in which Trust previously held stock.

Example 3. Subpart E trust. M transfers stock in *X,* an S corporation, and other assets to Trust, for the benefit of *B* and *B*'s siblings. *M* retains no powers or interest in Trust. Under section 678(a), *B* is treated as the owner of a portion of Trust which includes a portion of the *X* stock. No beneficiary has acquired any portion of his or her interest in Trust by purchase and Trust is not an ineligible trust under paragraph (m)(1)(iv) of this section. Trust is eligible to make an ESBT election.

Example 4. Determining ESBT beneficiaries. Trust holds stock in an S corporation and makes an ESBT election. Trust's instrument provides that income is to be paid to *A* for *A*'s life. Upon *A*'s death the remainder interest is to be paid to a separate trust for the benefit of *A*'s three children. If on *A*'s death none of A's children is alive, then the remainder is to be paid to *A*'s ten grandchildren. If on *A*'s death none of *A*'s children or grandchildren is alive, the remainder will be paid to State exclusively for public purposes. *A, A*'s children, and *A*'s grandchildren are all beneficiaries of Trust. Assuming the probability that State will ever receive any distribution from Trust is less than 5 percent, State is not considered a beneficiary for purposes of paragraph (m)(1)(ii) of this section. If the probability that State will receive a distribution from Trust ever equals or exceeds 5 percent, State would then be considered a beneficiary of the ESBT. Because State is an organization described in section 170(c)(1), rather than section 170(c)(2) through (5), State would be an ineligible beneficiary and the corporation's S corporation election would terminate.

Example 5. Potential current beneficiaries and distributee trusts. (i) *Distributee trust holding S corporation stock.* Trust-1 has a valid ESBT election in effect. The trustee of Trust-1 has the power to distribute to *A* directly or to any trust created for the benefit of *A.* On January 1, 2000, M creates Trust-2 for the benefit of *A.* Also on January 1, 2000, the trustee of Trust-1 distributes some S corporation stock to Trust-2. The current income beneficiary of Trust-2 makes a timely and effective election to treat Trust-2 as a QSST. Because Trust-2 is a valid S corporation shareholder, the distribution to Trust-2 does not terminate the ESBT election of Trust-1. Trust-2 itself will not be counted toward the 75-shareholder limit of section 1361(b)(1)(A). Additionally, because A is already counted as an S corporation shareholder because of A's status as a potential current income beneficiary of Trust-1, A is not counted again by reason of A's status as the deemed owner of Trust-2.

(ii) *Distributee trust not holding S corporation stock.* Assume the same facts as in paragraph (i) of this Example 5 except that no S corporation stock is distributed to Trust-2. Because Trust-2 would be eligible to make a QSST election or an ESBT election if it owned S corporation stock, under paragraph (m)(4)(iv)(D) of this section it is deemed to be a trust described in section 1361(c)(2)(A). Under paragraph (m)(4)(iv)(C) of this section, the potential current beneficiaries of Trust-2 are considered the potential current beneficiaries of Trust-1. Because A, the potential current beneficiary of Trust-2, is already a potential current beneficiary of Trust-1, A is not counted twice for purposes of the 75-shareholder limit of the S corporation.

Example 6. Potential current beneficiaries and distributee trust. (i) *Distributee trust that*

would itself qualify as an ESBT. Trust-1 holds stock in *X*, an S corporation, and has a valid ESBT election in effect. Under the terms of the governing instrument of Trust-1, the trustee has discretion to make distributions to *A, B* and Trust-2, a trust for the benefit of *A* and *B*'s children, *C, D* and *E.* Trust-2 would qualify to be an ESBT, but it owns no S corporation stock and has made no ESBT election. Under paragraph (m)(4)(iv) of this section, Trust-2's potential current beneficiaries are treated as the potential current beneficiaries of Trust-1 and are counted as shareholders for purposes of section 1361(b)(1). Thus, *A, B, C, D* and *E* are potential current beneficiaries of Trust-1 and are counted as shareholders for the purposes of section 1361(b)(1). Trust-2 itself will not be counted as a shareholder of Trust-1 for purposes of section 1361(b)(1).

(ii) *Distributee trust that would not qualify as an ESBT.* Assume the same facts as in *Example 6* (i) except that *D* is a non-resident alien. Trust-2 would not be eligible to make an ESBT or QSST election if it owned S corporation stock and therefore Trust-2 is a potential current beneficiary of Trust-1. Since Trust-2 is not an eligible shareholder, *X*'s S corporation election terminates.

(iii) *Distributee trust that is a section 1361(c)(2)(A)(ii) trust.* Assume the same facts as in Example 6 (i) except that Trust-2 is a trust treated as owned by *A* under section 676 because *A* had the power to revoke Trust-2 at any time prior to *A*'s death. On January 1, 2001, *A* dies. Because Trust-2 is a trust described in section 1361(c)(2)(A)(ii) during the 2-year period beginning on the day of *A*'s death, under paragraph (m)(4)(iv)(C) of this section, Trust-2's only potential current beneficiary is the person listed in section 1361(c)(2)(B)(ii), *A*'s estate.

Example 7. Potential current beneficiaries and powers of appointment. M creates Trust for the benefit of *A. A* also has a current power to appoint income or principal to anyone except *A, A*'s creditors, *A*'s estate, and *A*'s estate's creditors. The potential current beneficiaries of Trust will be *A* and all other persons except for *A*'s creditors, *A*'s estate, and *A*'s estate's creditors. This number will exceed the 75-shareholder limit of section 1361(b)(1)(A). If Trust holds S corporation stock, the corporation's S election will terminate.

Par. 6. Section 1.1362–6 is amended by revising paragraph (b)(2)(iv) to read as follows:

§ 1.1362–6 Election and consents.

* * * * *

(b) * * *

(2) * * *

(iv) *Trusts.* In the case of a trust described in section 1361(c)(2)(A) (including a trust treated under section 1361(d)(1)(A) as a trust described in section 1361(c)(2)(A)(i) and excepting an electing small business trust described in section 1361(c)(2)(A)(v) (ESBT)), only the person treated as the shareholder for purposes of section 1361(b)(1) must consent to the election. When stock of the corporation is held by a trust, both husband and wife must consent to any election if the husband and wife have a community interest in the trust property. See paragraph (b)(2)(i) of this section for rules concerning community interests in S corporation stock. In the case of an ESBT, the trustee and the owner of any portion of the trust that consists of the stock in one or more S corporations under subpart E, part I, subchapter J, chapter 1 of the Internal Revenue Code must consent to the S corporation election. If there is more than one trustee, the trustee or trustees with authority to legally bind the trust must consent to the S corporation election.

* * * * *

Par. 7. Section 1.1362–7 is amended by adding a sentence to the end of paragraph (a) to read as follows:

§ 1.1362–7 Effective date.

(a) * * * Section 1.1362–6(b)(2)(iv) is applicable on and after the date the final regulations are published in the **Federal Register**.

* * * * *

Par. 8. Section 1.1377–1 is amended by:

1. Adding paragraph (a)(2)(iii).
2. Adding *Example 3* to paragraph (c).

The additions read as follows:

§ 1.1377–1 Pro rata share.

(a) * * *

(2) * * *

(iii) *Electing small business trust (ESBT) election.* If an ESBT election is effective on a day other than the first day of trust's taxable year, and the trust was already an eligible S corporation shareholder under a different provision of section 1361(c)(2), then section 1377 applies to allocate S corporation income between the two types of trusts. The first day the ESBT is treated as an S corporation shareholder is the effective date of the ESBT election. The ESBT election does not result in the prior trust being treated as terminating its entire interest in its S corporation stock for purposes of paragraph (b) of this section, unless the prior trust was described in section 1361(c)(2)(A)(ii) or (iii).

* * * * *

(c) * * *

Example 3. Effect of conversion of a qualified subchapter S trust (QSST) to an electing small business trust (ESBT). (i) On January 1, 2000, Trust receives 100% of the stock of S corporation. Trust's current income beneficiary makes a timely QSST election under section 1361(d)(2), effective January 1, 2000. Later, the trustee and current income beneficiary of Trust elect pursuant to § 1.1361–1(j)(12), to terminate the QSST election and convert to an ESBT, effective July 1, 2002. In 2002, Trust's pro rata share of S corporation's nonseparately computed income is $100,000.

(ii) For purposes of computing the income allocable to the QSST and to the ESBT, Trust is treated as a QSST through June 30, 2002, and Trust is treated as an ESBT beginning July 1, 2002. Pursuant to section 1377(a)(1), the pro rata share of S corporation income allocated to the QSST is $49,589 ($100,000 × 181 days/365 days), and the pro rata share of S corporation income allocated to the ESBT is $50,411 ($100,000 × 184 days/365 days).

Par. 9. Section 1.1377–3 is revised to read as follows:

§ 1.1377–3 Effective date.

Section 1.1377–1 and 1.1377–2 apply to taxable years of an S corporation beginning after December 31, 1996, except that § 1.1377–1(a)(2)(iii) and (c) *Example 3* are applicable on and after the date the final regulations are published in the **Federal Register**.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 00–32191 Filed 12–28–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 94

RIN 0905–AE71

Public Health Service Standards for the Protection of Research Misconduct Whistleblowers; Correction

AGENCY: Department of Health and Human Services (HHS).

ACTION: Notice of proposed rulemaking; technical correction.

SUMMARY: The Department of Health and Human Services published in the **Federal Register** of November 28, 2000, a notice of proposed rulemaking to establish regulations that covered institutions must follow for preventing or otherwise responding to occurrences of retalitation against whistleblowers. (65 FR 70830) This document corrects the Preamble of the notice of proposed rulemaking to update changed Internet website addresses and to add several inadvertently omitted explanatory sentences.

FOR FURTHER INFORMATION CONTACT: Barbara Bullman, 301–443–5300 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Preamble Supplementary Information [Corrected]

On Page 70830, in the third column at the top of the page, correct the web page cite to read *''http://ori/hhs.gov.''*

On page 70830, in the third column, correct the fourth full paragraph by adding a sentence at the end of the paragraph to read ''If both parties agree, they may also continue mediation efforts during the administrative proceeding.''

On Page 70831, in the first column, the third full paragraph, correct the web page cite to read *''http://ori/hhs.gov.''*

On page 70831, in the second column, correct the second and third sentences of the first full paragraph to read ''The decisionmaker must order an institutional remedy if the whistleblower meets the burden of proof and proves by a preponderance of the evidence that the act of good faith whistleblowing was a contributing factor in the alleged adverse action taken by the institution or one of its members against the whistleblower. However, even if the whistleblower meets this burden, the burden of proof shifts to the institution, and the decisionmaker may not order an institutional remedy if the institution then proves by clear and convincing evidence that it would have taken the action at issue even in the absence of the whistleblower's allegation or cooperation with an investigation.''

On page 70832 in the second column, correct the second full paragraph by adding a sentence at the end of the paragraph to read ''As most retaliation occurs shortly after the whistleblower alleges misconduct, the regulation would require that the adverse action happen within one year of the allegation. We request comments on this time frame.''

On page 70832 in the third column, correct the last paragraph of the Supplementary Information section by adding a sentence at the end of the paragraph to read ''However, we request comments on whether to extend coverage of this proposed regulation to pending cases.''

Dated: December 18, 2000.

Brian P. Burns,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 00–33312 Filed 12–28–00; 8:45 am]

BILLING CODE 4110–60–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 120600B]

Atlantic Highly Migratory Species Fisheries; Technical Gear Workshop

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

ACTION: Notification of public meeting.

SUMMARY: NMFS announces the rescheduling of the public workshop to discuss potential gear modifications for the Atlantic pelagic longline fishery aimed at reducing the incidental take and mortality of threatened and endangered sea turtles. The workshop is intended to synthesize available information and discuss research objectives. A report of the workshop will be made available to interested parties.

DATES: The workshop will take place January 17, 2001, from 1 p.m. to 6 p.m. and January 18, 2001, from 8:30 a.m. to 3:30 p.m. Notice of attending the meeting should be provided by January 8, 2001.

ADDRESSES: The location for the workshop is: Holiday Inn Hotel, 8777 Georgia Avenue, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Margo Schulze-Haugen or Tyson Kade at (301) 713-2347. Also, if you are planning to attend the workshop, please contact these individuals by January 8, 2001. Attendees will be provided briefing materials prior to the meeting.

SUPPLEMENTARY INFORMATION: A Biological Opinion (BO) issued on June 30, 2000, by NMFS' Office of Protected Resources found that the continued operation of the Atlantic pelagic longline fishery is likely to jeopardize the continued existence of loggerhead and leatherback sea turtles. Since the BO was issued, NMFS has concluded that further analyses of observer data and additional population modeling of loggerhead sea turtles are needed to determine more precisely the impact of the pelagic longline fishery on turtles. NMFS reinitiated consultation to consider these factors, and anticipates issuance of a new BO in March 2001. This workshop will allow fishermen, gear experts, sea turtle experts, and fishery managers to discuss possible measures, including gear and fishing method modifications, to reduce the incidental take and mortality of sea turtles in the Atlantic pelagic longline fishery in the future. Information developed at the workshop will be incorporated into a workshop report that will be considered in the ongoing fishery consultation. The report will also be made available to the public.

Special Accommodations

The public workshop is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Margo Schulze-Haugen or Tyson Kade (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days prior to the meeting.

Authority: 16 U.S.C. 971 *et seq.*, and 16 U.S.C. 1801 *et seq.*

Dated: December 20, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–33225 Filed 12–28–00; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 65, No. 251

Friday, December 29, 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.

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletion from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete service previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: January 29, 2001.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will result in authorizing small entities to furnish the commodities and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information. The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Tape, Duct, 5640–00–103–2254
NPA: Cincinnati Association for the Blind, Cincinnati, Ohio
Cloth, High Performance
7920–00–NIB–0194 (30 Pack)
7920–00–NIB–0390 (Single blister—Red/Yellow)
7920–00–NIB–0394 (Single blister—Blue)
7920–00–NIB–0395 (Single blister—Platinum Gray)
7920–00–NIB–0396 (Lens Cloth—White)
7920–00–NIB–0397 (3 Pack)
7920–00–NIB–0398 (5 Pack)
NPA: L.C. Industries for the Blind, Inc., Durham, North Carolina

Services

Janitorial/Custodial, Max Rosenn Courthouse, 197 South Main Street, Wilkes-Barre, Pennsylvania
NPA: United Rehabilitation Services, Inc., Wilkes-Barre, Pennsylvania
Janitorial/Custodial. VA Outpatient Clinic Charleston, West Virginia
NPA: Goodwill Industries of Kanawha Valley, Inc., Charleston, West Virginia
Laborer, Multi-Tasks Support Services, Post wide, Fort Hood, Texas
NPA: Professional Contract Services, Inc., Austin, Texas
Mailroom Operation, USDA, Rural Development Agency, St. Louis, Missouri
NPA: MGI Services Corporation, St. Louis, Missouri

Deletion

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will result in authorizing small entities to furnish the commodities and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for deletion from the Procurement List.

The following service has been proposed for deletion from the Procurement List:

Service

Commissary Shelf Stocking & Custodial
Charles Melvin Price Support Center Commissary, Granite City, Illinois

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 00–33360 Filed 12–28–00; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and Deletion from the Procurement List.

SUMMARY: This action adds to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the procurement List commodities previously furnished by such agencies.

EFFECTIVE DATE: January 29, 2001.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740.

SUPPLEMENTARY INFORMATION: On October 27, November 3 and November 13, 2000, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (65 F.R. 64420, 66230 and 64417) of proposed additions to and deletion from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List.

Accordingly, the following commodity and services are hereby added to the Procurement List:

Commodity

Rake, Forest Fire, 4210–00–540–4512.

Services

ADA Compliance Investigator, Department of Transportation, Maritime Administration Headquarters, Washington, DC

Administrative Services, U.S. Department of Agriculture, Farm Service Agency, Kansas City, Missouri.

Administrative Services, U.S. Department of Agriculture, Farm Service Agency, Kansas City, Missouri

Administrative Services, U.S. Department of Agriculture, Rural Development Agency, St. Louis, Missouri.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletion

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. Accordingly,the following commodities are hereby deleted from the Procurement List:

Commodities

Water Bag, Nylon Duck, 8465–01–321–1678, 8465–01–321–1678F.

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 00–33361 Filed 12–28–00; 8:45 am]

BILLING CODE 6353–01–M

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA).

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 11/21/00–12/18/00

Firm name	Address	Date petition accepted	Product
Piller Plastics	3925 S. Grant Street, Washougal, WA 98671.	12/04/00	Injection molded parts for the computer, toy, tool and forestry industries.
Mo Rad Manufacturing, Inc. d.b.a. Morad Radiator Products.	1900 East Malone, Sikeston, MO 63801	12/04/00	Radiators and parts for the agricultural industry.
Sheppard Orchards, Inc	3401 Dethman Ridge Dr., Hood River, OR 97031.	12/06/00	Pears.
Laurance Brothers, Inc	7360 Cooper Spur Road, Parkdale, OR 97041.	12/06/00	Pears.
Rick Benjamin Orchards	8675 Cooper Spur Road, Parkdale, OR 97041.	12/06/00	Pears.
Tele-Tech Corporation	2050 Fairway Drive, Bozeman, MT 59715	36866	Telecommunications transmission/reception parts.
Mini Lace, Inc	960 West 84th Street, Hialeah, FL 33014	12/07/00	Warp knit fabrics, primarily for the intimate apparel industry.
Toy Works, Inc. (The)	Fiddler's Elbow Road, Middle Falls, NY 12848.	12/07/00	Hand printed canvas travel bags, doormats, kitchen towels, pillows and stuffed toys.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 11/21/00–12/18/00—Continued

Firm name	Address	Date petition accepted	Product
Zimmer Industries, Inc	200 Central Avenue, Hawthorne, NJ 07506.	12/08/00	Perforated steel and cutting rule, i.e. blades used by business form and labels industries.
DDG, Inc. d.b.a. Windsurfing Hawaii	1114 June Street, Hood River, OR 97031	12/08/00	Sailboard accessories and parts.
Madden Precision, Inc	3500 Charleston Road, Norman, OK 73069.	12/14/00	Valve parts.
Goldens Foundry and Machine Co	600 12th Street, Columbus, GA 31902	12/18/00	Component for agricultural tractors and medical furniture—clutch pedals and bases for operating room tables.

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: December 19, 2000.

Anthony J. Meyer,

Coordinator, Trade Adjustment and Technical Assistance.

[FR Doc. 00–33330 Filed 12–28–00; 8:45 am]

BILLING CODE 3510–24–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.122200A]

Draft Environmental Impact Statement (DEIS) for the Habitat Conservation Plans proposed for Public Utility District No. 1 of Douglas County, Washington, and the Public Utility District No. 1 of Chelan County, Washington

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

ACTION: Notice of document availability; request for comments.

SUMMARY: This notice advises the public that the Public Utility District (PUD) No. 1 of Douglas County, Washington, and the PUD No. 1 of Chelan County, Washington, (applicants) have submitted individual applications to the National Marine Fisheries Service (NMFS) for incidental take permits pursuant to the Endangered Species Act (ESA). The permit applications are related to the effects on listed anadromous fish of the PUDs' ongoing and future hydroelectric project operations on the mainstem Columbia River. Each PUD has included with its application a proposed (draft) Anadromous Fish Agreement and Habitat Conservation Plan (HCP) designed to minimize and mitigate any such incidental take of endangered or threatened species, as required by the ESA. The proposed HCPs are also intended to serve as proposed agreements to satisfy the PUDs' obligations under the Federal Power Act and related Federal and state laws governing project effects on anadromous fish and their habitat. To consider the effects of these proposed HCPs, the NMFS has prepared a DEIS that is now available for review and comment by interested parties.

DATES: Written comments on the DEIS must be received on or before March 29, 2001.

ADDRESSES: For copies of the DEIS, or to provide written comments, contact: National Marine Fisheries Service, Northwest Region, Hydro Program, 525 NE Oregon Street, Suite 420, Portland, OR 97232-2737 (503-736-4734). Comments may also be sent via fax to (503) 231-2318. Comment will not be accepted if submitted via email or the internet.

The DEIS and the proposed HCPs are available for review via the world wide web at www.nwr.noaa.gov/1hydrop/hydroweb/ferc.htm (under the ''Related Documents'' heading).

FOR FURTHER INFORMATION CONTACT: Mr. Bob Dach, Fishery Biologist, Hydro Program, Portland, OR (503-736-4734).

SUPPLEMENTARY INFORMATION: Under section 9 of the ESA and its implementing regulations, ''taking'' of an endangered species is prohibited. However, in limited circumstance NMFS may issue a permit to take endangered species if such taking is incidental to, and not the purpose of, an otherwise lawful activity. Regulations governing permits for endangered species can be found in 50 CFR part 222.

Anticipating that NMFS' decision to issue an incidental take permit, as contemplated by the proposed HCPs, would be a major federal action under the National Environmental Policy Act (NEPA), the PUDs requested that NMFS conduct a coordinated and consolidated environmental review process to facilitate the resolution of remaining issues under the proposed agreements while complying with applicable Federal and state legal requirements.

NMFS considers each of these permit requests to be a major Federal action significantly affecting the quality of the human environment. Therefore, in accordance with the requirements of NEPA, NMFS has prepared a DEIS. This notice, provided pursuant to NEPA

regulations (40 CFR 1506.6), advises the public that the DEIS and proposed HCPs are now available for review and comment. After considering any comments received pursuant to this notice, NMFS will prepare a final EIS and make a final determination regarding the sufficiency of the applications in accordance with the requirements of 50 CFR 222.307. If deemed sufficient, NMFS thereafter will publish a notice that the applications are available for public comment, as required by 50 CFR part 222, prior to reaching a decision on whether to issue or deny issuance of the permits.

The following species and evolutionarily significant units are included in these Plans: Endangered Upper Columbia River (UCR) spring-run chinook salmon (*Oncorhynchus tshawytscha*) and steelhead (*O. mykiss*), unlisted UCR summer/fall chinook salmon (*O. tshawytscha*), Okanogan River and Lake Wenatchee sockeye salmon (*O. nerka*), and UCR coho salmon (*O. kisutch*). The Plan also proposes specific procedures, protection and enhancement measures to mitigate for the effects that the Wells, Rocky Reach and Rock Island hydroelectric projects will have on these species, for a period of 50 years. The Wells Dam is owned and operated by the PUD No. 1 of Douglas County and the Rocky Reach and Rock Island dams are owned and operated by the PUD No. 1 of Chelan County. All three of these hydroelectric projects are located on the Mid-Columbia River in central Washington state.

The applicants have provided proposed HCPs with the intent of obtaining incidental take permits pursuant to ESA section 10(a)(1)(B). The proposed HCPs were developed over several years of negotiations with Federal and state resource agencies, Native American Tribes, and with American Rivers (a non-governmental environmental organization). While these negotiations produced proposed agreements on many important issues, it should be noted that not all parties are in support of the HCPs as currently proposed. NMFS has determined that we are unable to execute the agreements until a public review, the requisite environmental reviews, and Federal/Tribal consultations have been completed.

The proposed HCPs include a standard of ''no net impact'' which consists of a 95-percent juvenile dam passage survival standard and a 91-percent total project survival standard for each of the Plan species. The total project survival standard includes both the juvenile and adult life stages of the Plan species. The unavoidable project mortality (i.e., the remaining 9-percent of the Plan species still impacted by project operations) will be mitigated through a habitat conservation fund and a supplementation program. The habitat fund will address 2-percent of the unavoidable loss and the supplementation program will address the remaining 7-percent. As a result of this commitment, the applicants are requesting incidental take permits with a term of 50 years, settlement under the Federal Power Act when each project is relicensed, and a ''no surprises'' guarantee from the Federal government.

Following the DEIS public review and comment period, a preferred alternative will be selected and evaluated for its affect on ESA-listed species. At that time, NMFS will determine the sufficiency of the section 10(a)(1)(B) permit applications and will publish a notice of availability in the **Federal Register** for review of the completed applications and the Final Environmental Impact Statement (FEIS). NMFS will make its decision regarding issuance of the permit following completion of the FEIS and permit application review period.

The DEIS considers the environmental consequences of three alternatives: (1) no action, (2) ESA coverage pursuant to section 7(a)(2), and (3) ESA coverage pursuant to section 10(a)(1)(B). Alternative 1, the no action alternative, would result in continuation of the status quo. Alternative 2 would require the Federal Energy Regulatory Commission to implement all measures necessary to aid in the recovery of listed species, up to full mitigation of the project effects, although only limited measures would be applied to currently unlisted species. Alternative 3 would utilize the ''no net impact'' standard, as described previously, and implementation processes set forth in the proposed HCPs to both protect currently listed species and to further protect and enhance the remaining Plan species in an attempt to prevent future listings. The results of implementing each of these alternatives on the human environment have been assessed in the DEIS.

NMFS will use the comments received to modify the DEIS as appropriate and to aid in the selection of the preferred alternative. The applicants will then have an opportunity to modify their HCPs, if necessary, to address information provided during the comment period. Upon completion of a biological opinion on the preferred alternative, NMFS will render its decision.

Dated: December 22, 2000.

Wanda L. Cain,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–33227 Filed 12–28–00; 8:45 am]

BILLING CODE: 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122100C]

Endangered Species; Permits

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

ACTION: Receipt of application to modify permits (1231).

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement:

NMFS has received applications for permit modifications from: Dr. Lew Ehrhart, University of Central Florida (1231).

DATES: Comments or requests for a public hearing on any of the new applications or modification requests must be received at the appropriate address or fax number no later than 5 p.m. eastern standard time on January 29, 2001.

ADDRESSES: Written comments on any of the new applications or modification requests should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the application or modification request. Comments will not be accepted if submitted via e-mail or the Internet. The applications and related documents are available for review.

For permit 1231: Office of Protected Resources, Endangered Species Division, F/PR3, 1315 East-West Highway, Silver Spring, MD 20910 (ph: 301-713-1401, fax: 301-713-0376).

FOR FURTHER INFORMATION CONTACT: For permit 1213: Terri Jordan, Silver Spring, MD (phone: 301-713-1401 x148; fax: 301-713-0376); e-mail: Terri.Jordan@noaa.gov.

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) (ESA), is based on a

finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222-226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

The following species and evolutionarily significant units (ESU's) are covered in this notice:

Sea Turtles

Green turtle (*Chelonia mydas*)

Modification Requests Received

Permit 1231: The Recovery Plan for the U.S. Population of Atlantic Green Turtle states that the foremost problem in management and conservation of sea turtles is the lack of basic biological information. This study proposes to capture turtles living in the Indian River Lagoon Estuary of central Florida in Brevard and Indian River counties. The data provided by the study will include information regarding habitat requirements, seasonal distribution and abundance, movement and growth, feeding preferences, sex distribution and the prevalence and severity of fibropapilloma.

Modification #1 would authorize satellite tags to be deployed on eight (8) green turtles over the life of the permit. Turtles will be captured during netting operations under permit #1231 and #1144 in the Indian River Lagoon, FL.

Dated: December 21, 2000.

Wanda L. Cain,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–33226 Filed 12–28–00; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Taiwan

December 26, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Agreement, effected by exchange of letters dated January 10, 1997, May 2, 1997 and December 10, 1997, as amended and extended, concerning textiles and textile products, produced or manufactured in Taiwan, establishes limits for the period January 1, 2001 through March 31, 2001.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits for the first three months of 2001.

These limits may be revised if Taiwan becomes a member of the World Trade Organization (WTO) and the WTO agreement is applied to Taiwan.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 26, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Bilateral Textile Agreement, effected by exchange of letters dated January 10, 1997 and May 2, 1997, as amended and extended, between the Governments of the United States and Taiwan, you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Taiwan and exported during the three-month period which begins on January 1, 2001 and extends through March 31, 2001, in excess of the following levels of restraint:

Category	Twelve-month limit
Group I	
200–224, 225/317/326, 226, 227, 229, 300/301/607, 313–315, 360–363, 369–L/670–L/870 [1], 369–S [2], 369–O [3], 400–414, 464–469, 600–606, 611, 613/614/615/617, 618, 619/620, 621–624, 625/626/627/628/629, 665, 666, 669–P [4], 669–T [5], 669–O [6], 670–H [7] and 670–O [8], as a group.	145,584,324 square meters equivalent.
Sublevels in Group I	
218	5,611,493 square meters.
225/317/326	9,960,385 square meters.
226	1,807,492 square meters.
300/301/607	435,688 kilograms of which not more than 363,074 kilograms shall be in Category 300; not more than 363,074 kilograms shall be in Category 301; and not more than 363,074 kilograms shall be in Category 607.

Category	Twelve-month limit
363	3,025,018 numbers.
369–L/670–L/870	12,570,241 kilograms.
611	808,836 square meters.
613/614/615/617	5,016,320 square meters.
619/620	3,687,073 square meters.
625/626/627/628/629.	4,797,753 square meters.
669–P	87,221 kilograms.
669–T	283,488 kilograms.
670–H	4,813,482 kilograms.
Group I subgroup 200, 219, 313, 314, 315, 361, 369–S and 604, as a group.	37,024,512 square meters equivalent.
Within Group I subgroup	
200	181,318 kilograms.
219	4,126,617 square meters.
313	16,765,276 square meters.
314	7,350,600 square meters.
315	5,632,433 square meters.
361	364,228 numbers.
369–S	120,833 kilograms.
604	58,141 kilograms.
Group II 237, 239, 330–332, 333/334/335, 336, 338/339, 340–345, 347/348, 349, 350/650, 351, 352/652, 353, 354, 359–C/659–C [9], 359–H/659–H [10], 359–O [11], 431–444, 445/446, 447/448, 459, 630–632, 633/634/635, 636, 638/639, 640, 641–644, 645/646, 647/648, 649, 651, 653, 654, 659–S [12], 659–O [13], 831–844 and 846–859, as a group.	186,167,900 square meters equivalent.
Sublevels in Group II	
237	177,150 dozen.
239	1,452,293 kilograms.
331	126,955 dozen pairs.
336	30,181 dozen.
338/339	201,949 dozen.
340	276,730 dozen.
345	31,536 dozen.
347/348	262,591 dozen of which not more than 262,591 dozen shall be in Categories 347–W/348–W [14].
352/652	800,742 dozen.
359–C/659–C	356,957 kilograms.
359–H/659–H	1,200,281 kilograms.
433	3,833 dozen.
434	2,662 dozen.
435	6,321 dozen.
436	1,259 dozen.
438	7,103 dozen.
440	1,376 dozen.
442	10,807 dozen.
443	10,733 numbers.
444	15,286 numbers.
445/446	33,895 dozen.
631	1,273,773 dozen pairs.
633/634/635	403,020 dozen of which not more than 236,548 dozen shall be in Categories 633/634 and not more than 209,612 dozen shall be in Category 635.
638/639	1,618,812 dozen.
640	261,106 dozen of which not more than 69,464 dozen shall be in Category 640–Y [15].
642	191,625 dozen.
643	127,725 numbers.
644	192,181 numbers.
645/646	1,012,874 dozen.
647/648	1,294,186 dozen of which not more than 1,294,186 dozen shall be in Categories 647–W/648–W [16].
659–S	394,948 kilograms.
835	5,051 dozen.
Group II Subgroup 333/334/335, 341, 342, 350/650, 351, 447/448, 636, 641 and 651, as a group.	19,283,249 square meters equivalent.
Within Group II Subgroup	
333/334/335	77,648 dozen of which not more than 42,059 dozen shall be in Category 335.
341	84,658 dozen.
342	52,886 dozen.
350/650	34,388 dozen.
351	87,985 dozen.
447/448	5,238 dozen.
636	96,468 dozen.
641	180,630 dozen of which not more than 63,221 dozen shall be in Category 641–Y [17].
651	110,339 dozen.
Group III	
Sublevel in Group III	
845	210,522 dozen.

[1] Category 870; Category 369–L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091 and 6307.90.9905; Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907.

[2] Category 369–S: only HTS number 6307.10.2005.

[3] Category 369–O: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091, 6307.90.9905 (Category 369–L); and 6307.10.2005 (Category 369–S).

[4] Category 669–P: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.

[5] Category 669–T: only HTS numbers 6306.12.0000, 6306.19.0010 and 6306.22.9030.

[6] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category 669–P); 6306.12.0000, 6306.19.0010 and 6306.22.9030 (Category 669–T).

[7] Category 670–H: only HTS numbers 4202.22.4030 and 4202.22.8050.

[8] Category 670–O: all HTS numbers except 4202.22.4030, 4202.22.8050 (Category 670–H); 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907 (Category 670–L).

[9] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[10] Category 359–H: only HTS numbers 6505.90.1540 and 6505.90.2060; Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[11] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 (Category 359–C); 6505.90.1540 and 6505.90.2060 (Category 359–H).

[12] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[13] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S).

[14] Category 347–W: only HTS numbers 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–W: only HTS numbers 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[15] Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[16] Category 647–W: only HTS numbers 6203.23.0060, 6203.23.0070, 6203.29.2030, 6203.29.2035, 6203.43.2500, 6203.43.3500, 6203.43.4010, 6203.43.4020, 6203.43.4030, 6203.43.4040, 6203.49.1500, 6203.49.2015, 6203.49.2030, 6203.49.2045, 6203.49.2060, 6203.49.8030, 6210.40.5030, 6211.20.1525, 6211.20.3820 and 6211.33.0030; Category 648–W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.6030, 6204.69.9030, 6210.50.5035, 6211.20.1555, 6211.20.6820, 6211.43.0040 and 6217.90.9060.

[17] Category 641–Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

The limits set forth above are subject to adjustment pursuant to the current bilateral agreement concerning imports of textile and apparel products from Taiwan.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directive dated November 2, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

These limits may be revised if Taiwan becomes a member of the World Trade Organization (WTO) and the WTO agreement is applied to Taiwan.

The conversion factors are as follows:

Category	Conversion factors (square meters equivalent/category unit)
300/301/607	8.5
333/334/335	33.75
352/652	11.3
359–C/659–C	10.1
359–H/659–H	11.5
369–L/670–L/870	3.8
633/634/635	34.1
638/639	12.5

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–33362 Filed 12–28–00; 8:45 am]

BILLING CODE 3510–DR–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Notice of Availability of Funds To Support Service-related Activities of Former AmeriCorps Members

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability of funds.

SUMMARY: The Corporation for National and Community Service (the Corporation) will use up to $100,000 to enter into a cooperative agreement under subtitle H of the National and Community Service Act of 1990, as amended, to support efforts to: (1) Conduct outreach to former AmeriCorps members to support their participation in service activities with current AmeriCorps members and (2) develop and implement strategies to enable former and current AmeriCorps members to receive additional education credits and benefits for their service.

DATES: All proposals must arrive at the Corporation for National Service no later than 5:00 p.m., Eastern Daylight Time, January 23, 2001. The Corporation anticipates announcing its selection under this announcement no later than February 2, 2001.

ADDRESSES: Proposals must be submitted to the Corporation at the following address: Corporation for National and Community Service, Attn: Susannah Washburn, 1201 New York Avenue NW., Washington, DC 20525. This notice may be requested in an alternative format for the visually impaired.

FOR FURTHER INFORMATION CONTACT: For further information, or to obtain an application, contact Shelly Ryan at (202) 606–5000, ext. 549, or TDD: 202–565–2799, or TTY via the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Background

The Corporation is a federal government corporation that encourages Americans of all ages and backgrounds to engage in community-based service to meet the nation's educational, public safety, environmental and other human needs. In doing so, the Corporation fosters civic responsibility, strengthens the ties that bind us together as a people, and provides educational opportunity for those who make a substantial commitment to service. This year, the Corporation will support over 40,000 AmeriCorps members who perform substantial service in communities across the country and over one million students in service-learning programs, including programs at institutions of higher education. Since its inception in 1993, including the current class in service, more than 200,000 individuals have enrolled in AmeriCorps.

Under subtitle H of the National and Community Service Act, the Corporation may support innovative and model programs.

Under this authority the Corporation is now making available up to $100,000 for the purpose of supporting efforts to conduct outreach to former AmeriCorps members to support their engaging in service activities with current AmeriCorps members and to identify and encourage model programs at institutions of higher education to enable former and current AmeriCorps members to receive additional education credits and benefits for their service.

The Corporation anticipates making a single award to an organization that has the capacity and experience to carry out the purposes described below. The award is anticipated to be for a 12-month period, with a suggested start date of February 1, 2001. Applicants should specify the period and start date.

Purpose of Cooperative Agreement

Among the program objectives under the National and Community Service Act are: to encourage each participant to engage in public and community service after completion of the program and to expand educational opportunity by rewarding individuals who participate in national service with increased ability to pursue higher education.

Many individual programs in which AmeriCorps members participate conduct activities that accomplish these objectives. For example, individual programs invite former members to serve with current members on national days of service such as Martin Luther King, Jr. Day. Further, several programs in which AmeriCorps members serve are sponsored by organizations that partner with an institution of higher education to offer credit for service in AmeriCorps or scholarships to attend school based on service in AmeriCorps.

Although many local activities occur, there is a need for support for more systematic nationwide support to

enhance local activities. For example, there is no single place where a prospective, current, or former AmeriCorps member may go to learn education opportunities and benefits at institutions of higher education that are linked directly to service in AmeriCorps. Further, there is no nationwide effort to reach out to alumni to support their involvement specifically in all AmeriCorps gatherings held by state commissions across the country.

The purpose of this cooperative agreement is to support activities that reach across states and individual programs that will serve to support alumni's engaging in service activities with current AmeriCorps members and to identify and encourage efforts to enable former and current AmeriCorps members to receive additional education credits and benefits for their service.

Eligible Applicants

Eligible applicants for this funding are nonprofit organizations with experience in promoting the involvement of AmeriCorps alumni in service activities nationwide. An organization described in section 501(c)(4) of the Internal Revenue Code of 1986 26 U.S.C. 501(c)(4), that engages in lobbying activities, is not eligible to be a grantee. Based on the requirements for applicants and the number of agreements to be awarded under this notice, the Corporation expects fewer than ten applications to be submitted.

Types of Activities

The following are examples of the types of activities that the cooperative agreement may support. The applicant may choose to propose one or more of the following or propose additional activities consistent with the purposes described above.

- Development and dissemination of a directory of higher education programs for current members and alumni that offer special programs, credit, or financial assistance for those currently or formerly engaged in AmeriCorps activities.
- Outreach efforts to consortia of institutions of higher education to link service in AmeriCorps more closely with academic programs at institutions of higher education.
- Outreach efforts to support the mobilization of alumni to participate in All AmeriCorps gatherings and other service events that link current and former members in carrying out service to their communities.
- Technical assistance to state commissions and other entities that will support carrying out high quality all-member gatherings within a state, including the involvement of former members serving in that state.

The above are examples only; the applicant should propose the best strategies for carrying out the purposes described above.

Application Requirements

To be considered for funding, eligible applicants should submit the following:

1. An Application for Federal Assistance (SF 424).
2. Budget Information—Non-Construction Programs (SF 424A).
3. A Budget Narrative that provides a description of the budget form. It may be easier to complete the budget narrative first, using the line items on the SF 424A as a guide. The budget narrative should be in the same order as the budget form with requested Corporation funds clearly defined. For each of the line items contained on the budget form, provide a full explanation in the budget narrative that explains the item, its purpose, and shows how you calculated the cost.
4. Assurances—Non-Construction Programs (SF 424B).
5. A Program Narrative (no more than 15 pages) that includes:

a. The organization's background and capacity to provide sound programmatic and fiscal oversight, including any experience in administering federal grants.

b. A description of the organization's experience in promoting the involvement of AmeriCorps alumni in service activities.

c. The organization's plan for meeting the purposes of this grant, including: the activities to be conducted, the outcomes of those activities, and proposed timelines for all activities and outcomes.

d. Description of resources available to manage this grant.

Applicants must submit one unbound, original proposal and two copies to the Corporation at the following address: Corporation for National and Community Service, Attn: Susannah Washburn, 1201 New York Avenue NW., Washington, D.C. 20525. We will not accept any proposals submitted by facsimile.

Copies of the SF 424, SF 424A, and SF 424 B can be obtained at the following website: *http://fillform.gsa.gov/*. For a printed copy of any of these materials, please contact Shelly Ryan at (202) 606–5000, ext. 549.

Selection Process and Criteria

In awarding these grants, the Corporation will consider program design (60%); organizational capacity (25%); and budget/cost effectiveness (15%). Applicants must propose clearly-defined and specific activities to carry out the purposes of this grant. The Corporation will make all final decisions concerning the award and may require revisions to the original grant proposal in order to achieve the objectives under this Notice.

(Catalog of Federal Domestic Assistance #94.007.

Dated: December 21, 2000.

Gary Kowalczyk,

Coordinator, National Service Programs, Corporation for National and Community Service.

[FR Doc. 00–33275 Filed 12–28–00; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Information Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 27, 2001.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Under Secretary of Defense for Personnel & Readiness, Program Integration, Legal Policy, ATTN: Lt Col Karen Kinlin, 4000 Defense Pentagon, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instrument, please write to the above address or call at (703) 697–3387.

Title, Associated Form, and OMB Control Number: Indebtedness of Military Personnel—Involuntary Allotments; DD Form 2653; OMB Control Number 0704–0367.

Needs and Uses: Public Law 103–94, ''The Hatch Act Reform Amendments of 1993,'' directs the establishment of provisions for the involuntary allotment of the pay of a member of the Uniformed Services for indebtedness owed a third party based on a court order and as determined by competent military or executive authority to be in compliance with the Soldiers' and Sailors' Civil Relief Act of 1940. These provisions must also take into consideration the absence of a member of the Uniformed Services from appearance in a judicial proceeding if the absence results from the exigencies of military duty. The information collected hereby provides exigencies of military duty. The DD Form 2653, ''Indebtedness of Military Personnel—Involuntary Allotments,'' provides the respondent the opportunity to submit all information on one form.

Affected Public: Individuals or households; businesses or other for profit.

Annual Burden Hours: 4,657.

Number of Respondents: 9,314.

Responses per Respondent: One.

Average Burden per Response: 30 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This information is used by the Department of Defense to initiate an involuntary allotment from the pay of a member of the Uniformed Services for indebtedness owed a third party as determined by the final judgment of a court. This requirement was created by ''The Hatch Act Reform Amendments of 1993,'' Public Law 103–94. The DD Form 2653, ''Involuntary Allotment Application,'' requires the creditor to provide identifying information on the member of the Uniformed Services; certify a judgment was obtained and that the member's rights under the Soldier's and Sailors' Civil Relief Act were protected.

Dated: December 22, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–33278 Filed 12–28–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Finance and Accounting Service announces the proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 27, 2001.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Defense Finance and Accounting Service, ATTN: Lynne Anderson, 1931 Jefferson Davis Highway, CM#3–Second Floor, Arlington, VA 22240–5291.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call, DFAS, Studies & Analysis at (703) 607–3700.

Title, Associated Form, and OMB Number: Customer Satisfaction Surveys—Generic Clearance; OMB Number 0730–0003.

Needs and Uses: The information collection requirement is necessary to determine the kind and quality of services DFAS customers want and expect, as well as their satisfaction with DFAS's existing services.

Affected Public: Individuals or Households, Business or other for profit, Not-for-profit institutions, Federal Government, and State, Local or Tribal Governments.

Annual Burden Hours: Estimated 2,000

Number of Respondents: Estimated 15,000

Responses per Respondent: 1

Average Burden per Response: 8 minutes

Frequency: Annually

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

DFAS will conduct a variety of activities to include, but not necessarily limited to customer satisfaction surveys, transaction based telephone interviews, Interactive Voice Response Systems (IVRS) telephonic surveys, etc. If the customer feedback activities were not conducted, DFAS would not only be in violation of E.O. 12862, but would also not have the knowledge necessary to provide the best service possible and provide unfiltered feedback from the customer for our process improvement activities. The information collected provides information about customer perceptions and can help identify agency operations that need quality improvement, provide early detection of process or systems problems, and focus attention on areas where customer service and functional training or changes in existing operations will improve service delivery.

Dated: December 22, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–33279 Filed 12–28–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Defense Finance and Accounting Service, DD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Finance and Accounting Service announces the proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 27, 2001.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Defense Finance and Accounting Service—Kansas City, Financial Services Division (DFAS–DFDBD/KC), ATTN: Ms. Cynthia Burgess, 1500 East 95th Street, Kansas City, MO 64197–0030.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call, Ms. Cynthia Burgess, 816–926–3575.

Title, Associated Form, and OMB Number: Statement of Claimant Requesting Recertified Check, DD Form 2660; OMB Number 0730–0002.

Needs and Uses: In accordance with TFM Volume 1, Part 4, Section 706.20 and DoD 7000.14–R, Volume 5, there is a requirement that a payee identify himself/herself and certify as to what happened to the original check issued by the government (non-receipt, loss, destruction, theft, etc.). This collection will be used to identify rightful reissuance of government checks to individuals or businesses outside the Department of Defense.

Affected Public: Individuals or businesses or other for-profit.

Annual Burden Hours: 9,042 hours.

Number of Respondents: 108,500.

Responses per Respondent: 1.

Average Burden Per Response: 5 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Statement of Claimant Requesting Recertified Check is used to ascertain pertinent information needed by the Department of Defense in order to reissue checks to payees, if the checks have not been negotiated to financial institutions within one (1) year of the date of issuance, when an original check has been lost, not received, damaged, stolen, etc. The form will be completed by the payee who was issued the original check. The information provided on this form will be used in determining whether a check may be reissued to the named payee.

Dated: December 22, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–33280 Filed 12–28–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Availability of The National Missile Defense Deployment Final Environmental Impact Statement

AGENCY: Ballistic Missile Defense Organization, DoD.

ACTION: Notice of availability.

SUMMARY: The Ballistic Missile Defense Organization (BMDO) announces the availability of the National Missile Defense (NMD) Deployment Final Environmental Impact Statement (FEIS). The FEIS assesses the potential impacts associated with the possible deployment of the NMD system.

COMMENTS: The review period for the FEIS will end on January 29, 2001 and comments must be received by this date. Written comments and inquiries on the FEIS or a request for a copy of the FEIS should be directed to: SMDC–EN–V (Ms. Julia Hudson), U.S. Army Space and Missile Defense Command, PO Box 1500, Huntsville, AL 35807–3801, telephone (256) 955–4822.

SUPPLEMENTARY INFORMATION: The BMDO announced the availability of the National Missile Defense Deployment Draft Environmental Impact Statement (DEIS) on October 1, 1999 (64 FR 190 53364) providing notice that the DEIS was available for comment. The public review period was from October 1, 1999 through January 19, 2000. Public hearings were held October 26 through November 9, 1999. Comments from the DEIS review and public hearings have been considered and included along with responses in the FEIS. Additionally, availability of an Upgraded Early Warning Radar Supplement to the NMD Deployment DEIS was announced on March 3, 2000 (65 FR 43 11560) with the public comment period from March 3, 2000 to May 12, 2000. This analysis and the comments and responses to the supplement to the DEIS have been included in the NMD Deployment FEIS.

The NMD System would be a fixed, land-based, non-nuclear missile defense system with a land and space-based detection system capable of responding to limited strategic ballistic missile threats to the United States. Potential deployment locations for the NMD elements include sites in Alaska and North Dakota. In addition, as the operational requirements are refined other regions may be identified.

The Preferred Alternative is deployment of a NMD system with up to 100 Ground-Based Interceptor (GBI) silos and Battle Management Command and Control (BMC2) facilities at Fort Greely, Alaska; and an X-Band Radar (XBR) at Eareckson Air Station (AS) (Shemya Island), Alaska. Under the Preferred Alternative, the NMD system would make use of the existing Early Warning Radars (EWR), upgraded for NMD and the existing space-based detection system that would be in place at the time of deployment. The existing EWRs are located at Beale Air Force Base (AFB), California, Clear As, Alaska, and Cape Cod AS, Massachusetts. A decision on implementation of the EWR upgrades for NMD, however, is contingent upon the outcome of the U.S. Air Force's EIS that addresses modernization, maintenance, and sustainment of operations of the three radar facilities. Since the In-Flight Interceptor Communications System (IFICS) Data Terminals locations have not been identified, no preferred location has been selected.

Copies of the FEIS have been distributed to Federal, state, and local agencies; public officials; and organizations and individuals that previously requested copies of the DEIS or FEIS. Copies of the FEIS will be available for review at public libraries in communities adjacent to the potential NMD deployment sites. These communities include: Cavalier, Fargo, Grand Forks, and Langdon in North Dakota; Anchorage, Anderson, Delta Junction, Fairbanks, Healy, Kodiak, and Nenana in Alaska; Live Oak, Marysville, and Yuba City in California; Bourne, Falmount, Mashpee, Sandwich, and West Barnstable in Massachusetts. The library locations and the FEIS are also available on the BMDO internet site: *www.acq.osd.mil/bmdo/bmdolink/html/nmd.html.*

Dated: December 1, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liason Officer, Department of Defense.

[FR Doc. 00–33281 Filed 12–28–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Department of Defense Wage Committee; Notice of Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that closed meetings of the Department of Defense Wage Committee will be held on January 2, 2001; January 9, 2001; January 16, 2001; January 23, 2001; and January 30, 2001, at 10 a.m. in Room A105, The Nash Building, 1400 Key Boulevard, Rosslyn, Virginia.

Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

Dated: December 22, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–33283 Filed 12–28–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Threat Reduction Advisory Committee

AGENCY: Department of Defense, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics).

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Threat Reduction Advisory Committee will meet in closed session on Thursday February 15, 2001, at the Pentagon.

The mission of the Committee is to advise the Under Secretary of Defense (Acquisition, Technology, and Logistics) on technology security, counterproliferation, chemical and biological defense, sustainment of the nuclear weapons stockpile, and other matters related to the Defense Threat Reduction Agency's mission.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. Appendix II, (1994)), it has been determined that this Committee meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly the meeting will be closed to the public.

DATES: Thursday February 15, 2001, (8 a.m. to 6 p.m.)

ADDRESSES: Room 3E869, The Pentagon, Washington, DC 20301.

FOR FURTHER INFORMATION CONTACT: Contact Colonel Rick Baker, Defense Threat Reduction Agency/AST, 8725 John J. Kingman Road MS 6201, Fort Belvoir, VA 22060–6201. Phone: (703) 767–4759.

Dated: December 22, 2000.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–33282 Filed 12–28–00; 8:45 am]

BILLING CODE 1001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the United States Commission on National Security/21st Century

AGENCY: Department of Defense, Office of the Undersecretary of Defense (Policy).

ACTION: Notice of closed meetings.

SUMMARY: The United States Commission on National Security/21st Century will meet in closed session on January 9, 2001. The Commission was originally chartered by the Secretary of Defense on 1 July 1998 (charter revised on 18 August 1999) to conduct a comprehensive review of the early twenty-first century global security environment; develop appropriate national security objectives and a strategy to attain these objectives; and recommend concomitant changes to the national security apparatus as necessary.

The Commission will meet in closed session January 9, 2001, to review its Phase Three report. By charter, the Phase Three report is to be delivered to the Secretary of Defense no later than February 16, 2001.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended [5 U.S.C., Appendix II], it is anticipated that matters affecting national security, as covered by 5 U.S.C. 552b(c)(1)(1998), will be presented throughout the meetings, and that, accordingly, the meetings will be closed to the public.

DATES: Tuesday, January 9, 2001, 8:30 a.m.–5:00 p.m.

ADDRESSES: Crowne Plaza Hotel, 1489 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Contact Dr. Keith A. Dunn, National Security Study Group, Suite 532, Crystal Mall 3, 1931 Jefferson Davis Highway, Arlington, VA 22202–3805. Telephone 703–602–4175.

Dated: December 20, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–33284 Filed 12–28–00; 8:45 am]

BILLING CODE 5000–10–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory 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 February 27, 2001.

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, Regulatory 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: December 22, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.

Title: State Vocational Directors Survey on Perkins III Funding and Accountability Systems.

Frequency: One time.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 112; Burden Hours: 89.

Abstract: The Perkins III legislation mandates changes in state-level funding and accountability systems. In most cases, the new requirements demand a higher level of system organization and rigor than previously existed. The State Vocational Directors Survey is one part of an evaluation whose primary purpose is to determine the progress of state efforts to comply with these aspects of the Perkins III requirements.

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 4050, 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 Jacqueline Montague at (202) 708–5359 or via her internet address Jackie_Montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–33266 Filed 12–28–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory 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 February 27, 2001.

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, Regulatory 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: December 22, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision

Title: European Community (EC)/ United States of America (US) Cooperation Program in Higher Education and Vocational Education and Training

Frequency: Annually

Affected Public: Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs

Reporting and Recordkeeping Hour Burden:

Responses: 80.

Burden Hours: 2,400.

Abstract: The EC/US Cooperation Program will support new types of cooperation and exchange between institutions of higher education and vocational education and training in the U.S. and the Member States of the European Union.

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 4050, 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 Joseph Schubart at (202) 708–9266 or via his internet address Joe_Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–33267 Filed 12–28–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Revision to the Record of Decision for the Department of Energy's Waste Management Program: Treatment and Storage of Transuranic Waste

AGENCY: Department of Energy.

ACTION: Revision to record of decision.

SUMMARY: The Department of Energy (DOE), pursuant to 10 CFR 1021.315, is revising the Record of Decision for the Department of Energy's Waste Management Program: Treatment and Storage of Transuranic Waste (63 FR

3629) issued on January 23, 1998. The Department has now decided to establish the capability at WIPP to prepare for disposal up to 1,250 cubic meters of contact-handled transuranic (CH–TRU) waste out of about 7,000 cubic meters expected to be received annually for disposal at WIPP. In addition, DOE has decided to increase the time that CH–TRU waste may be stored above ground at WIPP to one year and to increase the total above-ground storage capacity at WIPP by 25 percent, for a total of 152 cubic meters. Implementation of these decisions is contingent on regulatory approval from the New Mexico Environment Department (NMED). Previously in its Record of Decision (ROD), based on the analysis in the Waste Management Programmatic Environmental Impact Statement, DOE/EIS–0200–F, May 1997 (WM PEIS), DOE had decided (with one exception) that each DOE site would prepare its own TRU waste for disposal and store it on-site until it could be shipped to WIPP for disposal.

FOR FURTHER INFORMATION: Copies of the Final Waste Management Programmatic Environmental Impact Statement, the first ROD, this revised ROD, and the Supplement Analysis for the Proposed Characterization for Disposal of Contact-Handled Transuranic Waste at the Waste Isolation Pilot Plant (DOE/EIS–0200–SA01) are available on DOE's NEPA Web Site at: *http://tis.eh.doe.gov/nepa/* under DOE NEPA Analyses. To request copies of any of these documents, please write or call: The Center for Environmental Management Information, P.O. Box 23769, Washington, DC 20026–3769, Telephone: 1–800–736–3282 (in Washington, DC: 202–863–5084).

For further information on the disposal of TRU waste at WIPP, contact: Ms. Lynne Wade, Director, U.S. Department of Energy, WIPP Office EM–23, Office of Environmental Management, 19901 Germantown Road, Germantown, MD 20874, Telephone: (301) 903–3124.

For general information on the DOE's National Environmental Policy Act process, please write or call: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, Office of Environment, Safety and Health, 1000 Independence Avenue, SW., Washington, DC 20585–0119, Telephone: (202) 586–4600, or leave a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION:

Background

In the WM PEIS ROD, DOE decided to prepare and store TRU waste designated for disposal at WIPP at the DOE sites where the waste is currently located or will be generated (*i.e.*, ''the generator sites'') until it could be transferred to WIPP for disposal. The only exception to this decision was the Sandia National Laboratory in New Mexico, which will ship its waste to the Los Alamos National Laboratory for disposal preparation and storage before disposal in WIPP. Under the original ROD, preparation for disposal included activities to characterize TRU waste for transportation as well as activities to characterize TRU waste for disposal.

The phrase ''characterize waste for transportation'' means all activities that are necessary to prepare TRU waste to meet the transportation requirements for shipment to WIPP. It includes collecting, organizing, supplementing, and evaluating information about the process that generated the waste, the materials used in the process, the radioactive and hazardous constituents in the waste, and any sampling and analysis of the waste. Characterization for transportation also may require that the physical or chemical form of the waste be altered in order to make it suitable for transportation. This could include treatment activities that alter the form of the waste, such as solidifying liquids and neutralizing reactive wastes. Other activities that could be used to make the waste more suitable for transportation include the removal of items prohibited from being shipped in containers licensed by the Nuclear Regulatory Commission, or repackaging of waste to meet thermal power limitations. Characterizing waste for transportation to WIPP would continue to be done at the generator sites under a quality assurance program approved by DOE's Carlsbad Field Office (CBFO).

The phrase ''characterize waste for disposal'' refers to the characterization required by WIPP's Hazardous Waste Facility Permit and the Environmental Protection Agency (EPA) Compliance Certification. Under the permit, disposal characterization includes radioassay, radiography, headspace gas sampling of waste containers, and for a statistically selected number of containers, visual examination to confirm the results of radiography. Collectively, the activities involved in characterizing waste for transportation and characterizing waste for disposal comprise all of the activities necessary to prepare TRU waste to meet the Waste Acceptance Criteria (WAC), as defined in the WM PEIS ROD for TRU waste. Characterizing waste for disposal would continue to be performed as part of a program approved by DOE's CBFO, the NMED, and EPA.

Decision

DOE is revising its earlier ROD in order to create a centralized capability at WIPP to characterize for disposal up to 1,250 cubic meters of CH–TRU out of about 7,000 cubic meters expected to be received annually at WIPP for disposal. In addition, the time that CH–TRU waste may be stored above ground will be increased from 60 days to one year and the total above-ground storage capacity will be increased by 25 percent, for a maximum storage capacity of 152 cubic meters. The storage capacity in the Waste Handling Building could increase from 77 cubic meters to 107 cubic meters. This would allow DOE to accumulate the necessary amount of waste to demonstrate the disposal characterization program in order to obtain approval of the program from the EPA and NMED. This increase also would allow DOE, if needed, to store wastes during any delay in disposal operations, or in the unlikely event a prohibited item were received, to store it until it can be shipped offsite or otherwise disposed of.

Once TRU waste that has been characterized for transportation arrives at WIPP, the CBFO will perform the remaining activities needed to ensure the CH–TRU waste meets all regulatory requirements for disposal (disposal characterization). These activities may include the radioassay of waste containers to determine their radionuclide content; radiography to confirm the form of the waste and to verify the absence of prohibited items; and headspace gas sampling and analysis to quantify the concentrations of volatile organic compounds and to confirm the knowledge used to characterize the waste stream. The activities also will include visual examination or computed tomography of the contents of a selected number of waste containers to confirm the results of radiography.

DOE considers it highly unlikely that waste forms or items prohibited from disposal at WIPP would be shipped to WIPP because the generator sites' quality assurance programs for characterizing waste for transportation are designed to ensure that prohibited items are not shipped to WIPP. DOE's Office of General Counsel is working with CBFO to revise the standard Memorandum of Agreement between CBFO and generator sites in order to clarify the obligations of the generator

sites regarding the management of prohibited items. If a prohibited item were found in waste shipped to WIPP for disposal characterization, it would be removed from the waste container (removal would be done inside of a glovebox), and DOE would then: (1) Return it to the generator site; (2) transport it to an approved waste management facility; or (3) treat the prohibited item in order to render it acceptable for disposal.

DOE's ability to implement its decision to perform disposal characterization on some CH–TRU waste at WIPP is contingent upon NMED approving a modification of WIPP's Hazardous Waste Facility Permit. The modification DOE plans to propose will specify the activities that DOE would perform at WIPP to characterize waste for disposal. NMED may approve, deny, or modify DOE's proposal. Accordingly, DOE cannot specify at this time the exact set of waste characterization activities it may be required to perform at WIPP; however, any characterization activities that NMED may require would necessarily fall within the broad array of activities and impacts that DOE already has analyzed under its prior NEPA reviews.

The equipment that CBFO will use to characterize waste for disposal will be located inside existing buildings at WIPP. Non-intrusive disposal characterization activities, such as radiography and radioassay, will be located inside the TRUPACT Maintenance Facility adjacent to the Waste Handling Building. The offices currently located in that building will be removed. Equipment used for intrusive characterization activities, such as the apparatus to sample headspace gas and gloveboxes, will be located in the Waste Handling Building at WIPP. Mobile glovebox facilities could be used until permanent gloveboxes can be procured and installed inside separate containment structures erected inside the Waste Handling Building. Emissions from the separate containment structures that will house the equipment used for intrusive sampling will be filtered through High Efficiency Particulate Air (HEPA) filters at least once and then fed into the Waste Handling Building's exhaust system, where they will be HEPA filtered again before being released to the atmosphere.

The disposal characterization capability at WIPP would have the ability to characterize approximately 4,000 to 6,000 drum volume equivalents (830 to 1,250 cubic meters) of waste annually. This would equate to about two or three shipments to WIPP per week that would be characterized there for disposal. Overall, DOE expects to begin receiving up to 17 shipments per week within the next two years. Most of this waste will have been fully characterized by the sites where it came from and would be ready for disposal. It is anticipated that an annual throughput of up to 1,250 cubic meters would not be maintained through the 35-year period of WIPP operation. This level of disposal characterization capacity would be used in the earlier years to assist sites in meeting compliance deadlines and closure schedules.

The primary purpose of centralized characterization at WIPP is to expedite the removal of waste from, and minimize expenditures at, sites with smaller inventories of CH–TRU waste, where setting up separate characterization programs would not be practical or cost effective. The characterization capability at WIPP also may be used to characterize for disposal some CH–TRU waste from sites with larger inventories, thereby accelerating removal of wastes from the Rocky Flats Environmental Technology Site in Colorado, the Idaho National Engineering and Environmental Laboratory, the Los Alamos National Laboratory in New Mexico, the Hanford Site in Washington, and the Savannah River Site in South Carolina. This approach would assist these sites in meeting compliance agreements, closure schedules, or other waste management needs. Disposal characterization at WIPP, however, would not eliminate the need for these sites to characterize most of their own wastes.

The WIPP Hazardous Waste Facility Permit requires that certain types of homogeneous wastes (*e.g.,* solidified sludges and soils) must be sampled representatively and the samples chemically analyzed. These types of homogeneous wastes have not been identified at the sites with smaller inventories of CH–TRU waste. DOE is not proposing to conduct core sampling and chemical analysis of sludges and soils at WIPP; therefore, these types of wastes would not be sent to WIPP for characterization. Also, no remote-handled TRU waste will be characterized at WIPP.

CH–TRU Waste Volumes

The impacts of preparing (including characterizing) waste for disposal depend on the volume of waste to be characterized and treated. The WM PEIS analyzed the volume of CH–TRU waste projected to be generated over 20 years, a total of 113,592 cubic meters. The CH–TRU waste inventory currently projected to be disposed of in WIPP is 106,387 cubic meters.[1] DOE's recent projection of the total complex-wide CH–TRU waste volume that will be sent to WIPP is less than the Department's prior projections. This is due in part to DOE's redefined mission and accelerated closure schedules at many of its sites (resulting in less CH–TRU waste being produced than anticipated), and also recategorization of waste streams due to refined waste knowledge and data collection.

Modification of WIPP's Hazardous Waste Facility Permit

As noted above, NMED must approve a modification of WIPP's Hazardous Waste Facility Permit (issued by NMED in October 1999) before DOE could perform disposal characterization there. In support of its proposal to establish centralized disposal characterization capability at WIPP, DOE submitted a permit modification request to NMED on July 21, 2000. DOE withdrew its request on September 29, 2000, however, shortly after the close of the public comment period on the modification and after discussions with NMED staff.

DOE will submit a revised permit modification request soon that will address issues raised by NMED and the public concerning DOE's earlier proposed modification. NMED received about 600 preprinted postcards and 27 other submissions from the public that raised the following concerns about DOE's proposed modification to the permit:

(1) In contrast to existing practice, the modification would allow DOE to open some drums of waste at WIPP in order to perform visual examination of their contents as a quality control check on the results of radiography.

(2) Shipment of waste to WIPP before it was completely characterized (*i.e.,* for both transportation and disposal) could result in the discovery of prohibited items or wastes that could not be placed in the repository and would therefore remain in the above-ground facilities at WIPP indefinitely.

(3) The modification would continue NMED's ongoing inspection authority at WIPP instead of providing for NMED to approve the waste disposal characterization program at WIPP.

(4) The modification requested did not provide adequate justification for a 25 percent increase of WIPP's above-ground storage capacity.

[1] National TRU Waste Management Plan (Draft), DOE/NTP–96–1204, December 2000.

(5) DOE should not be allowed to store waste indefinitely on the surface.

DOE will revise its request for a permit modification to address these and other issues raised by NMED and the public. DOE plans to propose that:

(1) Computed tomography be substituted for visual examination of waste drums so that they need not be opened at WIPP except in the unlikely event that a prohibited item is discovered.

(2) Any prohibited item be returned to the generator site; transported to an approved waste management facility; or treated in order to render the item acceptable for disposal in WIPP.

(3) All waste disposal characterization activities performed at WIPP and generator sites under the Hazardous Waste Facility Permit be approved by NMED.

(4) Above-ground storage capacity be increased by 25 percent. This increase is supported by a time and motion study prepared by the Sandia National Laboratory.

(5) The time limit on above-ground waste storage will not be indefinite; instead it will be increased from 60 days to one year.

DOE would not begin to characterize waste at WIPP unless and until NMED approves the permit modification request. Prior to NMED's decision on the revised modification request, DOE will begin to accelerate some physical changes needed in the TRUPACT Maintenance Facility that do not require regulatory approval, such as installation of an air lock, an additional fire wall, additional radiation monitors, and a spill coating on the concrete floor. In addition, DOE may begin procuring characterization equipment and contracting with providers of mobile characterization equipment so that DOE can begin training equipment operators and writing procedures for the proposed characterization operations at WIPP or at other sites. As stated previously, the decision on what, if any, particular waste characterization procedures will occur at WIPP depends on NMED's decision concerning the revised permit modification request.

Basis for DOE's Decision

The high costs of fully characterizing waste at all its sites were not apparent when DOE decided that each generator site would be responsible for preparing its waste for disposal in the WIPP repository. At the time DOE made its earlier decision, NMED had not issued the WIPP Hazardous Waste Facility Permit and EPA had not certified that the repository met EPA's requirements for disposal of TRU waste. The permit and the certification imposed additional requirements on WIPP concerning the characterization of waste for disposal. In particular, both EPA and NMED concluded that they needed to approve aspects of the waste characterization process at each site that intended to dispose of waste in WIPP. The costs of modifying programs and procedures to conform to these waste characterization requirements, especially those related to audits and approvals, were much greater than DOE had anticipated. These requirements increased the time and resources needed to establish waste disposal characterization programs at each site with TRU waste.

In light of the increased costs and potential for delays in shipping waste to WIPP, particularly from sites with small inventories of CH–TRU waste, DOE began to look for ways to reduce the number of approved waste characterization programs it would need. One way to reduce the number of programs would be to establish a centralized disposal characterization capability at WIPP while keeping transportation characterization programs at the small quantity sites. This approach would reduce the costs of preparing CH–TRU waste for disposal as well as reduce the number of waste disposal characterization programs that DOE would need to create and that DOE, NMED and EPA would need to approve. Establishing a centralized characterization program at WIPP would enable EPA and NMED to use their staff resources more efficiently because they would have fewer waste characterization programs to approve than would be the case if DOE had to establish separate disposal characterization programs at all of the sites that have or would generate TRU waste.

DOE has estimated the costs of characterizing waste for disposal at each generator site and the cost of creating a waste characterization capability at WIPP. The Department estimates that the latter approach could save as much as $100 million as compared to its former approach. Given the potentially large cost savings, DOE has decided to seek approval from NMED of a centralized waste characterization capability at WIPP.

Prior NEPA Analyses

DOE prepared a Supplement Analysis for the Proposed Characterization for Disposal of Contact-Handled Transuranic Waste at the Waste Isolation Pilot Plant (DOE/EIS–0200–SA01). This analysis was done to determine whether the activities and impacts of characterizing for disposal some CH–TRU waste at WIPP are encompassed within prior NEPA reviews.

The Supplement Analysis concluded that the activities and impacts of performing disposal characterization on some CH–TRU at WIPP are encompassed within the activities and impacts of the Centralized Alternative analyzed in the WM PEIS. However, the impacts of the activities that will result from DOE's revised decision will be much smaller than the impacts of the Centralized Alternative evaluated in the WM PEIS for two reasons. First, the Centralized Alternative assumed that virtually all of DOE's CH–TRU would be treated at WIPP. The characterization equipment that DOE has decided to locate at WIPP will characterize only a small portion of DOE's projected inventory of CH–TRU waste. Second, the Centralized Alternative analyzed in the WM PEIS assumed that the centralized facility at WIPP would treat CH–TRU waste by incineration. The characterization equipment DOE will install in existing buildings at WIPP pursuant to this revised decision would only characterize and, as needed, repackage CH–TRU waste; it would not incinerate or thermally treat any TRU waste. These two differences have the effect of making the potential environmental impacts of disposal characterization at WIPP significantly less than the impacts of the Centralized Alternative analyzed in the WM PEIS and well below applicable standards.

Based on the Supplement Analysis, DOE determined that characterizing some of DOE's CH–TRU waste at WIPP would not involve actions that are substantially different from those analyzed in prior NEPA analyses or have impacts beyond those already evaluated. Therefore, DOE concluded that it did not need to prepare additional NEPA analysis before deciding whether to locate a centralized disposal characterization facility at WIPP. Implementation of DOE's decision is contingent upon approval by NMED of a modification to WIPP's Hazardous Waste Facility Permit and WIPP's waste characterization program.

Issued in Washington, DC, December 19, 2000.

Carolyn L. Huntoon,

Assistant Secretary for Environmental Management.

[FR Doc. 00–33308 Filed 12–28–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Issuance of Emergency Orders Under Section 202(c) of the Federal Power Act

AGENCY: U.S. Department of Energy.

ACTION: Notice of issuance of emergency orders.

SUMMARY: The Department of Energy (DOE) is publishing an emergency order, and a subsequent amendment to the order, that the Secretary of Energy has issued pursuant to section 202(c) of the Federal Power Act to address a shortage of electric energy in California.

FOR FURTHER INFORMATION CONTACT: Paul Carrier, Office of Energy Emergencies, Office of Policy, U.S. Department of Energy, 1000 Independence Avenue, S.W., PO–5, Washington, D.C. 20585, (202) 586–5659, e-mail: Paul.Carrier@hq.doe.gov.

SUPPLEMENTARY INFORMATION: On December 14, 2000, the Secretary of Energy issued an emergency order pursuant to section 202(c) of the Federal Power Act (16 U.S.C. 824(c)) to require specified entities to deliver electric energy and services to the California Independent System Operator (California ISO), upon receipt of a certification from the California ISO that it has, or reasonably anticipates, an ''inadequate fuel or energy supply'' as defined in 10 CFR 205.375. The Secretary determined that an emergency existed because of a shortage of currently operational electric generation facilities, a shortage of water used to generate electricity, unusual volatility of electricity and natural gas markets, and other reasons.

Under the order, the California ISO must, to the extent feasible, allocate the requests in proportion to the amount of each entity's available power. The terms of any arrangement made between the entities subject to the order and the California ISO are to be as agreed to by the parties. If no agreement as to terms can be reached, the Secretary of Energy will immediately prescribe the conditions of service and refer the rate issue to the Federal Energy Regulatory Commission for a determination at a later date by that agency in accordance with its standards and procedures, and will prescribe by supplemental order such rates as it finds to be just and reasonable.

The order was to remain in effect until 3:00 a.m., EST, on December 21, 2000, unless modified. On December 20, 2000, the Secretary of Energy issued an amended order extending the emergency order until 3:00 a.m., EST, on December 28, 2000, and making some additional changes to the original order.

The full texts of the December 14, 2000, emergency order and the December 20, 2000, amendment are set forth as appendices to this notice.

Issued in Washington, D.C., on December 22, 2000.

Mark Schwartz,

Deputy General Counsel for Energy Policy.

The full text of the Secretary of Energy's December 14, 2000, emergency order is follows:

December 14, 2000.

Order Pursuant to Section 202(c) of the Federal Power Act

Pursuant to Section 202(c) of the Federal Power Act (16 U.S.C. 824a(c)) and 10 CFR 205.370, in this order I consider the question of whether an emergency exists in California by reason of a shortage of electric energy or of facilities for the generation or transmission of electric energy, or of fuel or water for generating facilities, or other causes, and whether to require by order such temporary connections of facilities and such generation, delivery, interchange, or transmission of electric energy as will best meet the emergency and serve the public interest. Because of a shortage of currently operational electric generation facilities, a shortage of water used to generate electricity, unusual volatility of electricity and natural gas markets, and for other reasons, California is experiencing an unexpected shortage of electric energy. Therefore, pursuant to Section 202(c) of the Federal Power Act, I find an emergency exists in California by reason of the shortage of electric energy.

Accordingly, I hereby order the entities listed in Attachment A to make arrangements to generate, deliver, interchange, and transmit electric energy when, as, and in such amounts as may be requested by the California Independent System Operator (California ISO), acting as agent for and on behalf of Scheduling Coordinators (as that term is defined in the California ISO tariff on file at the Federal Energy Regulatory Commission), consistent with the terms of this order. The entities listed in Attachment A are only required to sell electricity to the California ISO that is available in excess of electricity needed by each entity to render service to its firm customers.

This order is effective immediately and expires at 3:00 a.m., EST, December 21, 2000, unless altered or revoked by further order. However, the entities in Attachment A are not required to deliver energy or services under the terms of this order until 12 hours after the California ISO has filed with the Department of Energy (DOE) a signed certification that it has been unable to acquire in the market adequate supplies of electricity to meet system demand, and, as a consequence, it has, or reasonably anticipates, an ''inadequate fuel or energy supply'' as defined in 10 CFR 205.375. In order to continue to avail itself of this order, the California ISO is required to submit to DOE a further certification as set forth in the preceding sentence every twenty-four hours until the expiration of the order. The California ISO shall provide a signed copy of all certifications to the entities in Attachment A at the time it provides them to DOE.

The California ISO must inform each entity subject to this order of the amount and type of energy or services requested by 9:00 p.m., EST, the day before the requested service. In making requests for power pursuant to this order, to the extent feasible, the California ISO is directed to allocate those requests among the entities listed in Attachment A in proportion to each entity's available excess power.

The terms of any arrangement made between the entities subject to this order and the California ISO pursuant to this order are to be as agreed to by the parties. If no agreement as to terms can be reached, I will immediately prescribe the conditions of service and refer the rate issue to the Federal Energy Regulatory Commission for a determination at a later date by that agency in accordance with its standards and procedures, and will prescribe by supplemental order such rates as it finds to be just and reasonable.

Order

For the reasons set forth above, pursuant to Section 202(c) of the Federal Power Act, it is ordered that:

A. Consistent with the requirements set forth below, the entities listed on Attachment A will make arrangements to generate, deliver, interchange, and transmit electric energy when, as, and in such amounts as may be requested by the California Independent System Operator (California ISO), acting as agent for and on behalf of Scheduling Coordinators (as that term is defined in the California ISO tariff on file at the Federal Energy Regulatory Commission).

B. The entities listed in Attachment A are only required under the terms of this order to sell electricity to the ISO that is available in excess of electricity needed by each entity to render service to its firm customers.

C. This order is effective immediately and expires at 3:00 a.m., EST, December

21, 2000, unless altered or revoked by further order.

D. The entities in Attachment A are not required to deliver energy or services under the terms of this order until 12 hours after the California ISO has filed with the Department of Energy (DOE) a signed certification that it has been unable to acquire in the market adequate supplies of electricity to meet system demand, and, as a consequence, it has, or reasonably anticipates, an ''inadequate fuel or energy supply'' as defined in 10 CFR 205.375. In order to continue to avail itself of this order, the California ISO is required to submit to DOE a further certification as set forth in the preceding sentence every twenty-four hours until the expiration of the order. This certification should be submitted to Paul Carrier, Department of Energy, Office of Energy Emergencies, Office of Policy, PO–5, 1000 Independence Avenue, S. W., Washington, D.C. 20585, (202) 586–5659, fax: (202) 586–5391, e-mail: Paul.Carrier@hq.doe.gov. The California ISO shall provide a copy of all certifications to the entities in Attachment A at the time it provides them to DOE.

E. The California ISO must inform each entity subject to this order of the amount and type of energy or services requested by 9:00 p.m., EST, the day before the requested service. In making requests for power pursuant to this order, to the extent feasible, the California ISO is directed to allocate those requests among the entities listed in Attachment A in proportion to each entity's available excess power.

F. The terms of any arrangement made between the entities subject to this order and the California ISO pursuant to this order are to be as agreed to by the parties. If no agreement as to terms can be reached, I will immediately prescribe the conditions of service and refer the rate issue to the Federal Energy Regulatory Commission for a determination at a later date by that agency in accordance with its standards and procedures, and will prescribe by supplemental order such rates as it finds to be just and reasonable.

Issued in Washington, DC, on December 14, 2000.

Bill Richardson,

Secretary.

The following entities are listed in Attachment A to the order (not reproduced in full here):

American Electric Power Services, Houston, TX.
Aquila Power Corporation, Kansas City, MO.
Arizona Electric Power Cooperative.
Arizona Public Service Company, Phoenix, AZ.
Automated Power Exchange, Inc., Santa Clara, CA.
Avista Energy, Spokane, WA.
Bonneville Power Administration.
California Department of Water Resources.
California Polar Brokers, LLC, San Francisco, CA.
California Power Exchange, Alhambra, CA.
Cargill-Alliant, LLC, Minnetonka, MN.
Citizens Power Sales, Boston, MA.
City of Anaheim, CA.
City of Azusa, CA.
City of Banning, CA.
City of Burbank, CA.
City of Glendale, CA.
City of Pasadena, CA.
City of Riverside, CA.
City of Seattle, WA.
City of Shasta Lake, CA.
City of Vernon, CA.
Colorado River Storage Project, CO.
Constellation Power Source, Baltimore, MD.
Coral Power, L.L.C., San Diego, CA.
Duke Energy Trading & Marketing, L.L.C., Salt Lake City, UT.
Dynegy Power Marketing Inc., Houston, TX.
Edison Mission Marketing & Trading, Inc., Irvine, CA.
Edison Source, City of Industry, CA.
El Paso Electric Company, El Paso, TX.
El Paso Merchant Energy, Houston, TX.
Enron Energy Services, Houston, TX.
Enron Power Marketing, Inc., Portland, OR.
FPL Energy Power Marketing, Inc., North Palm Beach, FL.
Grant County Public Utility District, Ephrata, WA.
Hafslund Energy Trading, Seattle, WA.
Idaho Power Company, Boise, ID.
Illinova Energy Partners, Inc., Oak Brook, IL.
Koch Energy Trading, Inc., Houston, TX.
LA Department of Water & Power, Los Angeles, CA.
LG & E Energy Marketing, Inc., Louisville, KY.
Merchants Energy Group of the Americas, Annapolis, MD.
Mieco, Inc., Long Beach, CA.
Modesto Irrigation District, CA.
Nevada Power Company, Las Vegas, NV.
New Energy, Inc., Boston, MA.
Northern California Power Agency, Roseville, CA.
PacifiCorp, Portland, OR.
PacifiCorp Power Marketing, Inc., Portland, OR.
PECO, King of Prussia, PA.
PG & E, San Francisco, CA.
PG & E Energy Trading, Bethesda, MD.
Portland General Electric Company, Portland, OR.
Power Resource Managers, L.L.C., Bellevue, WA.
PP & L Montana, Butte, MT.
Public Service Company of Colorado, Denver, CO.
Public Service Company of New Mexico, Albuquerque, NM.
Public Utility District No. 1 of Douglas County, E. Wenatchee, WA.
Puget Sound Energy, Bellevue, WA.
Reliant Energy Services, Houston, TX.
Sacramento Municipal Utilities, CA.
Salt River Project, Phoenix, AZ.
San Diego Gas & Electric, CA.
Sempra Energy Trading, Stamford, CT.
Sierra Pacific Power Company, Reno, NV.
Silicon Valley Power, Santa Clara, CA.
Southern California Edison, Rosemead, CA.
Southern Company Energy Marketing, Atlanta, GA.
Strategic Energy, Ltd., Pittsburgh, PA.
Tacoma City Light, WA.
Tucson Electric Power, Tucson, AZ.
Washington Water Power, Spokane, WA.
Western Area Lower Colorado, Phoenix, AZ.
Western Area Power Administration.
Williams Energy Marketing and Trading, Tulas, OK.

The full text of the Secretary's December 20, 2000, emergency order is follows:

December 20, 2000.

Amended Order Pursuant to Section 202(c) of the Federal Power Act

On December 14, 2000, pursuant to Section 202(c) of the Federal Power Act (16 U.S.C. 824a(c)) and 10 CFR 205.370, because of a shortage of currently operational electric generation facilities, a shortage of water used to generate electricity, unusual volatility of electricity and natural gas markets, and for other reasons, I determined that California was experiencing an unexpected shortage of electric energy. Therefore, pursuant to Section 202(c) of the Federal Power Act, I found an emergency existed in California by reason of the shortage of electric energy, and issued an order requiring entities listed in the order to make arrangements to generate, deliver, interchange, and transmit electric energy when, as, and in such amounts as may be requested by the California Independent System Operator (California ISO).

I find that the circumstances which led to my previous determination that California was experiencing a shortage of electric energy continue and hereby extend the Section 202(c) emergency order until 3:00 a.m., EST December 28, 2000. In addition, I am changing the order such that the entities listed in the order are not required to deliver energy or services to the California ISO until 8 hours after the California ISO submits its certification to the entities. Further, I am deleting the first sentence of Ordering Paragraph E of the December 14, 2000, order and requiring the California ISO to request, at the time of certification from the entities from which it is seeking energy and services, information on the availability of resources subject to the order. This information must be supplied to the California ISO within 6 hours of certification.

All other terms of the December 14, 2000, order remain the same and in effect.

Order

For the reasons set forth above, pursuant to Section 202(c) of the Federal Power Act, it is ordered that:

G. Ordering Paragraph C of the ''Order pursuant to Section 202(c) of the Federal Power Act'' (the Order), dated December 14, 2000, is amended to read as follows: ''This order is effective immediately and expires at 3:00 a.m., EST, December 28, 2000, unless altered or revoked by further order.''

H. Ordering Paragraph D of the Order is amended by striking the number ''12'' and inserting in its place the number ''8''.

I. Ordering Paragraph E of the Order is amended by striking the first sentence thereof and inserting the following sentence: ''The California ISO must seek information from entities subject to the terms of this order, from which the California ISO seeks to obtain energy and services, at the time of certification and the entities must respond within 6 hours.''.

Issued in Washington, D.C., on December 20, 2000.

Bill Richardson,

Secretary.

[FR Doc. 00–33310 Filed 12–28–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board, Open Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Secretary of Energy Advisory Board's Task Force on the Department of Energy's Nonproliferation Programs in Russia. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), requires that agencies publish these notices in the **Federal Register** to allow for public participation. The purpose of the meeting is to discuss the Task Force's review of the Department of Energy's nonproliferation programs in Russia.

DATES: Wednesday, January 10, 2001, 10:00 AM–11:15 AM, Eastern Standard Time.

ADDRESSES: U.S. Department of Energy, Room 1E–245, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585. Note: Members of the public are requested to contact the Office of the Secretary of Energy Advisory Board at (202) 586–7092 in advance of the meeting (if possible), to expedite their entry to the meeting site on the day of the meeting. Public participation is welcomed.

FOR FURTHER INFORMATION CONTACT: Mary Louise Wagner, Executive Director, Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–7092 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION: The purpose of the Task Force on the Department of Energy's Nonproliferation Programs in Russia is to provide independent external advice and recommendations to the Secretary of Energy Advisory Board on the policy priorities established by the Department of Energy to pursue nonproliferation and nuclear safety programs in the Russian Federation. Special emphasis will be placed on program areas that may not have been addressed in the past. The Task Force will focus on assessing the performance of DOE's programs in achieving national security and nonproliferation missions, as well as providing policy recommendations on how the Department can be most effective in supporting U.S. national security interests. The Task Force will investigate, but will not be limited to, the following programs: (1) Initiatives for Nonproliferation, (2) Nuclear Cities Initiative, (3) Material Protection Control and Accounting Program, (4) Second Line of Defense Program, (5) Highly Enriched Uranium (HEU) Purchase Agreement, (6) Plutonium Disposition Program, and (7) International Nuclear Safety Program.

Tentative Agenda

The meeting will include presentations on the key findings and recommendations contained in the Task Force's draft final report entitled, An Evaluation of DOE's Nonproliferation Programs With Russia. Members of the Public wishing to comment on the key findings and recommendation contained in the Task Force's draft final report will have an opportunity to address the Task Force during the scheduled public comment period. Copies of subject report will be available at the meeting and may be obtained at that time from the Secretary of Energy Advisory Board's web site located at http://www.hr.doe.gov/seab/ or by calling (202) 586–7092.

Wednesday, January 10, 2001 from 10:00–11:15 AM

10:00 AM–10:10 AM—Opening Remarks.
10:10 AM–10:30 AM—Presentation of Key Finding.
10:30 AM–10:45 AM— Member Comment.
10:45 AM–11:00 AM—Public Comment.
11:00 AM–11:10 AM—Task Force Action & Closing Remarks.

This tentative agenda is subject to change. The final agenda will be available at the meeting.

Public Participation

In keeping with procedures, members of the public are welcome to observe the business of the Task Force on the Department of Energy's Nonproliferation Programs in Russia and comment during the scheduled public comment period or provide written comments. The Chairman of the Task Force is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its open meeting, the Task Force welcomes public comment. Members of the public will be heard in the order in which they sign in at the beginning of the meeting. The Task Force will make every effort to hear the views of all interested parties. Written comments should be submitted by no later than Januray 16, 2001 to Mary Louise Wagner, Executive Director, Secretary of Energy Advisory Board, AB–1, US Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585. This notice is being published less than 15 days before the date of the meeting due to the late resolution of programmatic issues.

Minutes

A copy of the minutes and a transcript of the open meeting will be made

available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between 9:00 AM and 4:00 PM, Monday through Friday except Federal holidays. Further information on the Secretary of Energy Advisory Board and its subcommittees may be found at the Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, D.C., on December 22, 2000.

Carol Anne Kennedy,

Acting Advisory Committee Management Officer.

[FR Doc. 00–33309 Filed 12–28–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2927–004; 2928–004]

Aquamac Corporation; Merrimac Paper Company, Inc.; Notice of Availability of Final Environmental Assessment

December 21, 2000.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the applications for new licenses for the Aquamac and Merrimac Hydroelectric Projects, located on the Merrimack River in the city of Lawrence, Essex County, Massachusetts, and has prepared a Multiple Project Environmental Assessment (MPEA) for the projects.

On October 15, 1999, the Commission staff issued and distributed to all parties a draft MPEA on the projects, and requested that comments be filed with the Commission within 30 days. Comments were filed and are addressed in the final MPEA.

This final MPEA contains the staff's analysis of the potential environmental impacts of the projects and concludes that licensing the projects, with appropriate environmental measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the final MPEA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–33325 Filed 12–28–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–389–000]

Calumet Energy Team, LLC; Notice of Issuance of Order

December 22, 2000.

Calumet Energy Team, LLC (Calumet) submitted for filing a rate schedule under which Calumet will engage in wholesale electric power and energy transactions at market-based rates. Calumet also requested waiver of various Commission regulations. In particular, Calumet requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Calumet.

On December 12, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Calumet 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).

Absent a request for hearing within this period, Calumet is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Calumet's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 12, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order 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. 00–33318 Filed 12–28–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–1523–046, et al.; Docket No. ER01–512–002]

Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York Inc., Long Island Lighting Company, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation; Notice of Filing

December 21, 2000.

Take notice that on December 15, 2000, the Members of the Transmission Owners Committee of the Energy Association of New York State, formerly known as the Member Systems of the New York Power Pool (Member Systems), tendered for filing an addition to a revised transmission service agreement submitted on November 27, 2000. The Member Systems state that these tariff sheets are in compliance with the Commission's October 26, 2000 order in this proceeding. *Central Hudson Gas & Electric Corp., et al.,* 93 FERC ¶61,091 (2000).

A copy of the filing was served upon all persons on the offical service list in the captioned proceeding.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before January 9, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on

file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–33326 Filed 12–26–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER97–1523–046 and ER01–512–001]

Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric & Gas Corporation, et al., Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation; Notice of Filing

December 21, 2000.

Take notice that on December 15, 2000, the Members of the Transmission Owners Committee of the Energy Association of New York State, formerly known as the Members Systems of the New York Power Pool (Member Systems), tendered for filing four additional documents to a revised transmission service agreement submitted on November 27, 2000. The Member Systems state that these tariff sheets are in compliance with the Commission's October 26, 2000 order in this proceeding. *Central Hudson Gas & Electric Corp., et al.*, 93 FERC ¶ 61,091 (2000).

A copy of the filing was served upon all persons on the official service list in the captioned proceedings.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before January 5, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–33327 Filed 12–28–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

December 21, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License.

b. *Project No.:* 2680–061.

c. *Date Filed:* November 13, 2000.

d. *Applicant:* Consumers Energy Company (Consumers) and Detroit Edison Company (Detroit Edison).

e. *Name of Project:* Ludington Pumped Storage Project.

f. *Location:* The eastern shore of Lake Michigan, in the City of Ludington, in Mason, Oceana, Newaygo, Muskegon, and Ottawa Counties, Michigan.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant's Contact:* Mr. William M. Lange, Consumers Power Corporation, 1016 16th Street, NW., Suite 100, Washington, DC 20036, (202) 293–5795; and John H. Flynn and Raymond O. Sturdy, Detroit Edison Company, 2000 Second Ave., Detroit, MI 48226.

i. *FERC Contact:* Any questions on this notice should be addressed to Doan Pham at (202) 219–2851 or e-mail address *doan.pham@ferc.fed.us.*

j. *Deadline for filing comments, motions to intervene, or protests:* January 29, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Please include the Project Number (2680–061) on any comments, protests, or motions filed.

k. Description of Amendment: Consumers and Detroit Edison filed an application to delete the following project facilities from the license: (1) A 70-mile, 345-kilovolt (kv) transmission line, extending from the Ludington switchyard to Consumers' Kenowa substation; and (2) the Ludington switchyard. The licensees state these facilities are part of their interconnected system and are no longer necessary for project's operation and maintenance. This proposal does not affect any federal lands.

l. Locations of the Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC, 20426, or by calling (202) 208–1371. This filing may be viewed on *http://www.ferc.fed.us/online/rims.htm* (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the addresses in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative

of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–33328 Filed 12–28–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–468–000]

Dominion Energy Marketing, Inc.; Notice of Issuance of Order

December 22, 2000.

Dominion Energy Marketing, Inc. (Dominion) submitted for filing a rate schedule under which Dominion will engage in wholesale electric power and energy transactions at market-based rates. Dominion also requested waiver of various Commission regulations. In particular, Dominion requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Dominion.

On December 15, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Dominion 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).

Absent a request for hearing within this period, Dominion is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Dominion's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 16, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order 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. 00–33319 Filed 12–28–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–95–000 and ER01–95–001]

Miami Valley Lighting, Inc.; Notice of Issuance of Order

December 22, 2000.

Miami Valley Lighting, Inc. (Miami Valley) submitted for filing a rate schedule under which Miami Valley will engage in wholesale electric power and energy transactions at market-based rates. Miami Valley also requested waiver of various Commission regulations. In particular, Miami Valley requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Miami Valley.

On December 15, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Miami Valley 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).

Absent a request for hearing within this period, Miami Valley is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither the public nor private interests will be adversely affected by continued approval of Miami Valley's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 16, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order 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. 00–33316 Filed 12–28–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES01–13–000]

Midwest Independent Transmission System Operator; Notice of Application

December 22, 2000.

Take notice that on December 15, 2000, the Midwest Independent Transmission System Operator submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue long-term senior notes in an amount not to exceed $100 million.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and

385.214). All such motions and protests should be filed on or before January 12, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–33320 Filed 12–28–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–51–000]

The Montana Power Company, the Montana Power, L.L.C.; Notice of Application to Transfer Natural Gas Act Section 3 Authorization and Presidential Permit

December 22, 2000.

Take notice that on December 18, 2000, The Montana Power Company (MPC), 40 East Broadway, Butte, Montana 59701, and The Montana Power, L.L.C. (LLC), 40 East Broadway, Butte, Montana 59701, tendered for filing an application to transfer from MPC to LLC natural Gas Act Section 3 authorization and a Presidential Permit to use and operate MPC's Whitlash, Montana border facilities so as to effectuate a change in MPC's legal form. The details of the request are more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may be viewed at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

The border facilities to be transferred consist of that portion of the 16-inch pipeline, extending approximately 52.3 miles from Cut Bank, Montana, to the international boundary between the United States and Canada in Northwest ¼, Northwest ¼ of Section 1, Township 37 North, Range 3 East in Toole County, Montana, where it connects with a 16-inch Canadian Montana Pipeline Company pipeline extending north to Pakowki Lake area in the Province of Alberta, Canada.

Questions regarding the details of this proposed project should be directed to William A. Pascoe, Vice-President—Transmission Services, The Montana Power Company, 40 East Broadway, Butte, Montana 59701, (406) 497–4212 (telephone) and (406) 497–2150 (fax); Douglas M. Canter, McCarthy, Sweeney & Harkaway, P.C., 2175 K Street, N.W. Suite 600, Washington, D.C. 20037, (202) 393–5710 (telephone) and (202) 393–5721 (fax); or Marjorie L. Thomas, Legal Department, The Montana Power Company, 40 East Broadway, Butte, Montana 59701, (406) 497–2314 (telephone) and (406) 497–2451 (fax).

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before January 22, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene 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 NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–33322 Filed 12–28–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–631–002]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

December 22, 2000.

Take notice that on November 20, 2000, Natural Gas Pipeline Company of America (Natural) tendered its compliance filing with the Commission's Order on Filings to Establish Imbalance Netting and Trading Pursuant to Order Nos. 587–G and 587–L [93 FERC ¶ 61,093 (2000)] issued on October 27, 2000 (October 27 Order).

Natural states that the purpose of this filing is to comply with the requirements of the October 27 Order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before December 29, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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). Comments and protests may be filed electronically via the internet in lie of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–33321 Filed 12–28–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–352–000]

Natural Gas Trading Corporation; Notice of Issuance of Order

December 22, 2000.

Natural Gas Trading Corporation (NGTC) submitted for filing a rate schedule under which NGTC will engage in wholesale electric power and energy transactions at market-based rates. NGTC also requested waiver of various Commission regulations. In particular, NGTC requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by NGTC.

On December 13, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by NGTC should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, NGTC is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of NGTC's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 16, 2001.

Copies of the full test of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, DC 20426. The Order 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. 00–33317 Filed 12–28–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Notice Establishing Technical Conference

[San Diego Gas & Electric Company, Complaint, v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents; Investigation of Practices of the California Independent System Operator and the California Power Exchange, Public Meeting in San Diego, California; Reliant Energy Power Generation, Inc., Dynegy Power Marketing, Inc., and Southern Energy California, L.L.C., Complaints, v. California Independent System Operator Corporation, Respondent; California Electricity Oversight Board, Complainant, v. All Sellers of Energy and Ancillary Services Into the Energy and Ancillary Services Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents; California Municipal Utilities Association, Complainant, v. All Jurisdictional Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents; Californians for Renewable Energy, Inc. (CARE), Complainant, v. Independent Energy Producers, Inc., and All Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange; All Scheduling Coordinators Acting on Behalf of the Above Sellers; California Independent System Operator Corporation; and California Power Exchange Corporation, Respondents; Puget Sound Energy, Inc., Complainant, v. All Jurisdictional Sellers of Energy and/or Capacity at Wholesale Into Electric Energy and/or Capacity Markets in the Pacific Northwest, Including Parties to the Western Systems Power Pool Agreement, Respondents; Docket Nos. EL00–95–000, EL00–95–002 and EL00–95–003; EL00–98–000, EL00–98–002 and EL00–98–003; EL00–107–000; EL00–97–000; EL00–104–000; EL01–1–000; EL01–2–000; EL01–10–000]

On December 15, 2000, the Commission issued an order [1] in Docket Nos. EL00–95–000, EL00–95–002, and EL00–95–003, *et al.*, requiring, among other things, a technical conference on the development of market monitoring procedures for the markets involving the California Independent System Operator. The technical conference required by the December 15, 2000 order will convene at 9:30 a.m. on January 23, 2001, at 888 First Street, NE., Washington, DC, in the Commission meeting room, Room 2C. If necessary, the conference will continue through 5:30 p.m. of the same day. All parties of record and other interested parties are welcome to attend.

Any questions concerning the conference should be directed to Scott Miller at (202) 208–2171 or Andrea Wolfman at (202) 208–2097.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–33323 Filed 12–28–00; 8:45 am]

BILLING CODE 6717–01–M

[1] San Diego Gas & Electric, Complainant, v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents, *et al.* 93 FERC ¶ 61,294 (2000).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG01–52–000, et al.]

Morgantown OL 1 LLC, et al.; Electric Rate and Corporate Regulation Filings

December 20, 2000.

Take notice that the following filings have been made with the Commission:

1. Morgantown OL1 LLC

[Docket No. EG01–52–000]

Take notice that on December 15, 2000, Morgantown OL1 LLC, c/o Wilmington Trust Company, Rodney Square North, 1100 North Market Street, Wilmington, DE 19890–0001, Attn: Corporate Trust Administration (Applicant), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant is a Delaware special purpose limited liability company that intends to acquire an undivided ownership interest in the coal/oil-fired Units 1 and 2 located at the Morgantown Station located near Newburg, Maryland (the Morgantown Units). The Morgantown Units have an aggregate generating capacity of approximately 1164 MW. Applicant will be engaged directly and exclusively in the business of owning all or part of one or more eligible facilities and selling electric energy at wholesale.

Comment date: January 10, 2001, 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. Morgantown OL2 LLC

[Docket No. EG01–53–000]

Take notice that on December 15, 2000, Morgantown OL2 LLC, c/o Wilmington Trust Company, Rodney Square North, 1100 North Market Street, Wilmington, DE 19890–0001, Attn: Corporate Trust Administration (Applicant), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant is a Delaware special purpose limited liability company that intends to acquire an undivided ownership interest in the coal/oil-fired Units 1 and 2 located at the Morgantown Station located near Newburg, Maryland (the Morgantown Units). The Morgantown Units have an aggregate generating capacity of approximately 1164 MW. Applicant will be engaged directly and exclusively in the business of owning all or part of one or more eligible facilities and selling electric energy at wholesale.

Comment date: January 10, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Morgantown OL3 LLC

[Docket No. EG01–54–000]

Take notice that on December 15, 2000, Morgantown OL3 LLC, c/o Wilmington Trust Company, Rodney Square North, 1100 North Market Street, Wilmington, DE 19890–0001, Attn: Corporate Trust Administration (Applicant), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant is a Delaware special purpose limited liability company that intends to acquire an undivided ownership interest in the coal/oil-fired Units 1 and 2 located at the Morgantown Station located near Newburg, Maryland (the Morgantown Units). The Morgantown Units have an aggregate generating capacity of approximately 1164 MW. Applicant will be engaged directly and exclusively in the business of owning all or part of one or more eligible facilities and selling electric energy at wholesale.

Comment date: January 10, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Morgantown OL4 LLC

[Docket No. EG01–55–000]

Take notice that on December 15, 2000, Morgantown OL4 LLC, c/o Wilmington Trust Company, Rodney Square North, 1100 North Market Street, Wilmington, DE 19890–0001, Attn: Corporate Trust Administration Applicant), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant is a Delaware special purpose limited liability company that intends to acquire an undivided ownership interest in the coal/oil-fired Units 1 and 2 located at the Morgantown Station located near Newburg, Maryland (the Morgantown Units). The Morgantown Units have an aggregate generating capacity of approximately 1164 MW. Applicant will be engaged directly and exclusively in the business of owning all or part of one or more eligible facilities and selling electric energy at wholesale.

Comment date: January 10, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Morgantown OL5 LLC

[Docket No. EG01–56–000]

Take notice that on December 15, 2000, Morgantown OL5 LLC, c/o Wilmington Trust Company, Rodney Square North, 1100 North Market Street, Wilmington, DE 19890–0001, Attn: Corporate Trust Administration (Applicant), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant is a Delaware special purpose limited liability company that intends to acquire an undivided ownership interest in the coal/oil-fired Units 1 and 2 located at the Morgantown Station located near Newburg, Maryland (the Morgantown Units). The Morgantown Units have an aggregate generating capacity of approximately 1164 MW. Applicant will be engaged directly and exclusively in the business of owning all or part of one or more eligible facilities and selling electric energy at wholesale.

Comment date: January 10, 2001, 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.

6. Morgantown OL6 LLC

[Docket No. EG01–57–000]

Take notice that on December 15, 2000, Morgantown OL6 LLC, c/o Wilmington Trust Company, Rodney Square North, 1100 North Market Street, Wilmington, DE 19890–0001, Attn: Corporate Trust Administration (Applicant), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant is a Delaware special purpose limited liability company that intends to acquire an undivided ownership interest in the coal/oil-fired Units 1 and 2 located at the Morgantown Station located near Newburg, Maryland (the Morgantown Units). The Morgantown Units have an aggregate generating capacity of approximately 1164 MW. Applicant will be engaged directly and exclusively in the business of owning all or part of one or more eligible facilities and selling electric energy at wholesale.

Comment date: January 10, 2001, 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.

7. Morgantown OL7 LLC

[Docket No. EG01–58–000]

Take notice that on December 15, 2000, Morgantown OL7 LLC, c/o Wilmington Trust Company, Rodney Square North, 1100 North Market Street, Wilmington, DE 19890–0001, Attn: Corporate Trust Administration (Applicant), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant is a Delaware special purpose limited liability company that intends to acquire an undivided ownership interest in the coal/oil-fired Units 1 and 2 located at the Morgantown Station located near Newburg, Maryland (the Morgantown Units). The Morgantown Units have an aggregate generating capacity of approximately 1164 MW. Applicant will be engaged directly and exclusively in the business of owning all or part of one or more eligible facilities and selling electric energy at wholesale.

Comment date: January 10, 2001, 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.

8. Dickerson OL1 LLC

[Docket No. EG01–59–000]

Take notice that on December 15, 2000, Dickerson OL1 LLC, c/o Wilmington Trust Company, Rodney Square North, 1100 North Market Street, Wilmington, DE 19890–0001, Attn: Corporate Trust Administration (Applicant), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant is a Delaware special purpose limited liability company that intends to acquire an undivided ownership interest in the coal/oil-fired Units 1 through 3 located at the Dickerson Station located in Montgomery County, Maryland (the Dickerson Units). The Dickerson Units have an aggregate generating capacity of approximately 546 MW. Applicant will be engaged directly and exclusively in the business of owning all or part of one or more eligible facilities and selling electric energy at wholesale.

Comment date: January 10, 2001, 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.

9. Dickerson OL2 LLC

[Docket No. EG01–60–000]

Take notice that on December 15, 2000, Dickerson OL2 LLC, c/o Wilmington Trust Company, Rodney Square North, 1100 North Market Street, Wilmington, DE 19890–0001, Attn: Corporate Trust Administration (Applicant), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant is a Delaware special purpose limited liability company that intends to acquire an undivided ownership interest in the coal/oil-fired Units 1 through 3 located at the Dickerson Station located in Montgomery County, Maryland (the Dickerson Units). The Dickerson Units have an aggregate generating capacity of approximately 546 MW. Applicant will be engaged directly and exclusively in the business of owning all or part of one or more eligible facilities and selling electric energy at wholesale.

Comment date: January 10, 2001, 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.

10. Dickerson OL3 LLC

[Docket No. EG01–61–000]

Take notice that on December 15, 2000, Dickerson OL3 LLC, c/o Wilmington Trust Company, Rodney Square North, 1100 North Market Street, Wilmington, DE 19890–0001, Attn: Corporate Trust Administration (Applicant), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant is a Delaware special purpose limited liability company that intends to acquire an undivided ownership interest in the coal/oil-fired Units 1 through 3 located at the Dickerson Station located in Montgomery County, Maryland (the Dickerson Units). The Dickerson Units have an aggregate generating capacity of approximately 546 MW. Applicant will be engaged directly and exclusively in the business of owning all or part of one or more eligible facilities and selling electric energy at wholesale.

Comment date: January 10, 2001, 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.

11. Dickerson OL4 LLC

[Docket No. EG01–62–000]

Take notice that on December 15, 2000, Dickerson OL4 LLC, c/o Wilmington Trust Company, Rodney Square North, 1100 North Market Street, Wilmington, DE 19890–0001, Attn: Corporate Trust Administration (Applicant), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant is a Delaware special purpose limited liability company that intends to acquire an undivided ownership interest in the coal/oil-fired Units 1 through 3 located at the Dickerson Station located in Montgomery County, Maryland (the Dickerson Units). The Dickerson Units have an aggregate generating capacity of approximately 546 MW. Applicant will be engaged directly and exclusively in the business of owning all or part of one or more eligible facilities and selling electric energy at wholesale.

Comment date: January 10, 2001, 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.

12. California Independent System Operator Corporation

[Docket No. ER01–313–001]

Take notice that on December 15, 2000, the California Independent System Operator Corporation (ISO) tendered for filing an Informational Filing containing information on the ISO's Operating Budget for 2001.

The ISO states that this filing has been served on the California Public Utilities Commission, all California ISO Scheduling Coordinators, and all parties on the official service lists maintained by the Secretary for the following dockets related to the Grid Management Charge: ER01–313–000, ER98–211–000, ER99–473–000, ER99–2730–000, EL99–47–000, and EL99–67–000.

Comment date: January 10, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. GridFlorida LLC, Florida Power & Light Co., Florida Power Corporation, Tampa Electric Co.

[Docket No. RT01–67–001]

Take notice that on December 15, 2000, Florida Power & Light Company, Florida Power Corporation, and Tampa Electric Company (collectively, the Applicants), pursuant to Sections 203 and 205 of the Federal Power Act, jointly filed a supplement to their October 16, 2000 Order No. 2000 compliance filing providing for the creation of a Regional Transmission Organization (RTO). The Applicants propose to form GridFlorida LLC, a for profit transmission company that will act as the RTO for the Florida Reliability Coordinating Council region.

Comment date: January 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Citizens Utilities Company

[Docket Nos. EL01–20–000, ER95–1586–006, EL96–17–002 and OA96–184–004]

Take notice that on December 14, 2000, Citizens Communications Company (Citizens) submitted for filing, pursuant to the Commission's November 12, 1997 Letter order (approving settlement) in the above-captioned dockets (81 FERC ¶ 61,197 (1997), a final Audit Report in

Compliance with Settlement Agreement. In addition, take notice that Citizens also filed on December 14, 2000 a Motion to Establish Hearings, and Petition for Declaratory Order.

The Final Audit Report filed by Citizens was conducted pursuant to a settlement in the above-captioned dockets. Citizens contests the results of the Final Audit Report. Accordingly, Citizens has included in its filing a motion to establish hearings to review the recommendations of the Final Audit Report, and a Petition for Declaratory Order that Citizens may recoup, with interest, any refunds or rate reductions made under the settlement that are subsequently found by the Commission to be in excess of the appropriate amount.

Comment date: January 4, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. U.S. Department of Energy, Bonneville Power Administration

[Docket No. EF01–2021–000]

Take notice that on December 14, 2000, the Bonneville Power Administration (Bonneville), tendered for filing proposed rate adjustments for its 2002 transmission and ancillary rates pursuant to section 7(a)(2) of the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 839e(a)(2). Pursuant to Commission regulation 300.21, 18 CFR 300.21, Bonneville seeks final confirmation and approval of the proposed transmission and ancillary services effective October 1, 2001.

Bonneville requests approval for the period October 1, 2001 through September 30, 2003, for the following proposed transmission and ancillary services rates: Formula Power Transmission Rate (FPT–01.1); Formula Power Transmission Rate (FP–02.3); Integration of Resources Rate (IR–02); Network Integration Rate (NT–02); Point-to-Point Rate (PTP–02); Southern Intertie Rate (IS–02); Montana Intertie Rate (IM–02); Use-Of-Facilities Transmission Rate (TGT092); Eastern Intertie Rate (IE–02); and Ancillary Services and Control Areas Services Rate (ACS–02). In addition, Bonneville requests approval of General Rate Schedule Provisions for transmission and Ancillary Service Rates (GRSPs) for the period of October 1, 2001, through September 30, 2003. The GRSPs will apply to the 2002 transmission and ancillary services rate. The above rates propose an increase from the current rates for combined long-term transmission service and certain ancillary services on the Bonneville Network that range from approximately 7.0% to 24.3%. The rate increase for the Utility Delivery segment is 24.3%. The rate increase for combined long-term transmission service and certain ancillary services on the Southern Intertie is approximately 9.0%. Bonneville requests final approval of the proposed 2002 transmission and ancillary services rates discussed above be granted by June 30, 2001.

Bonneville also requests a finding by the Commission that the rate adjustments to the following transmission and ancillary services rates and rate provisions associated with its Open Access Transmission Tariff satisfy the Commission's comparability standards applicable to non-public utilities pursuant to the reciprocity conditions of Order 888 and 18 CFR 35.28(a): Network Integration Rate (NT–01); Point-to-Point Rate (PTP–02); Southern Intertie Rate (IS–02); Montana Intertie Rate (IM–02); Use-Of-Facilities Transmission Rate (UFT–02); Advance Funding Rate (AF–02); Ancillary Services and Control Area Services Rate (ACS–02); and GRSPs.

Comment date: January 10, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–33314 Filed 12–28–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG01–29–000, et al.]

STI Capital Company, et al.; Electric Rate and Corporate Regulation Filings

December 22, 2000.

Take notice that the following filings have been made with the Commission:

1. STI Capital Company

[Docket No. EG01–29–000]

Take notice that on December 20, 2000, STI Capital Company, 2200 Pacific Coast Highway, San Diego, California 92101 (STI), filed with the Federal Energy Regulatory Commission (Commission) an Amendment to its November 9, 2000 Application for Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's Regulations and Section 32 of the Public Utility Holding Company Act, as amended (the Application).

The Application seeks a determination that STI qualifies for Exempt Wholesale Generator status. The purpose of the Amendment is to clarify STI's transactions with its corporate parent and its position in that regard.

Comment date: January 8, 2001, 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. Reliant Energy Aurora, LP

[Docket No. EG01–63–000]

Take notice that on December 15, 2000, Reliant Energy Aurora, LP, (Reliant Aurora) tendered for filing an application for a determination of exempt wholesale generator status, pursuant to Section 32 (a)(1) of the Public Utility Holding Company Act of 1935, as amended, (PUHCA), 15 U.S.C. 79z–5a (1994), and Subchapter T, Part 365 of the regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR Part 365.

Reliant Aurora is a Delaware limited partnership and proposes to construct, own and operate a generation facility in DuPage County, Illinois.

Comment date: January 11, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Hunlock Creek Energy Ventures

[Docket No. EG01–64–000]

Take notice that on December 15, 2000, Hunlock Creek Energy Ventures (Energy Ventures) filed with the Federal Energy Regulatory Commission an application for determination that it meets the requirements for exempt wholesale generator status pursuant to Part 365 of the Commission's regulations. Energy Ventures owns and operates the Hunlock Power Station, a coal-fired electric generating facility with a continuous net capacity of 48 MW, and a 44 MW combustion turbine generating facility on the Hunlock site. Energy Ventures is an affiliate of UGI Utilities, Inc., Allegheny Energy Supply Company, LLC, Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company.

Comment date: January 11, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Duke Energy Hinds, LLC

[Docket No. EG01–65–000]

Take notice that on December 15, 2000, Duke Energy Hinds, LLC (Duke Hinds) tendered for filing pursuant to Section 205 of the Federal Power Act its proposed FERC Electric Tariff No. 1.

Duke Hinds seeks authority to sell energy and capacity, as well as ancillary services, at market-based rates, together with certain waivers and preapprovals. Duke Hinds also seeks authority to sell, assign, or transfer transmission rights that it may acquire in the course of its marketing activities. Duke Hinds seeks an effective date sixty (60) days from the date of filing for its proposed rate schedules.

Comment date: January 11, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. IPP Energy LLC

[Docket No. EG01–66–000]

Take notice that on December 15, 2000, IPP Energy LLC (IPP), a limited liability company organized under the laws of the state of Delaware, 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.

IPP states that it will be engaged directly and exclusively in the business of owning and operating a 55 MW natural gas fired electric generating facility and related assets in Binghamton, New York. IPP will sell its capacity exclusively at wholesale. A copy of the filing was served upon the Securities and Exchange Commission and the New York State Public Service Commission

Comment date: January 11, 2001, 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.

6. Tiverton Power Associates Limited Partnership

[Docket No. EG01–67–000]

Take notice that on December 18, 2000, Tiverton Power Associates Limited Partnership (Applicant) filed with the Federal Energy Regulatory Commission an Application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations. Applicant, a Rhode Island Limited Partnership, proposes to hold a leasehold interest in and market exclusively at wholesale the output of an approximately 265–MW natural gas-fired electric generation facility near Tiverton, Rhode Island.

Comment date: January 11, 2001, 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.

7. Rumford Power Associates Limited Partnership

[Docket No. EG01–68–000]

Take notice that on December 18, 2000, Rumford Power Associates Limited Partnership (Applicant) filed with the Federal Energy Regulatory Commission an Application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations. Applicant, a Maine Limited Partnership, proposes to hold a leasehold interest in and market exclusively at wholesale the output of an approximately 265-MW natural gas-fired electric generation facility near Rumford, Maine.

Comment date: January 11, 2001, 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.

8. PMCC Calpine New England Investment LLC

[Docket No. EG01–69–000]

Take notice that on December 19, 2000, PMCC Calpine New England Investment LLC (Applicant) filed with the Federal Energy Regulatory Commission an application for Commission determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations. Applicant is a Delaware limited liability company formed for the benefit of PMCC Calpine NEIM LLC, a Delaware limited liability company, to purchase and hold legal title to two approximately 265 megawatt natural gas-fired electric generating facilities.

Comment date: January 11, 2001, 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.

9. PMCC Calpine New England Investment LLC

[Docket No. EG01–70–000]

Take notice that on December 19, 2000, PMCC Calpine New England Investment LLC (Applicant) filed with the Federal Energy Regulatory Commission an application for Commission determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations. Applicant is a Delaware limited liability company formed for the benefit of PMCC Calpine NEIM LLC, a Delaware limited liability company, to purchase and hold legal title to two approximately 265 megawatt natural gas-fired electric generating facilities.

Comment date: January 11, 2001, 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.

10. Canal Electric Company

[Docket No. ER00–3766–001]

Take notice that on December 18, 2000, Canal Electric Company (Canal) filed the second restated sixth amendment (Second Restated Sixth Amendment) to the Power Contract between Canal and its retail affiliates Cambridge Electric Light Company (Cambridge) and Commonwealth Electric Company (Commonwealth) (Canal Rate Schedule FERC No. 33, the Seabrook Power Contract). This filing supplements Canal's filing made with the Commission on September 28, 2000, whereby it submitted the Restated Sixth Amendment.

The Second Restated Sixth Amendment provides for a buydown of the Seakbrook Power Contract by Cambridge and Commonwealth in furtherance of their efforts to mitigate transition costs, in compliance with the requirements of the Massachusetts Electric Industry Restructuring Act of 1997. Under the Second Restated Sixth Amendment, Cambridge will pay Canal the amount of $28,235,000, and Commonwealth will pay Canal the amount of $113,365,000, for a reduction in the Gross Plant Investment in the amount of $141,600,000. This buydown payment in the amount of $141,600,000 is a reduction from the buydown payment of $146,741,000 stated in the Restated Sixth Amendment. Canal has requested approval of the Restated Sixth Amendment for effect November 1, 2000.

Comment date: January 8, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. IPP Energy LLC

[Docket No. ER01–688–000]

Take notice that on December 15, 2000, IPP Energy LLC (IPP), tendered for filing an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting IPP's Electric Rate Schedule FERC No. 1 and accompanying Code of Conduct to be effective January 1, 2001.

IPP intends to engage in electric power and energy transactions as a marketer. In transactions where IPP sells electric energy, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party. IPP's proposed Rate Schedule also permits it to reassign transmission capacity and sell certain ancillary services at market-based rates.

Comment date: January 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Merchant Energy Group of the Americas, Inc.

[Docket No. ER01–689–000]

Take notice that on December 15, 2000, Merchant Energy Group of the Americas, Inc. (MEGA), tendered for filing an amended FERC Electric Rate Schedule No. 1 (Rate Schedule) to sell ancillary services at market-based rates into New York Power Pool markets administered by the New York Independent System Operator (NYISO). Pursuant to the amended Rate Schedule, MEGA may sell Operating Reserves (Spinning Reserves, Ten Minute Non-Synchronous Reserves and Thirty Minute Operating Reserves) and Regulation and Frequency Response Service (load following), as defined in the NYISO tariff. MEGA also revises its Rate Schedule to include designations as required under Order No. 614.

MEGA requests waiver of the Commission's prior notice requirement to permit its amended Rate Schedule to be effective date of January 1, 2001.

Comment date: January 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Reliant Energy Aurora, LP

[Docket No. ER01–687–000]

Take notice that on December 15, 2000, Reliant Energy Aurora, LP (Reliant Aurora), tendered for filing pursuant to Rule 205 of the Commission's Rules of Practice and Procedure, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 authorizing Reliant Aurora to make sales at market-based rates. Reliant Aurora has requested this rate schedule become effective on the in service date Reliant Aurora of its DuPage County, Illinois generating facility.

Reliant Aurora intends to sell electric power at wholesale. In transactions where Reliant Aurora sells electric energy, it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Reliant Aurora's Rate Schedule provides for the sale of energy and capacity at agreed prices.

Comment date: January 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Duke Energy Hinds, LLC

[Docket No. ER01–691–000]

Take notice that on December 15, 2000, Duke Energy Hinds, LLC (Duke Hinds), tendered for filing pursuant to Section 205 of the Federal Power Act its proposed FERC Electric Tariff No. 1.

Duke Hinds seeks authority to sell energy and capacity, as well as ancillary services, at market based rates, together with certain waivers and preapprovals. Duke Hinds also seeks authority to sell, assign, or transfer transmission rights that it may acquire in the course of its marketing activities.

Duke Hinds seeks an effective date sixty (60) day from the date of filing for its proposed rate schedules.

Comment date: January 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. Duke Power a Division of Duke Energy Corporation

[Docket No. ER01–685–000]

Take notice that on December 15, 2000, Duke Power (Duke), a division of Duke Energy Corporation, tendered for filing a Service Agreement with Southern Company Energy Marketing, L.P. for power sales at market-based rates.

Duke requests that the proposed Service Agreement be permitted to become effective on December 13, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: January 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. Virginia Electric and Power Company

[Docket No. ER00–1737–002]

Take notice that on December 15, 2000, Virginia Electric and Power Company (the Company), tendered for filing a notice of change in status under its market-based rate authority to reflect the Company's acquisition of three qualifying cogeneration facilities and appurtenant transmission facilities. The cogeneration facilities include LG&E-Westmoreland Hopewell, LG&E-Westmoreland Altavista and LG&E-Westmoreland Southampton. The Company also requests to elect to notify the Commission of any future changes in status in its next three-year market analysis.

Comment date: January 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

17. American Electric Power Service Corporation

[Docket No. ER00–3688–002]

Take notice that on December 18, 2000, the American Electric Power Service Corporation (AEPSC), on behalf of the operating companies of the American Electric Power System (collectively AEP), tendered for filing a refund report in compliance with the Commission's order in American Electric Power Service Corporation, 93 FERC ¶ 61,151.

Comment date: January 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

18. Ameren Energy Development Company

[Docket No. ER01–294–001]

Take notice that on December 18, 2000, Ameren Energy Development Company (AED), tendered for filing

certain information intended to supplement its application for authorization to engage in the sale of electric energy and capacity at market-based rates filed on October 31, 2000, in the proceeding captioned above.

Comment date: January 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

19. WFEC GENCO, L.L.C.

[Docket No. ER01–388–001]

Take notice that on December 15, 2000, WFEC GENCO, L.L.C., tendered for filing its revised FERC Electric Tariff Original Volume No. 1 pursuant to the November 30, 2000 letter order of the Director of the Division of Corporate Applications in the above-captioned proceeding.

Comment date: January 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

20. AES NewEnergy, Inc.

[Docket No. ER01–507–001]

Take notice that on December 15, 2000, AES NewEnergy, Inc. (AES NewEnergy) tendered for filing an amendment to the Notice of Succession filed with the Commission on November 22, 2000 in the above-referenced docket.

Comment date: January 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

21. Wisconsin Electric Power Company

[Docket No. ER01–678–000]

Take notice that on December 12, 2000, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a Short-Term Firm Transmission Service Agreement and a Non-Firm Transmission Service Agreement between itself and Madison Gas and Electric Company (MG&E). The Transmission Service Agreements allow MG&E to receive transmission services under Wisconsin Energy Corporation Operating Companies' FERC Electric Tariff, Volume No. 1. Wisconsin Electric requests the Commission assign these service agreements as Nos. 188 and 189 under its Tariff.

Wisconsin Electric requests an effective date of May 1, 2002 coincident with MG&E's power supply transactions, Wisconsin Electric requests waiver of the Commission's notice requirements in order to accommodate MG&E's power supply transactions, Copies of the filing have been served on MG&E, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: January 3, 2001, in accordance with Standard Paragraph E at the end of this notice.

22. American Transmission Company

[Docket No. ER01–679–000]

Take notice that on December 14, 2000, American Transmission Company, LLC (ATCLLC), tendered for filing Generator Interconnection Agreements between ATCLLC and Edison Sault Electric Company for the following generators.

ATCLLC requests an effective date of January 1, 2001.

Comment date: January 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

23. Allegheny Energy Service Corporation, on Behalf of Monongahela Power Company, the Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER01–680–000]

Take notice that on December 15, 2000, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Notice of Cancellation of Service Agreement Nos. 19, 21 and 3 with Heartland Energy Services a customer under Allegheny Power's Standard Transmission Service Rate Schedule, Standard Generation Service Rate Schedule and Point-to-Point Transmission Service Tariff.

Allegheny Power has requested a waiver of notice to allow the cancellations to be effective June 14, 2000.

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, and the West Virginia Public Service Commission.

Comment date: January 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

24. American Transmission Systems, Inc.

[Docket No. ER01–681–000]

Take notice that on December 13, 2000, American Transmission Systems, Inc., tendered for filing a Service Agreement to provide Non-Firm Point to Point Transmission Service for the City of Cleveland, Department of Public Utilities, Division of Cleveland Public Power, the Transmission Customer. Services are being provided under the American Transmission Systems, Inc., Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER99–2647–000. The proposed effective date under the Service Agreement is December 11, 2000 for the above mentioned Service Agreement in this filing.

Comment date: January 4, 2001, in accordance with Standard Paragraph E at the end of this notice.

25. Western Resources, Inc

[Docket No. ER01–682–000]

Take notice that on December 13, 2000, Western Resources, Inc.(WR), tendered for filing a Service Agreement between WR and Southern Company Energy Marketing L.P. (Southern). WR states that the purpose of this agreement is to permit Southern to take service under WR Market Based Power Sales Tariff on file with the Commission.

This agreement is proposed to be effective December 1, 2000.

Copies of the filing were served upon Southern and the Kansas Corporation Commission.

Comment date: January 4, 2001, in accordance with Standard Paragraph E at the end of this notice.

26. Xcel Energy Operating Companies, Northern States Power Company, Northern States Power Company (Wisconsin)

[Docket No. ER01–683–000]

Take notice that on December 15, 2000, Northern States Power Company and Northern States Power Company (Wisconsin) (jointly NSP), wholly-owned utility operating company subsidiaries of Xcel Energy Inc., submitted a request that the currently effective Exhibit VII to the ''Agreement to Coordinate Planning and Operations and Interchange Power and Energy between Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)'' dated September 17, 1984, be allowed to remain in effect without change effective January 1, 2001. The filing is required by Article 2.3 of the Amendment to Settlement Agreement dated January 9, 1987 in Docket No. ER84–690. The Interchange Agreement is NSP Electric Rate Schedule FERC No. 437 and NSPW Electric Rate Schedule FERC No. 73.

Comment date: January 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

27. Pacific Gas and Electric Company

[Docket No. ER01–684–000]

Take notice that on December 15, 2000, Pacific Gas and Electric Company (PG&E), tendered for filing proposed revisions to Maximum Monthly MWh available to the California Independent System Operator Corporation (ISO)

under Reliability Must-run Service (RMR) Agreements. This filing is an annual update to monthly energy limits at all of PG&E's hydroelectric facilities which are subject to ISO dispatch under the RMR Agreements.

The changes are proposed to be effective January 1, 2001.

Copies of PG&E's supplemental filing have been served upon the ISO, the California Electricity Oversight Board, and the California Public Utilities Commission.

Comment date: January 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

28. Duke Electric Transmission, a Division of Duke Energy Corporation

[Docket No. ER01–686–000]

Take notice that on December 18, 2000, Duke Electric Transmission (Duke ET), tendered for filing First Revised Service Agreement No. 203 with Duke Power, a division of Duke Energy Corporation, for Transmission Service under Duke ET's Open Access Transmission Tariff.

Duke requests that the proposed Revised Service Agreement be permitted to become effective on January 1, 2001.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: January 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

29. Mid-Continent Area Power Pool

[Docket No. ER01–690–000]

Take notice that on December 18, 2000, the Mid-Continent Area Power Pool (MAPP), on behalf of its members that are subject to Commission jurisdiction as public utilities under Section 201(e) of the Federal Power Act, tendered for filing amendments to the Restated Agreement, FERC Electric Tariff, Original Volume No. 2 that would allow for the formation of the Midwest Reliability Organization, a non-profit Delaware corporation.

Comment date: January 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

30. Consumers Energy Company

[Docket No. ER01–692–000]

Take notice that on December 15, 2000, Consumers Energy Company (Consumers), tendered for filing an executed Service Agreement for Firm and Non-Firm Point to Point and Network Integration Transmission Service with Nordic Electric, L.L.C. (Customer) pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996 by Consumers and The Detroit Edison Company (Detroit Edison).

Consumers is requesting an effective date of November 20, 2000. Customer is taking service under the Service Agreement in connection with Consumers' Electric Customer Choice program.

Copies of the filed agreement were served upon the Michigan Public Service Commission, Detroit Edison, and the Customer.

Comment date: January 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

31. Public Service Company of New Mexico

[Docket No. ER01–693–000]

Take notice that on December 13, 2000, Public Service Company of New Mexico (PNM), submitted for filing two executed service agreements with Morgan Stanley Capital Group Inc. (Morgan Stanley) under the terms of PNM's Open Access Transmission Tariff. One agreement is for short-term firm point-to-point transmission service and one agreement is for non-firm point-to-point transmission service. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Copies of the filing have been sent to Morgan Stanley and to the New Mexico Public Regulation Commission.

Comment date: January 4, 2001, in accordance with Standard Paragraph E at the end of this notice.

32. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER01–694–000]

Take notice that on December 18, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy), tendered for filing Notice of Cancellation of the Service Agreement between GPU Service, Inc. and Williams Energy Services Company (now Williams Energy Marketing & Trading Company), FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 65.

GPU Energy requests that cancellation be effective the 14th day of February 2001.

Comment date: January 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

33. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER01–695–000]

Take notice that on December 18, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy), tendered for filing Notice of Cancellation of the Service Agreement between GPU Service, Inc. and Ohio Edison Company, FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 66.

GPU Energy requests that cancellation be effective the 14th day of February 2001.

Comment date: January 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

34. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER01–696–000]

Take notice that on December 18, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy), tendered for filing Notice of Cancellation of the Service Agreement between GPU Service, Inc. and Carolina Power & Light Company, FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 71.

GPU Energy requests that cancellation be effective the 14th day of February 2001.

Comment date: January 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

35. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER01–697–000]

Take notice that on December 18, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy), tendered for filing a Notice of Cancellation of the Service Agreement between GPU Service, Inc., and Toledo Edison Company, FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 52.

GPU Energy requests that cancellation be effective the 14th day of February 2001.

Comment date: January 9, 2001, 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. 00–33315 Filed 12–28–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2596–004 New York]

Rochester Gas and Electric Corporation; Notice of Availability of Draft Environmental Assessment

December 21, 2000.

A Draft Environmental Assessment (DEA) is available for public review. The DEA is for an application to surrender the license for the Station 160 Hydroelectric Project. The DEA finds that approval of the application, to include certain actions recommended by Commission staff, would not constitute a major federal action significantly affecting the quality of the human environment. The Station 160 Project is located on the Genesee River in Livingston County, New York.

The DEA was written by staff in the Office of Energy Projects, Federal Energy Regulatory Commission. Copies of the DEA can be obtained by calling the Commission's Public Reference Room at (202) 208–1371.

Please submit any comments on the DEA within 40 days from the date of this notice. Any comments, conclusions, or recommendations that draw upon studies, reports, or other working papers of substance should be supported by appropriate documentation. Comments should be addressed to: The Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please affix Project No. 2596–004 to all comments. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–33329 Filed 12–28–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6926–2]

Agency Information Collection Activities: Proposed Collection; Comment Request; Transition Program for Equipment Manufacturers

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 EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Transition Program for Equipment Manufacturers, EPA ICR Number 1826.02, OMB Control Number 2060–0369, expiration date: April 30, 2001, renewal. 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 February 27, 2001.

ADDRESSES: Office of Transportation and Air Quality, Certification and Compliance Division, Engine Compliance Programs Group, Ariel Ríos Building, 1200 Pennsylvania Ave., NW, Mail Code 6403J, Washington, DC 20460. Interested persons may request a copy of the ICRs without charge from the contact person below.

FOR FURTHER INFORMATION CONTACT: Nydia Y. Reyes-Morales, tel.: (202) 564–9264; fax: (202) 565–2057; e-mail: *reyes-morales.nydia@epa.gov.*

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are original nonroad equipment manufacturers and nonroad engine manufacturers.

Title: Transition Program for Equipment Manufacturers (OMB Control No. 2060–0369; EPA ICR No. 1826.02) expiring on April 30, 2001, renewal.

Abstract: In August 1998, EPA promulgated new regulations for nonroad compression-ignited engines which established emission standards (Tier I standards) for engines under 37 kW, and tightened existing standards (Tier II standards) for engines above 37 kW. These regulations are likely to cause some engine design changes. During the rulemaking process, some equipment manufacturers expressed concerns about delays in notification from engine manufacturers about engine design changes. These design changes can create problems in fitting the engine to the equipment. Subsequently, equipment manufacturers would be unable to sell the volume of equipment they planned for, since they would need to redesign their equipment before any products could be sold. In response to these concerns, EPA created a Transition Program for Equipment Manufacturers (TPEM) in an effort to provide original equipment manufacturers (OEMs) with some flexibility in complying with the regulations. Under the program, OEMs are allowed to use a number of noncompliant engines (uncertified engines rated below 37 kW or Tier I engines rated at or above 37 kW) in their equipment for up to seven years.

Participation in the program is voluntary. Participating OEMs and engine manufacturers who provide the noncompliant engines to the OEMs are required to keep records and submit reports of their activities under the program. The information is collected by the Engine Programs Group, Certification and Compliance Division, Office of Transportation and Air Quality, Office of Air and Radiation. Confidentiality to proprietary information is granted in accordance with the Freedom of Information Act, EPA regulations at 40 CFR part 2, and class determinations issued by EPA's Office of General Counsel. 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 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.

Burden Statement: EPA estimates that this information collection will have 233 respondents. Each respondent will spent approximately 40 hours, once a year, to respond to this information collection. The total cost to each respondent is estimated at $2,006.87 per year plus $15 for annual operational and maintenance expenses. Respondents are expected to incur no capital, start up or purchase of service expenses. 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.

Dated: December 21, 2000.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

[FR Doc. 00–33357 Filed 12–28–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6926–5]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Marine Engine Manufacturer-Based In-Use Emission Testing Program

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: Marine Engine Manufacturer-Based In-Use Emission Testing Program, OMB Control No. 2060–0322, expiration date December 31, 2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 29, 2001.

ADDRESSES: Send comments, referencing EPA ICR No. 1726.03 and OMB Control No. 2060–0322, to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, N.W., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, N.W., Washington, DC 20503.

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. 1726.03. For technical questions about the ICR contact Dennis Johnson, Engine Programs Group, Certification and Compliance Division, Office of Transportation and Air Quality at 202–564–9278 or by e-mail at johnson.dennis@epa.gov.

SUPPLEMENTARY INFORMATION:

Title: Marine Engine Manufacturer-Based In-Use Emission Testing Program (OMB Control No. 2060–0322; EPA ICR No. 1726.03), expiring December 31, 2000. This is a request for extension of a currently approved collection.

Abstract: This information collection requires manufacturers of marine engines to generate and submit quarterly reports of engine information and emissions data generated in the manufacturer's own in-use testing program. The Engine Programs Group in the Certification and Compliance Division, Office of Transportation and Air Quality, Office of Air and Radiation will collect this information and evaluate it to determine whether in-use marine engines comply with the emission standards set forth in the regulations at 40 CFR part 91.

The results of the manufacturers in-use testing program will primarily be used by the Office of Transportation and Air Quality to verify compliance of in-use marine engines; however, emissions data generated during this testing becomes public information after the testing programs are concluded. Consequently, States and localities may also use data generated in mobile source emission inventory estimates. Additionally, the Certification and Compliance Division will use the exhaust emission data from this testing to evaluate the appropriateness of the certification process.

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 August 31, 2000 (65 FR 53005); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 153 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: Marine engine manufacturers.

Estimated Number of Respondents: 10.

Frequency of Response: Quarterly.

Estimated Total Annual Hour Burden: 10,405 hours.

Estimated Total Annualized Capital, Operating/ Maintenance Cost Burden: $694,080.

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 addresses listed above. Please refer to EPA ICR No.1726.03 and OMB Control No. 2060–0323 in any correspondence.

Dated: December 19, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–33352 Filed 12–28–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6926–6]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Marine Engine Manufacturer Production Line Testing Reporting and Recordkeeping Requirements

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: Marine Engine Manufacturer Production Line Testing Reporting and Recordkeeping Requirements, OMB Control No. 2060–0323, expiration date December 31, 2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 29, 2001.

ADDRESSES: Send comments, referencing EPA ICR No.1725.03 and OMB Control No. 2060–0323, to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

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. 1725.03. For technical questions about the ICR contact Dennis Johnson, Engine Programs Group, Certification and Compliance Division, Office of Transportation and Air Quality at 202–564–9278 or by e-mail at johnson.dennis@epa.gov.

SUPPLEMENTARY INFORMATION:

*Title:*Marine Engine Manufacturer Production Line Testing Reporting and Recordkeeping Requirements (OMB Control No. 2060–0323; EPA ICR No. 1725.03), expiring December 31, 2000. This is a request for extension of a currently approved collection.

Abstract: The Production Line Testing Program (PLT) is a self-audit program, promulgated under the authority of section 213(d) of the CAA, in which marine engine manufacturers test engines as they leave the assembly line. Its objective is for EPA and the manufacturers to determine with statistical certainty whether new engines in fact comply with emission standards. By detecting problems while engines are still in production, noncomformities are detected and corrected before engines are introduced into commerce or soon after production when engines are most easily located. EPA uses the data obtained through the PLT to determine compliance with emission regulations and whether a Selective Enforcement Audit is needed. 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 August 31, 2000 (65 FR 53005); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 57 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: Marine engine manufacturers.

Estimated Number of Respondents: 10.

Frequency of Response: quarterly.

Estimated Total Annual Hour Burden: 19,300 hours.

Estimated Total Annualized Capital, Operating/ Maintenance Cost Burden: $2,821,160.

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 addresses listed above. Please refer to EPA ICR No. 1725.03 and OMB Control No. 2060–0323 in any correspondence.

Dated: December 19, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–33353 Filed 12–28–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6926–3]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Petroleum Refinery Wastewater Systems

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: Standards of Performance for NSPS Subpart QQQ—Petroleum Refinery Wastewater Systems, OMB Control number 2060–0172, expiration date December 31, 2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 29, 2001.

ADDRESSES: Send comments, referencing EPA ICR No. 1136.06 and OMB Control No. 2060–0172, to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

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. 1136.06. For technical questions about the ICR contact Dan Chadwick at 202–564–7054.

SUPPLEMENTARY INFORMATION:

Title: Standards of Performance for NSPS Subpart QQQ—Petroleum Refinery Wastewater Systems (OMB Control No. 2060–0172; EPA ICR No. 1136.06) expiring December 31, 2000. This is a request for extension of a currently approved collection.

Abstract: The New Source Performance Standards (NSPS) for petroleum refinery wastewater systems were proposed on May 4, 1987 and promulgated on November 23, 1988. These standards apply to the following facilities in petroleum refinery wastewater systems: individual drain systems, oil-water separators, and aggregate facilities commencing construction, modification or reconstruction after the date of proposal. An individual drain system consists of all process drains connected to the first downstream junction box. An oil-water separator is the wastewater treatment equipment used to separate oil from water. An aggregate facility is an individual drain system together with ancillary downstream sewer lines and oil-water separators, down to and including the secondary oil-water separators, as applicable. Aggregate facilities were created to capture all potential volatile organic compound (VOC) emissions within the petroleum refinery wastewater system even as this system is expanded and added to. There are no additional recordkeeping or reporting requirements for aggregate facilities. This information is being collected to assure compliance with 40 CFR part 60, subpart QQQ.

Owners or operators of the affected facilities described must make initial notification and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Monitoring requirements specific to petroleum refinery wastewater systems provide information on the operation of the emissions control device. Semiannual reports of excess emissions are required. These notifications, reports and records are required, in general, of all sources subject to NSPS. Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, maintenance reports and records and retain the file for at least two years following the date of such measurements, maintenance reports, and records.

Monitoring requirements provide information on the operation of the emissions control device. All information is being collected to assure compliance with 40 CFR part 60, subpart QQQ. This information is mandatory as per 40 CFR 60.697 and 60.698.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on April 18, 2000 (65 FR 20813); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 115 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: Owners/Operators Petroleum Refinery Wastewater Systems

Estimated Number of Respondents: 160.

Frequency of Response: Semi-annually.

Estimated Total Annual Hour Burden: 36,866.

Estimated Total Annualized Capital, O&M Cost Burden: $56,995.

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. 1136.06 and OMB Control No. 2060–0172 in any correspondence.

Dated: December 20, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–33354 Filed 12–28–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6926–4]

Agency Information Collection Activities: Submission for OMB Review; Comment Request Emission Defect Information Reports (DIRs) and Voluntary Emission Recall Reports (VERR) for Manufacturers of On-Highway Heavy-Duty Engines, Non-Road Compression-Ignition (CI) Engines, Non-Roadspark-Ignition (SI) Engines, Marine Engines, and Locomotives

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: Emission Defect Information Reports (DIRs) and Voluntary Emission Recall Reports (VERRs) for manufacturers of on-highway heavy-duty engines, non-road compression-ignition (CI) engines, non-road spark-ignition (SI) engines, marine engines, and locomotives, OMB Control Number: 2060–0048, expiration date December 31, 2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 29, 2001.

ADDRESSES: Send comments, referencing EPA ICR No. 0282.12, OMB Control Number: 2060–0048, to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

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@epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 0282.12. For technical questions about the ICR contact; Arman Tanman at (202) 564–9326.

SUPPLEMENTARY INFORMATION:

Title: Emission Defect Information Reports (DIRs) and Voluntary Emission Recall Reports (VERRs) for Manufacturers of On-highway Heavy-duty Engines, Non-road Compression-ignition (CI) Engines, Non-road Spark-ignition (SI) Engines, Marine Engines, and Locomotives. EPA ICR # 0282.12, OMB Control Number: 2060–0048, expiration date December 31, 2000. This is a request for extension of a currently approved collection.

Abstract: The Clean Air Act and applicable regulations require that new engines must be certified by EPA before they can be sold in the United States. In the certification process, manufacturers must demonstrate that those engines being produced will comply with the applicable emissions standards throughout their useful lives. Regulations implementing reporting requirements have been promulgated in ''Emission Defect Reporting Requirements,'' for:

Heavy Duty Truck engines 40 CFR part 85, subpart T. 40 CFR 85.1901–85.1909

Non-road CI engines 40 CFR part 89, subpart I, 40 CFR 89.801–89.803

Non-road SI engines 40 CFR part 90, subpart I, 40 CFR 90.801–90.805

Marine engines 40 CFR part 91, subpart J, 40 CFR 91.901–91.905, and Locomotive engines 40 CFR part 92, subpart E, 40 CFR 92.401–92.405

Defect Information Reports (DIRs) by the manufacturers alert EPA's Office of Transportation & Air Quality's (OTAQ) staff to the existence of emission-related defects on certain classes of engines. Such defects may exceed emission standards and ultimately to the need for an emissions recall. OTAQ staff use the DIRs to target potentially non-conforming classes for future testing and to monitor compliance with the Clean Air Act and applicable regulations. DIRs frequently lead to recalls (directly or indirectly) by the manufacturers.

Voluntary Emissions Recall Reports (VERRs) by the manufacturers are used to notify OTAQ staff when a manufacturer initiates a recall campaign. The VERRs and VERR progress update reports are used by OTAQ staff to determine whether a manufacturer is acting in accordance with the Clean Air Act and to examine and monitor the effectiveness of the recall campaign. Review and monitoring of the DIRs and VERRs by OTAQ staff provides a deterrent effect to help ensure compliance by the manufacturers with the Clean Air Act and the applicable regulations.

Any claimed confidential business information that meets the criteria for confidential treatment in EPA's regulations relating to confidential business claims pursuant to 5 U.S.C. 552 and 40 CFR part 2 will be treated as such.

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 August 31, 2000 (65 FR 53005) and no comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 107 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: engine manufacturers.

Estimated Number of Respondents: 15.

Frequency of Response: DR/VERR as needed, VERR quarterly.

Estimated Total Annual Hour Burden: 4,925.

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 addresses listed above. Please refer to EPA ICR No.0282.12 and OMB Control No. 2060–0048 in any correspondence.

Dated: December 18, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–33355 Filed 12–28–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6925–8]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Modification to Mobile Source Emission Factor Survey

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 amended Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Mobile Source Emission Factor Survey, OMB Control Number 2060–0078 that expires on June 30, 2003. The amended ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 29, 2001.

ADDRESSES: Send comments, referencing EPA ICR No. 0619.09 and OMB Control No. 2060–0078, to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

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@epa.gov*, or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 0619.09. For technical questions about the ICR contact Penny Carey at EPA by phone at (734) 214–4355, or by E-mail at *Carey.Penny@epa.gov.*

SUPPLEMENTARY INFORMATION:

Title: ''Mobile Source Emission Factor Survey'' (OMB Control No. 2060–0078; EPA ICR No. 0619.09 expiring on June 30, 2003. This is a request to amend a currently approved collection.

Abstract: In response to a request from Congress, the National Research Council of the National Academy of Sciences established the Committee to Review EPA's Mobile Source Emissions Factor (MOBILE) Model. The Committee was charged to evaluate MOBILE and to develop recommendations for improving the model. The Committee also examined EPA's NONROAD emissions model. With regard to improving MOBILE, the Committee recommended that EPA should develop a program to enable more accurate determination of in-use emissions, using more real-world approaches such as direct emissions monitoring systems. With regard to improving NONROAD, the Committee recommended that EPA develop a plan for compiling needed data, to include population and activity data and real-world emission factors.

The EPA Office of Transportation and Air Quality, Assessment and Standards Division, through contractors, intends to solicit the general public to voluntarily participate in survey and testing activities involving mobile sources. EPA will use the information from this survey and testing to provide inputs to various emission models. These models are used by EPA, state and local air pollution agencies, the automotive industry, and other parties that are interested in estimating mobile source emissions. These models provide a basis for developing State Implementation Plans (SIPs), Reasonable Further Progress (RFP) reports, and attainment status assessments for the National Ambient Air Quality Standards (NAAQS). The legislative basis for gathering this data is section 103(a)(1)(2)(3) of the Clean Air Act, which requires the Administrator to ''conduct * * * research, investigations, experiments, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, and control of air pollution'' and ''conduct investigations and research and make surveys concerning any specific problem of air pollution in cooperation with any air pollution control agency * * *''

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 September 22, 2000 (65 FR 57335) and no comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 1.3 hours per response 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: The general public and a few businesses that own on-highway vehicles and nonroad equipment.

Estimated Number of Respondents: 52,300.

Frequency of Response: Quarterly and annually.

Estimated Total Annual Hour Burden: 48,510.

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 addresses listed above. Please refer to EPA ICR No. 0619.09 and OMB Control No. 2060–0078 in any correspondence.

Changes in Burden: Because this ICR is being modified to include an expanded data collection program, the burden hours has increased from 1,649 to 48,510.

Dated: December 21, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–33358 Filed 12–28–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6925–9]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Reformulated Gasoline and Conventional Gasoline

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: Reformulated Gasoline and Conventional Gasoline, OMB Control No. 2060–0277, expiration date December 31, 2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 29, 2001.

ADDRESSES: Send comments, referencing EPA ICR No. 1591.13 and OMB Control No. 2060–0277, to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

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. 1591.13. For technical questions about the ICR contact James W. Caldwell, (202) 564–9303, fax (202) 565–2085, caldwell.jim@epa.gov.

SUPPLEMENTARY INFORMATION:

Title: Reformulated Gasoline and Conventional Gasoline: Requirements for Refiners, Oxygenate Blenders, and Importers of Gasoline; Requirements for Parties in the Gasoline Distribution Network (40 CFR part 80—subparts D, E and F), OMB Control No. 2060–0277, EPA ICR No. 1591.13, expiring December 31, 2000. This is a request for an extension of a currently approved collection.

Abstract: Gasoline combustion is the major source of air pollution in most urban areas. The Clean Air Act (Act) requires that gasoline dispensed in certain areas with severe air quality problems be reformulated to reduce toxic and ozone-forming (smog) emissions. The Act also requires that in the process of producing reformulated gasoline (RFG), dirty components removed in the reformulation process not be ''dumped'' into the remainder of the country's gasoline, known as conventional gasoline (CG). The EPA promulgated regulations at 40 CFR part 80 establishing standards for RFG and CG, as specified in the Act, and establishing mandatory reporting and recordkeeping requirements for demonstrating compliance and as an aid to enforcement. The primary requirements are to test each batch of gasoline for various properties, report the results to EPA, and demonstrate compliance with the standards on an annual basis.

The collection of information is necessary for the proper performance of the functions of the Agency and have practical utility. Section 211(k) of the Act specifically recognizes the need for recordkeeping, reporting and sampling/testing requirements for enforcement of this program. This is understandable given the complicated performance requirements and the averaging and trading provisions set forth in the Act. These provisions make it impossible for EPA to determine compliance merely by taking samples of gasoline at various facilities, unlike some other fuels programs. Moreover, in the negotiated regulation process, EPA agreed to accept industry's desire for national averaging, credits, yearly averaging periods, etc. EPA cannot enforce the regulations, as negotiated, without the recordkeeping controls included in the rule, some of which were specifically agreed to by industry (*e.g.*, covered area sampling and testing surveys and quarterly RFG refiner reporting). For example, EPA believes the attest procedures (discussed later) have led to discovery of significant violations and the prevention of future violations and believes that this process is very important. Further, the World Trade Organization ruled that the original RFG regulations discriminate against foreign refiners. EPA revised the RFG regulations to be GATT-consistent. If EPA could not use these enforcement tools for domestic refineries it would not be able to use them for foreign refineries. This would greatly hinder EPA's ability to regulate foreign refiners.

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 October 13, 2000, (65 FR 60939). One comment was received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 2 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: Refiners, Oxygenate blenders, Importers of gasoline, Parties in the gasoline distribution network .

Estimated Number of Respondents: 1,190.

Frequency of Response: On occasion, quarterly, annually.

Estimated Total Annual Hour Burden: 101,586 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $23 million.

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 addresses listed above. Please refer to EPA ICR No. 1591.13 and OMB Control No. 2060–0277 in any correspondence.

Dated: December 21, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–33359 Filed 12–28–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6614–1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7157 or www.epa.gov/oeca/ofa

Weekly receipt of Environmental Impact Statements

Filed December 18, 2000 Through December 22, 2000

Pursuant to 40 CFR 1506.9.

EIS No. 000456, DRAFT EIS, AFS, AK, Cholmondeley Timber Sales, Implementation, Harvesting Timber, Tongass Forest Plan, Tongass National Forest, Craig Ranger District, West of Ketchikan and South of Prince of Wales Island, AK, Due: February 19, 2001, Contact: Dale Kanen (907) 826–3271.

EIS No. 000457, DRAFT EIS, NPS, TX, Fort Davis National Historic Site, General Management Plan, Implementation, Fort Davis, TX, Due: March 05, 2001, Contact: Jerry R. Yarbrough (915) 426–3225.

EIS No. 000458, FINAL EIS, AFS, WY, Bridger-Teton National Forest, Oil and Gas Leasing in Management Areas: 21-Hoback Basin; 45 Moccasin Basin; 71 Union Pass and 72 Upper Basin River, Fremont, Sublette and Teton Counties, WY, Due: February 28, 2001, Contact: Richard Anderson (307) 739–5558.

EIS No. 000459, DRAFT EIS, IBR, CA, Grassland Bypass Project (2001 Use Agreement), To Implement the New Use Agreement for the period from October 1, 2001 through December 21, 2009, San Joaquin River and Merced River, Fresno, Merced and Stanislaus Counties, CA, Due: February 27, 2001, Contact: Michael Delamore (559) 487–5039.

EIS No. 000460, DRAFT EIS, GSA, OR, Eugene/Springfield New Federal Courthouse, Construction, Lane County, OR, Due: October 30, 2000, Contact: Michael Levine (253) 931–7263.

Due to an Administrative Error by the U.S. General Services Administration, the above Draft EIS was not properly filed with the U.S. Environmental Protection Agency. GSA has confirmed that distribution of the DEIS was made available to all federal agencies and interested parties for the 45-day review period. For further information contact Mr. Michael Levine at (253)931–7263.

EIS No. 000461, FINAL EIS, GSA, OR, Eugene/Springfield New Federal Courthouse, Construction, Lane

County, OR, Due: January 29, 2001, Contact: Michael Levine (253) 931–7263.

EIS No. 000462, DRAFT SUPPLEMENT, IBR, CA, San Joaquin River Agreement Project, Updated and New Information, The Acquisition of Additional Water for Meeting the San Joaquin River Agreement Flow Objectives, 2001–2010, Vernalis Adaptive Management Plan (VAMP), Mariposa, Merced, San Joaquin and Stanislaus Counties, CA, Due: February 12, 2001, Contact: John Burke (916) 978–5556.

EIS No. 000463, DRAFT SUPPLEMENT, FHW, IL, FAP Route 340 (I–355 South Extension), Interstate Rout 55 to Interstate Route 80, Additional Information for the Tollroad/Freeway Alternative, Funding, US Coast Guard Permit and COE Section 404 Permit, Cook, DuPage and Will Counties, IL, Due: February 28, 2001, Contact: Jon-Paul Kohler (217) 492–4988.

EIS No. 000464, DRAFT EIS, NOA, WA, Anadromous Fish Agreements and Habitat Conservation Plans for the Wells, Rocky Reach, and Rock Island Hydroelectric Projects, Implementation, Incidental Take Permits, Chelan and Douglas Counties, WA, Due: February 19, 2001, Contact: Bob Dach (503) 736–4734.

Amended Notices

EIS No. 000429, FINAL EIS, AFS, ID, Brownlee Vegetation and Access Management Project, Implementation, Weiser Ranger District, Payette National Forest, Washington County, ID , Due: January 22, 2001, Contact: John Baglien (208) 549–4200. Revision of FR notice published on 12/15/2000: CEQ Comment Date has been Extended from 01/16/2001 to 01/22/2001.

EIS No. 000445, FINAL EIS, AFS, WA, ID, OR, MT, Interior Columbia Basin Ecosystem Management Projects, Updated and New Information on Three Management Alternatives, Implementation, WA, OR, ID and MT, Due: January 16, 2001, Contact: Susan Giannettino (208) 334–1770. Published FR 12–15–00 Correction to Title.

Dated: December 26, 2000.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 00–33367 Filed 12–28–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6614–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 2000 (65 FR 20157).

Draft EISs

ERP No. D–AFS–G65076–OK Rating LO, Quachita National Forest, An Amendment to the Land and Resource Management Plan, Implementation, Glover River, McCurtain County, OK.

Summary: EPA has no objection to the selection of the proposed action as the preferred alternative for the amended land and resource management plan. EPA is suggesting the inclusion of some addition information to strengthen the Final Statement.

ERP No. D–USN–K35041–CA Rating EC2, Naval Station (NAVSTA) San Diego Replacement Pier and Dredging Improvements, Construction, Dredging and Dredged Material Disposal, San Diego Naval Complex, San Diego, CA.

Summary: EPA expressed environmental concerns regarding dredging and dredged material disposal, impacts to aquatic resources, hazardous air pollutants, toxic substances, environmental justice, and mitigation measures.

ERP No. DR–AFS–K61145–CA Rating EC2, Programmatic EIS—Ansel Adams, John Muir and Dinkey Lakes Wildernesses, Proposed New Management Direction, Amending the Land and Resource Management Plans for the Inyo and Sierra National Forests, Implementation, Inyo, Madera, Mono and Fresno Counties, CA.

Summary: EPA raised continuing concerns regarding the RDEIS' failure to analyze potential cumulative impacts associated with production livestock grazing.

Final EISs

ERP No. F–COE–H36108–NB, Sand Creek Watershed Restoration Project, To Develop Environmental Restoration, City of Wahoo, Saunders County, NB.

Summary: EPA continued to have environmental concerns on three issues: (1) Lack of current data in the project area; (2) project need and alternative; and (3) insufficient analysis of cumulative impacts.

ERP No. F–COE–K36133–CA, Whitewater River Basin (Thousand Palms) Flood Control Project, Construction of Facilities to Provide Flood Protection, Coachella Valley, Riverside County, CA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–COE–K39060–CA, Upper Newport Bay Restoration Project, To Develop a Long-Term Management Plan to Control Sediment Deposition, Orange County, CA.

Summary: No formal comment letter was sent to the preparing agency.

Dated: December 26, 2000.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 00–33368 Filed 12–28–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34145B; FRL–6763–2]

Fenthion Public Stakeholder Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: The Agency is holding a public stakeholder meeting to gather information and hear concerns and comments about risks and possible risk mitigation for the organophosphate mosquitocide pesticide, fenthion. The Agency recently completed an Interim Reregistration Eligible Decision (IRED) document identifying unacceptable risks and risk mitigation recommendations. EPA is seeking stakeholder discussion of the risks posed by fenthion use and ways to mitigate these risks.

DATES: The meeting will be held on January 17, 2001, from 9:00 a.m. to 5:00 p.m. Requests to participate in the meeting must be received on or before January 8, 2001.

ADDRESSES: The meeting will be held at Embassy Suites, 8978 International Drive, Orlando, Florida 32819, telephone, (407) 352–1400 ext. 7120. Requests to participate may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit II. of the **SUPPLEMENTARY INFORMATION.** To ensure

proper receipt by EPA, your request must identify docket control number OPP–34145B in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Tracy Truesdale, Office of Pesticide Programs, Special Review and Reregistration Division, (7508C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8073; e-mail address: truesdale.tracy@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Notice Apply to Me?

This notice is directed to the public in general. This notice may, however, be of interest to those person(s) who are interested in risk management strategies for workers, non-target organisms, as well as public health and mosquito control, etc. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. Copies of the fenthion IRED are available at www.epa.gov/REDs/.

2. *In person.* The Agency has established an administrative record for this meeting under docket control number OPP–34145B. The administrative record consists of the documents specifically referenced in this notice, any public comments received during an applicable comment period, and other information related to the proposed strategies to manage the remaining risks for fenthion, including any information claimed as Confidential Business Information (CBI). This administrative record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the administrative record, which includes printed, paper versions of any electronic comments that may be submitted during an applicable comment period, is available for inspection in Room 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. ti 4:00 p.m., Monday through Friday, excluding, excluding legal holidays. The telephone number of the Center is (703) 305–5805.

II. How Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting through the mail, in person, or electronically. Do not submit any information in your request that is considered CBI. Your request must be received by EPA on or before January 8, 2001. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34145B in the subject line on the first page of your request.

1. *By mail.* You may submit a written request to: Public Information and Records Integrity Branch, Information Resources and Services division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* You may deliver a written request to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division, Office of Pesticide Programs, Environmental Protection Agency, Room 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. The PIRIB is open from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your request electronically by e-mail to: opp-docket@epa.gov. Do not submit any requests electronically that you consider to be CBI. Electronic requests must be submitted as an ASCII file, avoiding the use of special characters and any form of encryption. All requests in electronic form must be identified by the docket control number OPP–34145B.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: December 20, 2000.

Lois Rossi,

Director, Office Pesticide Programs, Special Review and Reregistration Division.

[FR Doc. 00–33013 Filed 12–28–00; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6925–6]

Science Advisory Board; Notification of Six Public Advisory Committee Meetings; Cancellation of a Previously Announced Advisory Committee Meeting

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the EPA Science Advisory Board's (SAB) Environmental Engineering Committee will conduct six public teleconference meetings on Wednesday afternoons in 2001. The first conference call will be held from 3–5 Eastern time on January 10, 2001. The remaining conference calls will be held from 1–3 p.m. Eastern Time on March 7, May 2, July 11, September 5, and November 7.

The conference call meetings will be coordinated through a conference call connection in room 6450C Ariel Rios North (6th Floor), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC. The public is strongly encouraged to attend the meeting through a telephonic link, but may attend physically if arrangements are made in advance with the SAB staff. In both cases, arrangements should be made with the SAB staff by noon the Wednesday before the meeting. Staff may not be able to accommodate the presence of people who appear in person without advance notice. Additional instructions about how to participate in the conference call can be obtained by calling Ms. Mary Winston, Management Assistant, at (202) 564–4538, and via e-mail at: winston.mary@epa.gov.

Purpose of the Meetings: These conference calls have been scheduled to facilitate the routine work of the Committee throughout the year.

The purposes of the January 10, 2001 conference call meeting are:

(a) to discuss a potential Commentary on industrial ecology or related topics

(b) to undertake further planning on the consultation on research for environmental systems management

(c) to discuss potential activities related to contaminated sediments

(d) if time allows. to further explore ideas about subsequent overview briefings on EPA programs by media, or interagency briefings by media.

The purposes of the conference call on March 7, 2001 are:

(a) To consider a draft Risk Reduction Options Selection report

(b) To hear status reports on the planning for FY2001 EEC activities

(c) To learn the status of the Natural Attenuation Research Subcommittee report and the Commentary on Measures of Environmental Technology Performance

(d) To discuss report related items, such as the inclusion of one-paragraph biographies for contributors to commentaries and reports and the preparation of brief summaries of reports for distribution to journals and newsletters

The other four conference calls will be similarly used to further the Committee's various activities and approve reports. The agendas for these calls will be announced in subsequent Federal Register Notices or may be obtained closer to the meetings from the Designated Federal Office (DFO) or Management Assistant.

Availability of the written materials in advance of the conference call meetings: Any written materials prepared in advance of the conference calls will be made available to the public by E-mail before the meeting. For e-mail copies, please contact Ms. Kathleen White Conway, Designated Federal Officer, at *conway.kathleen@epa.gov.* A limited number of paper copies will be available from Ms. Mary Winston at (202) 564–4538, and via e-mail at: *winston.mary@epa.gov*

FOR FURTHER INFORMATION: Any member of the public wishing further information concerning the conference call meetings or wishing to submit brief oral comments must contact Ms. Kathleen White Conway, Designated Federal Officer, Science Advisory Board (1400A), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 564–4559; FAX (202) 501–0582; or via e-mail at *conway.katheen@epa.gov.* Requests for oral comments must be in writing (e-mail, fax or mail) and received by Ms. Conway no later than noon Eastern Time one week prior to the meeting.

Providing Oral or Written Comments at SAB Meetings

It is the policy of the Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should both e-mail their comments to the DFO in MSWord and WordPerfect formats (suitable for IBM–PC/Windows 95/98) and provide 5 paper copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), because this is a conference call meeting, any comments to be mailed to the Subcommittee in advance of the meeting should be received in the SAB Staff Office by noon at least a week before the meeting. E-mailed comments will be accepted until the day before the meeting, although earlier submission is encouraged; these should be sent in both MSWord and WordPerfect comments (suitable for IBM–PC/Windows 95/98).

General Information

Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in The FY2000 Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our website.

Meeting Access

Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Ms. Winston at least five business days prior to the meeting so that appropriate arrangements can be made.

Cancellation of a Previously Announced Advisory Committee Meeting

The January 11–12, 2001 face-to-face meeting, and February 28, 2000 teleconference meeting of the EPA Science Advisory Board's Drinking Water Committee (DWC), as advertised in the December 20, 2000 **Federal Register** (65 FR 79831) have been canceled. The issue under review by the DWC at these meetings has been delayed. The meetings will be rescheduled at a later date.

Dated: December 21, 2000.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 00–33305 Filed 12–28–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34145C; FRL–6763–4]

Organophosphate Pesticides; Availability of Interim Risk Management Decision Documents

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of the interim risk management decision document for the organophosphate pesticide fenthion. This decision document has been developed as part of the public participation process that EPA and U.S. Department of Agriculture (USDA) are now using for involving the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual organophosphate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Carol Stangel, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8007; e-mail address: stangel.carol@epa.gov.

For technical information contact: For questions on the IRED in this document, contact the Chemical Review Manager listed in the table in Unit I.B.2. of the **SUPPLEMENTARY INFORMATION**.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the interim risk management decision documents for fenthion , including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. Since other entities also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations'', ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**— Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. In addition, copies of the pesticide interim risk management decision documents released to the public may also be accessed at http://www.epa.gov/REDs.

2. *In person*. The Agency has established an official record for this action under docket control numbers OPP–34145C. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

For questions on the IRED in this document, contact the Chemical Review Manager listed in this table:

Chemical name	Case No.	Chemical Review Manager	Telephone no.	E-mail address
Fenthion	0290	Tracy Truesdale	(703) 308–8073	truesdale.tracy@epa.gov

III. What Action is the Agency Taking?

EPA has assessed the risks of fenthion and reached an Interim Reregistration Eligibility Decision (IRED) for this organophosphate pesticide. The Agency believes that currently registered uses of fenthion pose unreasonable adverse effects to human health and the environment, and that mitigation measures are necessary. EPA will conduct a public process in the near future to identify the best ways to reduce the risks associated with fenthion exposure. This process will include a public comment period on the risk mitigation proposed in this interim RED, as well as a stakeholder meeting. At the conclusion of this process, the Agency will announce a final determination on the risk mitigation it believes must be adopted in order for products containing fenthion to remain eligible for reregistration.

The interim risk management decision documents for fenthion were made through the organophosphate pesticide pilot public participation process, which increases transparency and maximizes stakeholder involvement in EPA's development of risk assessments and risk management decisions. The pilot public participation process was developed as part of the EPA-USDA Tolerance Reassessment Advisory Committee (TRAC), which was established in April 1998, as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology. A goal of the pilot public participation process is to find a more effective way for the public to participate at critical junctures in the Agency's development of organophosphate pesticide risk assessments and risk management decisions. EPA and USDA began implementing this pilot process in August 1998, to increase transparency and opportunities for stakeholder consultation.

EPA worked extensively with affected parties to reach the decisions presented in the interim risk management decision document for fenthion . As part of the pilot public participation process, numerous opportunities for public comment were offered as these interim risk management decision documents were being developed. In addition, the Agency will provide further opportunity for public involvement through a stakeholder meeting to discuss risk mitigation options and approaches for fenthion.

The risk assessments for fenthion were released to the public through a notice published in the **Federal Register** on September 9, 1998 (63 FR 48213) (OPP–34141; FRL–6030–2) and October 14, 1999 (64 FR 55712) (OPP–34145A; FRL–6389–2).

EPA's next step under FQPA is to complete a cumulative risk assessment and risk management decision encompassing all the organophosphate pesticides, which share a common mechanism of toxicity. The interim risk management decision documents on fenthion cannot be considered final until this cumulative assessment is complete.

When the cumulative risk assessment for all organophosphate pesticides has been completed, EPA will issue its final tolerance reassessment decision for fenthion and further risk mitigation measures may be needed.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: December 21, 2000.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 00–33014 Filed 12–28–00; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6926–1]

ILCO Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement.

SUMMARY: The United States Environmental Protection Agency is proposing to enter into two settlement agreements with a total of 19 parties for response costs at the ILCO Superfund Site pursuant to section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9622(h)(1). EPA will consider public comments on the proposed settlements for thirty (30) days. EPA may withdraw from or modify the proposed settlements should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the

proposed settlements are available from: Ms. Paula V. Batchelor, U.S. EPA, Region 4 (WMD–PSB), 61 Forsyth Street SW, Atlanta, Georgia 30303, (404) 562–8887.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of this publication.

Dated: December 21, 2000.

Franklin E. Hill,

Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 00–33356 Filed 12–28–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6924–9]

Stage 2 Microbial and Disinfection Byproducts Federal Advisory Committee Agreement in Principle

AGENCY: Environmental Protection Agency.

ACTION: Notice of agreement in principle.

SUMMARY: The purpose of today's notice is to make available to the public recommendations to the Administrator of the Environmental Protection Agency contained in the Stage 2 Microbial and Disinfection Byproducts (M–DBP) Federal Advisory Committee Agreement in Principle (Agreement) that was signed in September 2000. The Stage 2 M–DBP rules are a set of interrelated drinking water regulations which address risks from microbial pathogens and disinfection byproducts (DBPs). The U.S. Environmental Protection Agency (USEPA) convened the Stage 2 M–DBP Federal Advisory Committee (Committee) to collect, share, and analyze information that has become available since promulgation of the Stage 1 M–DBP rules in December 1998. The purpose of the Committee was to evaluate whether and to what degree USEPA should establish revised or additional DBP and microbial standards to protect public health. The Committee consisted of organizational members representing USEPA, public interest groups, State and local public health and regulatory agencies, local elected officials, Indian tribes, drinking water suppliers, and chemical and equipment manufacturers. Recommendations from the Committee are contained in the Agreement in Principle which is provided below. This Agreement is the result of a tremendous collaborative effort and USEPA would like to express its appreciation to all members of the Committee, as well as to members of the Technical Workgroup (TWG) which supported the Committee.

FOR FURTHER INFORMATION CONTACT: For general information contact the Safe Drinking Water Hotline, Telephone (800) 426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding federal holidays, from 9:00 a.m. to 5:30 p.m. Eastern Time. For technical inquiries contact Dan Schmelling or Jennifer McLain, Office of Ground Water and Drinking Water (MC 4607), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 260–1439 (Schmelling) or (202) 260–0431 (McLain).

SUPPLEMENTARY INFORMATION:

Introduction and Background

The Stage 2 M–DBP rules represent the final stage in a two phase M–DBP rulemaking strategy agreed upon by USEPA and stakeholders during a regulatory negotiation process in 1992–93, and later affirmed by Congress as part of the 1996 Amendments to the Safe Drinking Water Act (SDWA). They comprise the Long Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR) and the Stage 2 Disinfectants and Disinfection Byproducts Rule (DBPR). The LT2ESWTR focuses on risk from microbial pathogens, specifically *Cryptosporidium,* and the Stage 2 DBPR addresses risk from DBPs. These rules are being developed simultaneously in order to address complex risk trade-offs between the control of pathogens and limiting exposure to DBPs. Statutory deadlines require USEPA to promulgate the Stage 2 DBPR by May 2002. Consistent with statutory objectives for risk balancing, EPA will finalize the LT2ESWTR concurrent with the Stage 2 DBPR to ensure parallel protection from microbial and DBP risks.

Committee recommendations for the Stage 2 M–DBP rules would build upon the public health protection provided by the Stage 1 M–DBP rules, which include the Stage 1 DBPR, Interim Enhanced Surface Water Treatment Rule (IESWTR), and Long Term 1 Enhanced Surface Water Treatment Rule (LT1ESWTR). The Stage 1 DBPR and IESWTR were issued in December, 1998, and promulgation of the LT1ESWTR is anticipated for late 2000 or early 2001. The Stage 1 M–DBP rules are based on stakeholder agreements reached during the 1992–93 negotiated rulemaking, as well as the agreement of a subsequent Federal Advisory Committee which met from March to July 1997.

Prior to convening the Stage 2 M–DBP Advisory Committee, USEPA held three preparatory stakeholder meetings on pathogen and DBP health effects, occurrence, and treatment. The Committee then held fourteen formal negotiation meetings between March 1999 and September 2000 to discuss issues related to the Stage 2 DBPR and LT2ESWTR. The objective of the Committee at the outset was to reach a consensus regarding provisions for the two rules. Technical support for these discussions was provided by the TWG, which was established by the Committee at its first meeting. The Committee's activities resulted in the collection, development, evaluation, and presentation of substantial new information related to key elements for both rules. This information included new data on pathogenicity, occurrence, and treatment of microbial contaminants, specifically including *Cryptosporidium,* as well as new data on DBP health risks, exposure, and control.

A significant source of new data was the Information Collection Rule (ICR), which EPA promulgated in 1996 pursuant to SDWA requirements. The ICR required approximately 300 large public water systems to conduct 18 months of sampling for water quality and treatment parameters related to DBP formation and the occurrence of microbial pathogens. Data on DBP formation in small systems was obtained through a survey of approximately 120 treatment plants in systems serving fewer than 10,000 people. Seven states also provided small system DBP data. Subsequent to the ICR, EPA obtained additional data on pathogen occurrence through the ICR Supplemental Surveys (ICRSS). These surveys involved 127 water treatment plants, including 40 small systems, and comprised one year of bi-monthly sampling for *Cryptosporidium, Giardia,* and other water quality parameters (small systems did not measure protozoa).

USEPA and the TWG developed a series of eight databases to facilitate analysis of ICR data. The ICR databases were integrated with a Surface Water Analytical Tool model to predict the impact of potential new standards for DBPs and/or pathogens on shifts in treatment technologies among water systems and resulting DBP exposure profiles. Based on data supplied by equipment vendors, the TWG produced unit cost estimates for a number of potential regulatory compliance technologies. These technology unit costs were used in conjunction with SWAT projections of technology shifts

to make national cost estimates for regulatory options.

USEPA, in consultation with nationally recognized experts in the field of statistics, evaluated ICR and ICRSS data to generate estimates of the national occurrence distribution of *Cryptosporidium*. Occurrence distributions were coupled with data on the infectivity of different strains of *Cryptosporidium* and assumptions for the removal efficiency of treatment plants to make projections of the possible risk associated with *Cryptosporidium* in drinking water. In considering risks associated with DBPs, the Committee reviewed available toxicological and epidemiological data from a number of studies on reproductive and developmental health effects (*e.g.,* early term miscarriages), as well as cancer.

Despite the evaluation of a large amount of data, the Committee recognized that uncertainty remains in a number of areas regarding the precise nature and magnitude of risk associated with DBPs and pathogens in drinking water. In light of this uncertainty, the Committee recommended a series of balanced steps to address the areas of greatest health concern, taking into careful consideration the costs and potential impacts on public water systems.

In regard to DBPs, the Committee recommended a two phase approach to provide further control of concentration peaks in the distribution system. In Phase 1, systems would continue to meet maximum contaminant levels (MCLs) established by the Stage 1 DBPR for total trihalomethanes (TTHM) and five haloacetic acids (HAA5) of 0.080 and 0.060 mg/L, respectively, with compliance based on a running annual average (RAA). In addition, Phase 1 would add new MCLs of 0.120 and 0.100 mg/L for TTHM and HAA5, respectively, with compliance based on a locational running annual average (LRAA). Under an LRAA standard, the annual average at each monitoring point must not exceed the MCL. This compares with the RAA established by the Stage 1 DBPR in which compliance is determined by averaging across all monitoring points. All Phase 1 monitoring would be conducted at Stage 1 DBPR sites. Phase 2 would consist of maintaining MCLs of 0.080 mg/L for TTHM and 0.060 mg/L for HAA5 but compliance with these levels would be based on the LRAA. Under Phase 2, monitoring would be conducted at new sites determined from an initial distribution system evaluation designed to select site-specific optimal sample points for capturing DBP peaks.

The two phase approach recommended by the Committee for the Stage 2 DBPR would provide an initial level of protection from DBP peaks under Phase 1. Systems would then make decisions regarding the potentially more significant treatment changes necessary to comply with Phase 2 during the same time period as they evaluate options to comply with the LT2ESWTR. This approach is consistent with the Committee's support for simultaneous compliance for the Stage 2 M–DBP rules and the statutory objectives for balancing microbial and DBP risks.

In regard to microbial pathogens, the Committee recognized that systems with poor quality source waters may need to provide additional protection against *Cryptosporidium*. The Committee recommended a 'Microbial Framework' approach which involves assignment of systems into different categories (or bins) based on the results of source water *Cryptosporidium* monitoring. Additional treatment requirements depend on the bin to which the system is assigned. Systems would chose technologies to comply with additional treatment requirements from a 'toolbox' of options. The Committee also made recommendations for unfiltered systems and uncovered finished water reservoirs.

The Agreement in Principle is the full statement of the points on which the Committee reached consensus. The Agreement is divided into Parts A & B. The recommendations in each part stand alone and are independent of one another. The entire Committee reached consensus on Part A, which contains provisions that apply directly to the Stage 2 DBPR and LT2ESWTR. The full Committee with the exception of the National Rural Water Association agreed to Part B, which has recommendations for future activity by USEPA in the areas of distribution systems and microbial water quality criteria. Following the Agreement in today's notice is a list of the twenty one organizational members of the Committee and their alternates.

The recommendations contained in the Stage 2 M–DBP Agreement in Principle reflect the Committee's emphasis on targeted, risk based rulemaking. They incorporate substantial initial monitoring to identify systems with the highest potential risk. Additional treatment steps are required only where systems exceed specified locational average DBP concentrations or source water *Cryptosporidium* occurrence levels. In addition, the recommendations address risks from *Cryptosporidium* in unfiltered systems, as well as longstanding concerns over risks from uncovered finished water reservoirs. They also facilitate the use of nontraditional and potentially low cost treatment technologies like UV disinfection.

These recommendations represent an important and balanced step forward in controlling public health risks associated with drinking water. The ability of Committee representatives with different interests, areas of expertise, and perspectives to find common ground and reach agreement reflects an exceptional commitment to public health protection and to the regulatory negotiation process. In the future, results from new research will provide further insights into drinking water risks associated with reproductive and developmental toxicity of DBPs, the occurrence and pathogenicity of microorganisms, and other related topics. As new information evolves, USEPA will continue to work with stakeholders in evaluating the adequacy of existing drinking water standards and the need for revised or additional measures to protect public health.

USEPA has agreed to develop a proposed rulemaking for the Stage 2 DBPR and LT2ESWTR in 2001 that will reflect recommendations contained in the Agreement in Principle. As part of the proposed rulemaking, USEPA will solicit comments on the Agreement. Today's notice, however, is intended only to inform the public of the availability of the Agreement and USEPA does not request comment on this notice.

Dated: December 19, 2000.

J. Charles Fox,

Assistant Administrator, Office of Water.

1.0 Introduction

Pursuant to requirements under the Safe Drinking Water Act (SDWA), the Environmental Protection Agency (EPA) is developing interrelated regulations to control microbial pathogens and disinfectants/disinfection byproducts (D/DBPs) in drinking water. These rules are collectively known as the microbial/disinfection byproducts (M–DBP) rules.

The regulations are intended to address complex risk trade-offs between the two different types of contaminants. In keeping with a phased M–DBP strategy agreed to by stakeholders during the 1992–93 negotiated rulemaking on these matters and affirmed by Congress as part of the 1996 Amendments to the Safe Drinking Water Act, EPA issued the final Stage 1 Disinfectants and Disinfection Byproducts Rule (DBPR) and Interim Enhanced Surface Water Rule (IESWTR) in December 1998. These two rules built

upon stakeholder agreements reached in 1993 but also reflected the more recent 1997 Agreement in Principle signed by stakeholders who participated in an intensive Stage 1 M–DBP Federal Advisory Committee Act (FACA) negotiation process from March to July 1997.

As part of the 1996 amendments to the SDWA, Congress established deadlines for the M–DBP rules, beginning with a November 1998 deadline for promulgation of both the IESWTR and the Stage 1 D/DBP Rule. Related statutory deadlines for the Stage 2 M–DBP process require that EPA promulgate a Stage 2 Disinfectants and Disinfection Byproducts Rule (DBPR) by May 2002. The Agency plans to promulgate the Long Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR) by May 2002, as well. The central challenge of the Stage 2 M–DBP rule development process has been to assess information and research not fully considered in the Stage 1 process or only available since 1998 and evaluate whether and to what degree EPA should establish revised or additional DBP and microbial standards to protect public health.

As agreed to during Stage 1, EPA has convened a Stage 2 M–DBP Advisory Committee made up of organizational members (parties) named by EPA (see Attachment A). The purpose of the Advisory Committee is to develop recommendations for the Stage 2 DBPR and LT2ESWTR to be proposed in 2001. This Committee met from March 1999 through September 2000, with the initial objective to reach consensus. This document is the Committee's statement on the points of agreement reached. This document is separated into Part A and Part B. The recommendations in each part stand alone and are independent of one another.

2.0 Agreement in Principle

The Stage 2 M–DBP Federal Advisory Committee (Stage 2 FACA) considered both the strengths and limitations of new M–DBP information as well as the related technical and policy issues involved in developing a Stage 2 DBPR and a LT2ESWTR under the Safe Drinking Water Act and recommends that the Environmental Protection Agency base the applicable sections of its anticipated Stage 2 DBPR and LT2ESWTR proposals on the elements of agreement described below.

This agreement in principle Part A and B represents the consensus of the parties on the best conceptual principles that the Committee was able to generate within the allocated time and resources available.

The , a party to the negotiations, agrees that:

2.1 The person signing Part A or Part B of this agreement is authorized to commit this party to the terms of Part A or Part B, as the case may be.

2.2 EPA agrees to develop a Proposed Rulemaking in 2001 in accordance with applicable statutes and procedural requirements that will reflect recommendations contained in this Agreement in Principle, and will obtain comments from Stage 2 FACA parties and the public.

2.3 Each party and individual signatory that submits comments on the Stage 2 DBPR and LT2ESWTR proposals agrees to support those components of the proposals that reflect the recommendations contained in this Agreement in Principle. Each party and individual signatory reserves the right to comment, as individuals or on behalf of the organization he or she represents, on any other aspect of the proposals.

2.4 If new information becomes available that significantly affects the basis for provisions in this Agreement in Principle, EPA agrees to publish this information in a NODA and will consider whether it is necessary to reconvene the FACA.

2.5 EPA will work jointly with stakeholders while developing guidance documents in order to ensure that technical issues are adequately addressed prior to the final rule. EPA agrees to publish revised guidance documents that reflect consideration of comments on earlier drafts.

2.6 Concurrent with publication of the proposed rules, EPA will publish a draft guidance document that includes ozone and chlorine dioxide CT tables for the inactivation of *Cryptosporidium* (UV tables are addressed in 5.0). EPA will request comment in the proposed LT2ESWTR on whether any of the CT tables or other criteria in the guidance document should be incorporated into the final LT2ESWTR.

2.7 EPA will consider all relevant comments submitted concerning the Stage 2 DBPR and LT2ESWTR Notice(s) of Proposed Rulemaking and in response to such comments will make such modifications to the proposed rule(s) and preamble(s) as EPA determines are appropriate when issuing a final rule.

2.8 Recognizing that under the Appointments Clause of the Constitution governmental authority may be exercised only by officers of the United States and recognizing that it is EPA's responsibility to issue final rules, EPA intends to issue final rules that are based on the provisions of the Safe Drinking Water Act, pertinent facts, and comments received from the public.

2.9 Each party agrees not to take any action to inhibit the adoption of final rule(s) to the extent it and corresponding preamble(s) have the same substance and effect as the elements of the Agreement in Principle Part A or Part B or both parts as evidenced by the signature following each part.

2.10 EPA will hold a stakeholder meeting during the comment period to update stakeholders on new information germane to the Stage 2 DBPR and LT2ESWTR.

2.11 Implementation Schedule

2.11.a Compliance schedules for the LT2ESWTR will be tied to the availability of sufficient analytical capacity at approved laboratories for all large and medium affected systems to initiate *Cryptosporidium* and *E. coli* monitoring, and the availability of software for transferring, storing, and evaluating the results of all microbial analyses.

(1) If the availability of adequate laboratory capacity or data management software for microbial monitoring under LT2ESWTR for large or medium systems is delayed then monitoring, implementation, and compliance schedules for both the LT2ESWTR and Stage 2 DBPR described under 2.11.c will be delayed by an equivalent time period.

2.11.b The principle of simultaneous compliance reflected in the Stage 1 M-DBP rules will be continued in the Stage 2 M–DBP rules.

(1) The principle of simultaneous compliance means that systems will address the Stage 2 DBPR and LT2ESWTR requirements concurrently in order to protect public health and optimize technology choice decisions.

2.11.c Implementation Schedule

(1) Once the Stage 2 M-DBP rules have been promulgated, systems will conduct *Cryptosporidium* (Section 4.1) and IDSE (Section 3.1.a) monitoring and submit the results to their States/Primacy Agency. Large and medium systems must submit a report with the results of the Initial Distribution System Evaluation (IDSE) (including any monitoring) and the results of the *Cryptosporidium* monitoring two years and two and a half years after rule promulgation, respectively. Small systems must submit a report recommending new DBP compliance monitoring locations and supporting data with the results of their IDSE,

including any monitoring, and *Cryptosporidium* monitoring 4 years and 5 years after rule promulgation, respectively.[1]

(2) Systems will comply with the Stage 2 DBPR MCL for TTHMs/HAA5 in two phases:

(a) *Phase 1:* 3 years after rule promulgation (with an additional 2 year extension available for systems requiring capital improvements), all systems must comply with a 120/100 locational running annual average (LRAA) based on Stage 1 monitoring sites and also continue to comply with the Stage 1 80/60 running annual average.

(b) *Phase 2:* Systems must comply with 80/60 LRAA based on new sampling sites identified under the IDSE. This will begin 6 years after rule promulgation (with an additional 2 year extension available for systems requiring capital improvements) for large and medium systems. For small systems required to do *Cryptosporidium* monitoring, compliance with the 80/60 LRAA will begin 8.5 years after rule promulgation (with an additional 2 year extension available for systems requiring capital improvements). For all other small systems, compliance with the 80/60 LRAA will begin 7.5 years after rule promulgation (with an additional 2 year extension available for systems requiring capital improvements).

Part A

3.0 Disinfection Byproducts

The requirements in the Stage 2 DBPR will apply to all community water systems and non-transient non-community water systems that add a disinfectant other than UV or deliver water that has been disinfected.

The Stage 2 DBPR is designed to reduce DBP occurrence peaks in the distribution system based on changes to compliance monitoring provisions. Compliance monitoring will be preceded by an initial distribution system monitoring (IDSE)/study to select site-specific optimal sample points for capturing peaks. The FACA recognizes that TTHM and HAA5 concentrations vary over time and space and therefore agrees that compliance monitoring locations should reflect this variability.

[1] Systems which monitor for an indicator organism (*e.g.,* E. coli) and do not monitor for *Cryptosporidium* must submit the results of the indicator monitoring three and one-half years after rule promulgation.

3.1 TTHM/HAA5

Compliance with each MCL will be determined based on a Locational Running Annual Average (a running annual average must be calculated at each sample location). Systems will comply with the Stage 2 DBPR MCL in two phases:

Phase 1: 3 years after rule promulgation (with an additional 2 year extension available for systems requiring capital improvements), all systems must comply with a 120/100 locational running annual average (LRAA) based on Stage 1 monitoring sites and also continue to comply with the Stage 1 80/60 running annual average.

Phase 2: 6 years after rule promulgation (with an additional 2 year extension available for systems requiring capital improvements) large and medium systems must comply with an 80/60 LRAA based on new sampling sites identified under the IDSE. For small systems required to do *Cryptosporidium* monitoring, compliance with the 80/60 LRAA will begin 8.5 years after rule promulgation (with an additional 2 year extension available for systems requiring capital improvements). For all other small systems, compliance with the 80/60 LRAA will begin 7.5 years after rule promulgation (with an additional 2 year extension available for systems requiring capital improvements).

3.1.a Initial Distribution System Evaluation (IDSE)

IDSEs are studies conducted by Community Water Systems and are intended to select new compliance monitoring sites that more accurately reflect sites representing high TTHM and HAA5 levels. The studies will be based either on system specific monitoring or other system specific data that provides equivalent or better information on site selection. Systems will recommend new or revised monitoring sites to their State/Primacy Agency based on their IDSE study. IDSE results will not be used for compliance purposes.

Systems conducting IDSE monitoring shall monitor for one year under a schedule determined by source water type (*e.g.,* surface water vs. ground water) and system size as discussed in 1–3 below. As a part of the monitoring schedule, all systems conducting IDSE monitoring must monitor during the peak historical month for DBP levels or water temperature. All IDSE samples will be paired (*i.e.,* TTHM and HAA5 sample at each site).

(1) Surface Water Systems ≥ 10,000:

Systems must monitor bimonthly on a regular schedule of approximately every 60 days[2] for one year at 8 distribution system sites per plant (at sites that are in addition to the Stage 1 DBPR compliance monitoring sites).

The location of the 8 sites will be determined by residual disinfectant type as follows:

(a) For plants with chloramine distribution systems: 2 near distribution system entry point, 2 at average residence time, and 4 at points representative of highest THM and HAA5 concentrations;

(b) For plants with chlorine distribution systems: 1 near distribution system entry point, 2 at average residence time, and 5 at points representative of highest THM and HAA5 concentrations.

(2) Surface Water Systems < 10,000:

(a) 500–9,999: Systems must monitor quarterly on a regular schedule of approximately every 90 days for one year at 2 distribution system sites per plant (at sites that are in addition to the Stage 1 DBPR compliance monitoring sites).

(b) Under 500: System must monitor semi-annually on a regular schedule of approximately every 180 days for one year at 2 distribution system sites per plant (at sites that are in addition to the Stage 1 DBPR compliance monitoring sites).

(i) This monitoring requirement for systems under 500 may be waived if the State/Primacy Agency determines that the monitoring site approved for Stage 1 DBPR compliance is sufficient to represent both the highest HAA5 and the highest TTHM concentrations. The State/Primacy Agency must submit criteria for this determination to EPA as part of their Primacy application.

(3) Ground Water Systems:

Multiple wells drawing water from a single aquifer may, with State/Primacy Agency approval, be considered one treatment plant.

(a) ≥ 10,000: Systems must monitor quarterly on a regular schedule of approximately every 90 days for one year at 2 distribution system sites per plant (at sites that are in addition to the Stage 1 DBPR compliance monitoring sites)

(b) < 10,000: Systems must monitor semi-annually on a regular schedule of approximately every 180 days for one year at 2 distribution system sites per plant (at sites in addition to the Stage 1 DBPR compliance monitoring sites)

[2] The objective of this monitoring provision and similar monitoring provisions herein after is to prevent systems from avoiding monitoring during peak occurrence.

(i) This monitoring requirement for systems under 500 may be waived if the State/Primacy Agency determines that the monitoring site approved for Stage 1 DBPR compliance is sufficient to represent both the highest HAA5 and the highest TTHM concentrations. The State/Primacy Agency must submit criteria for this determination to EPA as part of their Primacy application.

(4) System Specific Studies—In lieu of the IDSE monitoring, systems may perform an IDSE study based on other system specific monitoring or system specific data which will provide comparable or superior selection of new monitoring sites that target high DBP levels. EPA agrees to work with stakeholders to develop guidance on criteria for system specific studies.

(5) Systems that certify to their State/Primacy Agency that all samples taken in the last 2 years were below 40/30 are not required to conduct the IDSE.

3.1.b. Long Term Compliance Monitoring (Phase 2)

Principles of the reduced compliance monitoring strategy reflected in the Stage 1 DBPR shall be continued in the Stage 2 DBPR. These principles are designed for systems with very low DBP levels.

Systems will collect paired samples (TTHM and HAA5) at each compliance monitoring sample site with the possible exception of some systems serving < 500 people.

(1) Surface Water Systems ≥ 10,000:

Systems must monitor quarterly on a regular schedule of approximately every 90 days [3] at 4 distribution system sites per plant. At least 1 quarterly sample must be taken during the peak historical month for DBP levels.

The location of the 4 sites in the distribution system will be determined as follows:

—One representative average from among current Stage 1 locations.
—One representative highest HAA5 identified under IDSE.
—Two at highest TTHM identified during IDSE.

(2) Surface Water Systems < 10,000.

(a) 500–9,999: Systems must monitor quarterly on a regular schedule of approximately every 90 days at the highest TTHM and the highest HAA5 points in the distribution system as identified under the IDSE. The State/Primacy Agency may determine, based on the results of the IDSE, that the site representative of the highest TTHM is at the same location as the site representative of the highest HAA5 and thus may determine that the system only has to monitor at a single site.

(b) Under 500: Systems must monitor annually at the site representing the highest TTHM and the highest HAA5 points in the distribution system as identified under the IDSE. If the State/Primacy Agency determines, based on the results of the IDSE, that this site is not representative of both the highest TTHM and HAA5 concentrations, the system should collect unpaired samples at two sites in the distribution system (*i.e.,* TTHM only at one site and HAA5 only at another site).

(i) If the State/Primacy Agency has waived the requirement to conduct the IDSE, systems under 500 will conduct annual sampling at the point of maximum residence time in the distribution system during the month of warmest water temperature.

(ii) Systems under 500 have the option of moving to quarterly compliance sampling consistent with the Stage 1 sampling strategy.

(3) Groundwater Systems:

(a) ≥ 10,000: Systems must monitor quarterly on a regular schedule of approximately every 90 days at the highest TTHM and the highest HAA5 points in the distribution system as identified under the IDSE. The State/Primacy Agency may determine, based on the results of the IDSE, that the site representative of the highest TTHM is at the same location as the site representative of the highest HAA5 and thus may determine that the system only has to monitor at a single site.

(b) 500–9,999: Systems must monitor annually at the highest TTHM and the highest HAA5 points in the distribution system as identified under the IDSE. The State/Primacy Agency may determine, based on the results of the IDSE, that the site representative of the highest TTHM is at the same location as the site representative of the highest HAA5 and thus may determine that the system only has to monitor at a single site.

(i) Ground water systems under 10,000 have the option of moving to quarterly compliance sampling consistent with Stage 1 sampling strategy.

(c) Under 500: Systems must monitor annually at the site representing the highest TTHM and the highest HAA5 points in the distribution system as identified under the IDSE. If the State/Primacy Agency determines, based on the results of the IDSE, that this site is not representative of both the highest TTHM and HAA5 concentrations, the system should collect unpaired samples at two sites in the distribution system (*i.e.,* TTHM only at one site and HAA5 only at another site).

(i) If the State/Primacy Agency waives the requirement for systems under 500 to conduct the IDSE, they will conduct annual sampling at the point of maximum residence time in the distribution system during the month of warmest water temperature.

(ii) Ground water systems under 500 have the option of moving to quarterly compliance sampling consistent with Stage 1 sampling strategy.

3.1.c Wholesale and Consecutive Systems

The FACA has considered the issues of consecutive systems and recommends that EPA propose that all wholesale and consecutive systems must comply with provisions of the Stage 2 DBPR on the same schedule required of the wholesale or consecutive system serving the largest population in the combined distribution system.

Principles:

- Consumers in consecutive systems should be just as well protected as customers of all systems, and
- Monitoring provisions should be tailored to meet the first principle.

The FACA recognizes that there may be issues that have not been fully explored or completely analyzed and therefore recommends that EPA solicit comments.

3.1.d Peaks

Recognizing that significant excursions of DBP levels will sometimes occur, even when systems are in full compliance with the enforceable MCL, public water systems that have significant excursions during peak periods are to refer to EPA guidance on how to conduct peak excursion evaluations, and how to reduce such peaks. Such excursions will be reviewed as a part of the sanitary survey process. EPA guidance on DBP level excursions will be issued prior to promulgation of the final rule and will be developed in consultation with stakeholders.

3.2. Bromate MCL

The Stage 2 M–DBP Advisory Committee has considered the present potential that reducing the bromate MCL to 0.005 mg/L would both increase the concentration of other DBPs in the drinking water and interfere with the efficacy of microbial pathogen inactivation. Therefore, the Committee recommends for purposes of Stage 2 that the bromate MCL remain at 0.010 mg/L. This recommendation is based upon current alternative technology utilization and upon current

[3] The objective of this monitoring provision and similar monitoring provisions herein after is to prevent systems from avoiding monitoring during peak occurrence.

understanding of bromate formation as a result of bromide concentrations. EPA commits to review the bromate MCL as part of the 6 year review and determine whether the MCL should remain at 0.010 mg/L or be reduced to 0.005 mg/L or a lower concentration. As a part of that review, EPA will consider the increased utilization of alternative technologies and whether the risk/risk concerns reflected in today's recommendation remain valid. The FACA agrees that it is important to continue research on bromate detection, formation, treatment, and health effects.

4.0 LT2ESWTR

The requirements of the LT2ESWTR will apply to all public water systems that use surface water or ground water under the direct influence of surface water.

The FACA recognizes that systems may need to provide additional protection against *Cryptosporidium,* and that such decisions should be made on a system specific basis. The LT2ESWTR incorporates system specific treatment requirements based on a 'Microbial Framework' approach. This approach generally involves assignment of systems into different categories (or bins) based on the results of source water *Cryptosporidium* monitoring. Additional treatment requirements depend on the bin to which the system is assigned. Systems will choose technologies to comply with additional treatment requirements from a 'toolbox' of options.

4.1 Monitoring and Treatment Requirements for Filtered Systems

4.1.a Monitoring for Bin Classification

(1) Systems ≥ 10,000:

For purposes of bin classification, source water *Cryptosporidium* monitoring shall be conducted using EPA Method 1622/23 and no less than 10L samples. EPA will provide guidance for those cases where it is not possible to process a 10L sample.

(a) *Cryptosporidium, E. coli,* and turbidity source water sampling shall be carried out on a predetermined schedule for 24 months with two choices:

(i) Bin classification based on highest 12 month running annual average if monthly samples, OR

(ii) Optional bin classification based on 2 year mean if facility conducts twice per month monitoring for 24 months (*i.e.* 48 samples). Systems may carry out additional sampling but it must be evenly distributed over the 2 year monitoring period.

(b) Systems with at least 2 years of historical *Cryptosporidium* data that is equivalent in sample number, frequency, and data quality (*e.g.* volume analyzed, percent recovery) to data that would be collected under the LT2ESWTR with EPA Method 1622/23 may use those data to determine bin classification in lieu of further monitoring. Systems which are able to use historical data in lieu of conducting new monitoring must submit such *Cryptosporidium* data to the State/Primacy Agency for consideration in selecting bin placement.

(c) Systems that provide 2.5 logs of treatment for *Cryptosporidium* (equivalent to Bin 4, including inactivation) in addition to conventional treatment are exempt from monitoring for purposes of selecting bin placement. Conventional treatment is defined as coagulation, flocculation, sedimentation and granular media filtration.

(d) EPA agrees to work with stakeholders to develop a guidance manual with appropriate QA/QC procedures for *Cryptosporidium* sampling

(2) Systems < 10,000:

(a) Based on the large system monitoring under 4.1.a, EPA will work with stakeholders to evaluate alternative indicators and system characterization scenarios for predicting *Cryptosporidium* occurrence in small systems. This evaluation will include new information on surrogates, including *E. coli,* and will assess whether *E. coli* concentrations of 10 and 50 per 100ml are appropriate values to trigger *Cryptosporidium* monitoring in lakes/reservoirs and flowing streams, respectively.

(b) In the absence of an alternative indicator specified by the State/Primacy Agency, based on EPA guidance, source water *E. coli* levels trigger *Cryptosporidium* monitoring as described below:

(i) Systems must begin one year of biweekly *E. coli* source water monitoring 2 years after large systems initiate *Cryptosporidium* monitoring.

(ii) Systems must conduct *Cryptosporidium* monitoring if *E. coli* concentrations exceed the following levels:

—annual mean > 10/100 ml for lakes and reservoirs.

—annual mean > 50/100 ml for flowing streams.

(c) Systems that provide 2.5 logs of treatment for *Cryptosporidium* (equivalent to Bin 4, including inactivation) in addition to conventional treatment are exempt from monitoring for purposes of selecting bin placement.

(d) The FACA recommends that *E. coli* monitoring for small systems will begin two and one half years after rule promulgation and also that *Cryptosporidium* monitoring be comprised of 24 samples over 1 year. The FACA also recommends that EPA solicit comment on any additional approaches to expedite small system compliance.

(e) EPA will work with stakeholders to explore the feasibility of developing alternative, lower frequency, *Cryptosporidium* monitoring criteria for providing a conservative mean estimate.

4.1.b Action Bins (for conventional treatment plants)

(1) The bins have been structured considering the total *Cryptosporidium* oocyst count, uncorrected for recovery, as measured using EPA Method 1623 and 10 L samples.

(2) Systems have 3 years following initial bin classification to meet the treatment requirements associated with the bin (see Bin Requirements Table below). The State/Primacy Agency may grant systems an additional 2 year extension to comply when capital investments are necessary.

(3) Systems currently using ozone, chlorine dioxide, UV, or membranes in addition to conventional treatment may receive credit for those technologies towards bin requirements.

(4) Bin requirements table is shown below:

BIN REQUIREMENTS TABLE

Bin No.	Average *Cryptosporidium* concentration	Additional treatment requirements for systems with conventional treatment that are in full compliance with IESWTR [4]
1	*Cryptosporidium* <0.075/L	No action.
2	0.075/L ≤*Cryptosporidium* <1.0/L	1-log treatment (systems may use any technology or combination of technologies from toolbox as long as total credit is at least 1-log).

BIN REQUIREMENTS TABLE—Continued

Bin No.	Average *Cryptosporidium* concentration	Additional treatment requirements for systems with conventional treatment that are in full compliance with IESWTR [4]
3	1.0/L ≤*Cryptosporidium* < 3.0/L	2.0 log treatment (systems must achieve at least 1-log of the required 2-log treatment using ozone, chlorine dioxide, UV, membranes, bag/cartridge filters, or in-bank filtration).
4	*Cryptosporidium* ≥3.0/L	2.5 log treatment (systems must achieve at least 1-log of the required 2.5-log treatment using ozone, chlorine dioxide, UV, membranes, bag/cartridge filters, or in-bank filtration).

[4]FACA has not addressed direct filtration systems. EPA will address direct filtration systems in connection with bins 2–4 in the proposed LT2ESWTR and request comment.

(5) The additional treatment requirements in the bin requirement table are based, in part, on the assumption that conventional treatment plants in compliance with the IESWTR achieve an average of 3 logs removal of *Cryptosporidium*. The total *Cryptosporidium* removal requirements for the action bins with 1 log, 2 log, and 2.5 log additional treatment correspond to total *Cryptosporidium* removals of 4, 5, and 5.5 log respectively.

(6) FACA recommends that EPA request public comment on whether current guidance regarding *Giardia* treatment requirements for meeting the Surface Water Treatment Rule need to be revised (to be consistent with multiple barrier concept in the current guidance and the FACA recommendations herein).

4.1.c Toolbox

(1) Meeting the log treatment requirements identified for each ''Action Bin'' may necessitate one or more actions from an array of management strategies which include watershed control, reducing influent *Cryptosporidium* concentrations, improved system performance, and additional treatment barriers.

(2) Based on available information, the FACA recommends that LT2ESWTR employ a ''toolbox'' approach, and that the following tools when properly designed and implemented receive the following log credit (or range of credit). As recognized previously in this Agreement, EPA must employ the best information available in developing the final rule and will request comment on the proposed log credits assigned in the following table.

(3) EPA will provide guidance for determining if toolbox options are properly designed and implemented.

(4) Table with microbial toolbox components and associated potential log credit is shown below:

MICROBIAL TOOLBOX COMPONENTS

[To be used in addition to existing treatment]

Treatment approach	Potential log credit			
	0.5	1.0	2.0	>2.5
Watershed Control:				
Watershed Control Program (1)	X			
Reduction in oocyst concentration (3)		As measured		
Reduction in viable oocyst concentration (3)		As measured		
Alternative Source:				
Intake relocation (3)		As measured		
Change to alternative source of supply (3)		As measured		
Management of intake to reduce capture of oocysts in source water (3)		As measured		
Managing timing of withdrawal (3)		As measured		
Managing level of withdrawal in water column (3)		As measured		
Pretreatment:				
Off-stream raw water storage w/detention of X days (1)	X			
Off-stream raw water storage w/detention of Y weeks (1)		X		
Pre-settling basin w/coagulant	X	→		
Lime softening (1)	→	→		
In-bank filtration (1)		X	→	→
Improved Treatment:				
Lower finished water turbidity (0.15 NTU 95%tile CFE)	X			
Slow sand filters (1)				X
Roughing filters (1)	X	→	→	→
Membranes (MF, UF, NF, RO) (1)				X
Bag filters (1)		X	→	→
Cartridge filters (1)			X	
Improved Disinfection:				
Chlorine dioxide (2)	X	X		
Ozone (2)	X	X	X	
UV (2)				X
Peer Review/Other Demonstration/Validation or System Performance:				
Peer review program (*e.g.,* Partnership Phase IV)		X		

MICROBIAL TOOLBOX COMPONENTS—Continued

[To be used in addition to existing treatment]

Treatment approach	Potential log credit			
	0.5	1.0	2.0	>2.5
Performance studies demonstrating reliable specific log removals for technologies not listed above. This provision does not supercede other inactivation requirements.	As demonstrated			

Key to table symbols: (X) indicates potential log credit based on proper design and implementation in accordance with EPA guidance. (→) indicates estimation of potential log credit based on site specific or technology specific demonstration of performance.

Table footnotes: (1) Criteria to be specified in guidance to determine allowed credit, (2) Inactivation dependent on dose and source water characteristics, (3) Additional monitoring for *Cryptosporidium* after this action would determine new bin classification and whether additional treatment is required.

4.1.d Reassessment and Future Monitoring

(1) Systems that provide a total of 2.5 logs of treatment (equivalent to Bin 4 including inactivation) for *Cryptosporidium* in addition to conventional treatment are exempt from reassessment and future monitoring.

(2) Four years after initial bin characterization, EPA will initiate a stakeholder process to review available methods and the bin characterization structures. EPA will conduct a stakeholder process to determine the appropriate analytical method, monitoring frequency, monitoring location, etc., for this second round of national assessment monitoring.

(3) Six years after completion of the initial bin characterization, systems will conduct a second round of monitoring, equivalent or superior to the initial round from a statistical perspective, as part of a national reassessment . In the absence of an improved *Cryptosporidium* method (specified by the State/Primacy Agency, based on EPA guidance or rule and appropriate adjustment factors) site-specific reassessment monitoring will utilize method 1623 and site specific re-binning will occur under the current bin structure and time interval. If a new monitoring method is used, or the assumptions underlying the current bin structure change, the resulting data will be used for a site specific risk characterization in accordance with a revised bin structure (may require a revised rule) reflecting the changes in the underlying method.

(4) As part of the three-year sanitary survey process, the Primacy Agency will assess any significant changes in the watershed and source water. The Primacy Agency will determine with the systems what follow-up action is appropriate. Actions that may be deemed appropriate include those outlined in the toolbox in this agreement.

4.2 Unfiltered Systems

4.2.a Unfiltered systems must:

(1) Continue to meet filtration avoidance criteria, and

(2) Provide 4 log virus inactivation, and

(3) Provide 3 log *Giardia lamblia* inactivation, and

(4) Provide 2 log *Cryptosporidium* inactivation.

4.2.b Overall inactivation requirements must be met using a minimum of 2 disinfectants.

4.2.c Ongoing monitoring and any eventual reassignment to risk bins for unfiltered systems will be consistent with requirements for other systems of their size, with the provision that unfiltered systems must demonstrate that their *Cryptosporidium* occurrence level continues to be less than or equal to 1 in 100 liters (or equivalent, using advanced methods) or provide 3 logs of *Cryptosporidium* inactivation.

4.3 Uncovered Finished Water Reservoirs 4.3.a Systems with uncovered finished water reservoirs must:

(1) Cover the uncovered finish water reservoir, or

(2) Treat reservoir discharge to the distribution system to achieve a 4 log virus inactivation, unless

(3) State/Primacy Agency determines that existing risk mitigation is adequate.

(a) Systems must develop and implement risk mitigation plans.

(i) Risk mitigation plans must address physical access, surface water run-off, animal and bird waste, and on-going water quality assessment.

(ii) Risk mitigation plans must account for cultural uses by tribes.

5.0 Ultraviolet Light

5.1 Based on available information, EPA believes that ultraviolet (UV) disinfection is available and feasible. However, information is needed in order to clarify how UV disinfection will be used as a tool for compliance with the proposed LT2ESWTR. Issues of particular importance include engineering issues like: Hydraulic control, reliability, redundancy, monitoring, placement of sensors, lamp cleaning and replacement, and lamp breakage, as well as confirmation of the information underlying EPA's assessment that UV is available and feasible.

5.2 Concurrent with publication of the proposed rules, EPA will publish the following:

5.2.a Tables specifying UV doses (product of irradiance (I) and exposure time (T)) needed to achieve up to 3 logs inactivation of *Giardia lamblia,* up to 3 logs inactivation of *Cryptosporidium,* and up to 4 logs inactivation of viruses.

5.2.b Minimum standards to determine if UV systems are acceptable for compliance with drinking water disinfection requirements. These standards will address the following:

(1) A UV Validation Protocol to be established for drinking water applications of UV technology.[5] Protocol to be premised on post-filter application of UV. Protocol will include the following:

(a) Water quality criteria and site specific performance demonstration requirements for alternative placement of UV treatment in WTP.

(b) Demonstration of adherence with the UV dose tables for inactivation per the identified protocols.

(c) Testing of UV reactors to validate performance under worst case conditions (These independent testing protocols would necessarily encompass a range of worst case conditions appropriate to the range of WTPs that must comply with the LT2ESWTR).

(d) Minimum UV sensor performance characteristics (*e.g.* accuracy, stability, sensitivity).

(2) Description of on-site monitoring required to ensure ongoing compliance with required dose, including necessary testing and calibration of UV sensors.

[5] The FACA recommends that EPA analyze the Deutscher Verein des Gas und Wasserfaches (DVGW) Technical Guidelines W 294 in developing the validation protocol.

5.2.c UV Guidance Manual, the purpose of which is primarily to facilitate design and planning of UV installations by familiarizing State/Primacy Agencies and utilities with important design and operational issues, including:

(1) Redundancy, reliability and hydraulic constraints in UV system design including design limitations with respect to plant/pipe size

(2) Design considerations to account for water quality (*e.g.* UV absorbance, turbidity), lamp fouling and aging

(3) Appropriate operations and maintenance protocols to ensure performance of UV lamp (*e.g.*, sleeve cleaning systems).

(4) Recommendations for water systems when soliciting UV disinfection systems to ensure conformance to criteria described under 5.2.b.

(5) Instructions on routine equipment and water quality monitoring practices used to assure reliable UV performance over time.

5.3 The availability of UV disinfection is a fundamental premise of this Agreement in Principle. The FACA recommends that EPA incorporate into the final LT2ESWTR provisions in 5.2 that will facilitate the approval of UV technology by Primacy Agencies. EPA agrees in the proposed LT2ESWTR to request comment on which criteria should be incorporated into the final LT2ESWTR.

5.4 EPA agrees to publish revised IT tables and revised guidance manuals as part of the final LT2ESWTR that reflect comments on earlier drafts.

5.5 EPA agrees to conduct a stakeholder meeting during the comment period for the proposed LT2ESWTR to update stakeholders on a range of issues including the status of UV and any outstanding guidance manual issues.

5.6 If EPA identifies substantial new information related to the availability or feasibility of UV, EPA agrees to publish this information in a NODA. If EPA determines that this information significantly impacts the basis for provisions in this agreement, EPA agrees to reconvene the FACA to address feasibility and availability of UV.

6.0 Health Risk Reduction and Cost Analysis (HRRCA)

EPA agrees to include in the Stage 2 DBPR and LT2ESWTR proposals an estimate of public health effects, and a health risk reduction and cost analysis (HRRCA). EPA agrees to use costing analysis that was developed to support the FACA process as part of its HRRCA analysis and where there is a significant difference in costing information EPA will use HRCCA to explain the difference. EPA also agrees to request comments from the Science Advisory Board prior to proposal.

STAGE 2—M–DBP AGREEMENT IN PRINCIPLE

PART A, Section 1.0–6.0 agreed to by:

Name, Organization

Date

All members of the Stage 2 M-DBP Advisory Committee signed Part A.

Part B

7.0 Distribution Systems

7.1 The FACA recognizes that finished water storage and distribution systems may have an impact on water quality and may pose risks to public health.

7.2 The FACA recognizes that cross connections and backflow in distribution systems represent a significant public health risk 7.3 The FACA recognizes that water quality problems can be related to infrastructure problems and that aging of distribution systems may increase risks of infrastructure problems.

7.4 The FACA recognizes that distribution systems are highly complex and that there is a significant need for additional information and analysis on the nature and magnitude of risk associated with them.

7.5 Therefore, the FACA recommends that beginning in January 2001, as part of the 6-year review of the Total Coliform Rule, EPA should evaluate available data and research on aspects of distribution systems that may create risks to public health and, working with stakeholders, initiate a process for addressing cross connection control and backflow prevention requirements and consider additional distribution system requirements related to significant health risks.

8.0 Microbial Water Quality Criteria

The FACA recommends the development of national water quality criteria funded by EPA under the Clean Water Act for microbial pathogens for stream segments designated by states/tribes for drinking water use. The FACA recognizes that both nonpoint sources and point sources may be a significant contributor to microbial contamination of drinking water and both must be responsible for reducing their individual contributions to microbial contamination to achieve water quality standards.

STAGE 2 M—DBP AGREEMENT IN PRINCIPLE

PART B, Section 1.0–8.0 agreed to by:

Name, Organization

Date

All members of the Stage 2 M–DBP Advisory Committee except for the National Rural Water Association signed Part B.

Stage 2 M–DBP Advisory Committee Members and Alternates

International Ozone Association
- Michael Dimitriou, IDI Aqua Source
- Rip Rice, Rice International Consulting Enterprises (Alternate)

U.S. Environmental Protection Agency
- Cynthia Dougherty, Office of Ground Water and Drinking Water, Office of Water

All Indian Pueblo Council, Pueblo Office of Environmental Protection
- Dave Esparza, All Indian Pueblo Council
- Everett Chavez, All Indian Pueblo Council (Alternate)

Physicians for Social Responsibility
- Cathey Falvo, New York Medical College
- Caroline Poppell, Physicians for Social Responsibility (Alternate)

Chlorine Chemistry Council
- Peggy Geimer, MD, Arch Chemicals, Inc.
- Keith Christman, Chlorine Chemistry Council (Alternate)

National Association of People with AIDS
- Jeffrey K. Griffiths, Tufts University Schools of Medicine & Veterinary Medicine
- Terje Anderson, National Association of People with AIDS (Alternate)

Association of State Drinking Water Administrators
- Richard Haberman, California Department of Health Services
- Vanessa Leiby, Association of State Drinking Water Administrators (Alternate)

Environmental Council of the States
- Barker G. Hamill, Bureau of Safe Drinking Water
- Eva Nieminski, Utah Department of Environmental Quality (Alternate)

National Association of State Utility Consumer Advocates
- Christine Hoover, Office of Consumer Advocate, PA
- Brian Gallagher, National Association of State Utility Consumer Advocates (Alternate)

Unfiltered Systems
- Rosemary Menard, Water Resources Management Group, Portland Water Bureau
- Steve Leonard, San Francisco PUC (Alternate)

National Association of Water Companies
Richard Moser, American Water Works Service Company
Peter Cook, National Association of Water Companies (Alternate)
Natural Resources Defense Council
Erik Olson, Natural Resources Defense Council
Adrianna Quintero, Natural Resources Defense Council (Alternate)
Conservation Law Foundation
David Ozonoff, School of Public Health, Boston University
American Water Works Association
David Paris, Manchester Water Works
John Sullivan, American Water Works Association (Alternate)
Association of Metropolitan Water Agencies
Brian Ramaley, Newport News Waterworks
Diane Van De Hei, Association of Metropolitan Water Agencies (Alternate)
Water and Wastewater Equipment Manufacturers Association
Charles Reading, Jr., ITT/SafeWater Solutions
Gary Van Stone, Calgon Carbon Corporation (Alternate)
National Rural Water Association
Rodney Tart, Harnett County Public Utility, NC
Randy Van Dyke, National Rural Water Association (Alternate)
National League of Cities
Bruce Tobey, Mayor of Gloucester, Massachusetts
Carol Kocheisen, National League of Cities (Alternate)
National Environmental Health Association
National Association of County and City Health Officials
Chris Wiant, TriCounty Health Department
National Association of Regulatory Utility Commissioners
John Williams, Florida Public Service Commission
Clean Water Action
Marguerite Young, Clean Water Action
Lynn Thorp, Clean Water Action (Alternate)

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FEDERAL COMMUNICATIONS COMMISSON

[Report No. AUC–00–38–C (Auction No. 38); DA 00–2571]

Auction of Licenses for the 700 MHz Guard Bands Scheduled for February 13, 2001; Auction Notice and Filing Requirements for 8 Licenses in the 700 MHz Guard Bands Minimum Opening Bids and Other Procedural Issues

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the procedures and minimum opening bids for the upcoming auction of eight Guard Band Manager licenses in the 700 MHz Guard Bands (''Auction No. 38'').

DATES: Auction No. 38 is scheduled for February 13, 2001.

FOR FURTHER INFORMATION CONTACT: Legal questions contact Howard Davenport, Auctions Attorney, at (202) 418–0660. For general auction and bidding questions, contact Linda Sanderson, Auctions Project Manager, at (717) 338–2888 or Craig Bomberger, Auctions Analyst, at (202) 418–0660. Media Contact, Mark Rubin at (202) 418–2924. For licensing questions, contact Roger Noel, Chief, Licensing & Technical Analysis Branch, at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This is a summary of a public notice released November 14, 2000. The complete text of the public notice, including attachments, is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.) 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800. It is also available on the Commission's web site at *http://www.fcc.gov*.

List of Attachments available at the FCC.

Attachment A—Licenses to be Auctioned
Attachment B—FCC Auction Seminar Registration Form
Attachment C—Electronic Filing and Review of the FCC Form 175
Attachment D—Guidelines for Completion of FCC Form 175 and Exhibits
Attachment F—FCC Bidding Preference/Remote Software Order Form
Attachment G—Accessing the FCC Network to File FCC Form 175
Attachment H—Summary of Documents Addressing the Anti-Collusion Rules
Attachment I—Incumbent Television Licensees on Channels 59–68

I. General Information

A. Introduction

1. This public notice announces the procedures and minimum opening bids for the upcoming auction of eight Guard Band Manager licenses in the 700 MHz Guard Bands (''Auction No. 38''). On October 13, 2000, the Wireless Telecommunications Bureau (''Bureau'') released a public notice, seeking comment on the establishment of reserve prices or minimum opening bids for Auction No. 38, in accordance with the Balanced Budget Act of 1997. In addition, the Bureau sought comment on a number of procedures to be used in Auction No. 38. The Bureau received no comments in response to the *Auction No. 38 Comment Public Notice* 65 FR 63584 (October 24, 2000).

i. Background of Proceeding

2. The 746–806 MHz band has historically been used exclusively by television stations (Channels 60–69). Incumbent analog television broadcasters are permitted by statute to continue operations in this band until their markets are converted to digital television (''DTV''). The Budget Act directed the Commission to reallocate this spectrum for public safety and commercial use by December 31, 1997, and to commence competitive bidding for the commercial licenses on the reallocated spectrum after January 1, 2001. In November 1999, Congress enacted a consolidated appropriations statute that revised the latter instruction. This legislation accelerated the schedule for auction of the commercial spectrum bands. Accordingly, the Bureau held an auction that began on September 6, 2000 and concluded on September 21, 2000 (Auction No. 33).

ii. Licenses to Be Auctioned

3. The licenses available in this auction consist of the following licenses that remained unsold in Auction No. 33.

Market No.	Market name	Block	Bandwidth
MEA012	Pittsburgh, PA	A	2 MHz
MEA014	Columbus, OH	B	4 MHz
MEA028	Little Rock, AR	B	4 MHz

Market No.	Market name	Block	Bandwidth
MEA034	Omaha, NE	B	4 MHz
MEA037	Oklahoma City, OK	B	4 MHz
MEA048	Hawaii	B	4 MHz
MEA049	Guam and the Northern Mariana Islands	B	4 MHz
MEA051	American Samoa	B	4 MHz

The frequency allocation for the ''A'' Block license is 746–747/776–777 MHz. The frequency allocation for the ''B'' Block licenses is 762–764/792–794 MHz.

B. Rules and Disclaimers

i. Relevant Authority

4. Prospective bidders must familiarize themselves thoroughly with the Commission's rules relating to the 700 MHz band, contained in title 47, part 27 of the Code of Federal Regulations, and those relating to application and auction procedures, contained in title 47, part 1 of the Code of Federal Regulations. In particular, bidders should also familiarize themselves with the Commission's recent amendments and clarifications to its general competitive bidding rules. *See* Part 1 Fifth Report and Order, 65 FR 52401 (August 29, 2000).

5. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions (collectively, ''Terms'') contained in this public notice; the *Auction No. 38 Comment Public Notice, 700 MHz Second Report and Order*, 65 FR 17594 (April 4, 2000), *700 MHz First Report & Order*, 65 FR 3139 (January 20, 2000), *700 MHz Memorandum Opinion and Order (MO&O)*, 65 FR 42879 (July 12, 2000), *Reallocation Report & Order*, 63 FR 6669 (February 10, 1998), and *Reallocation MO&O* 63 FR 63798 (November 17, 1998).

6. The terms contained in the Commission's rules, relevant orders and public notices are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time, and will issue public notices to convey any new or supplemental information to bidders. It is the responsibility of all prospective bidders to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Internet node via anonymous ftp @ftp.fcc.gov or the FCC Auctions World Wide Web site at *http://www.fcc.gov/wtb/auctions*. Additionally, documents may be obtained for a fee by calling the Commission's copy contractor, International Transcription Service, Inc. (ITS), at (202) 314–3070. When ordering documents from ITS, please provide the appropriate FCC number (for example, FCC 00–5 for the *700 MHz First Report & Order*).

ii. Prohibition of Collusion

7. To ensure the competitiveness of the auction process, the Commission's rules prohibit applicants for the same geographic license area from communicating with each other during the auction about bids, bidding strategies, or settlements. This prohibition begins at the short-form application filing deadline, and ends at the down payment deadline after the auction. Bidders competing for licenses in the same geographic license areas are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he/she is authorized to represent in the auction. Also, if the authorized bidders are different individuals employed by the same organization (*e.g.*, law firm or consulting firm), a violation could similarly occur. At a minimum, in such a case, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.

8. The Bureau, however, cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred nor will it preclude the initiation of an investigation when warranted. In Auction No. 38, for example, the rule would apply to any applicants bidding for the same MEA. Therefore, applicants that apply to bid for ''all markets'' would be precluded from communicating with all other applicants after filing the FCC Form 175. However, applicants may enter into bidding agreements before filing their FCC Form 175 short-form applications, as long as they disclose the existence of the agreement(s) in their Form 175 short-form applications. If parties agree in principle on all material terms prior to the short-form filing deadline, those parties must be identified on the short-form application under § 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the filing deadline, an applicant would not include the names of those parties on its application, and may not continue negotiations with other applicants for the same geographic license areas. By signing their FCC Form 175 short-form applications, applicants are certifying their compliance with § 1.2105(c). In addition, § 1.65 of the Commission's Rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, § 1.65 requires an auction applicant to notify the Commission of any violation of the anti-collusion rules upon learning of such violation. Bidders are therefore required to make such notification to the Commission immediately upon discovery.

iii. Protection of Public Safety Operations

9. Section 337 (d)(4) of the Budget Act requires that the Commission establish rules insuring that public safety services licensees using spectrum reallocated pursuant to subsection (a)(1) shall not be subject to harmful interference from television broadcast licensees. The Conference Report pertaining to that section states that the Commission should ensure that public safety service licensees in the 746–806 MHz band ''continue to operate free of interference from any new commercial licensees.'' To achieve this end, the Commission established ''Guard Bands'' in the 746–747 MHz, 762–764 MHz, 776–777 MHz, and 792–794 MHz bands. The Commission required that entities operating in the Guard Bands adhere to the same out-of-band emission (''OOBE'') criteria that was adopted for 700 MHz public safety users. In addition, these entities must coordinate their frequency use with public safety frequency coordinators and also comply

with the adjacent channel coupled power out-of-band emission limits. In addition, operations in the Guard Bands are restricted to entities that do not use a cellular system architecture.

iv. Protection of Television Services

10. Licensees operating on the spectrum associated with Channels 60, 62, 65, and 67 must comply with the co-channel and adjacent channel provisions of § 27.60 of our rules. For example, an entity operating on any portion of the 746–747 MHz Guard Band, which is contained in Channel 60, must provide co-channel protection to Channel 60, and adjacent channel protection to Channels 59 and 61.

11. *Negotiations with Incumbent Broadcast Licensees.* As the Commission noted in the *700 MHz First Report & Order:* ''The Congressional plan set forth in sections 336 and 337 of the [Communications] Act and in the 1997 Budget Act is to transition this spectrum from its current use for broadcast services to commercial use and public safety services.'' Congress also has directed the Commission to auction 36 MHz of spectrum, six of which are the subject of this auction, allocated for commercial use at least six years before the relocation deadline for incumbent broadcasters in this spectrum, while adopting interference limits and other technical restrictions necessary to protect full-service analog and digital television service during the transition to DTV.

12. In the *700 MHz MO&O*, the Commission concluded that voluntary band clearing agreements between incumbent broadcast licensees on Channels 59–69 and new licensees in the 700 MHz bands, if properly structured, will further the broad public interest in intensive and efficient use of the spectrum and further the statutory scheme. Accordingly, the Commission provided guidance in the *700 MHz MO&O* regarding its treatment of specific regulatory requests needed to implement such voluntary agreements. This guidance includes a presumption in favor of approving such regulatory requests in certain circumstances and a recognition of the must carry obligation of cable systems with regard to broadcasts of digital television programming. The Commission established a rebuttable presumption in favor of granting regulatory requests that would: (i) Make new or expanded wireless service, such as ''2.5'' or ''3G'' services available to consumers; (ii) clear commercial frequencies that enable provision of public safety services; or (iii) result in the provision of wireless service to rural or other underserved communities. The applicant would also need to show that grant of the request would not result in any of the following: (i) The loss of any of the four stations in the designated market area (DMA) with the largest audience share; (ii) the loss of the sole service licensed to the local community; or (iii) the loss of a community's sole service on a channel reserved for noncommercial educational broadcast service.

13. With respect to regulatory requests for which the presumption described is not established, or is rebutted, the Commission has stated that it will weigh the loss of broadcast service and the advent of new wireless service on a case-by-case basis. In reviewing specific requests not subject to the favorable presumption, the Commission would consider as a relevant factor in its public interest determination the extent to which the station's signal will remain available, after implementation of the agreement, to a significant number of its viewers in the licensee's service area. For instance, the Commission would find it significant if that signal is effectively available to a significant number of current viewers through various existing distribution channels, such as cable and DBS, and implementation of the voluntary agreement would not create additional TV white or gray area.

v. Due Diligence

14. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee in this service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does an FCC license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

15. Potential bidders are reminded that there are a number of incumbent broadcast television licensees already licensed and operating in the 746–764 and 776–794 MHz bands (television Channels 60–62 and 65–67), six megahertz of which will be subject to the upcoming auction. As discussed in greater detail, the Commission made clear that geographic area licensees operating on the spectrum associated with Channels 60, 62, 65, and 67 must comply with the co-channel and adjacent channel provision of § 90.545 of the Commission's rules. In addition, geographic area licensees operating fixed stations in the 746–764 MHz band must comply with the relevant provisions for ''base stations'' in §§ 90.309 and 90.545 of the Commission's rules; and licensees operating fixed stations in the 776–794 MHz band must comply with the relevant provisions for ''control stations'' in those sections of the rules.

16. These limitations may restrict the ability of such geographic licensees to use certain portions of the electromagnetic spectrum or provide service to certain regions in their geographic license areas. Listed in Attachment I are the facilities of incumbent television permittees and licensees on television Channels 59–68. However, prospective bidders should not rely solely on this list, but should carefully review the Commission's databases and records before formulating bidding strategies. Records relating to these stations are available for public inspection during regular business hours in the Reference Information Center at the Federal Communications Commission, 445 Twelfth Street, SW, CY–A257, Washington, DC 20554. The Commission makes no representation or guarantees regarding the accuracy or completeness of the information in Attachment I. In addition, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into the databases. Potential bidders are strongly encouraged to physically inspect any sites located in or near the geographic area for which they plan to bid.

17. Potential bidders should also be aware that certain applications (including those for modification), petitions for rulemaking, waiver requests, requests for special temporary authority (''STA''), petitions to deny, petitions for reconsideration, and applications for review may be pending before the Commission that relate to the facilities in Attachment I. We note that resolution of these pending matters could have an impact on the availability of spectrum for licensees in the 746–764 and 776–794 MHz bands. While the Commission will continue to act on pending matters, some of these matters may not be resolved by the time of auction.

18. Potential bidders are strongly encouraged to conduct their own research prior to Auction No. 38 in order to determine the existence of pending proceedings that might affect their decisions regarding participation in the auction. Participants in Auction

No. 38 are strongly encouraged to continue such research during the auction.

vi. Bidder Alerts

19. All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license, and not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency. Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

20. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 38 to deceive and defraud unsuspecting investors.

21. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326–2222 and from the SEC at (202) 942–7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876–7060. Consumers who have concerns about specific 700 MHz proposals may also call the FCC Consumer Center at (888) CALL–FCC ((888) 225–5322).

vii. National Environmental Policy Act (NEPA) Requirements

22. Licensees must comply with the Commission's rules regarding the National Environmental Policy Act (NEPA). The construction of a wireless antenna facility is a federal action and the licensee must comply with the Commission's NEPA rules for each such facility. The Commission's NEPA rules require, among other things, that the licensee consult with expert agencies having NEPA responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corp of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). The licensee must prepare environmental assessments for facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The licensee must also prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

C. Auction Specifics

i. Auction Date

23. The auction will begin on Tuesday, February 13, 2001. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding on all licenses will be conducted on each business day until bidding has stopped on all licenses.

ii. Auction Title

24. Auction No. 38—700 MHz Guard Band.

ii. Bidding Methodology

25. The bidding methodology for Auction No. 38 will be simultaneous multiple round bidding. Bidding will be permitted only from remote locations, either electronically (by computer) or telephonically.

iii. Pre-Auction Dates and Deadlines

26. These are important dates relating to Auction No. 38:

Auction Seminar—January 4, 2001
Short-Form Application (FCC FORM 175)—January 12, 2001; 6:00 p.m. ET
Upfront Payments (via wire transfer)—January 26, 2001; 6:00 p.m. ET
Orders for Remote Bidding Software—January 29, 2001; 6:00 p.m. ET
Mock Auction—February 9, 2001
Auction Begins—February 13, 2001

iv. Requirements for Participation

27. Those wishing to participate in the auction must:

- Submit a short form application (FCC Form 175) electronically by 6:00 p.m. ET, January 12, 2001.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET January 26, 2001.
- Comply with all provisions outlined in this public notice.

vi. General Contact Information

28. The following is a list of general contract information relating to Auction No. 38:

General Auction Information: General Auction Questions; Seminar Registration; Orders for Remote Bidding Software—FCC Auctions Hotline, (888) 225–5322, Press Option #2, or direct (717) 338–2888, Hours of service: 8 a.m.–6:00 p.m. ET.

Auction Legal Information: Auction Rules, Policies, Regulations—Auctions and Industry Analysis Division, Legal Branch (202) 418–0660.

Licensing Information: Rules, Policies, Regulations; Licensing Issues; Incumbency/Protection Issues—Commercial Wireless Division, (202) 418–0620.

Technical Support: Electronic Filing Assistance; Software Downloading—FCC Auctions Technical Support Hotline, (202) 414–1250 (Voice), (202) 414–1255 (TTY). Hours of service: 7 a.m.–10:00 p.m. ET, Monday–Friday; 8 a.m.–7:00 p.m. ET, Saturday; 12:00 p.m.–6:00 p.m. ET, Sunday.

Payment Information: Wire Transfers, Refunds—FCC Auctions Accounting Branch, (202) 418–1995, (202) 418–2843 (Fax).

Telephonic Bidding: Will be furnished only to qualified bidders.

FCC Copy Contractor: Additional Copies of Commission Documents—International Transcription Services, Inc., 445 12th Street, SW Room CY–B400, Washington, DC 20554, (202) 314–3070.

Press Information: Mark Rubin (202) 418–2924.

FCC Forms: (800) 418–3676 (outside Washington, DC), (202) 418–3676 (in the Washington Area), *http://www.fcc.gov/formpage.*

FCC Internet Sites: http://www.fcc.gov/wtb/auctions, http://www.fcc.gov, ftp://www.fcc.gov.

I. Short-Form (FCC Form 175) Application Requirements

29. Guidelines for completion of the short-form (FCC Form 175) are set forth in Attachment D to the public notice. The short-form application seeks the applicant's name and address, legal classification, status, bidding credit eligibility, identification of the authorization(s) sought, the authorized bidders and contact persons, and specific ownership information.

A. Ownership Disclosure Requirements (Form 175 Exhibit A)

30. All applicants must comply with the uniform part 1 ownership disclosure standards and provide information required by §§ 1.2105 and 1.2112 of the Commission's rules. Specifically, in completing Form 175, applicants will be required to file an Exhibit A providing a full and complete statement of the ownership of the bidding entity. The ownership disclosure standards for the short-form are set forth in § 1.2112 of the Commission's rules.

B. Consortia and Joint Bidding Arrangements (Form 175 Exhibit B)

31. Applicants will be required to identify on their short-form applications

any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate in any way to the licenses being auctioned, including any agreements relating to post-auction market structure. *See* 47 CFR 1.2105(a)(2)(viii); and 1.2105(c)(1). Applicants will also be required to certify on their short-form applications that they have not entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bids, bidding strategies, or the particular licenses on which they will or will not bid. *See* 47 CFR 1.2105(a)(2)(ix). As discussed, if an applicant has had discussions, but has not reached a joint bidding agreement by the short-form deadline, it would not include the names of parties to the discussions on its application and may not continue discussions with applicants for the same geographic license area(s) after the deadline. In cases where applicants have entered into consortia or joint bidding arrangements, applicants must submit an Exhibit B to the FCC Form 175.

32. A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other applicants for licenses in the same geographic license area provided that (i) the attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has formed a consortium or entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants. While the anti-collusion rules do not prohibit non-auction related business negotiations among auction applicants, bidders are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies.

C. Small Business Bidding Credits (Form 175 Exhibit C)

33. In the *700 MHz Second Report & Order,* the Commission adopted small business provisions to promote and facilitate the participation of small businesses in competitive bidding for Guard Band licenses in the 700 MHz band.

i. Eligibility

34. Bidding credits are available to small businesses and very small businesses as defined in 47 CFR 27.502(a). For purposes of determining which entities qualify as very small businesses or small businesses, the Commission will consider the gross revenues of the applicant, its controlling interest holders, and affiliates of the applicant and its controlling interest holders. The Commission does not impose specific equity requirements on controlling interest holders. Once principals or entities with a controlling interest are determined, only the revenues of those principals or entities, the applicant and its affiliates will be counted in determining small business eligibility. The term ''control'' includes both *de facto* and *de jure* control of the applicant. Typically, ownership of at least 50.1 percent of an entity's voting stock evidences de jure control. *De facto* control is determined on a case-by-case basis. The following are some common indicia of control:

- The entity constitutes or appoints more than 50 percent of the board of directors or management committee;
- The entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; or
- The entity plays an integral role in management decisions.

35. A consortium of small businesses, or very small businesses is a ''conglomerate organization formed as a joint venture between or among mutually independent business firms'', each of which individually must satisfy the definition of small or very small business in § 27.502. Thus, each consortium member must disclose its gross revenues along with those of its affiliates, controlling interests, and controlling interests' affiliates. We note that although the gross revenues of the consortium members will not be aggregated for purposes of determining eligibility for small or very small business credits, this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.

ii. Application Showing

36. Applicants must file supporting documentation as Exhibit C to their FCC Form 175 short form applications to establish that they satisfy the eligibility requirements to qualify as a small business or very small business (or consortia of small or very small businesses) for this auction. Specifically, for Auction No. 38, applicants applying to bid as small or very small businesses (or consortia of small or very small businesses) will be required to disclose on Exhibit C to their FCC Form 175 short-form applications, separately and in the aggregate, the gross revenues for the preceding three years of each of the following: (i) The applicant; (ii) the applicant's affiliates; (iii) the applicant's controlling interest holders; and (iv) the affiliates of the applicant's controlling interest holders. Certification that the average gross revenues for the preceding three years do not exceed the applicable limit is not sufficient. A statement of the total gross revenues for the preceding three years is also insufficient. The applicant must provide separately for itself, its affiliates, and its controlling interest holders, and their affiliates, a schedule of gross revenues for each of the preceding three years, as well as a statement of total average gross revenues for the three-year period. If the applicant is applying as a consortium of very small or small businesses, this information must be provided for each consortium member.

iii. Bidding Credits

37. Applicants that qualify under the definitions of small business and very small business (or consortia of small or very small businesses) as are set forth in 47 CFR 27.502, are eligible for a bidding credit that represents the amount by which a bidder's winning bids are discounted. The size of a bidding credit in the 700 MHz guard band auction depends on the average gross revenues for the preceding three years of the bidder and its controlling interests and affiliates:

- A bidder with average gross revenues of not more than $40 million for the preceding three years receives a 15 percent discount on its winning bids for 700 MHz Guard Band manager licenses (''small business'');
- A bidder with average gross revenues of not more than $15 million for the preceding three years receives a 25 percent discount on its winning bids for 700 MHz Guard Band manager licenses (''very small business'').

38. Bidding credits are not cumulative; qualifying applicants receive either the 15 percent or the 25 percent bidding credit, but not both. Bidders in Auction No. 38 should also note that unjust enrichment provisions apply to winning bidders that use bidding credits and subsequently assign or transfer control of their licenses to an entity not qualifying for the same level of bidding credit. Finally, bidders should also note that there are no

installment payment plans in Auction No. 38.

iv. Tribal Land Bidding Credit

39. To encourage the growth of wireless services in federally recognized tribal lands the Commission has implemented a tribal land bidding credit. *See* Part V.C.

D. Provisions Regarding Defaulters and Former Defaulters (FCC Form 175 Exhibit D)

40. Each applicant must certify on its FCC Form 175 application that it is not in default on any Commission licenses and that it is not delinquent on any non-tax debt owed to any Federal agency. In addition, each applicant must attach to its FCC Form 175 application a statement made under penalty of perjury indicating whether or not the applicant (or any of the applicant's controlling interest or their affiliates, as defined by § 1.2110 of the Commission's rules, as recently amended in the *Part 1 Fifth Report and Order)* has ever been in default on any Commission licenses or has ever been delinquent on any non-tax debt owed to any federal agency. Applicants must include this statement as Exhibit D of the FCC Form 175. Prospective bidders are reminded that the statement must be made under penalty of perjury and, further, submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

41. ''Former defaulters''—*i.e.,* applicants, including their attributable interest holders, that in the past have defaulted on any Commission licenses or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies—are eligible to bid in Auction No. 38, provided that they are otherwise qualified. However, as discussed *infra* in section III.D.3, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.

E. Other Information (Form 175 Exhibits E and F)

42. Applicants owned by minorities or women, as defined in 47 CFR 1.2110(b)(2), may attach an exhibit (Exhibit E) regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of ''designated entities'' in its auctions. Applicants wishing to submit additional information may do so in Exhibit F, Miscellaneous Information to the FCC Form 175.

F. Minor Modifications to Short-Form Applications (FCC Form 175)

43. After the short-form filing deadline (January 12, 2001), applicants may make only minor changes to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.,* change their license selections, change the certifying official or change control of the applicant or change bidding credits). *See* 47 CFR 1.2105. Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Applicants should make these changes on-line, and submit a letter to Louis Sigalos, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW, Suite 4-A668, Washington, DC 20554, briefly summarizing the changes. A separate copy of the letter should be submitted to Howard Davenport, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW, Room 4-A435, Washington, DC 20554. Questions about other changes should be directed to Howard Davenport at (202) 418–0660.

G. Maintaining Current Information in Short-Form Applications (FCC Form 175)

44. Applicants have an obligation under 47 CFR 1.65, to maintain the completeness and accuracy of information in their short-form applications. Amendments reporting substantial changes of possible decisional significance in information contained in FCC Form 175 applications, as defined by 47 CFR 1.2105(b)(2), will not be accepted and may in some instances result in the dismissal of the FCC Form 175 application.

III. Pre-Auction Procedures

A. Auction Seminar

45. On Thursday, January 4, 2001, the FCC will sponsor a free seminar for Auction No. 38 at the Federal Communications Commission, located at 445 12th Street, Room CY–B511/418, SW, Washington, D.C. The seminar will provide attendees with information about pre-auction procedures, conduct of the auction, FCC remote bidding software, and the 700 MHz Guard Band service and auction rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff.

46. To register, complete the registration form included as Attachment B of this public notice and submit it by 6 p.m. ET, Tuesday, January 2, 2001. Registrations are accepted on a first-come, first-served basis.

B. Short-Form Application (FCC Form 175)—Due January 12, 2001

47. In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application. This application must be submitted electronically and received at the Commission no later than 6:00 p.m. ET on January 12, 2001. Late applications will not be accepted.

48. There is no application fee required when filing an FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment. *See* Part III.D.

i. Electronic Filing

49. Applicants must file their FCC Form 175 applications electronically. Applications may generally be filed at any time from 12 noon ET on January 4, 2001 until 6 p.m. ET on January 12, 2001. Applicants are strongly encouraged to file early, and applicants are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline on January 12, 2001.

50. Information about accessing the FCC Form 175 is included in Attachment C. Technical support is available at (202) 414–1250 (voice) or (202) 414–1255 (text telephone (TTY)); the hours of service are 7 a.m. to 10 p.m. ET, Monday through Friday, 8 a.m. to 7 p.m. ET, Saturday, and 12 p.m. to 6 p.m. ET, Sunday.

ii. Completion of the FCC Form 175

51. Applicants should carefully review 47 CFR 1.2105, and must complete all items on the FCC Form 175. Instructions for completing the FCC Form 175 are in Attachment D of this public notice. Applicants are encouraged to begin preparing the required attachments for FCC Form 175 prior to submitting the form. Attachments C and D to this public notice provide information on the required attachments and appropriate formats.

iii. Electronic Review of FCC Form 175

52. The FCC Form 175 electronic review system may be used to review and print applicants' FCC Form 175 information. Applicants may also view other applicants' completed FCC Form 175s after the filing deadline has passed and the FCC has issued a public notice explaining the status of the applications. For this reason, it is important that applicants do not include their Taxpayer Identification Numbers (TINs) on any Exhibits to their FCC Form 175 applications. There is no fee for accessing this system. *See* Attachment C for details on accessing the review system.

C. Application Processing and Minor Corrections

53. After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (i) Those applications accepted for filing (including FCC account numbers and the licenses for which they applied); (ii) those applications rejected; and (iii) those applications that have minor defects that may be corrected, and the deadline for filing such corrected applications.

54. As described more fully in the Commission's rules, after the January 12, 2001, short form filing deadline, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.,* change their license selections, change the certifying official, change control of the applicant, or change bidding credit eligibility).

D. Upfront Payments—Due January 26, 2001

55. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159 that can be printed and faxed to Mellon Bank in Pittsburgh, PA. All upfront payments must be received at Mellon Bank by 6 p.m. ET on January 26, 2001.

Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction No. 38 go to a lockbox number different from the ones used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments.
- Failure to deliver the upfront payment by the January 26, 2001 deadline will result in dismissal of the application and disqualification from participation in the auction.

i. Making Auction Payments by Wire Transfer

56. Wire transfer payments must be received at Mellon Bank by 6 p.m. ET on January 26, 2001. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 043000261
Receiving Bank: Mellon Pittsburgh
BNF: FCC/ACCOUNT # 910–0180
OBI Field: (Skip one space between each information item)
''AUCTIONPAY''
TAXPAYER IDENTIFICATION NO. (same as FCC Form 159, block 26)
PAYMENT TYPE CODE (enter ''A38U'')
FCC CODE 1 (same as FCC Form 159, block 23A: ''38'')
PAYER NAME (same as FCC Form 159, block 2)
LOCKBOX NO. # 358420

Note: The BNF and Lockbox number are specific to the upfront payments for this auction; do not use BNF or Lockbox numbers from previous auctions.

57. Applicants must fax a completed FCC Form 159 to Mellon Bank at (412) 236–5702 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write ''Wire Transfer—Auction Payment for Auction Event No. 38.'' Applicants are strongly encouraged to confirm timely transmission and receipt of their upfront payment at Mellon Bank and can do so by contacting their sending financial institution.

ii. FCC Form 159

58. A completed FCC Remittance Advice Form (FCC Form 159) must be faxed to Mellon Bank to accompany each upfront payment wire transfer. Proper completion of FCC Form 159 is critical to ensuring correct credit of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment E to the public notice. An electronic version of the FCC form 159 is available after submitting the FCC Form 175. The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

iii. Amount of Upfront Payment

59. In the *Part 1 Order, Memorandum Opinion and Order, and Notice of Proposed Rule Making,* the Commission delegated to the Bureau the authority and discretion to determine an appropriate upfront payment for each license being auctioned. In addition, as required by the *Part 1 Fifth Report and Order,* the upfront payment amount for ''former defaulters,'' *i.e.,* applicants that have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency, will be fifty percent more than the normal amount required to be paid. In the *Auction No. 38 Comment Public Notice,* the Bureau proposed upfront payments for Auction No. 38 to be the same as the upfront payments used for Auction No. 33. No comments were received concerning these upfront payments. We therefore adopt our proposed upfront payment amounts for Auction No. 38 as listed on Attachment A.

60. Please note that upfront payments are not attributed to specific licenses, but instead will be translated to bidding units to define a bidder's maximum bidding eligibility. For Auction No. 38, the amount of the upfront payment will be translated into bidding units on a one-to-one basis, *e.g.,* a $1,000,000 upfront payment provides the bidder with 1,000,000 bidding units. The total upfront payment defines the maximum number of bidding units on which the applicant will be permitted to bid (including standing high bids) in any single round of bidding. Thus, an applicant does not have to make an upfront payment to cover all licenses that an applicant has selected on FCC Form 175, but rather to cover the maximum number of bidding units that are associated with licenses on which the bidder wishes to place bids and hold high bids at any given time.

61. In order to be able to place a bid on a license, in addition to having specified that license on the FCC Form 175, a bidder must have an eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses applied for on the FCC Form 175, or else the applicant will not be eligible to participate in the auction.

62. In calculating its upfront payment amount, an applicant should determine the *maximum* number of bidding units it may wish to bid on in any single round, and submit an upfront payment

covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all licenses on which it seeks to bid in any given round. Bidders should check their calculations carefully, as there is no provision for increasing a bidder's maximum eligibility after the upfront payment deadline.

63. Any auction applicant that has previously been in default on any Commission license or has previously been delinquent on any non-tax debt owed to any Federal agency must submit an upfront payment equal to 50 percent more than that set for each particular license. *See* 47 CFR 1.2106. Former defaulters should calculate their upfront payment for all licenses by multiplying the number of bidding units they wish to purchase by 1.5. In calculating the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.

Note: An applicant may, on its FCC Form 175, apply for every license being offered, but its actual bidding in any round will be limited by the bidding units reflected in its upfront payment.

iv. Applicant's Wire Transfer Information for Purposes of Refunds

64. The Commission will use wire transfers for all Auction No. 38 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information as listed be supplied to the FCC. Applicants must fax the Wire Transfer instructions by January 26, 2001, to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Tim Dates or Gail Glasser, at (202) 418–2843. Should the payer fail to submit the requested information, the refund will be returned to the original payer. For additional information, please call (202) 418–1995.

Name of Bank
ABA Number
Contact and Phone Number
Account Number to Credit
Name of Account Holder
Correspondent Bank (if applicable)
ABA Number
Account Number
Tax ID#

(Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds.) Eligibility for refunds is discussed in Part V.F.

E. Auction Registration

65. Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the licenses for which they applied.

66. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, each containing a portion of the confidential identification codes required to place bids. These mailings will be sent only to the contact person at the contact address listed in the FCC Form 175.

67. Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on Thursday, February 8, 2001, must contact the Auctions Hotline at 717–338–2888. Receipt of both registration mailings is critical to participating in the auction and each applicant is responsible for ensuring it has received all of the registration material.

68. Qualified bidders should note that lost login codes, passwords or bidder identification numbers can be replaced only by appearing in person at the FCC Auction Headquarters located at 445 12th St., SW, Washington, DC 20554. Only an authorized representative or certifying official, as designated on the applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacement codes. Qualified bidders needing replacement codes must call technical support prior to arriving at the FCC to arrange preparation of new codes.

F. Remote Electronic Bidding Software

69. Qualified bidders are allowed to bid electronically or by telephone. If choosing to bid electronically, each bidder must purchase their own copy of the remote electronic bidding software. Electronic bids will only be accepted from those applicants purchasing the software. However, the software may be copied by the applicant for use by its authorized bidders at different locations. The price of the FCC's remote bidding software is $175.00 and must be ordered by Monday, January 29, 2001. For security purposes, the software is only mailed to the contact person at the contact address listed on the FCC Form 175. Please note that auction software is tailored to a specific auction, so software from prior auctions will not work for Auction No. 38. If bidding telephonically, the telephonic bidding phone number will be supplied in the Federal Express mailings of confidential login codes. Qualified bidders that do not purchase the software may only bid telephonically. To indicate your bidding preference, an FCC Bidding Preference/Remote Software Order Form can be accessed when submitting the FCC Form 175. Bidders should complete this form electronically, print it out, and fax to (717) 338–2850. A manual copy of this form is also included as Attachment F in this public notice.

G. Mock Auction

70. All qualified bidders will be eligible to participate in a mock auction scheduled for Friday, February 9, 2001. The mock auction will enable applicants to become familiar with the electronic software prior to the auction. Free demonstration software will be available for use in the mock auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

IV. Auction Event

71. The first round of bidding for Auction No. 38 will begin on Tuesday, February 13, 2001. The initial bidding schedule will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

A. Auction Structure

i. Simultaneous Multiple Round Auction

72. In the *Auction No. 38 Comment Public Notice,* we proposed to award eight Guard Band Manager licenses in the 700 MHz guard bands in a single stage, simultaneous multiple round auction. We received no comment on this issue. We therefore conclude that it is operationally feasible and appropriate to auction the 700 MHz Guard Band manager licenses through this auction design. Unless otherwise announced, bids will be accepted on all licenses in successive rounds of bidding.

ii. Maximum Eligibility and Activity Rules

73. In the *Auction No. 38 Comment Public Notice,* we proposed that the amount of the upfront payment submitted by a bidder would determine the initial maximum eligibility (as measured in bidding units) for each bidder participating in Auction No. 38. We received no comments on this issue.

74. For Auction No. 38, we will adopt our proposal that the amount of the upfront payment submitted by a bidder determines the initial maximum eligibility (in bidding units) for each bidder participating in Auction No. 38. Note again that upfront payments are not attributed to specific licenses, but instead will be translated into bidding units to define a bidder's initial maximum eligibility. The total upfront payment defines the maximum number of bidding units on which the applicant will initially be permitted to bid. As there is no provision for increasing a bidder's maximum eligibility during the course of an auction, prospective bidders are cautioned to calculate their upfront payments carefully. The upfront payment does not define the total dollars a bidder may bid on any given license.

75. In addition, we received no comments on our proposal for a single stage auction. Therefore, in order to ensure that the auction closes within a reasonable period of time, we adopt our proposal with the following activity requirements: a bidder must either place a valid bid and/or be the standing high bidder during each round of the auction rather than wait until the end before participating. Bidders are required to be active on 100 percent of their maximum eligibility during each round of the auction.

76. A bidder's activity level in a round is the sum of the bidding units associated with the licenses on which the bidder is active. A bidder is considered active on a license in the current round if it is the high bidder at the end of the previous round, or if it submits an acceptable bid in the current round. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's bidding eligibility to bring them into compliance with the activity rule.

iii. Activity Rule Waivers and Reducing Eligibility

77. In the *Auction No. 38 Comment Public Notice,* we proposed that each bidder in the auction would be provided two activity rule waivers that may be used in any round during the course of the auction. We received no comment on this issue.

78. Based upon our experience in previous auctions, we adopt our proposal that each bidder be provided two activity rule waivers that may be used in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license. We are satisfied that by providing two waivers over the course of the auction provides a sufficient number of waivers and maximum flexibility to the bidders, while safeguarding the integrity of the auction.

79. The FCC automated auction system assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an ''automatic waiver'') at the end of any round where a bidder's activity level is below the minimum required unless: (1) there are no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements.

80. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the round by using the reduce eligibility function in the software. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

81. Finally, a bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding software) during a round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids will not keep the auction open.

iv. Auction Stopping Rules

82. For Auction No. 38, the Bureau proposed to employ a simultaneous stopping rule. Under this rule, bidding will remain open on all licenses until bidding stops on every license. The auction will close for all licenses when one round passes during which no bidder submits a new acceptable bid on any license, or applies a proactive waiver. After the first such round, bidding closes simultaneously on all licenses.

83. The Bureau also proposed a modified version of the simultaneous stopping rule. This modified version will close the auction for all licenses after the first round in which no bidder submits a proactive waiver, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the standing high bidder will not keep the auction open under this modified stopping rule. The Bureau further sought comment on whether this modified stopping rule should be used unilaterally.

84. The Bureau further proposed retaining the discretion to keep an auction open even if no new acceptable bids or proactive waivers are submitted. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use an activity rule waiver (if it has any left).

85. In addition, we proposed that the Bureau reserve the right to declare that the auction will end after a specified number of additional rounds (''special stopping rule''). If the Bureau invokes this special stopping rule, it will accept bids in the final round(s) only for licenses on which the high bid increased in at least one of the preceding specified number of rounds. We proposed to exercise this option only in circumstances such as where the auction is proceeding very slowly, where there is minimal overall bidding activity or where it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the Bureau is likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day.

86. No comments were received on any of these issues, therefore, we adopt all of the proposals concerning the auction stopping rules. Auction No. 38 will begin under the simultaneous stopping rule, and the Bureau will retain the discretion to invoke the other versions of the stopping rule. Adoption of these rules, we believe, is most appropriate for Auction No. 38 because our experience in prior auctions demonstrates that the auction stopping rules balance the interests of administrative efficiency and maximum bidder participation.

v. Auction Delay, Suspension, or Cancellation

87. In the *Auction No. 38 Comment Public Notice,* we proposed that, by public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity,

administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding.

88. Because this approach has proven effective in resolving exigent circumstances in previous auctions, we will adopt our proposed auction cancellation rules. By public notice or by announcement during the auction, the Bureau may delay, suspend or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to: resume the auction starting from the beginning of the current round; resume the auction starting from some previous round; or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. We emphasize that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

A. Bidding Procedures

i. Round Structure

89. The initial bidding schedule will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. This public notice will be included in the first registration mailing. The round structure for each bidding round contains a single bidding round followed by the release of the round results. Multiple bidding rounds may be conducted in a given day. Details regarding round results formats and locations will be included in the public notice.

90. The FCC has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The FCC may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors. We received no comments, therefore, we adopt the proposal.

ii. Reserve Price or Minimum Opening Bid

91. *Background.* The Balanced Budget Act of 1997 calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC licenses are subject to auction (i.e., because they are mutually exclusive), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Consistent with this mandate, the Commission directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction. Among other factors, the Bureau must consider the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, the extent of interference with other spectrum bands, and any other relevant factors that could have an impact on valuation of the spectrum being auctioned. The Commission concluded that the Bureau should have the discretion to employ either or both of these mechanisms for future auctions.

92. In the *Auction No. 38 Comment Public Notice,* the Bureau proposed to establish minimum opening bids for Auction No. 38 and to retain discretion to lower the minimum opening bids. Specifically, for Auction No. 38, the Commission proposed calculating the minimum opening bid based on information available in the form of a Congressional estimate of the value of the spectrum. We received no comments, therefore, the Bureau adopts the proposal contained in the public notice, and set them forth in Attachment A.

iii. Bid Increments and Minimum Accepted Bids

93. In the *Auction No. 38 Comment Public Notice,* we proposed to apply a minimum bid increment of 10 percent to calculate minimum bid increments. We further proposed to retain the discretion to change the minimum bid increment if circumstances so dictate. We received no comment on this issue.

94. We will adopt the proposal contained in the *Auction No. 38 Comment Public Notice.* Once there is a standing high bid on a license, there will be a bid increment associated with that bid indicating the minimum amount by which the bid on that license can be raised. For Auction No. 38, we will use a flat, across-the-board increment of 10 percent to calculate the minimum bid increment. The Bureau retains the discretion to compute the minimum bid increment through other methodologies if it determines circumstances so dictate. Advanced notice of the Bureau's decision to do so will be announced via the Automated Auction System.

95. Bidders will enter their bid as multiples of the bid increment (i.e., with a 10 percent bid increment, a bid of 1 increment will place a bid 10 percent above the previous high bid, a bid of 2 increments will place a bid 20 percent above the previous high bid).

iv. High Bids

96. Each bid will be date- and time-stamped when it is entered into the FCC computer system. In the event of tie bids (identical gross bid amounts) for a license during a round, the earliest of the tied bids will be the standing high bid at the end of the round. The bidding software allows bidders to make multiple submissions in a round. As each bid is individually date- and time-stamped according to when it was submitted, bids submitted by a bidder earlier in a round will have an earlier date and time stamp than bids submitted later in a round.

v. Bidding

97. During a bidding round, a bidder may submit bids for as many licenses as it wishes, (subject to its eligibility), as well as remove bids placed in the same bidding round, or permanently reduce eligibility. If a bidder submits multiple bids for a single license in the same round, the system takes the last bid entered as that bidder's bid for the round, and the date- and time-stamp of that bid reflects the latest time the bid was submitted.

98. Please note that all bidding will take place remotely either through the automated bidding software or by telephonic bidding. (Telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. Normally, four to five minutes are necessary to complete a bid submission.) There will be no on-site bidding during Auction No. 38.

99. A bidder's ability to bid on specific licenses in the first round of the auction is determined by two factors: (i) The licenses applied for on FCC Form 175; and (ii) the upfront payment amount deposited. The bid submission screens will be tailored for each bidder to include only those licenses for which the bidder applied on its FCC Form 175.

100. The bidding software requires each bidder to login to the FCC auction system during the bidding round using the FCC account number, bidder identification number, and the confidential security codes provided in the registration materials. Bidders are

strongly encouraged to download and print bid verifications *after* they submit their bids.

101. The bid entry screen of the automated auction system software for Auction No. 38 allows bidders to place multiple increment bids, which will allow bidders to increase high bids from one to nine bid increments. A single bid increment is defined as the difference between the standing high bid and the minimum acceptable bid for a license. The bidding software will display the bid increment for each license.

102. To place a bid on a license, the bidder must increase the standing high bid by one to nine times the bid increment. This is done by entering a whole number between 1 and 9 in the bid increment multiplier (Bid Mult) field in the software. This value will determine the amount of the bid (Amount Bid) by multiplying the bid increment multiplier by the bid increment and adding the result to the high bid amount according to the following formula:

Amount Bid=High Bid+(Bid Mult*Bid Increment)

Thus, bidders may place a bid that exceeds the standing high bid by between one and nine times the bid increment. For example, to bid the minimum acceptable bid, which is equal to one bid increment, a bidder will enter ''1'' in the bid increment multiplier column and press submit.

103. For any license on which the FCC is designated as the high bidder (i.e., a license that has not yet received a bid in the auction), bidders will be limited to bidding only the minimum acceptable bid. In this case no increment exists for the licenses, and bidders should enter ''1'' in the Bid Mult field. Note that in this case, any whole number between 1 and 9 entered in the multiplier column will result in a bid value at the minimum acceptable bid amount.

vi. Bid Removal and Bid Withdrawal

104. In the *Auction No. 38 Comment Public Notice,* we proposed bid removal and bid withdrawal procedures. With respect to bid withdrawals, and based on the fact that only eight licenses will be auctioned, we proposed that bidders not be permitted to withdraw bids in any round. We received no comment on this issue. Therefore the Bureau adopts this proposal and will not permit bidders to withdraw bids in any rounds during Auction No. 38.

105. *Procedures.* Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the ''remove bid'' function in the software, a bidder may effectively ''unsubmit'' any bid placed within that round. Removing a bid will affect a bidder's activity for the round in which it is removed; *i.e.,* a bid that is subsequently removed does not count toward the bidder's activity requirement. Once a round closes, a bidder may no longer remove a bid. No comments were received; therefore, we will adopt these procedures for Auction No. 38.

vii. Round Results

106. Bids placed during a round will not be published until the conclusion of that bidding period. After a round closes, the Commission will compile reports of all bids placed, current high bids, new minimum accepted bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders' identities and FCC account numbers for Auction No. 38 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

viii. Auction Announcements

107. The FCC will use auction announcements to announce items such as schedule and bid increment changes. All FCC auction announcements will be available on the FCC remote electronic bidding system, as well as on the Internet.

ix. Maintaining the Accuracy of FCC Form 175 Information

108. As noted in Part II.F., after the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications. For example, permissible minor changes include deletion and addition of authorized bidders (to a maximum of three) and certain revisions to exhibits. Filers must make these changes on-line, and submit a letter briefly summarizing these changes to: Louis Sigalos, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–A668, Washington, DC 20554.

109. A separate copy of the letter should be mailed to Howard Davenport, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–A435, Washington, DC 20554. Questions about other changes should be directed to Howard Davenport, Auctions Attorney, Auctions and Industry Analysis Division at (202) 418–0660.

A. Post-Auction Procedures

A. Down Payments

110. After bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bids and bidders for each license.

111. Within ten business days after release of the auction closing public notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Government to 20 percent of its net winning bids (actual bids less any applicable bidding credits). *See* 47 CFR 1.2107(b).

B. Long-Form Application

112. Within ten business days after release of the auction closing public notice, winning bidders must file: (i) FCC Form 601 and all required exhibits electronically via the Universal Licensing System (''ULS''); and (ii) FCC Form 602 manually pursuant to § 1.919 of the Commission's rules. Winning bidders may file a single application for all markets won at auction. Winning bidders that are small businesses or very small businesses must include an exhibit demonstrating their eligibility for bidding credits. *See* 47 CFR 1.2112(b). Further, more detailed filing instructions will be provided to auction winners at the close of the auction.

C. Tribal Land Bidding Credit

113. A winning bidder that intends to use its license(s) to deploy facilities and provide services to federally-recognized tribal lands that are unserved by any telecommunications carrier or that have a telephone service penetration rate equal to or below 70 percent is eligible to receive a tribal land bidding credit as set forth in 47 CFR 1.2107 and 1.2110(e). A tribal land bidding credit is in addition to, and separate from, any other bidding credit for which a winning bidder may qualify.

114. Unlike other bidding credits that are requested prior to the auction, a winning bidder applies for the tribal land bidding credit after winning the auction when it files its long-form application (FCC Form 601). In order for a winning bidder to be awarded a tribal land bidding credit, it must provide specific certifications regarding the servicing of tribal lands and is subject to specific performance criteria as set forth in 47 CFR 1.2110(e).

115. For additional information on the tribal land bidding credit, including

how to determine the amount of credit available, *see* Public Notice DA 00–2219, released September 28, 2000, entitled *Wireless Telecommunications Bureau Announces Availability of Bidding Credits For Providing Wireless Services To Qualifying Tribal Lands.*

D. Auction Discount Voucher

116. On June 8, 2000, the Commission awarded Qualcomm, Inc. a transferable Auction Discount Voucher in the amount of $125,273,878.00. This Auction Discount Voucher may be used by Qualcomm or its transferee, in whole or in part, to adjust a winning bid in any spectrum auction prior to June 8, 2003, subject to terms and conditions set forth in the Commission's Order.

E. Default and Disqualification

117. Any high bidder that defaults or is disqualified after the close of the auction (*i.e.,* fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). In such event the Commission may re-auction the license or offer it to the next highest bidder (in descending order) at their final bid. *See* 47 CFR 1.2109(b) and (c). In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant. *See* 47 CFR 1.2109(d).

F. Refund of Remaining Upfront Payment Balance

118. All applicants that submitted upfront payments but were not winning bidders for a 700 MHz Guard Band license may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction.

119. Bidders that drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. However, bidders that reduce their eligibility and remain in the auction are not eligible for partial refunds of upfront payments until the close of the auction. Qualified bidders that have exhausted all of their activity rule waivers, and have no remaining bidding eligibility, must submit a refund request which includes wire transfer instructions and a Taxpayer Identification Number (''TIN''), to: Federal Communications Commission, Financial Operations Center, Auctions Accounting Group, Gail Glasser, 445 12th Street, SW., Room 1–A843, Washington, DC 20554

120. Bidders are encouraged to file their refund information electronically using the Refund Information portion of the FCC Form 175, but bidders can also fax their request to the Auctions Accounting Group at (202) 418–2843. Once the request has been approved, a refund will be sent to the party identified in the refund information.

Note: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Tim Dates or Gail Glasser at (202) 418–1995.

Federal Communications Commission.

Margaret Wiener,

Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau.

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FEDERAL TRADE COMMISSION

[File No. 001 0121]

El Paso Energy Corporation, et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. the attached Analysis to Aid Public Comment describes both the allegations in the draft compliant that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before January 22, 2001.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Phillip Broyles, FTC/S–2105, 600 Pennsylvania Ave., NW., Washington, DC 20580. (202) 326–2805.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for December 31, 2000), on the World Wide Web, at ''http://www.ftc.gov/os/2000/12/index.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has accepted for public comment from the El Paso Energy Corporation (''El Paso'') and PG&E Corporation (''PG&E'') (collectively the ''Proposed Respondents'') an Agreement Containing Consent Order (''the Proposed Consent Order''). The Proposed Consent Order remedies the likely anticompetitive effects in the natural gas transportation markets in the Permian Basin production area, the San Antonio-Austin area, and the Matagorda offshore production area. El Paso has also reviewed a proposed draft of complaint (the ''Proposed Complaint'') that the Commission contemplates issuing. The Proposed Consent Order is designed to remedy the likely competitive effects arising from the El Paso acquisition of all of the outstanding voting shares of PG&E Gas Transmission Teco, Inc., and PG&E Gas Transmission Texas Corporation, from PG&E (the ''Acquisition'').

II. Description of the Parties and the Proposed Acquisition

El Paso Energy Corporation is an integrated energy company producing, transporting, gathering, processing, and treating natural gas. With over $21

billion in assets, El Paso Energy Corporation is one of the largest integrated natural gas-to-power companies in the world. El Paso Energy not only owns North America's largest natural gas pipeline system, but also has growing operations in merchant energy services, power generation, international project development, gas gathering and processing, and gas and oil production.

El Paso has an interest in five pipeline systems in Texas: the Oasis pipeline, running from west Texas, through the San Antonio and Austin areas, to the Katy natural gas trading area (near Houston, Texas); the Channel Pipeline, extending from south Texas to the Houston Ship Channel; the Shoreline and Tomcat gathering systems, carrying gas from the Texas Gulf Coast to other larger transmission pipelines, and the Gulf States Pipeline, which runs from the Texas border to Ruston, Louisiana. In addition, El Paso owns the El Paso Natural Gas Pipeline that carries large volumes of gas from the Permian Basin gas gathering area to New Mexico, Arizona and Southern California.

PG&E is a California holding company that provides energy services throughout North America. During 1999, PG&E's annual revenues were $20.8 billion. One of PG&E's divisions, PG&E Gas Transmission, provides natural gas transmission and distribution through three subsidiaries. PG&E Gas Transmission operates natural gas transportation in the northwestern United States through its wholly-owned subsidiary PG&E Gas Transmission Northwest and in Texas through two wholly-owned subsidiaries PG&E Gas Transmission Texas Corporation (''PG&E GTT'') and PG&E Gas Transmission Teco, Inc. (''PG&E Teco'').

Together PG&E GTT and PG&E Teco own 8,000 miles of intrastate pipelines in Texas. PG&E's Texas pipeline capacity is about 3 billion cubic feet of gas per day (''Bcf/d.''). One PG&E pipeline system connects a prolific gas supply area of western Texas and southeastern New Mexico (the Permian Basin) to the cities of San Antonio and Austin and a major market trading area near Houston, called Katy. This is the Trans Texas pipeline. The Tufco pipeline, a second PG&E system, jointly owned with TXU Corporation connects the Permian Basin to another trading area near Dallas. A third PG&E system connects producing areas in southern Texas to the trading are of Agua Dulce.

El Paso proposes to acquire all of the outstanding stock of PG&E Teco and PG&E GTT, owned by PG&E, for $840 million.

III. The Investigation and the Proposed Complaint

The Proposed Complaint alleges that consummation of the Acquisition would violate Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. 18. The Proposed Complaint alleges that the Acquisition will lessen competition in each of the following markets: (1) The transportation of natural gas out of the Permian Basin; (2) the transportation of natural gas into the gas consuming area of Central Texas, which includes San Antonio, Austin, and the surrounding metropolitan area; and (3) the transportation of natural gas out of the Matagorda Island Offshore production area (''Matagorda''), located in waters off of the Texas coast near Galveston.

To remedy the alleged anticompetitive effects of the Acquisition, the Proposed Consent Order requires Proposed Respondents to divest: (1) All of El Paso's share of the Oasis Pipe Line Company; (2) a 50 percent interest in the pipeline segment from Waha to New Braunfels; (3) all of PG&E's interest in the pipeline segment running from New Braunfels to Dewville, Texas; (4) all of PG&E's interest in the pipeline segment running from Dewville to Katy; and (5) all of PG&E's assets in Matagorda.

The Commission accepted for public comment the Agreement Containing Consent Order after an extensive investigation in which the Commission examined competition and the likely effects of the acquisition in the markets alleged in the Proposed Complaint and in several other areas. The Commission conducted the investigation in coordination with the Attorney General of the State of Texas. Proposed Respondents have entered into an agreement with the State of Texas settling charges that the Acquisition would violate state antitrust law.

The analysis applied in each market follows the analysis of the Federal Trade Commission and Department of Justice Horizontal Merger Guidelines (1997) (''Merger Guidelines''). The Proposed Complaint alleges in three counts that the Acquisition would violate the Federal antitrust laws in natural gas transportation in three separate geographic markets in Texas. The proposed Acquisition, if consummated would result in highly concentrated markets and allow Proposed Respondents to raise prices unilaterally. The Proposed Complaint also alleges that entry into any of the three markets would not be timely, likely, or sufficient to prevent a price increase. The efficiency claims of the Proposed Respondents, to the extent they relate to the markets alleged in the Proposed Complaint, are small compared to the magnitude and likely harm, and would not restore competition lost as a result of the acquisition even if the Proposed Respondents achieved the claimed efficiencies.

A. Count I—Loss of Competition in the Permian Basin

The Permian Basin is a natural gas producing area in western Texas and southeastern New Mexico. As alleged in the Proposed Complaint, producers and marketers of Permian Basin gas have no alternative but to transport their gas to consuming areas on natural gas pipelines located in the Permian Basin. El Paso and PG&E today are two of the largest holders of natural gas pipeline capacity out of the Permian Basin, and El Paso would be the largest holder of capacity in this region if the Acquisition were completed.

As alleged in the Proposed Complaint, the market for natural gas transportation from the Permian Basin would be highly concentrated after the Acquisition. For most times of the year, Permian Basis natural gas producers prefer to sell their gas to the San Antonio and Austin area (''Central Texas''). At other times, California is a desirable destination. The Proposed Complaint alleges that Proposed Respondents own or control most of the capacity from the Permian Basin to Central Texas. Proposed Respondents own almost all the capacity from the Permian Basin to California. The Acquisition is likely to eliminate actual and direct competition in this market between proposed Respondents with the likely effects of increased rates and reduced output of transportation in the market, and diminished production of natural gas in the Permian Basin.

B. Count II—Loss of Competition in Central Texas

Central Texas, which includes the metropolitan areas of San Antonio and Austin, is an important natural gas consuming area. Buyers of natural gas, gas and electric utilities and merchant power plants, have no alternative to using pipelines located near metropolitan San Antonio and Austin. These Central Texas customers also do no have economic alternatives to using natural gas to fuel all or a significant number of their power plants. El Paso's Oasis pipeline and PG&E's Trans Texas pipeline account for almost all of the natural gas pipeline capacity into Central Texas.

Today, the market is highly concentrated and would become more so if the Acquisition were to occur, absent the proposed divestitures. Certain Central Texas transportation customers must use either Oasis or Trans Texas for all or a significant portion of their transportation needs. Other pipelines in the area have insufficient capabilities to offset the anticompetitve effects of the Acquisition. Absent relief, the Acquisition would enable El Paso unilaterally to raise prices to these customers, which would also raise the price of electricity to Central Texas consumers.

C. Count III—Loss of Competition in Matagorda

El Paso and PG&E own the only two pipeline systems that transport gas from the Matagorda off-shore production areas to on-shore processing facilities. The Proposed Complaint alleges that the Acquisition will eliminate actual and direct competition between Proposed Respondents, with the likely effects of increased rates and reduced output of transportation in the market, and diminished production of natural gas in the Matagorda area.

IV. The Proposed Consent Order

The Commission accepted for public comment an Agreement Containing Consent Order with Proposed Respondents, which would settle allegations contained in the Proposed Complaint. The Agreement Containing Consent Order contemplates that the Commission would issue the Proposed Complaint and enter the Proposed Order.

The Proposed Consent Order requires the Proposed Respondents to divest all of El Paso's interest in Oasis Pipe Line Company to Aquila Gas Pipeline Corporation (''Aquila,'' a subsidiary of Utilicorp United Ltd.), Dow Hydrocarbons and Resources, Inc. (''Dow,'' a subsidiary of Dow Chemical Company) and the Oasis Pipe Line Company (the corporate owner of the Oasis pipeline). Aquila, Dow and El Paso currently own Oasis Pipe Line Company. The Proposed Consent Order also requires the Proposed Respondents to divest: (1) A 50 percent interest in the Trans Texas pipeline segment from Waha to New Braunfels; (2) all of PG&E's interest in the Trans Texas pipeline segment running from New Braunfels to Dewville, Texas; and (3) all of PG&E's interest in the Trans Texas pipeline segment running from Dewville to Katy. Prior to PG&E's Acquisition in 1997, these three pipeline segments were known as the Teco Pipeline. The Proposed Respondents must divest the Teco Pipeline to Duke Energy Field Services, LLC (''Duke,'' a subsidiary of the Duke Corporation). The Proposed Consent Order also requires Proposed Respondents to divest all of PG&E's pipeline assets in Matagorda to Panther Pipeline. The Proposed Respondents must divest these assets to these approved buyers not later than 10 days after the Commission places the Agreement Containing Consent Order on the public record or the closing of the Acquisition, whichever is later.

Under the terms of the Proposed Consent Order, in the event that El Paso does not divest the assets required to be divested under the terms and time constraints of the Proposed Consent Order, the Commission may appoint a trustee to divest those assets, expeditiously, and at no minimum price.

For a period of ten (10) years from the date the Proposed Consent Order becomes final, the Proposed Consent Order prohibits El Paso from acquiring, directly or indirectly, any of the assets that are to be divested or altering the governance provisions of the Teco pipeline without obtaining the prior approval of the Commission. PG&E's obligations under the Proposed Consent Order terminate after completing the Acquisition.

The Proposed Consent Order also requires the Proposed Respondents to provide the Commission with a report of compliance with the terms of the Proposed Consent Order within thirty (30) days after the Order becomes final. Proposed Respondents must also file annual compliance reports detailing their compliance with the notice provisions under the Proposed Consent Order.

A. Resolution of the Competitive Concerns

The Proposed Consent Order, if finally issued by the Commission, would settle all of the charges alleged in the Commission's Proposed Complaint.

1. The Proposed Order Resolves Competitive Concerns in the Permian Basin and Central Texas

Under the terms of the Proposed Consent Order, Respondent El Paso will divest all of its interest in the Oasis Pipe Line Company to Aquila, Dow, and the Oasis Pipe Line Company. Proposed Respondents also have agreed to divest to Duke all of the Teco Pipeline.

El Paso will sell its Oasis Pipe Line Company stock to Dow, Aquila and the Oasis Pipe Line Company. Oasis Pipe Line Company will retire its El Paso stock. Oasis currently operates as a single pipeline with three owners, Aquila, Dow and El Paso. After the proposed divestitures are completed, El Paso will no longer have any interest in the Oasis Pipe Line Company, and current owners will continue to own and operate Oasis. The divestiture therefore enables Oasis to compete with El Paso and Duke to serve Permian Basin producers and marketers of natural gas.

The Teco Pipeline is being divested to Duke, a firm that is not presently in the market. Under the Proposed Consent Order, Duke will be able to sell gas on or expand the Teco Pipeline without obtaining the approval of El Paso. These protections will afford Duke the opportunity to compete with El Paso to serve the Permian Basin. In 1999, Duke had annual revenues of $21.7 billion. Duke currently owns and operates natural gas and other pipelines through the United States.

The proposed divestitures resolve competitive concerns in the Permian Basin by giving Permian producers two new options for transportation. The proposed divestitures lower Permian Basin concentration levels below pre-Acquisition concentration levels. The proposed divestitures also give Permian producers new options for shipping natural gas to the most desirable destination. Before the Acquisition, Permian producers had two companies competing to deliver gas to Central Texas, PG&E and Oasis (owned by El Paso). After the divestitures, they will have three alternatives, Duke, Oasis (independent of El Paso) and El Paso.

In Central Texas, the divestiture creates a market less concentrated than before the proposed Acquisition. Presently, firms that need natural gas transportation have two primary options. Oasis and PG&E. After the divestiture these firm will have a third option in Duke.

2. The Proposed Order Resolves Competitive Concerns in the Matagorda Area

Under the terms of the Proposed Consent Order, Proposed Respondents will divest PG&E's Matagorda area pipeline assets to Panther Pipeline Company. Panther has substantial experience operating pipeline and gathering systems. By divesting all of the PG&E assets, Matagorda producers will continue to have two pipelines with which they may contract for natural gas transportation.

B. Opportunity for Public Comment

The Proposed Consent Order has been placed on the public record for thirty (30) days for receipt of comments by

interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the Proposed Consent Order and the comments received and will decide whether it should withdraw from the Proposed Consent Order or make it final.

By accepting the Proposed Consent Order subject to final approval, the Commission anticipates that the competitive problems alleged in the Proposed Complaint will be resolved. The purpose of this analysis is to invite public comment on the Proposed Consent Order, including the proposed divestitures, to aid the Commission in its determination of whether it should make final the Proposed Consent Order. This analysis is not intended to constitute an official interpretation of the Proposed Consent Order, nor is it intended to modify the terms of the Proposed Consent Order in any way.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 00–33259 Filed 12–28–00; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 981 0237]

FMC Corporation; and Asahi Chemical Industry Co. Ltd.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreements.

SUMMARY: The consent agreements in these two matters settle alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaints that accompany the consent agreements and the terms of the consent orders—embodied in the consent agreements—that would settle these allegations.

DATES: Comments must be received on or before January 22, 2001.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael Antalics, FTC/H–374, 600 Pennsylvania Ave., NW., Washington, DC 20580. (202) 326–2821.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and section 2.34 of the Commission's Rules of Practice (167 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for December 21, 200), on the World Wide Web, at ''http://www.ft.gov/os/2000/12/index.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Orders To Aid Public Comment

The Federal Trade Commission has accepted agreements to proposed consent orders from FMC Corporation (''FMC'') and from Asahi Chemical Industry Co. Ltd. (''Asahi Chemical''). FMC has it principal place of business in Chicago, Illinois. Asahi Chemical has its principal place of business in Tokyo, Japan.

The proposed consent orders have been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreements and the comments received, and decide whether it should withdraw from the agreements or make final the agreements' proposed orders.

The Commission's multi-count complaint charges that FMC and Asahi Chemical (collectively referred to as ''respondents'') have violated Section 5 of the Federal Trade Commission Act by conspiring to monopolize the world market for microcrystalline cellulose, and by agreeing to divide territories for the sale of microcrystalline cellulose. In addition, FMC is charged with attempting to monopolize the relevant market and with inviting a competitor to collude.

According to the complaint, microcrystalline cellulose (''MCC'') is derived from purified wood cellulose and is used primarily as a binder in the manufacture of pharmaceutical tablets. MCC is a component of nearly all pharmaceutical tablets sold in the United States today. During the term of the conspiracy, FMC was the largest manufacturer and seller of MCC in the world. Asahi Chemical was the second largest seller of MCC in the world, and the dominant supplier of MCC in Japan.

The complaint alleges that, for over a decade, FMC engaged in a course of conduct designed to neutralize or eliminate competing sellers of MCC and to secure monopoly power. In or about 1984, FMC entered into a conspiracy with Asahi Chemical to divide territories. FMC agreed that it would not sell any MCC product to customers located in Japan or East Asia without the consent of Asahi Chemical. In return, Asahi Chemical agreed that it would not sell any MCC product to customers located in North America or Europe without the consent of FMC.

In addition, the complaint alleges that FMC invited three smaller producers of MCC to join with FMCC in collusive and anticompetitive conduct. The three firms solicited by FMC were Ming Tai Chemical Co., Ltd. (''Ming Tai''), Wei Ming Pharmaceutical Mfg. Co., Ltd. (''Wei Ming''), and the Mendell division of Penwest, Ltd. (''Mendell'').

According to the complaint, in 1994 Ming Tai and Wei Ming emerged as significant suppliers of MCC to portions of the Asian MCC market. FMC was concerned that these Taiwan-based manufacturers would next compete for FMC's MCC accounts in North America and Europe. In or about January 1995, FMC proposed to Ming Tai that it grant FMC the exclusive right to distribute all MCC exported from Taiwan by Ming Tai. Also in or about January 1995, FMC proposed to Wei Ming that it sell MCC to FMC on an exclusive basis. In seeking these arrangements, FMC's intent was to exclude competition from the Taiwanese manufacturers and thereby secure monopoly power. Neither Ming Tai nor Wei Ming accepted FMC'c invitation.

The compliant further alleges that, in 1995, Mendell posed a competitive threat to FMC's position as the dominant seller of MCC to pharmaceutical manufacturers in North America and Europe. Mendell had

recently opened an MCC manufacturing facility in the United States, and was actively seeking to expand its sales. In April 1995, FMC proposed to Mendell that the two firms enter into a market division agreement. Mendell did not accept FMC's invitation.[1]

FMC and Asahi Chemical have signed consent agreements containing the proposed consent orders. The proposed consent orders would prohibit FMC and Asahi Chemical from:

(i) Agreeing with competitors to divide or allocate markets, customers, contracts, or geographic territories in connection with the sale of MCC, or (ii) agreeing with competitors to refrain in whole or in part from producing, selling, or marketing MCC. The respondents would also be barred from inviting or soliciting such agreements not to compete.

Further, in order to eradicate the anticompetitive effects of the alleged conspiracy, FMC is barred from serving as the U.S. distributor for any competing manufacturer of MCC (including Asahi Chemical) for a period of ten years. Further, for a period of five years, FMC may not distribute in the United States any other excipient manufactured by Asahi Chemical.[2]

The proposed consent orders contain several limited exemptions to the above-described provisions intended to permit FMC and Asahi Chemical to engage in certain lawful and pro-competitive conduct. For example, notwithstanding the broad prohibition on agreeing to divide markets, each respondent would be permitted to enter into exclusive trademark license agreements, to enforce its intellectual property rights, and to abide by reasonable restraints ancillary to lawful joint venture agreements. In any action by the Commission alleging violations of the consent order, each respondent would bear the burden of proof in demonstrating that its conduct satisfied the conditions of the exemption.

The proposed consent orders contain provisions to assist the Commission in monitoring the respondents' compliance with the orders. FMC would be required to retain copies of written communications with competing MCC manufacturers, and upon request, to make such documents available to the Commission. Asahi Chemical would be required to produce to the Commission all documents reasonably necessary for the purpose of determining or securing compliance with the consent order, without regard to whether the documents are located in the United States or in another jurisdiction.

The purpose of this analysis is to facilitate public comment on the proposed orders, and it is not intended to constitute an official interpretation of the agreements and proposed orders or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–33258 Filed 12–28–00; 8:45 am]

BILLING CODE 6750–01–M

[1] FMC's efforts to recruit Ming Tai, Wei Ming, and Mendell to enter into anticompetitive arrangements, as alleged in the complaint, support the attempted monopolization claim. See Complaint ¶ 22. FMC's invitation to Mendell was the most patently anticompetitive of the three, and is the basis for an independent cause of action. See Complaint ¶ 23.

[2] An excipient is an inactive ingredient used in the manufacture of pharmaceutical products.

OFFICE OF GOVERNMENT ETHICS

Study Under the Presidential Transition Act of 2000 on Improving the Financial Disclosure Process for Executive Branch Presidential Nominees; Opportunity for Comment

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice.

SUMMARY: The Office of Government Ethics is conducting a study under the Presidential Transition Act of 2000 on improving the financial disclosure process for executive branch Presidential nominees. This notice indicates the pendency of OGE's study and provides the public and agencies an opportunity to comment.

DATES: Any comments should be received by January 29, 2001.

ADDRESSES: Send any comments to the Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917, Attention: Ms. Jane S. Ley. Comments may also be sent electronically to OGE's Internet E-mail address at usoge@oge.gov. For E-mail messages, the subject line should include the following reference—''Comments Regarding Financial Disclosure Process Study.''

FOR FURTHER INFORMATION CONTACT: Jane S. Ley, Deputy Director for Government Relations and Special Projects, Office of Government Ethics, telephone: 202–208–8022; TDD: 202–208–8025; FAX: 202–208–8037.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics is in the midst of a six-month study under section 3 of the Presidential Transition Act of 2000, Public Law 106–293 (October 12, 2000), on improving the financial disclosure process for executive branch Presidential nominees required to file reports under section 101(b) of the Ethics in Government Act of 1978 (5 U.S.C. appendix). Within six months of the date of enactment of the new law (that is, by April 12, 2001), OGE has to submit a report based on the study to the Committee on Governmental Affairs of the U.S. Senate and Committee on Government Reform of the U.S. House of Representatives.

Under the law, OGE's report will include recommendations and legislative proposals on streamlining, standardizing and coordinating the financial disclosure process and requirements for executive branch Presidential nominees as well as avoiding duplication and burden with respect to financial information disclosed to the White House, OGE, and the Senate. The report may also address other matters relevant to the process, as OGE deems appropriate. The law further provides that the recommendations and proposals cannot, if implemented, have the effect of lessening substantive compliance with any conflict of interest requirement. Presidential nominees subject to Senate confirmation are currently required to file detailed Public Financial Disclosure Reports (the Standard Form (SF) 278 for executive branch nominees) with their agencies and OGE, as well as certain financial and other information filed with the White House, on the national security position questionnaire (SF 86) processed by the Federal Bureau of Investigation, and on various questionnaires developed by the respective confirming Senate committees.

As part of its consideration of these important matters, OGE believes it would be both appropriate and helpful to give the public and agencies an opportunity to express their views. Interested persons may submit comments to OGE, to be received by January 29, 2001, regarding any specific part of the financial disclosure process study or just to give general views on the study in order to assist OGE.

Approved: December 21, 2000.

Amy L. Comstock,

Director, Office of Government Ethics.

[FR Doc. 00–33220 Filed 12–28–00; 8:45 am]

BILLING CODE 6345–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98P–1121]

Grated Parmesan Cheese Deviating From Identity Standard; Temporary Permit for Market Testing; Extension of Temporary Permit

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; extension of temporary permit.

SUMMARY: The Food and Drug Administration (FDA) is announcing the extension of a temporary permit issued to Kraft Foods, Inc., to market test products designated as ''100% Grated Parmesan Cheese'' that deviate from the U.S. standards of identity for parmesan cheese and grated cheese. The extension will allow the permit holder to continue to collect data on consumer acceptance of the products while the agency takes action on a petition to amend the standard of identity for parmesan cheese that was submitted by the permit holder.

DATES: The new expiration date of the permit will be either the effective date of a final rule amending the standard of identity for parmesan cheese that may result from the permit holder's petition or 30 days after denial of the petition, whichever the case may be.

FOR FURTHER INFORMATION CONTACT: Loretta A. Carey, Center for Food Safety and Applied Nutrition (HFS–822), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4168.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17, FDA issued a temporary permit to Kraft Foods, Inc., Three Lakes Dr., Northfield, IL 60093–2753, to market test products identified as ''parmesan cheese'' that deviate from the U.S. standards of identity for parmesan cheese (21 CFR 133.165) and grated cheeses (21 CFR 133.146) (see 64 FR 16743, April 6, 1999). The agency issued the permit to facilitate market testing of foods deviating from the requirements of the standard of identity for parmesan cheese issued under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341). The permit covers limited interstate market testing of products identified as ''parmesan cheese'' that deviate from the standardized parmesan cheese products described in 21 CFR part 133 in that the product is formulated by using a different enzyme technology that fully cures the cheese in 6 months rather than 10 months. The test product meets all the requirements of the standard with the exception of this deviation.

On August 28, 2000, Kraft Foods, Inc. requested that its temporary permit be extended to allow for additional time for the market testing of its products under the permit in order to gain additional information in support of its petition. The petition requests FDA to amend the standard of identity for parmesan cheese to change the curing time from 10 months to 6 months.

The agency finds that it is in the interest of consumers to issue an extension of the time period for the market testing of products identified as parmesan cheese to gain information on consumer expectation and acceptance. FDA is inviting interested persons to participate in the market test under the conditions that apply to Kraft Foods (e.g., the composition of the test product), except that a different condition for the designated area of distribution may apply. Any person who wishes to participate in the extended market test must notify, in writing, the Director, Division of Standards and Labeling Regulations, Office of Nutritional Products, Labeling and Dietary Supplements, Center for Food Safety and Applied Nutrition (HFS–820), Food and Drug Administration, 200 C St. SW., Washington, DC 20204. The notification must include a description of the test products to be distributed, a justification statement for the amount requested, the area of distribution, and the labeling that will be used for the test product (i.e., a draft label for each size of container and each brand of product to be market tested). The information panel of the label must bear nutrition labeling in accordance with 21 CFR 101.9. Each of the ingredients used in the food must be declared on the label as required by the applicable sections of 21 CFR part 101.

Therefore, under the provisions of 21 CFR 130.17(i), FDA is extending the temporary permit granted to Kraft Foods, Inc., Three Lakes Dr., Northfield, IL 60093–2753 to provide for continued market testing on an annual basis of 86 million pounds. The test products will bear the name ''100% Grated Parmesan Cheese.'' FDA is extending the expiration date of the permit so that the permit expires either on the effective date of a final rule amending the standard of identity for parmesan cheese that may result from the permit holder's petition or 30 days after denial of the petition, whichever the case may be. All other conditions and terms of this permit remain the same.

Dated: December 12, 2000.

Christine J. Lewis,

Director, Office of Nutritional Products Labeling and Dietary Supplements, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–33373 Filed 12–28–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Veterinary Antimicrobial Decision Support System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) Center for Veterinary Medicine (CVM) announces that funds may be available to support an unsolicited grant application submitted by Iowa State University. The applicant has requested funds to develop a web-based, peer-reviewed antimicrobial decision support system centered on therapeutic applications that will allow food animal veterinary practitioners to utilize all available information in the construction of antimicrobial regimens.

FOR FURTHER INFORMATION CONTACT:

Regarding the administrative and financial management aspects of this notice: Peggy L. Jones, Division of Contracts and Procurement Management (HFA–520), Food and Drug Administration, 5600 Fishers Lane, rm. 2129, Rockville, MD 20857, 301–827–7160. Correspondence hand-carried or commercially delivered should be addressed to 5630 Fishers Lane (HFA–520), rm. 2129, Rockville, MD 20857.

Regarding the programmatic aspects of this notice: David B. Batson, Office of Research, Center for Veterinary Medicine (HFV–502), Food and Drug Administration, 8401 Muirkirk Rd., Laurel, MD 20708, 301–827–8021.

SUPPLEMENTARY INFORMATION:

I. Purpose of the Project

The specific aims of the project are as follows: (1) Perform extensive literature searches to identify pharmacokinetic, pharmacodynamic, clinical trial, antimicrobial pathogen susceptibility, regulatory, food safety, and approval process information pertinent to the veterinary antimicrobial decision support system (VADS); (2) develop and apply standard operating procedures for

evaluating the quality and reliability of information and data for use in developing the VADS system contents; (3) apply the principles of pharmacology in constructing therapeutic regimens for use when approved antimicrobial products are not effective as labeled; (4) design a relational database allowing a user to efficiently search the VADS system for label and extralabel regimens based on therapeutic applications, and to then review regulatory and food safety information applicable to these regimens; and (5) subject the VADS system content to review prior to release and then constantly upgrade the content on the basis of new information and review by users.

II. Eligible Applicants

Assistance may only be provided to Iowa State University because of the following:

1. Iowa State University is the only organization that submitted an unsolicited application for the purpose stated above.

2. The project proposed by the applicant is unique and innovative in that pharmacokinetic, pharmacodynamic, clinical trial, and pathogen susceptibility information will be interpreted by clinical pharmacologists and reviewed by other experts in the appropriate fields prior to inclusion in the system. Users may either use the information as provided or examine the transparent development process used in constructing the system. In addition, by compiling available information to support prudent antimicrobial use, the VADS system will emphasize what information is not available, thereby aiding researchers in targeting research goals.

3. The team assembled to carry out the proposed work is uniquely qualified to achieve the goals of this application. Their combined experience encompasses practice in academic, general, and specialized production medicine settings as well as demonstrated competence in the application of clinical pharmacology and informatics in veterinary medicine. Support for the research team and the VADS system project has already been expressed in the form of start up funding provided by veterinary and producer organizations.

III. Funding

We anticipate that approximately $250,000 may be made available in fiscal year (FY) 2001 to support this project. If funded the award will begin sometime in FY 2001 and will be made for a 12-month budget period within a project period of up to 5 years. Funding estimates may change. Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Dated: December 22, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–33372 Filed 12–28–01; 8:45 am]

BILLING CODE: 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0448]

International Conference on Harmonisation; Guidance on Q6A Specifications: Test Procedures and Acceptance Criteria for New Drug Substances and New Drug Products: Chemical Substances

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a guidance entitled ''Q6A Specifications: Test Procedures and Acceptance Criteria for New Drug Substances and New Drug Products: Chemical Substances.'' The guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guidance describes or provides recommendations concerning the selection of test procedures and the setting and justification of acceptance criteria for new chemical drug substances and new drug products produced from them. The guidance is intended to assist in the establishment of a single set of global specifications for new drug substances and new drug products.

DATES: Submit written comments by March 29, 2001.

ADDRESSES: Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Copies of the guidance are available from the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Eric B. Sheinin, Center for Drug Evaluation and Research (HFD–003), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2847, or Neil D. Goldman, Center for Biologics Evaluation and Research (HFM–20), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0377.

Regarding the ICH: Janet J. Showalter, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0864.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

In the **Federal Register** of November 25, 1997 (62 FR 62890), FDA published a draft tripartite guidance entitled ''Q6A Specifications: Test Procedures and

Acceptance Criteria for New Drug Substances and New Drug Products: Chemical Substances.'' The notice gave interested persons an opportunity to submit comments by January 26, 1998.

After consideration of the comments received and revisions to the guidance, a final draft of the guidance was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies on October 6, 1999.

In accordance with FDA's good guidance practices regulation (65 FR 56468, September 19, 2000), this document has been designated a guidance, rather than a guideline.

The guidance provides recommendations on the selection of test procedures and the setting and justification of acceptance criteria for new drug substances of synthetic chemical origin, and new drug products produced from them, that have not been registered previously in the United States, the European Union, or Japan. This guidance is intended to assist in the establishment of a single set of global specifications for new drug substances and new drug products.

This guidance represents the agency's current thinking on the selection of tests procedures and the setting and justification of acceptance criteria for new chemical drug substances and new drug products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

Interested persons may submit to the Dockets Management Branch (address above) written comments on the guidance at any time. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. An electronic version of this guidance is available on the Internet at http://www.fda.gov/cder/guidance/index.htm or at http://www.fda.gov/cber/publications.htm.

The text of the guidance follows:

Q6A Specifications: Test Procedures and Acceptance Criteria for New Drug Substances and New Drug Products: Chemical Substances [1]

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1. Introduction

1.1 Objective of the Guidance

This guidance is intended to assist, to the extent possible, in the establishment of a single set of global specifications for new drug substances and new drug products. It provides guidance on the setting and justification of acceptance criteria and the selection of test procedures for new drug substances of synthetic chemical origin, and new drug products produced from them, that have not been registered previously in the United States, the European Union, or Japan.

1.2 Background

A specification is defined as a list of tests, references to analytical procedures, and appropriate acceptance criteria that are numerical limits, ranges, or other criteria for the tests described. It establishes the set of criteria to which a drug substance or drug product should conform to be considered acceptable for its intended use. ''Conformance to specifications'' means that the drug substance and/or drug product, when tested according to the listed analytical procedures, will meet the listed acceptance criteria. Specifications are critical quality standards that are proposed and justified by the manufacturer and approved by regulatory authorities as conditions of approval.

Specifications are one part of a total control strategy for the drug substance and drug product designed to ensure product quality and consistency. Other parts of this strategy include thorough product characterization during development, upon which specifications are based, and adherence to good manufacturing practices (GMP's), e.g., suitable facilities, a validated manufacturing process, validated test procedures, raw materials testing, in-process testing, stability testing.

Specifications are chosen to confirm the quality of the drug substance and drug product rather than to establish full characterization, and should focus on those characteristics found to be useful in ensuring the safety and efficacy of the drug substance and drug product.

1.3 Scope of the Guidance

The quality of drug substances and drug products is determined by their design, development, in-process controls, GMP controls, process validation, and by specifications applied to them throughout development and manufacture. This guidance addresses specifications, i.e., those tests, procedures, and acceptance criteria that play a major role in assuring the quality of the new drug substance and new drug product at release and during shelf life. Specifications are an important component of quality assurance, but are not its only component. All of the factors listed above are considered necessary to ensure consistent production of drug substances and drug products of high quality.

This guidance addresses only the marketing approval of new drug products (including combination products) and, where applicable, new drug substances; it does not address drug substances or drug products during the clinical research stages of drug development. This guidance may be applicable to synthetic and semisynthetic antibiotics and synthetic peptides of low molecular weight; however, it is not sufficient to

[1] This guidance represents the Food and Drug Administration's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

adequately describe specifications of higher molecular weight peptides and polypeptides, and biotechnological/biological products. The ICH guidance on ''Q6B Specifications: Test Procedures and Acceptance Criteria for Biotechnological/Biological Products'' addresses guidance specifications, tests, and procedures for biotechnological/biological products. Radiopharmaceuticals, products of fermentation, oligonucleotides, herbal products, and crude products of animal or plant origin are similarly not covered.

Guidance is provided with regard to acceptance criteria that should be established for all new drug substances and new drug products, i.e., universal acceptance criteria, and those that are considered specific to individual drug substances and/or dosage forms. This guidance should not be considered all encompassing. New analytical technologies, and modifications to existing technology, are continually being developed. Such technologies should be used when justified.

Dosage forms addressed in this guidance include solid oral dosage forms, liquid oral dosage forms, and parenterals (small and large volume). This is not meant to be an all-inclusive list, or to limit the number of dosage forms to which this guidance applies. The dosage forms presented serve as models that may be applicable to other dosage forms that have not been discussed. The extended application of the concepts in this guidance to other dosage forms, e.g., to inhalation dosage forms (powders, solutions, etc.), to topical formulations (creams, ointments, gels), and to transdermal systems, is encouraged.

2. General Concepts

The following concepts are important in the development and setting of harmonized specifications. They are not universally applicable, but each should be considered in particular circumstances. This guidance presents a brief definition of each concept and an indication of the circumstances under which it may be applicable. Generally, proposals to implement these concepts should be justified by the applicant and approved by the appropriate regulatory authority before being put into effect.

2.1 Periodic or Skip Testing

Periodic or skip testing is the performance of specified tests at release on preselected batches and/or at predetermined intervals, rather than on a batch-by-batch basis, with the understanding that those batches not being tested still meet all acceptance criteria established for that product. This represents a less than full schedule of testing and should therefore be justified and presented to and approved by the regulatory authority prior to implementation. This concept may be applicable to, for example, residual solvents and microbiological testing for solid oral dosage forms. It is recognized that only limited data may be available at the time of submission of an application (see section 2.5). This concept should therefore generally be implemented postapproval. When tested, any failure to meet acceptance criteria established for the periodic test should be handled by proper notification of the appropriate regulatory authority(ies). If these data demonstrate a need to restore routine testing, then batch-by-batch release testing should be reinstated.

2.2 Release vs. Shelf-Life Acceptance Criteria

The concept of different acceptance criteria for release vs. shelf-life specifications applies to drug products only; it pertains to the establishment of more restrictive criteria for the release of a drug product than are applied to the shelf life. Examples where this may be applicable include assay and impurity (degradation product) levels. In Japan and the United States, this concept may only be applicable to in-house criteria, and not to the regulatory release criteria. Thus, in these regions, the regulatory acceptance criteria are the same from release throughout shelf life; however, an applicant may choose to have tighter in-house limits at the time of release to provide increased assurance to the applicant that the product will remain within the regulatory acceptance criteria throughout its shelf life. In the European Union there is a regulatory requirement for distinct specifications for release and for shelf life where different.

2.3 In-Process Tests

In-process tests, as presented in this guidance, are tests that may be performed during the manufacture of either the drug substance or drug product, rather than as part of the formal battery of tests that are conducted prior to release.

In-process tests that are only used for the purpose of adjusting process parameters within an operating range, e.g., hardness and friability of tablet cores that will be coated and individual tablet weights, are not included in the specification.

Certain tests conducted during the manufacturing process, where the acceptance criterion is identical to or tighter than the release requirement, (e.g., pH (hydrogen-ion concentration) of a solution) may be sufficient to satisfy specification requirements when the test is included in the specification. However, this approach should be validated to show that test results or product performance characteristics do not change from the in-process stage to finished product.

2.4 Design and Development Considerations

The experience and data accumulated during the development of a new drug substance or product should form the basis for the setting of specifications. It may be possible to propose excluding or replacing certain tests on this basis. Some examples are:

- Microbiological testing for drug substances and solid dosage forms that have been shown during development not to support microbial viability or growth (see Decision Trees #6 and #8).
- Extractables from product containers where it has been reproducibly shown that either no extractables are found in the drug product or the levels meet accepted standards for safety.
- Particle size testing may fall into this category, may be performed as an in-process test, or may be performed as a release test, depending on its relevance to product performance.
- Dissolution testing for immediate release solid oral drug products made from highly water soluble drug substances may be replaced by disintegration testing, if these products have been demonstrated during development to have consistently rapid drug release characteristics (see Decision Trees #7(1) through #7(2)).

2.5 Limited Data Available at Filing

It is recognized that only a limited amount of data may be available at the time of filing, which can influence the process of setting acceptance criteria. As a result, it may be necessary to propose revised acceptance criteria as additional experience is gained with the manufacture of a particular drug substance or drug product (example: acceptance limits for a specific impurity). The basis for the acceptance criteria at the time of filing should necessarily focus on safety and efficacy.

When only limited data are available, the initially approved tests and acceptance criteria should be reviewed as more information is collected, with a view towards possible modification. This could involve loosening, as well as tightening, acceptance criteria, as appropriate.

2.6 Parametric Release

Parametric release can be used as an operational alternative to routine release testing for the drug product in certain cases, when approved by the regulatory authority. Sterility testing for terminally sterilized drug products is one example. In this case, the release of each batch is based on satisfactory results from monitoring specific parameters, e.g., temperature, pressure, and time during the terminal sterilization phase(s) of drug product manufacturing. These parameters can generally be more accurately controlled and measured, so they are more reliable in predicting sterility assurance than is end-product sterility testing. Appropriate laboratory tests (e.g., chemical or physical indicator) may be included in the parametric release program. It is important to note that the sterilization process should be adequately validated before parametric release is proposed, and maintenance of a validated state should be demonstrated by revalidation at established intervals. When parametric release is performed, the attribute that is indirectly controlled (e.g., sterility), together with a reference to the associated test procedure, still should be included in the specifications.

2.7 Alternative Procedures

Alternative procedures are those that may be used to measure an attribute when such procedures control the quality of the drug substance or drug product to an extent that is comparable or superior to the official procedure. Example: For tablets that have been shown not to degrade during manufacture, it may be permissible to use a spectrophotometric procedure for release as opposed to the official procedure, which is chromatographic. However, the chromatographic procedure should still be used to demonstrate compliance with the acceptance criteria during the shelf life of the product.

2.8 Pharmacopeial Tests and Acceptance Criteria

References to certain procedures are found in pharmacopeias in each region. Wherever they are appropriate, pharmacopeial procedures should be used. Whereas differences in pharmacopeial procedures and/or acceptance criteria have existed among the regions, a harmonized specification is possible only if the procedures and acceptance criteria defined are acceptable to regulatory authorities in all regions.

The full utility of this guidance is dependent on the successful completion of harmonization of pharmacopeial procedures for several attributes commonly considered in the specification for new drug substances or new drug products. The Pharmacopoeial Discussion Group (PDG) of the European Pharmacopeia, the Japanese Pharmacopoeia (JP), and the United States Pharmacopeia has expressed a commitment to achieving harmonization of the procedures in a timely fashion.

Where harmonization has been achieved, an appropriate reference to the harmonized procedure and acceptance criteria is considered acceptable for a specification in all three regions. For example, after harmonization, sterility data generated using the JP procedure, as well as the JP procedure itself and its acceptance criteria, will be considered acceptable for registration in all three regions. To signify the harmonized status of these procedures, the pharmacopeias have agreed to include a statement in their respective texts that indicates that the procedures and acceptance criteria from all three pharmacopeias are considered equivalent and are, therefore, interchangeable.

Since the overall value of this guidance is linked to the extent of harmonization of the analytical procedures and acceptance criteria of the pharmacopeias, it is agreed by the members of the Q6A expert working group that none of the three pharmacopeias should change a harmonized monograph unilaterally. According to the PDG procedure for the revision of harmonized monographs and chapters, ''no pharmacopoeia shall revise unilaterally any monograph or chapter after sign-off or after publication.''

2.9 Evolving Technologies

New analytical technologies, and modifications to existing technology, are continually being developed. Such technologies should be used when they are considered to offer additional assurance of quality, or are otherwise justified.

2.10 Impact of Drug Substance on Drug Product Specifications

In general, it should not be necessary to test the drug product for quality attributes uniquely associated with the drug substance. Example: It is normally not considered necessary to test the drug product for synthesis impurities that are controlled in the drug substance and are not degradation products. Refer to the ICH guidance on ''Q3B Impurities in New Drug Products'' for detailed information.

2.11 Reference Standard

A reference standard, or reference material, is a substance prepared for use as the standard in an assay, identification, or purity test. It should have a quality appropriate to its use. It is often characterized and evaluated for its intended purpose by additional procedures other than those used in routine testing. For new drug substance reference standards intended for use in assays, the impurities should be adequately identified and/or controlled, and purity should be measured by a quantitative procedure.

3. Guidance

3.1 Specifications: Definition and Justification

3.1.1 Definition of Specifications

A specification is defined as a list of tests, references to analytical procedures, and appropriate acceptance criteria that are numerical limits, ranges, or other criteria for the tests described. It establishes the set of criteria to which a new drug substance or new drug product should conform to be considered acceptable for its intended use. ''Conformance to specifications'' means that the drug substance and/or drug product, when tested according to the listed analytical procedures, will meet the listed acceptance criteria. Specifications are critical quality standards that are proposed and justified by the manufacturer and approved by regulatory authorities as conditions of approval.

It is possible that, in addition to release tests, a specification may list in-process tests as defined in section 2.3, periodic or skip tests, and other tests that are not always conducted on a batch-by-batch basis. In such cases the applicant should specify which tests are routinely conducted batch by batch, and which tests are not, with an indication and justification of the actual testing frequency. In this situation, the drug substance and/or drug product should meet the acceptance criteria if tested.

It should be noted that changes in the specification after approval of the application may need prior approval by the regulatory authority.

3.1.2 Justification of Specifications

When a specification is first proposed, justification should be presented for each procedure and each acceptance criterion included. The justification should refer to relevant development data, pharmacopeial standards, test data for drug substances and drug products

used in toxicology and clinical studies, and results from accelerated and long-term stability studies, as appropriate. Additionally, a reasonable range of expected analytical and manufacturing variability should be considered. It is important to consider all of this information.

Approaches other than those set forth in this guidance may be applicable and acceptable. The applicant should justify alternative approaches. Such justification should be based on data derived from the new drug substance synthesis and/or the new drug product manufacturing process. This justification may consider theoretical tolerances for a given procedure or acceptance criterion, but the actual results obtained should form the primary basis for whatever approach is taken.

Test results from stability and scaleup/validation batches, with emphasis on the primary stability batches, should be considered in setting and justifying specifications. If multiple manufacturing sites are planned, it may be valuable to consider data from these sites in establishing the initial tests and acceptance criteria. This is particularly true when there is limited initial experience with the manufacture of the drug substance or drug product at any particular site. If data from a single representative manufacturing site are used in setting tests and acceptance criteria, product manufactured at all sites should still comply with these criteria.

Presentation of test results in graphic format may be helpful in justifying individual acceptance criteria, particularly for assay values and impurity levels. Data from development work should be included in such a presentation, along with stability data available for new drug substance or new drug product batches manufactured by the proposed commercial processes. Justification for proposing exclusion of a test from the specification should be based on development data and on process validation data (where appropriate).

3.2 Universal Tests/Criteria

Implementation of the recommendations in the following section should take into account the ICH guidances ''Q2A Text on Validation of Analytical Procedures'' and ''Q2B Validation of Analytical Procedures: Methodology.''

3.2.1 New Drug Substances

The following tests and acceptance criteria are considered generally applicable to all new drug substances.

(a) *Description:* A qualitative statement about the state (e.g., solid, liquid) and color of the new drug substance. If any of these characteristics change during storage, this change should be investigated and appropriate action taken.

(b) *Identification:* Identification testing should optimally be able to discriminate between compounds of closely related structure that are likely to be present. Identification tests should be specific for the new drug substance, e.g., infrared spectroscopy (IR). Identification solely by a single chromatographic retention time, for example, is not regarded as being specific. However, the use of two chromatographic procedures, where the separation is based on different principles or a combination of tests into a single procedure, such as HPLC (high-pressure liquid chromatography)/UV (ultraviolet) diode array, HPLC/MS (mass spectroscopy), or GC (gas chromatography)/MS is generally acceptable. If the new drug substance is a salt, identification testing should be specific for the individual ions. An identification test that is specific for the salt itself should suffice.

New drug substances that are optically active may also need specific identification testing or performance of a chiral assay. Please refer to section 3.3.1(d) in this guidance for further discussion of this topic.

(c) *Assay:* A specific, stability-indicating procedure should be included to determine the content of the new drug substance. In many cases it is possible to employ the same procedure (e.g., HPLC) for both assay of the new drug substance and quantitation of impurities.

In cases where use of a nonspecific assay is justified, other supporting analytical procedures should be used to achieve overall specificity. For example, where titration is adopted to assay the drug substance, the combination of the assay and a suitable test for impurities should be used.

(d) *Impurities:* Organic and inorganic impurities and residual solvents are included in this category. Refer to the ICH guidances on ''Q3A Impurities in New Drug Substances'' and ''Q3C Impurities: Residual Solvents'' for detailed information.

Decision Tree #1 addresses the extrapolation of meaningful limits on impurities from the body of data generated during development. At the time of filing it is unlikely that sufficient data will be available to assess process consistency. Therefore it is considered inappropriate to establish acceptance criteria that tightly encompass the batch data at the time of filing (see section 2.5).

3.2.2 New Drug Products

The following tests and acceptance criteria are considered generally applicable to all new drug products:

(a) *Description:* A qualitative description of the dosage form should be provided (e.g., size, shape, and color). If any of these characteristics change during manufacture or storage, this change should be investigated and appropriate action taken. The acceptance criteria should include the final acceptable appearance. If color changes during storage, a quantitative procedure may be appropriate.

(b) *Identification:* Identification testing should establish the identity of the new drug substance(s) in the new drug product and should be able to discriminate between compounds of closely related structure that are likely to be present. Identity tests should be specific for the new drug substance, e.g., infrared spectroscopy. Identification solely by a single chromatographic retention time, for example, is not regarded as being specific. However, the use of two chromatographic procedures, where the separation is based on different principles, or a combination of tests into a single procedure, such as HPLC/UV diode array, HPLC/MS, or GC/MS, is generally acceptable.

(c) *Assay:* A specific, stability-indicating assay to determine strength (content) should be included for all new drug products. In many cases it is possible to employ the same procedure (e.g., HPLC) for both assay of the new drug substance and quantitation of impurities. Results of content uniformity testing for new drug products can be used for quantitation of drug product strength, if the methods used for content uniformity are also appropriate as assays.

In cases where use of a nonspecific assay is justified, other supporting analytical procedures should be used to achieve overall specificity. For example, where titration is adopted to assay the drug substance for release, the combination of the assay and a suitable test for impurities can be used. A specific procedure should be used when there is evidence of excipient interference with the nonspecific assay.

(d) *Impurities:* Organic and inorganic impurities (degradation products) and residual solvents are included in this category. Refer to the ICH guidances on ''Q3B Impurities in New Drug Products'' and ''Q3C Impurities: Residual Solvents'' for detailed information.

Organic impurities arising from degradation of the new drug substance

and impurities that arise during the manufacturing process for the drug product should be monitored in the new drug product. Acceptance limits should be stated for individual specified degradation products, which may include both identified and unidentified degradation products, as appropriate, and total degradation products. Process impurities from the new drug substance synthesis are normally controlled during drug substance testing, and therefore are not included in the total impurities limit. However, when a synthesis impurity is also a degradation product, its level should be monitored and included in the total degradation product limit. When it has been conclusively demonstrated via appropriate analytical methodology that the drug substance does not degrade in the specific formulation, and under the specific storage conditions proposed in the new drug application, degradation product testing may be reduced or eliminated upon approval by the regulatory authorities.

Decision Tree #2 addresses the extrapolation of meaningful limits on degradation products from the body of data generated during development. At the time of filing it is unlikely that sufficient data will be available to assess process consistency. Therefore it is considered inappropriate to establish acceptance criteria that tightly encompass the batch data at the time of filing (see section 2.5).

3.3 Specific Tests/Criteria

In addition to the universal tests listed above, the following tests may be considered on a case-by-case basis for drug substances and/or drug products. Individual tests/criteria should be included in the specification when the tests have an impact on the quality of the drug substance and drug product for batch control. Tests other than those listed below may be needed in particular situations or as new information becomes available.

3.3.1 New Drug Substances

(a) *Physicochemical properties:* These are properties such as pH of an aqueous solution, melting point/range, and refractive index. The procedures used for the measurement of these properties are usually unique and do not need much elaboration, e.g., capillary melting point, Abbe refractometry. The tests performed in this category should be determined by the physical nature of the new drug substance and by its intended use.

(b) *Particle size:* For some new drug substances intended for use in solid or suspension drug products, particle size can have a significant effect on dissolution rates, bioavailability, and/or stability. In such instances, testing for particle size distribution should be carried out using an appropriate procedure, and acceptance criteria should be provided.

Decision Tree #3 provides additional guidance on when particle size testing should be considered.

(c) *Polymorphic forms:* Some new drug substances exist in different crystalline forms that differ in their physical properties. Polymorphism may also include solvation or hydration products (also known as pseudopolymorphs) and amorphous forms. Differences in these forms could, in some cases, affect the quality or performance of the new drug products. In cases where differences exist that have been shown to affect drug product performance, bioavailability, or stability, then the appropriate solid state should be specified.

Physicochemical measurements and techniques are commonly used to determine whether multiple forms exist. Examples of these procedures are: Melting point (including hot-stage microscopy), solid state IR, X-ray powder diffraction, thermal analysis procedures (like DSC (differential scanning calorimetry), TGA (thermogravimetric analysis) and DTA (differential thermal analysis)), Raman spectroscopy, optical microscopy, and solid state NMR (nuclear magnetic resonance) spectroscopy.

Decision Trees #4(1) through #4(3) provide additional guidance on when, and how, polymorphic forms should be monitored and controlled.

Note: These decision trees should be followed sequentially. Trees #4(1) and #4(2) consider whether polymorphism is exhibited by the drug substance, and whether the different polymorphic forms can affect performance of the drug product. Tree #4(3) should only be applied when polymorphism has been demonstrated for the drug substance, and shown to affect these properties. Tree #4(3) considers the potential for change in polymorphic forms in the drug product and whether such a change has any effect on product performance.

It is generally technically very difficult to measure polymorphic changes in drug products. A surrogate test (e.g., dissolution) (see Decision Tree #4(3)) can generally be used to monitor product performance, and polymorph content should only be used as a test and acceptance criterion of last resort.

(d) *Tests for chiral new drug substances:* Where a new drug substance is predominantly one enantiomer, the opposite enantiomer is excluded from the qualification and identification thresholds given in the ICH guidances on ''Q3A Impurities in New Drug Substances'' and ''Q3B Impurities in New Drug Products'' because of practical difficulties in quantifying it at those levels. However, that impurity in the chiral new drug substance and the resulting new drug product(s) should otherwise be treated according to the principles established in those guidances.

Decision Tree #5 summarizes when and if chiral identity tests, impurity tests, and assays may be needed for both new drug substances and new drug products, according to the following concepts:

Drug Substance: Impurities. For chiral drug substances that are developed as a single enantiomer, control of the other enantiomer should be considered in the same manner as for other impurities. However, technical limitations may preclude the same limits of quantification or qualification from being applied. Assurance of control also could be given by appropriate testing of a starting material or intermediate, with suitable justification.

Assay. An enantioselective determination of the drug substance should be part of the specification. It is considered acceptable for this to be achieved either through use of a chiral assay procedure or by the combination of an achiral assay together with appropriate methods of controlling the enantiomeric impurity.

Identity. For a drug substance developed as a single enantiomer, the identity test(s) should be capable of distinguishing both enantiomers and the racemic mixture. For a racemic drug substance, there are generally two situations where a stereospecific identity test is appropriate for release/acceptance testing: (1) Where there is a significant possibility that the enantiomer might be substituted for the racemate, or (2) when there is evidence that preferential crystallization may lead to unintentional production of a nonracemic mixture.

Drug Product: Degradation products. Control of the other enantiomer in a drug product is considered necessary unless racemization has been shown to be insignificant during manufacture of the dosage form and on storage.

Assay. An achiral assay may be sufficient where racemization has been shown to be insignificant during manufacture of the dosage form and on storage. Otherwise a chiral assay should be used. Alternatively, the combination of an achiral assay plus a validated

procedure to control the presence of the opposite enantiomer may be used.

Identity. A stereospecific identity test is not generally needed in the drug product release specification. When racemization is insignificant during manufacture of the dosage form and on storage, stereospecific identity testing is more appropriately addressed as part of the drug substance specification. When racemization in the dosage form is a concern, chiral assay or enantiomeric impurity testing of the drug product will serve to verify identity.

(e) *Water content:* This test is important in cases where the new drug substance is known to be hygroscopic or degraded by moisture or when the drug substance is known to be a stoichiometric hydrate. The acceptance criteria may be justified with data on the effects of hydration or moisture absorption. In some cases, a loss on drying procedure may be considered adequate; however, a detection procedure that is specific for water (e.g., Karl Fischer titration) is preferred.

(f) *Inorganic impurities:* The need for inclusion of tests and acceptance criteria for inorganic impurities (e.g., catalysts) should be studied during development and based on knowledge of the manufacturing process. Procedures and acceptance criteria for sulfated ash/residue on ignition should follow pharmacopeial precedents; other inorganic impurities may be determined by other appropriate procedures, e.g., atomic absorption spectroscopy.

(g) *Microbial limits:* There may be a need to specify the total count of aerobic microorganisms, the total count of yeasts and molds, and the absence of specific objectionable bacteria (e.g., Staphylococcus aureus, Escherichia coli, Salmonella, Pseudomonas aeruginosa). These should be suitably determined using pharmacopeial procedures. The type of microbial test(s) and acceptance criteria should be based on the nature of the drug substance, method of manufacture, and the intended use of the drug product. For example, sterility testing may be appropriate for drug substances manufactured as sterile, and endotoxin testing may be appropriate for drug substances used to formulate an injectable drug product.

Decision Tree #6 provides additional guidance on when microbial limits should be included.

3.3.2 New Drug Products

Additional tests and acceptance criteria generally should be included for particular new drug products. The following selection presents a representative sample of both the drug products and the types of tests and acceptance criteria that may be appropriate. The specific dosage forms addressed include solid oral drug products, liquid oral drug products, and parenterals (small and large volume). Application of the concepts in this guidance to other dosage forms is encouraged. Note that issues related to optically active drug substances and to solid state considerations for drug products are discussed in section 3.3.1 of this guidance.

3.3.2.1 The following tests are applicable to tablets (coated and uncoated) and hard capsules. One or more of these tests may also be applicable to soft capsules and granules.

(a) *Dissolution:* The specification for solid oral dosage forms normally includes a test to measure release of drug substance from the drug product. Single-point measurements are normally considered to be suitable for immediate-release dosage forms. For modified-release dosage forms, appropriate test conditions and sampling procedures should be established. For example, multiple time-point sampling should be performed for extended-release dosage forms, and two-stage testing (using different media in succession or in parallel, as appropriate) may be appropriate for delayed-release dosage forms. In these cases it is important to consider the populations of individuals who will be taking the drug product (e.g., achlorhydric elderly) when designing the tests and acceptance criteria. In some cases (see section 3.3.2.1(b) Disintegration) dissolution testing may be replaced by disintegration testing (see Decision Tree #7(1)).

For immediate-release drug products where changes in dissolution rate have been demonstrated to significantly affect bioavailability, it is desirable to develop test conditions that can distinguish batches with unacceptable bioavailability. If changes in formulation or process variables significantly affect dissolution, and such changes are not controlled by another aspect of the specification, it may also be appropriate to adopt dissolution test conditions that can distinguish these changes (see Decision Tree #7(2)).

Where dissolution significantly affects bioavailability, the acceptance criteria should be set to reject batches with unacceptable bioavailability. Otherwise, test conditions and acceptance criteria should be established that pass clinically acceptable batches (see Decision Tree #7(2)).

For extended-release drug products, in vitro/in vivo correlation may be used to establish acceptance criteria when human bioavailability data are available for formulations exhibiting different release rates. Where such data are not available, and drug release cannot be shown to be independent of in vitro test conditions, then acceptance criteria should be established on the basis of available batch data. Normally, the permitted variability in mean release rate at any given time point should not exceed a total numerical difference of ±10 percent of the labeled content of drug substance (i.e., a total variability of 20 percent: a requirement of 50±10 percent thus means an acceptable range from 40 percent to 60 percent), unless a wider range is supported by a bioequivalency study (see Decision Tree #7(3)).

(b) *Disintegration:* For rapidly dissolving (dissolution >80 percent in 15 minutes at pH 1.2, 4.0, and 6.8) products containing drugs that are highly soluble throughout the physiological range (dose/solubility volume ≤ 250 milliliters (mL) from pH 1.2 to 6.8), disintegration may be substituted for dissolution. Disintegration testing is considered most appropriate when a relationship to dissolution has been established or when disintegration is shown to be more discriminating than dissolution. In such cases dissolution testing may not be necessary. It is expected that development information will be provided to support the robustness of the formulation and manufacturing process with respect to the selection of dissolution versus disintegration testing (see Decision Tree #7(1)).

(c) *Hardness/friability:* It is normally appropriate to perform hardness and/or friability testing as an in-process control (see section 2.3). Under these circumstances, it is normally not necessary to include these attributes in the specification. If the characteristics of hardness and friability have a critical impact on drug product quality (e.g., chewable tablets), acceptance criteria should be included in the specification.

(d) *Uniformity of dosage units:* This term includes both the mass of the dosage form and the content of the active substance in the dosage form; a pharmacopeial procedure should be used. In general, the specification should include one or the other, but not both. If appropriate, these tests may be performed in-process; the acceptance criteria should be included in the specification. When weight variation is applied to new drug products exceeding the threshold value to allow testing uniformity by weight variation, applicants should verify during drug

development that the homogeneity of the product is adequate.

(e) *Water content:* A test for water content should be included when appropriate. The acceptance criteria may be justified with data on the effects of hydration or water absorption on the drug product. In some cases, a loss on drying procedure may be considered adequate; however, a detection procedure that is specific for water (e.g., Karl Fischer titration) is preferred.

(f) *Microbial limits:* Microbial limit testing is seen as an attribute of GMP, as well as of quality assurance. In general, it is advisable to test the drug product unless its components are tested before manufacture and the manufacturing process is known, through validation studies, not to carry a significant risk of microbial contamination or proliferation. It should be noted that, whereas this guidance does not directly address excipients, the principles discussed here may be applicable to excipients as well as to new drug products. Skip testing may be an appropriate approach in both cases, where permissible (see Decision Tree #6 for microbial testing of excipients).

Acceptance criteria should be set for the total count of aerobic microorganisms, the total count of yeasts and molds, and the absence of specific objectionable bacteria (e.g., Staphylococcus aureus, Escherichia coli, Salmonella, Pseudomonas aeruginosa). These should be determined by suitable procedures, using pharmacopeial procedures, and at a sampling frequency or time point in manufacture that is justified by data and experience. The type of microbial test(s) and acceptance criteria should be based on the nature of the drug substance, method of manufacture, and the intended use of the drug product. With acceptable scientific justification, it should be possible to propose no microbial limit testing for solid oral dosage forms.

Decision Tree #8 provides additional guidance on the use of microbial limits testing.

3.3.2.2 *Oral liquids:* One or more of the following specific tests will normally be applicable to oral liquids and to powders intended for reconstitution as oral liquids.

(a) *Uniformity of dosage units:* This term includes both the mass of the dosage form and the content of the active drug substance in the dosage form; a pharmacopeial procedure should be used. In general, the specification should include one or the other, but not both. When weight variation is applied to new drug products exceeding the threshold value to allow testing uniformity by weight variation, applicants should verify during drug development that the homogeneity of the product is adequate.

If appropriate, tests may be performed in-process; however, the acceptance criteria should be included in the specification. This concept may be applied to both single-dose and multiple-dose packages.

The dosage unit is considered to be the typical dose taken by the patient. If the actual unit dose, as taken by the patient, is controlled, it may either be measured directly or calculated, based on the total measured weight or volume of drug divided by the total number of doses expected. If dispensing equipment (such as medicine droppers or dropper tips for bottles) is an integral part of the packaging, this equipment should be used to measure the dose. Otherwise, a standard volume measure should be used. The dispensing equipment to be used is normally determined during development. For powders for reconstitution, uniformity of mass testing is generally considered acceptable.

(b) *pH:* Acceptance criteria for pH should be provided where applicable and the proposed range justified.

(c) *Microbial limits:* Microbial limit testing is seen as an attribute of GMP, as well as of quality assurance. In general, it is advisable to test the drug product unless its components are tested before manufacture and the manufacturing process is known, through validation studies, not to carry a significant risk of microbial contamination or proliferation. It should be noted that, whereas this guidance does not directly address excipients, the principles discussed here may be applicable to excipients as well as to new drug products. Skip testing may be an appropriate approach in both cases, where permissible. With acceptable scientific justification, it may be possible to propose no microbial limit testing for powders intended for reconstitution as oral liquids.

Acceptance criteria should be set for the total count of aerobic microorganisms, total count of yeasts and molds, and the absence of specific objectionable bacteria (e.g., Staphylococcus aureus, Escherichia coli, Salmonella, Pseudomonas aeruginosa). These should be determined by suitable procedures, using pharmacopeial procedures, and at a sampling frequency or time point in manufacture that is justified by data and experience.

Decision Tree #8 provides additional guidance on the use of microbial limits testing.

(d) *Antimicrobial preservative content:* For oral liquids needing an antimicrobial preservative, acceptance criteria for preservative content should be established. Acceptance criteria for preservative content should be based upon the levels of antimicrobial preservative necessary to maintain microbiological quality of the product at all stages throughout its proposed usage and shelf life. The lowest specified concentration of antimicrobial preservative should be demonstrated to be effective in controlling microorganisms by using a pharmacopeial antimicrobial preservative effectiveness test.

Testing for antimicrobial preservative content should normally be performed at release. Under certain circumstances, in-process testing may suffice in lieu of release testing. When antimicrobial preservative content testing is performed as an in-process test, the acceptance criteria should remain part of the specification.

Antimicrobial preservative effectiveness should be demonstrated during development, during scaleup, and throughout the shelf life (e.g., in stability testing: see the ICH guidance ''Q1A Stability Testing of New Drug Substances and Products''), although chemical testing for preservative content is the attribute normally included in the specification.

(e) *Antioxidant preservative content:* Release testing for antioxidant content should normally be performed. Under certain circumstances where justified by developmental and stability data, shelf-life testing may be unnecessary, and in-process testing may suffice in lieu of release testing where permitted. When antioxidant content testing is performed as an in-process test, the acceptance criteria should remain part of the specification. If only release testing is performed, this decision should be reinvestigated whenever either the manufacturing procedure or the container/closure system changes.

(f) *Extractables:* Generally, where development and stability data show evidence that extractables from the container/closure systems are consistently below levels that are demonstrated to be acceptable and safe, elimination of this test can normally be accepted. This should be reinvestigated if the container/closure system or formulation changes.

Where data demonstrate the need, tests and acceptance criteria for extractables from the container/closure system components (e.g., rubber

stopper, cap liner, plastic bottle, etc.) are considered appropriate for oral solutions packaged in nonglass systems, or in glass containers with nonglass closures. The container/closure components should be listed, and data collected for these components as early in the development process as possible.

(g) *Alcohol content:* Where it is declared quantitatively on the label in accordance with pertinent regulations, the alcohol content should be specified. It may be assayed or calculated.

(h) *Dissolution:* In addition to the attributes recommended immediately above, it may be appropriate (e.g., insoluble drug substance) to include dissolution testing and acceptance criteria for oral suspensions and dry powder products for resuspension. Dissolution testing should be performed at release. This test may be performed as an in-process test when justified by product development data. The testing apparatus, media, and conditions should be pharmacopeial, if possible, or otherwise justified. Dissolution procedures using either a pharmacopeial or nonpharmacopeial apparatus and conditions should be validated.

Single-point measurements are normally considered suitable for immediate-release dosage forms. Multiple-point sampling, at appropriate intervals, should be performed for modified-release dosage forms. Acceptance criteria should be set based on the observed range of variation, and should take into account the dissolution profiles of the batches that showed acceptable performance in vivo. Developmental data should be considered when determining the need for either a dissolution procedure or a particle size distribution procedure.

(i) *Particle size distribution:* Quantitative acceptance criteria and a procedure for determination of particle size distribution may be appropriate for oral suspensions. Developmental data should be considered when determining the need for either a dissolution procedure or a particle size distribution procedure for these formulations.

Particle size distribution testing should be performed at release. It may be performed as an in-process test when justified by product development data. If these products have been demonstrated during development to have consistently rapid drug release characteristics, exclusion of a particle size distribution test from the specification may be proposed.

Particle size distribution testing may also be proposed in place of dissolution testing; justification should be provided. The acceptance criteria should include acceptable particle size distribution in terms of the percent of total particles in given size ranges. The mean, upper, and/or lower particle size limits should be well defined.

Acceptance criteria should be set based on the observed range of variation, and should take into account the dissolution profiles of the batches that showed acceptable performance in vivo, as well as the intended use of the product. The potential for particle growth should be investigated during product development; the acceptance criteria should take the results of these studies into account.

(j) *Redispersibility:* For oral suspensions that settle on storage (produce sediment), acceptance criteria for redispersibility may be appropriate. Shaking may be an appropriate procedure.

The procedure (mechanical or manual) should be indicated. Time required to achieve resuspension by the indicated procedure should be clearly defined. Data generated during product development may be sufficient to justify periodic or skip testing, or elimination of this attribute from the specification may be proposed.

(k) *Rheological properties:* For relatively viscous solutions or suspensions, it may be appropriate to include rheological properties (viscosity/specific gravity) in the specification. The test and acceptance criteria should be stated. Data generated during product development may be sufficient to justify periodic or skip testing, or elimination of this attribute from the specification may be proposed.

(l) *Reconstitution time:* Acceptance criteria for reconstitution time should be provided for dry powder products that require reconstitution. The choice of diluent should be justified. Data generated during product development may be sufficient to justify periodic or skip testing, or elimination of this attribute from the specification may be proposed.

(m) *Water content:* For oral products requiring reconstitution, a test and acceptance criterion for water content should be proposed when appropriate. Loss on drying is generally considered sufficient if the effect of absorbed moisture versus water of hydration has been adequately characterized during the development of the product. In certain cases a more specific procedure (e.g., Karl Fischer titration) may be preferable.

3.3.2.3 *Parenteral Drug Products:* The following tests may be applicable to parenteral drug products.

(a) *Uniformity of dosage units:* This term includes both the mass of the dosage form and the content of the active drug substance in the dosage form; a pharmacopeial procedure should be used. In general, the specification should be one or the other, but not both, and is applicable to powders for reconstitution. When weight variation is applied to new drug products exceeding the threshold value to allow testing uniformity by weight variation, applicants should verify during drug development that the homogeneity of the product is adequate.

If appropriate (see section 2.3), these tests may be performed in-process; the acceptance criteria should be included in the specification. This test may be applied to both single-dose and multiple-dose packages.

For powders for reconstitution, uniformity of mass testing is generally considered acceptable.

(b) *pH:* Acceptance criteria for pH should be provided where applicable, and the proposed range justified.

(c) *Sterility:* All parenteral products should have a test procedure and acceptance criterion for evaluation of sterility. Where data generated during development and validation justify parametric release, this approach may be proposed for terminally sterilized drug products (see section 2.6).

(d) *Endotoxins/Pyrogens:* A test procedure and acceptance criterion for endotoxins, using a procedure such as the limulus amoebocyte lysate test, should be included in the specification. Pyrogenicity testing may be proposed as an alternative to endotoxin testing where justified.

(e) *Particulate matter:* Parenteral products should have appropriate acceptance criteria for particulate matter. This will normally include acceptance criteria for visible particulates and/or clarity of solution, as well as for subvisible particulates, as appropriate.

(f) *Water content:* For nonaqueous parenterals, and for parenteral products for reconstitution, a test procedure and acceptance criterion for water content should be proposed when appropriate. Loss on drying is generally considered sufficient for parenteral products, if the effect of absorbed moisture versus water of hydration has been adequately characterized during development. In certain cases a more specific procedure (e.g., Karl Fischer titration) may be preferred.

(g) *Antimicrobial preservative content:* For parenteral products

needing an antimicrobial preservative, acceptance criteria for preservative content should be established. Acceptance criteria for preservative content should be based upon the levels of antimicrobial preservative necessary to maintain microbiological quality of the product at all stages throughout its proposed usage and shelf life. The lowest specified concentration of antimicrobial preservative should be demonstrated to be effective in controlling microorganisms by using a pharmacopeial antimicrobial preservative effectiveness test.

Testing for antimicrobial preservative content should normally be performed at release. Under certain circumstances, in-process testing may suffice in lieu of release testing, where permitted. When antimicrobial preservative content testing is performed as an in-process test, the acceptance criteria should remain part of the specification.

Antimicrobial preservative effectiveness should be demonstrated during development, during scaleup, and throughout the shelf life (e.g., in stability testing: see the ICH guidance ''Q1A Stability Testing of New Drug Substances and Products''), although chemical testing for preservative content is the attribute normally included in the specification.

(h) *Antioxidant preservative content:* Release testing for antioxidant content should normally be performed. Under certain circumstances, where justified by developmental and stability data, shelf-life testing may be unnecessary and in-process testing may suffice in lieu of release testing. When antioxidant content testing is performed as an in-process test, the acceptance criteria should remain part of the specification. If only release testing is performed, this decision should be reinvestigated whenever either the manufacturing procedure or the container/closure system changes.

(i) *Extractables:* Control of extractables from container/closure systems is considered significantly more important for parenteral products than for oral liquids. However, where development and stability data show evidence that extractables are consistently below the levels that are demonstrated to be acceptable and safe, elimination of this test can normally be accepted. This should be reinvestigated if the container/closure system or formulation changes.

Where data demonstrate the need, acceptance criteria for extractables from the container/closure components are considered appropriate for parenteral products packaged in nonglass systems or in glass containers with elastomeric closures. This testing may be performed at release only, where justified by data obtained during development. The container/closure system components (e.g., rubber stopper, etc.) should be listed, and data collected for these components as early in the development process as possible.

(j) *Functionality testing of delivery systems:* Parenteral formulations packaged in prefilled syringes, autoinjector cartridges, or the equivalent should have test procedures and acceptance criteria related to the functionality of the delivery system. These may include control of syringeability, pressure, and seal integrity (leakage), and/or parameters such as tip cap removal force, piston release force, piston travel force, and power injector function force. Under certain circumstances these tests may be performed in-process. Data generated during product development may be sufficient to justify skip lot testing or elimination of some or all attributes from the specification.

(k) *Osmolarity:* When the tonicity of a product is declared in its labeling, appropriate control of its osmolarity should be performed. Data generated during development and validation may be sufficient to justify performance of this procedure as an in-process control, skip lot testing, or direct calculation of this attribute.

(l) *Particle size distribution:* Quantitative acceptance criteria and a procedure for determination of particle size distribution may be appropriate for injectable suspensions. Developmental data should be considered when determining the need for either a dissolution procedure or a particle size distribution procedure.

Particle size distribution testing should be performed at release. It may be performed as an in-process test when justified by product development data. If the product has been demonstrated during development to have consistently rapid drug release characteristics, exclusion of particle size controls from the specification may be proposed.

Particle size distribution testing may also be proposed in place of dissolution testing when development studies demonstrate that particle size is the primary factor influencing dissolution; justification should be provided. The acceptance criteria should include acceptable particle size distribution in terms of the percent of total particles in given size ranges. The mean, upper, and/or lower particle size limits should be well defined.

Acceptance criteria should be set based on the observed range of variation, and should take into account the dissolution profiles of the batches that showed acceptable performance in vivo and the intended use of the product. The potential for particle growth should be investigated during product development; the acceptance criteria should take the results of these studies into account.

(m) *Redispersibility:* For injectable suspensions that settle on storage (produce sediment), acceptance criteria for redispersibility may be appropriate. Shaking may be an appropriate procedure. The procedure (mechanical or manual) should be indicated. Time required to achieve resuspension by the indicated procedure should be clearly defined. Data generated during product development may be sufficient to justify skip lot testing, or elimination of this attribute from the specification may be proposed.

(n) *Reconstitution time:* Acceptance criteria for reconstitution time should be provided for all parenteral products that require reconstitution. The choice of diluent should be justified. Data generated during product development and process validation may be sufficient to justify skip lot testing or elimination of this attribute from the specification for rapidly dissolving products.

4. Glossary (the following definitions are presented for the purpose of this guidance)

Acceptance criteria: Numerical limits, ranges, or other suitable measures for acceptance of the results of analytical procedures.

Chiral: Not superimposable with its mirror image, as applied to molecules, conformations, and macroscopic objects, such as crystals. The term has been extended to samples of substances whose molecules are chiral, even if the macroscopic assembly of such molecules is racemic.

Combination product: A drug product that contains more than one drug substance.

Degradation product: A molecule resulting from a chemical change in the drug molecule brought about over time and/or by the action of light, temperature, pH, water, or by reaction with an excipient and/or the immediate container/closure system. Also called decomposition product.

Delayed release: Release of a drug (or drugs) at a time other than immediately following oral administration.

Enantiomers: Compounds with the same molecular formula as the drug substance, which differ in the spatial arrangement of atoms within the molecule and are nonsuperimposable mirror images.

Extended release: Products that are formulated to make the drug available over an extended period after administration.

Highly water soluble drugs: Drugs with a dose/solubility volume of less than or equal to 250 mL over a pH range of 1.2 to 6.8. (Example: Compound A has as its lowest solubility at 37±0.5 °C, 1.0 milligram (mg)/milliliter (mL) at pH 6.8, and is available in 100 mg, 200 mg, and 400 mg strengths. This drug would be considered a low solubility drug, as its dose/solubility volume is greater than 250 mL (400 mg/1.0 mg/mL = 400 mL)).

Immediate release: Allows the drug to dissolve in the gastrointestinal contents, with no intention of delaying or prolonging the dissolution or absorption of the drug.

Impurity: (1) Any component of the new drug substance that is not the chemical entity defined as the new drug substance. (2) Any component of the drug product that is not the chemical entity defined as the drug substance or an excipient in the drug product.

Identified impurity: An impurity for which a structural characterization has been achieved.

In-process tests: Tests that may be performed during the manufacture of either the drug substance or drug product, rather than as part of the formal battery of tests that are conducted prior to release.

Modified release: Dosage forms whose drug release characteristics of time course and/or location are chosen to accomplish therapeutic or convenience objectives not offered by conventional dosage forms, such as a solution or an immediate-release dosage form. Modified-release solid oral dosage forms include both delayed- and extended-release drug products.

New drug product: A pharmaceutical product type, e.g., tablet, capsule, solution, cream, etc., that has not previously been registered in a region or Member State, and that contains a drug ingredient generally, but not necessarily, in association with excipients.

New drug substance: The designated therapeutic moiety that has not previously been registered in a region or Member State (also referred to as a new molecular entity or new chemical entity). It may be a complex, simple ester, or salt of a previously approved drug substance.

Polymorphism: The occurrence of different crystalline forms of the same drug substance. This may include solvation or hydration products (also known as pseudopolymorphs) and amorphous forms.

Quality: The suitability of either a drug substance or drug product for its intended use. This term includes such attributes as the identity, strength, and purity.

Racemate: A composite (solid, liquid, gaseous, or in solution) of equimolar quantities of two enantiomeric species. It is devoid of optical activity.

Rapidly dissolving products: An immediate release solid oral drug product is considered rapidly dissolving when not less than 80 percent of the label amount of the drug substance dissolves within 15 minutes in each of the following media: (1) pH 1.2, (2) pH 4.0, and (3) pH 6.8.

Reagent: A substance, other than a starting material or solvent, that is used in the manufacture of a new drug substance.

Solvent: An inorganic or an organic liquid used as a vehicle for the preparation of solutions or suspensions in the synthesis of a new drug substance or the manufacture of a new drug product.

Specification: A list of tests, references to analytical procedures, and appropriate acceptance criteria that are numerical limits, ranges, or other criteria for the tests described. It establishes the set of criteria to which a drug substance or drug product should conform to be considered acceptable for its intended use. ''Conformance to specifications'' means that the drug substance and/or drug product, when tested according to the listed analytical procedures, will meet the listed acceptance criteria. Specifications are critical quality standards that are proposed and justified by the manufacturer and approved by regulatory authorities as conditions of approval.

Specific test: A test that is considered to be applicable to particular new drug substances or particular new drug products, depending on their specific properties and/or intended use.

Specified impurity: An identified or unidentified impurity that is selected for inclusion in the new drug substance or new drug product specification and is individually listed and limited to ensure the quality of the new drug substance or new drug product.

Unidentified impurity: An impurity that is defined solely by qualitative analytical properties (e.g., chromatographic retention time).

Universal test: A test that is considered potentially applicable to all new drug substances, or all new drug products; e.g., appearance, identification, assay, and impurity tests.

5. References

International Conference on Harmonisation, ''Q3A Impurities in New Drug Substances,'' 1996.

International Conference on Harmonisation, ''Q3B Impurities in New Drug Products,'' 1997.

International Conference on Harmonisation, ''Q1A Stability Testing of New Drug Substances and Products,'' 1994.

International Conference on Harmonisation, ''Q2A Text on Validation of Analytical Procedures,'' 1995.

International Conference on Harmonisation, ''Q2B Validation of Analytical Procedures: Methodology,'' 1996.

International Conference on Harmonisation, ''Q3C Impurities: Residual Solvents,'' 1997.

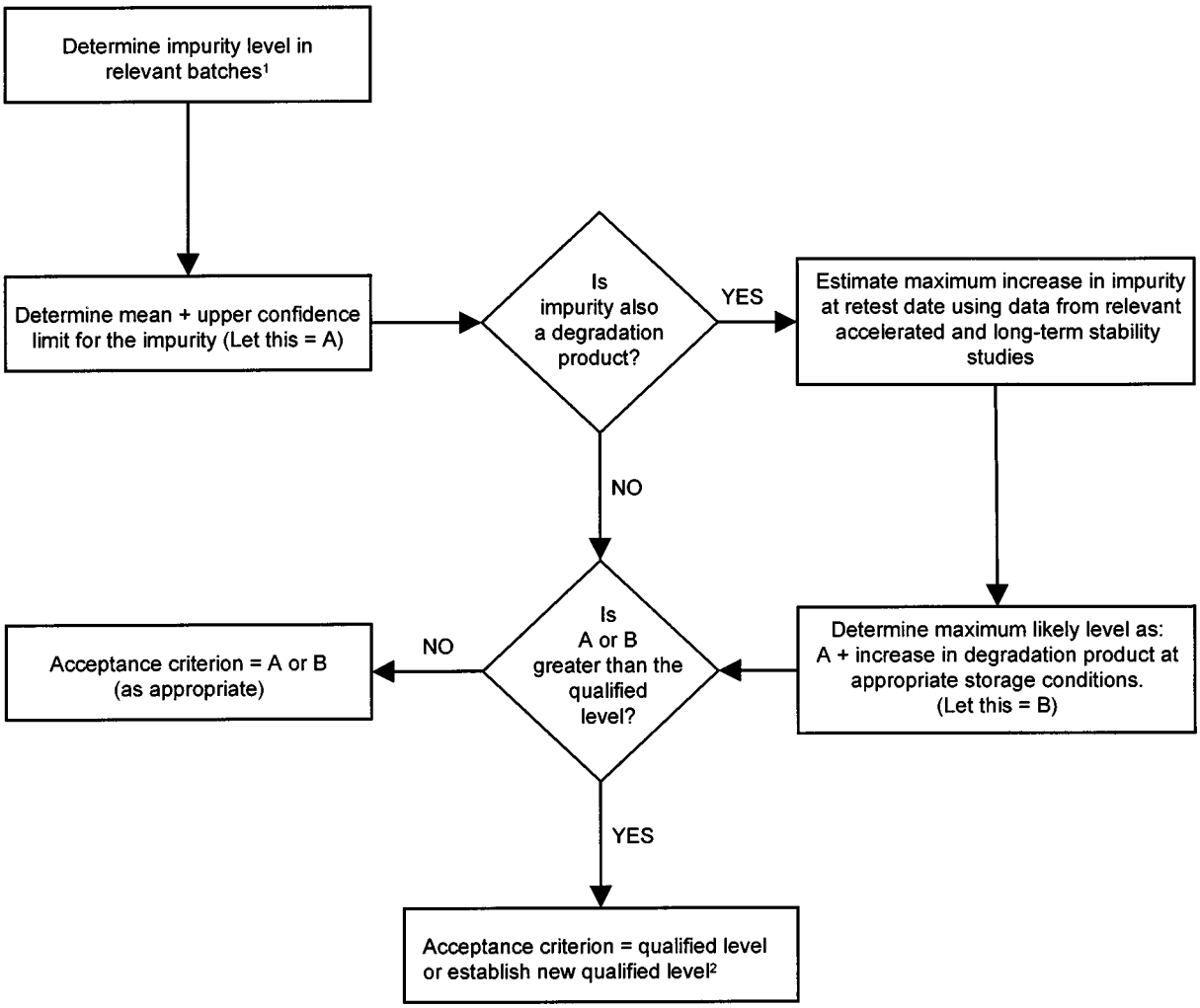
International Conference on Harmonisation, ''Q6B Specifications: Test Procedures and Acceptance Criteria for Biotechnological/Biological Products,'' 1999.

6. Attachments: Decision Trees #1 through #8

For the decision trees referenced in this guidance, see the following pages.

BILLING CODE 4160–01–F

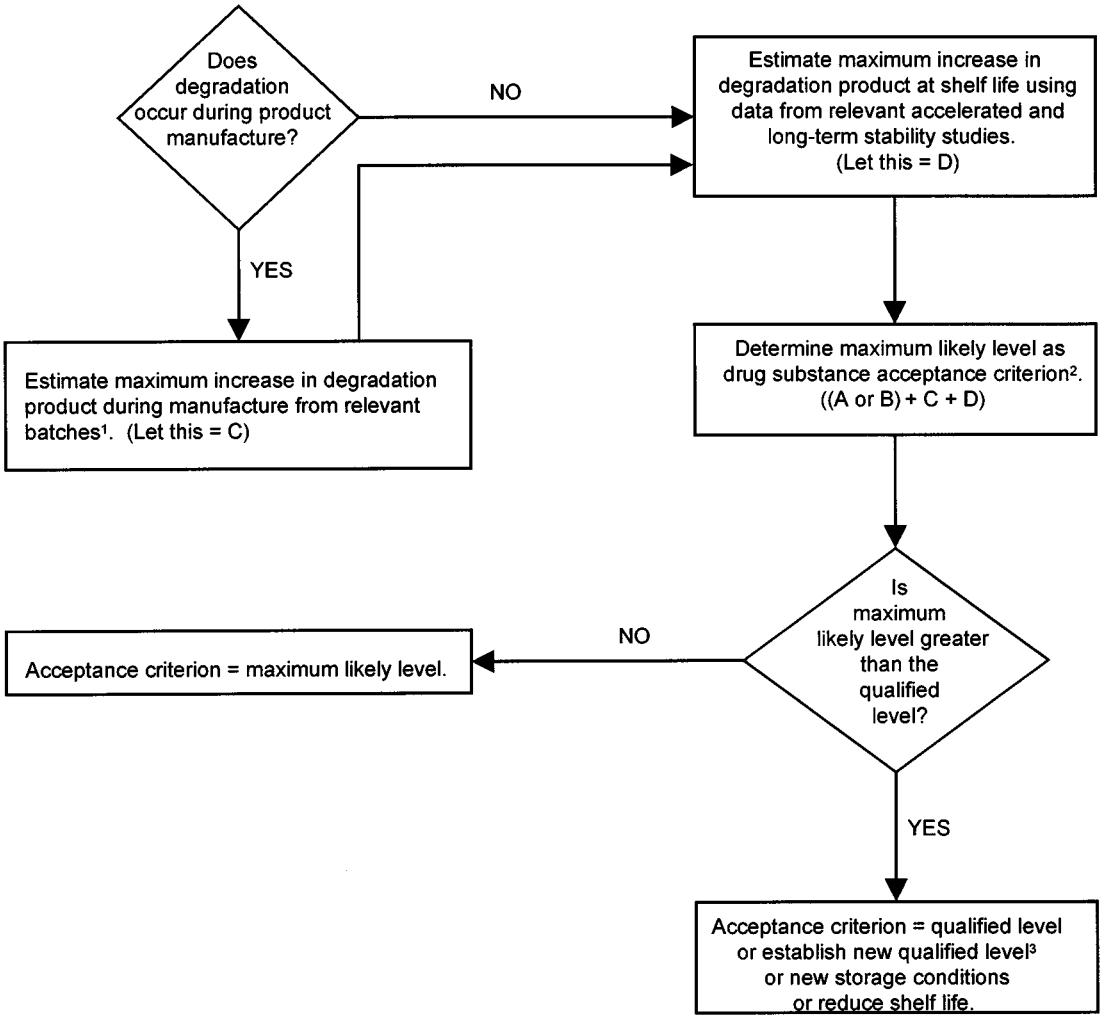
DECISION TREE #1: ESTABLISHING AN ACCEPTANCE CRITERION FOR A SPECIFIED IMPURITY IN A NEW DRUG SUBSTANCE



[1] Relevant batches are those from development, pilot and scale-up studies.
[2] Refer to ICH Guideline on Impurities in New Drug Substances

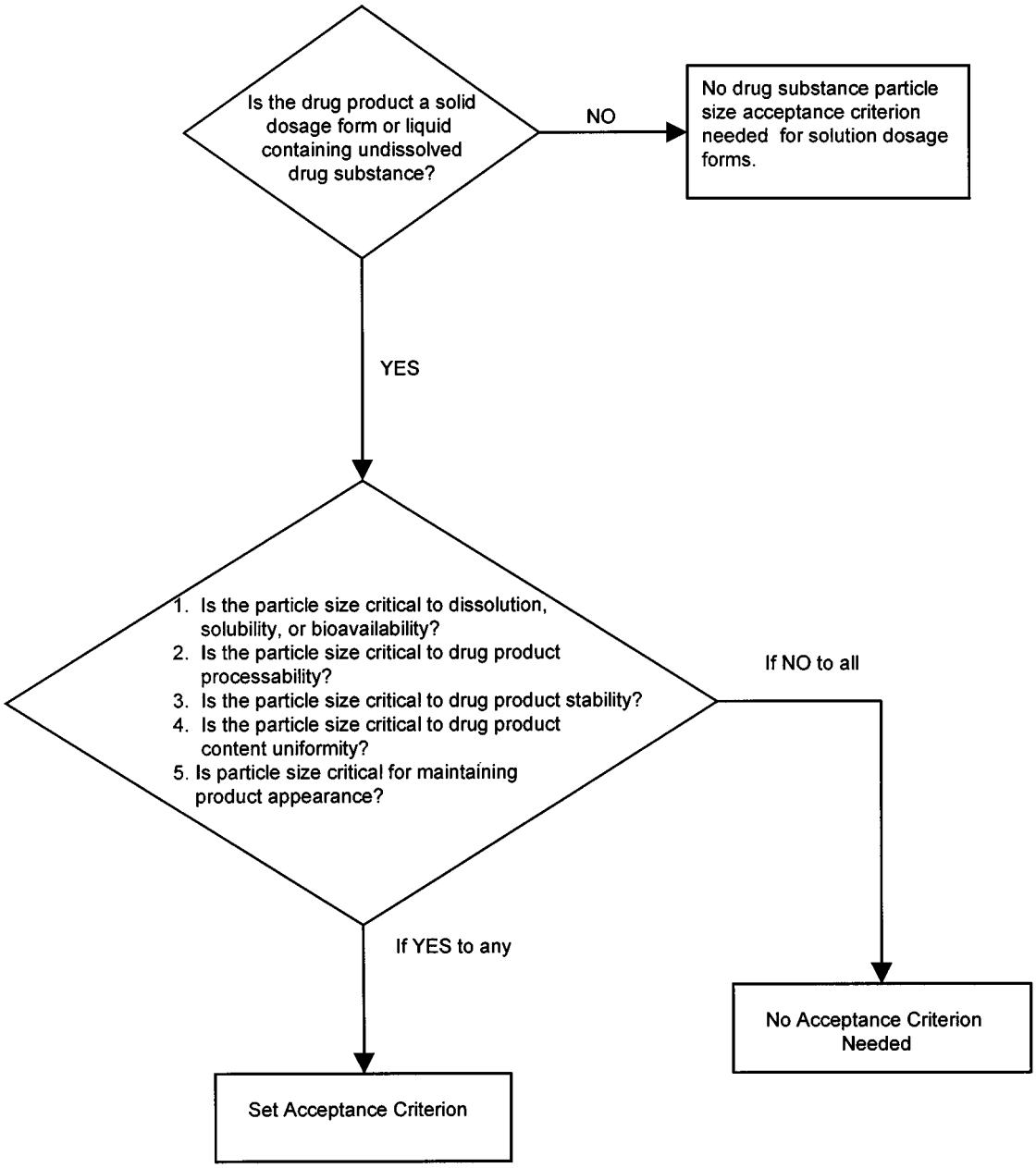
Definition: upper confidence limit = three times the standard deviation of batch analysis data

DECISION TREE #2: ESTABLISHING AN ACCEPTANCE CRITERION FOR A DEGRADATION PRODUCT IN A NEW DRUG PRODUCT

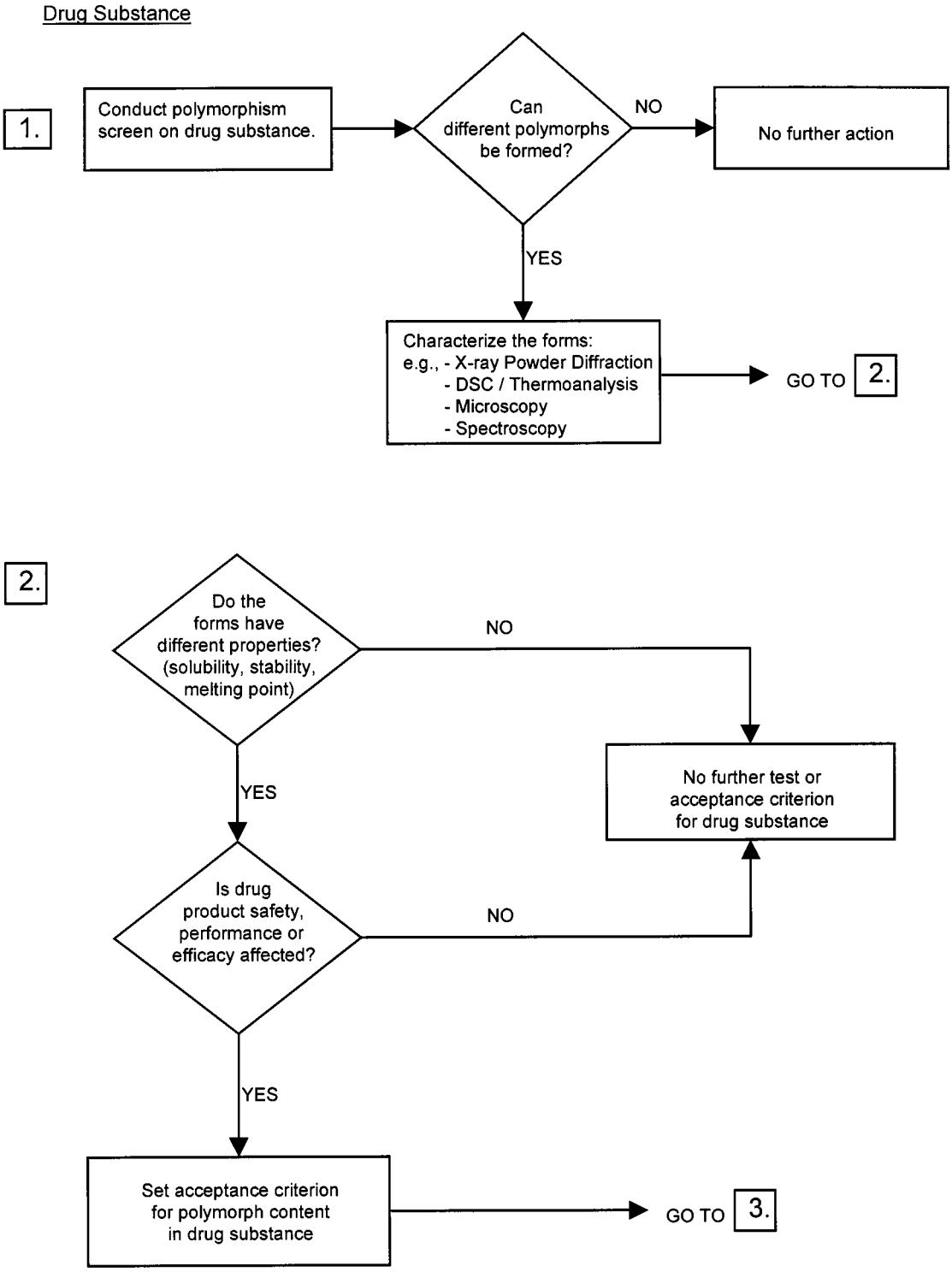


[1] Relevant batches are those from development, pilot and scale-up studies.
[2] Refer to Decision Tree 1 for information regarding A and B.
[3] Refer to ICH Guideline on Impurities in New Drug Products.

DECISION TREE #3: SETTING ACCEPTANCE CRITERIA FOR DRUG SUBSTANCE PARTICLE SIZE DISTRIBUTION



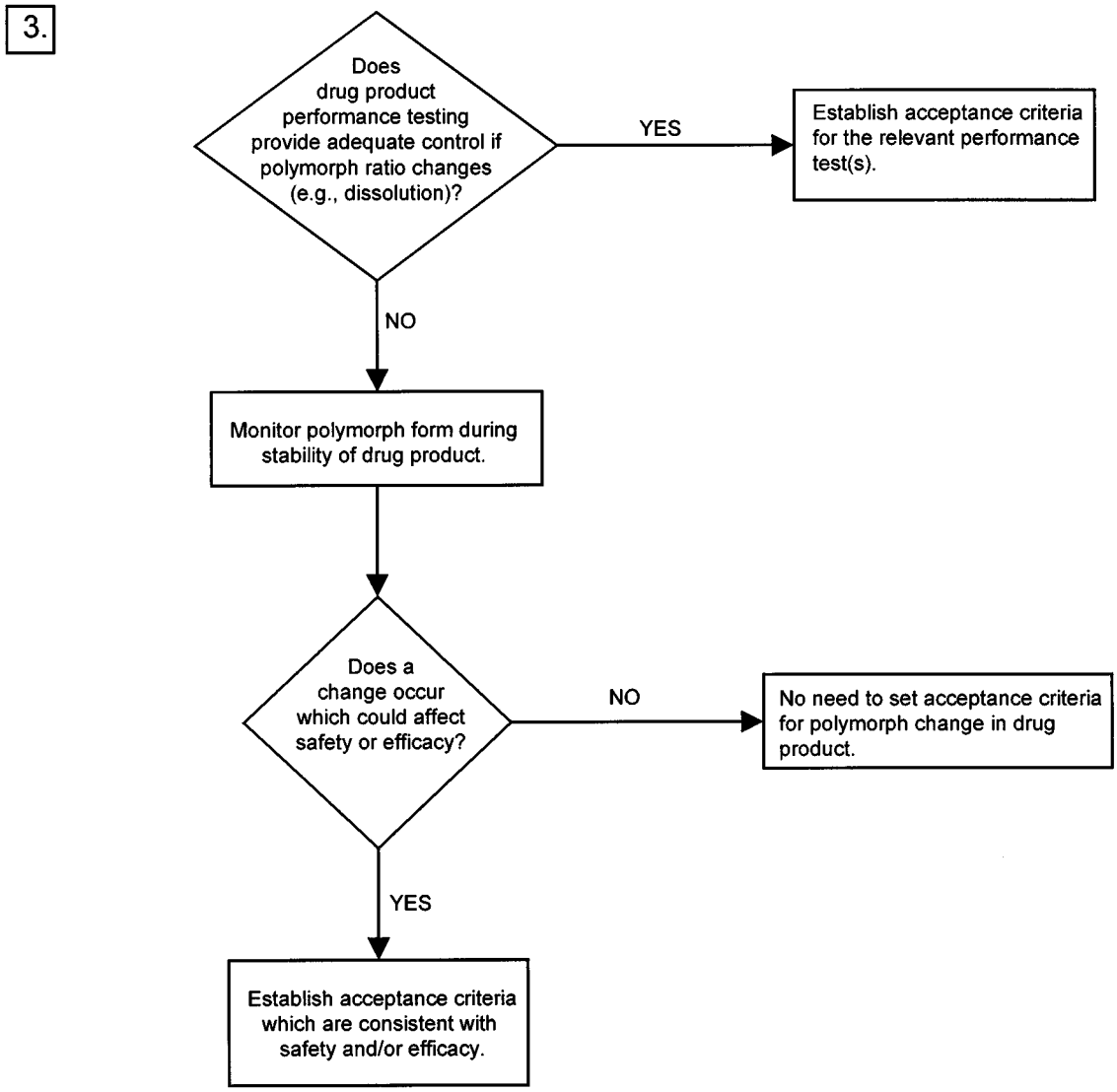
DECISION TREE #4: INVESTIGATING THE NEED TO SET ACCEPTANCE CRITERIA FOR POLYMORPHISM IN DRUG SUBSTANCES AND DRUG PRODUCTS



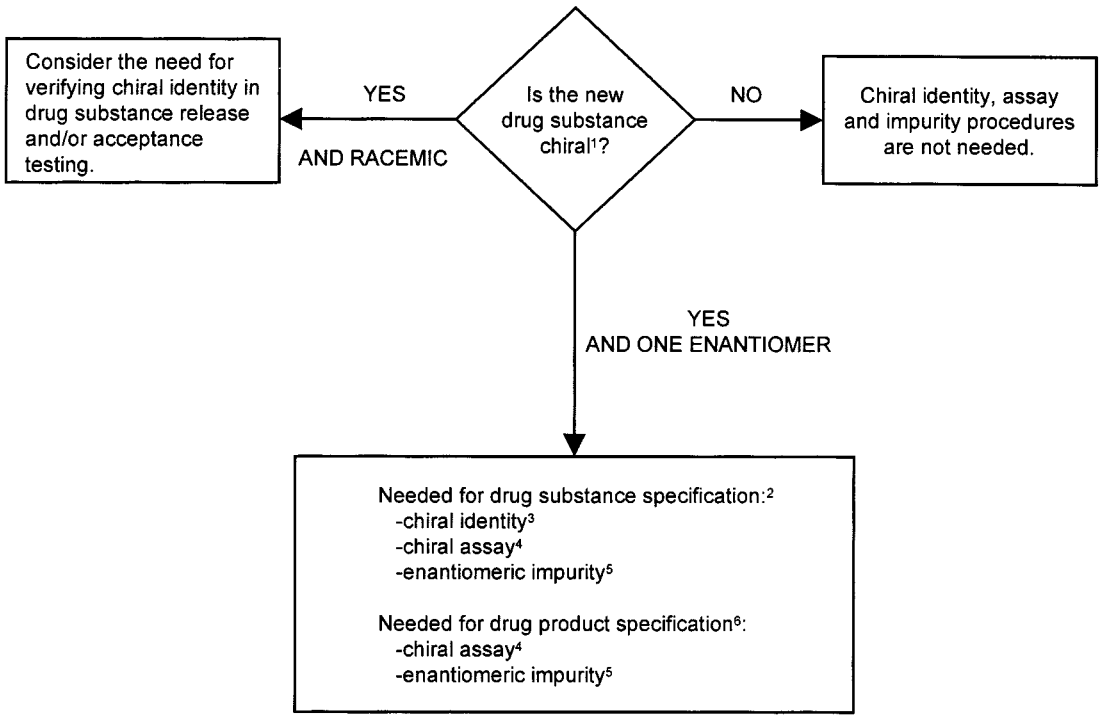
DECISION TREE #4: INVESTIGATING THE NEED TO SET ACCEPTANCE CRITERIA FOR POLYMORPHISM IN DRUG SUBSTANCES AND DRUG PRODUCTS

Drug Product - Solid Dosage Form or Liquid Containing Undissolved Drug Substance

N.B.: Undertake the following processes only if technically possible to measure polymorph content in the drug product.



DECISION TREE #5: ESTABLISHING IDENTITY, ASSAY AND ENANTIOMERIC IMPURITY PROCEDURES FOR CHIRAL NEW DRUG SUBSTANCES AND NEW DRUG PRODUCTS CONTAINING CHIRAL DRUG SUBSTANCES



[1] Chiral substances of natural origin are not addressed in this Guideline.

[2] As with other impurities arising in and from raw materials used in drug substance synthesis, control of chiral quality could be established alternatively by applying limits to appropriate starting materials or intermediates when justified from developmental studies. This essentially will be the case when there are multiple chiral centers (e.g., three or more), or when control at a step prior to production of the final drug substance is desirable.

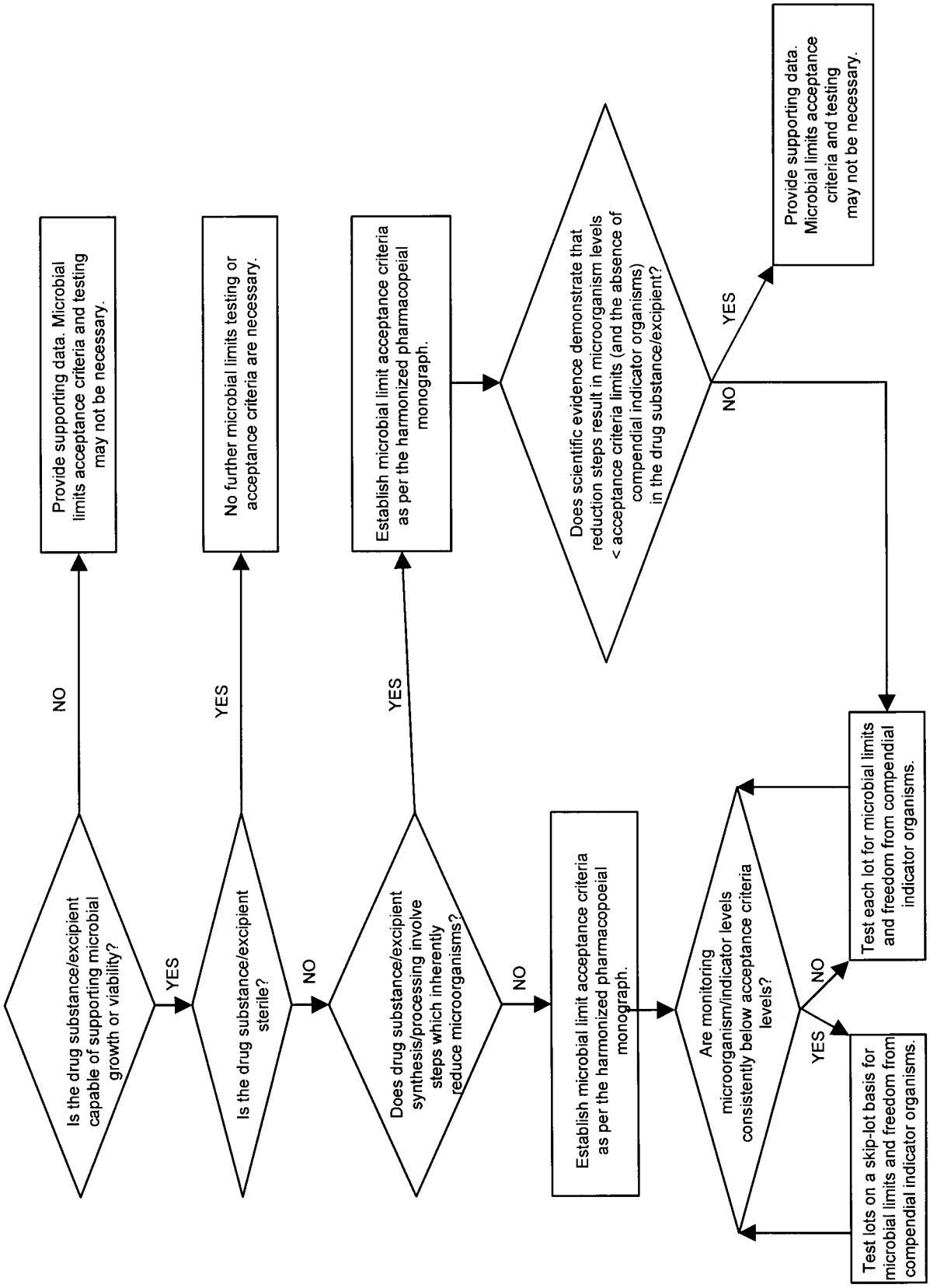
[3] A chiral assay or an enantiomeric impurity procedure may be acceptable in lieu of a chiral identity procedure.

[4] An achiral assay combined with a method for controlling the opposite enantiomer is considered acceptable in lieu of a chiral assay.

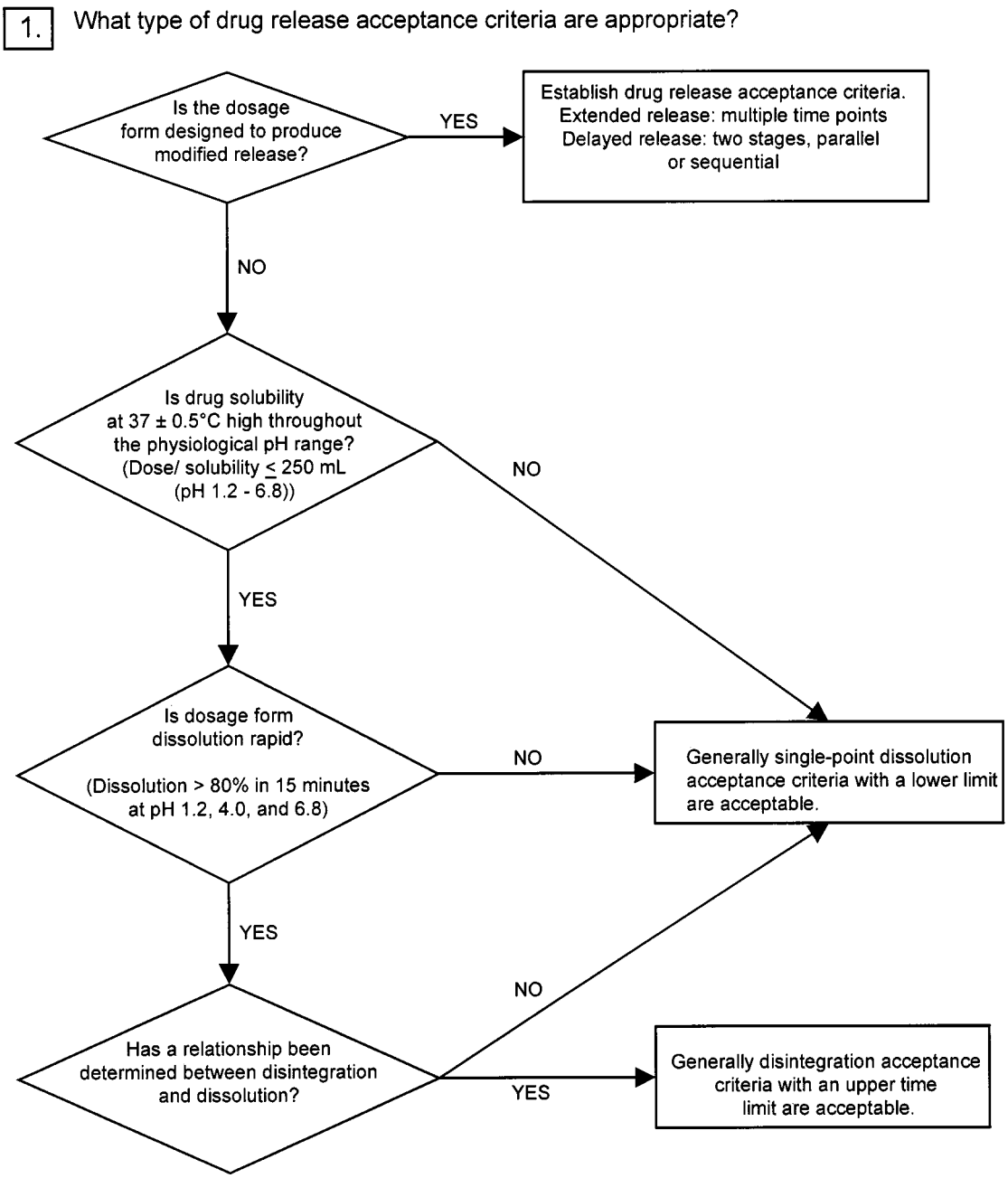
[5] The level of the opposite enantiomer of the drug substance may be derived from chiral assay data or from a separate procedure.

[6] Stereospecific testing of drug product may not be necessary if racemization has been demonstrated to be insignificant during drug product manufacture and during storage of the finished dosage form.

DECISION TREE #6: MICROBIOLOGICAL QUALITY ATTRIBUTES OF DRUG SUBSTANCE AND EXCIPIENTS



DECISION TREES #7: SETTING ACCEPTANCE CRITERIA FOR DRUG PRODUCT DISSOLUTION



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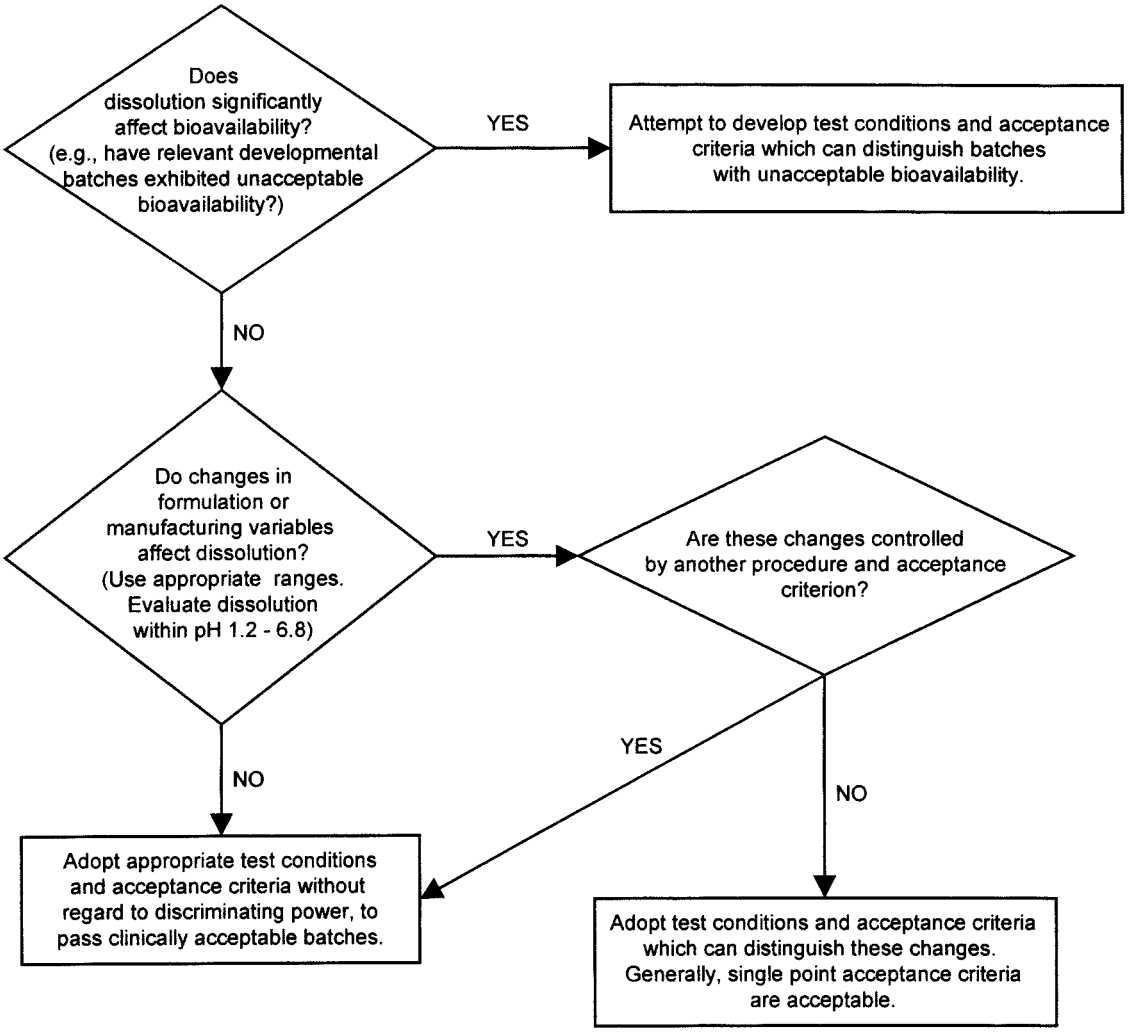
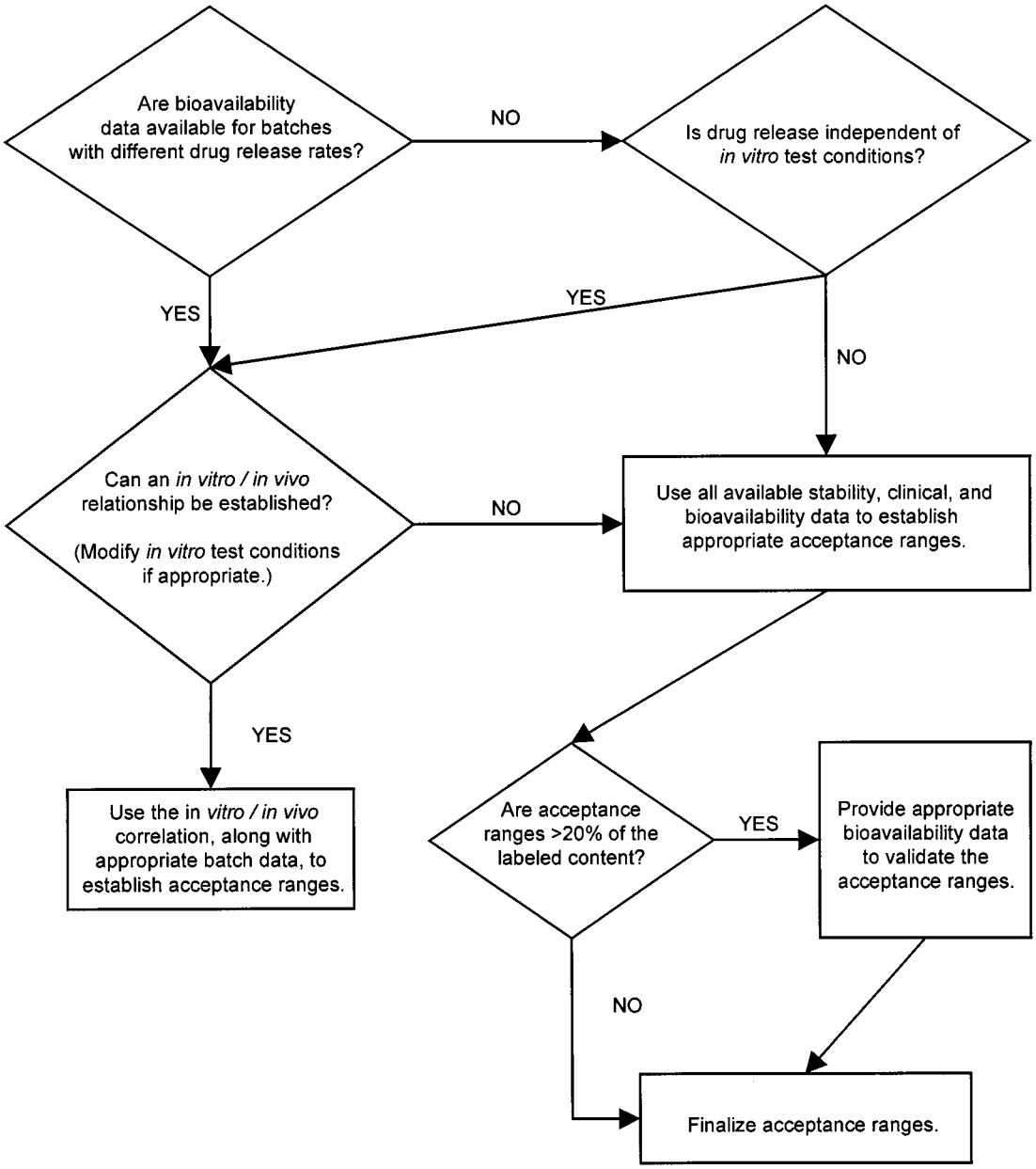
DECISION TREES #7: SETTING ACCEPTANCE CRITERIA
FOR DRUG PRODUCT DISSOLUTION

2. What specific test conditions and acceptance criteria are appropriate? [immediate release]

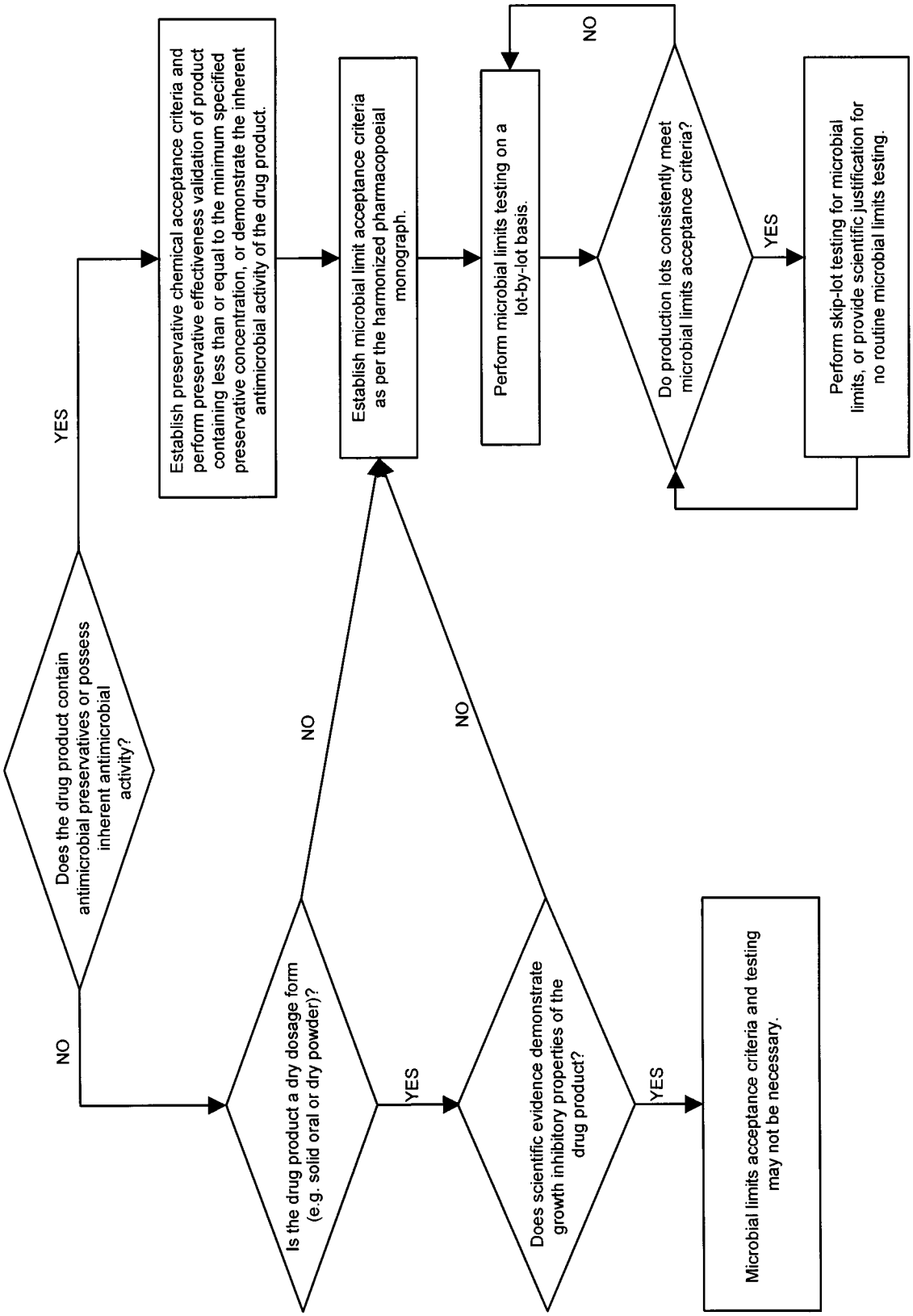


DECISION TREES #7: SETTING
ACCEPTANCE CRITERIA
FOR DRUG PRODUCT DISSOLUTION

3. What are appropriate acceptance ranges? [extended release]



DECISION TREE #8: MICROBIOLOGICAL ATTRIBUTES OF NON-STERILE DRUG PRODUCTS



Dated: December 20, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–33369 Filed 12–28–00; 8:45 am]

BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Cooperative Arrangement Between the United States Food and Drug Administration and Therapeutic Goods Administration, Republic of Australia Regarding the Exchange of Information on Current Good Manufacturing Practice Inspections of Human Pharmaceutical Facilities

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of cooperative arrangement between the Food and Drug Administration, Department of Health and Human Services, United States of America and the Therapeutic Goods Administration, Department of Health and Aged Care, Commonwealth of Australia. The purpose of the arrangement is to enable each administration to obtain information that will enable it to make its own independent facility and/or product regulatory decisions in the assessment of current good manufacturing practices compliance, public health protection, and approval of new drugs. It also will facilitate more efficient use of resources for each organization in meeting their statutory requirements without reduction of public safety or regulatory responsibilities.

DATES: The arrangement became effective October 11, 2000.

FOR FURTHER INFORMATION CONTACT: Merton V. Smith, Office of International Programs, International Agreements Staff (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0910.

SUPPLEMENTARY INFORMATION: This cooperative arrangement is subject to FDA's regulations in 21 CFR 20.108 for cooperative agreements. Therefore, in accordance with 21 CFR 20.108(c), which states that all written agreements and memoranda of understanding between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this written arrangement.

Dated: December 20, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

The arrangement is set forth in its entirety as follows:

BILLING CODE 4160–01–F

COOPERATIVE ARRANGEMENT

BETWEEN THE

FOOD AND DRUG ADMINISTRATION

OF THE

DEPARTMENT OF HEALTH AND HUMAN SERVICES

OF THE

UNITED STATES OF AMERICA

AND THE

THERAPEUTIC GOODS ADMINISTRATION

OF THE

DEPARTMENT OF HEALTH AND AGED CARE

OF THE

COMMONWEALTH OF AUSTRALIA

REGARDING THE EXCHANGE OF INFORMATION ON

CURRENT GOOD MANUFACTURING PRACTICE INSPECTIONS

OF HUMAN PHARMACEUTICAL FACILITIES

The Food and Drug Administration, Department of Health and Human Services (FDA) of the United States of America and the Therapeutic Goods Administration, Department of Health and Aged Care (TGA) of the Commonwealth of Australia in order to exchange information and/or documents on the observations and results of inspections of human pharmaceutical products and facilities for adherence to Current Good Manufacturing Practices (CGMPs) and conditions of adulteration, misbranding, or adverse health consequences;

Recognizing that this Arrangement provides the means by which each Administration can obtain information that will enable it to make its own independent facility and/or product

regulatory decisions in the assessment of CGMP compliance, public health protection and approval of new drugs; and,

Realizing that this Arrangement can save both time and costs for each Administration in meeting their statutory requirements without reduction of public safety or regulatory responsibilities;

Hereby jointly plan to undertake the activities as stated herein.

A. For FDA:

1. Upon request from the TGA, FDA intends to promptly furnish copies of pharmaceutical establishment inspection reports and product sample results prepared by FDA employees.

2. In response to a request from the TGA, the FDA will endeavor to reinspect and provide a written inspection report, normally within 90 days, on a specific pharmaceutical facility in which current FDA information on CGMP compliance does not exist to determine the acceptability of CGMP compliance for the same profile class as that of the TGA request. Any such inspections of pharmaceutical plants conducted by the FDA in the United States will be conducted in accordance with the requirements of the Federal Food, Drug, and Cosmetic Act and its implementing regulations.

3. In those cases where a hazard to health is reported by the TGA and concurred in by the FDA, FDA intends to conduct an inspection in an expedited manner to provide the TGA with the written inspection/investigation report.

4. In those cases related to a request to inspect a specific drug product, FDA will endeavor to perform the inspection normally within a period of 45 days. If an inspection cannot be performed or cannot be performed within this time frame, FDA plans to notify TGA within 15 days of the request.

5. FDA intends to notify the TGA as soon as practical that it plans to conduct a CGMP inspection in Australia. FDA intends to be receptive to authorized inspectors of the TGA accompanying FDA employees in an effort to promote better understanding of FDA's inspectional programs and techniques.

6. FDA will endeavor to provide the TGA with prompt notification to manufacturing conditions and/or particular products, which may constitute a potential hazard to health or significant violations of CGMPs. This may include the exchange of recall information, adverse product trends, health hazard evaluations, and alert system(s) information deemed appropriate by the FDA.

7. FDA plans to continue to allow the TGA access to facility/profile class approval status listing in its computer databases (COMSTAT).

8. FDA will endeavor to provide assistance to TGA when drug shortage situations involving medically necessary human pharmaceuticals occur in Australia by providing information regarding manufacturers of these pharmaceuticals to or in the United States and the regulatory status of these manufacturers when possible.

9. To the extent funding resources allow and by joint agreement, the FDA will endeavor to arrange for meetings at least once per year between its inspectors/investigators, technical experts, compliance officers, and/or management employees and those of the TGA for the purpose of developing and reviewing inspectional techniques, computer databases, report formats, guidance documents, and laws and/or regulations in an effort to enhance harmonization between the FDA and TGA.

10. FDA intends to provide information under this Arrangement according to relevant U.S. laws and regulations. FDA intends to generally provide information that is publicly available under U.S. law and regulations. Where TGA needs and requests non-public information, FDA intends to provide such information in accordance with Part 20 of Title 21 of the U.S. Code of Federal Regulations.

FDA intends to protect from public disclosure information it receives from TGA pursuant to this Arrangement to the extent required or permitted under U.S. law and regulations.

FDA intends to use the information it receives from TGA to assess the compliance of human pharmaceutical facilities or products manufactured, distributed, or offered for distribution within the United States or its territories.

11. FDA intends to identify to the TGA appropriate individuals/offices as the primary liaison officer for this Arrangement and as contact points for the activities to be carried out under this Arrangement with regard to inspection notifications, sample/inspection report requests and compliance actions, recalls/alerts/adverse event reports, drug shortages, and meetings.

B. For TGA:

1. Upon request from the FDA, TGA intends to promptly furnish FDA with copies of pharmaceutical establishment inspection reports and product sample results prepared by TGA employees.

2. In response to a request from the FDA, the TGA will endeavor to re-inspect and provide a written inspection report, normally within 90 days, on a specific pharmaceutical facility in which current TGA information on CGMP compliance does not exist to determine the acceptability of CGMP compliance for the same profile class as that of the FDA request. Any such inspections of pharmaceutical facilities in Australia will be conducted by the TGA in accordance with the requirements of the Therapeutic Goods Act, 1989, and its implementing regulations.

3. In those cases where a hazard to health is reported by the FDA, and concurred with by the TGA, TGA intends to conduct an inspection in an expedited manner to provide the FDA with the written inspection/investigation report.

4. In those cases related to a request to inspect a specific drug product, TGA will endeavor to perform an inspection normally within a period of 45 days. If an inspection cannot be performed or performed within this time frame,TGA intends to notify FDA within 15 days of the request.

5. TGA intends to notify FDA as soon as practical that it plans to conduct a CGMP inspection in the U.S. or its territories. TGA intends to be receptive to authorized investigators of the FDA accompanying TGA employees in an effort to promote better understanding of TGA's inspectional programs and techniques.

6. TGA will endeavor to provide the FDA with prompt notification of manufacturing conditions and/or particular products which may constitute a potential hazard to health or significant violations of CGMPs. This may include the exchange of recall information, adverse product trends, health hazard evaluations, and alert system(s) information deemed appropriate by the TGA.

7. TGA intends to provide FDA access to information on facility approval status, including the product categories involved, in its computer databases and/or through hard copy records where no computer data exists.

8. TGA will endeavor to provide assistance to FDA when drug shortage situations involving medically necessary human pharmaceuticals occur in the U.S. by providing information regarding manufacturers of these pharmaceuticals to or in Australia and the regulatory status of these manufacturers when possible.

9. To the extent funding resources allow and by joint agreement, the TGA will endeavor to arrange for meetings between its inspectors/investigators, technical experts, compliance officers, management employees and those of the

FDA for the purpose of developing and/or reviewing inspectional techniques, computer databases, report formats, guidance documents, and laws and/or regulations in an effort to enhance harmonization between both FDA and TGA.

10. TGA intends to provide information pursuant to this Arrangement in confidence to FDA in accordance with Australian law. TGA will protect information received from FDA to the extent allowed under Australian law. TGA intends to use information it receives from the FDA only to assess the compliance of human pharmaceutical facilities or products manufactured, distributed, or offered for distribution within the Commonwealth of Australia.

11. TGA intends to identify to the FDA the appropriate individuals/offices as primary liaison officer for this Arrangement and as contact points for this Arrangement with regard to inspection notifications, sample/inspection report requests/compliance actions, recalls/alerts/adverse event reports, drug shortages, and meetings.

PERIOD OF COOPERATIVE ARRANGEMENT

This Arrangement enters into force upon signing by both Administration representatives and continues in effect for a period of five (5) years unless modified by mutual consent of both parties or termination earlier by either party upon written notification.

This Arrangement does not modify existing arrangements nor does it preclude entering into separate arrangements for special programs which can be handled more efficiently and expeditiously by special arrangements.

Nothing in this Arrangement is intended to diminish or otherwise affect the authority of either agency (FDA/TGA) to carry out its respective statutory functions. Additionally, no provision of this Arrangement restricts either administration from making its own inspection of any pharmaceutical facility located within the jurisdictional boundaries of the other country when needed to meet the needs of its own drug regulatory program.

FOR THE FOOD AND DRUG ADMINISTRATION, DEPARTMENT HEALTH AND HUMAN SERVICES OF UNITED STATES OF AMERICA

DATE: October 11, 2000
PLACE: Rockville Maryland

FOR THE THERAPEUTIC GOODS ADMINISTRATION, DEPARTMENT OF HEALTH AND AGED CARE OF COMMONWEALTH OF AUSTRALIA

DATE: 11.10.00
PLACE: Rockville MD

[FR Doc. 00–33216 Filed 12–28–00; 8:45 am]
BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0969]

Use of Antimicrobial Drugs in Food Animals and Establishment of Regulatory Thresholds on Antimicrobial Resistance; Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is amending an announcement of the following meeting: Use of Antimicrobial Drugs in Food Animals and Establishment of Regulatory Thresholds on Antimicrobial Resistance. The topic to be discussed is the Center for Veterinary Medicine's (CVM's) current thinking on concepts for the establishment of resistance and monitoring thresholds in food-producing animals. This documents amends the date and title of the meeting (formally entitled ''Establishment of Resistance and Monitoring Thresholds in Food-Producing Animals'') that we previously announced in the **Federal Register** of July 28, 2000 (63 FR 46464), and amended on September 26, 2000 (65 FR 57820).

Date and Time: The meeting will be held on January 22 through 24, 2001, 8:30 a.m. to 5 p.m.

Location: The meeting will be held at the DoubleTree Hotel, 1750 Rockville Pike, Rockville, MD.

For Further Information Contact: For general inquiries about the meeting and registration contact: Lynda W. Cowatch, Center for Veterinary Medicine (HFV–150), Food and Drug Administration, 7500 Standish Pl., Rockville MD 20855, 301–827–5281, FAX 301–594–2298.
For technical inquiries contact: Aleta M. Sindelar, Center for Veterinary Medicine (HFV–1), Food and Drug Administration, 7500 Standish Pl., Rockville MD 20855, 301–827–0148.

Registration: Registration is required. There is no registration fee for the meeting. Limited space is available, and early registration is encouraged. Logistics for the meeting and the registration form are available on the Internet at http://www.fda.gov/cvm/fda/mappgs/registration.html. Please send the registration form to Lynda W. Cowatch (address above). Additional information about the meeting and the agenda will be available on the Internet (address above) before the meeting.

If you need special accommodations due to a disability, please contact the DoubleTree Hotel at least 7 days in advance, 1–800–222–8733.

Transcripts: Transcripts of the meeting will be available on the Internet at http://www.fda.gov/cvm.

Dated: December 21, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–33371 Filed 12–28–00 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

RIN 00N–1686

Electronic Investigational New Drug Application: Cumulative Table of Contents; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting to discuss the possibility of using extensible markup language (XML) to create a cumulative table of contents for investigational new drug applications (IND's) intended to be submitted electronically to the Center for Biologics Evaluation and Research (CBER) or the Center for Drug Evaluation and Research (CDER). Although the agency does not yet have a comprehensive approach to accepting IND's in electronic format in place of paper, it is updating existing guidance to make electronically submitted IND's in place of paper possible in the future. The agency is hoping to gain public input at the meeting on the use of XML to create a cumulative table of contents.

DATES: The public meeting will be held on January 26, 2001, from 8 a.m. to 4 p.m. Submit registration request by January 17, 2001. Written comments on the use of XML to create a cumulative table of contents are welcome at any time.

ADDRESSES: The public meeting will be held in the CDER Advisory Committee Conference Room, 5630 Fishers Lane, rm. 1066, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Randy Levin, Center for Drug Evaluation and Research (HFD–001), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5400, e-mail: levinr@cder.fda.gov, or Robert A. Yetter, Center for Biologics Evaluation and Research (HFM–025), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0373, e-mail: yetter@cber.fda.gov.

SUPPLEMENTARY INFORMATION: FDA is holding a public meeting to discuss the possibility of using XML to create a cumulative table of contents for IND's intended to be submitted electronically to CBER or CDER. The agency is updating guidance to make electronically submitted IND's in place of paper possible in the future. The agency is interested in input from the public on the following questions related to the use of XML to create a cumulative table of contents:

- Would a cumulative table of contents offer you advantages?
- How difficult is it for you to create and maintain the XML files needed for the cumulative table of contents?
- How difficult will it be for you to incorporate the preparation of an XML document in your submission preparation process?
- Do you have suggestions for improvements on the cumulative table of contents?
- Are you interested in piloting the cumulative table of contents in electronic IND's with the agency?
- Are you interested in working with us to develop tools to be used with the cumulative table of contents?
- Do you have other comments or suggestions?

An agenda and other materials including an example of a cumulative table of contents will be available prior to the meeting on the Internet at http://www.fda.gov/cder/regulatory/ersr/default.htm. Although there is no fee, preregistration by January 17, 2001, is required for all attendees at this meeting. Participation is limited to the first 100 registrants. To accommodate the greatest number of interested parties, registration is limited to persons outside FDA, and no more than two persons from an individual company should attend. Persons interested in attending the meeting should register by sending the names of those attending with the name of their company in an e-mail message to embreyj@cder.fda.gov.

The location of the meeting is 5630 Fishers Lane, next to the Parklawn Bldg. Please use the lower entrance, which faces Parklawn Dr. Visitor badges will be held at the guard station at the entrance to the building. Participants will need picture identifications to pick up their badge. Public parking is not available at the 5630 Fishers Lane location. A public parking lot is available on Fishers Lane across from the Parklawn Bldg., and additional public parking is available at the

Twinbrook Metro Station located several blocks west of the meeting location.

Interested persons may submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, written comments on the use of XML to create a cumulative table of contents. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 22, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–33370 Filed 12–28–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1677]

Discussion Paper: An Approach for Establishing Thresholds in Association With the Use of Antimicrobial Drugs in Food-Producing Animals; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a discussion paper entitled ''An Approach for Establishing Thresholds in Association With the Use of Antimicrobial Drugs in Food-Producing Animals (discussion paper).'' This discussion paper reflects the Center for Veterinary Medicine's (CVM's) current thinking on one concept for establishing resistance thresholds for antimicrobial drugs used in food-producing animals. The concept will be presented for discussion at a public meeting on January 22 to 24, 2001. CVM wants to receive comment on scientific and policy issues regarding this concept, as well as suggestions for alternative approaches.

DATES: Submit written comments on this discussion paper by April 9, 2001.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

See the **SUPPLEMENTARY INFORMATION** section for electronic access to the discussion paper. Persons without Internet access may submit written requests for single copies of this discussion paper to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: *For general inquiries:* Sharon R. Thompson, Center for Veterinary Medicine (HFV–3), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–4514, e-mail at sthompso@cvm.fda.gov.

For technical inquiries: William T. Flynn, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7570, e-mail at wflynn@cvm.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 6, 1999 (64 FR 887), FDA announced the availability of a discussion paper entitled ''A Proposed Framework for Evaluating and Assuring the Human Safety of the Microbial Effects of Antimicrobial Drugs Intended for Use in Food-Producing Animals'' (the Framework Document). FDA made the Framework Document available to the public to initiate discussions with the scientific community and other interested parties on the agency's thinking about appropriate underlying concepts to be used to develop new policy for evaluating and ensuring that antimicrobial drug use in food-producing animals is safe for the public health. The Framework Document discussed several strategies for addressing concerns regarding the development of antimicrobial drug resistance associated with the use of antimicrobial drugs in food-producing animals. These strategies covered both preapproval and postapproval approaches and included: (1) Revision of the preapproval safety assessment for antimicrobial resistance for new animal drug applications to consider all uses of antimicrobial drugs in food-producing animals, (2) categorization of antimicrobial drugs based upon the importance of the drug for human medicine and upon which preapproval and postapproval requirements would be based, (3) postapproval monitoring of the development of antimicrobial drug resistance, and (4) elaboration of resistance and monitoring thresholds.

The Framework Document discussed the concept of two thresholds, the resistance threshold and the monitoring threshold, that would be established prior to the approval of an antimicrobial new animal drug for use in food-producing animals to ensure that food products derived from the animal species treated with the drug are safe for consumers. The resistance threshold would be established in humans to represent the upper limit of resistant bacteria that can be transferred from animals to consumers. The Framework Document discussed the possibility of establishing resistance thresholds based on human data, animal data, or both.

The Framework Document noted that monitoring thresholds also would be established to guide the postapproval monitoring of resistance development in animals. According to the Framework Document, a monitoring threshold would need to be determined for each antimicrobial drug prior to approval, and the threshold could vary depending on the human or animal pathogen of concern. Monitoring thresholds would be established in animals so that they would serve as an early warning system, signaling when loss of susceptibility or resistance prevalence is approaching the resistance threshold.

If a monitoring threshold were reached, the drug sponsor could implement mitigation actions to address the loss of susceptibility or the increasing resistance trend. According to the concepts described in the Framework Document, if mitigation actions were found to be unsuccessful, and resistance levels exceeded the resistance threshold, withdrawal of the approval of the drug for the use(s) of concern would be warranted.

The discussion paper, which is the subject of this notice of availability, further describes an approach for establishing thresholds intended to limit the emergence and spread of antimicrobial resistance in human pathogens attributed to antimicrobial drug use in food-producing animals. The discussion paper attempts to describe the possible complexities of this approach to establishing thresholds in order to encourage discussion before, during, and after the January public meeting mentioned above. A notice of the public meeting was announced in the **Federal Register** of September 26, 2000 (65 FR 57820).

The discussion paper discusses the use of two types of thresholds, a human health threshold and a resistance-in-animals threshold. The human health threshold represents the level at which there is no longer a reasonable certainty of no harm to human health associated

with antimicrobial resistance development as a consequence of antimicrobial drug use in food-producing animals. The resistance-in-animals threshold represents the upper limit of acceptable levels of antimicrobial resistance in a food-producing animal species. This resistance threshold is derived through a risk assessment model that builds a link between the human health threshold and the resistance levels in animals. Therefore, exceeding the resistance threshold would be considered an unacceptable human health risk.

II. Comments

This discussion paper is being distributed at this time for consideration by the public in anticipation of the January 22 to 24, 2001, public meeting. Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this discussion paper by April 9, 2001. Two copies of any comments are to be submitted, except that an individual may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the docket including transcript and comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Copies of the discussion paper may be obtained on the Internet from the CVM home page at http://www.fda.gov/cvm/.

Dated: December 21, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–33215 Filed 12–26–00; 11:47 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement for the opportunity for public comment on proposed data collection projects (section 3506 (c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer at (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Ryan White CARE Act: Cross-Title Data Report Form (CTDR)—New

The Cross Title Data Report (CTDR) form, created in 1999 by the HIV/AIDS Bureau of the Health Resources Services Administration (HRSA), is designed to collect information from grantees, as well as their subcontracted service providers, funded under Titles I, II, III and IV of the Ryan White Comprehensive AIDS Emergency (CARE) Act of 1990, as amended by the Ryan White CARE Act Amendments of 1996 and 2000 (codified under Title XXVII of the Public Health Services Act). The purpose of the Ryan White CARE Act is to provide emergency assistance to localities that are disproportionately affected by the human immunodeficiency virus (HIV) epidemic and to make financial assistance available for the development, organization, coordination, and operation of more effective and cost-efficient systems for the delivery of essential services to persons with HIV disease. The CARE Act also provides grants to states, eligible metropolitan areas, community-based programs, and early intervention programs for the delivery of services to individuals and families with HIV infection. All Titles of the CARE Act specify HRSA's responsibilities in the administration of grant funds, the allocation of funds, the evaluation of programs for the population served, and the improvement of the quantity and quality of care. Accurate records of the providers receiving CARE Act funding, the services provided, and the clients served continue to be critical to the implementation of the legislation and thus are necessary for HRSA to fulfill its responsibilities.

Previously, grantees under each Ryan White CARE Act Title reported aggregate data on distinct Title-specific forms. The CTDR, an aggregate of these data collection forms, is designed to reduce the reporting burden for grantees with concurrent reporting responsibilities, and to eliminate title-specific reporting in order to reduce duplication among grantees and providers funded through multiple CARE Act Titles. The CTDR form collects data from grantees and their subcontracted service providers on six different areas: service provider information, client information, services provided/clients served, demographic information, AIDS Pharmaceutical Assistance and AIDS Drug Assistance Program, and the Health Insurance Program. Collected on an annual basis, the primary purposes of the CTDR are to: (1) Characterize the organizations from which clients receive services; (2) provide information on the number and characteristics of clients who receive CARE Act services; and (3) enable HAB to describe the type and amount of services a client receives. In addition to meeting the goal of accountability to Congress, clients, advocacy groups, and the general public, information collected on the CTDR is critical for HRSA, state and local grantees, and individual providers to assess the status of existing HIV-related service delivery systems.

The estimated response burden for CARE Act grantees is estimated as:

Title under which grantee is funded	Number of grantees respondents	Responses per grantee	Hours to coordinate receipt of data reports from providers	Total hour burden
Title I only	54	107	40	2,160

Title under which grantee is funded	Number of grantees respondents	Responses per grantee	Hours to coordinate receipt of data reports from providers	Total hour burden
Title II only	50	112	40	2,000
Title III only	303	1	8	2,424
Title IV only	63	1	16	1,008
Total	470			7,592

The estimated response burden for service providers is estimated as:

Title under which provider is funded	Number of provider respondents	Responses per provider	Hours per response	Total hour burden
Title I only	1,011	1	24	24,264
Title II only	836	1	40	33,440
Title III only	138	1	40	5,520
Title IV only	34	1	40	1,360
Funded under multiple Titles	491	1	48	23,568
Total	2,019			88,152

	Number of respondents			Total hour burden
Total	2,489			95,744

Send comments to Susan G. Queen, Ph.D, HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: December 22, 2000.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–33218 Filed 12–28–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Evaluation of the Scholarships for Disadvantaged Students (SDS) Program—New

The Scholarships for Disadvantaged Students (SDS) program was established in 1990 to provide financial assistance to health professions and nursing students from disadvantaged backgrounds. A primary tenet of the SDS program is that students who come from disadvantaged backgrounds will be most likely to practice in Medically Underserved Communities (MUCs) after graduation. In this way, the SDS program is working to alleviate health profession and nursing shortages across the country.

The evaluation of this program will include a mail survey directed at graduates of SDS-participating institutions in the fields of allopathic and osteopathic medicine, dentistry, veterinary medicine, optometry, podiatry, pharmacy, nursing, allied health and behavioral and mental health. The survey will be directed at the 1996 graduates of allopathic and osteopathic medicine schools who participated in the SDS program in both 1996 and 2001. The survey will also be directed at the 1999 graduates of dentistry, veterinary medicine, optometry, podiatry, pharmacy, nursing, allied health and behavioral and mental health schools who participated in the SDS program in both 1999 and 2001. The information will identify the place and type of employment for each individual surveyed in order to determine whether or not the individual practiced in a MUC between July 1, 1999, and June 30, 2000. The data collected through this survey will be used to determine whether statistically significant differences exist between the rate at which disadvantaged versus non-disdvantaged individuals and SDS scholarship recipients versus non-recipients practice in MUCs after graduation. These data will also be used to to determine whether differences exist in the rates at which individuals in different health professions work in MUCs. The results will be used to formulate programmatic and policy recommendations designed to strengthen the SDS program and increase its effectiveness.

Type of survey	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Graduate Survey	3750	1	.25	937.5

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: December 22, 2000.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–33219 Filed 12–28–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4557–N–51]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: December 29, 2000.

FOR FURTHER INFORMATION CONTACT: Clifford Taffett, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless.

Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: December 18, 2000.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 00–32634 Filed 12–28–00; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4557–N–52]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: December 29, 2000.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: December 21, 2000.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 00–33136 Filed 12–28–00; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Office of Acquisition and Property Management; Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Office of Acquisition and Property Management (PAM), Office of the Secretary, Interior.

ACTION: Notice of a new information collection that is based upon revision of a currently approved information collection (OMB Control Number 1006–0009) and request for comment.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are submitting to OMB for review and approval an information collection request (ICR), titled ''Private Rental Survey.'' We are also soliciting comments from the public on this ICR.

DATES: Submit written comments by January 29, 2001.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1084–NEW), 725 17th Street, N.W., Washington, D.C. 20503. Mail or hand carry a copy of your comments to the Department of the Interior; Office of Acquisition and Property Management; Attention: Linda Tribby; Mail Stop 5512; 1849 C Street, NW, Washington, DC 20240. Comments may also be submitted electronically to *linda_tribby@ios.doi.gov.* Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the 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: Linda Tribby, Departmental Quarters Program Manager, telephone (202) 219–0728.

SUPPLEMENTAL INFORMATION:

Title: Private Rental Survey.

OMB Control Number: 1084–NEW (replaces OMB No. 1006–0009).

Bureau Form Number: OS–2000 and OS–2001 (replace Bureau of Reclamation Forms 7–2226 and 7–2227).

Abstract: Public Law 88–459 authorizes Federal agencies to provide housing for Government employees under specified circumstances. In compliance with OMB Circular A–45 (Revised), Rental and Construction of Government Quarters, a review of private rental market housing rates is required at least once every 5 years to ensure that the rental, utility charges, and charges for related services to occupants of Government Furnished Quarters (GFQ) are comparable to corresponding charges in the private sector. To avoid unnecessary duplication and inconsistent rental rates, PAM conducts housing surveys in support of quarters management programs for the Departments of the Interior (DOI), Agriculture, Commerce, Defense, Justice, Transportation, Treasury, Health and Human Services, and Veterans Affairs. DOI's Bureau of Reclamation previously performed these information collections under the currently approved OMB Control No. 1006–0009. This collection of information provides data that helps DOI as well as other Federal agencies to manage GFQ in compliance with the requirements of OMB Circular A–45 (Revised). If the collection activity were not performed, there would be no basis for determining open market rental costs for GFQ.

On August 18, 2000, we published a **Federal Register** notice (65 FR 50555–50556) with the required 60-day comment period announcing that we would submit this collection of information to OMB for approval. We received no comments in response to the notice.

Frequency of Collection: We survey each of 16 regions every third year, surveying five to six regions each year.

Description of Respondents: Individual property owners and small businesses or organizations (real estate managers, appraisers, or property managers).

Estimated Annual Responses: 5,279.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: 1,046 hours (refer to burden chart). There are no recordkeeping requirements.

RESPONSE BURDEN CHART

Form no.	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response (in minutes)	Burden hours
OS–2000	4,979	1	4,979	12	996
OS–2001	300	1	300	10	50
Total	5,279		5,279		1,046

Estimated Annual Reporting and Recordkeeping ''Non-Hour Cost'' Burden: None.

Comments: The PRA (44 U.S.C. 3501, *et seq.*) 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. 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.

If you wish to comment in response to this notice, send your comments directly to the office listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by January 29, 2001.

PAM Information Collection Clearance Officer: Debra E. Sonderman, (202) 208–6352.

Dated: December 20, 2000.

Debra E. Sonderman,

Director, Office of Acquisition and Property Management.

[FR Doc. 00–33307 Filed 12–28–00; 8:45 am]

BILLING CODE 4310–RF–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application for an Incidental Take Permit by Hancock Natural Resource Group, Inc. for Silvicultural Activities in Crenshaw and Covington Counties, Alabama

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

Hancock Natural Resource Group, Inc. (Applicant) has requested an incidental take permit (ITP) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (U.S.C. 1531 *et seq.*), as amended (Act). The Applicant anticipates taking the threatened Red hills salamander (*Phaeognathus hubrichti*) over the next 30 years incidental to forest management for timber production, road construction, and timber harvest. The anticipated take and measures to minimize and mitigate these takings will occur on 3,561 acres of the Applicant's properties in Crenshaw and Covington counties, Alabama. Absolute levels of incidental take can only be estimated based on projected population densities in various habitats in relation to proposed activities in those habitats. The applicant estimates that up to 400 salamanders may be taken. Incidental take will comprise harm resulting from habitat modification or direct physical injury or death.

To minimize and mitigate for taking of salamanders, the Applicant will survey by habitat types to classify management units for expected salamander density. The intensity of

silvicultural activities (*i.e.*, harvest rates, site preparation) will then be proportionately greater in habitats with little or no expectation of salamander occurrence. The best salamander habitats, approximately 25 acres, will be left un-harvested. A more detailed description of the mitigation and minimization measures to address the effects of the Project to the Red hills salamander is provided in the Applicant's Habitat Conservation Plan (HCP). These measures are outlined in the **SUPPLEMENTARY INFORMATION** section below. The Service has determined that the Applicant's proposal, including the proposed mitigation and minimization measures, will individually and cumulatively have a minor or negligible effect on the species covered in the HCP. Therefore, the ITP is a ''low effect'' project and would qualify as a categorical exclusion under the National Environmental Policy Act (NEPA), as provided by the Department of Interior Manual (516 DM2, Appendix 1 and 516 DM 6, Appendix 1).

The Service announces the availability of the HCP and our determination of Categorical Exclusion for the incidental take application. Copies of the HCP and Service supporting documents may be obtained by making a request to the Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice is provided pursuant to Section 10 of the Act and NEPA regulations (40 CFR 1506.6).

The Service specifically requests information, views, and opinions from the public via this Notice on the federal action, regarding the adequacy of the HCP as measured against the Service's ITP issuance criteria found in 50 CFR Parts 13 and 17.

If you wish to comment, you may submit comments by any one of several methods. Please reference permit number TE029614–0 in such comments. You may mail comments to the Service's Regional Office (see **ADDRESSES**). You may also comment via the internet to ''david_dell@fws.gov''. Please submit comments over the internet as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your internet message. If you do not receive a confirmation from the Service that we have received your internet message, contact us directly at either telephone number listed below (see **FURTHER INFORMATION**). Finally, you may hand deliver comments to either Service office listed below (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not; however, 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.

DATES: Written comments on the permit application, supporting documentation, and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before January 29, 2001.

ADDRESSES: Persons wishing to review the application, supporting documentation, and HCP may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field Supervisor, U.S. Fish and Wildlife Service, PO Drawer 1190, Daphne East Office Plaza, Suite A, 2001 Highway 98, Daphne, Alabama 36526–6578. Written data or comments concerning the application, or HCP should be submitted to the Regional Office. Please reference permit number TE029614–0 in requests of the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional HCP Coordinator, (see **ADDRESSES** above), telephone: 404/679–7313, facsimile: 404/679–7081; or Ms. Barbara Allen, Fish and Wildlife Biologist, Daphne Field Office, Alabama (see **ADDRESSES** above), telephone: 334/441–5181.

SUPPLEMENTARY INFORMATION: The Red hills salamander is endemic to Alabama, and was listed in 1976 as a threatened species due to historic silvicultural practices, and habitat loss and fragmentation. Typical habitat of the Red hills salamander is moist, steep to moderately steep ravine slopes and bluff faces in mature, upland mixed hardwood and pine forest.

Of the 3,561 acres that would be covered by the ITP, only an estimated 200 acres offer potential habitat for the Red hills salamander. The HCP classifies potentially occupied salamander habitat into three categories: optimal, moderately suitable, and marginal. Optimal habitats are bluffs and ravines with a 27-degree angle slope or greater, or other extensive areas of steep slopes that are underlain by the Tallahatta geologic formation, and are dominated by deciduous trees. No timber harvest will be permitted in optimal habitats. Current area estimates are subject to change as additional information is obtained, but such habitat comprises an estimated 25 acres.

Moderately suitable habitats are areas of 18 to 27-degree slope within either the Tallahatta or Hatchetigbee geologic formations, and with naturally occurring mixed hardwood/pine and pine/hardwood forest types. Siltstone outcroppings may or may not be evident. These habitats may receive increased levels of selective cutting (followed by natural regeneration of tree species characteristic of Red Hills salamander habitat), provided total hardwood canopy cover is not reduced to less than 65 percent. Moderately suitable habitats comprise an estimated 100 acres.

Marginally suitable to unsuitable habitats within the Tallahatta or Hatchetigbee geologic formations occur immediately adjacent to optimal or moderately suitable habitats with naturally occurring mixed hardwood/pine or pine hardwood forest types; siltstone may or may not be evident. Normal silviculture practices will be done in these areas including clearcutting, select tree harvest, chemical and mechanical site preparation, planting, and prescribed burning. Estimated marginally suitable habitat within the Hancock property covered by the ITP is 75 acres.

Under section 9 of the Act and its implementing regulations, ''taking'' of endangered and threatened wildlife is prohibited. However, the Service, under limited circumstances, may issue permits to take such wildlife if the taking is incidental to and not the purpose of otherwise lawful activities. The Applicant has prepared an HCP as required for the incidental take permit application.

The biological goal of the Applicant's HCP is long term preservation of Red hills salamander population levels on optimal habitat, and to maintain a population on moderately suitable habitats over the 30-year term of the ITP. Conversion of natural forest to pine plantation within a minimum of 50 feet of occupied or potentially occupied habitat will be avoided. The following

management actions will be incorporated to minimize incidental take:

1. Clearcutting will be avoided on slopes occupied by Red Hills salamanders.
2. Mechanical site preparation will be avoided within occupied habitat.
3. If an area is select cut, woody litter will be maintained to provide some shade, maintain moisture and preserve invertebrate fauna. Select cutting that maintains at least two-thirds canopy cover and creates minimal surface disturbance may not adversely impact salamander populations.
4. If areas above or below slopes occupied by salamanders are cleared, a buffer strip of natural vegetation will be left to provide shade and allow moisture retention to vegetation on the slope. Size of the buffer will vary depending on aspect, but will provide shade at all times of the day.
5. Annual monitoring will be conducted for each habitat class to assess the performance of the HCP goals and objectives. Monitoring will be conducted between April 1 and October 31. A 5-year comprehensive review of monitoring results will be conducted to better determine the density threshold below which the species may not be considered to be successfully maintained. This report will be submitted by December 31, 2005.
6. After the first ten years, a comprehensive review of permit conditions, HCP implementation, and monitoring results will be conducted.
7. Existing access roads will be used to the extent practicable, and no roads will be constructed through areas of optimal habitat. Any new road construction through moderately suitable or marginal habitat will be carefully planned so as to cause the least possible damage to the habitat and will comply with Alabama's Best Management Practices for forestry.
8. The applicant will conduct or participate in training workshops for all its foresters and technicians that work in the plan area. Workshops will train employees to recognize Red hills salamander habitat, properly establish buffers around and mark timber within occupied habitat, and to minimize impacts of machinery. Employees will be provided general biological background information, will be familiarized with general details of the HCP, and will be required to participate in the implementation of the plan.

As stated above, the Service has made a preliminary determination that the issuance of the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of NEPA. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the HCP. The Service will also evaluate whether the issuance of a section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of the biological opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: December 21, 2000.

H. Dale Hall,

Acting Regional Director.

[FR Doc. 00–33331 Filed 12–28–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1320–EL, WYW151133]

Federal Coal Lease Application

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of a draft environmental assessment and notice of public hearing on the Belle Ayr 2000 federal coal lease application in the decertified Powder River federal coal production region, Wyoming.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) and implementing regulations and other applicable statutes, the Bureau of Land Management (BLM) announces the availability of a Draft Environmental Assessment (EA) for the Belle Ayr 2000 Coal Lease Application, BLM serial number WYW151133, in the Wyoming Powder River Basin (PRB), and announces the scheduled date and place for a public hearing pursuant to 43 Code of Federal Regulations (CFR) 3425.4. The draft EA analyzes the impacts of issuing a Federal coal lease for the proposed Belle Ayr 2000 Federal coal tract. The purpose of the hearing is to solicit public comments on the Draft EA, the fair market value, the maximum economic recovery, and the proposed competitive sale of the coal included in the proposed Belle Ayr 2000 Federal coal tract. The Belle Ayr 2000 tract is being considered for sale as a result of a coal lease application received from RAG Wyoming Land Company (RAG) on July 28, 2000. The tract as applied for includes about 243.61 acres containing approximately 29 million tons of recoverable Federal coal reserves in Campbell County, WY.

DATES: A public hearing will be held at 7 p.m. MDT, on January 18, 2001 at the Clarion Western Plaza Motel, 2009 S. Douglas Highway, Gillette, WY. An open house will start at 6:30 p.m., prior to the hearing, to answer questions related to the leasing process and this coal lease application. Written comments on the Draft EA will be accepted until on or before January 29, 2001.

ADDRESSES: Please address questions, comments or requests for copies of the Draft EA to the Casper Field Office, BLM, Attn: Nancy Doelger, 2987 Prospector Drive, Casper, WY 82601; or you may e-mail them to the attention of Nancy Doelger at casper_wymail@blm.gov; or fax them to 307–261–7587.

FOR FURTHER INFORMATION CONTACT: Nancy Doelger or Mike Karbs at the above address, or phone: 307–261–7600.

SUPPLEMENTARY INFORMATION: The application for the Belle Ayr 2000 tract was filed as a maintenance tract coal lease-by-application (LBA) under the provisions of 43 CFR 3425.1.

On July 28, 2000, RAG filed coal lease application WYW151133 for the Belle Ayr 2000 Federal coal tract with the BLM for the following lands:

T48N, R71W, 6th P.M., Campbell County, Wyoming
Section 28: Lots 3 through 6;
Section 29: Lots 1, 6.

Total surface area applied for: 243.61 acres.

RAG had previously applied for a maintenance LBA that encompassed the coal resources included in the Belle Ayr 2000 lease application as well as additional coal resources northwest of the Belle Ayr 2000 lease application area on March 20, 1997. They filed a request to modify the 1997 Belle Ayr LBA by withdrawing the lands included in the Belle Ayr 2000 application on July 28, 2000. RAG then filed a separate lease application for the lands withdrawn from the original LBA and included in Belle Ayr 2000 Tract.

The Powder River Regional Coal Team reviewed the request to modify the Belle Ayr 1997 LBA application and the application for the Belle Ayr 2000 LBA at their public meeting on October 25, 2000, in Cheyenne, Wyoming, and recommended that BLM process it.

The Belle Ayr Mine, which is adjacent to the lease application area, has an approved mining and reclamation plan from the Land Quality Division of the Wyoming Department of Environmental Quality (DEQ) and an approved air quality permit from the Air Quality Division of the Wyoming DEQ to mine up to 45 million tons of coal per year.

According to the application filed for the Belle Ayr 2000 tract, the maintenance tract would be mined to maintain production at the existing Belle Ayr Mine. The tract is also contiguous to an existing lease at the Caballo Mine.

The Belle Ayr 2000 tract is bounded on three sides by existing coal leases at the Belle Ayr and Caballo Mines. Under the approved mining plans for these two mines, a large portion of the tract will be disturbed when the adjacent leases are mined in order to recover all of the coal in those leases.

The Draft EA analyzes two alternatives. The Proposed Action is to issue a maintenance lease for the Belle Ayr 2000 tract as applied for to the successful bidder at a competitive sealed bid sale. The second alternative, Alternative 1, is the No Action Alternative, which assumes that the application for the Belle Ayr 2000 tract is rejected.

The Office of Surface Mining Reclamation and Enforcement is a cooperating agency in the preparation of this EA because it is the Federal agency that would recommend approval or disapproval of the Mineral Leasing Act (MLA) mining plan for the Belle Ayr 2000 LBA tract to the Secretary of the Interior, if a lease is issued for the tract.

During the scoping process, the issues that were identified related to this lease application included: The potential for conflicts with recovery of coalbed methane resources in the coal; potential cumulative impacts of increasing mineral development in the PRB; validity and currency of resource data; public access; potential impacts to threatened and endangered species and other species of concern; potential cumulative air quality impacts; potential impacts of nitrogen oxide emissions resulting from blasting of coal and overburden; and cumulative impacts of reasonably foreseeable actions such as the construction and operation of the DM&E railroad in the cumulative analysis.

Comments, including names and street addresses of respondents, will be available for public review at the BLM, Casper Field Office, 2987 Prospector Drive, Casper, WY, during regular business hours (8 a.m. to 4:30 p.m.), Monday through Friday, except holidays, and may be published as part of the final EA. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently 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 of officials of organizations or businesses, will be made available for public inspection in their entirety.

Dated: December 21, 2000.

Alan Rabinoff,

Deputy State Director, Minerals and Lands.

[FR Doc. 00–33090 Filed 12–28–00; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–910–0777–XX]

Colorado Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice: Joint meeting of the Front Range, Northwest, and Southwest Resource Advisory Councils.

SUMMARY: The next meeting of the three Colorado Resource Advisory Councils will be held on Wednesday, January 31, and Thursday, February 1, 2001, at the Sheraton Denver West Hotel, 360 Union Boulevard, Lakewood, Colorado.

DATES: The joint meeting will be held Wednesday, January 31, and Thursday, February 1, 2001.

ADDRESSES: For further information on the joint meeting, contact Sheri Bell, Bureau of Land Management (BLM), 2850 Youngfield Street, Lakewood, Colorado; Telephone (303) 239–3670. For information on the Southwest RAC, contact Roger Alexander, Bureau of Land Management (BLM) at (970) 240–5335. For information on the northwest RAC, contact Lynn Barclay at (970) 826–5096. For information on the Front Range RAC, contact Ken Smith at (719) 269–8553.

SUPPLEMENTARY INFORMATION: The three Colorado Resource Advisory Councils (RAC) will meet on January 31 and February 1, 2001, at the Sheraton Denver West Hotel, Lakewood, Colorado. The meeting will start at 1 p.m. on Wednesday, January 31, ending at 4:30 p.m. that same day. The meeting will reconvene Thursday, February 1 at 8 a.m., ending at approximately 12 noon. Discussion will include fire management, off-highway vehicles, recreation guidelines and processes for coordinating multi-council efforts. In addition, several topics of general interest will be presented to the councils by guest speakers. Time will be made available for the RACs to meet individually, if needed, at the end of the joint meeting.

The meeting is open to the public. Interested persons may make oral statements at the meetings or submit written statements at the meeting. Time for public comment will be provided at 4 p.m., Wednesday, January 31, 2001. Per-person time limits for oral statements may be set to allow all interested persons an opportunity to speak.

Summary minutes of council meetings are maintained at the Bureau of Land Management Offices in Craig, Grand Junction, Montrose, and Canon City, Colorado. They are available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Dated: December 22, 2000.

Duane Johnson,

Acting Little Snake Field Manager.

[FR Doc. 00–33332 Filed 12–28–00; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–910–0777–26–241A]

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Arizona Resource Advisory Council Meeting notice.

SUMMARY: This notice announces a meeting and tour of the Arizona Resource Advisory Council (RAC). The meeting and tour will be held on January 25–26, in Yuma, Arizona. The business meeting will be held in the BLM Yuma Field Office, 2555 East Gila Ridge Road. It will begin at 9 a.m. and will conclude at approximately 4 p.m. The agenda items to be covered include the review of the December 12, 2000 meeting minutes; BLM State Director's Update on legislation, regulations and statewide planning efforts; Update on National Off-Highway Vehicle Use Strategy and RAC Discussion of OHV Guideline; Update on Wildland Urban Interface Issues and Outreach Efforts; Discussion of New RAC Working Group Assignments; Update Proposed Field Office Rangeland Resource Teams; Reports from BLM Field Office Managers; Reports by the Standards and Guidelines, Recreation and Public Relations, Wild Horse and Burro Working Groups; Reports from RAC members; and Discussion of future meetings. A public comment period will

be provide at 11:30 a.m. on January 25, 2001, for any interested publics who wish to address the Council. On January 26, the RAC will tour BLM public land in the Yuma Wash Study Area. The tour will highlight some of the resource monitoring efforts for the Wild Horse and Burro Program.

FOR FURTHER INFORMATION CONTACT: Deborah Stevens, Bureau of Land Management, Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004–2203, (602) 417–9215.

Michael A. Ferguson,

Acting State Director.

[FR Doc. 00–33333 Filed 12–28–00; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–050–01–5101–ER–F323; N–66472, N–73726, N–66150, N–61191]

Notice of Realty Action—Clark County, NV; Notice of Intent for a Table Mountain Area Environmental Impact Statement Focusing on Wind Power Projects and Other Planned Energy Projects, Notice of Public Meetings, Request for Interest In a Right-of-way for a Wind Array, and Request for Other Potential Applications for Power Generating Facilities Not Known to the Bureau of Land Management

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS), notice of EIS public scoping meetings for construction of an array of wind turbines and ancillary facilities, and other power generating facilities, in the Table Mountain Area of Clark County, Nevada, a request for interest in acquiring a right-of-way for an array of wind turbines and ancillary facilities, and a request for other potential applications for power generating facilities not known to the Bureau of Land Management in the same area.

SUMMARY: Pursuant to Section 102 (2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM), Las Vegas Field Office, will be directing the preparation of an EIS and conducting scoping meetings on Table Mountain, Shenandoah Peak and Potosi Peak area to assess the potential impacts of a proposed right-of-way for an array of wind turbines and ancillary facilities, and possible rights-of-way for other power generating facilities. The area is essentially encompassed by Sandy Valley, Goodsprings, Jean, and Primm, Nevada.

This Notice is also a call for parties interested in competitively bidding for an opportunity to apply to have a right-of-way application for wind power development to be analyzed in an EIS.

SUPPLEMENTARY INFORMATION: The Table Mountain area is located in the extreme southern part of Nevada essentially encompassed by Sandy Valley, Goodsprings, Jean, and Primm, Nevada. The site is located in the Springs Mountain Range at an elevation of approximately 5,000 feet. The area is accessible by Inter-state Highway 15, State Highway 161 and a Clark County road that passes through Sandy Valley. Existing dirt roads throughout the area provide access to microwave towers, radio towers, weather station, transmission lines and numerous mining claims.

The proposed wind power development area encompasses approximately 4,500 acres of public lands. The legal description of the public land proposed to be available for wind power development is as follows:

Mount Diablo Meridian

T. 24 S., R. 57 E.
Sec. 13, E½.
T. 24 S., R. 58 E.
Sec. 5, S½, S½NW¼, S½NE¼;
Sec. 6, S½, NE¼, S½NW¼;
Sec. 7, All;
Sec. 8, All;
Sec. 18, All;
Sec. 19, All;
Sec. 29, W½SW¼;
Sec. 30, All;
Sec. 31, N½, N½SW¼, N½SE¼;
Sec. 32, N½, SE ¼, N½SW¼, SE¼SW¼;
Sec. 33, All;
Sec. 34, SW¼NW¼, NW¼SW¼, S½SW¼, S½SE¼;
Sec. 35, S½SW¼ .
T. 25 S., R. 58 E.
Sec. 2, NW¼;
Sec. 3, All;
Sec. 4, All;
Sec. 5, E½NE¼, E½SE¼;
Sec. 9, N½, SE¼;
Sec. 10, All;
Sec. 15, All;
Sec. 16, NE¼, E½SE¼;
Sec. 22, N½, SE¼, E½SW¼.

The extent of other potential applications for power generating facilities is unknown at this time, but may include power lines and a substation located along the perimeter of the area described above.

All applicants will share in the cost reimbursement and preparation of the EIS through the Record of Decision, and construction.

Written Expressions of Interest

With publication of this notice and until the end of the NOI comment period, the BLM is accepting written expressions of interest for taking part in a competitive auction for a preference right to file a right-of-way application for a site on which to construct, operate, and maintain an array of wind turbines. All except the successful bidder's proposed project would be eliminated from being considered in the EIS. Thus, the unsuccessful bidder(s) could invest their capital elsewhere and a more focused EIS could be provided. Written expressions of interest filed and received after the comment period closes will be returned.

Information specific to written expressions of interest for taking part in a competitive auction for a preference right to file a right-of-way application for a site to construct, operate, and maintain an array of wind turbines is available in writing, by telefax, or on e-mail by visiting the BLM, Las Vegas home page at *www.nv.blm.nv/vegas.*

Competitive Auction for a Preference Right

The preference right competitive auction will be held on February 8, 2001, at 2:00 p.m. at the Bureau of Land Management, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada. The bidding process shall be an oral auction. A $16,500 sealed bid must be submitted to be qualified to take part in the oral auction. The opening bid will be considered to be the $16,500 sealed bid, and will be determined by draw. Bid raises will be at increments dictated by the participating bidders. The last bid taken will be considered the high bid. It is to be noted that this bidding is to determine which interested party will be considered the applicant and have their proposal evaluated in the EIS. The successful bidder would become the applicant and would submit a build out plan (Plan of Development). The Plan of Development (POD) would be in sufficient detail to develop the proposed action for the EIS. This information will also be presented at the second round of public meetings, see below.

The POD would include a detailed schematic illustrating the proposed locations of the turbines, power cables, roads, telecommunication system, substations, and related facilities. Detailed drawings of the turbines and their support structures are required. The POD would include a weed inventory and management plan, storm water pollution control plan, hazardous materials spill prevention and control plan, emergency services plan, reclamation plan, and mitigation measures designed to reduce anticipated impacts. It would also include an electric transmission and wheeling plan

that details method of interconnection and means to transmit power output to the market. The transmission plan should show evidence that there is a transmission interconnect study with a local electrical utility illustrating that the utility has sufficient capacity and can upgrade its system to handle the wind generation output.

As part of processing the right-of-way application, the annual rent will be established by an appraisal. Rent must be paid prior to issuance of the right-of-way, should that be the decision in the EIS. No warranty of any kind shall be given or implied by the United States as to the potential uses of the lands offered by competitive bid or that a right-of-way shall be issued.

A bond will be required, in accordance with 43 CFR 2803.1–4.

The Las Vegas Field Office's rationale for this request is to better manage processing of the volume of applications being filed, provide for better management of right-of-way corridors, and more completely analyze the cumulative impacts in the area specified. With publication of this notice and until the end of the NOI comment period, the BLM is encouraging the filing of applications for rights-of-way for other power generating facilities on the public lands described above and for the surrounding area. Applications received after that time will be held and processed after a decision is made on the EIS.

Preliminary Issues

Tentatively identified issues of concern may include: threatened and endangered species, visual resources, wildlife, cultural resources, land use, and wild horses.

Posssible Alternatives

The EIS will analyze the Proposed Actions and No Action Alternative. Other alternatives may include modifying proposed tower/turbine locations, road, power cable and line locations, rerouting linear electric power line right-of-way locations, as well as mitigating measures.

Decisions To Be Made

Separate Records of Decision would be issued for the right-of-way for an array of wind turbines and ancillary facilities, and the rights-of-way for other types of power generating facilities, roads, and transmission lines.

Public Scoping Meetings

Two sets of public scoping meetings are planned. The first round of meetings will be ''open houses'' giving an opportunity for each entity anticipating filing a letter of interest to be considered for competitive bidding on the wind power development, and for applicants for rights-of-way for other power generating facilities, to provide informational brochures, present models or other presentations addressing their planned facility. Since space is limited, those applicants and potential applicants planning to make presentations need to contact the Project Manager named below to determine the applicability of the space available to their proposed presentation.

The successful bidder for the preference right to construct, operate, and maintain an array of wind turbines will be selected prior to the second round of public meetings. This entity and the applicants for the rights-of-way for other power generating facilities, will present detailed proposals at the second round of public meetings.

The second round of meetings will be more formal, providing time for a description of the proposals that are presented and time to present comments and issues that need to be addressed in the EIS.

The first round of public meetings will be ''open houses'' starting at 6 p.m. and ending at 9:00 p.m. Beginning at 7 p.m. the EIS process will be explained and an opportunity will be given for written comments and general concerns. Meetings have been scheduled for the following locations:

January 16, 2001 at the Clark County Government Center, Room ODC #3, 500 Grand Central Parkway, Las Vegas, Nevada.

January 17, 2001 at the Community Center, W. Quartz Ave., Sandy Valley, Nevada.

January 18, 2001 at the Community Center, 375 W. San Pedro Ave., Goodsprings, Nevada.

The second round of public meetings will be more formal with determination of the successful bidder for application of the wind power right-of-way having been made. These scoping meetings will be held from 6:30 p.m. to 9:30 p.m.

February 27, 2001 at the Community Center, 375 W. San Pedro Ave., Goodsprings, Nevada.

February 28, 2001 at the Clark County Government Center, Room ODC #3, 500 Grand Central Parkway, Las Vegas, Nevada.

March 1, 2001 at the Community Center, W. Quartz Ave., Sandy Valley, Nevada.

Public Input Requested

Comments concerning the Proposed Actions and EIS should address issues to be considered, feasible alternatives to examine, possible mitigation, and information relevant to or having a bearing on the Proposed Action.

Comment Dates

The comment period for scoping the EIS will commence with the publication of this notice. Those having concerns, issues, or alternatives they would like to see addressed in the EIS should respond with written comments within 30 days from the date of this notice. This Scoping Notice will be distributed by mail on or about the date of this notice. Comments on the proposed EIS and responses for the call for interest will be accepted for 30 days following the date of this notice.

All comments received at the public meeting or through written comments submitted will aid the BLM in identifying alternatives and assuring all issues are analyzed in the environmental impact analysis.

ADDRESSES: Information and a copy of this Scoping Notice for the Table Mountain Wind Power EIS can be obtained by either writing to or visiting the Bureau of Land Management, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada 89108. Comments and issues on the proposed EIS, expressions of interest for participating in competitive bidding, or other energy related proposals in the area specified above should be mailed to Anna M. Wharton, Project Manager, Bureau of Land Management, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada 89108 or at e-mail *awharton@nv.blm.gov* (e-mail is not applicable for the expression of interest as announced above).

FOR FURTHER INFORMATION CONTACT: Anna M. Wharton, (702) 647–5000 or at e-mail *awharton@nv.blm.gov.*

Dated: December 18, 2000.

Rex Wells,

Assistant Field Manager, Division of Lands.

[FR Doc. 00–33222 Filed 12–28–00; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Arizona State Museum, Tucson, AZ, and in the Control of the Bureau of Indian Affairs

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American

Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in possession of the Arizona State Museum, Tucson, AZ, and in the control of the Bureau of Indian Affairs.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the Arizona State Museum professional staff and Bureau of Indian Affairs professional staff in consultation with representatives of the Gila River Indian Community of the Gila River Indian Reservation, Arizona; the Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; the Tohono O'odham Nation of Arizona; the Hopi Tribe of Arizona; and the Pueblo of Zuni. The Pueblo of Zuni has withdrawn from this consultation. The Gila River Indian Community of the Gila River Indian Reservation, Arizona is acting on behalf of the Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; the Tohono O'odham Nation of Arizona; and themselves.

In 1934–35, human remains representing five individuals were removed during excavations conducted by the Gila Pueblo Foundation of Arizona at the Snaketown Site (AZ:U:13:1 ASM) on the Gila River Indian Reservation, Pinal County, AZ. No known individuals were identified. The seven associated funerary objects are three pottery jars, one stone bead, one turquoise piece, two pottery bowls, and a figurine fragment.

In 1964–65, human remains representing 100 individuals were removed during excavations at the Snaketown Site (AZ:U:13:1 ASM) by University of Arizona staff. Four individuals consisted of inhumations, the remainder were removed from 97 cremation features. No known individuals were identified. The 5,543 associated funerary objects are 125 pottery sherds, 4 ceramic scoops, 21 pottery jars and jar fragments, 24 pottery bowls and bowl fragments, 3 plates and plate fragments, 1 pottery seed jar, 9 shells, 3,105 shell beads, 1,225 shell fragments, 11 shell artifacts, 1 shell artifact fragment, 1 shell bracelet, 74 shell bracelet fragments, 5 shell pendants, 1 shell ring, 10 bone tube fragments, 102 stone beads, 3 censers, 449 shell or stone beads, 3 turquoise pieces, 2 turquoise pendants, 1 stone pendant, 5 bone hair ornaments, 43 whole and fragmentary antler artifacts, 1 bone awl, 153 bone awl fragments, 10 bone artifact fragments, 2 pillow-shaped pieces, 1 polishing stone, 1 core, 1 pecking stone, 1 tabular knife, 1 hoe fragment, 1 stone scraper-chopper, 1 abrader, 2 reamers, 3 manos, 1 scraper, 1 hammerstone, 4 crystals, 2 medicine stones, 1 stone bowl, 5 figurine fragments, 15 stone palettes and palette fragments, 54 projectile points, 5 projectile point fragments, 49 unworked faunal bones and bone fragments, and 1 group of plant remains.

The archeological evidence, including characteristics of portable material culture, attributes of ceramic styles, domestic and ritual architecture, site organization, and canal-based agriculture of the settlement, places the Snaketown Site within the archeologically-defined Hohokam tradition and within the Phoenix Basin local variant of that tradition. The occupation of the Snaketown Site spans the years circa A.D. 500/700–1100/1150.

In 1964–1965, human remains representing three individuals were removed during joint University of Arizona Department of Anthropology and Arizona State Museum excavations at site AZ:U:13:22 ASM, Gila River Indian Reservation, Pinal County, AZ. No known individuals were identified. The two associated funerary objects are a bowl fragment and a ceramic sherd.

The archeological evidence, including characteristics of portable material culture, attributes of ceramic styles, domestic and ritual architecture, site organization, and canal-based agriculture of the settlement, places AZ U:13:22 within the archeologically-defined Hohokam tradition and within the Phoenix Basin local variant of that tradition. The occupation of AZ:U:13:22 ASM spans the years circa A.D. 1150–1350.

In 1964–1965, human remains representing 15 individuals were removed during joint University of Arizona Department of Anthropology and Arizona State Museum excavations at AZ:U:13:24 ASM, Gila River Indian Reservation, Pinal County, AZ. No known individuals were identified. The 165 associated funerary objects are 7 pottery jars, 1 bowl, 2 sherds, 1 projectile point, and 153 beads.

The archeological evidence, including characteristics of portable material culture, attributes of ceramic styles, domestic and ritual architecture, site organization, and canal-based agriculture of the settlement, places AZ U:13:24 ASM within the archeologically-defined Hohokam tradition and within the Phoenix Basin local variant of that tradition. The occupation of AZ:U:13:24 ASM spans the years circa A.D.1150–1350/1400.

In 1963, human remains representing 29 individuals were removed during I–10 Highway Salvage Project excavations at site AZ:U:13:9 ASM by Arizona State Museum staff Alfred E. Johnson. This site is located approximately one mile north of Bapchule, at the southwestern corner of Gila Butte, Gila River Indian Reservation, Pinal County, AZ. No known individuals were identified. The 141 associated funerary objects are 98 bone artifacts, 9 bowls, 8 jars, 1 pitcher, 1 plate, 4 reconstructable bowls, 3 reconstructable jars, 4 hammerstones, 2 shell pendants, 1 shell fragment, and 10 sherds.

Based upon architecture, portable material culture, and site organization, occupation at site AZ U:13:9 ASM has been dated to approximately A.D.700–1350/1400.

In 1963, human remains representing 16 individuals were removed during I–10 Highway Salvage Project excavations at site AZ U:13:11 ASM by Arizona State Museum staff Alfred E. Johnson. This site is located approximately 0.5 mile north of Bapchule, Gila River Indian Reservation, Pinal County, AZ. The 17 associated funerary objects are 1 pottery bowl, 5 jars, 1 scoop, 1 reconstructable jar, 3 jar fragments, and 6 sherds.

The archeological evidence, including characteristics of portable material culture, attributes of ceramic styles, domestic and ritual architecture, site organization, and canal-based agriculture of the settlement, places AZ U:13:11 within the archeologically-defined Hohokam tradition. The occupation of AZ U:13:11 spans the years circa A.D. 1150–1300.

In 1969, human remains representing three individuals were removed from site AZ U:13:27 ASM during excavations associated with the construction of the Sacaton municipal hospital, Sacaton, Gila River Reservation, Pinal County, AZ, by Arizona State Museum staff. No known individuals were identified. The five associated funerary objects are a shell bracelet, a shell pendant, a stone knife, a stone palette, and a ring.

The archeological evidence, including characteristics of portable material

culture, attributes of ceramic styles, domestic and ritual architecture, site organization, and canal-based agriculture of the settlement, places AZ U:13:27 ASM within the archeologically-defined Hohokam tradition and within the Phoenix Basin local variant of that tradition. The occupation of AZ U:13:27 spans the years circa A.D.750–1350/1400.

At an unknown date, human remains representing one individual were recovered from Upper Sacaton Village (AZ U:14:8 ASM), Gila River Indian Reservation, Pinal County, AZ, by an unknown person. At an unknown time, these remains were donated to the Arizona State Museum by an unknown person. No known individual was identified. No associated funerary objects are present.

Based on architecture, portable material culture including red-on-buff and polychrome ceramics, and site organization, AZ U:14:8 ASM has been identified as a Hohokam site. The occupation of AZ U:14:8 ASM spans the years circa A.D.775–1500.

At unknown and, presumably, separate dates prior to 1967, human remains representing four individuals were removed from three cremation features at unknown sites in the vicinity of Sacaton, Gila River Indian Community, Pinal County, AZ, by an unknown person or persons. These remains were donated to the Arizona State Museum by unknown persons in 1967. No known individuals were identified. The three associated funerary objects are the jars in which the remains had been placed subsequent to cremation.

Based on characteristics of the mortuary program, these burials have been identified as having a high probability of association with the Hohokam archeological tradition.

In 1971, human remains representing three individuals were removed from surface contexts within the Gila River Indian Community, Pinal County, AZ, by Donald Wood, Arizona State Museum staff. No known individuals were identified. No associated funerary objects are present.

Based on characteristics of the mortuary program, these burials have been identified as having a high probability of association with the archeologically-defined Hohokam tradition.

Continuities of ethnographic materials and technology indicate affiliation of Hohokam settlements with present-day O'odham (Piman), Pee Posh, and Puebloan cultures. Oral traditions documented for the Gila River Indian Community of the Gila River Indian Reservation, Arizona; the Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; the Tohono O'odham Nation of Arizona; the Hopi Tribe of Arizona; and the Pueblo of Zuni support affiliation with Hohokam sites in central Arizona.

Based on the above-mentioned information, officials of the Arizona State Museum and the Bureau of Indian Affairs have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 179 individuals of Native American ancestry. Officials of the Arizona State Museum and the Bureau of Indian Affairs also have determined that, pursuant to 43 CFR 10.2 (d)(2), the 5,899 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Arizona State Museum and the Bureau of Indian Affairs have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Gila River Indian Community of the Gila River Indian Reservation, Arizona; the Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; the Tohono O'odham Nation of Arizona; the Hopi Tribe of Arizona; and the Pueblo of Zuni.

This notice has been sent to officials of the Gila River Indian Community of the Gila River Indian Reservation, Arizona; the Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; the Tohono O'odham Nation of Arizona; the Hopi Tribe of Arizona; and the Pueblo of Zuni. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Lynn S. Teague, Repatriation Coordinator, Arizona State Museum, University of Arizona, Tucson, AZ 85721, telephone (520) 621–4795, before January 29, 2001. Repatriation of the human remains and associated funerary objects to the Gila River Indian Community of the Gila River Indian Reservation, Arizona; the Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; the Tohono O'odham Nation of Arizona; the Hopi Tribe of Arizona; and the Pueblo of Zuni may begin after that date if no additional claimants come forward.

Dated: December 14, 2000.

John Robbins,

Assistant Director, Cultural Resources, Stewardship, and Partnerships.

[FR Doc. 00–33272 Filed 12–28–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the National Museum of Health and Medicine, Armed Forces Institute of Pathology, Washington, DC

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the National Museum of Health and Medicine, Armed Forces Institute of Pathology, Washington, DC.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the National Museum of Health and Medicine, Armed Forces Institute of Pathology professional staff in consultation with representatives of the Klamath Indian Tribe of Oregon and the Modoc Tribe of Oklahoma.

In 1873, human remains representing one individual were collected from an unknown area in Oregon or California referred to as ''the lava beds,'' by J. D. Skinner. Accession records identify this individual is as brother of Sconchin, a former chief of the Modoc. No associated funerary objects are present.

Based on accession records from the National Museum of Health and Medicine, this individual has been

identified as Native American. The Klamath Indian Tribe of Oregon and the Modoc Tribe of Oklahoma have a shared ancestry. Following the conclusion of the Modoc wars, the Modoc people were relocated to Oklahoma. In 1888, the Modoc reservation was established. In 1909, permission was granted to the Modoc to return to Oregon. Those who returned became part of the Klamath Indian Tribe of Oregon. To date, consultation with the Klamath Indian Tribe of Oregon and the Modoc Tribe of Oklahoma has not identified a lineal descendent.

In 1874, human remains representing four individuals were collected by an unknown individual from an unknown area. The circumstances surrounding the recovery of the remains are unknown. In 1874, the remains were donated to the National Museum of Health and Medicine (formerly the Army Medical Museum) by E. T. Parker. The museum is in possession of only two individuals. No known individuals were identified. No associated funerary objects are present.

Accession records from the National Museum of Health and Medicine indicate that the remains are from Modoc Indians who were hung. The Klamath Indian Tribe of Oregon and the Modoc Tribe of Oklahoma have a shared ancestry. Following the conclusion of the Modoc wars, the Modoc people were relocated to Oklahoma. In 1888, the Modoc reservation was established. In 1909, permission was granted to the Modoc to return to Oregon. Those who returned became part of the Klamath Indian Tribe of Oregon.

Based on the above-mentioned information, officials of the National Museum of Health and Medicine of the Armed Forces Institute of Pathology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of three individuals of Native American ancestry. Officials of the National Museum of Health and Medicine of the Armed Forces Institute of Pathology have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Klamath Indian Tribe of Oregon and the Modoc Tribe of Oklahoma.

This notice has been sent to officials of the Klamath Indian Tribe of Oregon and the Modoc Tribe of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Lenore Barbian, Assistant Curator, National Museum of Health and Medicine, Armed Forces Institute of Pathology, Walter Reed Army Medical Center, Building 54, Washington, DC 20306, telephone (202) 782-2203, before January 29, 2001. Repatriation of the human remains and associated funerary objects to the Klamath Indian Tribe of Oregon may begin after that date if no additional claimants come forward.

Dated: December 21, 2000

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships

[FR Doc. 00–33274 Filed 12–28–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Seneca Falls Historical Society, Seneca Falls, NY

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Seneca Falls Historical Society, Seneca Falls, NY.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Seneca Falls Historical Society professional staff in consultation with representatives of the Cayuga Nation of New York and the Seneca Nation of New York.

In 1932, human remains representing one individual were donated to the Seneca Falls Historical Society, Seneca Falls, NY, by Charles Zacharie. A newspaper article published at the time of donation reported that Dr. Zacherie had collected the remains at an unknown location in the region of Seneca and Cayuga Lakes, NY. No known individual was identified. No associated funerary objects are present.

Based on the reported manner of interment, these remains are determined to be Native American. The degree of preservation of the remains indicates that they date to within the last 500 years. The geographical location of the burial is consistent with the traditional territory of the Cayuga Nation of New York.

Based on the above mentioned information, officials of the Seneca Falls Historical Society have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Seneca Falls Historical Society also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Cayuga Nation of New York.

This notice has been sent to officials of the Cayuga Nation of New York, the Seneca Nation of New York, and the Seneca-Cayuga Tribe of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Lisa Compton, Director, Seneca Falls Historical Society, 55 Cayuga Street, Seneca Falls, NY 13148, telephone (315) 568–8412, before January 29, 2001. Repatriation of the human remains occurred on August 13,1999.

Dated: December 14, 2000.

John Robbins,

Assistant Director, Cultural Resources, Stewardship, and Partnerships.

[FR Doc. 00–33273 Filed 12–28–00; 8:45 am]

BILLING CODE 4310–70–F

INTERNATIONAL TRADE COMMISSION

[Investigation No. 1205–5]

Proposed Modifications to the Harmonized Tariff Schedule of the United States

AGENCY: United States International Trade Commission.

ACTION: Additional Proposed Amendments.

EFFECTIVE DATE: December 21, 2000.

SUMMARY: On November 18, 1999, the Commission instituted investigation No. 1205–5, Proposed Modifications to the Harmonized Tariff Schedule of the United States, pursuant to section 1205 of the Omnibus Trade and Competitiveness Act of 1988. Section 1205 directs the Commission to keep Harmonized Tariff Schedule of the United States (HTS) under continuous review and to recommend modifications

to the HTS (1) when amendments to the International Convention on the Harmonized Commodity Description and Coding System (Harmonized System), and the Protocol thereto, are recommended by the World Customs Organization (WCO) (formerly known as the Customs Cooperation Council) for adoption, and (2) as other circumstances warrant. The Commission's final report will set forth the proposed changes and indicate the necessary changes in the HTS that would be needed to conform the HTS to the international nomenclature structure; the report will also include other appropriate explanatory information on the proposed changes. A preliminary report was submitted to the Office of the United States Trade Representative in March 2000. Since that time, the Commission has been informed of additional proposed amendments to the HTS that should be included in the final report.

FOR FURTHER INFORMATION CONTACT: Eugene A. Rosengarden, Director (202–205–2592), Office of Tariff Affairs and Trade Agreements, U.S. International Trade Commission, Washington, DC 20436. Hearing impaired individuals are advised that information on this investigation can be obtained by contacting the TDD terminal on (202) 205–1810.

Background

The majority of the changes proposed in the Commission's preliminary report are the result of the work of the WCO and its Harmonized System Committee (HSC) to update and clarify the Harmonized System nomenclature, as part of the WCO's long-term program to review the nomenclature structure on a formal basis. These proposed changes, which are to become effective in January 2002, are available in the Office of the Secretary, Room 112, United States International Trade Commission, 500 E Street SW., Washington, DC 20436 (telephone 202–205–2000) and are posted on the Commission's website (*http://www.usitc.gov*). These changes encompass all decisions taken by the HSC since the implementation of the last set of WCO modifications to the Harmonized System, which were effective as of January 1, 1996. Future notices will be issued in this investigation indicating the final resolution of all matters and decisions taken by the HSC during the course of Commission consideration. Other proposed changes included in this investigation are requested by the U.S. Customs Service, in order to clarify the proper tariff classification and duty treatment of particular goods due to decisions of the Court of International Trade, the HSC, or the US Customs Service. These changes, including those which are the subject of this notice, will be treated separately in the Commission's final report. The Commission has prepared non-authoritative cross-reference tables in its preliminary report to provide guidance to potentially affected parties and to show the likely existing and future tariff classifications of the goods concerned. The Customs Service has domestic legal authority for tariff classification and may provide information, both during the course of the investigation and after the Commission's report is submitted, that indicates different or additional tariff classifications of some goods. Moreover, the WCO will eventually issue a cross-reference table under Article 16 of the Harmonized System Convention, indicating the agreed international classifications (existing and future) of the goods affected by the proposed changes. The latter table may be release later in the Commission's investigation, and differences between international and domestic classification of a few goods may be suggested (in some cases due to reservations filed by WCO member countries or to theoretical or asserted classifications for some goods). Thus, the classifications shown in the Commission's cross-reference tables may be subject to change in the final report.

Additional Proposed Amendments to the HTS

In addition to the changes to the HTS proposed in the Commission's preliminary report, the following changes are also proposed, in order to correct an error made during the conversion of the former Tariff Schedules of the United States (TSUS) to the format of the Harmonized System. These new proposed changes are set out below.

(1) Subheading 2924.29.41: Delete the reference to ''Methyl-4-aminobenzenesulfonylcarbamate (Asulam)'' from the Article Description, so that the description would read as follows:

''3-Ethoxycarbonylaminophenyl-N-phenylcarbamate (Desmedipahm); and Isopropyl-N-(3-chlorophenyl)car-bamate (CIPC)''

Renumber the subheading as 2924.29.43 to reflect a change in its scope.

(2) Subheading 2935.00.05: Insert a reference to ''Methyl-4-aminobenzenesulfonylcarbamate (Asulam)'' in the Article Description, so that the description would read as follows:

''4-Amino-6-chloro-m-benzenedisulfonamide; and Methyl-4-aminobenzenesulfonylcarbamate (Asulam)''

Renumber the subheading as 2935.00.06 to reflect a change in its scope.

Written Submissions

Interested parties are invited to submit written statements concerning two proposed changes outlined above. Commercial or financial information that a submitter desires to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's rules of practice and procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the proposed changes above should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on January 19, 2001. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or by electronic means.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

List of Subjects

Tariffs/HTS, Harmonized System, WCO, and imports.

Issued: December 21, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–33257 Filed 12–28–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–424]

U.S.-Israel Agricultural Trade: Likely Effects on the U.S. and Israeli Agricultural; Industries of U.S.-Israel Trade Conducted in a Free Trade Environment

AGENCY: United States International Trade Commission (ITC).

ACTION: Initiation of investigation and notice of hearing.

EFFECTIVE DATE: December 21, 2000.

SUMMARY: Following receipt of a request on December 1, 2000, from the United States Trade Representative (USTR), pursuant to authority under section 332(g) of the Tariff Act of 1930, the Commission instituted investigation No. 332–424, U.S.-Israel Agricultural Trade: Likely Effects on the U.S. and Israeli Agricultural Industries of U.S.-Israel Trade Conducted in a Free Trade Environment.

FOR FURTHER INFORMATION CONTACT: For general information, contact Stephen Burket (202–205–3318; burket@usitc.gov), John Fry (202–708–4157; jfry@usitc.gov), or Cathy Jabara (202–205–3309; jabara@usitc.gov), Agriculture and Forest Products Division, Office of Industries. For information on legal aspects, contact William Gearhart (202–205–3091; wgearhart@usitc.gov), Office of the General Counsel, U.S. International Trade Commission. Hearing impaired persons can obtain information on these studies by contacting the Commission's TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

Background

The United States-Israel Agreement on Trade in Agricultural Products (ATAP), an adjunct to the 1985 Agreement on the establishment of a Free Trade Area between the Government of Israel and the Government of the United States (FTA Agreement), is a five-year agreement signed in 1996 and expiring on December 31, 2001. The FTA Agreement applies, in full, to trade in all products between the two countries. However, the United States and Israel held differing interpretations as to the meaning of certain rights and obligations related to agricultural products under the FTA Agreement. In the interest of achieving practical improvements in agricultural trade between the two countries, the United States in 1996 entered into the ATAP with Israel. In 2001, the Governments of the United States and Israel will initiate review of the ATAP to seek ways to improve the Agreement prior to its expiration. In order to assist USTR in preparing for these negotiations, under authority delegated by the President and pursuant to section 332(g) of the Tariff Act of 1930, USTR requested that the ITC conduct a study analyzing the likely effect on both the U.S. and Israeli agricultural industries of U.S.-Israel agricultural trade conducted in a free trade environment. USTR requested that the Commission's report include the following:

- An analysis of the effects on free U.S./Israel trade in agriculture at the industry level, focusing on the main products traded or likely to be traded by the United States and Israel. In preparing this analysis, the Commission should assume that the new ATAP would include elimination of tariffs and tariff-rate quotas on agricultural products so as to calculate its maximum potential impact. To the extent possible, and depending on data availability, the analysis should include the use of partial equilibrium analysis and other quantitative methods.
- A review of existing Israeli non-tariff barriers to agricultural trade and an analysis of their impact on U.S. agricultural exports to Israel.

The Commission plans to submit its report U.S.-Israel Agricultural Trade: Likely Effects on the U.S. and Israeli Agricultural Industries of U.S.-Israel Trade Conducted in a Free Trade Environment on June 1, 2001. USTR indicated that portions of the report will be classified as confidential.

Public Hearing

A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on March 6, 2001. All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, no later than 5:15 p.m., February 20, 2001. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., February 22, 2001; the deadline for filing post-hearing briefs or statements is 5:15 p.m., March 16, 2001. In the event that, as of the close of business on February 21, 2001, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary of the Commission (202–205–1806) after February 21, 2001, to determine whether the hearing will be held.

Written Submissions

Commercial or financial information that a person desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. The Commission's Rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. All written submissions must conform with the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8). All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be assured of consideration, written statements relating to the Commission's report should be submitted at the earliest possible date and should be received not later than March 16, 2001. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

List of Subjects: ATAP, imports, exports, tariffs, agricultural trade, Israel, non-tariff barriers.

Issued: December 22, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–33256 Filed 12–28–00; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on December 22, 2000, a proposed Consent

Decree (''Decree'') in *United States and State of Colorado* v. *Robert Friedland,* Civil No. 96 N 1213, was lodged with the United States District Court for the District of Colorado. The United States and State of Colorado filed this action pursuant to the Comprehensive Environmental Response, Compensation and Liability Act for recovery of costs incurred by the United States and State of Colorado in responding to releases of hazardous substances at the Summitville Mine Superfund Site near Del Norte, Colorado.

Pursuant to the proposed Consent Decree, defendant Robert Friedland will pay $27,750,000, to be paid over a nine year period, to the United States and State of Colorado to resolve the claims of the governments. This action also resolves claims of Robert Friedland filed in Canada against the United States and employees of the United States, including claims by each side for attorneys' fees. The United States will pay $1.25 million to defendant Friedland to resolve all issues related to the Canadian litigation.

The funds received from defendant Friedland will be used, in part, to fund ongoing and future response actions still required at the Site. In addition, $5 million of the settlement will be paid to the Federal and State natural resource trustees to be used for restoration, replacement or acquisition of natural resources damaged by releases of hazardous substances from the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to, *United States and State of Colorado* v. *Robert Friedland,* Civil No. 96 N 1213, and D.J. Ref. # 90–11–3–1133B.

The Decree may be examined at the office of the U.S. Department of Justice, Environmental Enforcement Section, 999 18th Street, Suite 945, North Tower, Denver, Colorado; at U.S. EPA Region 8, Office of Regional Counsel, 999 18th Street, Suite 300, South Tower, Denver, Colorado. A copy of the Decree may be obtained by mail from the Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044. In requesting a copy, please enclose a check in the amount of $5.50 for the Decree (25 cents per page reproduction cost) payable to the Consent Decree Library.

Walker B. Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–33351 Filed 12–28–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Federal Alternative Dispute Resolution Council

Confidentiality in Federal Alternative Dispute Resolution Programs

AGENCY: Federal Alternative Dispute Resolution Council, Department of Justice.

ACTION: Guidance.

SUMMARY: This notice publishes a document entitled ''Confidentiality in Federal Alternative Dispute Resolution Programs,'' which provides guidance to assist Federal agencies in developing ADR programs. The document was created by a subcommittee of the Federal ADR Steering Committee, a group of subject matter experts from federal agencies with ADR programs. It was approved by the Federal ADR Council, a group of high-level government officials chaired by the Attorney General. The document contains detailed guidance on the nature and limits of confidentiality in Federal ADR programs and also includes guidelines for a statement on these issues that Federal neutrals may use in ADR proceedings.

Interested persons have been afforded an opportunity to participate in the making of this guidance. A draft was submitted for public comment in the **Federal Register**, and due consideration has been given to the comments received. Comments were provided by private sector organizations and government agencies from around the country.

ADDRESSES: Address any comments to Jeffrey M. Senger, Deputy Senior Counsel for Dispute Resolution, United States Department of Justice, 950 Pennsylvania Ave. NW., Room 4328, Washington, DC. 20530.

Dated: December 19, 2000.

Jeffrey M. Senger,

Deputy Senior Counsel for Dispute Resolution, Department of Justice.

SUPPLEMENTARY INFORMATION:

Authority

The Administrative Dispute Resolution Act of 1996 (ADR Act), 5 U.S.C. 571–584, requires each Federal agency to promote the use of ADR and calls for the establishment of an interagency committee to assist agencies in the use of ADR. Pursuant to this Act, a Presidential Memorandum dated May 1, 1998, created the Interagency ADR Working Group, chaired by the Attorney General, to ''facilitate, encourage, and provide coordination'' for Federal agencies. In the Memorandum, the President charged the Working Group with assisting agencies with training in ''how to use alternative means of dispute resolution.'' The following document is designed to serve this goal.

Introduction

The subject of the document is confidentiality, which is a critical component of a successful ADR process. Guarantees of confidentiality allow parties to freely engage in candid, informal discussions of their interests in order to reach the best possible settlement of their claims. A promise of confidentiality allows parties to speak openly without fear that statements made during an ADR process will be used against them later. Confidentiality can reduce posturing and destructive dialogue among parties during the settlement process.

Public comment was solicited on a draft of this document that was published in the **Federal Register** at 65 FR 59200, October 4, 2000. The draft was revised to incorporate many suggestions on the draft received from the following private sector organizations, government agencies, and individuals from around the country:

American Bar Association, Section of Administrative Law and Regulatory Practice
American Bar Association, Section of Dispute Resolution
Association of the Bar of the City of New York, Committee on Alternative Dispute Resolution
Executive Council on Integrity and Efficiency
Federal Mediation and Conciliation Service
Martin J. Harty
Lawrence A. Huerta
Oregon Department of Agriculture Farm Mediation Program
Margaret Porter, Administrator, Federal Sharing Neutrals Program
Karen D. Powell
President's Council on Integrity and Efficiency
Texas Center for Public Policy Dispute Resolution
United States Department of Agriculture, Office of Inspector General

United States Department of Energy, Chicago Operations Office
United States Department of Transportation, Federal Aviation Administration
United States Institute for Environmental Conflict Resolution
Richard C. Walters

Major comments fell primarily into three categories. The first is the interplay of the ADR Act confidentiality provisions with federal ''access'' statutes that provide Federal entities authority to seek access to certain classes of information. The second is the extent of confidentiality protection for statements of parties made in joint session. The third is the model statement on confidentiality for neutrals to read to parties at the beginning of a mediation.

The ADR Council believes that the understanding of these issues will benefit from experience and further collaboration with a broader community. The Council recognizes that its timetable for comments to this document was limited and wants to make clear that it anticipates further discussion of these issues. Future research, analysis, and practical experience in the field are certain to have a continuing impact on these important areas, and this Guidance may need to be revised or updated. We look forward to cooperation with interested parties in this work.

The Relationship Between the ADR Act and Other Authorities

The largest number of comments concerned the relationship between ADR Act confidentiality guarantees and other laws or regulations that authorize access to certain classes of information. Some commenters suggested that confidentiality should be narrower than provided under the draft Guidance. For example, some commenters believed that threats of physical harm and statements concerning ongoing or future criminal activity should not be confidential. Other commenters stated that Federal statutes providing access for government investigatory agencies should override the ADR Act's confidentiality guarantees.

In sharp contrast, other commenters believed that the confidentiality guarantees in the draft should be much broader. Several commenters argued that the ADR Act prohibitions on disclosure take precedence over any other Federal statute. These commenters argue that the ADR Act allows Inspectors General and other investigators to obtain confidential communications only through a court order obtained pursuant to the Act.

The Federal ADR Council acknowledges the points of view expressed in these comments but does not concur with them. There does not appear to be an easy answer to the tension between these authorities. While the ADR Act's confidentiality provisions are clear, the access provisions of other statutes are equally clear.

Standard techniques for resolving statutory conflicts do not provide a ready answer in this situation. For example, arguments have been made on both sides as to which statute is more specific. While the ADR Act specifically addresses the types of processes to which it applies, some have argued that other acts, such as the Inspector General Act, do the same by specifically describing the types of information that may be requested and the purposes for which a request can be made. Nor does the legislative history of the ADR Act provide an apparent solution, as it does not appear to contain any mention of this conflict.

A further problem is that the Federal ADR Council is not the appropriate body to provide a final decision on this question. The Council is an advisory body created by the Attorney General to issue guidance, but it is not authorized to promulgate binding interpretations in the manner of a court.

While it is, of course, appropriate to give this matter careful attention, we note that the circumstances when confidentiality might be challenged are, based on our experience, rare. The Council believes that there are opportunities for ADR programs and Federal requesting entities to establish good working relationships such that disputes over demands for disclosure of confidential communications can be minimized. This report continues to endorse a cooperative approach of this nature.

In addition, the revised report endorses use of the standards in the ADR Act's judicial override provision, sections 574(a)(4) and (b)(5), stating that they should be used both formally, when available, and informally to resolve the rare instances where requesting entities seek access to communications protected by the ADR Act.

The Confidentiality of Statements Made in Joint Session

Many comments were also received concerning the extent of confidentiality protection for statements made by parties in joint session. The draft report stated that there is no confidentiality protection for a party's dispute resolution communications that are available to all other parties, such as comments made or documents shared in joint session. Commenters noted that the guidance on this issue differs from traditional ADR practices and party expectations regarding confidentiality, and said this interpretation could reduce the utility of joint sessions. One commenter suggested that the report's interpretation of section 574(b)(7), the key provision on this point, would render sections 574(b)(1)–(6) superfluous. Further, this commenter noted that comments by several legislators and a Senate report indicate 574(b)(7) was intended to cover only documents, not oral statements.

The Federal ADR Council acknowledges that the ADR Act's treatment of this issue is different from the practice in many ADR processes that do not involve the government, but notes that the language of the statute is difficult to overcome. The Act states that there is no confidentiality protection if ''the dispute resolution communication was provided to or was available to all parties in the dispute resolution proceeding.'' 5 U.S.C. 574(b)(7). Communications in a joint session with all parties present fit squarely within this provision. Further, the Act's definition of dispute resolution communication contains no exception for oral statements. Indeed, it explicitly includes ''any *oral* or written communication prepared for the purposes of a dispute resolution proceeding'' (emphasis added).

Despite the language of (b)(7), it appears that the remaining provisions of 574(b) provide protection for limited types of communications. These other sections continue to protect, for example, a party who is asked what a mediator said at any time, or a party who is asked what another party said in a multi-party case when not all parties were present. With regard to legislative history, an indicator of Congressional intent is the report of the final Conference Committee in 1996, when the current statute was enacted. It states, ''A dispute resolution communication originating from a party to a party or parties is not protected from disclosure by the ADR Act.'' H.R. Rep. No. 104–841, 142 Cong. Rec. H11,110 (September 25, 1996). The Committee could have used the word ''document'' if it wanted to exclude oral statements, but it chose to use the term ''dispute resolution communication,'' which is explicitly defined in the statute to include oral statements.

The Council does recognize that this provision could hinder a party's candor in a joint session, and therefore the Guidance suggests that parties address

this issue through the use of a contract. Confidentiality agreements are a standard practice in many ADR contexts, and their use is encouraged in Federal dispute resolution processes where confidentiality of party-to-party communications is desired. It is important to note that confidentiality agreements do not bind anyone who is not a signatory. Further, such agreements will not protect against disclosure of documents through the Freedom of Information Act (FOIA). Nevertheless, the majority of problems caused by the plain language reading of section 574(b)(7) can be rectified through a well-drafted confidentiality agreement.

The Model Confidentiality Statement for Use by Neutrals

Finally, many commenters made suggestions regarding the Model Confidentiality Statement for Use by Neutrals that appeared at the end of the draft report. Some commenters argued that provisions should be added to the statement to ensure parties were made aware of additional possible confidentiality exceptions. Others stated that the statement was already too complex and potentially chilling. The Council appreciates the difficulty in making an opening statement complete enough to put parties on notice of important issues, while not making it so exhaustive that it discourages participation in ADR. The Council acknowledges that a well-drafted statement should accommodate all of these concerns as well as possible.

Other commenters noted that the statement may not be appropriate for all types of proceedings or all types of neutrals. The Federal ADR Council agrees that the model statement may not fit all situations and all ADR processes, or even all stages of a single ADR process. In response to these comments, the Guidance now includes a set of guidelines for neutrals to use in developing their own statements on confidentiality, appropriate to the situation. It is the neutral's responsibility to address confidentiality with the parties. Neutrals and agency ADR programs may want to develop a standard confidentiality statement, consistent with the guidelines presented in this report, that is appropriate to a particular ADR process.

The Guidance also includes an example of one possible confidentiality statement. It is important to note that this statement should be tailored, as necessary, to fit the needs of each particular case. This statement refers to a mediation, because mediation is the most common ADR process in the Federal government.

Conclusion

The balance of this revised report follows the same format as the draft report. Section I is a reprint of the confidentiality provisions of the ADR Act. Section II is a section-by-section analysis of the confidentiality provisions of the Act. Section III contains the revised questions and answers on confidentiality issues likely to arise in practice. Section IV contains the new guidelines for use in developing confidentiality statements. In addition, as assistance for neutrals and agencies drafting confidentiality statements, Section IV contains an example of one possible confidentiality statement.

Nothing in this Guidance shall be construed to create any right or benefit, substantive or procedural, enforceable at law or in equity, by a party against the United States, its agencies, its officers or any other person.

The Federal ADR Council

Chair: Janet Reno, Attorney General, Department of Justice.

Vice Chair: Erica Cooper, Deputy General Counsel, Federal Deposit Insurance Corporation.

Members: Leigh A. Bradley, General Counsel, Department of Veterans Affairs; Meyer Eisenberg, Deputy General Counsel, Securities and Exchange Commission; Mary Anne Gibbons, General Counsel, U.S. Postal Service; Gary S. Guzy, General Counsel, Environmental Protection Agency; Jeh C. Johnson, General Counsel, Department of the Air Force; Stewart Aly, Acting Deputy General Counsel, Department of Defense; Rosalind Knapp, Acting General Counsel, Department of Transportation; Anthony N. Palladino, Director, Office of Dispute Resolution, Federal Aviation Administration, Department of Transportation; Janet S. Potts, Counsel to the Secretary, Department of Agriculture; Harriett S. Rabb, General Counsel, Department of Health and Human Services; Henry L. Solano, Solicitor, Department of Labor; John Sparks, Acting General Counsel, Department of the Navy; Peter R. Steenland, Jr., Senior Counsel for Dispute Resolution, U.S. Department of Justice; Mary Ann Sullivan, General Counsel, Department of Energy; Robert Ward, Senior Counsel for Dispute Resolution, Environmental Protection Agency.

Report on the Reasonable Expectations of Confidentiality Under the Administrative Dispute Resolution Act of 1996

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I. Administrative Dispute Resolution Act

Definitions (5 U.S.C. 571)

For the purposes of this subchapter, the term—

(1) ''agency'' has the same meaning as in section 551(1) of this title;

(2) ''administrative program'' includes a Federal function which involves protection of the public interest and the determination of rights, privileges, and obligations of private persons through rule making, adjudication, licensing, or investigation, as those terms are used in subchapter II of this chapter;

(3) ''alternative means of dispute resolution'' means any procedure that is used to resolve issues in controversy, including, but not limited to, conciliation, facilitation, mediation, factfinding, minitrials, arbitration, and use of ombuds, or any combination thereof;

(4) ''award'' means any decision by an arbitrator resolving the issues in controversy;

(5) ''dispute resolution communication'' means any oral or written communication prepared for the purposes of a dispute resolution proceeding, including any memoranda, notes or work product of the neutral, parties or nonparty participant; except that a written agreement to enter into a dispute resolution proceeding, or final written agreement or arbitral award reached as a result of a dispute resolution proceeding, is not a dispute resolution communication;

(6) ''dispute resolution proceeding'' means any process in which an alternative means of dispute resolution is used to resolve an issue in controversy in which a neutral is appointed and specified parties participate;

(7) ''in confidence'' means, with respect to information, that the information is provided—

(A) with the expressed intent of the source that it not be disclosed; or

(B) under circumstances that would create the reasonable expectation on

behalf of the source that the information will not be disclosed;

(8) ''issue in controversy'' means an issue which is material to a decision concerning an administrative program of an agency, and with which there is disagreement—

(A) between an agency and persons who would be substantially affected by the decision; or

(B) between persons who would be substantially affected by the decision;

(9) ''neutral'' means an individual who, with respect to an issue in controversy, functions specifically to aid the parties in resolving the controversy;

(10) ''party'' means—

(A) for a proceeding with named parties, the same as in section 551(3) of this title; and

(B) for a proceeding without named parties, a person who will be significantly affected by the decision in the proceeding and who participates in the proceeding;

(11) ''person'' has the same meaning as in section 551(2) of this title; and

(12) ''roster'' means a list of persons qualified to provide services as neutrals.

Confidentiality (5 U.S.C. 574)

(a) Except as provided in subsections (d) and (e), a neutral in a dispute resolution proceeding shall not voluntarily disclose or through discovery or compulsory process be required to disclose any dispute resolution communication or any communication provided in confidence to the neutral, unless—

(1) all parties to the dispute resolution proceeding and the neutral consent in writing, and, if the dispute resolution communication was provided by a nonparty participant, that participant also consents in writing;

(2) the dispute resolution communication has already been made public;

(3) the dispute resolution communication is required by statute to be made public, but a neutral should make such communication public only if no other person is reasonably available to disclose the communication; or

(4) a court determines that such testimony or disclosure is necessary to—

(A) prevent a manifest injustice;

(B) help establish a violation of law; or

(C) prevent harm to the public health or safety,

of sufficient magnitude in the particular case to outweigh the integrity of dispute resolution proceedings in general by reducing the confidence of parties in future cases that their communications will remain confidential.

(b) A party to a dispute resolution proceeding shall not voluntarily disclose or through discovery or compulsory process be required to disclose any dispute resolution communication, unless—

(1) the communication was prepared by the party seeking disclosure;

(2) all parties to the dispute resolution proceeding consent in writing;

(3) the dispute resolution communication has already been made public;

(4) the dispute resolution communication is required by statute to be made public;

(5) a court determines that such testimony or disclosure is necessary to—

(A) prevent a manifest injustice;

(B) help establish a violation of law; or

(C) prevent harm to the public health and safety,

of sufficient magnitude in the particular case to outweigh the integrity of dispute resolution proceedings in general by reducing the confidence of parties in future cases that their communications will remain confidential;

(6) the dispute resolution communication is relevant to determining the existence or meaning of an agreement or award that resulted from the dispute resolution proceeding or to the enforcement of such an agreement or award; or

(7) except for dispute resolution communications generated by the neutral, the dispute resolution communication was provided to or was available to all parties to the dispute resolution proceeding.

(c) Any dispute resolution communication that is disclosed in violation of subsection (a) or (b), shall not be admissible in any proceeding relating to the issues in controversy with respect to which the communication was made.

(d)(1) The parties may agree to alternative confidential procedures for disclosures by a neutral. Upon such agreement the parties shall inform the neutral before the commencement of the dispute resolution proceeding of any modifications to the provisions of subsection (a) that will govern the confidentiality of the dispute resolution proceeding. If the parties do not so inform the neutral, subsection (a) shall apply.

(2) To qualify for the exemption established under subsection (j), an alternative confidential procedure under this subsection may not provide for less disclosure than the confidential procedures otherwise provided under this section.

(e) If a demand for disclosure, by way of discovery request or other legal process, is made upon a neutral regarding a dispute resolution communication, the neutral shall make reasonable efforts to notify the parties and any affected nonparty participants of the demand. Any party or affected nonparty participant who receives such notice and within 15 calendar days does not offer to defend a refusal of the neutral to disclose the requested information shall have waived any objection to such disclosure.

(f) Nothing in this section shall prevent the discovery or admissibility of any evidence that is otherwise discoverable, merely because the evidence was presented in the course of a dispute resolution proceeding.

(g) Subsections (a) and (b) shall have no effect on the information and data that are necessary to document an agreement reached or order issued pursuant to a dispute resolution proceeding.

(h) Subsections (a) and (b) shall not prevent the gathering of information for research or educational purposes, in cooperation with other agencies, governmental entities, or dispute resolution programs, so long as the parties and the specific issues in controversy are not identifiable.

(i) Subsections (a) and (b) shall not prevent use of a dispute resolution communication to resolve a dispute between the neutral in a dispute resolution proceeding and a party to or participant in such proceeding, so long as such dispute resolution communication is disclosed only to the extent necessary to resolve such dispute.

(j) A dispute resolution communication which is between a neutral and a party and which may not be disclosed under this section shall also be exempt from disclosure under section 552(b)(3).

II. Section-by-Section Analysis of Confidentiality Provisions (5 U.S.C. 574)

Section 574(a)

In general, a neutral in a dispute resolution proceeding is prohibited from disclosing any dispute resolution communication or any communication provided to him or her in confidence. Unless the communication falls within one of the exceptions listed below, the neutral cannot voluntarily disclose a communication and cannot be forced to disclose a communication through a

discovery request or by any other compulsory process.

The exceptions to this general rule are found in subsections 574(a)(1)–(4), 574(d) and 574(e).

Section 574(a)(1)

A neutral may disclose a dispute resolution communication if all parties *and* the neutral agree in writing to the disclosure. If a nonparty provided the dispute resolution communication, then the nonparty must also agree in writing to the disclosure.

Section 574(a)(2)

A neutral may disclose a dispute resolution communication if the communication has already been made public.

Section 574(a)(3)

A neutral may disclose a dispute resolution communication if there is a statute which requires it to be made public. However, the neutral should not disclose the communication unless there is no other person available to make the disclosure.

Section 574(a)(4)

A neutral may disclose a dispute resolution communication or a communication provided in confidence to the neutral if a court finds that the neutral's testimony, or the disclosure, is necessary to:

A. prevent a manifest injustice;

B. help establish a violation of law; or

C. prevent harm to the public health and safety.

In order to require disclosure, a court must determine that the need for disclosure is of sufficient magnitude to outweigh the detrimental impact on the integrity of dispute resolution proceedings in general. The need for the information must be so great that it outweighs a loss of confidence among other potential parties that their dispute resolution communications or communications provided in confidence to the neutral will remain confidential in future proceedings.

Section 574(b)

Unless a dispute resolution communication falls within one of the exceptions listed below, a party cannot voluntarily disclose the communication and cannot be forced to disclose a communication through a discovery request or by any other compulsory process.

Section 574(b)(1)

The party who prepared the dispute resolution communication is free to disclose it.

Section 574(b)(2)

A party may disclose a dispute resolution communication if all the parties agree in writing to the disclosure.

Section 574(b)(3)

A party may disclose a dispute resolution communication if the dispute resolution communication has already been made public.

Section 574(b)(4)

A party may disclose a dispute resolution communication if there is a statute which requires it to be made public.

Section 574(b)(5)

A party may be required to disclose a dispute resolution communication if a court finds that the party's testimony, or the disclosure, is necessary to:

A. prevent a manifest injustice;

B. help establish a violation of law; or

C. prevent harm to the public health and safety.

In order to require disclosure, a court must determine that the need for disclosure is of sufficient magnitude to outweigh the detrimental impact on the integrity of dispute resolution proceedings in general. The need for the information must be so great that it outweighs a loss of confidence among other potential parties that their dispute resolution communications will remain confidential in future proceedings.

Section 574(b)(6)

(1) Parties may use dispute resolution communications to show that a settlement agreement was in fact reached or to show what the terms of this agreement mean.

(2) Parties may also use dispute resolution communications in connection with later issues regarding enforcing the agreement.

Section 574(b)(7)

(1) A party is not prohibited from disclosing another party's dispute resolution communication that was available to all parties in the proceeding. For example, in a joint mediation session with all parties present, statements made and documents provided by parties are not confidential.

(2) Dispute resolution communications coming from the neutral are nonetheless confidential.

Section 574(c)

No one may use any dispute resolution communication in a related proceeding, if that communication was disclosed in violation of Section 574 (a) or (b).

Section 574(d)(1)

(1) Parties may agree to alternative confidentiality procedures for disclosures by a neutral.

(2) Parties must inform the neutral of the alternative procedures before the dispute resolution proceeding begins.

(3) If parties do not inform the neutral of the alternative procedures, the procedures outlined in Section 574(a) will apply.

Section 574(d)(2)

(1) Dispute resolution communications covered by alternative confidentiality procedures may be protected from disclosure under FOIA.

(2) To qualify for this protection, the alternative procedures must provide for as much, or more, disclosure than the procedures provided in Section 574.

(3) Dispute resolution communications covered by alternative confidentiality procedures do not qualify for protection from disclosure under FOIA if the alternative procedures provide for less disclosure than those outlined in Section 574.

Section 574(e)

(1) A neutral who receives a demand for disclosure, in the form of a discovery request or other legal process, must make reasonable efforts to notify the parties and any affected non-party participants of the demand.

(2) Parties and non-party participants who receive a notice of a demand for disclosure from a neutral:

a. must respond within 15 calendar days and offer to defend a refusal to disclose the information; or

b. if they do not respond within 15 calendar days, they will be deemed to have waived their objections to disclosure of the information.

Section 574(f)

Evidence that is otherwise discoverable or admissible is not protected from disclosure under this Section merely because the evidence was presented during a dispute resolution proceeding.

Section 574(g)

The provisions of Section 574(a) and (b) do not affect information and data that are necessary to document agreements or orders resulting from dispute resolution proceedings.

Section 574(h)

Information from and about dispute resolution proceedings may be used for educational and research purposes as long as the parties and specific issues in controversy are not identifiable.

Section 574(i)

Dispute resolution communications may be used to resolve disputes between the neutral in a dispute resolution proceeding and a party or participant, but only to the extent necessary to resolve a dispute between a neutral and party or participant.

Section 574(j)

A dispute resolution communication between a neutral and a party that is protected from disclosure under this section is also protected from disclosure under FOIA (Section 552(b)(3)).

III. Questions & Answers on Confidentiality Under the Administrative Dispute Resolution Act of 1996 (ADR Act)

General Confidentiality Rules

1. What types of communications are confidential?

Subject to certain exceptions, the following two types of communications are potentially confidential under the ADR Act:

A. *A dispute resolution communication.* A dispute resolution communication is any oral statement made or writing presented by a party, nonparty participant or neutral during a dispute resolution proceeding prepared specifically for the purposes of a dispute resolution proceeding. However, written agreements to enter into a dispute resolution proceeding and any written final agreement reached as a result of the proceeding are not dispute resolution communications. Citation: 5 U.S.C. 571(5).

Example: At the outset of the mediation conference, the parties sign an agreement to mediate. During private meetings with the mediator, they each make oral statements and give the mediator documents prepared specifically for use in the mediation. At the conclusion of the mediation, the parties sign a settlement agreement resolving the matter.

The oral statements and written documents prepared specifically for use in the mediation are dispute resolution communications. The agreement to mediate and the settlement agreement are not dispute resolution communications.

B. *A ''communication provided in confidence to the neutral.''* A ''communication provided in confidence to the neutral'' is any oral statement or written document provided to a neutral during a dispute resolution proceeding. The communication must be: (1) Made with the express intent that it not be disclosed or (2) provided under circumstances that would create a reasonable expectation that it not be disclosed. Citation: 5 U.S.C. 571(7) and 574(a).

Example: During private meetings, counsel for the contractor and for the agency separately give the mediator different documents prepared before mediation which contain highly sensitive information. Counsel for the contractor expressly asks the mediator to keep his document confidential; counsel for the agency says nothing about keeping her document confidential. Both documents are ''communications provided in confidence to the neutral.'' The contractor's documents are communications provided in confidence because counsel for the contractor expressly asked the neutral to keep it confidential. The agency's documents are communications provided in confidence because they were provided under circumstances which create a reasonable expectation that they should not be disclosed.

Example: An employee during a caucus in a mediation session tells the neutral that he might appear inattentive during the joint session because he has been diagnosed recently with cancer and is taking medicine. He tells the mediator not to share that information with the other party, his supervisor. The information is a communication provided in confidence because the employee provided it to the neutral with the expressed intent that it not be disclosed.

2. What confidentiality protection is provided for dispute resolution communications?

Generally, neutrals and parties may not voluntarily disclose or be compelled to disclose dispute resolution communications. The ADR Act contains specific exceptions to the general rule. (See Question 11) Citation: 5 U.S.C. 574(a), (b).

Example: A party resolves his EEO complaint through mediation and signs a written agreement settling all issues. The mediator subsequently receives a phone call from another employee asking (1) What was management's position in the mediation, and, (2) what relief was obtained. The mediator, as a neutral, may not disclose to the employee any communications made by management in the dispute resolution proceeding. However, the neutral may provide the employee with a copy of the final agreement which sets forth the relief obtained.

Example: During a mediation involving ten parties, two meet in caucus with the mediator and discuss their common interests. Later, a person contacts one of the two parties asking about what the other party said during the caucus with the mediator. The first party may not disclose what the other party said during the caucus.

3. What confidentiality protection applies to a ''communication provided in confidence'' by a party to a neutral?

Generally, neutrals may not disclose any communication provided to them in confidence. The ADR Act contains specific exceptions to the general rule. (See Question 11.) Citation: 5 U.S.C. 574(a).

Example: A government contractor during a caucus in a mediation session tells the neutral the details of his proposed ''bid'' for a government contract. The neutral may not disclose the information because the program participant would have a reasonable expectation that the information would not be shared.

4. What is a dispute resolution proceeding?

A dispute resolution proceeding is an alternative means of resolving an issue in controversy arising from an agency's program, operations or actions. The ADR Act supports a broad reading of the term ''dispute resolution proceeding.'' The ADR Act broadly incorporates all ADR forms and techniques, including any combination of ADR forms or techniques. In defining an issue in controversy, the ADR Act incorporates disagreements between an agency and parties or between parties. This indicates a legislative intent to provide for the use of ADR processes in an inclusive manner to assist the wide range of situations where disagreements may arise in the conduct of an agency's programs, operations, or actions. A dispute resolution proceeding includes intake and convening stages as well as more formal stages, such as mediation. Citation: 5 U.S.C. 571(3), (6) and (8).

Example: A neutral is engaged to help resolve a dispute between an agency and one of its contractors. The process managed by the neutral (*i.e.,* mediation, arbitration, or another technique) is a dispute resolution proceeding.

Example: A dispute exists between an agency and several other parties with regard to the agency's interpretation of a regulation. The work of a neutral to convene the parties (*i.e.,* to bring them together for purposes of conducting a negotiated settlement) is a dispute resolution proceeding.

5. Who is a neutral?

A neutral is anyone who functions specifically to aid the parties during a dispute resolution process. A neutral may be a private person or a federal government employee who is acceptable to the parties. There may be more than one neutral during the course of a dispute resolution process (e.g., an ''intake'' neutral, a ''convener'' neutral, as well as the neutral who facilitates a face-to-face proceeding). It is important that agencies clearly identify neutrals to avoid misunderstanding.

The ADR Act supports a broad reading of the term ''neutral.'' In defining neutral, the ADR Act refers to the services of an individual who functions to aid parties in the resolution of an issue in controversy. This indicates the intent of the ADR Act to support the use of neutrals to aid parties during all stages of the resolution of a

disagreement, from the convening of participants and design of effective dispute resolution procedures to the conduct of settlement discussions.

The ADR Act provides that a neutral should be acceptable to the parties. In light of the broad variety of ADR services and types of disagreements encompassed by the ADR Act, this requirement must be considered on a case by case basis to provide flexibility in how individual parties ''accept'' a neutral. If an agency clearly identifies an individual as an intake or convening neutral, an agency or private party who contacts the neutral for the purpose of seeking aid in resolving a disagreement indicates an acceptance of the neutral for that purpose. Likewise, the voluntary participation of a party in an ADR process conducted by a neutral indicates an acceptance of the neutral. Citation: 5 U.S.C. 571(3), (6), (8),and (9) & 573(a).

Example: An employee contacts an agency ADR program seeking assistance in resolving a dispute and describes a dispute to an intake person. The conversation is confidential only if the intake person has been appropriately identified as a neutral by the agency to aid parties in resolving such disputes.

Example: An EEO office automatically assigns, on a rotating basis, a trained neutral from within the agency, without consulting the parties. The parties can be deemed to have agreed to the neutral by virtue of their participation.

6. Who is a party?

A party is any person or entity who participates in a dispute resolution proceeding and is named in an agency proceeding or will be affected significantly by the outcome of an agency proceeding. Consistent with common legal practice, the obligations of parties extend to their representatives and agents. Citation: 5 U.S.C. 571(10).

Example: An agency convenes a mediation of all affected stakeholders to resolve an environmental dispute. Every person, business entity, state or local government, and non-profit organization that will be significantly affected by the outcome of the process and agrees to participate is a party to the mediation.

7. What constitutes disclosure?

Disclosure is not defined in the ADR Act. Disclosure occurs when a neutral, a party, or a non-party participant makes a communication available to some other person or entity by any method.

Example: A federal employee is mediating a workplace dispute as a collateral duty. The mediator's supervisor asks for a briefing on the case. Telling the supervisor ''dispute resolution communications'' or ''communications provided in confidence'' would constitute disclosure.

8. May a party or neutral disclose dispute resolution communications in response to discovery or compulsory process?

In general, neither a neutral nor a party can be required to disclose dispute resolution communications through discovery or compulsory process. Compulsory processes include any administrative, judicial or regulatory process that compels action by an individual. Citation: 5 U.S.C. 574(a) & 574(b).

Example: A neutral receives a notice of deposition from an attorney in a lawsuit regarding a matter which the neutral mediated. The attorney informs her that she will be asked about the statements by the complainant made during the mediation. In the deposition, the neutral may not disclose the complainant's statements because they are dispute resolution communications.

9. What confidentiality protection is provided for communications by a nonparty participant in a dispute resolution proceeding?

The term ''nonparty participant'' is not defined in the ADR Act. However, common usage suggests that a nonparty participant is an individual present during a dispute resolution proceeding other than a party, an agent or representative of a party, or the neutral. This could be an individual who is asked by the neutral to present information for use of the neutral or parties. Dispute resolution communications made by nonparty participants are subject to the same protections and exceptions as are all other dispute resolution communications. A neutral needs to obtain the written consent of all parties and the nonparty participant to disclose such communications. Citation: 5 U.S.C. 574(a)(1).

Example: An expert talks about inflation and wages she prepared for mediation. The communication is confidential and cannot be disclosed by the neutral without the consent of all the parties and the expert.

Example: An expert retained by the neutral discusses his environmental impact research and participates in subsequent discussions with the parties. The expert is not prohibited from disclosing any communications from those discussions, absent a signed agreement to that effect.

10. When in an ADR process do the confidentiality protections of the ADR Act apply?

Confidentiality applies to communications when a person seeking ADR services contacts an appropriate neutral. A communication made by a party to a neutral is covered even if made prior to a face-to-face ADR proceeding. Confidentiality does not apply to communications made after a final written agreement is reached or after resolution efforts aided by the neutral have otherwise ended. Citation: 5 U.S.C 571(6), 574(a) and (b).

Example: Two parties have agreed to use an ADR process to try to resolve a dispute and have selected a neutral. Prior to the first session between the parties and the neutral, the neutral communicates independently with each of the parties. The confidentiality provisions of the ADR Act apply to these discussions.

Example: The parties to an ADR process have completed a dispute resolution proceeding and signed a settlement agreement. One of the parties subsequently calls the neutral to discuss how the settlement is being implemented. This discussion is not confidential under the ADR Act because the dispute resolution proceeding has already ended.

Exceptions To Confidentiality Protection

11. Under what circumstances may communications be disclosed under the ADR Act?

A. *A party's own communications during a dispute resolution proceeding.* A party may disclose any oral or written communication which the party makes or prepares for a dispute resolution proceeding. Citation: 5 U.S.C. 574(b)(1).

Example: During a separate caucus, the contractor drafts a document showing the financial impact of his breach of contract. The mediation is unsuccessful. The government subpoenas the contractor to produce the document for an administrative hearing. The contractor cannot be compelled to produce the document. She may, however, voluntarily produce it.

B. *A dispute resolution communication that has ''already been made public.''* The ADR Act's confidentiality protections do not apply to communications that have already been made public. Although the ADR Act does not define the term, examples of communications that have ''already been made public'' could include, for example, the following:

1. The communication has been discussed in an open Congressional hearing;
2. The communication has been placed in a court filing or testified about in a court in a proceeding not under seal;
3. The communication has been discussed in a meeting which is open to the public;
4. The communication has been released under FOIA. Citation: 5 U.S.C. 574(a)(2) & 574(b)(3).

C. *Communications required by statute to be made public.* There are a handful of statutes which require certain classes of information to be

made public. To the extent that such information is shared during a dispute resolution proceeding the information is not confidential. Citation: 5 U.S.C. 574(a)(3), 574(b)(4).

Example: Section 114(c) of the Clean Air Act states that certain records, reports or information obtained from regulated entities ''shall be made available to the public.'' These communications are not subject to the ADR Act prohibitions on disclosure by a neutral or a party.

D. *When a court orders disclosure.* A court may override the confidentiality protections of the ADR Act in three limited situations. In order to override the confidentiality protections, a court must determine that testimony or disclosure of a communication is necessary to either (1) prevent a manifest injustice, (2) help establish a violation of law, or (3) prevent harm to the public health or safety. The court must also determine, by applying a balancing test, that the need for the information is of a sufficient magnitude in the particular case to outweigh the integrity of dispute resolution proceedings in general by reducing the confidence of parties in future cases that their communications will remain confidential. Citation: 5 U.S.C. 574(a)(4) & (b)(5).

Example (to prevent a manifest injustice): During a separate caucus in a Federal Tort Claims Act mediation, a husband tells the mediator that his wife's claims to have been paralyzed in an accident were false. Mediation terminates, and the case proceeds to trial. Information about the wife's statements comes to the attention of the insurance company which seeks an order to compel testimony from the mediator. The court, in applying the balancing test in 574(a)(4), may order the mediator to disclose information if it finds that a failure to disclose the information would result in a manifest injustice to the moving party.

Example (help establish a violation of law): During a mediation regrading the dismissal of a federal employee, the employee divulges to the mediator that he charged personal goods to his government credit card. In a later action against the employee for misuse of government funds, the neutral is asked to testify about what he learned in the mediation. The court, in applying the balancing test in 574(a)(4), may require the neutral to testify if it determines that the neutral's testimony is necessary to help establish a violation of law.

Example (prevent harm to the public health or safety): During mediation of a tort claim, an engineer discloses to the neutral that her structural evaluation indicated serious defects in a building, but that her supervisor refused to accept the report as written and threatened her job security if she did not alter the report. When the case comes to trial, the plaintiff subpoenas the neutral to testify. The court, in applying the balancing test in 574(a)(4), may require the neutral to testify if it determines that the neutral's testimony is necessary to prevent harm to the public safety.

E. *In order to resolve a dispute over the existence or meaning of a settlement arrived at through a dispute resolution proceeding.* The ADR Act creates an exception to the general rule of nondisclosure by a party for the limited purpose of determining the existence or meaning of an agreement arrived at through a dispute resolution proceeding. Parties may also disclose communications as required to enforce an agreement arrived at through a dispute resolution proceeding. Citation: 5 U.S.C. 574(b)(6).

Example: Parties may disclose dispute resolution communications as required to show that a settlement agreement was reached or explore the meaning of the terms of this agreement.

F. *Parties' communications in joint session, with all parties present.* A neutral may not disclose dispute resolution communications made in joint session. However, except for communications by a neutral, there is no prohibition against a party disclosing communications available to all other parties in the proceeding. Citation: 5 U.S.C. 574(b)(7).

Example: In a joint session, with all parties present, a party admits that she was unaware of the defect in question. The other parties may disclose the information without violating the ADR Act.

G. *Information sought for specific purposes.* The ADR Act allows for the disclosure of information for educational and research purposes, in cooperation with agencies, governmental entities, or dispute resolution programs. However, it is required that the parties and specific issues in controversy not be identifiable. Citation: 5 U.S.C. 574(h).

Example: An individual who has served as a neutral in a number of agency ADR proceedings may share collected experiences when participating in a training program, provided that the parties and specific issues are not identifiable.

Example: An ADR program administrator may provide statistical information to an auditor or inspector who is evaluating the efficiency and effectiveness of an ADR program, provided that the parties and specific issues are not identifiable.

H. *Communications required to resolve disputes that arise between the neutral and a party.* If there is a dispute between a neutral and a party regarding the conduct of a dispute resolution proceeding, both may disclose dispute resolution communications to the extent necessary to resolve the dispute. Citation: 5 U.S.C. 574(I)

Example: If a party refuses to pay the neutral for services, the neutral can disclose dispute resolution communications to the extent necessary to establish that payment is due.

12. Are a neutral's communications to parties in joint session or otherwise provided to all parties confidential?

Yes. The ADR Act protects communications by a neutral. A party, however, may not use this provision to gain protection for a communication by providing it to the neutral who then provides it to another party. The ADR Act provides that the communication must be ''generated'' by the neutral, not just passed along by the neutral. Citation: 5 U.S.C. 574(b)(7). (*See* H. Rept. 104–841,142 Cong. Rec. H11108–11 (September 25, 1996).

Example: Early neutral evaluations or settlement proposals provided to the parties by a neutral are protected from disclosure by either the neutral or the parties.

13. Can confidentiality attach to communications that are provided to or available to fewer than all of the parties?

Yes. The ADR Act does not prohibit parties from disclosing dispute resolution communications that are ''provided to or * * * available to all parties to the dispute resolution proceeding.'' Under a plain reading of the statute, communications are not protected when provided to, or available to, *all* parties; thus, they remain protected if they are provided to, or are available to, some (but not all) of the parties in a dispute.

The legislative history states, ''A dispute resolution communication originating from a party to a party or parties is not protected from disclosure by the ADR Act.'' H.R. Rep. No. 104–841, 142 Cong. Rec. H11110 (Sept. 25, 1996). The plain language of the statute is not inconsistent with this piece of legislative history, in that it can be interpreted to mean both parties in a two-party (''party to the other party'') or all parties in a multi-party dispute (''party to all other parties''). Citation: 5 U.S.C. 574(b)(7).

Example: Six parties participate in a mediation. The mediator initially convenes a day-long meeting with all parties together in a joint session. The mediator believes that four have similar interests and convenes a separate meeting with just those four. Confidentiality attaches to communications which take place at the separate meeting, since fewer than all parties are present. Only if all six were present, or the information was available to all six, would disclosure be permissible under the (b)(7) exception.

14. Does the ADR Act prevent the discovery or admissibility of all information presented in a dispute resolution proceeding?

No. Information presented in a dispute resolution proceeding that is not protected by the ADR Act may be subject to discovery or admissibility as evidence in a subsequent legal action. Citation: 5 U.S.C. 574(f).

Example: During a mediation proceeding in a dispute over a promotion, the complainant produces notes she made during an interview with the selecting official. She shares her interview notes with the neutral and management representative. In private caucus with the neutral, complainant prepares handwritten notes of the neutral's comments regarding the case. When the case goes to litigation, the agency requests discovery of complainant's interview notes, as well as the notes reflecting the neutral's assessment of the case.

The agency would not be prohibited from seeking complainant's notes of the interview with the selecting official. The interview notes are not dispute resolution communications because they were not prepared for purposes of the dispute resolution proceeding. However, the complainant's notes reflecting the neutral's assessment of her case constitute a dispute resolution communication because they were prepared for the purpose of the dispute resolution proceeding.

15. Does the ADR Act protect against the disclosure of dispute resolution communications in response to requests by federal entities for such information?

Section 574 of the ADR Act prohibits a neutral or a party from disclosing, voluntarily or in response to discovery or compulsory process, any protected communication. The ADR Act further states that neutrals and parties shall not ''be required'' to disclose such communications.

A number of federal entities have statutory authority to request disclosure of documents from federal agencies and employees. Examples of such statutes include, but are not limited to, the Inspector General Act (5 U.S.C. App.) and the Whistle blower Protection Act (5 U.S.C. Section 1212(b)(2)). Further, certain statutes may be read to impose an affirmative obligation to disclose certain classes of information. These include, 18 U.S.C. Section 4 (knowledge relating to the commission of a felony) and 28 U.S.C. Section 535 (investigation of crimes involving Government officers and employees).

None of the exceptions to the ADR Act's confidentiality provisions directly applies to the above-mentioned authorities. For example, none of the authorities cited above constitutes a requirement that information be ''made public'' pursuant to ADR Act section 574(a)(3) and (b)(4). In addition, the judicial override procedure outlined in Section 574(a)(4) and (b)(5) will not always be available when a conflict between the ADR Act and disclosure statute arises.

In summary a tension among these authorities exists. The issues of statutory interpretation between these differing authorities have not yet been considered in an appropriate forum. Although we do not anticipate that direct conflicts between the ADR Act and one of the disclosure statutes will be common, it is important for agencies, neutrals, and participants to be aware of the potential issue.

The ADR Act's judicial override provision contains a standard for determining if disclosure is necessary despite the Act's general prohibition on disclosure. The judicial override procedure should be followed whenever possible by requesting entities. Use of this statutorily authorized procedure will provide the best guidance to both the ADR community and requesting entities. Even when the override procedure is not available (because of jurisdictional limitations, for example), this standard should be used in determining whether to disclose an otherwise protected communication. The override provision, at section 574(a)(4) & (b)(5), takes into account the need for access to information to prevent manifest injustice, establish violations of law, and prevent harm to public health and safety, while considering the integrity of dispute resolution proceedings in general and the consequences breaching confidentiality.

There are also several practical steps that agencies can take to minimize the likelihood of a dispute over a demand for disclosure of confidential communications. Agency ADR programs and potential requesting entities should enter into a dialogue to establish a framework for how potential demands for disclosure will be handled. The following principles should be included in such a framework:

- Agency ADR programs and requesting entities should educate each other about their respective missions.
- Procedures should be established for access to information that balance the need to prevent manifest injustice, help establish a violation of law, and prevent harm to the public health and safety against the need to protect the integrity of the agency's dispute resolution proceedings.
- ADR programs should identify classes of information that are not confidential, such as budgetary and statistical information regarding the number and types of cases and processes used.
- Requesting entities should use non-confidential information as a basis for information requests.
- Requesting entities should seek confidential information only if the information is not available through other means.
- Requesting entities should seek information from a neutral only if the information is not otherwise available.
- The ADR program and requesting entities should agree to procedures to resolve specific disagreements that arise with regard to the disclosure of information.

Alternative Procedures to Establish Confidentiality Protection

16. May parties agree to confidentiality procedures which are different from those contained in ADR Act?

Yes. Parties may agree to more, or less, confidentiality protection for disclosure by the neutral or themselves than is provided for in the Act.

The ADR Act provides that parties may agree to alternative confidential procedures for disclosures by a neutral. While there is no parallel provision for parties, the exclusive wording of this subsection should not be construed as limiting parties' ability to agree to alternative confidentiality procedures. Parties have a general right to sign confidentiality agreements, and there is no reason this should change in a mediation context.

If the parties agree to alternative confidentiality procedures regarding disclosure by a neutral, they must so inform the neutral before the dispute resolution proceeding begins or the confidentiality procedures in the ADR Act will apply. An agreement providing for alternative confidentiality procedures is binding on anyone who signs the agreement. On the other hand, such an agreement will not be binding on third parties and may not guarantee that dispute resolution communications will be protected by the ADR Act from disclosure to such parties. Consistent with prudent practice, it is recommended that any such agreements be documented in writing. (See Questions 23 and 24 for potential FOIA implications.) Citation: 5 U.S.C. 574(d)(1).

Example: Parties to an ADR proceeding can agree to authorize the neutral to use his or her judgment about whether to voluntarily disclose a protected communication, as long as the neutral is informed of this agreement before the ADR proceeding commences.

Example: Parties to an ADR proceeding can agree that they, and the neutral, will keep

everything they say to each other in joint session confidential. A third party expert who overhears their discussions is not bound by their agreement unless she also signs it.

Issues Regarding the Disclosure of Protected Communications

17. What restrictions are put on the use of confidential communications disclosed in violation of the ADR Act?

If the neutral or any participant discloses a confidential communication in violation of Sections 574(a) or (b), that communication is not admissible in any proceeding that is related to the subject of the dispute resolution proceeding in which the protected communication was made. A dispute resolution communication that was improperly disclosed may not be protected from use in an unrelated proceeding. Citation: 5 U.S.C. 574(c).

Example: A supervisor and employee are engaged in a very bitter dispute regarding allegations of sexual harassment. They try mediation with a well respected mediator who is considered an expert in federal sexual harassment law. During a separate caucus between the mediator and the supervisor (alleged harasser) the mediator pointedly questioned the strength of the supervisor's defense.

The mediation is unsuccessful, and the EEOC issues a decision finding that the supervisor did not sexually harass his employee. The supervisor is ecstatic and talks to his friends about the situation, mocking some of the ''wrong'' comments the mediator made.

The employee appeals the case. She learns of the supervisor's reaction to the mediator's comments and wants to use the information in her brief. She will not be able to use the information because (1) the supervisor improperly disclosed information generated by the neutral, and (2) the appeal is a related proceeding.

Example: A federal agency and two contractors are mediating a dispute over an alleged breach of contract. During a caucus with the mediator, the two contractors share confidential information about their financial status. After completing mediation, Contractor 1, in violation of the ADR Act, tells Company X about Contractor 2's financial status.

A year later, Company X and Contractor 2 are in a dispute over a different contract in which Contractor 2's financial status is in dispute. Company X wants to use the information disclosed by Contractor 1. Company X would not be precluded by the ADR Act from using the information disclosed by Contractor 1, because the subject of the current proceeding is not related to that of the prior mediation.

18. What is the penalty for disclosing confidential communications in violation of the statute?

The ADR Act does not specify any civil or criminal penalty for the disclosure of a protected communication in violation of the Act. However, such disclosure may violate other laws, regulations or agreements of the parties.

Example: The parties agree in writing to keep confidential all statements they make in joint session. The agreement includes a provision that anyone disclosing statements made in joint session will be liable for damages. A party issues a press release disclosing statements made in joint session. The other parties may proceed against him in a suit for damages.

19. What must a neutral do when he or she receives a ''demand for disclosure'' of dispute resolution communications?

Although the ADR Act does not define the term, a ''demand for disclosure'' may be understood as a formal request for confidential information. The demand must be made by a discovery request or some other legal process.

Upon receiving a demand for disclosure of a dispute resolution communication, a neutral must make a reasonable effort to notify the parties and any affected non-party participants of the demand. Notice must be provided even if the neutral believes that there is no basis for refusing to disclose the communication.

Notice should be delivered to the last address provided by a party. Parties have fifteen calendar days, from the date they receive the notice, in which to offer to defend the neutral against disclosure. Therefore, notice should be sent by a process that provides certification of delivery. For example, delivery could be by registered mail, courier, or by any other carrier that provides tracking and certification of delivery. Use of telephone or email communications as notice could be problematic. Since the parties must respond within 15 calendar days or waive their right to object to disclosure, there should be a written record of when the notice was sent and when it was received. In certain rare circumstances, such as a criminal investigation, a neutral may be asked not to notify parties and others (*e.g.,* program administrators) of a request for information. Under such circumstances, the neutral should seek the advice of counsel. Citation: 5 U.S.C. 574(e).

Example: A colleague asks a neutral what happened in a mediation. The neutral must simply refuse to discuss the matter. The neutral does not need to notify the parties of the request since the demand was not a formal request for information.

Example: A neutral receives a formal discovery request for information on what happened in a mediation. Despite the fact that the neutral believes that the requested information could be disclosed under the ADR Act, the neutral must notify the parties of this demand for disclosure using the procedures described above.

20. What can/must parties do when they receive notice of a demand for disclosure from the neutral?

If a party has no objection to the disclosure of confidential communications, it need not respond to the notice. On the other hand, if a party believes that the sought-after communications should not be disclosed, the party should notify the neutral within 15 calendar days and make arrangements to defend the neutral from the demand for disclosure. Federal agencies should develop departmental procedures for responding to such notices.

Example: A party receives notice from a neutral that she has been served with a subpoena from the agency to produce documents and testify in a court proceeding. The party fulfills his responsibility under the Act by notifying the neutral within 15 calendar days that he objects to the demand for disclosure and that he will obtain counsel to defend the neutral.

21. What responsibilities do agencies have for ensuring that the notification requirement is met?

An agency does not have a notification requirement under the ADR Act. However, in some Federal ADR programs the neutral may be a Federal employee performing collateral duty. Requiring these neutrals to keep records of parties to dispute resolution proceedings may be unduly onerous and ineffective. Agencies should develop administrative procedures to ensure that the necessary records are retained. It is ultimately the neutral's responsibility to ensure that the notice is sent to the parties.

Example: A Federal employee who serves on collateral duty as a mediator for the ADR program of another agency receives a demand for disclosure but does not know how to locate the parties. She approaches the ADR program manager of the other agency for assistance. The program manager provides the neutral with sufficient information to deliver notice as required under the ADR Act.

22. May a neutral refuse to disclose communications even when the parties have failed to agree to defend the neutral?

Yes. The ADR Act permits, but does not compel, a neutral to disclose if the parties have waived objections to disclosure under Section 574(e). While the statute is clear that a neutral ''shall not'' disclose where a party objects, the statute does not say that a neutral must disclose if a party does not object.

The effectiveness and integrity of mediation and other ADR processes is largely dependent on the credibility and trustworthiness of neutrals. In order to safeguard the integrity of ADR programs and to eliminate the potential for eroding confidence in future ADR proceedings, neutrals should be allowed to rely on established codes of ethics and confidentiality standards to support a decision not to disclose. Citation: 5 U.S.C. 574(a) & (e).

Example: A neutral receives a subpoena requesting disclosure of confidential communications from a dispute resolution process. The parties do not object to the disclosure and have not offered to defend the neutral against the subpoena. The neutral may still, at his or her own expense, resist the subpoena if the neutral objects to the disclosure.

Issues Related to the Freedom of Information Act (FOIA)

23. What dispute resolution communications are protected from disclosure under FOIA?

Dispute resolution communications between a neutral and a party that may not be disclosed under the ADR Act are specifically exempted from disclosure under section 552(b)(3) of the Freedom of Information Act. This could include communications that are generated by a neutral and provided to all parties, such as an Early Neutral Evaluation. In addition, other FOIA exemptions may apply.

Since only Federal records are subject to FOIA, dispute resolution communications that are not Federal records are not subject to the disclosure requirements of FOIA. Therefore, this subsection would not apply to oral dispute resolution communications because they are not records. Citation: 5 U.S.C. 574(j).

Example: During mediation of a contract claim, the parties (a contractor and the agency) request a neutral to provide an evaluation of the merits of their respective cases. The neutral agrees, reviews the evidence, and presents each party separately with a written assessment of their respective cases. The contractor submits a FOIA request to obtain a copy of the neutral's written evaluation of the agency's case. The FOIA request can be denied under section 574(j) because the document is a dispute resolution communication generated by a neutral and may not be disclosed under the ADR Act.

24. If parties agree to alternative confidentiality procedures, are dispute resolution communications subject to FOIA?

Parties may agree to confidentiality procedures that differ from those otherwise provided in the Act. Parties should be aware, however, that the FOIA exemption might not apply to all the communications that are protected under their agreement to use alternative confidentiality procedures.

If the alternative confidentiality procedures agreed to by the parties provide for less disclosure than the ADR Act permits, those dispute resolution communications that would not be protected under the ADR Act are also not protected by the FOIA exemption in section 574(j). Parties cannot contract for more FOIA protection than the ADR Act provides. Citation: 5 U.S.C. 574(d) & (j).

Example: Parties enter into a confidentiality agreement as part of an agreement to mediate. The parties agree to keep statements made and documents presented during joint session confidential . Documents that are made available by the parties during joint session are not protected by the FOIA exemption in 574(j), even though they are provided by contract to be kept confidential.

Other Considerations

25. Do the ADR Act's confidentiality provisions apply differently to government and private sector neutrals?

No. There are, however, certain circumstances in which the choice of neutral may affect disclosure related to ADR processes. For example, because a private neutral's records are likely not deemed ''agency records,'' they likely will not be subject to FOIA or to record retention requirements. Additionally, the IG Act authorizes an IG to subpoena a private neutral, but not a government neutral. Finally, a private neutral is not subject to some of the statutory provisions that create a tension with the ADR Act's non-disclosure requirements (See Question 15).

IV. Guidance on Confidentiality Statements for Use By Neutrals

Neutrals should make introductory remarks at the outset of a dispute resolution process explaining applicable ADR Act confidentiality provisions. Which provisions apply will vary, depending on such things as the type of ADR used, the number of parties participating, and the issues involved. In addition, agencies may choose to highlight or supplement ADR Act provisions to meet specific programmatic needs. We provide guidelines below to assist neutrals in crafting appropriate introductory confidentiality statements.

An introductory confidentiality statement should address the following topics:

(1) Application of the ADR Act to administrative ADR processes;

(2) The intent of the ADR Act to provide confidentiality assurances for communications between the parties and the neutral occurring during an ADR proceedings;

(3) Confidentiality between and among parties, consistent with this Guidance;

(4) Exceptions to the Act's nondisclosure provisions pertinent to the particular dispute;

(5) Availability of alternative confidentiality protections through written agreement and applicable limitations; and

(6) Authorities other than the ADR Act that may also apply.

Example: The confidentiality provisions of the Administrative Dispute Resolution Act apply to this mediation. The Act focuses primarily on protecting private communications between parties and the mediator. Generally speaking, if you tell me something during this process, I will keep it confidential. The same is true for written documents you prepare for this process and give only to me.

There are exceptions to the confidentiality provisions in the Act. For example, statements you make with all the other parties in the room or documents you provide to them are not confidential. Also, in unusual circumstances, a judge can order disclosure of information that would prevent a manifest injustice, help establish a violation of law, or prevent harm to public health and safety.

You can agree to more confidentiality if you want to. For example, you can agree to keep statements you make or documents you share with the other parties confidential . If you want to do this, everyone will need to agree in writing. Outside parties may, however, still have access to statements or documents as provided by law.

(*This is only an example of one possible confidentiality statement. It is important that this statement be tailored to fit the needs of each particular case.*)

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DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Southwest Research Institute (''SWRI''): Clean Diesel III

Notice is hereby given that, on November 2, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute (''SwRI'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its

membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Equilon Enterprises LLC, Houston, TX has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and SwRI intends to file additional written notification disclosing all changes in membership.

On January 12, 2000, SwRI filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 26, 2000 (65 FR 39429).

The last notification was filed with the Department on June 12, 2000. A notice has not yet been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations, Antitrust Division.

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DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Wireless Application Protocol Forum, LTD.

Notice is hereby given that, on October 3, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Wireless Application Protocol Forum, Ltd. (''WAP'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ActiveSky, Inc., Redwood, CA; Adam Comsof Ltd., Bombay, India; Adobe Systems Inc., San Jose, CA; Airwallet, Redwood City, CA; Alerts.com, Raleigh, NC; Apar Infotech Ltd., Maidenhead, England, United Kingdom; AsiaInfo Holdings, Inc., Santa Clara, CA; Aspective Limited, Middlesex, England, United Kingdom; Axel Digital Group Oyj, Helsinki, Finland; Belgacom Mobile, Brussels, Belgium; Bosch, Stuttgart, Germany; Cambridge Technology Partners, Inc., Cambridge, MA; CellStar, Carrollton, TX; Centerpost Corp., Chicago, IL; Clarkston Potomac Group, Durham, NC; Condat A/S, Aalborg, Denmark; CR2 Limited, Dublin, Ireland; CYBIRD Co., Ltd., Tokyo, Japan; Dimon Software, Reykjavik, Iceland; Documentum, Inc., Pleasanton, CA; eFrenzy, Inc., San Francisco, CA; Electronic Business Research Center, Hsinchu, Taiwan; Enition Incorporated, Santa Clara, CA; Europay International, Waterloo, Belgium; EZOS, Braine-L'Alleud, Belgium; FDTI, Lisboa, Portugal; Feelingk.Co., Ltd., Seoul, Republic of Korea; FolloWAP, Inc., New York, NY; Hello Asia, Redwood City, CA; HiddenMind Technology, Cary, NC; Hii Co., Ltd., Fu Shin Ten, Taipei County, Taiwan; hotpalm.com, Atlanta, GA; iDini Corporation, San Jose, CA; Impronta Comunicaciones, S.L., Madrid, Spain; Informa Telecoms Group, London, England, United Kingdom; Informal Ltd, Leominster, Herefordshire, England, United Kingdom; Isovia, Inc., Boston, MA; Jumbuck Corporation Ltd., Melbourne, Victoria, Australia; Kyocera Corporation, Kanagwa, Japan; m-IQ Ltd., London, England, United Kingdom; MediaSolv.com, Inc., San Jose, CA; Microband, Inc., New York, NY; MICROPOLE, Nanterre, France; Mobileaware Limited, Dublin, Ireland; MobileQ, Inc., Toronto, Ontario, Canada; Mobileum, Inc., Pleasanton, CA; nCipher, Inc., Woburn, MA; Net Manage, Inc., Cupertino, CA; ome internet communication services AG, Vienna, Austria; Onscan, Inc., Fremont, CA; OverNet Data, London, England, United Kingdom; Paradigm4, Inc., Bothell, WA; PhoneDo Networks Inc., Haifa Bay, Israel; Red-M Limited, Wexham Slough Bucks, England, United Kingdom; ReefEdge, Inc., Fort Lee, NJ; ResQNet.com, Inc., New York, NY; SAS Institute Inc., Cary, NY; SeraNova, Inc., Rosemont, IL; Sierra Wireless, Richmond, British Columbia, Canada; Societe Generale, Paris La Defense, France; Spyrus, Inc., Santa Clara, CA; SurfControl plc, Congleton, Cheshire, England, United Kingdom; SurfGold.com, Singapore, SINGAPORE; ThatWEb.com Private Limited, Singapore, Singapore; UBICCO, Paris, France; Webtop DZ, Cambridge, England, United Kingdom; White.Cell, Inc., Rosh-Haayin, Israel; XYPoint Corporation, Seattle, WA; YesMobile Holdings Co., Ltd., Hong Kong, Hong Kong-China; and ZION Limited, Tokyo, Japan have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and WAP intends to file additional written notifications disclosing all changes in membership.

On March 18, 1998, WAP filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 31, 1998 (63 FR 72333).

The last notification was filed with the Department on April 3, 2000. A notice for this filing has not yet been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations, Antitrust Division.

JOINT VENTURE WORKSHEET

[Supplemental Filings Only]

A. Name of venture: Wireless Application Protocol Forum, Ltd; Nature of notification: supplemental; Concise statement of purpose (if purpose has changed): Same as before—no changes.

B. For ventures involving research and development only:

Identity of parties added to venture:

1. ActiveSky, Inc., Redwood, CA
2. Adam Comsof Ltd., Bombay, INDIA
3. Adobe Systems Inc., San Jose, CA
4. Airwallet, Redwood City, CA
5. Alerts.com, Raleigh, NC
6. Apar Infotech Ltd., Maidenhead, England, UNITED KINGDOM
7. AsiaInfo Holdings, Inc., Santa Clara, CA
8. Aspective Limited, Middlesex, England, UNITED KINGDOM
9. Axel Digital Group Oyj, Helsinki, FINLAND
10. Belgacom Mobile, Brussels, BELGIUM

Identity of parties dropped from venture:

JOINT VENTURE WORKSHEET—Continued

[Supplemental Filings Only]

11. Bosch, Stuttgart, GERMANY
12. Cambridge Technology Partners, Inc., Cambridge, MA
13. CellStar, Carrollton, TX
14. Centerpost Corp., Chicago, IL
15. Clarkston Potomac Group, Durham, NC
16. Condat A/S, Aalborg, DENMARK
17. CR2 Limited, Dublin, IRELAND
18. CYBIRD Co., Ltd., Tokyo, JAPAN
19. Dimon Software, Reykjavik, ICELAND
20. Documentum, Inc., Pleasanton, CA
21. eFrenzy, Inc., San Francisco, CA
22. Electronic Business Research Center, Hsinchu, TAIWAN
23. Enition Incorporated, Santa Clara, CA
24. Europay International, Waterloo, BELGIUM
25. EZOS, Braine-L' Alleud, BELGIUM
26. FDTI, Lisboa, PORTUGAL
27. Feelingk. Co., Ltd., Seoul, REPUBLIC OF KOREA
28. FolloWAP, Inc., New York, NY
29. Hello Asia, Redwood City, CA
30. HiddenMind Technology, Cary, NC
31. Hii Co., Ltd., Fu Shin Ten, Taipei County, TAIWAN
32. hotpalm.com, Atlanta, GA
33. iDini Corporation, San Jose, CA
34. Impronta Comunicaciones, S.L., Madrid, SPAIN
35. Informa Telecoms Group, London, England, UNITED KINGDOM
36. Informal Ltd, Leominster, Herefordshire, England, UNITED KINGDOM
37. Isovia, Inc., Boston, MA
38. Jumbuck Corporation Ltd., Melbourne, Victoria, AUSTRALIA
39. Kyocera Corporation, Kanagwa, JAPAN
40. m–IQ Ltd., London, England, UNITED KINGDOM
41. MediaSolv.com, Inc., San Jose, CA
42. Microband, Inc., New York, NY
43. MIRCOPOLE, Nanterre, FRANCE
44. Mobileaware Limited, Dublin, IRELAND
45. MobileQ, Inc., Toronto, Ontario, CANADA
46. Mobileum, Inc., Pleasanton, CA
47. nCipher, Inc., Woburn, MA
48. Net Manage, Inc., Cupertino, CA
49. ome internet communication services AG, Vienna, AUSTRIA
50. Onscan, Inc., Fremont, CA
51. OverNet Data, London, England, UNITED KINGDOM
52. Paradigm4, Inc., Bothell, WA
53. PhoneDo Networks Inc., Haifa Bay, ISRAEL
54. Red-M Limited, Wexham Slough Bucks, England, UNITED KINGDOM
55. ReefEdge, Inc., Fort Lee, NJ
56. ResQNet.com, Inc., New York, NY
57. SAS Institute Inc., Cary, NY
58. SeraNova, Inc., Rosemont, IL
59. Sierra Wireless, Richmond, British Columbia, CANADA
60. Societe Generale, Paris La Defense, FRANCE
61. Spyrus, Inc., Santa Clara, CA
62. SurfControl plc, Congleton, Cheshire, England, UNITED KINGDOM
63. SurfGold.com, Singapore, SINGAPORE
64. ThatWeb.com Private Limited, Singapore, SINGAPORE
65. UBICCO, Paris, FRANCE
66. Webtop DZ, Cambridge, England, UNITED KINGDOM
67. White.Cell, Inc., Rosh-Haayin, ISRAEL
68. XYPoint Corporation, Seattle, WA
69. YesMobile Holdings Co., Ltd., Hong Kong, HONG KONG-CHINA
70. ZION Limited, Tokyo, JAPAN

C. For ventures involving production: Identity and nationality of parties to joint production venture:

Identity	Nationality	Place of Incorporation	Location of Principal Executive Offices

[FR Doc. 00–33252 Filed 12–28–00; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2102–00]

Announcement of District Advisory Council on Immigration Matters 11th Meeting

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of meeting.

SUMMARY: The Immigration and Naturalization Service (Service) has established a District Advisory Council on Immigration Matters (DACOIM) to provide the New York District Director of the Service with recommendations on ways to improve the response and reaction to customers in the local jurisdiction and to develop new partnerships with local officials and community organizations to build and enhance a broader understanding of immigration policies and practices. The purpose of this notice is to announce the forthcoming meeting.

DATES: The 11th meeting of the DACOIM is scheduled for January 25, 2001, at 1 p.m.

ADDRESSES: The meeting will be held at the Jacob Javitts Federal Building, 26 Federal Plaza, Room 537, New York, New York 10278.

FOR FURTHER INFORMATION CONTACT: Christian A. Rodriguez, Designated Federal Officer, Immigration and Naturalization Service, 26 Federal Plaza, Room 14–100, New York, New York, 10278, telephone: (212) 264–0736.

SUPPLEMENTARY INFORMATION: Meetings will be held tri-annually on the fourth Thursday during the months of January, May, and September.

Summary of Agenda

The purpose of the meeting will be to conduct general business, review subcommittee reports, and facilitate public participation. The DACOIM will be chaired by Jack Byrnes, Section Chief, New York District, Immigration and Naturalization Service.

Public Participation

The DACOIM meeting is open to the public, but advance notice of attendance is requested to ensure adequate seating. Persons planning to attend should notify the contact person at least two (2) days prior to the meeting. Members of the public may submit written statements at any time before or after the meeting for consideration by the DACOIM. Written statements should be sent to Christian A. Rodriguez, Designated Federal Officer, Immigration and Naturalization Service, 26 Federal Plaza, Room 14–100, New York, New York, 10278, telephone: (212) 264–0736. Only written statements received by 5 p.m. on January 22, 2001, will be considered for presentation at the meeting. Minutes of the meeting will be available upon request.

Dated: December 21, 2000.

Mary Ann Wyrsch,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 00–33276 Filed 12–28–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

December 20, 2000.

The Department of Labor (DOL) has submitted the following public information requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 693–4127 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 693–4129 or by E-mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

OMB is particularly interested in comments that:

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

Agency: Department of Labor, Pension and Welfare Benefits Administration.

Title: Prohibited Transaction Exemption 80–83; Purchase of securities where issuer may use proceeds to reduce indebtedness to parties in interest.

Type of Review: Extension of a currently approved collection.

*OMB Number:*1210–0064.

Affected Public: Business or other for-profit, not-for-profit institutions, individuals or households.

Frequency of Response: On occasion.

Respondents: 25.

Responses: 25.

Total Estimated Burden Hours: 2.

Total Annualized Capital/Startup Costs: $0.

Total Annual Cost (Operating and Maintenance): $0.

Description: Section 408(a) of the ERISA authorizes the Secretary of Labor to grant a conditional or unconditional exemption of any fiduciary or class of fiduciaries or transactions, from all or part of the restrictions imposed by section 406 of ERISA. Prohibited transaction exemption 80–83, which was granted on November 4, 1980, allows employee benefit plans to purchase securities which may aid the issuer of the securities to reduce or retire indebtedness to a party in interest. By requiring that records pertaining to the exempted transaction are maintained for six years, this ICR insures that the exemption is not abused, the rights of the participants and beneficiaries are protected, and that compliance with the exemption's conditions is taking place.

Agency: Department of Labor, Pension and Welfare Benefits Administration.

Title: Prohibited Transaction Exemption 75–1; Broker-dealers, Reporting Dealers, Banks Engaging in Securities Transactions.

Type of Review: Extension of a currently approved collection.

OMB Number: 1210–0092.

Affected Public: Business or other for-profit, not-for-profit institutions, individuals or households.

Frequency of Response: On occasion.

Respondents: 42,000.

Responses: 42,000.

Total Estimated Burden Hours: 3,500.

Total Annualized Capital/Startup Costs: $0.

Total Annual Cost (Operating and Maintenance): $0.

Description: Section 408(a) of the ERISA authorizes the Secretary of Labor to grant a conditional or unconditional exemption of any fiduciary or class of fiduciaries or transactions, from all or part of the restrictions imposed by section 406 of ERISA. Prohibited Transaction Exemption (PTE) 75–1, granted on October 24, 1975, allows several types of security transactions between plans and broker-dealers, reporting dealers and banks. Transactions, which would otherwise be prohibited, include broker-dealers filing a plan's order from its personal inventory of stocks, plans purchasing securities from underwriting syndicates in which the plan fiduciary is a member, plans purchasing or selling securities to a market maker even if the market maker is a fiduciary, and broker-dealers extending credit to a plan in settling a security transaction. By requiring that records pertaining to the exempted transactions are maintained for six years, this ICR insures that the exemption is not abused, the rights of the participants and beneficiaries are protected, and that compliance with the exemption's conditions is taking place.

Agency: Department of Labor, Pension and Welfare Benefits Administration.

Title: Prohibited Transaction Exemption 88–59; Residential Mortgage Financing Arrangements Involving Employee Benefit Plans.

Type of Review: Extension of a currently approved collection.

OMB Number: 1210–0095.

Affected Public: Business or other for-profit, not-for-profit institutions, individuals or households.

Frequency of Response: On occasion.

Respondents: 500.

Responses: 2,500.

Total Estimated Burden Hours: 208.

Total Annualized Capital/Startup Costs: $0.

Total Annual Cost (Operating and Maintenance): $0.

Description: Section 408(a) of the ERISA authorizes the Secretary of Labor to grant a conditional or unconditional exemption of any fiduciary or class of fiduciaries or transactions, from all or part of the restrictions imposed by section 406 of ERISA. Prohibited transaction exemption 88–59, which was granted on June 30, 1988, allows employee benefit plans to participate in several different types of residential mortgage financing transactions. By requiring that records pertaining to the exempted transaction are maintained for the duration of a mortgage loan, this ICR insures that the exemption is not abused, the rights of the participants and beneficiaries are protected, and that compliance with the exemption's conditions is taking place.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–33345 Filed 12–28–00; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None.

Volume II

None.

Volume III

None.

Volume IV

None.

Volume V

None.

Volume VI

None.

Volume VII

None.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts.'' This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 21st day of December 2000.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 00–32975 Filed 12–28–00; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before February 12, 2001. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of the Army, Agency-wide (N1–AU–00–14, 44 items, 44 temporary items). Records relating to petroleum management, inventory management, and maintenance. Included are such records as petroleum supply reports, reports on the testing of petroleum products, property books, soldier issue files, requisitions, supply

codes, and maintenance requests. Also included are electronic copies of documents created using electronic mail and word processing. This schedule allows the agency to expedite disposal of these short-term facilitative records, which were previously approved for disposal. It also authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

2. Department of the Army, Agency-wide (N1–AU–00–33, 89 items, 89 temporary items). Records relating to management activities, including the management of installations, information management, information control, office management, the management of waterborne commerce, and public information programs. Included are records relating to such matters as agreements for support services, telephone services, printing operations, public inquiries, vessel operations, and waterway traffic through locks and canals. Also included are electronic copies of documents created using electronic mail and word processing. This schedule allows the agency to expedite disposal of these short-term facilitative records, which were previously approved for disposal. It also authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

3. Department of the Army, Agency-wide (N1–AU–00–34, 33 items, 33 temporary items). Records relating to standardization, communications-electronics, and facilities engineering. Included are records relating to such matters as agreements to test equipment, forecasts of needs for cable and similar equipment, estimates for projects prepared by facility engineers, the maintenance of heating and cooling systems, roof inspections, and land management at installations. Also included are electronic copies of documents created using electronic mail and word processing. This schedule allows the agency to expedite disposal of these short-term facilitative records, which were previously approved for disposal. It also authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

4. Department of the Army, Agency-wide (N1–AU–00–35, 106 items, 106 temporary items). Records relating to transportation and travel, including surface transportation, motor transportation, air transportation, courier service, and aviation. Included are records relating to such subjects as the issuance of passports to military and civilian personnel, the clearance of air shipments, the unloading of shipments, baggage inspections, vessel clearances, the allocation of motor vehicles, the cost of courier operations, local flight rules, flight plans, and airspace utilization. Also included are electronic copies of documents created using electronic mail and word processing. This schedule allows the agency to expedite disposal of these short-term facilitative records, which were previously approved for disposal. It also authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

5. Department of the Army, Agency-wide (N1–AU–00–36, 117 items, 117 temporary items). Records relating to logistics and supply matters. Records relate to such matters as product assurance and the cataloging, procurement, requisition, issue, storage, marking, packing, maintenance, utilization, and disposal of supplies and equipment. Also included are electronic copies of documents created using electronic mail and word processing. This schedule allows the agency to expedite disposal of these short-term facilitative records, which were previously approved for disposal. It also authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

6. Department of Commerce, National Oceanographic and Atmospheric Administration (N1–370–99–7, 6 items, 3 temporary items). Random aerial photographs taken by satellite, magnetic tapes dating from 1977–1989 that lack documentation or finding aids, and procedural guidance for measuring the upper atmosphere in airplanes. Records proposed for permanent retention include civil penalty case files, policy and planning files, and international cooperative research agreements.

7. Department of Defense, Office of the Inspector General (N1–509–00–5, 38 items, 35 temporary items). Records relating to intelligence oversight, including such records as inquiries, reference files, administrative procedures, files pertaining to the work of project teams, and electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of schedules for conducting intelligence reviews, records that relate to the policies and procedures governing intelligence reviews, and intelligence review case files.

8. Department of Defense, National Imagery and Mapping Agency (N1–537–01–2, 59 items, 59 temporary items). Paper and electronic records relating to facilities, including electronic copies of documents created using electronic mail and word processing. Records relate to such matters as design and construction activities, maintenance, the operation of utilities, engineering services and studies, and the acquisition, utilization, management, and disposal of real and installed property.

9. Department of Health and Human Services, Office of the Secretary (N1–468–01–1, 3 items, 3 temporary items). International Merchant Purchase Authorization Card records. Files include all required forms, charge and credit slips, cash register receipts, statements signed by the cardholder and vendor, and other transaction documentation. Also included are electronic copies of documents created using electronic mail and word processing.

10. Department of Health and Human Services, Agency for Healthcare Research and Quality (N1–510–01–1, 3 items, 3 temporary items). International Merchant Purchase Authorization Card records. Files include all required forms, charge and credit slips, cash register receipts, statements signed by the cardholder and vendor, and other transaction documentation. Also included are electronic copies of documents created using electronic mail and word processing.

11. Department of the Interior, National Park Service (N1–79–97–1, 4 items, 3 temporary items). Planning and design case files relating to construction and maintenance projects that lack historical significance and electronic copies of documents created using electronic mail and word processing systems that relate to projects. Recordkeeping copies of selected case files are proposed for permanent retention, including files that pertain to projects that have national or regional significance, generate significant impact on tourism or facilities, improve the preservation of historic or natural resources, or document major additions to existing structures.

12. Department of Justice, Federal Bureau of Investigation (N1–65–00–3, 2 items, 1 temporary item). Field office copies of communications of interest to all field offices produced under the Bureau-wide Information Program from 1973 to 1989. The record set of these files maintained at agency headquarters is proposed for permanent retention.

13. Department of Justice, Federal Bureau of Investigation (N1–65–00–7, 119 items, 32 temporary items). Headquarters and field office files closed prior to 1995 that pertain to investigations in such areas as foreign counterintelligence, equal employment opportunity, organized crime, civil rights, and economic espionage. Selected files for each type of

investigation are proposed for permanent retention, including policy files, files on informants, statistical samples, and case files containing more than a specified number of documents or sections.

14. Department of the Treasury, Bureau of the Public Debt (N1–53–01–3, 3 items, 3 temporary items). Records relating to the sale of savings bonds from Federal Reserve Bank savings bond processing sites. Included are an electronic database and hardcopy and electronic versions of inputs.

15. Department of Veterans Affairs, Veterans Health Administration (N1–15–00–4, 8 items, 8 temporary items). Records relating to the Disaster Emergency Medical Personnel System, an electronic system which contains personal data on individual employees who volunteer to assist in national emergencies caused by catastrophic events. Records include paper and microfilm input documents, electronic files, backup files, reports, codebooks, and data system specifications. Also included are electronic copies of documents created using electronic mail and word processing.

16. Environmental Protection Agency, Office of Pollution, Prevention, and Toxics (N1–412–96–3, 15 items, 13 temporary items). Software, input documents, and electronic data with supporting documentation relating to the manufacture, production, and distribution of pesticides and other chemicals. Proposed for permanent retention are electronic databases, with supporting documentation, which report, for a comprehensive list of chemicals, detailed company and plant site information, along with specific volumes produced and distributed.

17. Federal Labor Relations Authority, Office of the Inspector General (N1–480–01–1, 27 items, 23 temporary items). Working papers pertaining to semi-annual reports, general subject correspondence, and a case tracking system as well as records relating to such matters as investigations, audits, and internal reviews. Also included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of selected investigative case files, final audit and internal review reports, and semi-annual reports to Congress are proposed for permanent retention.

18. Board of Governors of the Federal Reserve System, Office of the Inspector General (N1–82–00–1, 5 items, and 5 temporary items). Investigative case files, files not related to specific investigations, audit work papers, and litigation case files. Also included are electronic copies of records created using electronic mail and word processing.

19. National Aeronautics and Space Administration, Headquarters (N1–255–00–6, 8 items, 6 temporary items). Congressional files including correspondence with Members of Congress, publication requests from Members of Congress, and congressional briefings relating to agency programs and projects. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of correspondence to and from congressional committees and reports to Congress.

20. National Archives and Records Administration, Office of Records Services (N2–77–01–1, 1 item, 1 temporary item). Copies of satellite imagery files in the custody of the National Archives that were accumulated by the Army Corps of Engineers between 1970 and 1978. Records consist of black and white satellite film and such related textual materials as indexes, camera specifications, and catalogs. Recordkeeping copies of these files held by the U.S. Geological Survey were previously approved for permanent retention.

21. National Drought Policy Commission, Agency-wide (N1–220–00–7, 10 items, 4 temporary items). Reference materials, staff files, and electronic copies of records created using electronic mail and word processing. Recordkeeping copies of meeting and hearing files, briefing books, correspondence files, subject files, working group/subcommittee files, and publications are proposed for permanent retention.

22. Social Security Administration, Agency-wide (N1–047–00–3, 6 items, 6 temporary items). Records relating to claims filed by individuals suspected of intentionally giving false or incomplete information in applying for benefits, which could result in the agency penalizing the individual by omitting valid payments for a given period of time. Included are case files, electronic copies of documents created using electronic mail and word processing, an electronic database and copies maintained as system backup, supporting documentation, and outputs.

23. Tennessee Valley Authority, Synterprise Group (N1–142–99–12, 4 items, 3 temporary items). Administrative forms, correspondence, memoranda, and related records used in the process of developing projects to generate work for outsourced employees. Also included are electronic copies of documents created using electronic mail and word processing. Substantive program records are proposed for permanent retention.

24. Tennessee Valley Authority, Customer Services and Marketing (N1–142–99–13, 4 items, 3 temporary items). Forms, correspondence, memoranda, and related records pertaining to such subjects as automatic data processing, budget and finance, equipment and supplies, health and safety matters, personnel management, and procurement. Also included are electronic copies of documents created using electronic mail and word processing. Substantive program records are proposed for permanent retention.

Dated: December 20, 2000.

Howard P. Lowell,

Acting Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 00–33253 Filed 12–28–00; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Senior Executive Service (SES) Performance Review Board; Members

AGENCY: National Archives and Records Administration.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the National Archives and Records Administration (NARA) Performance Review Board.

EFFECTIVE DATE: This appointment is effective on December 29, 2000.

FOR FURTHER INFORMATION CONTACT: Steven G. Rappold, Human Resources Services Division (NHH), National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001, (301) 713–6760.

SUPPLEMENTARY INFORMATION: Section 4314(c) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES Performance Review Boards. The Board shall review the initial appraisal of a senior executive's performance by the supervisor and recommendations regarding the recertification of senior executives, and recommend final action to the appointing authority regarding matters related to senior executive performance.

The members of the Performance Review Board for the National Archives and Records Administration are: Lewis J. Bellardo, Deputy Archivist of the United States and Chief of Staff, Adrienne C. Thomas, Assistant

Archivist for Administrative Services, and Richard L. Claypoole, Assistant Archivist for Regional Records Services. These appointments supersede all previous appointments.

Dated: December 21, 2000.

John W. Carlin,

Archivist of the United States.

[FR Doc. 00–33254 Filed 12–28–00; 8:45 am]

BILLING CODE 7515–01–P

NORTHEAST DAIRY COMPACT COMMISSION

Notice of Meeting

AGENCY: Northeast Dairy Compact Commission.

ACTION: Notice of meeting.

SUMMARY: The Compact Commission will hold its regular monthly meeting to consider matters relating to administration and enforcement of the price regulation, including the reports and recommendations of the Commission's standing Committees.

DATES: The meeting will begin at 10:00 a.m. on Wednesday, January 3, 2001.

ADDRESSES: The meeting will be held at the Centennial Inn, Armenia White Room, 96 Pleasant Street, Concord, New Hampshire.

FOR FURTHER INFORMATION CONTACT: Daniel Smith, Executive Director, Northeast Dairy Compact Commission, 64 Main Street, Room 21, Montpelier, VT 05602. Telephone (802) 229–1941.

Authority: 7 U.S.C. 7256.

Dated: December 20, 2000.

Daniel Smith,

Executive Director.

[FR Doc. 00–33229 Filed 12–28–00; 8:45 am]

BILLING CODE 1650–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–219]

AmerGen Energy Company, LLC (Oyster Creek Nuclear Generating Station); Order Approving Application Regarding Transfer of Interest in Amergen Energy Company, LLC

I

AmerGen Energy Company, LLC (AmerGen, the licensee) is the holder of Facility Operating License No. DPR–16, which authorizes possession, use, and operation of Oyster Creek Nuclear Generating Station (the facility). The facility is located at the licensee's site in Ocean County, New Jersey. AmerGen is owned by PECO Energy Company (PECO) and British Energy, Inc., each holding a 50 percent interest. British Energy, Inc. is wholly owned by British Energy, plc.

II

Under cover of a letter dated February 28, 2000, AmerGen submitted an application requesting approval of the transfer of control of the facility operating license that would occur upon a new generating company, Exelon Generation Company, LLC (EGC), acquiring the interest in AmerGen now held by PECO. EGC is to be formed as an indirect subsidiary of a new holding company, Exelon Corporation (Exelon), which was created in connection with the October 20, 2000, merger of Unicom Corporation (Unicom), the parent of Commonwealth Edison Company, and PECO. EGC will be a subsidiary of Exelon Ventures Company, which in turn will be a subsidiary of Exelon. Supplemental information was provided by submittals dated May 12, May 24, June 1 and June 28, 2000. Hereinafter, the February 28, 2000, application and supplemental information will be referred to collectively as the ''application.'' At the time of the February 28, 2000, application, GPU Nuclear, Inc. (GPUN) was the licensed operator for Oyster Creek Nuclear Generating Station and Jersey Central Power and Light Company was the owner of the facility. On August 8, 2000, the license and ownership of Oyster Creek was transferred to AmerGen.

Approval of the transfer of control of the facility operating license was requested by AmerGen pursuant to 10 CFR 50.80. Notice of the request and an opportunity for a hearing was published in the **Federal Register** on July 27, 2000 (65 FR 46182). The Commission received no comments or requests for hearing pursuant to such notice.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application by AmerGen, and other information before the Commission, and relying upon the representation and agreements contained in the application, the NRC staff has determined that the transfer of PECO's interest in AmerGen to EGC will not affect the qualifications of AmerGen to be the holder of the license, that AmerGen will remain qualified to hold the license, and that the transfer of control of the license, to the extent effected by the above transaction, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below.

The foregoing findings are supported by a safety evaluation dated December 21, 2000.

III

Accordingly, pursuant to Sections 161b, 161i and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §§ 2201(b), 2201(i) and 2234; and 10 CFR 50.80, *it is hereby ordered* that the transfer of control of the license as described herein is approved, subject to the following condition:

Should the transfer of control of the license not be completed by December 31, 2001, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may in writing be extended.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated February 28, 2000, and supplemental submittals dated May 12, May 24, June 1 and June 28, 2000, and the safety evaluation dated December 21, 2000, which are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site *(http://www.nrc.gov).*

Dated at Rockville, Maryland this 21st day of December 2000.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 00–33348 Filed 12–28–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–461]

AmerGen Energy Company, LLC (Clinton Power Station); Order Approving Application Regarding Transfer of Interest in AmerGen Energy Company, LLC, and Conforming Amendment

I

AmerGen Energy Company, LLC (AmerGen, the licensee) is the holder of Facility Operating License No. NPF–62, which authorizes possession, use, and operation of Clinton Power Station (the facility). The facility is located at the licensee's site in DeWitt County,

Illinois. AmerGen is owned by PECO Energy Company (PECO) and British Energy, Inc., each holding a 50 percent interest. British Energy, Inc., is wholly owned by British Energy, plc.

II

Under cover of a letter dated February 28, 2000, AmerGen submitted an application requesting approval of the transfer of control of the facility operating license that would occur upon a new generating company, Exelon Generation Company, LLC (EGC), acquiring the interest in AmerGen now held by PECO. EGC is to be formed as an indirect subsidiary of a new holding company, Exelon Corporation (Exelon), which was created in connection with the October 20, 2000, merger of Unicom Corporation (Unicom), the parent of Commonwealth Edison Company, and PECO. EGC will be a subsidiary of Exelon Ventures Company, which in turn will be a subsidiary of Exelon. AmerGen also requested approval of a conforming amendment to reflect the transfer. Supplemental information was provided by submittals dated May 12, May 24, June 1 and June 28, 2000. Hereinafter, the February 28, 2000, application and supplemental information will be referred to collectively as the ''application.'' The conforming license amendment would add language to two license conditions that were imposed in connection with the initial transfer of the license to AmerGen. The first condition, which requires the submission of certain Securities and Exchange Commission reports pertaining to PECO stock, would be expanded to reflect and account for EGC (and further, any direct or indirect successor to PECO's interest) acquiring PECO's interest in AmerGen, such that meaningful reports would continue to be submitted. The second condition, which pertains to the contingency fund commitment now provided to AmerGen by PECO and British Energy, plc, would be expanded to reflect and account for EGC assuming PECO's share of the commitment, which will occur in connection with the subject transfer, and further any successor to any share of the commitment for which either PECO or British Energy, plc, are now responsible.

Approval of the transfer of control of the facility operating license and conforming license amendment was requested by AmerGen pursuant to 10 CFR 50.80 and 10 CFR 50.90. Notice of the request and an opportunity for a hearing was published in the **Federal Register** on April 11, 2000 (65 FR 19396). The Commission received no comments or requests for hearing pursuant to such notice.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application by AmerGen, and other information before the Commission, and relying upon the representation and agreements contained in the application, the NRC staff has determined that the transfer of PECO's interest in AmerGen to EGC will not affect the qualifications of AmerGen to be the holder of the license, that AmerGen will remain qualified to hold the license, and that the transfer of control of the license, to the extent effected by the above transaction, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations set forth in 10 CFR Chapter I; the facility will operate in conformity with the application, the provisions of the Act and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendment can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendment will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed amendment will be in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.

The foregoing findings are supported by a safety evaluation dated December 21, 2000.

III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *It Is Hereby Ordered* that the transfer of control of the license as described herein is approved, subject to the following condition:

AmerGen shall inform the Director of the Office of Nuclear Reactor Regulation, in writing, of the date of the closing of the subject transaction no later than 7 business days prior to the date of the closing. Should the transfer of control of the license not be completed by December 31, 2001, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may in writing be extended.

It is Further Ordered that, consistent with 10 CFR 2.1315(b), a license amendment that makes changes, as indicated in Enclosure 4 to the cover letter forwarding this Order, to conform the license to reflect the subject transfer of control of the license is approved. The amendment shall be issued and made effective at the time the proposed transfer of control of the license is completed.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated February 28, 2000, and supplemental submittals dated May 12, May 24, June 1 and June 28, 2000, and the safety evaluation dated December 21, 2000, which are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland this 21st day of December 2000.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 00–33349 Filed 12–28–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–289]

AmerGen Energy Company, LLC (Three Mile Island Nuclear Station, Unit 1); Order Approving Application Regarding Transfer of Interest in AmerGen Energy Company, LLC and Conforming Amendment

I

AmerGen Energy Company, LLC (AmerGen, the licensee) is the holder of Facility Operating License No. DPR–50, which authorizes possession, use, and operation of Three Mile Island Nuclear Station, Unit 1 (the facility). The facility is located at the licensee's site in Dauphin County, Pennsylvania. AmerGen is owned by PECO Energy Company (PECO) and British Energy, Inc., each holding a 50 percent interest.

British Energy, Inc., is wholly owned by British Energy, plc.

II

Under cover of a letter dated February 28, 2000, AmerGen submitted an application requesting approval of the transfer of control of the facility operating license that would occur upon a new generating company, Exelon Generation Company, LLC (EGC), acquiring the interest in AmerGen now held by PECO. EGC is to be formed as an indirect subsidiary of a new holding company, Exelon Corporation (Exelon), which was created in connection with the October 20, 2000, merger of Unicom Corporation (Unicom), the parent of Commonwealth Edison Company, and PECO. EGC will be a subsidiary of Exelon Ventures Company, which in turn will be a subsidiary of Exelon. AmerGen also requested approval of a conforming amendment to reflect the transfer. Supplemental information was provided by submittals dated May 12, May 24, June 1 and June 28, 2000. Hereinafter, the February 28, 2000, application and supplemental information will be referred to collectively as the ''application.'' The conforming license amendment would add language to two license conditions that were imposed in connection with the initial transfer of the license to AmerGen. The first condition, which requires the submission of certain Securities and Exchange Commission reports pertaining to PECO stock, would be expanded to reflect and account for EGC (and further, any direct or indirect successor to PECO's interest) acquiring PECO's interest in AmerGen, such that meaningful reports would continue to be submitted. The second condition, which pertains to the contingency fund commitment now provided to AmerGen by PECO and British Energy, plc, would be expanded to reflect and account for EGC assuming PECO's share of the commitment, which will occur in connection with the subject transfer, and further any successor to any share of the commitment for which either PECO or British Energy, plc, are now responsible.

Approval of the transfer of control of the facility operating license and conforming license amendment was requested by AmerGen pursuant to 10 CFR 50.80 and 10 CFR 50.90. Notice of the request and an opportunity for a hearing was published in the **Federal Register** on April 10, 2000 (65 FR 19029). The Commission received no comments or requests for hearing pursuant to such notice.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application by AmerGen, and other information before the Commission, and relying upon the representation and agreements contained in the application, the NRC staff has determined that the transfer of PECO's interest in AmerGen to EGC will not affect the qualifications of AmerGen to be the holder of the license, that AmerGen will remain qualified to hold the license, and that the transfer of control of the license, to the extent effected by the above transaction, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations set forth in 10 CFR Chapter I; the facility will operate in conformity with the application, the provisions the Act and the rules and regulation of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendment can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendment will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed amendment will be in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.

The foregoing findings are supported by a safety evaluation dated December 21, 2000.

III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *it is hereby ordered* that the transfer of control of the license as described herein is approved, subject to the following condition:

AmerGen shall inform the Director of the Office of Nuclear Reactor Regulation, in writing, of the date of the closing of the subject transaction no later than 7 business days prior to the date of the closing. Should the transfer of control of the license not be completed by December 31, 2001, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may in writing be extended.

It is further ordered that, consistent with 10 CFR 2.1315(b), a license amendment that makes changes, as indicated in Enclosure 5 to the cover letter forwarding this Order, to conform the license to reflect the subject transfer of control of the license is approved. The amendment shall be issued and made effective at the time the proposed transfer of control of the license is completed.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated February 28, 2000, and supplemental submittals dated May 12, May 24, June 1 and June 28, 2000, and the safety evaluation dated December 21, 2000, which are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland this 21st day of December 2000.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 00–33347 Filed 12–28–00; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Information Collection; OMB Approval; Payment of Premiums

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of OMB approval under the Paperwork Reduction Act.

SUMMARY: The Office of Management and Budget (''OMB'') has extended its approval, under the Paperwork Reduction Act, of a collection of information (with revisions) under the Pension Benefit Guaranty Corporation's regulation on Payment of Premiums.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY and TDD, call 800–877–8339 and request connection to 202–326–4024.)

SUPPLEMENTARY INFORMATION: On October 23, 2000, the Pension Benefit Guaranty Corporation (''PBGC'') published in the **Federal Register** (at 65 FR 63266) a notice of its request to the Office of Management and Budget (''OMB'') for extension of approval, under the Paperwork Reduction Act, of the collection of information under the PBGC's regulation on Payment of Premiums (29 CFR Part 4007). On December 1, 2000, the PBGC published in the **Federal Register** (at 65 FR 75160) a final rule that affected the collection of information. In the same day's **Federal Register**, the PBGC published (at 65 FR 75319) a notice informing the public that the PBGC was supplementing its pending paperwork request by submitting to OMB for review and approval a revised collection of information, including revised premium forms and instructions reflecting amendments made by the final rule.

OMB has approved the PBGC's request, as so supplemented, for three years (until December 31, 2003). The control number assigned to this collection of information by OMB is 1212–0009. 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.

Issued in Washington, DC, this 21st day of December, 2000.

Stuart A. Sirkin,

Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.

[FR Doc. 00–33311 Filed 12–28–00; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24795; 813–214]

BCP III Affiliates Fund Limited Partnership and Baird Financial Corporation; Notice of Application

December 21, 2000.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for an order under sections 6(b) and 6(e) of the Investment Company Act of 1940 (the ''ACT'') exempting the applications from all provisions of the Act, except section 9, section 17 (other than certain provisions of paragraphs (a), (d), (e), (f), (g), and (j)), section 30 (except for certain provisions of paragraphs (a), (b), (e), and (h)), and sections 36 through 53, and the rules of regulations under the Act.

Summary of Application: Applicants request an order to exempt certain limited partnerships or other investment vehicles formed for the benefit of key employees of Baird Financial Corporation (''BFC'') and its affiliates from certain provisions of the Act. Each partnership will be an employees' securities company within the meaning of section 2(a)(13) of the Act.

Applicants: BCP III Affiliates Fund Limited Partnership (''Initial Partnership'') and BFC, on behalf of other partnerships or other investment vehicles that may be formed in the future (together, with the Initial Partnership, the ''Partnerships'').

Filing Dates: The application was filed on September 30, 1999, and amended on June 12, 2000 and December 14, 2000.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 16, 2001, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, 777 East Wisconsin Avenue, Milwaukee, Wisconsin, 53202.

FOR FURTHER INFORMATION CONTACT: Paula L. Kashtan, Senior Counsel, at (202) 942–0615, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. BFC, a Wisconsin corporation, is a diversified financial services company which, directly or through its affiliates, engages in investment banking, securities and asset management. BFC and its affiliates as defined in rule 12b-2 of the Securities Exchange Act of 1934 (the ''Exchange Act'') are referred to in this notice collectively as the ''BFC Group'' and individually as a ''BFC entity.''

2. Applicants propose to offer various investment programs for the benefit of certain key employees of BFC Group. The programs may be structured as different Partnerships or as separate plans within the same Partnership. Each Partnership will be a limited partnership, limited liability company, or other entity formed as an ''employees' securities company'' within the meaning of section 2(a)(13) of the Act, and will operate as a closed-end, non-diversified management investment company. The Partnerships will be established primarily for the benefit of highly compensated employees of BFC Group as part of a program designed to create capital building opportunities that are competitive with those at other investment banking firms and to facilitate the recruitment of high caliber professionals. Participation in a Partnership is voluntary.

3. Baird Capital Partners Management Company III, L.L.C., a Delaware limited liability company, will act as the general partner of the Initial Partnership (together with any affiliate that controls, is controlled by or is under common control with BFC and acts as a Partnership's general partner, the ''General Partner''). The General Partner will be registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''). The General Partner will manage, operate and control each of the Parnerships. The General Partner will not charge the Initial Partnership a management fee, but it will receive a carried interest.[1] The General Partner may charge subsequent Partnerships a management fee and/or receive a carried interest.

4. Limited partner interests in the Partnerships (''Interests'') will be offered without registration in reliance on section 4(2) of the Securities Act of 1933 (''Securities Act''), or Regulation D under the Securities Act, and will be sold only to ''Eligible Employees'' and other ''Qualified Participants,'' in each case as defined below (collectively, ''Participants''). Prior to offering Interests to an Eligible Employee, the General Partner must reasonably believe that such individual will be a sophisticated investor capable of understanding and evaluating the risks

[1] Any carried interest will be charged only to the extent permitted by section 205(a) of the Advisers Act and rule 205–3 under the Advisers Act.

of participating in the Partnership without the benefit of regulatory safeguards. An Eligible Employee is an individual who is a current or former employee, officer, or director of BFC Group and, except for a maximum of 35 individuals who meet the definition of Knowledgeable Employee in rule 3c-5(a)(4) under the Act with respect to a Partnership as if it were a Covered Company within the meaning of the rule or certain professionals who meet the sophistication and salary requirements described below (''BFC Investors''), meets the standards of an accredited investor under rule 501(a)(6) of Regulation D under the Securities Act. Eligible Employees will be experienced professionals in the investment banking, securities, and investment management businesses, or in related administrative, financial, accounting, legal, or operational activities.

5. Each BFC Investor, who also will qualify as an Eligible Employee, will: (a) Have a graduate degree in business, law or accounting; (b) have a minimum of five years of consulting, investment banking or similar business experience; and (c) have had reportable income from all sources (including all profit shares or bonuses) in the calendar year immediately preceding the individual's commitment in excess of $120,000 and have a reasonable expectation of income from all sources of at least $150,000 in each year in which the person invests in a Partnership. In addition, an Eligible Employee in this category will not be permitted to invest in any year more than 10% of his or her aggregate income from all sources for the immediately preceding year in the Partnership and in all other Partnerships in which he or she has previously invested.

6. A Qualified Participant: (a) Is an Eligible Family Member or Qualified Entity (in each case as defined below) of an Eligible Employee; and (b) if the individual or entity is purchasing an Interest from a Partner [2] or directly from the Partnership, comes within one of the categories of an ''accredited investor'' under rule 501(a) of Regulation D. An ''Eligible Family Member'' is a spouse, parent, child, spouse of child, brother, sister, or grandchild of an Eligible Employee. A ''Qualified Entity'' is: (a) A trust of which the trustee, grantor, and/or beneficiary is an Eligible Employee; (b) a partnership, corporation, or other entity controlled by an Eligible Employee; [3] or (c) a trust or other entity established solely for the benefit of eligible Family Members of an Eligible Employee.

7. The terms of a Partnership will be fully disclosed to each Eligible Employee and, if applicable, to a Qualified Participant of the Eligible Employee, at the time the Eligible Employee is invited to participate in the Partnership. Each Partnership will send audited financial statements to each Participant within 120 days or as soon as practicable after the end of its fiscal year. In addition, each Participant will receive a copy of Schedule K–1 showing the Participant's share of income, credits, reductions, and other tax items.

8. Interests in a Partnership will be non-transferable except with the prior written consent of the General Partner. No person will be admitted into a Partnership unless the person is an Eligible Employee, a Qualified Participant of an Eligible Employee, or a BFC entity. No sales load will be charged in connection with the sale of Interests.

9. An Eligible Employee's Interest may be subject to repurchase upon termination of such employee from BFC Group. Upon repurchase, the General Partner will pay to the Eligible Employee at least the lesser of (a) the amount actually paid by the Eligible Employee to acquire the Interest (less prior distributions, plus interest and dividends), and (b) the fair market value of the Interest as determined at the time of termination by the General Partner. The terms of any repurchase provisions will apply equally to any Qualified Participant of an eligible employee.

10. Subject to the terms of the applicable limited partnership agreement, a Partnership will be permitted to enter into transactions involving: (a) A BFC entity; (b) a portfolio company; (c) any Partner or any person or entity affiliated with a Partner; (d) an investment fund or separate account that is organized for the benefit of investors who are not affiliated with and over which a BFC entity will exercise investment discretion (a ''Third Party Fund''); or (e) any partner or other investor of a Third Party Fund that is not affiliated with BFC Group (a ''Third Party Investor''). These transaction may include a Partnership's purchase or sale of an investment or an interest from or to any BFC entity or Third Party Fund, acting as principal. Prior to entering into these transactions, the General Partner must determine that the terms are fair to the Participants.

11. No Partnership will acquire any security issued by a registered investment company if, immediately after such acquisition, the Partnership would own more than 3% of the outstanding voting stock of the registered investment company.

12. A BFC entity (including the General Partner), acting as agent or broker, may receive placement fees, advisory fees, or other compensation from a Partnership in connection with a Partnership's purchase or sale of securities, provided the placement fees, advisory fees, or other compensation are ''usual and customary,'' subject to the requirements described below. A BFC entity, including the General Partner, also may be compensated for services to entities in which the Partnerships invest and to entities that are competitors of these entities.

Applicants' Legal Analysis

1. Section 6(b) of the Act provides, in part, that the SEC will exempt employees' securities companies from the provisions of the Act to the extent that the exemption is consistent with the protection of investors. Section 6(b) provides that the SEC will consider, in determining the provisions of the Act from which the company should be exempt, the company's form of organization and capital structure, the persons owning and controlling its securities, the price of the company's securities and the amount of any sales load, how the company's funds are invested, and the relationship between the company and the issuers of the securities in which it invests. Section 2(a)(13) defines an employees' security company, in relevant part, as any investment company all of whose securities are beneficially owned: (a) By current or former employees, or person on retainer, of one or more affiliated employers; (b) by immediate family members of such persons; or (c) by such employer or employers together with any of the persons in (a) or (b).

2. Section 7 of the Act generally prohibits an investment company that is not registered under section 8 of the Act from selling or redeeming its securities. Section 6(e) provides that, in connection with any order exempting an investment company from any provision of section 7, certain provisions of the Act, as specified by the SEC, will be applicable to the company and other persons dealing with the company as though the company were registered under the Act.

[2] ''Partner'' means any partner of a Partnership, including the General Partner.

[3] The inclusion of partnerships, corporations, or other entities controlled by an Eligible Employee in the definition of ''Qualified Entity'' is intended to enable Eligible Employees to make investments in the Partnerships through personal investment vehicles for the purpose of personal and family investment and estate planning objectives. Eligible Employees will exercise investment discretion or control over these investment vehicles, thereby creating a close nexus between BFC Group and these investment vehicles.

Applicants request an order under sections 6(b) and 6(e) of the Act for an exemption from all provisions of the Act except section 9, section 17 (other than certain provisions of paragraphs (a), (d), (e), (f), (g) and (j)), section 30 (other than certain provisions of paragraphs (a), (b), (e), and (h)), sections 36 through 53, and the rules and regulations thereunder.

3. Section 17(a) generally prohibits any affiliated person of a registered investment company, or any affiliated person of an affiliated person, acting as principal, from knowingly selling or purchasing any security or other property to or from the company. Applicants request an exemption from section 17(a) to: (a) Permit a BFC entity or a Third Party Fund, acting as principal, to engage in any transaction directly or indirectly with any Partnership or any company controlled by the Partnership; (b) permit any Partnership to invest in or engage in any transaction with any entity, acting as principal, (i) in which the Partnership, any company controlled by the Partnership, or any BFC entity or Third Party Fund has invested or will invest, or (ii) with which the Partnership, any company controlled by the Partnership, or any BFC entity or Third Party Fund is or will become otherwise affiliated; and (c) permit any Third Party Investor, acting as principal, to engage in any transaction directly or indirectly with any Partnership or any company controlled by the Partnership.

4. Applicants state that an exemption from section 17(a) is consistent with the protection of investors and is necessary to promote the purpose of the Partnerships. Applicants state that the Participants in each Partnership will be fully informed of the extent of the Partnership's dealings with BFC Group. Applicants also state that, as professionals employed in the investment banking and financial services businesses, Participants will be able to understand and evaluate the attendant risks. Applicants assert that the community of interest among the Participants and BFC Group will provide the best protection against any risk of abuse.

5. Section 17(d) of the Act and rule 17d–1 prohibit any affiliated person or principal underwriter of a registered investment company, or any affiliated person of such person or principal underwriter, acting as principal, from participating in any joint arrangement with the company unless authorized by the SEC. Applicants request relief to permit affiliated persons of each Partnership, or affiliated persons of any of these persons, to participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement or profit-sharing plan in which the Partnership or a company controlled by the Partnership is a participant.

6. Applicants submit that it is likely that suitable investments will be brought to the attention of a Partnership because of its affiliation with BFC Group, or BFC Group's large capital resources, and its experience in structuring complex transactions. Applicants also submit that the types of investment opportunities considered by a Partnership often require each investor to make funds available in an amount that may be substantially greater than what a Partnership may make available on its own. Applicants contend that, as a result, the only way in which a Partnership may be able to participate in these opportunities may be to co-invest with other persons, including its affiliates. Applicants note that each Partnership will be primarily organized for the benefit of employee Participants as an incentive for them to remain with BFC Group and for the generation and maintenance of goodwill. Applicants believe that, if co-investments with BFC Group are prohibited, the appeal of the Partnerships would be significantly diminished. Applicants assert that Eligible Employees wish to participate in co-investment opportunities because they believe that: (a) The resources of BFC Group enable it to analyze investment opportunities to an extent that individual employees would not be able to duplicate; (b) investments made by BFC Group will not be generally available to investors even of the financial status of the Eligible Employees; and (c) Eligible Employees will be able to pool their investment resources, thus achieving greater diversification of their individual investment portfolios.

7. Applicants assert that the flexibility to structure co-investments and joint investments will not involve abuses of the type section 17(d) and rule 17d–1 were designed to prevent. Applicants state that the concern that permitting co-investments by BFC Group and a Partnership might lead to less advantageous treatment of the Partnership will be mitigated by the fact that BFC Group will be acutely concerned with its relationship with the personnel who invest in such Partnership and the fact that senior officers and directors of BFC Group entities will be investing in such Partnership. Finally, applicants contend that the possibility that a Partnership may be disadvantaged by the participation of an affiliate in a transaction will be minimized by compliance with the lockstep procedures described in condition 3 below. Applicants believe that this condition will ensure that a Partnership will co-invest side-by-side and pro rata with, and on at least as favorable terms as, a BFC entity.

8. Co-investments with Third Party Funds, or by a BFC entity pursuant to a contractual obligation to a Third Party Fund, will not be subject to condition 3. Applicants note that it is common for a Third Party Fund to require that BFC Group invest its own capital in Third Party Fund investments, and that the BFC Group investments be subject to substantially the same terms as those applicable to the Third Party Fund. Applicants believe it is important that the interests of the Third Party Fund take priority over the interests of the Partnerships, and that the Third Party Fund not be burdened or otherwise affected by activities of the Partnerships. In addition, applicants assert that the relationship of a Partnership to a Third Party Fund is fundamentally different from a Partnership's relationship to BFC Group. Applicants contend that the focus of, and the rationale for, the protections contained in the requested relief are to protect the Partnerships from any overreaching by BFC Group in the employer/employee context, whereas the same concerns are not present with respect to the Partnerships vis-a-vis a Third Party Fund.

9. Section 17(e) and rule 17e–1 limit the compensation an affiliated person may receive when acting as agent or broker for a registered investment company. Applicants request an exemption from section 17(e) to permit a BFC entity (including the General Partner), that acts as an agent or broker, to receive placement fees, advisory fees, or other compensation from a Partnership in connection with the purchase or sale by the Partnership of securities, provided that the fees or other compensation is deemed ''usual and customary.'' Applicants state that for the purposes of the application, fees or other compensation that is charged or received by a BFC entity will be deemed ''usual and customary'' only if: (a) The Partnership is purchasing or selling securities with other unaffiliated third parties, including a Third Party Fund; (b) the fees or compensation being charged to the Partnership are also being charged to the unaffiliated third parties, including Third Party Funds; and (c) the amount of securities being purchased or sold by the Partnership does not exceed 50% of the total amount of securities being purchased or sold by the Partnership and the unaffiliated third parties, including Third Party Funds.

Applicants assert that, because BFC Group does not wish it to appear as if it is favoring the Partnerships, compliance with section 17(e) would prevent a Partnership from participating in transactions where the Partnership is being charged lower fees than unaffiliated third parties. Applicants assert that the fees of other compensation paid by a Partnership to a BFC entity will be the same as those negotiated at arm's length with unaffiliated third parties.

10. Rule 17e–1(b) requires that a majority of directors of the General Partner who are not ''interested persons'' (as defined in section 2(a)(19) of the Act) take actions and make approvals regarding commissions, fees, or other remuneration. Applicants request an exemption from rule 17e–1 to the extent necessary to permit each Partnership to comply with the rule without having a majority of the managers of the General Partner who are not interested persons take actions and make determinations as set forth in the rule. Applicants state that because all the managers of the General Partner will be affiliated persons, without the relief requested, a Partnership could not comply with rule 17e–1. Applicants state that each Partnership will comply with rule 17e–1 by having a majority of the managers of the General Partner take actions and make approvals as are set forth in rule 17e–1. Applicants state that each Partnership will comply with all other requirements of rule 17e–1 for the transactions described above in the discussion of section 17(e).

11. Section 17(f) designates the entities that may act as investment company custodians, and rule 17f–1 imposes certain requirements when the custodian is a member of a national securities exchange. Applicants request an exemption from section 17(f) and rule 17f–1 to permit a BFC entity to act as custodian of Partnership assets without a written contract, as would be required by rule 17f–1(a). Applicants also request an exemption from the rule 17f–1(b)(4) requirement that an independent accountant periodically verify the assets held by the custodian. Applicants believe that, because of the community of interest between BFC Group and the Partnerships and the existing requirement for an independent audit, compliance with these requirements would be unnecessarily burdensome and expensive. Applicants will comply with all other requirements of rule 17f–1.

12. Section 17(g) and rule 17g–1 generally require the bonding of officers and employees of a registered investment company who have access to its securities or funds. Rule 17g–1 requires that a majority of directors who are not interested persons take certain actions and give certain approvals relating to fidelity bonding. Applicants request exemptive relief to permit the General Partner's officers and directors, who may be deemed interested persons, to take actions and make determinations set forth in the rule. Applicants state that, because all the directors of the General Partner will be affiliated persons, a Partnership could not comply with rule 17g–1 without the requested relief. Specifically, each Partnership will comply with rule 17g–1 by having a majority of the Partnership's directors take actions and make determinations as are set forth in rule 17g–1. Applicants also state that each Partnership will comply with all other requirements of rule 17g–1.

13. Section 17(j) and paragraph (b) of rule 17j–1 make it unlawful for certain enumerated persons to engage in fraudulent or deceptive practices in connection with the purchase or sale of a security held or to be acquired by a registered investment company. Rule 17j–1 also requires that every registered investment company adopt a written code of ethics and that every access person of a registered investment company report personal securities transactions. Applicants request an exemption from the provisions of rule 17j–1, except for the anti-fraud provisions of paragraph (b), because they are unnecessarily burdensome as applied to the Partnerships.

14. Applicants request an exemption from the requirements in sections 30(a), 30(b) and 30(e), and the rules under those sections, that registered investment companies prepare and file with the SEC and mail to their shareholders certain periodic reports and financial statements. Applicants contend that the forms prescribed by the SEC for periodic reports have little relevance to the Partnerships and would entail administrative and legal costs that outweigh any benefit to the Participants. Applicants request exemptive relief to the extent necessary to permit each Partnership to report annually to its Participants. Applicants also request an exemption from section 30(h) to the extent necessary to exempt the General Partner of each Partnership and any other persons who may be deemed to be members of an advisory board of a Partnership from filing Forms 3, 4 and 5 under section 16(a) of the Exchange Act with respect to their ownership of Interests in the Partnership. Applicants assert that, because there will be no trading market and the transfers of Interests will be severely restricted, these filings are unnecessary for the protection of investors and burdensome to those required to make them.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Each proposed transaction otherwise prohibited by section 17(a) or section 17(d) and rule 17d–1 to which a Partnership is a party (the ''Section 17 Transaction'') will be effected only if the General Partner determines that: (a) The terms of the transaction, including the consideration to be paid or received, are fair and reasonable to the Partners of such Partnership and do not involve overreaching of such Partnership or its Participants on the part of any person concerned; and (b) the transaction is consistent with the interests of the Partners of such Partnership, and the Partnership's organizational documents, and such Partnership's reports to its Partners. In addition, the General Partner of each Partnership will record and preserve a description of the Section 17 Transactions, the General Partner's findings, the information or materials upon which the General Partner's findings are based, and the basis for the findings. All records relating to an investment program will be maintained until the termination of the investment program and at least two years thereafter, and will be subject to examination by the SEC and its staff.[4]

2. In connection with the Section 17 Transactions, the General Partner of each Partnership will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any Section 17 Transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for such Partnership, or any affiliated person of the affiliated person, promoter, or principal underwriter.

3. The General Partner of each Partnership will not invest the funds of such Partnership in any investment in which a ''Co-Investor'' (as defined below) has acquired or proposes to acquire the same class of securities of the same issuer, if the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d–1 in which such Partnership and the Co-Investor are participants, unless the Co-Investor, prior to disposing of all

[4] Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

or part of its investment: (a) Gives the General Partner sufficient, but not less than one day's, notice of its intent to dispose of its investment; and (b) refrains from disposing of its investment unless the Partnership has the opportunity to dispose of the Partnership's investment prior to or concurrently with, on the same terms as, and pro rata with the Co-Investor. The term ''Co-Investor'' with respect to any Partnership means any person who is: (a) An ''affiliated person'' (as defined in section 2(a)(3) of the Act) of the Partnership (other than a Third Party Fund); (b) BFC Group; (c) an officer or director of BFC Group; or (d) an entity (other than a Third Party Fund) in which the General Partner acts as a general partner or has a similar capacity to control the sale or other disposition of the entity's securities. The restrictions contained in this condition, however, will not be deemed to limit or prevent the disposition of an investment by a Co-Investor: (a) To its direct or indirect wholly-owned subsidiary, to any company (a ''Parent'') of which the Co-Investor is a direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its Parent; (b) to immediate family members of the Co-Investor or a trust or other investment vehicle established for any immediate family member; (c) when the investment comprises securities that are listed on any exchange registered as a national securities exchange under section 6 of the Exchange Act; (d) when the investment comprises securities that are national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11Aa2–1 under the Exchange Act; (e) when the investment comprises government securities as defined in section 2(a)(16) of the Act or other money market instruments; or (f) when the investment comprises securities that are listed on or traded on any foreign securities exchange or board of trade that satisfies regulatory requirements under the law of the jurisdiction in which such foreign securities exchange or board of trade is organized similar to those that apply to a national securities exchange or a national market system for securities.

4. Each Partnership and the General Partner will maintain and preserve, for the life of such Partnership and at least two years thereafter, the accounts, books, and other documents that constitute the record forming the basis for the audited financial statements that are to be provided to the Participants in the Partnership, and each annual report of such Partnership required to be sent to such Participants, and agree that these records will be subject to examination by the SEC and its Staff.[5]

5. The General Partner of each Partnership will send to each Participant in such Partnership who had an interest in any capital account of such Partnership, at any time during the fiscal year then ended, Partnership financial statements audited by the Partnership's independent accountants. At the end of each fiscal year, the General Partner will make a valuation or have a valuation made of all of the assets of the Partnership as of the fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the Partnership. In addition, within 120 days after the end of each fiscal year of each Partnership or as soon as practicable thereafter, the General Partner of such Partnership will send a report to each person who was a Participant in the Partnership at any time during the fiscal year then ended, setting forth the tax information necessary for the preparation by the Participant of federal and state income tax returns.

6. If purchases or sales are made by a Partnership from or to an entity affiliated with the Partnership by reason of a 5% or more investment in the entity by a BFC director, officer, or employee, such individual will not participate in the Partnership's determination of whether or not to effect the purchase or sale.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–M

[5] Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24796; File No. 812–12282]

First Defined Sector Fund, et al., Notice of Application

December 21, 2000.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for an order of exemption under Section 6(c) of the Investment Company Act of 1940 (''1940 Act'') for exemptions from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

Applicants: First Defined Sector Fund and First Trust Advisors, L.P.

Summary of Application: Applicants seek an order to the extent necessary to permit shares of any existing or future portfolio of First Defined Sector Fund (''Trust'') designed to fund insurance products and shares of any other investment company or series thereof now or in the future registered under the 1940 Act that is designed to fund insurance products and for which First Trust Advisors, L.P. (''First Trust''), or any of its affiliates, may serve as investment adviser, administrator, manager, principal underwriter or sponsor (''Future Trusts'') (the Trust, together with Future Trusts are referred to, collectively, as the ''Trusts''), to be sold to and held by (1) separate accounts funding variable annuity and variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies; (2) qualified pension and retirement plans outside of the separate account context; (3) separate accounts that are not registered as investment companies under the 1940 Act pursuant to exemptions from registration under Section 3(c) of the 1940 Act; and (4) First Trust or any of its affiliates.

Filing Date: The application was filed on October 2, 2000, and amended and restated on December 14, 2000.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on January 16, 2001, and accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of your interest, the reason for the request, and the issues you contest. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549–0609. Applicants, c/o Eric F. Fess, Esquire, Chapman and Cutler, 111 West Monroe Street, Chicago, Illinois 60603.

FOR FURTHER INFORMATION CONTACT: Ronald A. Holinsky, Senior Counsel or Lorna MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. The Trust is a Massachusetts business trust registered as an open-end management investment company under the 1940 Act. The Trust currently consists of nine separate portfolios.

2. First Trust is registered as an investment adviser under the Investment Advisers Act of 1940 and serves as the investment adviser to the Trust.

3. The Trusts intend to offer its shares representing interests in each fund, and any other portfolio established by the Trusts, to separate accounts of both affiliated and unaffiliated insurance companies to serve as the investment vehicle for variable annuity and variable life insurance contracts (collectively referred to as ''Variable Contracts''). The insurance companies that elect to purchase shares of one or more portfolio are collectively referred to as ''Participating Insurance Companies.''

4. The Trusts also intend to offer shares representing interests in their portfolios directly to qualified pension and retirement plans (''Plans'') outside the separate account context. Shares of the portfolios sold to Plans will be held by the trustees of Plans as required by Section 403(a) of the Employee Retirement Income Security Act of 1974, as amended (''ERISA'').

5. The Participating Insurance Companies will establish their own separate accounts. Each Participating Insurance Company will enter into a fund participation agreement with the portfolios on behalf of its Participating Separate Account and will have the legal obligation of satisfying all requirements under state and federal law. The role of the Trusts, so far as the federal securities laws are applicable, will be to offer their shares to separate accounts of Participating Insurance Companies and to Plans and to fulfill any conditions that the Commission may impose upon granting the order requested in the application.

6. Plans may choose the Fund (or any series thereof) as their sole investment or as one of several investments. Plan participants may or may not be given an investment choice depending on the Plan itself. Shares of the portfolios sold to Plans would be held by the trustee(s) of the Plans as mandated by Section 403(a) of ERISA.

7. Shares of the portfolios also may be offered and sold to a portfolio's investment adviser or an affiliate pursuant to Treasury Regulation 1.817–5(f)(3)(ii).

8. Applicants state that the Treasury Department Regulations permit such sales as long as the return on shares held by the adviser or such an affiliate is computed in the same manner as for shares held by a separate account, the adviser or such affiliate does not intend to sell shares of the portfolios held by it to the public, and the adviser or such affiliate holds such shares only in connection with the creation or management of a portfolio.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order under Section 6(c) of the 1940 Act granting exemptive relief from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of the portfolios to be offered and sold to variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated insurance companies, Plans, and First Trust and its affiliates.

2. Section 6(c) of the 1940 Act provides, in part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of the 1940 Act, or the rules or regulations thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. The exemptions granted by Rule 6e–2(b)(15) are available, however, only where the management investment company underlying the separate account (''underlying fund'') offers its shares ''exclusively to variable life insurance separate accounts of the life insurer or any affiliated life insurance company . . .'' Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity or flexible premium variable life insurance separate account of the same company or of any affiliated life insurance company. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of the same insurance company or of any affiliated life insurance company is referred to herein as ''mixed funding.'' In addition, the relief granted by Rule 6e–2(b)(15) is not available if shares of the underlying management investment company are offered to variable annuity or variable life insurance separate accounts of unaffiliated life insurance companies. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of the same insurance company or of any unaffiliated life insurance company is referred to herein as ''shared funding.''

4. In connection with the funding of flexible premium variable life insurance contracts issued through a separate account, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. The exemptions granted by Rule 6e–3(T)(b)(15) are available, however, only where the separate account's underlying fund offers its shares ''exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company, or which offer their shares to any such life insurance company in consideration solely for advances made by the life insurer in connection with the operation of the separate account. . . .'' Therefore, Rule 6e–3(T)(b)(15) permits mixed funding with respect to a flexible premium variable life insurance separate account. However, Rule 6e–3(T)(b)(15) does not permit shared funding because the relief granted by Rule 6e–3(T)(b)(15) is not available with respect to a flexible premium variable life insurance separate account that owns shares of a management investment company that also offers its shares to separate accounts (including flexible premium variable life insurance separate accounts) of unaffiliated life insurance companies.

5. Applicants state that the current tax law permits the Fund to increase its asset base through the sale of shares to Plans. Section 817(h) of the Code imposes certain diversification standards on the underlying assets of

the variable contracts. The Code provides that such contracts shall not be treated as an annuity contract or life insurance contract for any period during which the investments are not adequately diversified in accordance with regulations prescribed by the Treasury Department. Treasury regulations provide that, to meet the diversification requirements, all of the beneficial interests in an investment company must be held by the segregated asset accounts of one or more insurance companies. The regulations do contain certain exceptions to this requirement, however, one of which permits shares of an investment company to be held by the trustee of a Plan without adversely affecting the ability of shares in the same investment company also to be held by the separate accounts of insurance companies in connection with their variable contracts (Treas. Reg. 1.8 17–5(f)(3)(iii)).

6. Applicants state that the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of these Treasury regulations which made it possible for shares of a portfolio to be held by the trustee of a Plan without adversely affecting the ability of shares of the Fund to also be held by the separate accounts of insurance companies in connection with their variable life insurance contracts. Thus, Applicants assert that the sales of shares of a portfolio to separate accounts through which variable life insurance contracts are issued and Plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15), given the then-current tax law.

7. Section 9(a)(3) of the 1940 Act provides that it is unlawful for any company to act as investment adviser to, or principal underwriter for, any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Sections 9(a)(1) or (2). Rules 6e–2(b)(15)(i) and (ii), and 6e–3(T)(b)(15)(i) and (ii) provide partial exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. These exemptions limit the application of eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying management investment company.

8. Applicants state that the relief provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15) permits the life insurer to serve as the underlying fund's investment adviser or principal underwriter, provided that none of the insurer's personnel who are ineligible pursuant to Section 9(a) are participating in the management or administration of the fund. Applicants state that the partial relief from Section 9(a) provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15), in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Applicants assert that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to the many individuals in an insurance company complex, most of whom typically will have no involvement in matters pertaining to investment companies funding the separate accounts. Applicants assert that it also is unnecessary to apply the restrictions of Section 9(a) to the many individuals in various unaffiliated insurance companies (or affiliated companies of participating insurance companies) that may utilize the Funds as a funding medium for variable contracts. Moreover, Applicants state that the appropriateness of the relief requested will not be affected by the proposed sale of shares of the Fund to Plans, because the insulation of the Fund from those individuals who are disqualified under the 1940 Act remains in place.

9. Applicants state that Rules 6e–2(b)(15)(iii) and 6e–3 [T] (b)(15) iii under the 1940 Act provide exemptions from the pass-through voting requirements with respect to several significant matters, assuming the limitations on mixed and shared funding are observed.

10. Applicants further represent that the sale of portfolio shares to Plans should not affect the relief requested. With respect to Plans, there is no requirement to pass-through voting rights to Plan participants. Shares of the portfolios sold to Plans would be held by the trustees of such Plans as mandated by Section 403(a) of ERISA. Section 403(a) also provides that the trustees must have exclusive authority and discretion to manage and control the Plan with two exceptions: (a) When the Plan expressly provides that the trustees are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the two exceptions stated in Section 403(a) applies, the Plan trustees have exclusive authority and responsibility for voting proxies.

11. Applicants state that where a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. Accordingly, applicants submit that unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to Plans since such Plans are not entitled to pass-through voting privileges.

12. Applicants generally expect many Plans to have their trustee(s) or other fiduciaries exercise voting rights attributable to investment securities held by the Plan in their discretion. Some of the Plans, however, may provide for the trustee(s), or investment adviser(s) or another named fiduciary to exercise voting rights in accordance with instructions from participants. Applicants submit that where a Plan does not provide participants with the right to give voting instructions, there is no potential for material irreconcilable conflicts of interest between or among contract owners and Plan investors with respect to voting of the Fund's shares. Applicants further submit that where a Plan does provide participants with the right to give voting instruction, they see no reason to believe that participants in Plans generally, or those in a particular Plan, either as a single group or in combination with participants in other Plans, would vote in a manner that would disadvantage contract owners. The purchase of shares of the Fund by Plans that provide voting rights does not present any complications not otherwise occasioned by mixed and shared funding.

13. Applicants submit that even if a Plan were to hold a controlling interest in the Fund, such control would not disadvantage other investors in the Fund to any greater extent than is the case when any institutional shareholder holds a majority of the voting securities of any open-end management investment company. In this regard applicants submit that investment in the Fund by a Plan will not create any of the voting complications occasioned by mixed and shared funding. Unlike mixed or shared funding, Plan investor voting rights cannot be frustrated by veto rights of insurers of state regulators.

14. Applicants state that no increased conflicts of interest would be presented by the granting of the requested relief. Applicants assert that shared funding does not present any issues that do not already exist where a single insurance

company is licensed to do business in several states. Applicants note that where different Participating Insurance Companies are domiciled in different states, it is possible that the state insurance regulatory body in a state in which one Participating Insurance company is domiciled could require action that is inconsistent with the requirements of other insurance regulators in one or more other states in which other Participating Insurance Companies are domiciled. Applicants submit that this possibility is no different or greater than exists where a single insurer and its affiliates offer their insurance products in several states.

15. Applicants further submit that affiliation does not reduce the potential for differences in state regulatory requirements. In any event, the conditions discussed below are designed to safeguard against any adverse effects that these differences may produce. If a particular state insurance regulator's decision conflicts with the majority of other state regulators, the affected insurer may be required to withdraw its Participating Separate Account's investment in the Fund.

16. Applicants also argue that affiliation does not eliminate the potential, if any exists, for divergent judgments as to when a Participating Insurance Company could disregard contract owner voting instructions. Potential disagreement is limited by the requirement that disregarding voting instructions be both reasonable and based on specified good faith determinations. However, if a Participating Insurance Company's decision to disregard Contract owner voting instructions represents a minority position or would preclude a majority vote approving a particular change, such Participating Insurance Company may be required, at the election of the Fund, to withdraw its separate account, investment in the Fund. No change or penalty will be imposed as a result of such a withdrawal.

17. Applicants submit that there is no reason why the investment policies of the Fund with mixed funding would, or should, be materially different from what those policies would, or should, be if the Fund supported only variable annuity or only variable life insurance contracts. Hence, Applicants state, there is no reason to believe that conflicts of interest would result from mixed funding. Moreover, Applicants represent that the Fund will not be managed to favor or disfavor any particular insurer or type of contract.

18. As noted above, Section 817(h) of the Code imposes certain diversification standards on the assets underlying the variable contracts held in the portfolios of management investment companies. Treasury Regulation Section 1.817–5(f)(3)(iii), which establishes diversification requirements for such portfolios, specifically permits, among other things, ''qualified pension or retirement plans'' and separate accounts to share the same underlying management investment company. Therefore, Applicants assert that neither the Code, the Treasury regulations, nor the revenue rulings thereunder, recognize or proscribe any inherent conflicts of interest if qualified plans, variable annuity separate accounts, and variable life separate accounts all invest in the same management investment company.

19. Applicants note that while there are differences in the manner in which distributions from variable contracts and Plans are taxed, the tax consequences do not raise any conflicts of interest. When distributions are to be made, and the Participating Separate Account or a Plan cannot net purchase payments to make the distributions, the Participating Separate Account or Plan will redeem shares of the Fund at their net asset value in conformity with Rule 22c–1 under the 1940 Act to provide proceeds to meet distribution needs. The Plan will then make distributions in accordance with the terms of the Plan. The life insurance company will surrender values from the Separate Account into the general account to make distributions in accordance with the terms of the variable contract.

20. Applicants state that the sale of shares to Plans should not increase the potential for material irreconcilable conflicts of interest between or among different types of investors. Applicants submit that there should be very little potential for such conflicts beyond that which would otherwise exist between variable annuity and variable life insurance contract owners.

21. Applicants also state that it is possible to provide an equitable means of giving voting rights to separate account contract owners and to Plans. The transfer agent for the Trusts will inform each Participating Insurance company of each Participating Separate Account's share ownership in the Trusts, as well as inform the trustees of Plans of their holdings. The Participating Insurance company then will solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T), as applicable, and its participation agreement with the Trusts. Shares held by Plans will be voted in accordance with applicable law. The voting rights provided to Plans with respect to shares of the Trusts would be no different from the voting rights that are provided to Plans with respect to shares of funds sold to the general public.

22. Applicants submit that the ability of the Trusts to sell its shares directly to Plans does not create a ''senior security,'' as such term is defined under Section 12(g) of the 1940 Act, with respect to any contract owner as opposed to a Plans participant. Regardless of the rights and benefits of Plan participants or contract owners, the Plans and the separate accounts only have rights with respect to their respective shares of the Trusts. No shareholder of the Trusts has any preference over any other shareholder with respect to distribution of assets or payments of dividends.

23. Applicants state that there are no conflicts between the contract owners of Participating Separate Accounts and Plan participants with respect to the state insurance commissioners' veto powers over investment objectives. The basic premise of shareholder voting is that shareholders may not all agree with a particular proposal. While interests and opinions of shareholders may differ, however, this does not mean that there are any inherent conflicts of interest between or among such shareholders. State insurance commissioners have been given the veto power in recognition of the fact that insurance companies usually cannot simply redeem their separate accounts out of one fund and invest in another. Generally, complex and time-consuming transactions must be undertaken to accomplish such redemptions and transfers. Conversely, trustees of Plans can make the decision quickly and redeem their shares of the Trusts and reinvest in another funding vehicle without the same regulatory impediments faced by separate accounts, or, as is the case with most Plans, even hold cash pending a suitable investment. Based on the foregoing, applicants represent that even should the interests of contract owners and the interests of Plans conflict, the conflicts can be resolved almost immediately because the trustees of the Plans can, independently, redeem shares out of the Trusts.

24. Applicants also assert that there does not appear to be any greater potential for material irreconcilable conflicts arising between the interests of Plan participants and contract owners of Participating Insurance Companies from possible future changes in the federal tax laws than that which already exists

between variable annuity and variable life insurance contract owners.

25. Applicants believe that the summary of the discussion contained herein demonstrates that the sale of shares of the Trusts to qualified plans and variable contracts does not increase the risk of material irreconcilable conflicts of interest. Furthermore, Applicants state that the use of the Trusts with respect to Plans is not substantially different from the Trusts' current use, in that Plans, like variable contracts, are generally long-term retirement vehicles. In addition, applicants assert that regardless of the type of shareholder in the Trusts, First Trust is or would be contractually or otherwise obligated to manage the Trusts solely and exclusively in accordance with the portfolio's investment objectives, policies and restrictions as well as any guidelines established by a portfolio's Board of Trustees.

26. Applicants assert that various factors have prevented more insurance companies from offering variable annuity and variable life insurance contracts than currently do so. These factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management, and the lack of public name recognition as investment professionals. In particular, some smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the variable contract business on their own. Applicants assert that use of the Trusts as a common investment medium for variable contracts would ameliorate these concerns. Participating Insurance Companies would benefit not only from the investment advisory and administrative expertise of First Trust and its affiliates, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Applicants submit that therefore, making the Trusts available for mixed and shared funding will encourage more insurance companies to offer variable contracts. Applicants claim that this should result in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges. Moreover, the sale of the shares of the portfolios to Plans should further increase the amount of assets available for investment by the fund. This in turn, should inure to the benefit of contract owners by promoting economies of scale, by permitting greater safety through greater diversification, and by making the addition of new portfolios more feasible.

27. Applicants assert that there is no significant legal impediment to permitting mixed and shared funding and sales of shares to Plans.

Applicant's conditions

Applicant consents to the following conditions if the application is granted:

1. A majority of the Board of Trustees or Board of Directors (''Board'') of each Trust will consist of persons who are not ''interested persons'' of such Trust, as defined by Section 2(a)(19) of the 1940 Act, and the rules thereunder, and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any trustee or director, then the operation of this condition shall be suspended: (a) For a period of 45 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by rule or order upon application.

2. Each Board will monitor its respective Trust for the existence of any material irreconcilable conflict among the interests of the contract owners of all separate accounts, participants of all Plans, and First Trust or any of its affiliates investing in such Trust and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of such Trust are being managed; (e) a difference in voting instructions given by variable annuity contract owners and variable life insurance contract owners, and trustees of Plans; (f) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (g) if applicable, a decision by a Plan to disregard voting instructions of Plan participants.

3. Participating Insurance Companies, First Trust or an affiliate, and any Plan that executes a participation agreement upon becoming an owner of 10% or more of the assets of any portfolio (collectively, ''Participants'') will report any potential or existing conflicts to the relevant Board. Participants will be responsible for assisting the relevant Board in carrying out the Board's responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by each Participating Insurance Company to inform the relevant Board whenever contract owner voting instructions are disregarded, and, if pass-through voting is applicable, an obligation of each Plan to inform the Board whenever it has determined to disregard Plan participant voting instructions. The responsibility to report such information and conflicts, and to assist the Board, will be a contractual obligation of all Participating Insurance Companies under their participation agreements with the Trusts, and these responsibilities will be carried out with a view only to the interests of the contract owners. The responsibility to report such information and conflicts, and to assist the Board, also will be contractual obligations of all Plans with participation agreements, and such agreements shall provide that these responsibilities will be carried out with a view only to the interests of Plan participants.

4. If it is determined by a majority of the Board, or a majority of its disinterested trustees or directors of such Board, that a material irreconcilable conflict exists, then the Participant will, at its own expense and to the extent reasonably practicable (as determined by a majority of the disinterested trustees or directors), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, up to and including: (a) withdrawing the assets allocable to some or all of the separate accounts from the relevant portfolio and reinvesting such assets in a different investment, including another portfolio of the Trusts, or in the case of insurance company participants submitting the question as to whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.,* annuity contract owners or life insurance contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; and (b) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a decision by a Participating Insurance

Company to disregard contract owner voting instructions, and that decision represents a minority position or would preclude a majority vote, then the insurer may be required, at the election of the relevant Trust, to withdraw such insurer's separate account's investment in the such Trust, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Plan may be required, at the election of the relevant Trust, to withdraw its investment in such Trust, and no charge or penalty will be imposed as a result of such withdrawal. To the extent permitted by applicable law, the responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and bear the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies and Plans under their agreements governing participation in the Fund and these responsibilities will be carried out with a view only to the interests of the contract owners and Plan participants, as appropriate.

For purposes of Condition 4, a majority of the disinterested members of a Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but, in no event will any Trust, First Trust, or First Trust's affiliates, as relevant, be required to establish a new funding medium for any variable contract. No Participating Insurance Company will be required by Condition 4 to establish a new funding medium for any variable contract if an offer to do so has been declined by a vote of the majority of contract owners materially and adversely affected by the material irreconcilable conflict. Further, no Plan will be required by Condition 4 to establish a new funding medium for such Plan if: (a) A majority of the Plan participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer or (b) pursuant to documents governing the Plan and applicable law, the Plan makes such decision without a Plan participant vote.

5. Participants will be informed promptly in writing of the Board's determination of the existence of a material irreconcilable conflict and its implications.

6. Participating Insurance Companies will be required to provide pass-through voting privileges to all contract owners so long as the Commission interprets the 1940 Act to require pass-through voting privileges for contract owners. Accordingly, the Participating Insurance Companies will vote shares of the applicable portfolios held in their separate accounts in a manner consistent with voting instructions timely received from contract owners. Participating Insurance Companies shall be responsible for assuring that each of their separate accounts calculates voting privileges in a manner consistent with all other participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other separate accounts investing in the portfolio will be a contractual obligation of all participating Insurance Companies under the agreements governing participation in a portfolio. Each Participating Insurance Company will be required to vote shares for which it has not received voting instructions as well as shares attributable to it in the same proportion as it votes shares for which it has received instructions. Each Plan will vote as required by applicable law and governing Plan documents.

7. As long as the 1940 Act requires pass-through voting privileges to be provided to variable contract owners, First Trust or any of its affiliates will vote its shares of any portfolio in the same proportion of all variable contract owners having voting rights with respect to the portfolio; provided, however, that First Trust or any of its affiliates shall vote its shares in such other manner as may be required by the Commission or its staff.

8. Each Trust will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of the respective portfolio). In particular, each Trust will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although the Trusts are not one of the trusts described in Section 16(c) of the Act), as well as with Section 16(a) and, if and when applicable, Section 16(b) of the 1940 Act. Further, each Trust will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of trustees and with whatever rules the Commission may promulgate with respect thereto.

9. The Trusts will notify all Participants that separate account prospectuses or Plan prospectuses or other Plan document disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Trust will disclose in its prospectus that: (a) Shares of such Trust may be offered to insurance company separate accounts of both annuity and life insurance contracts and, if applicable, to Plans; (b) due to differences in tax treatment and other considerations, the interests of various contract owners participating in each Trust and the interest of Plans investing in each Trust, if applicable, may conflict; and (c) the Board will monitor events in order to identify the existence of any material conflicts and determine what action, if any, should be taken in response to any such conflict.

10. If and to the extent Rule 6e–2 and Rule 6e–3(T) under the 1940 Act are amended, or proposed Rule 6e–3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act, or the rules promulgated thereunder, with respect to mixed or shared funding, on terms and conditions materially different from any exemptions granted in the order requested by Applicants, then the Trust and/or Participating Insurance Companies as appropriate, shall take steps as may be necessary to comply with Rules 6e–2 or 6e–3(T), as amended, or Rule 6e–3, as adopted, as such rules are applicable.

11. The Participants, at least annually, will submit to the Board of each Trust such reports, materials or data as the Board reasonably may request so that the trustees of the Board may fully carry out the obligations imposed upon a Board by the conditions contained in this Application. Such reports, materials and data will be submitted more frequently if deemed appropriate by a Board. The obligations of the Participants to provide these reports, materials, and data to the Board, when it so reasonably requests, will be a contractual obligation of all Participants under their agreements governing participation in the portfolios.

12. All reports of potential or existing conflicts of interest received by a Board, and all Board action with regard to determining the existence of a conflict, notifying Participants of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the relevant Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

13. The Trust will not accept a purchase order from a Plan if such purchase would make the Plan participant shareholder an owner of 10% or more of the assets of such

portfolio unless such Plan executes an agreement with the relevant Trust governing participation in such portfolio that includes the conditions set forth to the extent applicable. A Plan or Plan participant will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shares of any portfolio.

14. Any shares of a portfolio purchased by First Trust or its affiliates will be automatically redeemed if and when First Trust's advisory agreement terminates, to the extent required by applicable Treasury regulations. Neither First Trust nor its affiliates will sell such shares of the portfolios to the public.

Conclusion

For the reasons stated above, Applicants believe that the requested exemptions, in accordance with the standards of Section 6(c) of the 1940 Act, are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–33262 Filed 12–28–00 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24794; File No. 812–12124]

Market Street Fund, Inc., et al.; Notice of Application

December 21, 2000.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order of exemption pursuant to Section 17(b) of the Investment Company Act of 1940 (the ''Act'') from Section 17(a) of Act.

Applicants: Market Street Fund, Inc. (the ''Fund''), Market Street Fund (the ''Trust''), Provident Mutual Life Insurance Company (''PMLIC''), Market Street Investment Management Company (''MSIM''), and Providentmutual Life and Annuity Company of America (''PLACA'').

Summary of Application: Applicants seek an order exempting certain transactions from the provisions of Section 17(a) of the Act to the extent necessary to permit the reorganization of the Fund, a Maryland corporation, into a Delaware business trust. At the conclusion of the transactions, the assets and liabilities currently held in the Money Market, Equity 500 Index, Growth, Bond, Managed, Aggressive Growth, International, All Pro Large Cap Growth, All Pro Small Cap Growth, All Pro Large Cap Value, and All Pro Small Cap Value Portfolios (collectively, the ''Fund Portfolios'') of the Fund will be held by the corresponding portfolios of the Trust (collectively, the ''Trust Portfolios'') which previously will have had no operations. Because of certain affiliations, Applicants may not rely on Rule 17a–8 under the Act.

Filing Dates: The application was filed on May 19, 2000, and amended and restated on December 20, 2000.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 16, 2001, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. For the Applicants: James A Bernstein, Esq., Market Street Fund Inc., Market Street Trust, 103 Bellevue Parkway, Wilmington, Delaware 19809; Provident Mutual Life Insurance Company, Market Street Investment Management Company, 1000 Chesterbrook Boulevard, Berwyn, Pennsylvania 19312–1181; Michael Berenson, Esq., Jorden Burt Boros Cicchetti Berenson & Johnson LLP, 1025 Thomas Jefferson Street, NW., Suite 400 East, Washington, DC 20007–0805; Providentmutual Life and Annuity Company of America, 300 Continental Drive, Newark, Delaware 19713–4399.

FOR FURTHER INFORMATION CONTACT: Keith A. O'Connell, Senior Counsel, or Lorna J. MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 5th Street, NW., Washington, DC 20549 (tel. (202) 942–8090).

Applicant's Representations

1. The Fund, a Maryland corporation incorporated on March 21, 1985, is an open-end, management investment company registered under the Act. Eleven of the twelve portfolios will participate in the reorganization: the Money Market, Equity 500 Index, Growth, Bond, Managed, Aggressive Growth, International, All Pro Large Cap Growth, All Pro Small Cap Growth, All Pro Large Cap Value, and All Pro Small Cap Value Portfolios (each, a ''Portfolio''). The Fund receives investment advisory services from Sentinel Advisors Company (''SAC'')[1] for the Money Market, Bond, Growth, Managed, and Aggressive Growth Portfolios and from Market Street Investment Management Company (''MSIM'') for the Equity 500 Index, International, All Pro Large Cap Growth, All Pro Small Cap Growth, All Pro Large Cap Value, and All Pro Small Cap Value Portfolios. MSIM retains various sub-advisers that are responsible for the day-to-day decision making for the portfolios for which it serves as investment adviser.

2. The Trust, a Delaware business trust, was created on October 30, 2000. On or about January 26, 2001, the Trust will adopt the Fund's registration statement under the Act as an open-end management investment company. The Trust will offer 11 investment portfolios corresponding to the various portfolios of the Fund, excluding the Sentinel Growth Portfolio. The Trust will receive investment advisory services from MSIM for all of the Trust Portfolios. Each of the Trust Portfolios into which the Fund Portfolios will be merged has the same investment objective as the corresponding Fund Portfolios. In addition to the reorganization, shareholders of the Fund Portfolios are being asked to approve by proxy (1) A proposal to change the investment approaches of and rename certain Portfolios and to change the investment objective of the Growth Portfolio, (2) a proposal for a new investment advisory agreement between the Fund and MSIM for all of its Portfolios, and (3) a proposal to permit MSIM to enter and materially amend subadvisory agreements for certain Portfolios without shareholder approval.

[1] SAC is registered as an investment adviser under the Investment Advisers Act of 1940 and is a Vermont general partnership indirectly wholly owned by PMLIC, National Life Insurance Company and Penn Mutual Life Insurance Company.

3. The shares of the Fund are sold generally only to insurance companies and their separate accounts as the underlying investment media for variable life insurance and variable annuity contracts issued by such insurance companies. The shares of the Trust, similarly, will be sold generally only to insurance companies and their separate accounts as the underlying investment media for variable life insurance and variable annuity contracts issued by such insurance companies. As of November 28, 2000, PMLIC had contributed seed capital equal to approximately 34% of the All Pro Large Cap Value Portfolio, 6% of the All Pro Small Cap Growth Portfolio, and 16% of the All Pro Small Cap Value Portfolio. These seed capital holdings represent the only shares held by PMLIC and PLACA other than through their separate accounts.

4. As of December 20, 2000, PMLIC, PLACA, and National Life Insurance Company (''NLIC'') and certain of their separate accounts are the only shareholders of the Fund Portfolios. As the primary holders of the Portfolio's shares, PMLIC, PLACA, and NLIC currently control the Fund. On November 27, 2000, NLIC received an order of approval from the Commission pursuant to Section 26(b) of the Act permitting NLIC to substitute shares of various investment companies for shares of the various Fund Portfolios currently held by its separate accounts on behalf of its contract owners. The substitution took place at the close of business on November 30, 2000, with respect to all of the Fund Portfolios except the Bond and Managed Portfolios. SAC will resign on or about January 26, 2001, as the investment adviser to the Money Market, Bond, Growth, Managed and Aggressive Growth Portfolios. On November 3, 2000, the Fund's Board of Directors and the Trust's Board of Trustees approved MSIM as investment adviser to these five Portfolios. As a result of the NLIC substitution, NLIC and its separate accounts continue to be shareholders in only two of the Fund Portfolios (the Managed and Bond Portfolios). PMLIC, PLACA, NLIC, and their separate accounts, are the only shareholders of the Fund Portfolios, and upon consummation of the Reorganization (defined below), will be the only shareholders of the Trust Portfolios. As stated above, PMLIC has contributed seed capital to certain portfolios and therefore beneficially owns shares in such portfolios. Following the Reorganization, PMLIC and PLACA will control the Trust as the primary shareholders of the Trust Portfolios.

5. The Fund plans to reorganize and redomesticate from a Maryland corporation into a Delaware business trust (the ''Reorganization''). The Reorganization will take place pursuant to the terms and conditions stated in the Agreement and Plan of Reorganization, Redomestication and Pro Rata Distribution (the ''Plan''). The Reorganization process can be summarized as follows. First, a Delaware business trust has been created. If shareholders owners approve the Reorganization, the Fund will assign, transfer and convey the assets of each of the Fund Portfolios to the corresponding series of the Trust. Each Trust Portfolio will acquire all of the assets and liabilities of each corresponding Fund Portfolio in exchange for full and fractional shares of beneficial interest of the Trust Portfolio. The shares of the Trust Portfolios will have an aggregate net asset value equal to the aggregate net asset value of the shares of the corresponding Fund Portfolios immediately prior to the Reorganization. The value of the assets will be determined in accordance with the current prospectus and statement of additional information of the Fund and Trust.

6. In connection with the Reorganization, shares of each Trust portfolio will be distributed to holders of the shares of the respective corresponding Fund Portfolio. The number of full and fractional shares of a Trust Portfolio received by a shareholder of the corresponding Fund Portfolio will be equal in value to the value of that shareholder's shares of the corresponding Fund Portfolio immediately prior to the Reorganization as of the close of regularly scheduled trading on the New York Stock Exchange on the closing date of the Reorganization. The Reorganization is intended to be a reorganization within the meaning of Section 368(a)(1) of the United States Internal Revenue Code of 1986, as amended. The Reorganization will not result in the merger or reorganization of the various separate accounts that hold shares of the Fund.

7. On April 24, 2000, the Board of Directors of the Fund authorized the Fund's officers to take steps necessary to effect the Reorganization. On November 3, 2000, both the Board of Directors of the Fund and the Board of Trustees of the Trust (together, the ''Board'') authorized and approved the Reorganization. The Board's vote and findings were recorded in the minutes of the November 3 Board Meeting. The Reorganization will be submitted to a vote of the shareholders of the Fund Portfolios for approval at a Special Meeting of Shareholders scheduled to be held on January 12, 2001, in accordance with Maryland law, the Act and Commission rules. However, at any time prior to the Reorganization, the Board may decide that it is in the best interest of the Fund and its shareholders not to reorganize into the Trust.

8. The Reorganization of the Fund from a Maryland corporation to a Delaware business trust will not affect the advisory fees or expenses, including existing fee waivers or expense reimbursements, if any, of the Trust Portfolios. These fees and expenses may change as a result of other proposals that contract owners are being asked to approve. No sales charge will be assessed in connection with the Reorganization. The expenses of the Reorganization, including any brokerage commissions, if any, will be borne by PMLIC.

9. The Applicants state that the principal purpose of the Reorganization is to take advantage of the benefits Delaware business trust law offers mutual funds.

10. In reaching the decision to approve the Reorganization and to recommend that shareholders approve it, the Board concluded that the Reorganization is in the best interests of each Fund Portfolio and each corresponding Trust Portfolio, as well as in the best interests of the shareholders and the contract owners whose contract values are invested in shares of the Fund Portfolios and will be invested in the corresponding Trust Portfolios, and that the interests of existing shareholders and contract owners will not be diluted as a result of the Reorganization. The Board considered a number of factors including the advantages of operating under Delaware law, the fact that the share prices will not be affected by the Reorganization, the tax-free treatment at the federal level of the Reorganization, and the continued protection of shareholders from liability for the Trust's obligations.

11. The Reorganization is subject to certain conditions precedent, including (1) shareholder approval of the Reorganization, (b) effectiveness of the Trust's registration statement, and (c) the order requested herein.

Applicant's Legal Analysis

1. Section 17(a) of the Act provides in part that it is unlawful for any affiliated person of a registered investment company, or any affiliated person of such an affiliated person, acting as principal, knowingly to sell to such

investment company or to purchase from such investment company any securities or other property.

2. Section 2(a)(3) of the Act defines the term affiliated persons of another person, in part, as:

(A) any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person; (B) any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; (C) any person directly or indirectly controlling, controlled by, or under common control with, such other person; * * * (E) if such other person is an investment company, any investment adviser thereof or any member of any advisory board thereof * * *

Section 2(a)(9) of the Act defines control in part to mean ''the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company.''

3. The Applicants state that as of the date of the Reorganization, all of the outstanding shares of the Fund Portfolios will be legally owned by PMLIC, PLACA and NLIC, and their separate accounts and PMLIC will beneficially own shares of certain Portfolios. All of the outstanding shares of the Trust Portfolios will, immediately prior to the Reorganization, be legally owned by PMLIC. The Applicants state that as a result of these relationships, the Fund Portfolios and the Trust Portfolios may be deemed to be under common control and, therefore, affiliated persons of each other for the purposes of the prohibitions set forth in Section 17(a) of the Act.

4. In addition, the Applicants state that MSIM currently serves as investment adviser to the Equity 500 Index, International, All Pro Large Cap Growth, All Pro Small Cap Growth, All Pro Large Cap Value, and All Pro Small Cap Value Portfolios of the Fund, and will serve as investment adviser for the corresponding Trust Portfolios. SAC gave formal notice of its intent to resign effective on or around January 26, 2001, as investment adviser to the Fund Portfolios that it currently manages. As noted above, the Board has already approved MSIM as investment adviser to these five portfolios. All of the portfolios, except the Money Market Portfolio, will implement a manager-of-managers approach to management. As a result of these relationships, the Applicants state that these Fund Portfolios and the corresponding Trust Portfolios might also be deemed to be affiliated persons of affiliated persons of each other. Thus, the Applicants state that, absent exemptive relief, consummation of these portions of the Reorganization could result in a violation of Section 17(a).

5. Section 17(b) of the Act provides that, notwithstanding Section 17(a), a person may file with the Commission an application for an order exempting a proposed transaction from one or more of the prohibitions of section 17(a). The Commission shall grant such application if evidence establishes that: (1) The terms of the proposed transaction, including the consideration to be paid or received, are fair and reasonable, and do not involve overreaching on the part of any person concerned; (2) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and in reports filed under the Act; and (3) the proposed transaction is consistent with the general purposes of the Act. Applicants request an order of the Commission, pursuant to Section 17(b) of the Act, exempting them from the provisions of Section 17(a) of the Act.

6. Rule 17a–8 under the Act provides, in part, that a merger of registered investment companies which are affiliated persons solely by reason of having a common investment adviser, director, and/or officers is exempt from the prohibitions of Section 17(a), provided that the board of directors of each affiliated company in question, including a majority of independent directors/trustees, determines: (1) That participation in the transaction is in the best interests of that registered company and (2) that the interests of existing shareholders of that registered company will not be diluted as a result of the merger.

7. The Applicants state that, due to the fact that 100% of the shares of the Fund and Trust Portfolios are legally owned by PMLIC and PLACA, through their separate accounts and for general investment purposes, the exemption provided by Rule 17a–8 may not be available with respect to the proposed transactions. Applicants assert that, while the affiliations involved may not be, as a substantive matter, within the scope of the express relief provided by Rule 17a–8, the Reorganization is consistent with the routine mergers that otherwise do not require exemptive relief, as well as with the spirit of Rule 17a–8. The Applicants state that the additional affiliations presented here do not implicate any greater danger of overreaching than do the affiliations within the scope of Rule 17a–8, and are rendered of less concern because contract owners participating in registered separate accounts holding shares of the Fund Portfolios at the record date will have the opportunity to provide voting instructions on the Reorganization and that all shares owned by PMLIC and PLACA will be voted in proportion to voting instructions received from such contract owners.

8. The Applicants state that the Board has reviewed the transactions proposed in light of the determinations required by Rule 17a–8. The Board, including the independent directors/trustees, has reviewed the contemplated transactions and unanimously determined that the transactions are in the best interests of the shareholders of the Fund and Trust Portfolios, and that the transactions are in the best interests of the contract owners with values currently allocated to the Fund Portfolios and ultimately allocated to the Trust Portfolios. The Board, including the independent directors/trustees, has also determined that the interests of existing shareholders and contract owners will not be diluted as a result of the Reorganization. The Board's vote and findings were recorded in the minutes of the November 3 Board Meeting. The Applicants state that, accordingly, if Rule 17a–8 were available, its conditions would be satisfied.

9. Applicants assert that the requirements of Section 17(b) set forth above are met by the proposed transaction. Applicants note that the Plan will provide that the exchange of assets and liabilities, as described above, of the Fund Portfolios for shares of the Trust Portfolios shall be accomplished on the basis of the net asset value of the respective Portfolios, and thus the Reorganization will not involve dilution of the interests of existing shareholders or contract owners. The method for determining the number of shares of the Fund Portfolios for which shares of the corresponding Trust Portfolios will be exchanged is set out in the Plan and will be summarized in the proxy statement delivered to contract owners.[2] Applicants assert that the terms of the proposed transactions are fair and reasonable and do not involve overreaching on the part of any person concerned.

10. Applicants assert that the proposed transactions are consistent with the policies of the Fund, of the Trust, and of the individual portfolios involved in the proposed transaction.

[2] The preliminary proxy statement was filed with the Commission on November 17, 2000, and the definitive proxy statement was filed on December 1, 2000.

The Applicants state that each of the Trust Portfolios into which the Fund Portfolios will be merged has the same investment objectives as the corresponding Fund Portfolios. In addition, the Applicants state that although the investment approaches and names of certain of the Fund Portfolios may change, subject to shareholder approval, based on proposals disclosed in the proxy statement, these changes are distinct from those caused by the Reorganization.

11. Applicants assert that the proposed transaction is consistent with the general purposes of the Act. The transactions must receive the approval of a majority of the outstanding voting shares of the Fund. Contract owners have received a proxy statement containing all material disclosures. Each contract owner will be entitled to instruct how the number of shares related to his or her interest in the separate accounts will be voted. All other shares will be mirrored voted in proportion to the shares voted in accordance with those instructions.

Conclusion

For all the reasons stated above, Applicants assert that the terms of the contemplated transactions meet all of the requirements of Section 17(b) of the Act. Accordingly, Applicants request that the Commission issue an order exempting the proposed transactions from the provisions of Section 17(a) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43742; File No. SR–CHX–00–37]

Self-Regulatory Organizations; Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 by the Chicago Stock Exchange, Incorporated, Relating to the Exchange's SuperMAX 2000 Price Improvement Program

December 19, 2000.

I. Introduction

On November 6, 2000, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change that would amend CHX Article XX, Rule 37 to add a new price improvement algorithm entitled SuperMAX 2000, applicable to all issues trading in decimal price increments. On November 16, 2000, the CHX filed an amendment to the proposal.[3] Notice of the proposed rule change, including Amendment No. 1, was published for comment in the **Federal Register** on November 29, 2000.[4] The Commission received no comments on the proposal. On December 19, after the close of the 15-day comment period, the CHX again amended the proposed rule change.[5] This order approves the proposed rule change and Amendment Nos. 1 and 2, on an accelerated basis.

II. Description of the Proposal

According to the CHX, the primary purpose of the proposed rule change is to increase the number of orders that are eligible for price improvement, and to afford CHX specialists the opportunity to provide price improvement alternatives equal to or more favorable than existing alternatives.

By way of background, on May 22, 1995, the Commission approved a proposed CHX rule change that allows specialists on the Exchange, through the Exchange's MAX system, to provide order execution guarantees that are more favorable than those required under CHX Rule 37(a), Article XX.[6] That order contemplated that the CHX would file with the Commission specific modifications to the parameters of MAX that are required to implement various options under this new rule.

SuperMAX, Enhanced SuperMAX, SuperMAX Plus and Derivative SuperMAX are four existing CHX programs within the MAX system that use computerized algorithms to provide automated price improvement. The Commission has approved each of these price improvement programs on a permanent basis.[7]

The Exchange believes that, for it to remain competitive, its specialists must be able to swiftly and meaningfully respond to the price improvement considerations articulated by the Exchange's order sending firms and their customers. To this end, the Exchange proposes to change its existing price improvement program.

At present, Exchange specialists may voluntarily participate, on an issue-by-issue basis, in one of the four price improvement programs referenced above. Each of the existing price improvement programs provides for a fixed amount of price improvement when the national BBO spread meets certain spread parameters (*e.g.*, in SuperMAX plus, $.01 on a BBO spread of $.03 on orders from 100 to 199 shares).

Under the proposed SuperMAX 2000 program, customers would be guaranteed the same minimum amount of price improvement they would receive under SuperMAX Plus (*i.e.,* $.01 on a spread of $.03 on orders of 100 shares) if a specialist has enabled SuperMAX 2000; in addition, specialists would be permitted to provide further automated price improvement on an issue-by-issue basis. This opportunity for additional price improvement would exist for all orders of 100 shares or greater.

The Exchange believes that SuperMAX 2000 will provide CHX specialists with the flexibility to better respond to customer price improvement requirements in a decimal pricing environment. The proposal contemplates equality among order-sending firms (and their customers) by mandating that CHX specialists provide additional price improvement on an issue-by-issue basis; specialists would not be permitted to distinguish among order-sending firms when designating price improvement levels.

The Exchange also believes that SuperMAX 2000 would simplify the Exchange's existing price improvement framework by eliminating multiple price improvement programs with different names, requirements and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* November 15, 2000 letter from Kathleen M. Boege, Associate General Counsel, CHX, to Joseph Morra, Special Counsel, Division of Market Regulation, SEC (''Amendment No. 1''). In Amendment No. 1, the CHX made a minor, technical correction to the language of proposed Rule 37(h).

[4] Securities Exchange Act Release No. 43577 (November 16, 2000), 65 FR 71164.

[5] *See* December 18, 2000 letter from Kathleen M. Boege, Associate General Counsel, CHX, to Joseph Morra, Special Counsel, Division, SEC (''Amendment No. 2''). In Amendment No. 2, the CHX made further minor, technical corrections to the language of proposed Rule 37(h). The Commission notes that neither amendment made substantive changes to the proposal.

[6] *See* Securities Exchange Act Release No. 35753 (May 22, 1995), 60 FR 28007 (May 26, 1995) (SR–CHX–95–08).

[7] *See* Securities Exchange Act Release Nos. 40017 (May 20, 1998), (63 FR 29277 (May 28, 1998) (SR–CHX–98–09) and 40235 (July 17, 1998), 63 FR 40147 (July 27, 1998) (SR–CHX–98–09) (orders approving revised SuperMAX and Enhanced SuperMAX algorithms); 41480 (June 4, 1999), 64 FR 32570 (June 17, 1999) (SR–CHX–99–04) (order approving revised SuperMAX Plus algorithm); and 42565 (March 22, 2000), 65 FR 16442 (March 28, 2000) (SR–CHX–99–24) (order approving Derivative SuperMAX algorithm).

results.[8] By replacing four existing price improvement programs with one comprehensive program that will incorporate (as a minimum threshold) the level of price improvement currently available, the Exchange can afford its specialists the flexibility to provide a wide variety of price improvement alternatives, all of which will be equal to or more favorable than existing alternatives.

III. Discussion

The Commission has reviewed carefully the proposed rule change, as amended, and finds that it is consistent with the Act and the rules and regulations promulgated thereunder applicable to a national securities exchange and, in particular, with the requirements of section 6(b).[9] Specifically, the Commission finds that approval of the proposed rule change is consistent with section 6(b)(5) [10] in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. The Commission believes that SuperMAX 2000 should provide CHX specialists with greater flexibility to respond to customer price improvement requirements than the four CHX programs within the MAX system currently in use. The Commission also believes that SuperMAX 2000 will simplify the Exchange's existing price improvement framework by eliminating the four existing price improvement programs and replacing them with one comprehensive program that incorporates as a minimum threshold the level of price improvement that was available under the four previous price improvement programs. Finally, the Commission believes that implementation of SuperMAX 2000 should afford CHX specialists greater flexibility to provide a wide variety of price improvement alternatives, all of which will be equal to or better than the price improvement alternatives currently available.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. In the notice, the Commission indicated that it would consider granting accelerated approval of the proposal after a 15-day comment period. The Commission received no comments on the proposal during the 15-day comment period. Amendment Nos. 1 and 2 made only minor, technical changes to the proposed rule language, and did not alter the substance of the proposal.[11] Furthermore, because SuperMax 2000 is designed to provide price improvement alternatives that incorporate as a minimum threshold the level of price improvement currently available under the price improvement programs previously in use, the Commission believes it is reasonable to implement SuperMAX 2000 on an accelerated basis to allow specialists and investors to reap the anticipated benefits of this program as soon as possible. For these reasons, the Commission finds good cause for accelerating approval of the proposal rule change, as amended.

IV. Conclusion

For the above reasons, the Commission finds that the proposed rule change is consistent with the provisions of the Act, in general, and with section 6(b)(5) [12] in particular.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (SR–CHX–00–37), as amended, be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

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[8] The Exchange anticipates that its existing price improvement programs, which have been amended on a pilot basis to include decimal price increments, would become obsolete once the pilot expires on February 28, 2001. In accordance with an Exchange rule approved by the Commission, the four existing price improvement programs would be deemed deleted from the Exchange's rules upon the completion of the securities industry transition to a decimal pricing environment. *See* Article XXB, Rule 4, which provides, in pertinent part, that all rule references to fractional price increments shall be deemed deleted.

[9] 15 U.S.C. 78f(b). In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] Amendment No. 1 was published for comment. *See* footnote 4, *supra*. Because Amendment No. 2 made only technical, non-substantive changes to the proposal, there is no need to solicit comments on Amendment No.2

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43763; File No. SR–NYSE–99–24)]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1 and 2 Thereto by the New York Stock Exchange, Inc. Establishing XPress Orders and Quotes

December 21, 2000.

I. Introduction

On June 10, 1999, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2], a proposed rule change establishing XPress orders and quotes. The proposed rule change was published for comment in the **Federal Register** on August 11, 1993.[3] The Exchange filed Amendment Nos. 1 [4] and 2 [5] to the proposal on September 13, 1999 and August 21, 2000, respectively. The Commission received no comments on the proposal. This order approves the proposed rule change, as amended, and solicits comments from interested persons on Amendment Nos. 1 and 2.

II. Description of the Proposal

In order to enhance participation in its auction market, the Exchange proposes to create a new type of order,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 41703 (August 4, 1999), 64 FR 43802.

[4] *See* letter from Daniel Parker Odell, Assistant Secretary, NYSE, to Richard Strasser, Assistant Director, Division of Market Regulation (''Division''), Commission (September 10, 1999) (''Amendment No. 1''), Amendment No. 1 specifies that XPress orders and XPress quotes must consist of at least 25,000 shares and XPress quotes must be displayed for at least 30 seconds.

[5] *See* letter from Daniel Parker Odell, Assistant Secretary, NYSE, to Nancy Sanow, Assistant Director, Division, Commission (August 17, 2000) (''Amendment No. 2''). Amendment No. 2 changes the original proposal to allow partial executions when an XPress order is entered against a valid XPress quote that is reduced below the minimum size requirement before the XPress order is received at the specialist's post. Amendment No. 2 provides examples of situations where XPress orders would receive partial executions. Amendment No. 2 also provides that is a SuperDOT order is received after an XPress order, but just before a second XPress order, the SuperDOT order will be executed, to the extent possible, with the XPress orders, in time priority. Finally, Amendment No. 2 amends proposed Rule 13 to require XPress orders to be entered before 3:58 p.m. or two minutes prior to any other closing time on the Exchange and clarifies that price improvement does not remove bids and offers from the floor.

known as an ''XPress order.'' The Exchange believes this order type responds to the needs of market participants for ''clean'' executions when entering large-size orders in response to bids and offers which have been displayed for a minimum time period.

The proposed rule change consists of amendments to NYSE Rule 13, defining XPress orders and XPress quotes, and amendments to NYSE Rule 72, describing the requirements for executing XPress orders. NYSE Rule 13 defines an XPress order as an order of at least 25,000 shares to be executed against a displayed XPress quote, or at an improved price, if obtainable.[6] Under NYSE Rule 13, the size of the XPress order could not exceed the size of the XPress bid or offer against which it was to be executed at the time of order entry. Any portion of the XPress order that is not executed against a displayed XPress quote is cancelled.[7] XPress orders would be delivered to the specialist's post via the Exchange's automated order routing system. Multiple XPress orders in the same stock would be executed in strict time priority with respect to each other and with respect to other orders.

An XPress quote is defined as a published bid or offer of at least 25,000 shares that is displayed at the same price for at least 30 seconds.[8] If the XPress bid or offer price changed, the quote would have to be displayed at the new price for at least 30 seconds before it would be XPress eligible. Generally, if the size of the quote drops below 25,000 shares, the quote would no longer be XPress eligible.

However, if an XPress order is entered against a valid XPress quote, but the quote has been reduced below 25,000 shares and is no longer XPress eligible when the order is received at the specialist's post, the Exchange proposes that the XPress order receive a partial execution.[9] Any portion of the XPress order not executed, at either the XPress price or an improved price, would be cancelled. The Exchange provided the following examples of situations where an XPress order may be entered against a valid XPress quote that is reduced below 25,000 shares when the order is received at the specialist's post.[10]

First, assume there is an XPress offer for 25,000 shares at a price of $20. An XPress order to buy 25,000 shares is submitted, but a member in the crowd takes 5,000 shares of the offer before the specialist can interact with the XPress order. The Exchange proposes that the XPress order be permitted to buy the remaining 20,000 shares offered, with 5,000 shares of the XPress order cancelled.

Second, assume there is an XPress offer for 75,000 shares at $20, and three XPress orders of 25,000, 25,000 and 35,000 shares are received within a nearly simultaneous time frame.[11] It is proposed that the first two XPress orders be executed for 25,000 shares each, and that the third XPress order receive a partial execution of 25,000 shares, with 10,000 shares cancelled.

Under Supplementary Material .50 to Rule 72, once the specialist has represented an XPress order in the crowd, no part of the XPress bid or offer against which the XPress order is to be executed can be withdrawn, except to provide price improvement to all or part of the XPress order.[12] A member providing price improvement to an XPress order would have to trade with all other market interest having priority at the price before trading with the XPress order. The remainder of the XPress order, if any, would be executed at the XPress bid or offer price up to the number of shares then available, regardless of whether the number is less than the minimum size for an XPress quote. All or part of the balance of an XPress bid or offer could be withdrawn after an XPress order has been executed and before any subsequent XPress orders are represented.

Under the proposal, an execution of an XPress order, in whole or in part, would not remove bids or offers from the floor. Therefore, an XPress order executed in part, at an improved price, would retain its priority[13] (*i.e.* be first in line for execution) and would not have to compete (*i.e.,* be on parity) with newly entered bids or offers at the XPress quote. Without this proposed provision, NYSE Rule 72(f), which provides that a trade clears the floor, would apply. The Exchange believes that this result would defeat the purpose of the XPress order.

In addition, an intervening SuperDOT order (*i.e.* a SuperDOT order received immediately between two XPress orders) would not remove bids or offers from the floor.[14] For example, assume there is an XPress offer of 75,000 shares at $20. An XPress order to buy is received for 40,000 shares followed closely by a SuperDOT limit order to buy 1,000 shares at $20, and another XPress order to buy for 40,000 shares. In this example, the Exchange proposes that 75,000 shares trade at $20, with 40,000 shares allocated to the first XPress order, 1,000 shares to the SuperDOT limit order, and 34,000 shares to the second XPress order, with 6,000 shares of this order cancelled. Otherwise, the intervening SuperDOT order would clear the floor and the second XPress order would not be assured an execution.[15]

The effective date of the proposed rule change will be based on the implementation of enhancements to NYSE systems as well as the state of readiness of the member firm community. Presently, implementation of the proposal is targeted for the first quarter of the year 2001.[16]

III. Discussion

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange.[17] In particular, the proposal is consistent with Section

[6] A customer's individual orders may not be aggregated to become an XPress order. For example, a customer's three separate 10,000 share orders could not be aggregated to be designated as XPress. Telephone call between Donald Siemer, Director, Market Surveillance, NYSE, and Sonia Patton, Staff Attorney, Division, Commission (November 13, 2000).

[7] If no portion of the XPress order is executed because the entire XPress quote has been executed against by the time the XPress order is received at the specialist's post, the entire XPress order will be canceled. Telephone call between Donald Siemer, Director, Market Surveillance, NYSE, and Sonia Patton, Staff Attorney, Division, Commission (November 13, 2000).

[8] *See* Amendment No. 1, *supra* n.4. The Exchange has indicated that it may, in the future, submit a proposed rule change to reduce the minimum size for XPress orders and quotes to 15,000 shares and to reduce the 30-second minimum requirement for XPress quote designation.

[9] *See* Amendment No. 2, *supra* n.5. Under the original version of the proposal, if an XPress order was received at the specialist's post and the quote was no longer XPress, the XPress order would be cancelled.

[10] *See* Amendment No. 2, *supra* n.5.

[11] ''Within a nearly simultaneous time frame'' means within seconds. Telephone call between Donald Siemer, Director, Market Surveillance, NYSE, and Sonia Patton, Staff Attorney, Division, Commission (November 21, 2000).

[12] XPress orders that receive partial execution are also eligible to receive price improvement. Telephone call between Donald Siemer, Director, Market Surveillance, NYSE, and Sonia Patton, Staff Attorney, Division, Commission (November 21, 2000).

[13] NYSE Rules 71 and 72 provide that the first bid made at the highest price has priority. Similarly, the first offer at the lowest price has priority.

[14] *See* Amendment No. 2, *supra* n.5.

[15] Telephone call between Donald Siemer, Director, Market Surveillance, NYSE, and Jack Drogin, Assistant Director, Division, Commission, Terri Evans, Special Counsel, Division, Commission, and Sonia Patton, Staff Attorney, Division, Commission (October 10, 2000).

[16] Telephone call between Donald Siemer, Director, Market Surveillance, NYSE, and Sonia Patton, Staff Attorney, Division, Commission (November 21, 2000).

[17] In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

6(b)(5) of the Act [18] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. In addition, the Commission believes that the XPress system is consistent with Congress's finding in Section 11A(a)(1)(C)(i) of the Act [19] that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the economically efficient execution of securities transactions.

The Commission believes that the XPress system should assure the economically efficient execution of securities transactions by providing a means for the execution of large orders from off the floor, In addition, the Commission believes that the XPress system should encourage market participants, particularly institutional investors, to display orders of at least 25,000 shares, which may attract more order flow and increase the depth and liquidity of the Exchange's market to the benefit of investors and the public interest. The Commission notes that the 30 second display requirement provides brokers and non-XPress orders the opportunity to interact with the quote before it becomes XPress eligible. The Commission also believes that the proposed rule change could help to perfect the mechanism of a free and open market by allowing market participants, particularly institutional investors, to more quickly execute large orders from off the floor. The Commission also believes that permitting the prompt and efficient execution of large orders, with the opportunity for price improvement, could strengthen the NYSE market and benefit market participants.

The Commission finds good cause to approve Amendment Nos. 1 and 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing of the amendment in the **Federal Register**. Specifically, Amendment No. 1 amends the proposed rule language to clarify that the minimum number of shares required for an order to be designated as XPress is 25,000 and that a published bid or offer must remain at the same price for at least 30 seconds to be designated an XPress quote. Amendment No. 2 clarifies that partial executions are permitted by the system, that intervening SuperDOT orders will not clear the floor, and that XPress orders cannot be entered within two minutes of the close of trading. The Commission believes that these amendments should assist members, investors, and market participants in general in understanding the requirements of XPresss quotes and XPress orders and how orders are executed on the system. Accordingly, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b) of the Act,[20] to approve Amendment Nos. 1 and 2 to the proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1 and 2, including whether these amendments are 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the File No. SR–NYSE–99–24 and should be submitted by [insert date 21 days from the date of publication].

V. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change (SR–NYSE–99–24), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–33264 Filed 12–28–00; 8:45 am]

BILLING CODE 8010–01–M

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78k–1(a)(1)(C)(i).

[20] 15 U.S.C. 78f(b)(5) and 78s(b).

[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43762; File No. SR–Phlx–00–64]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Late Charges and Penalties for Non-Payment

December 21, 2000.

I. Introduction

On September 18, 2000, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its By-Law Article XIV, Section 14–5, ''Penalty for Non-Payment,'' and Phlx Rule 50, ''Late Charge,'' to clarify and provide consistent time periods for reporting delinquent accounts to the Phlx's Finance Committee and the Phlx's Board of Governors (''Board'').

The proposed rule change was published for comment in the **Federal Register** on November 8, 2000.[3] No comments were received on the proposal. This order approves the proposal.

II. Description of the Proposal

The Phlx proposes to amend Phlx Rule 50 to: (1) Impose a late charge on accounts unpaid 30 days after the date of the original invoice, rather than accounts unpaid 40 days after the date of the original invoice; (2) reduce the amount of the late charge from 2% simple interest to 1% simple interest for each 30-day period or fraction thereof, calculated on a daily basis, during which the accounts payable to the Phlx remain outstanding; and (3) provide that the Phlx's Finance Committee may waive the amount of the late charge, or a portion thereof, if the amount falls within guidelines established by the Board. The Phlx also proposes to eliminate from Phlx Rule 50 the requirement that the Phlx's Controller notify the board when an amount due to the Exchange remains outstanding for 90 days. Instead, Phlx Rule 50, as amended, requires the Phlx's controller to notify the Finance Committee when an amount due to the Phlx remains unpaid 50 days after the date of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 43489 (October 27, 2000), 65 FR 67031.

original invoice. The Finance Committee will refer the matter to the Board if the amount due exceeds $10,000.

For amounts in excess of $10,000, Phlx By-Law Article XIV, Section 14–5, as amended, requires the Phlx's Controller, rather than the Secretary, to report to the Board: (1) A find and/or other monetary sanction unpaid 20 days after the amount becomes payable; and (2) a due, foreign currency option (''FCO'') user's fee, fee other charge or other amount due to the Phlx that is unpaid 50 days from the date of the original invoice. In addition, the Phlx proposes to amend Phlx By-Law 14–5 to provide that the Phlx's Committee on Admissions may dispose of a membership or FCO participation when an amount over $10,000 has not been paid within one year after payment was due.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Section 6 of the Act.[4] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5)[5] of the Act in that it is designed to modify the Exchange's fee collection process in a manner that promotes just and equitable principles of trade, prevents fraudulent and manipulative acts and practices, maintains fair and orderly markets, and protests investors and the public interest.[6] In addition, the Commission finds that the proposal is consistent with Section 6(b)(4) of the Act,[7] which provides that a registered national securities exchange must promulgate rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

The Commission believes that the proposal to revise PHLX Rule 50 to impose a late charge 30 days after the date of the original invoice, rather than 40 days after the date of the original invoice, will help to encourage the prompt payment of amounts due to the Exchange. The Commission believes that the reduction of the late charge in PHLX Rule 50 from 2% simple interest to 1% simple interest is reasonable. In addition, the Commission believes that the proposal to allow the Finance Committee or its designee to waive a late charge or a portion of a late charge if the amount falls within guidelines established by the Board will provide the Finance Committee with flexibility in the administration of late charges.

PHLX Rule 50 currently requires the Controller to notify the Board if a member fails to pay dues, fees, fines, or other charges within 90 days. The Commission believes that the proposal to revise PHLX Rule 50 to require the Controller to notify the Finance Committee of the failure to pay a fine and/or other monetary sanction within 20 days, and of the failure to pay dues, fees, and other charges within 50 days, will facilitate the collection of amounts owed to the PHLX. The Commission believes that amending PHLX Rule 50 to require the Finance Committee to report to the matter to the Board when an amount due exceed $10,000 establishes a reasonable threshold for Board involvement in the collection process.

PHLX By-Law 14–5 currently states that the membership or participation of a member or FCO participant may be disposed of by the PHLX's Committee on Admissions when a due, fee, or fine has not been paid within one year. The Commission believes that amending PHLX By-Law 14–5 to specify that the Committee on Admissions may dispose of the participation or membership when an amount in excess of $10,000 has not been paid within a year will establish a threshold for action by the Committee on Admissions and notify members and participants of a circumstance under which the Committee on Admissions may dispose of a membership or FCO participation. With regard to unpaid amounts exceeding $10,000, the Commission finds that the PHLX's proposal to amend PHLX By-Law 14–5 to require the PHLX's Controller, rather than the Secretary, to report to the Board: (1) A fine and/or other monetary sanction unpaid 20 days after the amount becomes payable; and (2) a due, FCO user's fee, fee, other charge, or other amount due to the PHLX that is unpaid 50 days from the date of the original invoice is designed to increase the efficiency of the collection process.

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–PHLX–00–64) be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–33263 Filed 12–28–00; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(5).

[6] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[License No. 09/71–0378]

Housatonic Equity Investors SBIC, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Housatonic Equity Investors SBIC, L.P., 88 Kearney St. Suite 1610, San Francisco, CA 94108, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') rules and regulations (13 CFR 107.730 (2000)). Houstonic Equity Investors SBIC, L.P. proposes to provide equity financing to WebFeet.com, Inc. 609 Mission Street, Suite 4000, San Francisco, CA 94105. The financing is contemplated for working capital purposes.

The financing is brought within the purview of Sec. 107.730(a)(1) of the Regulations because Houstonic Equity Investors, L.P., an Associate of Houstonic Equity Investors SBIC, L.P., currently owns greater than 10 percent of ArchivesOne, Inc. and therefore WebFeet.com, Inc. is considered an Associate of Housatonic Equity Investors, L.P. as defined in Sec. 107.50 of the regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 00–33350 Filed 12–28–00; 8:45 am]

BILLING CODE 6325–01–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Privacy Act of 1974: System of Records

AGENCY: Office of the Secretary, DOT.

ACTION: Notice to establish two systems of records and to amend two systems of records.

SUMMARY: DOT intends to establish two new systems of records under the Privacy Act of 1974 and to exempt them from certain provisions of the Act. DOT also intends to amend two existing systems of records.

DATES: December 29, 2000.

FOR FURTHER INFORMATION CONTACT: Yvonne L. Coates, Department of Transportation, Office of the Secretary, 400 7th Street, SW., Washington, DC 20590, (202) 366–6964 (telephone), (202) 366–7024 (fax), *Yvonne.Coates@ost.dot.gov* (Internet address).

SUPPLEMENTARY INFORMATION: The Department of Transportation systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the above mentioned address.

DOT/FAA 852

SYSTEM NAME:

Suspected Unapproved Parts (SUP) Program.

SECURITY CLASSIFICATION:

Unclassified, Sensitive.

SYSTEM LOCATION:

Department of Transportation, Federal Aviation Administration (FAA), Associate Administrator for Regulation and Certification, Suspected Unapproved Parts Program Office, Dulles, VA 20166. Records may also be temporarily located in FAA Regional Offices and Directorate Offices, as well as FAA Civil Aviation Security Offices during the time of the open investigation.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM OF RECORDS:

Company representatives of air carriers, repair stations, mechanics, manufacturers, suppliers, brokers, or individuals who are otherwise directly or indirectly involved in suspected unapproved parts investigations. Individuals who contact the FAA regarding the manufacture, sale or use of suspected unapproved parts may also be included in the system of records.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include files and other investigatory material pertaining to a SUP investigation. Records may contain name and address, phone numbers, and certificate numbers of companies or individuals, their role in SUP investigations, information referencing enforcement actions, alert or notification actions, and investigation results.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 44701.

PURPOSE:

To provide a primary collection point of SUP records and issues and provide technical support to FAA and industry on SUP; maintain a parts reporting information system for tracking SUP investigations and analysis of data; provide program oversight, and review of SUP related enforcement actions and audits.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

FAA will routinely provide relevant information to the Federal Bureau of Investigation, U.S. Customs Service, and Defense Criminal Investigative Services for their use in any civil/criminal investigations when a SUP case is initiated. Also see Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copy documents are stored in locked file cabinets with restricted access; electronic records reside in a secure database system. The SUP Program Office operates in a secure office with limited access, key controls, and locks.

RETRIEVABILITY:

Hard copy investigative records are retrieved by SUP case number; electronic records are retrieved through automated searches such as by case number, company name, individual's name, including source's name, name of the subject of an investigation, part number, type of aircraft, or geographical location.

SAFEGUARDS:

Manual records and folders are stored in locked file cabinets with restricted access. Access to automated records is restricted by controlled user ID's and passwords. A risk assessment plan and system security plan are in place.

RETENTION AND DISPOSAL:

These records are retained for a period of 5 years. National Archives and Records Administration (NARA) approval pending.

SYSTEM MANAGER AND ADDRESS:

Department of Transportation, Federal Aviation Administration, Manager, Suspected Unapproved Parts Program Office, 4500 Aviation Drive, Suite 214, Dulles, VA 20166.

NOTIFICATION PROCEDURE:

Same as ''System Manager.''

RECORD ACCESS PROCEDURES:

Same as ''System Manager.''

CONTESTING RECORD PROCEDURES:

Same as ''System Manager.''

RECORD SOURCE CATEGORIES:

Information is collected from individuals, including air carriers, repair stations, aircraft owners/operators, manufacturers, suppliers, brokers, mechanics, pilots, FAA, and DOT officials who believe for any reason a part is not approved.

EXEMPTION CLAIMED FOR THE SYSTEM:

Portions of this system are exempt from disclosure under the provisions of 5 U.S.C. 552a(k)(2).

OMB CONTROL NUMBER:

Not applicable.

SYSTEM NUMBER:

DOT/FMCSA 001.

SYSTEM NAME:

Motor Carrier Management Information System (MCMIS).

SECURITY CLASSIFICATION:

Unclassified, Sensitive.

SYSTEM LOCATION:

Austin Automation Center (AAC), Department of Veterans Affairs (VA), 1615 Woodward Street, Austin, TX 78772 (*www.aac.va.gov*).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM OF RECORDS:

Individuals who are the sole employee (owner/operator) of a company subject to the Federal Motor Carrier Safety Regulations. Drivers of commercial vehicles who were involved in a recordable crash or who were the subject of a roadside driver/vehicle inspection or an investigatory action.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include information, which supports investigatory procedures and

enforcement actions. Company operation records are identified by legal name, trade name, physical and mailing addresses, USDOT number, MC or MX number, Dun & Bradstreet number and Tax Identification Number which, in the case of an owner/operator, is the individual's Social Security Number. Drivers and co-drivers are identified by name, date of birth, license number and license State. Inspection records include violations of applicable Federal and State laws that were discovered during an inspection. Information maintained in the MCMIS includes demographic and safety performance information on approximately 600,000 interstate and foreign motor carriers and hazardous material shippers operating in the United States. Additionally, information on intrastate carriers is being added to MCMIS as States move toward use of a single USDOT number to identify all motor carriers.

Data in MCMIS include:

Motor Carrier Identification (Census)—This data includes the USDOT number, carrier identification, carrier address, type and size of operation, commodities carried, as well as other characteristics of the operation. Approximately 50,000 new entities are added to the census file annually.

Driver/Vehicle Inspection Data—This data is collected during roadside inspections of drivers and vehicles. Violations of safety regulations governing the driver, the vehicle and those specifically related to the transportation of hazardous materials are included. The majority of driver/vehicle inspections are conducted by State officers. Approximately 2 million inspections of motor carriers' drivers and vehicles operating in interstate commerce and 300,000 inspections of motor carriers operating intrastate are entered into MCMIS annually.

Crashes—This data is collected from State and local police crash reports. Approximately 100,000 truck and bus crashes are entered into MCMIS annually.

Reviews and Ratings—This data is collected during on-site reviews of motor carrier and hazardous material shipper operations. Information from these reviews is used to determine a safety fitness rating (Satisfactory, Conditional, Unsatisfactory) which is posted in the MCMIS. Over 130,000 motor carriers are currently rated and approximately 10,000 more are added every year.

Enforcement—The MCMIS contains key information about each enforcement case conducted against a company, including types of violations and fines assessed. It is estimated that information on about 2,000 new cases is received annually.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 502, 504, 506, and 508; and 49 CFR 1.73.

PURPOSE:

To provide a central collection point for records on motor carriers and hazardous material shippers which allows for the analysis of safety-related data needed to administer and manage the FMCSA's motor carrier safety program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be shared with Federal, State, and local governments, contractors involved in system support and maintenance, and Motor Carrier Safety Assistance Program (MCSAP) participants and grantees for use in support of commercial motor vehicle safety. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

MCMIS records are stored in an automated system operated and maintained at the AAC.

RETRIEVABILITY:

Electronic records can be retrieved through automated searches on information, such as, company name, company's tax identification number, driver's name, driver's date of birth, driver's license number, geographical location, or various other means.

SAFEGUARDS:

The MCMIS falls under the guidelines of the AAC in Austin, TX. This facility has it's own approved System Security Plan which provides that:

The system will be maintained in a secure computer room with access restricted to authorized personnel.

Access to the building must be authorized and is limited.

Access will be controlled by requiring that users provide a valid account name and password. The MCMIS contains a function that tracks system usage for other authorized users. MCMIS will require users to change access control identifiers at periodic intervals.

The Federal Motor Carrier Safety Administration will operate the MCMIS in accordance with the Federal security regulations, policy, procedures, standards and guidance for implementing the Automated Information System Security Program.

Only authorized U.S. and State Government personnel and contractors conducting system support or maintenance may access MCMIS records.

Access to records is password protected and the scope of access for each password is limited to the official need of each individual authorized access.

Additional protection is afforded by the use of password security, data encryption, and the use of a secure network.

RETENTION AND DISPOSAL:

Computerized database with daily backups performed automatically. Master Files are NARA historical copies, which are permanent. Annual transfers occur at end of each fiscal year. Agency master files are destroyed after six years.

SYSTEM MANAGER AND ADDRESS:

Department of Transportation, Federal Motor Carrier Safety Administration, Division Chief, Information Systems Division, 400 7th Street, SW., Washington, DC 20590.

NOTIFICATION PROCEDURE:

Same as ''System Manager.''

RECORD ACCESS PROCEDURES:

Same as ''System Manager.''

CONTESTING RECORD PROCEDURES:

Same as ''System Manager.''

RECORD SOURCE CATEGORIES:

Driver information is recorded as a result of roadside driver/vehicle inspections and crash reports submitted by State and local law enforcement agencies and investigations performed by State and Federal investigators. MCMIS is constantly being updated as States and FMCSA field offices forward safety information to the MCMIS soon after it has been accumulated and processed in their local information systems.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system are exempt from disclosure under the provisions of 5 U.S.C. 552a(k)(2).

OMB CONTROL NUMBER:

The Federal Motor Carrier Safety Administration has received approval from the Office of Management and Budget (OMB) for each collection of information it conducts and requires pursuant to OMB No. 2126–0013, Motor Carrier Identification Report

(Application for U.S. DOT Number), MCS–150 (Rev. 3–2000).

The Department of Transportation proposes to amend the following two systems of records. The DOT/FHWA 204 is being changed to DOT/FMCSA 002; and DOT/FHWA 213 is being changed to DOT/FMCSA 003.

DOT/FMCSA 002

SYSTEM NAME:

Federal Motor Carrier Safety Administration (FMCSA) Motor Carrier Safety Proposed Civil and Criminal Enforcement Cases, DOT/FMCSA.

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

Office of Enforcement (MC–EC); 400 7th Street, SW., Room 3419, Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Officers, agents or employees of motor carriers, including drivers who have been the subject of investigation for Motor Carrier Safety regulation violations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Motor Carrier safety regulation violations and identifying features.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Motor Carrier Safety Act of 1984, 49 U.S.C. 521(b).

PURPOSE(S):

Decide enforcement action, and for use as historical documents in case of appeal.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses. Routine use number 5 does not apply to this system of records.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders in the Field Legal Services' offices

RETRIEVABILITY:

Names of individuals.

SAFEGUARDS:

Only Office of the Chief Counsel or Field Legal Services employees, and other FMCSA employees have regular access to the files.

RETENTION AND DISPOSAL:

The records are retained for one year and then are generally sent to the local Federal Records Centers for an additional three-year period. System manager(s) and address: FMCSA, Office of the Chief Counsel, 400 7th Street, SW., Room 4217, Washington, DC 20590; FMCSA Service Centers, Field Legal Services.

NOTIFICATION PROCEDURE:

Same as ''System Manager.''

RECORD ACCESS PROCEDURES:

Same as ''System Manager.''

CONTESTING RECORD PROCEDURES:

Same as ''System Manager.''

RECORD SOURCE CATEGORIES:

Individuals, motor carrier files, OMCHS file information as gathered by OMCHS investigators, etc.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

5 U.S.C. 552 (c)(3), (d), (e)(4)(G), (H), and (I), (f) to the extent they contain investigative material compiled for law enforcement purposes in accordance with 5 U.S.C. 552a(k)(2).

DOT/FMCSA 003

SYSTEM NAME:

Driver Waiver/Exemption File.

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA), Office of Bus and Truck Standards and Operations (MC–PS), 400 7th Street, SW., Washington, DC 20590; FMCSA Service Centers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Operators of interstate commercial motor vehicles that transport certain commodities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications for waiver (usually involving physical disability); final disposition of request for waiver; and waiver renewal.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Motor Carrier Safety Act of 1984 (49 U.S.C. 31136(e) and TEA–21 (49 U.S.C. 31315).

PURPOSE(S):

Monitor drivers of commercial motor vehicles who operate in interstate commerce and have been identified as physically impaired.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses. Routine use number 5 is not applicable to this system of records.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in file folders in file cabinets.

RETRIEVABILITY:

The records are filed by driver's name.

SAFEGUARDS:

Files are classified as sensitive and are regularly accessible only by designated employees within the FMCSA Service Centers and the FMCSA.

RETENTION AND DISPOSAL:

The files are retained while the driver waivers are active. The inactive driver waiver files are purged every 3 years.

SYSTEM MANAGER(S) AND ADDRESS:

Department of Transportation, Federal Motor Carrier Safety Administration, Office of Bus and Truck Standards and Operations (MC-PS), 400 7th Street, SW., Washington, DC 20590.

NOTIFICATION PROCEDURE:

Same as ''System Manager.''

RECORD ACCESS PROCEDURES:

Same as ''System Manager.''

CONTESTING RECORD PROCEDURES:

Same as ''System Manager.''

RECORD SOURCE CATEGORIES:

Application for Waiver or Waiver Renewal.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: December 26, 2000.

Yvonne L. Coates,

Privacy Act Coordinator.

[FR Doc. 00–33365 Filed 12–28–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Antidrug and Alcohol Misuse Prevention Program for Personnel Engaged in Specified Aviation Activities; Correction

ACTION: Notice; correction.

SUMMARY: On December 5, 2000, the Federal Aviation Administration (FAA) published a notice at 65 FR 76000 that announced to the public the minimum percentage rate for drug and alcohol testing for the year 2001. In that notice, the FAA included a numerical error on page 76001; this number refers to the alcohol violation rate for the year 1999. This document corrects that minor error.

FOR FURTHER INFORMATION CONTACT: Arnold N. Schwartz, Office of Aviation Medicine (AAM–810), Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–8932.

Correction

On page 76001 (65 FR 76001), in the second column, fifth paragraph, seventh line, ''0.42'' should read ''.06''.

Issued in Washington, DC on December 20, 2000.

Jon L. Jordan,

Federal Air Surgeon.

[FR Doc. 00–32970 Filed 12–28–00; 8:45 am]

BILLING CODE 1410–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number 2000–7912]

Notice of Cancellation of Public Hearing; The Union Pacific Railroad

On August 31, 2000, the Union Pacific Railroad (UP) petitioned the Federal Railroad Administration (FRA) seeking a waiver of compliance with the requirements of 49 CFR 214.329. UP requested relief that would permit the use of a system described by UP as the automatic train approach warning system (TAWS). FRA subsequently scheduled a public hearing seeking comments from interested parties on UP's proposal (65 FR 71200, November 29, 2000).

UP has withdrawn its petition for waiver (see Docket No. FRA–2000–7912, Document No. 11). Accordingly, the public hearing scheduled for this matter on Thursday, January 4, 2001 in Omaha, Nebraska is hereby cancelled.

Issued in Washington, D.C. on December 26, 2000.

Edward R. English,

Director, Office of Safety Enforcement.

[FR Doc. 00–33364 Filed 12–28–00; 8:45 am]

BILLING CODE 4910–06–P

Federal Register

Friday,
December 29, 2000

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 410, 414, 424, 480, and 498

Medicare Program; Expanded Coverage for Outpatient Diabetes Self-Management Training and Diabetes Outcome Measurements; Final Rule and Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 410, 414, 424, 480, and 498

[HCFA–3002–F]

RIN 0938–AI96

Medicare Program; Expanded Coverage for Outpatient Diabetes Self-Management Training and Diabetes Outcome Measurements

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule implements section 4105 of the Balanced Budget Act of 1997 (BBA) by expanding Medicare coverage for outpatient diabetes self-management training and establishes outcome measurements for evaluating the improvement of the health status of Medicare beneficiaries with diabetes. These services include education and training furnished to a beneficiary with diabetes by an approved entity deemed to meet certain quality standards established in this final rule. The physician (or qualified nonphysician practitioner) treating the beneficiary's diabetes must certify that these services are needed as part of the beneficiary's comprehensive plan of care.

EFFECTIVE DATE: These regulations are effective February 27, 2001.

FOR FURTHER INFORMATION CONTACT: Mary Stojak, (410) 786–6939 (Conditions for Coverage and Quality Standards); Joan Mitchell, (410) 786–4508 (Physician Fee Schedule Payments); Joan Brooks, (410) 786–5526 and Eva Fung, (410) 786–7539 (Accreditation and Deeming); Barbara Fleming, M.D., (410) 786–6863 (Outcome Measurement).

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I. Background

A. Legislation

Section 4105(a) of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33, enacted on August 5, 1997) provides coverage for diabetes self-management training in outpatient settings without limiting this coverage to hospital outpatient departments. The BBA stipulates that training may be furnished by a physician or other individual or entity that also provides other items or services payable under Medicare, and that meets certain quality standards. The payment amount for the services must be established under the physician fee schedule in consultation with organizations representing persons with diabetes. Additionally, section 4105(c)(1) of the BBA requires the Secretary to establish outcome measurements for purposes of evaluating the improvement of the health status of Medicare beneficiaries with diabetes.

On February 11, 1999, we published a proposed rule (64 FR 6827) to implement the BBA provisions addressing the coverage, payment, and accreditation requirements for outpatient diabetes self-management training. An overview of that proposed rule is given in section II of this preamble, the comments on the proposed rule and our responses to those comments are in section III, and a summary of changes in the final rule appears in section IV.

B. Program Instructions

In June and September of 1998, we issued program memoranda (PM AB–98–36 and PM AB–98–51) that implemented the outpatient diabetes self-management training benefit. We reissued these program instructions in 1999 and most recently on July 20, 2000.

C. Office of Inspector General Report

The Office of Inspector General (OIG) issued a draft report titled ''Medicare's Expanded Coverage of Outpatient Diabetes Self-Management Training Services'' (A–14–99–00207, June 2000) which reviewed the reasonableness of the individual and group session payment rates proposed by HCFA for diabetes self-management training. The OIG concluded that our proposed rates were inflated.

In our response to the draft report, we did not concur with the recommendation that the payment rates should be adjusted downward. We did agree, however, that we should refine our payment rates as we gain additional experience and knowledge about diabetes self-management training. We will periodically review the payment rates as part of our review of services furnished under the physician fee schedule and include any revisions in our annual updates to the physician fee schedule payment rates.

II. Provisions of the Proposed Rule

On February 11, 1999, we published in the **Federal Register**, a proposed rule (64 FR 6827) to implement section 4105(a) of the BBA concerning the expanded coverage of, and payment for, outpatient diabetes self-management training.

In the preamble of the February 1999 proposed rule, we noted that, as required by section 4105(a)(3) of the BBA, we consulted with representatives of various groups or organizations active in the field of diabetes education and training. These organizations or groups included the following:

- American Diabetes Association.
- The American Medical Association.
- The American Academy of Family Physicians.
- The Endocrine Society.
- The American Association of Clinical Endocrinologists.
- The American Association of Diabetes Educators.
- The American Dietetic Association.
- The Health Industry Manufacturers Association.
- Merck-Medco.
- The Diabetes Treatment Centers of America.
- American Pharmaceutical Association.
- The National Association of Chain Drug Stores.
- The National Community Pharmacy Associations.

We also worked extensively with diabetes experts from the Centers for

Disease Control and Prevention (CDC) and the Department of Veterans Affairs. In addition, we visited a number of diverse hospital-based training programs.

These consultations and visits revealed that there is no clear consensus on several important issues. The issues include critical questions concerning: (1) Who should be eligible to receive training; (2) how, when, and where the training should be furnished; and (3) who should furnish the training (and the specific qualifications necessary). We specifically solicited public comments on these issues and requested clinical data describing the impact of our proposed requirements on beneficiary health outcomes.

The parties that we consulted about diabetes self-management training agree that it is an interactive, collaborative process involving individuals with diabetes, their physicians, and their educators. The diabetes educational process will furnish the beneficiary with the knowledge and skills needed to perform self-care, manage crises, and make lifestyle changes to successfully manage the disease. The goal is to enable the beneficiary to become an active participant in a four-step process that includes assessment of the beneficiary's needs, development of an individualized educational plan, educational interventions, and evaluation of the beneficiary's success in achieving self-management goals.

The major provisions of the proposed rule are as follows:

A. Outpatient Diabetes Self-Management Training

We proposed in § 410.141(a) that Medicare Part B would cover an outpatient diabetes self-management training program when ordered by the physician or qualified nonphysician practitioner treating the beneficiary's diabetes. To ensure access to these services, we would recognize training ordered by certain nonphysician practitioners who treat a beneficiary's diabetes and whose services would be covered under Medicare as physician services if they were furnished by a physician. We would require these nonphysician practitioners to operate within the scope of the statutory benefit and their authority under State law or regulations. We further stated that we would not cover patient self-referral services.

B. Conditions for Coverage

In § 410.141(b), we proposed that we would cover outpatient diabetes self-management training under Medicare Part B if the following conditions are met: The physician (or qualified nonphysician practitioner) must order the training; the physician (or qualified nonphysician practitioner) must prepare a comprehensive plan of care that describes the content, number, frequency, and duration of the diabetes self-management training; the physician (or qualified nonphysician practitioner) must determine if the diabetes self-management training is reasonable and necessary for the treatment of the beneficiary's diabetes; and the services must be furnished in a group setting of 2 to 20 individuals (or on an individual basis if a group session is unavailable or if the beneficiary has special needs resulting from medical conditions that would hinder the beneficiary's participation in a group training session). All individuals in the group do not have to be Medicare beneficiaries.

C. Types and Frequency of Training

1. Initial Training

In § 410.141(c)(1), we proposed that Medicare would cover up to 10 hours of initial outpatient diabetes self-management training within a continuous 12-month period for each beneficiary who meets certain conditions. In addition, we proposed that payment would be only for those sessions attended (not for packages of sessions unless there is documentation that the beneficiary attended all sessions).

2. Additional Training

In § 410.141(c)(2), we proposed that a beneficiary who receives the initial training program would be eligible for a single follow-up training session of no more than 1 hour each year. The physician (or qualified nonphysician practitioner) treating the beneficiary must document in the beneficiary's medical record the specific medical condition (described in § 410.141(d)) that warrants the additional training.

D. Beneficiaries Who May be Covered

1. Medical Conditions

In § 410.141(d)(1), we proposed that any beneficiary who has one or more of the following medical conditions occurring within the 12-month period before the physician's order for the training would be eligible for Medicare coverage for training from an approved entity:

- New onset diabetes.
- Poor glycemic control as evidenced by a glycosylated hemoglobin (HbA1C) of 9.5 percent or more in the 90 days before attending the training.
- A change in treatment regimen from no diabetes medications to any diabetes medication, or from oral diabetes medication to insulin.
- High risk for complications based on poor glycemic control; documented acute episodes of severe hypoglycemia or acute severe hyperglycemia occurring in the past year during which the beneficiary needed third party assistance for either emergency room visits or hospitalization.
- High risk based on at least one of the following documented complications:
- Lack of feeling in the foot or other foot complications such as foot ulcer or amputation.
- Pre-proliferative or proliferative retinopathy or prior laser treatment of the eye.
- Kidney complications related to diabetes, such as macroalbuminuria or elevated creatinine.

2. Other Conditions

In § 410.141(d)(2), we proposed that beneficiaries who are inpatients in a hospital, skilled nursing facility, hospice, or nursing home would not be simultaneously eligible for services under this benefit. It is the responsibility of the staff at these facilities to furnish effective disease management training as a part of the basic care and treatment furnished to the beneficiary while the beneficiary is an inpatient of that facility.

If outpatient diabetes self-management training is furnished in a Federally Qualified Health Center (FQHC) or a Rural Health Clinic (RHC) setting by a nonphysician practitioner, the services would be bundled into the facility rate. The payment made to the FQHC or the RHC under the all-inclusive rate specifically accounts for these professional services because the facility payment rate reflects the costs of these services.

E. Approved Entities

In proposed § 410.141(e), we identified the conditions we would require an approved entity to meet. In order to be an ''approved entity,'' we would require that the physician, individual, or entity furnish other services for which direct Medicare payment may be made. In addition, the approved entity must comply with the Medicare regulations on the prohibition on reassignment of Medicare benefits set forth in §§ 424.73 and 424.80.

We also stated that we would require an approved entity to provide us with any documentation that we may request, which may include information that is necessary for us to pay a claim or to perform a focused post-payment medical review study. Finally, we

would approve an entity to furnish outpatient diabetes training if it meets the quality standards prescribed by us; the National Standards for Diabetes Self-Management Education Program (NSDSMEP), previously the National Diabetes Advisory Board (NDAB) standard; or standards developed by a national organization that is either a nonprofit or not-for-profit organization (approved by us) with demonstrated experience in representing the interest of individuals with diabetes. In order to show that these quality standards are met, an approved entity must show proof that it has been accredited by a HCFA-approved accreditation organization.

F. HCFA's Process for Approving National Accreditation Organizations

Section 410.142 proposed that we may approve and recognize a nonprofit or not-for-profit organization with demonstrated experience in representing the interest of individuals with diabetes to accredit entities to furnish training. We proposed to require an accreditation organization to submit documentation outlining how its quality standards are substantially equivalent to the HCFA quality standards as outlined in § 410.144(a) of the proposed rule. In addition, we proposed that the prospective organization verify and comply with information requirements in the application process as described in § 410.142(b).

G. Requirements for Approved Accreditation Organizations

In § 410.143, we proposed the requirements for an approved accreditation organization. We included the proposed ongoing responsibilities of an approved accreditation organization as well as set forth our oversight responsibilities for an approved national accreditation organization, our requirements for recognition and withdrawal, and our reconsideration process.

H. Quality Standards for a Deemed Entity

We proposed in § 410.144 that a national accreditation organization approved and recognized by us may accredit an entity to meet one of the following sets of standards: the quality standards prescribed by us and set forth in the proposed rule; the NSDSMEP quality standards; or standards of a national accreditation organization (approved by us) that represents individuals with diabetes.

I. Requirements for Deemed Entities

In § 410.145 of the proposed rule, we specified the conditions under which an entity may be deemed to meet our quality standards. We also proposed a procedure for determining the effective date and requirements for deemed entities, as well as a procedure for the removal of deemed status.

J. Payment for Outpatient Diabetes Self-Management Training Services

In accordance with section 4105(a) of the BBA, we proposed in § 414.63 that Medicare payment for outpatient diabetes self-management training would be made under the physician fee schedule described in § 414.1 through 414.48. Section 1848 of the Act requires that payments under the physician fee schedule be based on national uniform relative value units (RVUs) that are based on the resources used in furnishing a service. We proposed in the preamble of the February 1999 proposed rule to pay $55.41 (using the proposed RVUs) for individual sessions and $32.62 per person within a group session. We stated that these same payment rates would apply for the 1-hour annual refresher training. We also stated that actual payments to an entity approved by us would be adjusted for geographic variation and determined based on the physician fee schedule methodology as described in a separate final rule published in the **Federal Register** on October 31, 1997 (62 FR 59048).

K. Time Limits for Filing Claims

We proposed to add a new paragraph (d), ''Outpatient diabetes self-management training,'' to § 424.44, ''Time limits for filing claims.'' New paragraph (d) would state that we would make payment to an entity for the furnishing of outpatient diabetes self-management training after we approve the entity to furnish the services under part 410, subpart H.

L. Photocopying Reimbursement and Mailing Costs for Practitioners

Section 4105(c) of the BBA requires the Secretary to establish outcome measurements, including glycosylated hemoglobin (past 90-day average blood sugar levels), for purposes of evaluating the improvement of the health status of Medicare beneficiaries with diabetes. In order to obtain adequate clinical documentation used in developing outcome measurements, we proposed to direct Peer Review Organizations (PROs) to collect this information from a physician (or qualified nonphysician practitioner) treating a beneficiary with diabetes.

In § 476.111, ''PRO access to records and information of institutions and practitioners,'' (now designated § 480.111) we proposed to reimburse all Medicare providers and suppliers for the cost of photocopying and mailing copies of requested beneficiary medical records for any Medicare covered services to the PROs. We proposed payment of $.10 per page for photocopying plus first class postage costs for mailing the records. The proposed photocopying amount includes the cost of labor, supplies, equipment, and overhead based on the photocopying payment rates previously established for hospitals.

M. Appeals

In § 498.2, ''Definitions,'' we proposed adding to the definition of ''supplier,'' for the purposes of appeals, the words ''an entity approved by HCFA to furnish outpatient diabetes self-management training,'' following ''(OPO).''

III. Comments and Responses Based on the Proposed Rule

We received approximately 1,900 items of correspondence in response to our request for public comments on the February 1999 proposed regulation on diabetes self-management training. Commenters included individuals, professional associations, providers of care, and various health care professionals. A summary of those comments and responses follows:

Conditions for Coverage (§ 410.141(b))

Comment: One commenter suggested that in § 410.141(b)(1), there was no rationale to permit qualified nonphysician practitioners to order diabetes self-management training and that only physicians should be able to order the services.

Response: We highly regard the contributions and quality of care furnished by physicians in the United States. We will, however, retain the requirement in § 410.141(b)(1) that permits qualified nonphysician practitioners (such as, clinical nurse specialists, physician assistants, nurse practitioners, and nurse midwives) to order the training because this provision is consistent with section 1842(b)(18)(D) of the Act. We believe that the required State licensure requirements will ensure that this care is provided in an appropriate manner by qualified nonphysician practitioners. We believe, moreover, that the availability of training to improve the quality of life for Medicare beneficiaries should not be denied, particularly to beneficiaries who receive their medical care from qualified nonphysician practitioners. Permitting

qualified nonphysician practitioners to order this training will facilitate access to our beneficiaries, particularly in rural areas.

Comment: Many commenters did not agree with our requirement in proposed § 410.141(b)(2) that the physician (or qualified nonphysician practitioner) develop the entire plan of care or our requirement in proposed § 410.141(b)(2)(iii) that the physician (or qualified nonphysician practitioner) sign for any changes in the plan of care. The commenters contended that the treating physician should initiate the plan of care, but the diabetes educator should be the primary administrator of diabetes education and training.

Response: We continue to believe that the primary care physician (or qualified nonphysician practitioner) treating the beneficiary must order the training because he or she is most qualified to manage the beneficiary's care. Section 4105 of the BBA suggests that the person managing the individual's diabetic condition must certify that the training is needed under a comprehensive plan of care. Therefore, we will retain the requirement in § 410.141(b)(2) that the physician (or qualified nonphysician practitioner) develops the comprehensive plan of care, which includes the education and training needs of the individual beneficiary. We note that in § 410.141(b)(2)(ii) the referring physician (or qualified nonphysician practitioner) must identify the beneficiary's medical conditions. This is intended to help the educator to address the appropriate training.

We will also retain the requirement in § 410.141(b)(2)(iii) that the physician (or qualified nonphysician practitioner) sign any changes to the plan of care for the beneficiary before those changes are implemented. Diabetes self-management training is an interactive, collaborative process involving a beneficiary with diabetes, the beneficiary's physician (or qualified nonphysician practitioner) and educator. For that reason, we do not believe that the only role the physician should have is to refer the beneficiary for education and training. Under our quality standards on review of the plan of care and goals at § 410.144(a)(7), we have added requirements for the approved entity to forward a copy of the documentation to the referring physician and to periodically update the referring physician of the beneficiary's educational status. In a collaborative environment as described above, we believe that training will successfully change the beneficiary's self-management behavior.

Before Congress mandated Medicare coverage of diabetes training, some Medicare payments for diabetes training were made under the physician services benefit, usually in the context of outpatient or inpatient visits with the physician for diabetes management and counseling. We believe that physicians will continue to provide this type of education for their Medicare beneficiaries in addition to the diabetes training now available under this final regulation. We view these benefits as complementary and we believe both are appropriate for the management of a beneficiary's care.

Types and Frequency of Training (§ 410.141(c))

Comment: Many commenters suggested that we revise our provision in § 410.141(c)(1) to require more than 10 hours of initial training to cover all the subject areas required in the proposed rule.

Response: When developing the proposed rule, we conducted discussions and on-site visits with many diabetes self-management training programs. One of the purposes of these visits was to determine how many hours we should cover for a one time initial training benefit. We found that for most programs training averaged 10 hours. Training consists of 15 content areas. We observed that attendance dwindled and beneficiaries began to have compromised attention spans when the total number of training hours exceeded 10. We believe training outcomes are more effective when the training curriculum is concise and focused. Therefore, we conclude that 10 hours is a reasonable amount of time to cover the 15 content areas as described in § 410.144(a)(5). Although commenters suggested that 10 hours of initial training was not enough, they did not provide compelling arguments to support their opinions. We will continue to monitor and reassess the amount of hours needed to cover the required curriculum to ensure that our beneficiaries receive quality training service.

Comment: Many commenters indicated that we should permit educators more flexibility to conduct training in group or individual sessions (§ 410.141(c)). They stated that the NSDSMEP quality standards require that staff develop and update an individualized assessment for each patient. Also, certain aspects of diabetes education, such as a needs assessment, individualized instruction on medication or insulin delivery, and development of an individualized meal plan, can only be furnished on a one-to-one basis.

Response: We believe the commenters are correct that there should be more flexibility in our training coverage in § 410.141(c). We have increased the flexibility of how educators may furnish the training by changing the requirements in § 410.141(c)(1)(i)(F) and (c)(2)(i), respectively, to allow 1 hour of initial training and 2 hours of follow-up training to be individual training without the beneficiary meeting one of the special conditions in § 410.141(c)(1)(ii). This change will accomodate the requirement for individual assessment and special circumstances requiring individual training. Further, we revised the requirements for initial and follow-up training in § 410.141(c)(1) and (2) to permit training in half-hour increments.

Even though the attending physician specifies the medical condition the training must address, there will be instances in which the educator will be determining how the training will be conducted. For example, if a beneficiary has not complied with his or her diabetic diet after initial training, the educator will determine the appropriate intervention. However, if the physician specified that the beneficiary needs training on the delivery of insulin or other training, the training should address this specific need. Under this final rule, the educator is to perform training in adherence to the instructions from the referring physician (or qualified nonphysician practitioner).

Comment: Many commenters expressed concern that we revise our requirement in § 410.141(c)(2) to require more than 1 hour per year of follow-up training. The suggestions for more than 1 hour per year ranged from 2 hours to 10 hours per year, or up to 10 additional hours over a 5-year period. The most frequently stated comment was to increase the amount of follow-up training to 2 hours.

Response: Before we published the February 1999 proposed rule, our consultations with the diabetes community indicated that 1 hour of follow-up training would be sufficient to accomplish the goal of properly educating a diabetic patient. The comments on the proposed rule provided compelling arguments that more time is needed to reassess the training needs of the beneficiary and provide new training in some situations. An example of a situation when 1 hour of follow-up training may not be sufficient is when a beneficiary with Type 2 or non-insulin dependent diabetes becomes insulin dependent. A reassessment of the beneficiary's

training needs must be completed and the beneficiary might need additional training on how to perform injections and how to self-monitor glucose levels. Multiple educational interventions to stabilize the beneficiary's condition might be needed in a single year, which we agree could require more than 1 hour of follow-up training. However, we have determined it will not take more than 1 additional hour of training. Also, based on comments from the public, 2 hours of follow-up training is standard practice for diabetes educators. We received no evidence to support allowing more than 2 hours of follow-up training.

We have accepted commenters suggestions and increased the amount of follow-up training in § 410.141(c)(2) to 2 hours each year starting in the calendar year after the beneficiary completes the initial training (See § 410.141(c)(2)(iii).) In addition, educators may provide follow-up training on four different occasions during the year using the half-hour increments in the final rule. The follow-up training may be provided in individual training sessions or group sessions. A beneficiary is not required to meet any special requirements in order to obtain an individual follow-up session.

Comment: A major national organization and other individual commenters urged us to furnish coding and payment for educational training in increments of 30 minutes instead of 1 hour for individual training sessions. The commenters indicated that shorter intervention sessions may be more appropriate for older beneficiaries.

Response: We have considered the comments for the 30-minute increment billing code for diabetes education and are adopting this comment. We agree that the shorter intervention sessions may be more appropriate for older Medicare beneficiaries and will allow more flexibility in training schedules. As stated above, we will allow a 30–minute increment code for individual and group training for both initial and follow–up training instead of a 1-hour increment.

Comment: Some commenters noted that a system needs to be developed to track diabetes training to tell providers the number of hours available to beneficiaries.

Response: We agree with the commenter that there is a need to track the number of hours of diabetes training furnished to a beneficiary. However, in light of other system and privacy demands, we are unable to announce a specific system at this time.

Beneficiaries Who May Be Covered (§ 410.141(d))

Comment: Many commenters stated that the HbA1C level of 9.5 percent as proposed in § 410.141(d)(1)(ii) would result in an increased risk of complications before diabetes education would be available to the beneficiary. The comments suggest that this would be especially true for individuals of certain ethnic backgrounds because they are at a higher risk for complications. Commenters suggested that the HbA1C level should be lowered. The suggestions among the commenters for a lower level ranged from 7.0 to 8.5 percent.

Response: We agree with the commenters that establishing an appropriate glycohemoglobin requirement as an eligibility criterion for the diabetes training benefits is important. In order to do this, we reviewed the medical literature for both the relationship of the glycohemoglobin level to the risk of developing complications of diabetes and the effect of diabetes training in reducing the glycohemoglobin level both in terms of the amount of reduction and the lowest glycohemoglobin level attained.

The medical literature was useful in supporting a direct relationship between the level of glycohemoglobin and the risk of developing diabetes complications. Specifically, lower levels of glycohemoglobin reduce the risk of developing complications. Lowering the glycohemoglobin, however, from 10 percent to 9 percent results in a much greater reduction in risk than lowering the glycohemoglobin from 8 percent to 7 percent; while lowering the glycohemoglobin from 9 percent to 8 percent results in an intermediate reduction in risk.

Much of the literature on diabetes training consists of studies with patients who have poor glycemic control (for example, glycohemoglobins higher than 9.5 percent), and generally measured the effect of diabetes training for short periods of time. Some studies involved concurrent changes in diabetes medications making the effect of diabetes education hard to measure. Although some studies demonstrated a reduction in glycohemoglobin levels, this reduction was generally less than or equal to 1 percent and was short-lived.

We have found that the medical literature is not conclusive regarding the efficacy of diabetes training alone in reducing glycohemoglobins below 8.5 percent, in effectuating long term improvement of glycemic control below 8.5 percent, or in reducing the risk of diabetes complications. Therefore, until strong medical evidence becomes available showing the efficacy of diabetes training in achieving these goals we have established a glycohemoglobin level of 8.5 percent as a criterion for eligibility for the diabetes training benefit. We believe that this level satisfies the concerns of the commenters. We will revisit this requirement when the medical literature indicates it is appropriate.

In determining the eligibility criteria we considered the magnitude of the impact of an elevated glycohemoglobin on a beneficiary's health, such as a high risk of developing heart disease or hypertension. Our eligibility criteria ensure that not only patients at significant risk for developing complications of diabetes will have access to the diabetes training service, but that patients with diabetes at risk for other illnesses such as strokes and heart attacks will also be eligible for diabetes training. This impact is related to the degree and the duration of the elevation in glycohemoglobin. We believe that making all beneficiaries with two consecutive glycohemoglobin levels of 8.5 percent or more (3 months apart in the year prior to entry into the training program) eligible for this service will ensure that beneficiaries at significant risk for complications of diabetes will be able to get diabetes training. We believe that this lower level is sufficient to ensure the availability of training for individuals of any ethnic background. In consideration of the risks of elevated HbA1C levels in the Medicare population and concerns expressed by the commenters, we revised § 410.141(d)(2) to reduce the level of HbA1C required for initial training to a level of 8.5 percent or more on 2 consecutive HbA1C determinations 3 or more months apart in the year before the beneficiary begins receiving training.

Comment: Many commenters suggested in § 410.141(d)(1)(v)(C), that we add criteria for a diagnosis of microalbuminuria documented by two positive microalbuminuria screening tests in the absence of urinary tract infections, fever, or infection in the year before a beneficiary receives training.

Response: We agree with the commenters that a criteria for a diagnosis of microalbuminuria should be added. Therefore, in § 410.141(d)(5)(iii), we have changed the criteria to read, ''when manifested by albuminuria,'' in response to the comment. The term albuminuria includes both microalbuminuria and macroalbuminuria.

Comment: Commenters also suggested adding to proposed § 410.141(d)(1)(v)(C)

levels of hypertension and hyperlipidemia to the criteria.

Response: We believe the revised criteria in § 410.141(d)(5)(iii), as noted above, will also apply to beneficiaries who have hypertension and hyperlipidemia because the conditions usually occur at the same time as other medical conditions already cited in the regulation. Therefore, we have not included those additional criteria.

Who May Furnish Services (§ 410.141(e))

Comment: Many commenters advised us that they believe our requirements for who may furnish training (proposed § 410.141(e)) would not sufficiently expand the access of training in rural areas.

Response: In order to address the concerns of commenters regarding limited access to training in rural areas, we are making several clarifications.

First, we have allowed an approved entity to delay the implementation of the requirement for a Certified Diabetes Educator (CDE) until February 27, 2004 if the team includes a registered nurse. This delay will allow an approved entity additional time to recruit a diabetes educator that has the required certification from the National Certification Board for Diabetes Educators (NCBDE). (The NCBDE is the only eligible certification organization at this time.)

Second, we have revised the final rule to allow for an exception to the team approach in rural areas (§ 410.144(a)(4)(ii)). Under the exception, an individual who is qualified as a registered dietitian and as a CDE currently certified by the NBCDE (or as a registered nurse until February 27, 2004) may furnish training in a rural area and will be deemed to meet the requirement in (§ 410.144(a)(4)(ii)).

In addition, as stated in the proposed rule an approved entity must properly receive Medicare payment under § 424.73 or § 424.80 which set forth prohibitions on assignment and reassignment of benefits. Diabetes training programs may provide services at any location if the educators are W–2 employees of the approved entity. Thus, even if the employee is part-time, Medicare payment to the employer would still be appropriate.

We also wish to clarify that the reassignment rules allow a ''facility'', such as a hospital, to use an independent contractor to provide training services with in the facility. This option may be particularly helpful to certain facilities in rural areas.

Quality Standards for a Deemed Entity (§ 410.144)

Comment: Many commenters believe that we exceeded our authority by including the requirement in proposed § 410.144(b) that changes in the NSDSMEP quality standards must be approved by HCFA.

Response: We have reviewed the comments questioning our authority to approve or disapprove any subsequent revisions to the NSDSMEP quality standards, as well as our proposed rule preamble discussion on § 410.143 (which states we reserve the right to approve or disapprove any changes made by the ADA). After reconsidering this issue in light of the comments, we believe that the statute could be interpreted to authorize payment to entities that are found to meet revised standards, even if those standards are subsequently modified to be less stringent. Therefore, in § 410.144(b), we removed ''approved by HCFA''.

Individuals or entities that meet the quality standards originally established by the NDAB or subsequently revised are recognized under the Medicare statute. Reviewing the quality standards of entities, however, is a separate issue from monitoring accreditation organizations in their capability to apply and enforce the quality standards. Section 1865 of the Act, as amended in 1996, requires us to determine whether the accreditation of a provider or supplier entity by the national accreditation organization ensures that the applicable Medicare health and safety conditions or requirements will be met or exceeded. It is our responsibility to ensure accreditation organizations will apply and enforce the quality standards set forth in § 410.144. We expect the accreditation organizations to develop other procedural and administrative activities to demonstrate the accreditation process is solid and, most important of all, ensures that the applicable quality standards are being successfully enforced. Therefore, we have concluded it is necessary for us to review the accreditation organization's program as a whole, as set forth in § 410.142 in order to ensure that the organizations that were found to have met the quality standards do so on a continuous basis.

We still have the responsibility for ensuring that organizations that enforce the quality standards in § 410.144 perform adequate oversight to assure that approved entities continually meet the quality standards. We have extensive experience with review and oversight of national accreditation organizations that deem other entities to meet our quality standards. This oversight consists, in part, of reviewing how well the accreditation organizations enforce their standards and assure that the Medicare requirements are met. In the interest of improving our quality oversight activities, we are currently refining and strengthening our validation activities with regard to national accreditation organizations. That said, we believe we must assure that any national accreditation organization that uses the NSDSMEP quality standards also performs adequate oversight and enforcement activities.

Given that our major concerns are the application and the enforcement of the quality standards, we will oversee these accreditation organizations and delegate certain responsibilities to the accreditation organizations as set forth in § 410.143 to ensure beneficiaries will receive quality diabetes self-management training.

Comment: Several commenters questioned our proposed requirement in § 410.144(a)(3) which describes the requirements of the program coordinator and asked us to clarify their qualifications. Some commenters recommended that a physician should be the program coordinator or the team leader.

Response: In order to allow greater flexibility, we have not specified who must be the program coordinator, nor have we identified specific qualifications of the program coordinator. We expect the program coordinator to be an individual with experience in diabetes and program management that can ensure effective coordination of the different aspects of the training services.

Comment: Some commenters recommended our proposed requirements, in § 410.144(a)(3)(ii), for nonphysician professional program staff should be reduced from 14 hours every 2 years to 12 hours every 2 years.

Response: We agree that the requirement for nonphysician professional program staff to obtain 12 hours of continuing education every 2 years is reasonable and adequate to ensure quality. We recognize that nonphysician professional staff have other requirements for continuing education, or they will acquire additional clinical experience through direct contact with patients. Based on commenters suggestions, we have revised the requirement in § 410.144(a)(3)(ii) from 14 hours to 12 hours to decrease the burden associated with the benefit.

Comment: Many commenters were concerned that § 410.144 did not allow

sufficient time for those hospital outpatient diabetes self-management training programs that had billed Medicare before July 1, 1998, and that did not have ADA accreditation, to achieve accreditation by the time the final rule is published. Some of these commenters suggested that we should allow from 1 to 5 years additional time to accomplish accreditation.

Response: While we understand the concerns regarding these outpatient hospital programs, the statute does not give us the authority to deem that these programs meet the NSDSMEP quality standards. We are aware that the ADA requires a 12-month data collection period, before programs can submit the application for education recognition. However, the ADA has approved approximately 250 providers since the February 1999 publication of the proposed rule. Based on information obtained from the ADA, they specified that they do not have a backlog of applications and are working to maintain timely processing. This demonstrates to us that outpatient hospital programs not recognized at the time of the proposed rule have been rapidly recognized by the ADA. We are also amending this final rule to continue to recognize those hospitals with NSDSMEP quality standards certificates until July 1, 2002. This will allow adequate time for new programs to be deemed during the interim period while other approved accrediting organizations are recognized. Additionally, we believe ADA will not remain the only accreditation organization once the 18 month transition period that exclusively allows ADA recognized programs to receive Medicare payment for diabetes training expires.

Comment: Many commenters stated that many of the existing diabetes self-management training programs chose not to seek ADA recognition for a number of reasons. These included the lack of staff support by the ADA, the burden of recordkeeping, cost, and the amount of time involved in the ADA application process. They stated that this hardship is even more intensified in smaller, rural programs, which will be forced to go out of business.

Response: We expect other organizations will apply, and we will approve more accreditation organizations that will use one of a variety of quality standards that meet the requirements of § 410.144. Other accreditation organizations that currently evaluate Medicare providers may seek to become approved to accredit for this service. As the statute is fully implemented, we anticipate a variety of accrediting choices will become available that may be procedurally faster and less expensive. However, currently the ADA offers the fastest way for an entity to demonstrate that they meet the quality standards requirements. We will monitor the number of accreditation choices and their impact on rural providers. This will assist us in determining the need to make future adjustments.

Comment: One commenter questioned the superiority of ADA-certified programs versus non-ADA-certified programs. Also, commenters recommended grandfathering entities that are Medicare-certified for a period of 1 year.

Response: We do not automatically assume that ADA-certified programs are superior to non-ADA certified programs. By statute, Congress has recognized that those programs that have been approved as meeting the NSDSMEP quality standards meet our quality standards. Other programs may apply to become an accrediting organization. Also, we must fulfill the statutory requirement that all approved entities meet a set of quality standards. The statute does not provide for a transition period for the quality requirement. Therefore, we do not believe that it is prudent to grandfather older programs for any period of time under our new payment systems.

Comment: A few commenters questioned if we have studied the capacity of ADA-certified programs to furnish services to the Medicare population.

Response: We studied the access issue and the growth rate of ADA-recognized programs. As of June 2000, ADA has recognized 819 diabetes self-management training programs and 482 satellite offices. The number of existing ADA-recognized programs has increased significantly since the publication of the proposed rule in 1999, when the number of ADA-recognized programs was 575. At this steady growth rate, we believe the existing ADA-recognized programs, coupled with the anticipated increased number of programs certified by other accreditation organizations, will be adequate to serve the Medicare beneficiaries and resolve the access issue.

HCFA Process for Approving National Accreditation Organizations (§ 410.142)

Comment: Some commenters suggested that the accreditation requirement was not clearly stated in § 410.142 and we should explain how we will evaluate quality standards.

Response: We sometimes use national accrediting organizations to determine whether a provider entity meets some or all of the requirements that are necessary in order to provide a service for which Medicare payment can be made. Entities not currently recognized by the ADA, must become accredited by a HCFA-approved accreditation organization or recognized by the ADA until August 27, 2002. Given the number of Medicare providers or suppliers who are permitted to bill for this service if they are found to meet the quality standards, we have determined that it will be more efficient to use a national accrediting organization to evaluate a prospective diabetes educator, rather than increasing our workforce in order to conduct the necessary evaluations.

Before we can approve an accrediting organization, we must know what quality standards the organization plans to use to evaluate applicants. Also, we normally must determine that those standards meet or exceed our quality standards. As we have stated, we will not review any changes to the NSDSMEP quality standards. Still, we need to make sure that the accrediting organization will be properly evaluating prospective applicants based on one of the three sets of quality standards described in § 410.144.

For any accreditation organization, to become approved by us, we would need to determine that the organization would be using either the HCFA quality standards, the NSDSMEP quality standards, or some other standards that meet or exceed our quality standards in § 410.144(a). These alternative standards could include the standards of a national accreditation organization that represents individuals with diabetes, that we have approved. When the standards of a national accreditation organization vary in any way from either the HCFA quality standards or the NSDSMEP quality standards, they must meet or exceed the HCFA quality standards. If an organization proposes the use of standards that include more quality measures but still meets the core HCFA quality standards, those standards may be determined to ''exceed'' the HCFA quality standards.

In developing our standards, we used the NSDSMEP quality standards as a model. The Congress found that individuals or entities that met the NSDSMEP quality standards would be deemed to meet the quality standards that we would promulgate by regulation. Therefore, we believed it was important to consider the same topics and issues as had been previously considered by the diabetes community.

After evaluating the quality standards the accrediting organization would use, we will look at its processes to ensure

that the organization meets our accreditation requirements. We will use these requirements to evaluate all organizations that request our approval as an accreditation organization for diabetes self-management training programs.

We are committed to implementing quality standards that impose a minimum burden to entities seeking to become approved accredited organizations while simultaneously ensuring access to quality diabetes self-management training for Medicare beneficiaries.

Comment: Commenters were concerned about the use and timeliness of our approval process for accreditation organizations.

Response: The 210-day deadline for completing the approval process is specified in section 1865(b)(3)(B) of the Act. However, we will strive to complete the process as expeditiously as possible. The process includes our publication of two notices in the **Federal Register**. The first notice would solicit comments on the accreditation organization's accreditation program, and the second notice notifies the community of the approval or disapproval of the accreditation organization. The nature of the process requires that sufficient time be included for essential correspondence between us and the accreditation organization. The time required to complete the process will be substantially reduced if an organization requesting approval as an accreditation organization submits a comprehensive application that addresses all the requirements in this final rule.

We recognize that the normal time frames for approving accrediting organizations may cause a delay. We remain committed to ensuring that beneficiaries receive, and that providers can bill for these expanded services, as quickly as possible. Thus, in order to ensure access to expanded quality services while accrediting organizations are being approved, we are amending the final rule to deem an entity to meet the NSDSMEP quality standards described in § 410.144(b), if the entity provides the Medicare contractor that will process its claims with a copy of a current certificate the entity received from the ADA that verifies the training program it furnishes meets the NSDSMEP quality standards described in § 410.144(b). All organizations (including the ADA) may apply to HCFA to become a national accreditation organization after January 29, 2001. We will strive to review and approve the applications as expeditiously as possible. We expect after the initial 18 month period expires, that there could be several accrediting organizations thereby eliminating any access concerns.

Comment: Many commenters were concerned with our proposed provisions in § 410.142 to approve only national accreditation organizations. They believe this would severely limit a Medicare beneficiary's access to diabetes self-management training in some rural and nonmetropolitan areas where State (not national) certification programs exist. Commenters noted that State-certified programs use standards that are comparable to the NSDSMEP quality standards. They believed that we should allow the use of both national and State accreditation organizations or grandfather the State-certified programs in for a period of 3 years. Commenters further contended that national accreditation incurs high costs, recordkeeping burdens, and resource management issues; and that beneficiaries in rural and nonmetropolitan areas would be required to travel many miles to reach a nationally accredited program.

Response: Section 1865(a) of the Act requires the use of ''national'' accreditation organizations for the accreditation of providers and suppliers of Medicare services. Permitting the use of State-accreditation organizations for this purpose would require a statutory change.

Team Approach (§ 410.144(a)(4))

Comment: The HCFA quality standards require, in § 410.144(a)(4), that diabetes self-management training services are to be furnished by a multidisciplinary team. One commenter suggested that the multidisciplinary team approach may cause discomfort for some beneficiaries. One commenter stated that the delivery of services using a multidisciplinary team is impractical in small communities due to the difficulty in assembling a full team in this environment. However, other commenters agreed that patients with diabetes are best served by a multidisciplinary team.

Response: We have consulted several groups and organizations active in the field of diabetes education and training. They all agreed that diabetes self-management training should be an interactive collaborative process involving beneficiaries with diabetes, their physicians, and their educators. We continue to believe that the multidisciplinary team concept set forth in § 410.144(a)(4), is the best way for Medicare beneficiaries to receive diabetes self-management training. The multidisciplinary team members are necessary to bring the appropriate expertise to educate beneficiaries in the 15 training areas described in § 410.144(a)(5). Therefore, we are requiring that all appropriate team members be present during the portion of the training for which they are responsible and must directly furnish the training within their scope of practice. Also, we believe that educators serving diverse populations will use their experience, interpersonal skills, and sensitivity to meet a Medicare beneficiary's individual needs.

Further, consistent with our understanding that interactive, collaborative, skill-based training methods are required for effective diabetes education, in § 410.144(a)(6)(iii) we will require entities to maximize the use of interactive training.

Given the need to address each patient's individual needs, maximize the effectiveness of training, and facilitate interactive learning during group training sessions, we anticipate that in most circumstances more than one team member will need to be present for the entirety of each training session. For example, each patient in a group training session will likely have individual concerns regarding diet, exercise, and home glucose monitoring. In order to adequately address these concerns, one-on-one interaction between a patient and a team member will frequently be needed. This interaction between each team member and patient is important to develop a bond of trust. In fact, a single training session may involve teaching several content areas due to the educational requirements of each patient. Such situations may require the presence of more than one team members for the entire training session, as needed. We encourage approved entities in rural areas to create arrangements to meet the team approach objective while still meeting Medicare and State general requirements.

Comment: Some commenters suggested we replace the CDE requirement in proposed § 410.144(a)(4) with a less stringent alternative certification requirement, that is, to limit the amount of diabetes training to a certain number of hours or days. One commenter recommended that practitioners from any health care professions should be allowed to apply as a CDE.

Response: Based on the available literature, we continue to support the CDE requirement to ensure quality. We believe the comprehensive scope and standards of practice for CDEs will be beneficial to diabetes patients and will

ensure the quality of services furnished. Also, we do not regulate the process for becoming a CDE. The NCBDE is currently the sole entity that meets our requirements for CDE certification, including the specific health care professions that are eligible to apply as CDEs. This does not preclude us from considering other organizations in the future, if comparable certification organizations are formed that will also ensure quality.

Comment: Some commenters believe that the requirement of a multidisciplinary team approach will have a negative effect on access to training in rural areas, due to the varying accessibility of specific team members in those locations. For this reason they believe that mandatory members of the team should be expanded to include such professionals as pharmacists.

Response: The proposed rule required that the team consist of at least a registered dietitian and a CDE who have didactic experience and knowledge of diabetes clinical and educational issues. (If the team includes a registered nurse, an approved entity may delay implementation of the requirement for a CDE until February 27, 2004.) We found that registered dietitians and registered nurses bring unique qualifications to the team that are essential for furnishing adequate training, such as specific assessment of patients metabolic needs, plan of care, and refinement of nutrition therapy. Pharmacists, though not mandatory members of the team, can participate as optional team members, program coordinators, or team sponsors if they qualify as approved entities. Furthermore, pharmacists have the option of becoming CDEs, which would enable them to be included as core team members.

Comment: Many commenters voiced concern that the proposed requirement in § 410.144(a)(4)(i)(A) for the team to include at least a dietitian and a CDE would create hardship for programs in rural areas.

Response: The purpose of this final rule is to expand access to beneficiaries with diabetes by providing coverage for outpatient diabetes self-management training. We believe the establishment of a staff quality standard will promote desired outcomes that result in improved health status of beneficiaries with diabetes. Those in the field of Diabetes Self-Management Education, national organizations such as the ADA, the American Association of Clinical Endocrinologists, the Diabetes Treatment Center of America, and the American Medical Association generally accept that team requirements are appropriate.

We closely evaluated the Diabetes Educator Certification requirement that begins with requiring applicants to hold a current unrestricted United States license or registration as a registered nurse, dietitian, pharmacist, physician, physician assistant, podiatrist, or be a health care professional with a minimum of a master's degree from a United States college or university in one of the following areas of health care practice: nutrition, social work, clinical psychology, exercise physiology, health education, or public health. This is followed by a prerequisite certification examination requirement of a minimum of 2 calendar years experience in direct diabetes patient and self-management education, that is, working a minimum of 1,000 hours in direct diabetes patient and self-management education in those 2 years or within a 5-calendar-year period before application for certification. Patient teaching is a skilled service and patient education can affect outcomes of care, for example, HbA1C control, medication management, reduced hospitalization from diabetic complications, and patient compliance.

We believe the comprehensive scope and standards of practice for CDEs will be beneficial to patients with diabetes and will ensure the quality of services furnished. We are aware of a potential shortage of CDEs in some areas, and many primary care physicians may have registered nurses providing diabetes education at present. Therefore, we will delay the implementation of the requirements for a CDE until February 27, 2004, if the team includes a registered nurse. Furthermore, we added a provision in § 410.144(a)(4)(ii) to allow programs in rural areas that have a single individual who is qualified both as a registered dietitian and as a CDE to meet the multidisciplinary team requirement.

Performance Measurement and Quality Improvement § 410.144(a)(9))

We requested comments on the requirement for standardized performance measures in the preamble of the proposed rule, following the discussion on HCFA's quality standards. We did not receive any comments.

However, standardized performance measurement for continuous quality improvement is an effective methodology for the development, implementation, maintenance, and enhancement of quality diabetes self-management education. The effectiveness of any systematic educational effort is dependent on clearly defining set organizational goals, collecting and analyzing data, and identifying and implementing process improvement measures. Continuous quality improvement involves continuing quantitative and qualitative analysis of processes and health and satisfaction outcomes. Therefore, we are maintaining performance measurements and quality improvement as part of the HCFA quality standards.

The continuous quality improvement process relies on a demonstrated organizational commitment to provide quality diabetes self-management education, and an ongoing effort by all organization and diabetes self-management education team members to meet the needs and expectations of individuals with diabetes and other consumers. Quality improvement goals and objectives are consistent with the organizational goals and are based on an assessment of the diabetes self-management education entity's target populations.

We will establish the performance standards under a separate rulemaking.

Peer Review Organization Review (§ 410.144(a)(10))

Comment: Some commenters stated the opinion that the PRO review described in proposed § 410.144(a)(10) is a costly, bureaucratic, and unnecessary measure to require of diabetes self-management training programs. Commenters expressed concern over their mandatory participation in PRO projects. Many commenters warned against promulgating a final regulation that is too prescriptive. They emphasized that what is needed, above all, is flexibility to design a program that meets the needs of all sizes and specialties, rather than a ''one-size-fits-all'' regulation.

Response: We believe that quality improvement initiatives are necessary to improve the health care furnished to Medicare beneficiaries. PROs are tasked with improving quality of care for beneficiaries and have experience in evaluating quality initiatives. In response to public comments, we are implementing a more flexible approach in our final rule. We are providing flexibility with the appropriate amount of accountability. Specifically, we have modified the requirement for participation in a PRO project for an entity that uses the HCFA quality standards. An entity, having an agreement with a PRO may either: (1) Participate in a quality improvement project defined by the PRO, or (2) if the entity elects not to participate in the PRO project, it must be able to demonstrate a level of achievement

through a project of its own design. The alternative project must be comparable to, or better than, the achievement to be expected from participation in the PRO-designed project, and must focus on maximizing outcomes by improving patient safety and quality of care. An entity must measure, analyze, and track quality indicators, including adverse patient events or other aspects of performance that reflect processes of care and program operations. This approach will allow an entity the flexibility to invest appropriate efforts in its quality improvement project and the freedom to make decisions about the best way to improve the quality of care. The NSDSMEP have a similar provision. Standard 10 requires an entity to use a continuous quality improvement process to evaluate performance of its program and to determine opportunities for improvement. An entity using the process described in the NSDSMEP must define organizational goals, collect and analyze data, and identify and implement process improvement measurement. The NSDSMEP standard is substantially equivalent to the HCFA quality standards but does not require an agreement with a PRO.

To aid an entity in developing its own quality improvement projects, we are providing the following guidance:

• *Improvement projects*—These projects are based upon an entity's own assessments of its performance and must show measured, sustained results that actually benefit patients. Because most organizations usually identify more improvement opportunities than they can initiate, improvement project priorities must be set. Therefore, these priorities must be established by the entity. Although we do not require a specific number of projects, we do expect an entity to improve its performance on at least one outcome or quality indicator each year as stated in this rule (§ 410.144 (a)(9)(B). An entity can use certain factors such as, the expected impact on performance or the selection of high-risk, high-volume, or problem-prone processes. These factors are helpful in setting project improvement priorities.

• *Peer Review Organization Projects*—We developed criteria to help PROs select clinical topics for quality improvement projects. These criteria were designed to ensure that a project has the greatest possible likelihood of significantly impacting the health outcomes of Medicare beneficiaries. An entity may use these same criteria in determining which projects best encompass its particular needs, and in determining if projects the entity identifies will be comparable to the expected outcomes of those projects identified by the PRO.

There are two basic areas of consideration used when establishing criteria for selection of PRO projects: (1) Identifying clinical topics, and (2) prioritizing clinical topics. The following information is provided as guidance for an entity in choosing clinical topic areas for quality improvement projects.

Identifying Clinical Topics

There are four criteria to assess when identifying clinical topics: prevalence, science, measurability and the opportunity to improve care (OIC). These criteria address the issues central to identifying appropriate clinical topics and quality indicators.

• *Prevalence/Incidence and Disease Impact*—The burden (morbidity/mortality) of the clinical condition or medical procedure under consideration is great for the population affected. The burden within a sub-population (for example, minority, disabled, at-risk, etc.) may be another consideration that is taken into account.

• *Science*—There should be scientific consensus through multiple independent observations and/or clinical trials that changing a process or procedure of care will measurably improve patient outcomes.

• *Measurability*—The process(es) or outcome(s) of care for the topic can be stated in clearly defined, discrete, quantifiable data elements from data sources which are valid and reliable; accessible in a timely manner; from appropriate care settings; and when necessary, span the continuum of care. In addition to the final measures of outcome, interim measures of progress toward achieving the quality improvement goal are desirable.

• *Opportunity to Improve Care*—Not only should the process or outcome be measurable, there should be a gap between current performance and what can reasonably be achieved. The wider the gap between the present situation and what is feasibly achievable, the greater the opportunity is for improvement. Additionally, there must be a feasible means of narrowing that gap. Measuring the problem is not sufficient. The entity must also be reasonably certain that the actions can improve the situation.

Prioritizing Clinical Topics

Clinical topics meeting identification criteria above should be further prioritized. The following criteria should be helpful in that process. Although it is likely that no topic will consistently meet all of the criteria, proposed topics can be compared on the basis of the number and degree to which the criteria are met.

• *Previous Project or Pilot Studies*—Demonstrate previous experience with the proposed project methodology or demonstrate that a project of similar design can reasonably be expected to improve health care outcomes. Potential priority topics should have been the subject of previous successful projects by PROs or other organizations. Here, the focus is on selecting topics for which quality improvement has previously been demonstrated or on replicating successful project methodologies.

• *Adequate Program Resources*—The entity would consider the adequacy of the resources (time, personnel, and funding) to implement the quality improvement project. Alternative potential projects with similar costs should be compared for their relative potential benefit. Whenever feasible, topics that make use of existing data sets should be selected.

• *Availability of Partnerships*—The entity would select topics that allow collaboration with other providers and national, regional, and local organizations with similar goals. Collaboration with other organizations is encouraged for several reasons: planning, implementation and analytic costs can be shared; planned, coordinated differences in project methods can be compared for efficacy and cost; local lessons learned can be shared and compared; and ideas for second and subsequent improvement cycles can be gathered.

• *Ability to Enable or Facilitate Ongoing Quality Improvement*—The entity would select topics and interventions that foster or enhance the development of quality improvement efforts that extend to care processes and conditions beyond those targeted by the improvement project. Some topics may be selected, in part, because of the learning value to the intended user (for example, demonstrating principles and methods that can be applied by the user to other topics) and the sustain ability of the improvements they trigger.

• *Likelihood of Success (Readiness)*—The entity would identify topics that are of interest to the relevant stakeholders who will be asked to make improvements. This criterion recognizes the fact that significant improvement is not likely to occur if some pivotal individuals do not welcome or are not capable of participating in the project.

The criteria will be used as a guide for programs to establish priorities when considering whether to implement a PRO project, or conduct a project of

their own. This will aid hospitals in determining if internal projects have the potential to yield benefits comparable to, or exceeding expectations set by PRO projects.

Comment: A commenter recommended that the PRO review the State diabetes education database to track the differences in health outcomes among ADA-recognized programs and non-ADA-recognized programs.

Response: We plan to track the differences in health outcomes among ADA and non-ADA-recognized programs. These plans, however, have not yet been finalized and the possibility of a PRO review of State diabetes education databases may be considered.

Requirements for deemed entities (§ 410.145)

We proposed under the HCFA quality standards that programs have an agreement with a PRO, which has a contract with us to perform quality assurance reviews. Among other things, the proposal would have allowed the PRO access to beneficiary records. We did not receive any specific comments on this point. However, in the final rule, we are extending the requirement that all approved entities must provide access to beneficiary or group training records to a PRO. Since the review of effectiveness of an educational program will rely on evaluation of clinical data, we believe the expertise of a PRO is needed to give a fair and equitable evaluation of the data. This requirement is currently in § 410.145(b)(4), and will facilitate preparation of the outcome measures mandated by Congress.

Recent data shows that diabetes has reached epidemic proportions among certain subsets of the Medicare population (Morbidity and Mortality Weekly Report 4643, 1014–1018, 1997). We believe that participation in quality improvement projects and continuous improvement activities are ways that we can encourage better diabetes outcomes for Medicare beneficiaries. We believe it is important to measure beneficiaries progress as a result of improved education and training. Therefore, providing the PRO access to beneficiary and group records, will provide us with the raw data we need to measure improvement. This is important not only for the programs meeting HCFA quality standards, but also for the programs that use alternative quality standards.

With regard to outcome measures, we have only required that information be collected on a quarterly basis, in a organized manner, which will facilitate the PRO review as well as reduce the burden on the approved entities. By making needed information more accessible, it will prevent reviewers from spending undue hours locating appropriate information. It would also enable approved entities to better evaluate their own program. We continue to believe that providers, in this case diabetes self-management training programs, must ensure that there is an effective, quality-assurance program to evaluate patient care.

Comment: Some commenters were confused by our use of the term ''deemed entity'' in this regulation, stating that it does not conform with our traditional use of the term in previous regulations.

Response: In this regulation, we have used the term ''deemed entity'' to denote an entity that has been accredited by an approved organization as meeting one of the three sets of quality standards established in § 410.144. Though deemed by the accreditation organization, these entities are not yet approved to furnish the training and receive Medicare payment until they have been approved by us. Our reason for making this distinction is to differentiate entities that meet quality requirements (as determined by an accrediting organization) from those that have received final approval from us and can be properly paid under Medicare.

Outcome Measurements

Comment: In response to our specific request, several commenters submitted suggestions for developing outcome measurements. One commenter recommended that we monitor the following: the percentage of patients having an annual dilated examination; the percentage of patients with a glycosylated hemoglobin (HbA1C) level that is 2 percent below the upper normal range; the percentage of patients who filled blood glucose test strip prescription; the percentage of patients with retinal photo-coagulation procedures; the percentage of patients with amputation; the percentage of patients with frequent hospitalization or emergency room visits due to diabetic complications; and the frequency of foot examination. Other alternatives suggested included using the Health Plan Employer Data and Information Set 2000 (HEDIS), and performing a State-based pilot program to determine the evaluation of the feasibility of using outcome measurements.

Response: We evaluated the comments to measure specific items and we also considered using different methods of evaluating outcome measurements that had previously been established, such as HEDIS. We have decided to reduce our collection of information to a few meaningful topics that are a part of the patients medical record, and we are eliminating the collection of information that is duplicative or less useful.

As a result of comments, we developed a new provision (§ 410.146) on outcome measurements. Collection of outcome data based on § 410.146 will be required after February 27, 2001.

The following data must be collected and made available to the PRO upon request: educational goals; patient information, including duration of the diabetic condition, use of insulin or oral agents, height and weight by date, results and date of last lipid test, results and date of last HbA1C, information on self-monitoring (frequency and results), blood pressure and the corresponding dates; assessment of educational needs; program goals; plan for assessing achievement of program goals between 6 months and 1 year after the end of the training (obtained from the patient survey, primary care physician contact, and follow-up visit); and documentation of the evaluation of program goals.

Section 4105(c) of the BBA requires the Secretary to establish outcome measures for the purpose of evaluating the improvement of the health status of Medicare beneficiaries with diabetes. The BBA also requires that the health status information of Medicare beneficiaries with diabetes, as measured under the outcome measures, be periodically reported by the Secretary to the Congress for the purpose of making recommendations to modify coverage under the Medicare program.

Outcome measurement information is a quality tool which will measure the effectiveness of care given to beneficiaries. In keeping with the PROs role of quality improvement, the PROs need information to assess the effectiveness of care. Access to outcome measurement data also allows the PROs to engage in quality improvement initiatives with the training programs that meet our quality standards. In § 410.146(a) we require all approved entities to effectively report beneficiary health outcome information to the PROs.

We realize diabetes self-management training will be a new service for many and that there will be varying levels of experience. For this reason, we encourage training programs to use the PRO and other resources to assist in the development and growth of these programs. By requiring an approved entity to collect outcome measures, we set a clear expectation that the training program must take a proactive approach

to monitor, track, and improve, as necessary, their performance and outcomes of care.

We state that information must be organized in a systematic manner, and at least collected on a quarterly basis. By requiring quarterly documentation, we are allowing sufficient time to assess changes in blood levels, compliance, and learning needs. Simultaneously, we will have the needed documentation to track beneficiaries on a regular basis.

Payment for Outpatient Diabetes Self-Management Services (§ 414.63)

Comment: Many dietitians commented that they believe the final regulation should provide for the direct payment to registered dietitians. They believe that to deny direct payment to them is in conflict with the requirement in § 410.144(a)(4), requiring a registered dietitian as a member of the multidisciplinary team providing diabetes self-management training. The commenters believe nutritional counseling is the cornerstone of effective diabetes care and control, and that only registered dietitians are uniquely qualified to provide this service.

Response: The BBA, which established the statutory authority for expanded coverage of outpatient diabetes training, explicitly requires that a 'certified provider' be a physician or other individual or entity that ''in addition to providing diabetes outpatient self-management training, provides other items or services for which payment may be made'' under the Medicare program. Though training furnished by registered dietitians is essential to high quality outcome measurements, dietitians do not furnish other services for which direct Medicare payment may be made. Thus, dietitians do not qualify as approved entities for the purpose of receiving direct payment for outpatient diabetes training. A CDE can be part of a team that can be an approved entity (for example, an employee of a physician who is an approved entity, or as an independent contractor of a hospital that furnishes training onsite at the hospital). Each core member of the multidisciplinary team is essential to the success of the diabetes self-management education program. However, this does not mean that each core team member of an approved entity has a right to be paid directly by the Medicare program.

Comment: Several commenters suggested that we cover core diabetes education for Medicare beneficiaries once in a lifetime, not to exceed $330, and follow-up visits, if needed, not to exceed $170 per year. By limiting the dollar amount instead of the number of hours, these commenters suggest that clinicians could take responsibility for customizing a cost-effective treatment plan to best meet the needs of the patient. For example, $330 could be used for 6 hours of individual training or 10 hours of classroom training. It would save time, paperwork, and preserve the Medicare budget.

Response: Under the proposed rule, payment is made for training sessions actually attended by the beneficiary and not for packages of training sessions. We believe this payment methodology is important to ensure that needed training is received and to give us information that we can later use to evaluate the effectiveness of the benefit. Therefore, in § 414.63(c), we retain the requirement that payment is made for training sessions actually attended by the beneficiary and documented on attendance sheets by half-hour units. We, however, agree that the benefit allows for a once in a lifetime core of training. We provide clarification in § 410.141(c).

Comment: The State of Maine Department of Human Resources recommends that FQHCs be allowed to receive payment for diabetes self-management training similar to that proposed for hospital outpatient department programs. The current practice of bundling into the facility rate does not provide sufficient payment to the health center for coverage of a registered nurse and a registered dietitian with training in diabetes education. In 20 years, only 220 individuals with diabetes have completed the diabetes education program at the Maine FQHC.

Response: We explained in the preamble of the February 1999 proposed rule that if outpatient diabetes self-management training is furnished in a FQHC or a RHC setting by a nonphysician practitioner, the services would be bundled into the facility rate. Separate payment for the professional services of nurse practitioners, physician assistants, and clinical nurse specialists furnished in an RHC or FQHC setting is not permitted. The professional services of these nonphysician practitioners are bundled with other facility services when furnished to patients under the RHC and FQHC benefits. The payment made to the RHC and FQHC under the all-inclusive rate specifically accounts for the services of these nonphysician practitioners furnished in the RHC or FQHC setting because the facility payment rate reflects the costs of these services.

Comment: Some commenters requested that we review the payment schedule proposed for the diabetes self-management training. Commenters stated that the proposed payment rates were inadequate and work at cross-purposes to our requirement that approved entities improve patient outcomes. The commenter stated that the rates based on average salaries of RNs and dietitians that are currently employed in institutions may not be comparable with those paid to community pharmacists. Also, the proposed reimbursement rates did not account for the significant administrative costs, costs of peer review, and the costs of accreditation that noninstitutional certified providers would incur to participate in the program.

Response: We believe that the payment rates for outpatient diabetes self-management training are reasonable. The initial payments for outpatient diabetes self-management training are based on resource-based RVUs. The RVUs reflect practice expense and malpractice expense. They were established in a manner consistent with how we establish payments for other new services under the physician fee schedule. Like other services paid under the physician fee schedule, the actual payment amounts will vary among geographic areas to reflect differences in costs of practice as measured by the Geographic Practice Cost Indexes.

Comment: One commenter objected to the methodology used for determining practice expense RVUs on an average group of 10, simply because groups of 2 to 20 participants are allowed under proposed § 410.141(b)(4). The commenter believes this assumption was flawed. The commenter stated that most groups would have fewer than 10 patients.

Response: In the February 1999 proposed rule, we outlined how payment amounts were developed for the training, including our premise that an average group will consist of 10 people. We continue to believe that 10 participants is a reasonable group size for purposes of estimating resource inputs for these services. We will reconsider this in the future once we gain additional experience and information about how these services are being furnished. Any changes to the payment amount will be proposed and finalized in the annual publication of the physician fee schedule.

Comment: Several commenters stated that end stage renal disease (ESRD) facilities fall under the definition of approved entities that furnish outpatient

diabetes training. The commenters recommend that a method be established to ensure that dialysis facilities can be directly paid under this initiative.

Response: The requirements in § 414.63 state that payment for outpatient diabetes self-management training is made under the physician fee schedule. We agree, however, that these facilities that are not normally paid under the physician fee schedule may qualify to be an approved entity if they meet all the criteria for providing this service. In this final rule, we added a new § 414.63(d), to provide for ''Payments made to those not paid under the physician fee schedule''. ESRD facilities that qualify will bill the fiscal intermediary for these services using the appropriate HCFA Common Procedure Coding System (HCPCS) codes. The same quality standards and other requirements apply in any setting. The payment amount for a qualifying ESRD facility will be the same as the amount established for an entity paid by a carrier.

Comment: Commenters expressed some concern regarding the differing payment methodologies for homebound beneficiaries.

Response: Homebound beneficiaries under the prospective payment system (PPS) bundled payment for home health services receive diabetes education in the form of a home visit from a qualified practitioner with diabetes knowledge. We note, however, that home health agencies do not receive a separate payment under this benefit for services furnished to homebound beneficiaries. We will not pay twice for similar services under two different benefits.

Billing for Training in 30-minute Increments (§ 424.44(d))

Comment: Many commenters requested that we change the billing codes to 30-minute increments and that we explain how payment rates are developed.

Response: In response to comments, we have revised proposed § 424.44(d) to require billing of initial and follow-up training in half-hour increments. Also, we are revising the HCPCS codes for diabetes outpatient self-management training so that training session units are now equal to 30-minute increments. The codes are G0108 for individual diabetes outpatient self-management training per 30 minutes and G0109 for a group session (2 to 20) diabetes outpatient self-management training per 30 minutes. Before the effective date of the final regulation, we will issue program instructions that will implement the 30-minute billing increment.

The payment rates for these services are part of the physician fee schedule, which is updated annually. For calendar year 2000, the national payment rate is $60.41 (practice expense relative value unit (RVU) of 1.65) per hour for individual session and $35.88 (RVU of .98) per beneficiary per hour in a group session. The malpractice expense RVU is 0.1 for both individual and group training. While the current physician fee schedule reflects the amount for hourly sessions for both individual and group sessions, the revised training codes are now equal to 30 minute sessions, the payment rates are billable at one half of the fee schedule amount (that is, $30.21 for individual training and $17.94 for an individual in a group). Like other services paid under the physician fee schedule, the actual payment amounts will vary among geographic areas to reflect differences in costs of practice as measured by the Geographic Practice Cost Indexes (GPCIs). The Part B carrier will furnish payment amounts including the GPCIs to the fiscal intermediary for each calendar year.

In the case of payments made to other approved entities, such as hospital outpatient departments, ESRD facilities, and durable medical equipment suppliers, the payment will be equal to amounts established under the physician fee schedule and made under the appropriate payment systems.

Comment: One commenter was concerned that all indirect and direct resource costs have to be included in the payment rate. The commenter asserted, for example, that 30 minutes chart time was not accurate and the cost of coverage for vacations and sick time was not included. A few commenters suggested that we recalculate the payment schedule to include the amount of time it takes to complete the documentation required for recognition and to meet the Joint Commission on Accreditation of Health Care Organizations (JCAHO) standards.

Response: The estimates we used to establish the proposed payment amount were based on consultations with professional groups. As noted above, all comments regarding payment amounts were considered during the updates to the physician fee schedule. Payments under the physician fee schedule are determined in part, by the ''typical'' resource inputs (that is, staff, equipment, and supplies needed to furnish each service). Because the Congress designated that payment for the service would be established under the physician fee schedule, the rules regarding development of the rates under the fee schedule apply.

Comment: Some of the commenters stated that the payment rates to approved entities are too low. The proposed fee schedule in 1999, based on the average salaries of registered nurses and dietitians, was insufficient for other health care providers who could furnish these services. The commenters believe that the proposed salary levels would prevent many providers from participating in the program.

Also, one professional association stated that the payment rates grossly underestimated the time and administrative costs involved (that is, costs for photocopying, achieving CDE accreditation, and general administrative expenses) in applying for accreditation as well as maintaining the accreditation.

Response: We do recognize that there are variations among individual entities in how they provide services. The 1999 payment amounts for these services were established under the physician fee schedule in a manner consistent with how we establish payments for other services paid under the fee schedule and as required by statute. As noted earlier in this section, for calendar year 2000, however, adjustments were made to reflect more relative value units for the service.

IV. Summary of Changes to the Proposed Rule

In response to comments on the proposed rule and to provide policy clarifications, we made a number of changes in the final rule, which are summarized as follows:

- Add to the definitions section, definitions for the American Diabetes Association (ADA), National Standards for Diabetes Self-Management Education Program (NSDSMEP), and rural. (*See* § 410.140)
- Clarify that the 10-hour initial training is a one-time benefit. (*See* § 410.141(c))
- Permit 1 hour of the 10-hour initial training to be used for assessment of the individual's training needs. (*See* § 410.141(c)(1))
- Increase the amount of follow-up training from 1 hour to no more than 2 hours of individual or group training. (*See* § 410.141(c)(2))
- Replace the 90-day provision for evidence of poor glycemic control (HbA1C level of 9.5 percent) with evidence of inadequate glycemic control from HbA1C level determinations of 8.5 percent 3 or more months apart in the year before the beneficiary receives initial training. (*See* § 410.141(d)(2))

• Expand the proposed medical condition criteria for kidney complications related to diabetes to include both macroalbuminuria and microalbuminuria by changing the medical requirement to ''Kidney complications related to diabetes, when manifested by albuminuria, without other cause. * * *'' (*See* § 410.141(d)(5))

• Correct the proposed regulations text by removing the term, ''accreditation requirements'' from the crosswalk requirement in § 410.142(b)(2).

• Clarify the process an accreditation organization must use to notify HCFA of its intent to change its quality standards. (*See* § 410.143(a))

• Require an accreditation program that uses a set of quality standards other than our quality standards or the NSDSMEP quality standards to ''meet or exceed'' our quality standards rather than ''be substantially equivalent to'' our quality standards. (*See* § 410.142(e)(1) and § 410.144(c))

• Reduce the proposed requirement for nonphysician professional staff to obtain 14 hours of continuing education every 2 years to 12 hours of relevant continuing education every 2 years. (*See* § 410.144(a)(3))

• Add a requirement that the certified diabetes educator (CDE) on the multidisciplinary team be currently certified by a qualified organization that has registered with us. (*See* § 410.144(a)(4))

• Add a requirement that the appropriate team members must be present during the portion of the training for which they are responsible and must directly furnish training within the scope of their practices. (*See* 410.144(a)(4))

• In rural areas, provide an exception to the multi-disciplinary team requirement to allow an individual who is qualified as both a registered dietitian and as a CDE certified by a qualified organization that has registered with us (or as a registered dietitian and an RN until 3 years after the effective date of this final rule) to furnish training. (*See* § 410.144(a)(4)) (For purposes of this requirement, a rural area (as defined in § 410.140) includes an area served by the Indian Health Service.)

• Maximize the use of interactive training methods. (We wish to discourage didactic training; that is, simply lecturing beneficiaries.) (*See* § 410.144(a)(6))

• Add a new requirement under our quality standard on review of plan of care and goals, for the approved entity to forward a copy of the documentation to the referring physician. (*See* § 410.144(a)(7))

• Add a new requirement under our quality standard on review of plan of care and goals, for the approved entity to periodically update the beneficiary's referring physician of the beneficiary's educational status. (*See* § 410.144(a)(7))

• Remove requirements for an entity meeting the Secretary's quality standards to report to us nationally standardized performance measures and to meet minimum performance levels that we establish. (*See* § 410.144(a)(9))

• Provide more flexibility under the HCFA quality standards by allowing a program to design an alternate quality improvement project. (*See* § 410.144(a)(10))

• Remove the proposed requirement that we would approve subsequent changes to the NSDSMEP quality standards. (*See* § 410.144(b))

• Provide that we may deem an entity to meet the quality standards for the first 18 months after the effective date of this final rule if the entity provides us with a copy of its certificate or proof of recognition from the ADA that verifies the training it furnishes meets the NSDSMEP quality standards. (*See* § 410.145(a)(2))

• Require that all approved entities allow the PRO, under a contract with us to have access to beneficiary and group training records. (*See* § 410.145(b)(4))

• Add a new section on Diabetes Outcome Measurements. (*See* § 410.146)

• Provide for payment for outpatient diabetes self-management training to entities not routinely paid under the physician fee schedule. (*See* § 414.63(d))

• Require billing of initial and follow-up training in half-hour increments so that training may be furnished in half-hour increments. (*See* § 424.44(d))

V. Collection of Information Requirements

Under the Paperwork Reduction Act (PRA) of 1995, we are required to provide 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

• The need for the information collection and its usefulness in carrying out the proper functions of our agency.

• The accuracy of our estimate of the information collection burden.

• The quality, utility, and clarity of the information to be collected.

• Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the information collection requirements (ICRs) as summarized and discussed below.

Section 410.141 Outpatient Diabetes Self-management and Training

Paragraph (b) of section 410.141 states that outpatient diabetes self-management training must be included in a comprehensive plan of care and documented in the patient's medical record by the physician (or qualified nonphysician practitioner) treating the beneficiary for training that meets the requirements of this section.

While this ICR is subject to the PRA, we believe the burden associated with this ICR is exempt in accordance with 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary to comply with these requirements would be incurred by persons in the normal course of their activities.

In addition, this section requires that a HCFA-approved entity submit its plans of care to HCFA upon request. While the documentation and recordkeeping requirement imposed by this section is subject to the PRA, the requirements to disclose information to HCFA upon request are not subject to the PRA in accordance with 5 CFR 1320.4(a)(2), since the disclosure of information to or for a Federal agency during the conduct of an administrative action or audit involving an agency against specific individuals or entities is exempt from the PRA.

Paragraph (b)(2)(ii) of § 410.141 requires the physician (or qualified nonphysician practitioner) treating the beneficiary to document in the beneficiary's medical record the specific medical condition that the additional beneficiary training must address.

We believe the burden associated with this ICR is exempt in accordance with 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary to comply with these requirements would be incurred by certified providers in the normal course of business activities.

Paragraph (c)(1)(ii)(B) of § 410.141 requires that the beneficiary's physician (or qualified nonphysician practitioner) document in the beneficiary's medical record that the beneficiary has special needs resulting from conditions such as severe vision, hearing, or language limitations that would hinder effective participation in a group training session.

While this ICR is subject to the PRA, we believe the burden associated with

this ICR is exempt in accordance with 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary to comply with these requirements would be incurred by persons in the normal course of their activities.

Section 410.141(e)(3) requires that an entity submit the necessary documentation to, and be accredited by, an accreditation organization approved by HCFA under § 410.142 to meet one of the sets of quality standards described in § 410.144.

We previously estimated that each accredited certified provider would spend 60 hours to complete the requirements every 3 years for an estimated total annual burden of 15,000 hours. We received a comment that this amount underestimated the effect of the accreditation requirement. However, we believe that 60 hours every year, in addition to the amount of recordkeeping that would be normal business practice for a diabetes self-management training program, is appropriate. We do not believe we should count recordkeeping that would occur even in the absence of the accreditation requirement.

We have updated the burden for this provision based on the increase in number of programs accredited in the year 2000. We estimate that 819 approved entities will take 60 hours to complete these requirements every 3 years, for an annual burden of 20 hours per certified provider. Therefore, the total annual burden imposed by these requirements is estimated to be 16,380 hours.

Section 410.141(e)(4) states that the entity must provide documentation to HCFA, as requested, including diabetes outcome measurements set forth at § 410.146.

Since this documentation will be collected as part of an administrative action, investigation or audit against specific individuals or entities, we believe that this ICR is exempt in accordance with 5 CFR 1320.4(a)(2). In addition, we believe that since the request for information is addressed to a single person as defined in 5 CFR 1320.3(h)(6), the collection does not meet the definition of an information collection as defined in 5 CFR 1320.3(c).

Section 410.142 HCFA Process for Approving National Accreditation Organizations

Section 410.142(b) states that a national organization requesting out approval and recognition of its accreditation program must furnish to us the information and materials described in this section.

The burden associated with these requirements is the time and effort to furnish to HCFA the information and materials described in this section. It is estimated that during the first year after publication of the final rule it will take 5 national organizations 96 hours to comply with these requirements. Since organizations will generally be approved for at least 6 years, we have annualized the total burden to be 96 × 5 = 480 hours/6 years = 80 annual hours.

Section 410.142(c) states that we may visit the prospective accreditation organization's offices to verify information in the organization's application, including, but not limited to, review of documents and interviews with the organization's staff.

The burden imposed by this section is the time and effort necessary to disclose documentation related to the onsite visit. However, we believe that this requirement is exempt from the PRA since it will be imposed under the conditions defined in 5 CFR 1320.4 as a result of an administrative action and meet the exception(s) to the definition of information as set forth in 5 CFR 1320.3(h)(3), (h)(6), and (h)(9); as such, they do not meet the definition of an information collection.

Section 410.142(g) states that an accreditation organization that has received our notice of denial of its request for our approval and recognition of its accreditation program to accredit entities to furnish training may request reconsideration of our decision in accordance with part 488 subpart D of this chapter.

We believe that this ICR is exempt in accordance with 5 CFR 1320.4(a)(2) since this requirement is the result of an administrative action, investigation, or audit against specific individuals or entities.

Section 410.142(h) states that an organization that has received our notice of denial of its request for accreditation may submit a new request to us if it meets the conditions in this section.

We anticipate that this requirement will be imposed on fewer than 10 persons on an annual basis, and, therefore, is not subject to the PRA as defined in 5 CFR 1320.3(c).

Section 410.142(j) states that, at least 6 months before the expiration of our approval and recognition of the accreditation organization's program, an accreditation organization must request from HCFA continued approval and recognition.

The burden associated with this requirement is the time and effort necessary for an organization to submit to HCFA a request for reapproval. The burden associated with this requirement is captured in § 410.142(b).

Section 410.143 Requirements for Approved Accreditation Organizations

Section 410.143(a)(1) states that an accreditation organization approved and recognized by us must provide to us in a written form and on a monthly basis all of the information set forth in § 410.143(a)(1)(i) through (a)(1)(iv).

The burden associated with these requirements is the time and effort for an accreditation organization to furnish the required information. It is estimated that it will take each organization 4 hours to complete these requirements. There will be approximately 5 respondents for a total of 20 annual hours.

Section 410.143(a)(2) states that, if an organization does not use the NSDSMEP quality standards described in § 410.144(b), and wishes to change its quality standards that HCFA previously approved, the organization must submit its plan to alter its quality standards and include a crosswalk between the set of quality standards described in § 410.144 and the organization's revised standards. Paragraph (a)(3) states that, if HCFA notifies an organization that uses the HCFA quality standards described in § 410.144(a) that it has changed the HCFA quality standards, the organization must submit to HCFA, within 30 days of HCFA's notification of a change in the quality standards, its organization's plan to alter its quality standards to conform to the revised quality standards described in § 410.144(a).

The burden associated with these requirements is the time and effort for an organization to submit its organization's plan. It is estimated that it will take each organization 10 hours to comply with these requirements. There will be approximately 5 respondents for a total of 50 hours.

Section 410.143(b) states that we (or our agent(s)) may perform oversight activities such equivalency reviews, validation reviews, and onsite inspections to ensure that an approved accreditation organization and the entities the accreditation organization accredits continue to meet the quality standards described in § 410.144. In addition, an accreditation organization that is dissatisfied with a determination to withdraw our approval and recognition may request a reconsideration of our decision in accordance with part 488 subpart D of this chapter.

The burden imposed by this section is the time and effort necessary to disclose documentation under the reviews and

inspections. However, we believe that these requirements are exempt from the PRA since they will be imposed under the conditions defined in 5 CFR 1320.4 as the result of an administrative action and meet the exception(s) to the definition of information as set forth in 5 CFR 1320.3(h)(3), (h)(6), and (h)(9); as such, they do not meet the definition of an information collection.

Section 410.144 Quality Standards for Deemed Entities

Section 410.144, in paragraphs (a)(1)(ii) and (iii), requires that a deemed entity clearly define and document the organizational relationships, lines of authority, staffing, job descriptions, and operational policies. In addition, it must maintain a written policy that affirms education as an integral component of diabetes care.

The burden associated with this requirement is the time and effort for a approved entity to document and maintain the information described above. It is estimated these requirements will take each entity 8 hours. There are approximately 819 entities for a total annual burden of 6,552 hours.

Section 410.144(a)(7) states that an entity must review each beneficiary's plan of care and develop and update an individual assessment in collaboration with each beneficiary and document the results, including assessment, intervention, evaluation, and follow-up in the beneficiary's permanent medical record.

The burden associated with this requirement is captured in § 410.141(b) above.

Paragraph (a)(7) also requires that an entity forward a copy of the documentation in paragraph (a)(7)(ii) to the referring physician and periodically update the referring physician about the beneficiary's educational status.

While these information collection requirements are subject to the PRA, we believe the burden associated with them is exempt as defined in 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary to comply with the requirement are incurred by persons in the normal course of their activities.Section 410.144(a)(9) states that an entity must establish and maintain a performance measurement and quality improvement program that meets the requirements of this section. In addition, if requested, an entity must report to us nationally standardized performance measures to the extent that they become available in the future and the Secretary determines they are appropriate.

While the requirements to maintain documentation and the reporting of nationally standardized performance measures are subject to the PRA, the requirements to disclose information to us upon request are not subject to the PRA in accordance with 5 CFR 1320.4(a)(2), since the disclosure of information to or for a Federal agency during the conduct of an administrative action, investigation, or audit involving an agency against specific individuals or entities is exempt from the PRA.

Therefore, the burden associated with this section that is subject to the PRA is the time and effort necessary for an entity to maintain documentation related to the performance measurement and quality improvement program and the reporting of nationally standardized performance measures. It is estimated that the recordkeeping requirements will take each entity 3 hours on an annual basis. Since there are approximately 819 entities, we estimate a total annual burden of 2,457 hours. Since HCFA is not currently requiring entities to report nationally standardized performance measures, we are not assigning any burden to this requirement. When HCFA does mandate the requirement to report these performance measures, the burden associated with this requirement will be adjusted accordingly. We solicit comments on how long fulfilling this requirement will take.

Section 410.145 Requirements for Approved Entities

Section 410.145(a)(1)(i) states that an entity may be approved to meet our standards described in § 410.144 if the entity has submitted necessary documentation and is fully accredited (and periodically reaccredited) by a national accreditation organization approved by HCFA. The burden associated with meeting these requirements is captured in § 410.141(e)(3).

Section 410.145(b)(1) through (3) states that an entity may be approved if the entity:

- Forwards a copy of its certificate from its accreditation organization indicating that the entity meets the HCFA quality standards described in § 410.144(a) before submitting a claim for Medicare payment.
- Agrees to submit to evaluation (including onsite inspections) by us (or our agent) to validate its approved organization's accreditation process.
- Authorizes for its approved organization to release to HCFA a copy of its most recent accreditation evaluation and any accreditation-related information that HCFA may require.

The burden associated with these requirements is the time and effort for an entity to submit a copy of its certificate, along with its agreement, and authorization.

It is estimated that it will take each entity 5 minutes to comply with these requirements. There are approximately 819 respondents for a total of 68 hours.

Section 410.145(b)(4) states that, at a minimum, the entity must allow a PRO (under a contract with HCFA) access to beneficiary or group training records.

The burden associated with this requirement is the time and effort necessary to maintain the necessary documentation and to demonstrate that the approved entity meets the requirements of this section.

We estimate that it will take 819 entities 5 minutes on an annual basis to maintain the necessary documentation or to report the results of an internal quality assessment program to HCFA for an overall annual burden of 68 hours.

Section 410.146 Diabetes Outcome Measurements

This section requires an entity to collect and record specified information for a beneficiary who receives training under § 410.141. The section also requires an entity to make the data it collects available to a Peer Review Organization upon request.

The burden associated with this section is that for collecting the data and for reporting it, upon request. The burden associated with collecting the data, while subject to the PRA, is, we believe, is exempt in accordance with 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary to comply with these requirements would be incurred by persons in the normal course of their activities. The burden for reporting the data is included with the burden for § 410.144.

Section 414.63 Payment for Outpatient Diabetes Self-Management Training

Section 414.63(c) states payment may be made for training sessions actually attended by the beneficiary and documented on attendance sheets.

While this documentation requirement is subject to the PRA, we have not accounted for its burden because we believe the burden associated with this ICR is exempt in accordance with 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary to comply with these requirements would be incurred by persons in the normal course of their activities. Although we solicited comments, we did not receive any on our conclusion that this activity would not be a burden for providers.

We have submitted a copy of this final rule to OMB for its review of the

information collection requirements described above. These requirements are not effective until they have been approved by OMB.

If you comment on any of these information collection and recordkeeping requirements, please mail copies directly to the following:

Health Care Financing Administration, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850, Attn: Julie Brown HCFA–3002–F.

and,

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Wendy Taylor, HCFA Desk Officer.

VI. Regulatory Impact Analysis

A. Background

We have examined the impacts of this final rule as required by Executive Order 12866, section 1102(b) of the Social Security Act (the Act), the Unfunded Mandates Act of 1995, the Regulatory Flexibility Act (RFA) (Public Law 96–354), and Executive Order 13132 (Federalism). 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 effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year). The statutory provision that this rule further implements will cause this to be a major rule and economically significant rule because we have estimated that the annual costs associated with this rule will be significantly higher than $100 million beginning in 2001.

Section 1102(b) of the Act requires us to prepare an RIA if a rule has a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

Section 202 of the Unfunded Mandates Reform Act of 1995 requires agencies to prepare an assessment of anticipated costs and benefits before issuing any rule that may mandate an expenditure by State, local, or tribal governments, in an aggregate, or by the private sector, of $100 million or more in any one year. We believe that this final rule will not mandate such expenditures.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit and not-for-profit organizations, and governmental agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit or not-for-profit status, or by having revenues of $5 million or less annually. States and tribal governments are not considered to be small entities.

This final rule provides additional benefit payments to providers and suppliers for offering classes on diabetes self-management training. In section C. of the RIA we discuss the accreditation approval process and acknowledge that some small entities may encounter a regulatory burden in obtaining accreditation. We discuss measures that we believe will lessen the regulatory burden on these entities.

This final rule sets forth an expanded benefit for Medicare beneficiaries with diabetes who meet the criteria for outpatient self-management training. This final rule also identifies approved entities that may furnish these services, and lists the quality standards that must be met by these approved entities. This regulation will primarily affect beneficiaries with diabetes and certain health care professionals and facilities.

We estimate that there are 4.5 million Medicare beneficiaries with diabetes (approximately 4 million aged beneficiaries and .5 million disabled beneficiaries). Of this total, we estimate that about half or 2.25 million beneficiaries, will receive outpatient diabetes self-management training. This estimate assumes that the remaining 2.25 million Medicare beneficiaries either have already received the training or do not currently meet the conditions of coverage. These beneficiaries may meet the conditions of coverage at a later date, if their medical condition changes.

B. Diabetes Costs and Benefits

After consultation with representatives of various groups and organizations active in the field of diabetes education and training, we believe it is reasonable to cover up to 10 hours of initial diabetes self-management training (allowing 1 individual hour and 9 group hours) within a continuous 12-month period and up to 2 hours of additional training annually (allowing both hours to be either individual or group training in any combination of half-hour increments) for each beneficiary that meets the conditions of coverage. We estimate that there will be twenty half-hour increments billed in the first year and possibly four follow-up increments (up to 2 hours) billed each year thereafter.

The following table displays the estimated Federal Medicare outlays for the outpatient diabetes self-management training benefit.

PROJECTED BUDGET IMPACT OF NEW BENEFIT

[$ in millions]

FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
$150	$200	$270	$270	$280

The costs have been recalculated using year 2000 payment rates updated annually, and the following assumptions: (1) Payments reflected in the budget projections are for the revised benefit, not the benefit implemented earlier under program memorandums; (2) utilization is based on capacity of accredited programs; (3) the number of accredited programs will increase by 100 every year; (4) beneficiaries will receive the full amount of the covered service; and (5) approximately 2.25 million beneficiaries are eligible to receive the benefit. Based on the capacity of the ADA recognized programs in 2000 and the number of programs we expect in 2001 through 2005, not all beneficiaries will be able to receive the initial training immediately. The costs associated with initial training are approximately five times greater than the costs that are subsequently incurred for follow-up

training because 10 hours are allowed for initial training and only 2 hours are allowed for follow-up training. Therefore, costs associated with the benefit decline after the backlog of 2.25 million beneficiaries receive initial training even with our assumption that all beneficiaries will receive 2 hours of follow-up training each year. After 2005, with only approximately 300,000 beneficiaries with diabetes becoming eligible annually, costs are expected to drop by approximately 30 percent. These figures assume all payments for the service are made at the full fee-for-service rate minus deductible and coinsurance, for all beneficiaries and that all beneficiaries who are eligible for the service, receive it.

If the referral rate is low, or actual utilization is low, we would expect the stated figures to be reduced by as much as 50 percent. The estimates vary considerably from the proposed rule because we had incomplete data at that time.

The expected costs could be considerable, especially in the first 5 years, but we also expect substantial benefits. When an individual has diabetes, his or her body has trouble making or using insulin, a hormone produced by the pancreas. Insulin enables the body's tissues to use glucose, a sugar that circulates in the bloodstream and that normally provides energy for the body's cells. Because a beneficiary with diabetes cannot properly use glucose in the blood, blood glucose levels remain high, unless the individual takes appropriate medication (such as insulin) or is able to reduce blood sugar levels through diet and exercise. The consequences of diabetes can be severe. It is the fourth leading cause of death by disease in the United States.

Diabetes can also result in many other medical problems, including heart disease, stroke, kidney disease, loss of sensation and circulation in the legs, possibly leading to amputations, and blindness. Proper health care and self-management can help circumvent these problems or slow their onset.

There are two critical questions regarding outpatient diabetes self-management training: (1) When should the person receive the training? (2) How much training should the person receive? Initial training may bring about short term behavioral changes. Some experts express concern about the difficulty individuals with diabetes may have in maintaining behavior changes unless they get additional education and support as a follow-up to the initial training. To assure that our beneficiaries receive the amount of training and support we believe they need to maintain good health or improve their existing health status, we will provide, when medically necessary, refresher training in a subsequent year following the initial training. We believe that this provision of coverage will have a positive result on the Medicare program.

We did not receive public comments on the potential cost and impact of the outcome measurement requirement in § 410.146 of this final rule. However, we consider that the collection and integration of this information into a beneficiary's training file or medical plan of care would normally be a part of keeping adequate medical records. We plan to monitor specific outcome measurements to assist us in ensuring quality programs for our beneficiaries. The only sizeable additional cost would be for the photocopying of the records. Under the final rule, these photocopying and mailing costs would be reimbursable by the PRO.

C. Accreditation Process

Section 1865 of the Act requires us to determine whether the accreditation of a provider or supplier entity by a national accreditation organization provides assurances that the applicable Medicare health and safety conditions or requirements are met.

The BBA authorized the Secretary to develop her own quality standards. We have condensed the standards originally established by the NSDSMEP quality standards and recognized by the ADA. We believe that our standards offer sufficient assurances that the outpatient diabetes self-management training programs will provide quality care and the standards are flexible enough to apply in most health care settings.

The ADA Education Recognition Program is a national voluntary process that identifies diabetes self-management training programs that meet the NSDSMEP quality standards. The ADA currently recognizes outpatient diabetes self-management programs. The ADA has given recognition to approximately 819 education programs. Under the conditions in this final rule, the ADA, along with any other national accreditation organization that wishes to be approved and recognized by us, will be required to submit appropriate documentation requesting accreditation approval from HCFA. Once we have determined that the organization meets our requirements concerning frequency of accreditation, accreditation forms, and that the organization uses guidelines and instructions to evaluators that are as rigorous as our requirements with a similar emphasis on outcomes, they may then be approved and recognized as national accreditation organizations.

We fully expect that the ADA will apply to us as a national accreditation organization and be quickly approved to accredit entities. Our review of the ADA-recognized programs indicates that there is a minimum of at least one program in each State and the District of Columbia. These programs are located in both small rural hospitals as well as large urban hospitals. While the majority of these programs are hospital-based, there are some that are clinics and one in Arizona that is an insurance plan.

We recognize that some small entities such as rural-based physicians and free-standing education clinics run by approved entities may find the 12-month collection of data and the start-up fees required by the ADA to be a burden to their business operations. The approximate cost for an entity to get accredited, based on current ADA figures, is $850, which includes all application costs. The subsequent triennial fee is also $850. Additional items, such as recordkeeping costs and other overhead costs, have not been factored into the cost of becoming an approved entity. We estimate that there will be a total of 819 approved entities when this rule is implemented and that the number of approved entities will increase by 100 every year until utilization should drop affecting the number of new applicants for accreditation. The additional private sector cost through 2005 will be $1,121,150.

We acknowledge that some existing programs that are currently accredited by their State or local agency may find it a burden to become accredited by a national organization. However, we expect that at least four other organizations in addition to the ADA will apply to us for recognition and that these entities may find the quality standards of these organizations to be substantially equivalent to the existing State or local standards.

The CDC has a cooperative agreement with the 50 States, all United States territories, and the District of Columbia. This cooperative agreement provides funding for these geographic entities to perform a variety of diabetes-related activities. Ten of the States use a portion of their funds to administer their State diabetes self-management training accreditation programs. Under this final rule, there will be no loss of revenue from this cooperative agreement for any of these geographic entities. The States that currently use funds from the cooperative agreement to administer their State diabetes self-management

training programs can either choose to become an organization or choose to fund other diabetes-related activities, including the development of educational programs for the use of approved entities that desire to obtain national accreditation in order to qualify for Medicare payment under this benefit.

One way we are trying to lessen the burden on rural and small entities is by postponing the requirement for the CDE to be part of the diabetes self-management multidisciplinary team. Diabetes education programs are allowed to use a registered nurse instead of a CDE for 3 years from the effective date of the regulation. This final rule requires that diabetes educators and dietitians complete 12 hours of approved diabetes-related continuing education every 2 years. The approximate cost of obtaining these credits is $300. (This estimate is based on diabetes-related training information that we received from the American Association of Diabetes Educators.) Existing programs will have 3 years from the publication of this final rule to provide outpatient diabetes self-management training while preparing to meet our standard concerning the CDE.

We estimate that there will be 819 approved education programs when this final rule is fully implemented. Each approved entity will need a CDE 3 years from February 27, 2001. We estimate that 1019 approved education programs will be available at the time the CDE requirement goes into effect. The initial certification of a CDE costs $250 and another $300 every 2 years to maintain certification. The initial CDE certification will cost approximately $254,750 (1019 * $250) per year for CDE certification starting 3 years from February 27, 2001.

Under the continuing education requirement, a CDE, RN, or a registered dietitian must complete 12 credits every 2 years. The costs associated with this final rule will be approximately $150 every year. In the first year, the estimated total cost for continuing education for all CDEs/RNs and dietitians will be $245,700 (819 * 2 * $150) for all programs. These costs may be less for those rural areas that have a single individual who is qualified both as a registered dietitian and as a CDE to meet the multidisciplinary team requirement.

D. Conclusions

We anticipate that this final rule will improve the health of Medicare beneficiaries with diabetes by furnishing them with the skills and knowledge necessary to effectively manage their diabetic condition. We recognize that there may be some burden on existing and new entities because of the requirement that they must be accredited by a national accreditation body. However, we must ensure that Medicare pays only for those programs that are of the highest quality. We believe that the overall burden to these entities is worth the benefit that will be gained by both Medicare beneficiaries and the Medicare program.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

We have reviewed this final rule, under the threshold criteria of Executive Order 13132, Federalism. We have determined that it does not significantly affect the rights, roles, and responsibilities of States.

List of Subjects

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

42 CFR Part 414

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 424

Emergency medical services, Health facilities, Health professions, Medicare.

42 CFR Part 480

Health care, Health professional, Health record, Peer Review Organizations (PRO), Penalties, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 498

Administrative practice and procedure, Health facilities, Health professions, Medicare.

For the reasons set forth in the preamble, 42 CFR Chapter IV is amended as set forth below:

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

A. Part 410 is amended as follows:

1. The authority citation for part 410 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), unless otherwise indicated.

2. In § 410.1, paragraph (a) is revised to read as follows:

§ 410.1 Basis and scope.

(a) Statutory basis. This part is based on the indicated provisions of the following sections of the Act:

(1) Section 1832—Scope of benefits furnished under the Medicare Part B supplementary medical insurance (SMI) program.

(2) Section 1833 through 1835 and 1862—Amounts of payment for SMI services, the conditions for payment, and the exclusions from coverage.

(3) Section 1861(qq)—Definition of the kinds of services that may be covered.

(4) Section 1865(b)—Permission for HCFA to approve and recognize a national accreditation organization for the purpose of deeming entities accredited by the organization to meet program requirements.

(5) Section 1881—Medicare coverage for end-stage renal disease beneficiaries.

* * * * *

3. New subpart H, consisting of §§ 410.140 through 410.146, is added to read as follows:

Subpart H—Outpatient Diabetes Self-Management Training and Diabetes Outcome Measurements

Sec.
410.140 Definitions.
410.141 Outpatient diabetes self-management training.
410.142 HCFA process for approving national accreditation organizations.
410.143 Requirements for approved accreditation organizations.
410.144 Quality standards for deemed entities.
410.145 Requirements for entities.
410.146 Diabetes outcome measurements.

Subpart H—Outpatient Diabetes Self-Management Training and Diabetes Outcome Measurements

§ 410.140 Definitions.

For purposes of this subpart, the following definitions apply:

ADA stands for the American Diabetes Association.

Approved entity means an individual, physician, or entity accredited by an approved organization as meeting one of the sets of quality standards described in § 410.144 and approved by HCFA under § 410.141(e) to furnish training.

Deemed entity means an individual, physician, or entity accredited by an approved organization, but that has not yet been approved by HCFA to furnish and receive Medicare payment for the training. Upon being approved by HCFA under § 410.141(e) to furnish training, HCFA refers to this entity as an ''approved entity''.

NSDSMEP stands for the National Standards for Diabetes Self Management Education Programs.

Organization means a national accreditation organization.

Rural means an area that meets one of the following conditions:

(1) Is not urbanized (as defined by the Bureau of the Census) and that is designated by the chief executive officer of the State, and certified by the Secretary, as an area with a shortage of personal health services.

(2) Is designated by the Secretary either as an area with a shortage of personal health services or as a health professional shortage area.

(3) Is designated by the Indian Health Service as a health service delivery area as defined in § 36.15 of this title.

Training means outpatient diabetes self-management training.

§ 410.141 Outpatient diabetes self-management training.

(a) General rule. Medicare Part B covers training defined in § 410.140 if all of the conditions and requirements of this subpart are met.

(b) Conditions for coverage. The training must meet the following conditions:

(1) Training orders. Following an evaluation of the beneficiary's need for the training, it is ordered by the physician (or qualified nonphysician practitioner) (as defined in § 410.32(a)) treating the beneficiary's diabetes.

(2) Plan of care. It is included in a comprehensive plan of care established by the physician (or qualified nonphysician practitioner) treating the beneficiary for diabetes that meets the following requirements:

(i) Describes the content, number of sessions, frequency, and duration of the training as written by the physician (or qualified nonphysician practitioner) treating the beneficiary.

(ii) Contains a statement specified by HCFA and signed by the physician (or qualified nonphysician practitioner) managing the beneficiary's diabetic condition. By signing this statement, the physician (or qualified nonphysician practitioner) certifies that he or she is managing the beneficiary's diabetic condition and the training described in the plan of care is needed to ensure therapy compliance or to provide the beneficiary with the skills and knowledge to help manage the beneficiary's diabetes. The physician's (or qualified nonphysician practitioner's) statement must identify the beneficiary's specific medical conditions (described in paragraph (d) of this section) that the training will address.

(iii) Provides that any changes to the plan of care are signed by the physician (or qualified nonphysician practitioner) treating the beneficiary.

(iv) Is incorporated into the approved entity's medical record for the beneficiary and is made available, upon request, to HCFA.

(3) Reasonable and necessary. It is reasonable and necessary for treating or monitoring the condition of a beneficiary who meets the conditions described in paragraph (d) of this section.

(c) Types and frequency of training—(1) Initial training.—General rule. (i) Medicare Part B covers initial training that meets the following conditions:

(A) Is furnished to a beneficiary who has not previously received initial training under this benefit.

(B) Is furnished within a continuous 12-month period.

(C) Does not exceed a total of 10 hours.

(D) Except as permitted under paragraph (c)(1)(ii) of this section, 9 hours of the training are furnished in a group setting consisting of 2 to 20 individuals who need not all be Medicare beneficiaries.

(E) Is furnished in increments of no less than one-half hour.

(F) May include 1 hour of individual training for an assessment of the beneficiary's training needs.

(ii) Exception. Medicare covers training on an individual basis for a Medicare beneficiary who meets any of the following conditions:

(A) No group session is available within 2 months of the date the training is ordered.

(B) The beneficiary's physician (or qualified nonphysician practitioner) documents in the beneficiary's medical record that the beneficiary has special needs resulting from conditions, such as severe vision, hearing, or language limitations that will hinder effective participation in a group training session.

(2) Follow-up training. After receiving the initial training described in paragraph (c)(1) of this section, Medicare covers follow-up training that meets the following conditions:

(i) Consists of no more than 2 hours individual or group training for a beneficiary each year.

(ii) Group training consists of 2 to 20 individuals who need not all be Medicare beneficiaries.

(iii) Is furnished any time in a calendar year following the year in which the beneficiary completes the initial training.

(iv) Is furnished in increments of no less than one-half hour.

(v) The physician (or qualified nonphysician practitioner) treating the beneficiary must document, in the referral for training and the beneficiary's medical record, the specific medical condition (described in paragraph (d) of this section) that the follow-up training must address.

(d) Beneficiaries who may be covered. Medicare Part B covers one course of initial training for a beneficiary who has one or more of the following medical conditions present within the 12-month period before the physician's order for the training:

(1) New onset diabetes.

(2) Inadequate glycemic control as evidenced by a glycosylated hemoglobin (HbA1C) level of 8.5 percent or more on two consecutive HbA1C determinations 3 or more months apart in the year before the beneficiary begins receiving training.

(3) A change in treatment regimen from no diabetes medications to any diabetes medication, or from oral diabetes medication to insulin.

(4) High risk for complications based on inadequate glycemic control (documented acute episodes of severe hypoglycemia or acute severe hyperglycemia occurring in the past year during which the beneficiary needed emergency room visits or hospitalization).

(5) High risk based on at least one of the following documented complications:

(i) Lack of feeling in the foot or other foot complications such as foot ulcers, deformities, or amputation.

(ii) Pre-proliferative or proliferative retinopathy or prior laser treatment of the eye.

(iii) Kidney complications related to diabetes, when manifested by albuminuria, without other cause, or elevated creatinine.

(e) Who may furnish services. Training may be furnished by a physician, individual, or entity that meets the following conditions:

(1) Furnishes other services for which direct Medicare payment may be made.

(2) May properly receive Medicare payment under § 424.73 or § 424.80 of this chapter, which set forth prohibitions on assignment and reassignment of benefits.

(3) Submits necessary documentation to, and is accredited by, an accreditation organization approved by HCFA under § 410.142 to meet one of the sets of quality standards described in § 410.144.

(4) Provides documentation to HCFA, as requested, including diabetes outcome measurements set forth at § 410.146.

§ 410.142 HCFA process for approving national accreditation organizations.

(a) General rule. HCFA may approve and recognize a nonprofit or not-for-

profit organization with demonstrated experience in representing the interest of individuals with diabetes to accredit entities to furnish training.

(b) Required information and materials. An organization requesting HCFA's approval and recognition of its accreditation program must furnish to HCFA the following information and materials:

(1) The requirements and quality standards that the organization uses to accredit entities to furnish training.

(2) If an organization does not use the HCFA quality standards or the NSDSMEP quality standards described in § 410.144(a) or (b), a detailed comparison including a crosswalk between the organization's standards and the HCFA quality standards described in § 410.144(a).

(3) Detailed information about the organization's accreditation process, including all of the following information:

(i) Frequency of accreditation.

(ii) Copies of accreditation forms, guidelines, and instructions to evaluators.

(iii) Descriptions of the following:

(A) The accreditation review process and the accreditation status decision making process.

(B) The procedures used to notify a deemed entity of deficiencies in its outpatient diabetes self-management training program and procedures to monitor the correction of those deficiencies.

(C) The procedures used to enforce compliance with the accreditation requirements and standards.

(4) Detailed information about the individuals who perform evaluations for the organization, including all of the following information:

(i) The education and experience requirements for the individuals who perform evaluations.

(ii) The content and frequency of continuing education furnished to the individuals who perform evaluations.

(iii) The process used to monitor the performance of individuals who perform evaluations.

(iv) The organization's policies and practices for participation in the accreditation process by an individual who is professionally or financially affiliated with the entity being evaluated.

(5) A description of the organization's data management and analysis system for its accreditation activities and decisions, including the kinds of reports, tables, and other displays generated by that system.

(6) A description of the organization's procedures for responding to and investigating complaints against an approved entity, including policies and procedures regarding coordination of these activities with appropriate licensing bodies, ombudsmen programs, and HCFA.

(7) A description of the organization's policies and procedures for withholding or removing a certificate of accreditation for failure to meet the organization's standards or requirements, and other actions the organization takes in response to noncompliance with its standards and requirements.

(8) A description of all types (for example, full or partial) and categories (for example, provisional, conditional, or temporary) of accreditation offered by the organization, the duration of each type and category of accreditation, and a statement identifying the types and categories that will serve as a basis for accreditation if HCFA approves the organization.

(9) A list of all of the approved entities currently accredited to furnish training and the type, category, and expiration date of the accreditation held by each of them.

(10) The name and address of each person with an ownership or control interest in the organization.

(11) Documentation that demonstrates its ability to furnish HCFA with electronic data in HCFA-compatible format.

(12) A resource analysis that demonstrates that its staffing, funding, and other resources are adequate to perform the required accreditation activities.

(13) A statement acknowledging that, as a condition for approval and recognition by HCFA of its accreditation program, it agrees to comply with the requirements set forth in §§ 410.142 through 410.146.

(14) Additional information HCFA requests to enable it to respond to the organization's request for HCFA approval and recognition of its accreditation program to accredit entities to furnish training.

(c) Onsite visit. HCFA may visit the prospective organization's offices to verify information in the organization's application, including, but not limited to, review of documents, and interviews with the organization's staff.

(d) Notice and comment—(1) Proposed notice. HCFA publishes a proposed notice in the **Federal Register** announcing its intention to approve an organization's request for HCFA approval and recognition of its accreditation program and the standards it uses to accredit entities to furnish training. The notice includes the following information:

(i) The basis for approving the organization.

(ii) A description of how the organization's accreditation program applies and enforces quality standards that have been determined by HCFA to meet or exceed the HCFA quality standards described in § 410.144(a) or how the organization would use the NSDSMEP quality standards described in § 410.144(b).

(iii) An opportunity for public comment.

(2) Final notice. (i) After considering public comments HCFA receives on the proposed notice, it publishes a final notice in the **Federal Register** indicating whether it has approved an organization's request for HCFA approval and recognition of its accreditation program and the standards it uses to accredit entities to furnish training.

(ii) If HCFA approves the request, the final notice specifies the effective date and the term of the approval, which may not exceed 6 years.

(e) Criteria HCFA uses to approve national accreditation organizations. In deciding to approve and recognize an organization's accreditation program to accredit entities to furnish training, HCFA considers the following criteria:

(1) The organization uses and enforces quality standards that HCFA has determined meet or exceed the HCFA quality standards described in § 410.144(a), or uses the NSDSMEP quality standards described in § 410.144(b).

(2) The organization meets the requirements for approved organizations in § 410.143.

(3) The organization is not owned or controlled by the entities it accredits, as defined in § 413.17(b)(2) or (b)(3), respectively, of this chapter.

(4) The organization does not accredit any entity it owns or controls.

(f) Notice of HCFA's decision. HCFA notifies the prospective organization in writing of its decision. The notice includes the following information:

(1) Statement of approval or denial.

(2) If approved, the expiration date of HCFA's approval and recognition of the accreditation program.

(3) If denied, the rationale for the denial and the reconsideration and reapplication procedures.

(g) Reconsideration of adverse decision. An organization that has received HCFA's notice of denial of its request for HCFA approval and recognition of its accreditation program to accredit entities to furnish training may request reconsideration of HCFA's decision in accordance with part 488 subpart D of this chapter.

(h) Request for approval following denial. (1) Except as provided in paragraph (h)(2) of this section, an organization that has received HCFA's notice of denial of its request for HCFA approval and recognition of its accreditation program to accredit entities to furnish training may submit a new request to HCFA if it meets the following conditions:

(i) Has revised its accreditation program to correct the deficiencies HCFA noted in its denial notice.

(ii) Demonstrates, through documentation, the use of one of the sets of quality standards described in § 410.144.

(iii) Resubmits the application in its entirety.

(2) For an organization that has requested reconsideration of HCFA's denial of its request for HCFA approval and recognition of its accreditation program to accredit entities to furnish training, HCFA will not consider the organization's new request until all administrative proceedings on the previous request have been completed.

(i) Withdrawal. An organization requesting HCFA approval and recognition of its accreditation program to accredit entities may withdraw its application at any time.

(j) Applying for continued HCFA approval. At least 6 months before the expiration of HCFA's approval and recognition of the organization's program, an organization must request from HCFA continued approval and recognition.

§ 410.143 Requirements for approved accreditation organizations.

(a) Ongoing responsibilities of an approved accreditation organization. An organization approved and recognized by HCFA must undertake the following activities on an ongoing basis:

(1) Provide to HCFA in writing, on a monthly basis, all of the following:

(i) Copies of all accreditation decisions and any accreditation-related information that HCFA may require (including corrective action plans and summaries of unmet quality standards described in § 410.144).

(ii) Notice of all complaints related to approved entities.

(iii) Within 30 days of taking remedial or adverse action (including revocation, withdrawal, or revision of an approved entity's deemed status) against an approved entity, information describing the remedial or adverse action and the circumstances that led to taking the action.

(iv) Notice of any proposed changes in its accreditation standards and requirements or evaluation process. If an organization implements changes without HCFA approval (other than changes to the NSDSMEP quality standards described in § 410.144(b)), HCFA may withdraw its approval and recognition of the organization's accreditation program.

(2) If an organization does not use the NSDSMEP quality standards described in § 410.144(b), and wishes to change its quality standards that HCFA previously approved, the organization must submit its plan to alter its quality standards and include a crosswalk between the set of quality standards described in § 410.144 and the organization's revised standards. If an organization implements changes in its quality standards without HCFA approval, HCFA may withdraw its approval and recognition of the organization's accreditation program.

(3) If HCFA notifies an organization that uses the HCFA quality standards described in § 410.144(a) that it has changed the HCFA quality standards, the organization must meet the following requirements:

(i) Submit to HCFA, within 30 days of HCFA's notification of a change in the quality standards, its organization's plan to alter its quality standards to conform to the revised quality standards described in § 410.144(a).

(ii) Implement the changes to its accreditation program by the implementation date specified in HCFA's notification of the changes in the quality standards.

(b) HCFA oversight of approved national accreditation organizations. HCFA, or its agent, performs oversight activities to ensure that an approved organization and the entities the organization accredits continue to meet a set of quality standards described in § 410.144. HCFA (or its agent) uses the following procedures:

(1) Equivalency review. HCFA compares the organization's standards and its application and enforcement of its standards to a set of quality standards (described in § 410.144) and processes when any of the following conditions exist:

(i) HCFA imposes new requirements or changes its process for approving and recognizing an organization.

(ii) Except for an organization that uses the NSDSMEP quality standards, the organization proposes to adopt new standards or changes its accreditation process.

(iii) The organization reapplies to HCFA for continuation of its approval and recognition by HCFA of its program to accredit entities to furnish training.

(2) Validation reviews. HCFA validates an organization's accreditation process by conducting evaluations of approved entities accredited by the organization and comparing its results to the results of the organization's evaluation of the approved entities.

(3) Onsite inspections. HCFA may conduct an onsite inspection of the organization's operations and offices to verify information and assess the organization's compliance with its own policies and procedures. The onsite inspection may include, but is not limited to, reviewing documents, auditing documentation of meetings concerning the accreditation process, evaluating accreditation results or the accreditation status decision making process, and interviewing the organization's staff.

(4) Withdrawal of HCFA approval and recognition—(i) HCFA gives an organization written notice of HCFA's intent to withdraw its approval and recognition of the organization's program to accredit entities if HCFA determines through an equivalency review, validation review, onsite inspection, or HCFA's daily experience with the organization that any of the following conditions exist:

(A) Except for those accrediting organizations using quality standards in § 410.144(b), the quality standards that the organization applies and enforces do not meet or exceed the HCFA quality standards described in § 410.144(a).

(B) The organization has failed to meet the requirements for accreditation in §§ 410.142 through 410.144.

(ii) Request for reconsideration. An organization may request a reconsideration of HCFA's decision to withdraw its approval and recognition of the organization in accordance with part 488, subpart D of this chapter.

§ 410.144 Quality standards for deemed entities.

An organization approved and recognized by HCFA may accredit an entity to meet one of the following sets of quality standards:

(a) HCFA quality standards. Standards prescribed by HCFA, which include the following:

(1) Organizational structure. (i) Provides the educational resources to support the programs offered and the beneficiaries served, including adequate space, personnel, budget, instructional materials, confidentiality, privacy, and operational support.

(ii) Defines clearly and documents the organizational relationships, lines of authority, staffing, job descriptions, and operational policies.

(iii) Maintains a written policy that affirms education as an integral component of diabetes care.

(iv) Includes in its operational policies, specific standards and procedures identifying the amount of collaborative, interactive, skill-based training methods and didactic training methods furnished to the beneficiary.

(v) Assesses the service area to define the target population in order to appropriately allocate personnel and resources.

(vi) Identifies in its operational policies, the minimal amount that each team member must be involved in the following:

(A) Development of training materials.

(B) Instruction of beneficiaries.

(2) Environment. Maintains a safe and sanitary environment, properly constructed, equipped, and maintained to protect the health and safety of all patients and that meets all applicable fire protection and life safety codes.

(3) Program staff. (i) Requires a program coordinator who is responsible for program planning, implementation, and evaluation.

(ii) Requires nonphysician professional staff to obtain 12 hours of continuing diabetes education concerning educational principles and behavior change strategies every 2 years.

(4) Team approach. (i) Except as provided in paragraph (a)(4)(ii) of this section for a rural area, furnishes services using a multidisciplinary instructional team that meets the following requirements:

(A) The team includes at least a registered dietitian, as recognized under State law, and a certified diabetes educator (CDE), certified by a qualified organization that has registered with HCFA, who have didactic experience and knowledge of diabetes clinical and educational issues. (If the team includes a registered nurse, an approved entity may delay implementation of the requirement for a CDE until February 27, 2004.)

(B) The team is qualified to teach the training content areas required in paragraph (a)(5) of this section.

(C) All appropriate team members must be present during the portion of the training for which they are responsible and must directly furnish the training within the scope of their practices.

(ii) In a rural area, an individual who is qualified as a registered dietitian and as a CDE that is currently certified by an organization approved by HCFA (or until February 27, 2004 an individual who is qualified as a registered dietitian and as a registered nurse) may furnish training and is deemed to meet the multidisciplinary team requirement in paragraph (a)(4)(i) of this section.

(5) Training content. Offers training and is capable of meeting the needs of its patients on the following subjects:

(i) Diabetes overview/ pathophysiology of diabetes.

(ii) Nutrition.

(iii) Exercise and activity.

(iv) Diabetes medications (including skills related to the self-administration of injectable drugs).

(v) Self-monitoring and use of the results.

(vi) Prevention, detection, and treatment of acute complications.

(vii) Prevention, detection, and treatment of chronic complications.

(viii) Foot, skin, and dental care.

(ix) Behavior change strategies, goal setting, risk factor reduction, and problem solving.

(x) Preconception care, pregnancy, and gestational diabetes.

(xi) Relationships among nutrition, exercise, medication, and blood glucose levels.

(xii) Stress and psychosocial adjustment.

(xiii) Family involvement and social support.

(xiv) Benefits, risks, and management options for improving glucose control.

(xv) Use of health care systems and community resources.

(6) Training methods. (i) Offers individual and group instruction for effective training.

(ii) Uses instructional methods and materials that are appropriate for the target population, and participants being served.

(iii) Uses primarily interactive, collaborative, skill-based training methods and maximizes the use of interactive training methods.

(7) Review of plan of care and goals. (i) Reviews each beneficiary's plan of care.

(ii) Develops and updates an individual assessment, in collaboration with each beneficiary, that includes relevant medical history, present health status, health service or resource utilization, risk factors, diabetes knowledge and skills, cultural influences, health beliefs and attitudes, health behaviors and goals, support systems, barriers to learning, and socioeconomic factors.

(iii) Based on the assessment, develops, in collaboration with each beneficiary, an individual education plan. Includes in the education plan, the goals for education, the periodic updates, the specific amount of interactive, collaborative, skill-based training methods and didactic training methods that have been and will be furnished.

(iv) Documents the results, including assessment, intervention, evaluation and follow-up in the beneficiary's medical record.

(v) Forwards a copy of the documentation in paragraph (a)(7)(ii) through (iv) of this section to the referring physician (or qualified nonphysician practitioner).

(vi) Periodically updates the beneficiary's referring physician (or qualified nonphysician practitioner) about the beneficiary's educational status.

(8) Educational intervention. Offers appropriate and timely educational intervention based on referral from the beneficiary's physician (or qualified nonphysician practitioner) and based on periodic reassessments of health status, knowledge, skills, attitudes, goals, and self-care behaviors.

(9) Performance measurement and quality improvement. Establishes and maintains an effective internal performance measurement and quality improvement program that focuses on maximizing outcomes by improving patient safety and quality of care. The program must meet the following requirements:

(i) Stresses health outcomes (for example, improved beneficiary diabetes control, beneficiary understanding, or beneficiary compliance) and provides for the collection, analysis, and reporting of data that permits measurement of performance outcomes, or other quality indicators.

(ii) Requires an entity to take the following actions:

(A) Evaluate itself on an annual basis as to its effectiveness in using performance measures.

(B) Improve its performance on at least one outcome or quality indicator each year.

(10) Quality improvement. Has an agreement with a PRO to participate in quality improvement projects defined by the PRO, or if a program elects not to participate in a PRO project, it must be able to demonstrate a level of achievement through a project of its own design that is comparable to or better than the achievement to be expected from participation in the PRO quality improvement project.

(b) The National Standards for Diabetes Self-Management Education Programs. The set of quality standards contained in the NSDSMEP or any NSDSMEP standards subsequently revised.

(c) Standards of a national accreditation organization that represents individuals with diabetes. Standards that meet or exceed the HCFA quality standards described in paragraph (a) of this section that have been developed by a national

organization (and approved by HCFA) that is either a nonprofit or not-for-profit organization with demonstrated experience in representing the interest of individuals, including health care professionals and Medicare beneficiaries, with diabetes.

§ 410.145 Requirements for entities.

(a) Deemed entities. (1) Except as permitted in paragraph (a)(2) of this section, an entity may be deemed to meet a set of quality standards described in § 410.144 if the following conditions are met:

(i) The entity has submitted necessary documentation and is fully accredited (and periodically reaccredited) by an organization approved by HCFA under § 410.142.

(ii) The entity is not accredited by an organization that owns or controls the entity.

(2) Before August 27, 2002 HCFA may deem an entity to meet the NSDSMEP quality standards described in § 410.144(b), if the entity provides the Medicare contractor that will process its claims with a copy of a current certificate the entity received from the ADA that verifies the training program it furnishes meets the NSDSMEP quality standards described in § 410.144(b).

(b) Approved entities. An entity may be approved to furnish training if the entity meets the following conditions:

(1) Before submitting a claim for Medicare payment, forwards a copy of its certificate or proof of accreditation from an organization approved by HCFA under § 410.142 indicating that the entity meets a set of quality standards described in § 410.144, or before August 27, 2002, submits documentation of its current ADA recognition status.

(2) Agrees to submit to evaluation (including onsite inspections) by HCFA (or its agent) to validate its approved organization's accreditation process.

(3) Authorizes its approved organization to release to HCFA a copy of its most recent accreditation evaluation, and any accreditation-related information that HCFA may require.

(4) At a minimum, allows the PRO (under a contract with HCFA) access to beneficiary or group training records.

(c) Effective dates—(1) Deemed to meet quality standards. Except as permitted in paragraph (c)(2) of this section, the date on which an entity is deemed to meet a set of quality standards described in § 410.144 is the later of one of the following dates:

(i) The date HCFA approves and recognizes the accreditation organization to accredit entities to furnish training.

(ii) The date an organization accredits the entity to meet a set of quality standards described in § 410.144.

(2) Approved to furnish training. HCFA covers the training furnished by an entity beginning on the later of one of the following dates:

(i) The date HCFA approves the deemed entity as meeting the conditions for coverage in § 410.141(e).

(ii) The date the entity is deemed to meet a set of quality standards described in § 410.144.

(d) Removal of approved status—(1) General rule. HCFA removes an entity's approved status for any of the following reasons:

(i) HCFA determines, on the basis of its own evaluation or the results of the accreditation evaluation, that the entity does not meet a set of quality standards described in § 410.144.

(ii) HCFA withdraws its approval of the organization that deemed the entity to meet a set of quality standards described in § 410.144.

(iii) The entity fails to meet the requirements of paragraphs (a) and (b) of this section.

(2) Effective date. The effective date of HCFA's removal of an entity's approved status is 60 days after the date of HCFA's notice to the entity.

§ 410.146 Diabetes outcome measurements.

(a) Information collection. An approved entity must collect and record in an organized systematic manner the following patient assessment information at least on a quarterly basis for a beneficiary who receives training under § 410.141:

(1) Medical information that includes the following:

(i) Duration of the diabetic condition.

(ii) Use of insulin or oral agents.

(iii) Height and weight by date.

(iv) Results and date of last lipid test.

(v) Results and date of last HbA1C.

(vi) Information on self-monitoring (frequency and results).

(vii) Blood pressure with the corresponding dates.

(viii) Date of the last eye exam.

(2) Other information that includes the following:

(i) Educational goals.

(ii) Assessment of educational needs.

(iii) Training goals.

(iv) Plan for a follow-up assessment of achievement of training goals between 6 months and 1 year after the beneficiary completes the training.

(v) Documentation of the training goals assessment.

(b) Follow-up assessment information. An approved entity may obtain information from the beneficiary's survey, primary care physician contact, and follow-up visits.

B. Part 414 is amended as follows:

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

1. The authority citation for part 414 continues to read as follows:

Authority: Secs. 1102, 1871, and 1881(b)(1) of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395rr(b)(1)).

2. A new § 414.63 is added to read as follows:

§ 414.63 Payment for outpatient diabetes self-management training.

(a) Payment under the physician fee schedule. Except as provided in paragraph (d) of this section, payment for outpatient diabetes self-management training is made under the physician fee schedule in accordance with §§ 414.1 through 414.48.

(b) To whom payment may be made. Payment may be made to an entity approved by HCFA to furnish outpatient diabetes self-management training in accordance with part 410, subpart H of this chapter.

(c) Limitation on payment. Payment may be made for training sessions actually attended by the beneficiary and documented on attendance sheets.

(d) Payments made to those not paid under the physician fee schedule. Payments may be made to other entities not routinely paid under the physician fee schedule, such as hospital outpatient departments, ESRD facilities, and DME suppliers. The payment equals the amounts paid under the physician fee schedule.

(e) Other conditions for fee-for-service payment. The beneficiary must meet the following conditions:

(1) Has not previously received initial training for which Medicare payment was made under this benefit.

(2) Is not receiving services as an inpatient in a hospital, SNF, hospice, or nursing home.

(3) Is not receiving services as an outpatient in an RHC or FQHC.

C. Part 424 is amended as follows:

PART 424—CONDITIONS FOR MEDICARE PAYMENT

1. The authority citation for part 424 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 424.44, a new paragraph (d) is added to read as follows:

§ 424.44 Time limits for filing claims.

* * * * *

(d) Outpatient diabetes self-management training. HCFA makes payment in half-hour increments to an entity for the furnishing of outpatient diabetes self-management training on or after the approval date HCFA approves the entity to furnish the services under part 410, subpart H of this chapter.

D. Part 480 is amended as follows:

PART 480—ACQUISITION, PROTECTION, AND DISCLOSURE OF PEER REVIEW INFORMATION

1. The authority citation for part 480 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 480.111, new paragraph (d) is added to read as follows:

§ 480.111 PRO access to records and information of institutions and practitioners.

* * * * *

(d) A PRO may reimburse for requested information at the rate of $.10 per page for photocopying plus first class postage. The photocopying amount includes the cost of labor, supplies, equipment, and overhead.

E. Part 498 is amended as follows:

PART 498—APPEALS PROCEDURES FOR DETERMINATIONS THAT AFFECT PARTICIPATION IN THE MEDICARE PROGRAM AND FOR DETERMINATIONS THAT AFFECT THE PARTICIPATION OF ICFS/MR AND CERTAIN NFS IN THE MEDICAID PROGRAM

1. The authority citation for part 498 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 498.2 [Amended]

2. In § 498.2, the definition of ''supplier'' is amended to add the words ''an entity approved by HCFA to furnish outpatient diabetes self-management training,'' following ''(OPO),''.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: October 2, 2000.

Michael M. Hash,

Acting Administrator, Health Care Financing Administration.

Approved: October 20, 2000.

Donna E. Shalala,

Secretary.

[FR Doc. 00–32703 Filed 12–28–00; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–3002–N]

RIN 0938–AI96

Medicare Program; Application Process for National Organizations To Obtain Deeming Authority for Diabetes Self-Management Training Programs

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces that we will accept applications from national accreditation organizations with demonstrated experience in representing the interests of individuals with diabetes that seek deeming authority to approve entities to furnish diabetes self-management training.

EFFECTIVE DATE: This notice is effective on January 29, 2001.

FOR FURTHER INFORMATION CONTACT:

Joan A. Brooks, (410) 786–5526 or *jbrooks@hcfa.gov*, or
Eva Fung (410) 786–7539 or *efung@hcfa.gov*.

ADDRESSES: Mail applications to the following address: Department of Health and Human Services, Health Care Financing Administration, Attention: Joan A. Brooks or Eva Fung, Office of Clinical Standards and Quality, Clinical Standards Group, Mail Stop: S3–02–01, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

SUPPLEMENTARY INFORMATION:

I. Background

Section 4105(a) of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33, enacted on August 5, 1997) provides coverage of outpatient diabetes self-management training furnished to beneficiaries with diabetes by entities deemed to meet certain quality standards. (For purposes of this notice, we are using the term ''training'' to mean outpatient diabetes self-management training.) We have published a final rule elsewhere in this **Federal Register** that provides for expanded coverage of the training. An entity may receive Medicare payment for furnishing training if the entity is accredited by a national accreditation organization that we have approved as having deeming authority and that meets certain other conditions for payment. Section 1865(b) of the Act authorizes us to approve and to recognize certain national accreditation organizations and their accreditation programs to accredit entities that furnish training. In these cases, we will deem the accredited entities to have met or exceeded the applicable set of quality standards.

In order to ensure access to expanded quality services while accrediting organizations are being approved (as discussed in the preamble to the final rule), for the first 18 months after the effective date of the final rule we may deem an entity to meet the National Standards for Diabetes Self-Management Education Program (NSDSMEP) quality standards described in 42 CFR 410.144(b). Under § 410.145(a)(2), an entity that currently meets the NSDSMEP must provide the Medicare contractor that will process its claims a copy of the current certificate the entity received from the American Diabetes Association (ADA) that verifies the training program it furnishes meets the NSDSMEP quality standards described in § 410.144(b).

All organizations (including the ADA) may apply to HCFA to become a national accreditation organization at any time after January 29, 2001 according to the procedure specified in § 410.142 of the final rule. We will strive to review and approve the applications as expeditiously as possible. We expect that after the initial 18 month period expires, there could be several accrediting organizations thereby eliminating any access concerns.

II. Applications

Section 410.142 of the final rule (published elsewhere in this **Federal Register**) sets forth conditions and procedures for granting deeming authority to a national accreditation organization. We wish to emphasize that § 410.142(b) requires an organization that does not use the quality standards described in § 410.144(a) or (b) to prepare a detailed comparison, including a crosswalk that compares its quality standards to the HCFA quality standards described in § 410.144(a). For consideration of its application, a national organization that seeks deeming authority to approve entities to furnish training should submit an application, including all information required by § 410.142(b), to the address specified in the **ADDRESSES** section of this notice. We will accept and review applications we receive (as of the effective date of this notice) from a national accreditation organization that seeks deeming authority for training programs.

This notice announces that we will accept applications before the effective date of the final diabetes self-management training rule (published elsewhere in this **Federal Register**), but we will not process them until the final rule becomes effective.

III. Waiver of Proposed Notice

In adopting notices such as this, we ordinarily publish a proposed notice in the **Federal Register** to provide a period for public comment before the provisions of the notice take effect. However, we may waive this procedure if for good cause we find that prior notice and comment are impracticable, unnecessary or contrary to public interest (5 U.S.C. 553(b)(B)). Section 1865(b)(3)(A) of the Act specifies that the Secretary will consider accreditation organizations' written requests for a grant of deeming authority. Following the statute, in our final rule on diabetes self-management training (published elsewhere in this **Federal Register**), we have developed a procedure for considering these requests. This final rule is being published after notice and comment. Therefore, because notice and an opportunity for comment were provided in the accompanying rule, and because this notice exercises no discretion, we find that it is unnecessary to provide a separate notice and comment period.

Authority: Section 1865(b) of the Social Security Act (42 U.S.C. 1395bb).

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 22, 2000.

Michael M. Hash,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 00–32704 Filed 12–28–00; 8:45 am]

BILLING CODE 4120–01–P

Federal Register

Friday,
December 29, 2000

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determinations of Whether Designation of Critical Habitat Is Prudent for 20 Plant Species and the Proposed Designations of Critical Habitat for 32 Plant Species From the Island of Molokai, Hawaii; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH08

Endangered and Threatened Wildlife and Plants; Determinations of Whether Designation of Critical Habitat Is Prudent for 20 Plant Species and the Proposed Designations of Critical Habitat for 32 Plant Species From the Island of Molokai, HI

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule and notice of determinations of whether designation of critical habitat is prudent.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have reconsidered our findings concerning whether designating critical habitat for 20 federally protected plants from the island of Molokai, some of which may also occur on other Hawaiian Islands, would be prudent. The 20 plants were listed as endangered or threatened species under the Endangered Species Act of 1973, as amended (Act), between 1991 and 1999. At the time each plant was listed, we determined that designation of critical habitat was not prudent because designation would increase the degree of threat to the species and/or would not benefit the plant.

We determine that critical habitat is prudent for 19 of these species *(Bidens wiebkei, Brighamia rockii, Canavalia molokaiensis, Clermontia oblongifolia* ssp. *brevipes, Cyanea dunbarii, Cyanea mannii, Cyanea procera, Hibiscus arnottianus* ssp. *immaculatus, Lysimachia maxima, Mariscus fauriei, Marsilea villosa, Melicope reflexa, Phyllostegia mannii, Schiedea lydgatei, Schiedea sarmentosa, Silene alexandri, Silene lanceolata, Stenogyne bifida*, and *Tetramolopium rockii)* because the potential benefits of designating critical habitat essential for the conservation of these species outweigh the risks that may result from human activity because of critical habitat designation. We propose that critical habitat designation is not prudent for one species, *Pritchardia munroi*, because it would likely increase the threat from vandalism or collection of this species on Molokai. This proposed rule also proposes designation of critical habitat for 17 of these 20 species. Critical habitat is not proposed for two species, *Lysimachia maxima* and *Phyllostegia mannii*, that are currently found only in areas on Molokai that do not require special management consideration or protection because they are already protected and managed to the benefit of these species. Thus, these areas do not meet the definition of critical habitat.

For one additional species from Molokai, *Labordia triflora*, we determined that designation of critical habitat was prudent at the time of its listing as an endangered species in 1999. Critical habitat designation for this species is proposed at this time.

In other proposed rules we determined that critical habitat was prudent for 19 species that occur on Molokai as well as on Kauai, Niihau, Maui, Kahoolawe, and/or Lanai. The determinations were included in proposed rules for Kauai and Niihau, published on November 7, 2000, for Maui and Kahoolawe, published on December 18, 2000, or for Lanai, published on December 27, 2000. These species are: *Adenophorous periens, Alectryon macrococcus, Centarium sebaeoides, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Diellia erecta, Hedyotis mannii, Hesperomannia arborescens, Ischaemum byrone, Melicope mucronulata, Neraudia sericea, Peucedanum sandwicense, Plantago princeps, Platanthera holochila, Schiedea nuttallii, Sesbania tomentosa, Spermolepis hawaiiensis, Vigna o-wahuensis*, and *Zanthoxylum hawaiiense*. Critical habitat designations for 14 of the 19 species on Molokai are proposed at this time. Critical habitat is not proposed for five of these species *(Adenophorus periens, Hedyotis mannii, Plantago princeps, Plantanthera holochila*, and *Schiedea nuttallii)* that currently are found in areas on Molokai that do not require special management or protection because they are already protected and managed to the benefit of these species. Thus, these areas do not meet the definition of critical habitat.

Critical habitat designations for 32 species within 28 critical habitat units on the Hawaiian island of Molokai are proposed at this time.

We solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the proposed designations. We may revise this proposal to incorporate or address new information received during the comment period.

DATES: We must receive comments from all interested parties by February 27, 2001. Public hearing requests must be received by February 12, 2001.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., P.O. Box 50088, Honolulu, HI 96850–0001.

You may send comments by electronic mail (e-mail) to *mo crithab pr@fws.gov.* Please submit comments in ASCII file format and avoid the use of special characters and encryption. Please include ''Attn: 1018–AH08'' and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Pacific Islands Office at phone number 808/541–3441. Please note that the e-mail address *(mo crithab pr@fws.gov)* will be closed out at the termination of the public comment period.

You may hand-deliver written comments to our Pacific Islands Office at 300 Ala Moana Blvd., Room 3–122, Honolulu, HI.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule will be available for public inspection, by appointment, during normal business hours at the Pacific Islands Office.

FOR FURTHER INFORMATION CONTACT: Paul Henson, Field Supervisor, Pacific Islands Office (see **ADDRESSES** section) (telephone: 808/541–3441; facsimile: 808/541–3470).

SUPPLEMENTARY INFORMATION:

Background

We, the U.S. Fish and Wildlife Service (Service), have reconsidered our findings concerning whether designating critical habitat for 20 federally protected plants from the island of Molokai is prudent. Currently, 15 of these species *(Bidens wiebkei, Canavalia molokaiensis, Clermontia oblongifolia* ssp. *brevipes, Cyanea dunbarii, Cyanea mannii, Cyanea procera, Hibiscus arnottianus* ssp. *immaculatus, Lysimachia maxima, Melicope reflexa, Pritchardia munroi, Schiedea lydgatei, Schiedea sarmentosa, Silene alexandri, Stenogyne bifida*, and *Tetramolopium rockii)* are endemic to the island of Molokai while three species *(Mariscus fauriei, Marsilea villosa*, and *Silene lanceolata)* are known from Molokai as well as one or more other islands. One species, *Brighamia rockii*, was known from Lanai, Maui, and Molokai but currently is extant only on Molokai. Another species, *Phyllostegia mannii*, was

known from Maui and Molokai but currently is extant only on Molokai (Table 1).

Prudency determinations for 19 other species *(Adenophorous periens, Alectryon macrococcus, Centarium sebaeoides, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Diellia erecta, Hedyotis mannii, Hesperomannia arborescens, Ischaemum byrone, Melicope mucronulata, Neraudia sericea, Peucedanum sandwicense, Plantago princeps, Platanthera holochila, Schiedea nuttallii, Sesbania tomentosa, Spermolepis hawaiiensis, Vigna o-wahuensis*, and *Zanthoxylum hawaiiense)* which also occur on the islands of Kauai, Maui and/or Lanai were published in proposed rules on November 7, 2000 (Kauai and Niihau, 65 FR 66808), on December 18, 2000 (Maui and Kahoolawe, 65 FR 79192), or on December 27, 2000 (Lanai). Critical habitat designations for 14 of these 19 species on Molokai are proposed at this time. Critical habitat is not proposed for five species *(Adenophorous periens, Hedyotis mannii, Plantago princeps, Platanthera holochila*, and *Schiedea nuttallii)* that currently are found only in areas on Molokai that are protected and managed for the benefit of these species.

In addition, for one species in this proposed rule, *Labordia triflora*, we determined that designation of critical habitat was prudent at the time of its listing as an endangered species in 1999. Critical habitat designation for this species on Molokai is proposed at this time.

TABLE 1.—SUMMARY OF ISLAND DISTRIBUTION OF 49 SPECIES ON MOLOKAI

Species	Island Distribution						
	Kauai	Oahu	Molokai	Lanai	Maui	Hawaii	N.W. Isles, *Ka*hoolawe *Ni*ihau
Adenophorus periens (pendant kihi fern)	C	H	C	R	R	C	
Alectryon macrococcus (mahoe)	C	C	C	.....	C	.....	
Bidens wiebkei (ko oko olau)	.....	.....	C	.....	.....	.....	
Bonamia menziesii (No common name)	C	C	H	C	C	C	
Brighamia rockii (pua ala)	.....	.....	C	H	H	.....	
Canavalia molokaiensis (awikiwiki)	.....	.....	C	.....	.....	.....	
Centaurium sebaeoides (awiwi)	C	C	C	C	C	.....	
Clermontia oblongifolia ssp. *brevipes* (oha wai)	.....	.....	C	.....	.....	.....	
Ctenitis squamigera (pauoa)	H	C	C	C	C	H	
Cyanea dunbarii (haha)	.....	.....	C	.....	.....	.....	
Cyanea grimesiana ssp. *grimesiana* (haha)	.....	C	C	C	C	.....	
Cyanea mannii (haha)	.....	.....	C	.....	.....	.....	
Cyanea procera (haha)	.....	.....	C	.....	.....	.....	
Cyperus trachysanthos (pu ukaa)	C	C	H	H	.....	.....	Ni (C)
Diellia erecta (No common name)	H	H	C	H	C	C	
Eugenia Koolauensis (nioi)	.....	C	H	.....	.....	.....	
Flueggea neowawraea (mehamehame)	C	C	H	.....	C	C	
Hedyotis mannii (pilo)	.....	.....	C	C	C	.....	
Hesperomannia arborescens (No common name)	.....	C	C	H	C	.....	
Hibiscus arnottianus ssp. *immaculatus* (kokio ke okeo)	.....	.....	C	.....	.....	.....	
Hibiscus brackenridgei (mao hau hele)	H	C	H	C	C	C	Ka (R)
Ischaemum byrone (Hilo ischaemum)	R	H	C	.....	C	C	
Isodendrion pyrifolium (wahine noho kula)	.....	H	H	H	H	C	Ni (H)
Labordia triflora (Kamakahala)	.....	.....	C	.....	.....	.....	
Lysimachia maxima (No common name)	.....	.....	C	.....	.....	.....	
Mariscus faurei (No common name)	.....	.....	C	H	.....	C	
Marsilea villosa (ini ihi)	.....	C	C	.....	.....	.....	Ni (H)
Melicope mucronulata (alani)	.....	.....	C	.....	C	.....	
Melicope reflexa (alani)	.....	.....	C	.....	.....	.....	
Neraudia sericea (No common name)	.....	.....	C	H	C	.....	Ka (H)
Peucedanum sandwicense (makou)	C	C	C	.....	C	.....	
Phyllostegia mannii (No common name)	.....	.....	C	.....	H	.....	
Phyllostegia mollis (No common name)	.....	C	H	.....	C	.....	
Plantago princeps (ale)	C	C	C	.....	C	H	
Platanthera holochila (No common name)	C	H	C	.....	C	.....	
Pritchardia munroi (loulu)	.....	.....	C	.....	.....	.....	
Pteris lidgatei (No common name)	.....	C	H	.....	C	.....	
Schiedea lydgatei (No common name)	.....	.....	C	.....	.....	.....	
Schiedea nuttallii (No common name)	C	C	C	.....	R	.....	
Schiedea sarmentosa (No common name)	.....	.....	C	.....	.....	.....	
Sesbania tomentosa (ohai)	C	C	C	H	C	C	Ni (H), Ka (C), NW Isles (C)
Silena alexandri (No common name)	.....	.....	C	.....	.....	.....	
Silene lanceolata (No common name)	H	C	C	H	.....	C	
Solanum incompletum (popolo ku mai)	H	.....	H	H	H	C	
Spermolepis hawaiiensis (No common name)	C	C	C	C	C	C	
Stenogyne bifida (No common name)	.....	.....	C	.....	.....	.....	
Tetramolopium rockii (No common name)	.....	.....	C	.....	.....	.....	
Vigna o-wahuensis (No common name)	.....	H	C	C	C	C	Ni (H), Ka (C)
Zanthoxylum hawaiiense (a e)	C	.....	C	H	C	C	

Key:
C (Current)—population last observed within the past 30 years.
H (Historical)—population not seen for more than 30 years.
R (Reported)—reported from undocumented observations.

An additional nine species are known on Molokai only from historical records (pre-1970) or from undocumented observations. Prudency determinations and proposed critical habitat designations or non-designations for these species which still occur on other islands are/will be included in the proposed rules for the islands on which they currently occur (Table 2).

The 40 plants at issue in this proposed rule were listed as endangered or threatened species under the Endangered Species Act of 1973, as amended (Act), between 1991 and 1999. At the time 39 of these plants were listed, we determined that designation of critical habitat was not prudent because designation would increase the degree of threat to the species and/or would not benefit the plant. These are not prudent determinations, along with 206 others, were challenged in *Conservation Council for Hawaii* v. *Babbitt*. On March 9, 1998, the United States District Court for the District of Hawaii directed us to review the prudency determinations for 245 listed plant species in Hawaii, including 39 of these species (2 F. Supp. 2d 1280). On August 10, 1998, the court ordered us to publish proposed critical habitat designations or non-designations for at least 100 species by November 30, 2000, and to publish proposed designations or non-designations for the remaining 145 species by April 30, 2002 (24 F. Supp. 2d 1074).

TABLE 2.—LIST OF PROPOSED RULES IN WHICH PRUDENCY DETERMINATIONS AND CRITICAL HABITAT DESIGNATIONS WILL BE MADE FOR NINE SPECIES THAT NO LONGER OCCUR ON MOLOKAI

Species	Proposed rule in which prudency will be determined	Proposed rules in which critical habitat designations will be proposed
Bonamia menziesii	Kauai and Niihau (65 FR 66808)	Kauai and Niihau (65 FR 66808); Maui and Kahoolawe (65 FR 79192); Lanai; Hawaii; Oahu.
Cyperus trachysanthos	Kauai and Niihau (65 FR 66808)	Kauai and Niihau (65 FR 66808); Oahu.
Eugenia koolauensis	Oahu	Oahu.
Flueggea neowawraea	Kauai and Niihau (65 FR 66808)	Kauai and Niihau (65 FR 66808); Maui and Kahoolawe (65 FR 79192); Hawaii; Oahu.
Hibiscus brackenridgei	Maui and Kahoolawe (65 FR 79192)	Maui and Kahoolawe (65 FR 79192); Lanai; Hawaii; Oahu.
Isodendrion pyrifolium	Hawaii	Hawaii.
Phyllostegia mollis	Maui and Kahoolawe (65 FR 79192)	Maui and Kahoolawe (65 FR 79192); Oahu.
Pteris lidgatei	Oahu	Oahu.
Solanum incompletum	Hawaii	Hawaii.

We determined that designation of critical habitat was prudent for *Labordia triflora* at the time it was listed and stated in the final listing rule that we would develop a critical habitat designation for this taxon, along with nine others from Maui, Molokai, Lanai, or Kahoolawe (the Maui Nui species) at the same time we developed the designations for the 245 Hawaiian plant species. In *Conservation Council for Hawaii* v. *Babbitt*, Civ. No. 99–00283 HG (D. Haw. Aug. 19, 1999, Feb. 16, 2000, and March 28, 2000), the United States District Court for the District of Hawaii ordered us to publish proposed critical habitat designations for these ten Maui Nui species by November 30, 2000, and to publish final critical habitat designations by November 30, 2001. This prudency determination and proposed rule designating critical habitat for 32 plants from the island of Molokai respond to these court orders.

We propose that critical habitat is prudent for 19 species (*Bidens wiebkei, Brighamia rockii, Canavalia molokaiensis, Clermontia oblongifolia* ssp. *brevipes, Cyanea dunbarii, Cyanea mannii, Cyanea procera, Hibiscus arnottianus ssp. immaculatus, Lysimachia maxima, Mariscus fauriei, Marsilea villosa, Melicope reflexa, Phyllostegia mannii, Schiedea lydgatei, Schiedea sarmentosa, Silene alexandri, Silene lanceolata, Stenogyne bifida, Tetramolopium rockii*) because the potential benefits of designating critical habitat essential for the conservation of these species outweigh the risks of designation as a result of human activity. We propose that critical habitat designation is not prudent for one species, *Pritchardia munroi*, because it would likely increase the threat from vandalism or collection of this species on Molokai.

Critical habitat is proposed for designation within 28 critical habitat units on the island of Molokai. The land area within these units totals 6,165 hectares (ha) (15,230 acres (ac)). If this proposal is made final, section 7 of the Act would prohibit destruction or adverse modification of critical habitat through any activity funded, authorized, or carried out by any Federal agency. Section 4 of the Act requires us to consider economic and other impacts of specifying any particular area as critical habitat.

The Island of Molokai

The island of Molokai, the fifth largest in the Hawaiian Islands chain, is approximately 61 kilometers (km) (38 miles (mi)) long, up to 17 km (10 mi) wide, and encompasses an area of about 688 sq km (266 sq mi) (57 FR 46325). Three shield volcanoes make up most of the land mass of Molokai: West Molokai Mountain, East Molokai Mountain, and a volcano that formed Kalaupapa Peninsula (57 FR 46325).

The taller and larger East Molokai Mountain rises 1,813 meters (m) (4,970 feet (ft)) above sea level and comprises roughly 50 percent of the island's area (57 FR 46325). Topographically, the windward side of East Molokai differs from the leeward side. Precipitous cliffs line the northern windward coast and deep inaccessible valleys dissect the coastal area. The annual rainfall on the windward side is 200 to over 375 centimeters (cm) (75 to over 150 inches (in)), distributed throughout the year. The soils are poorly drained and high in organic matter. The gulches and valleys are usually very steep, but sometimes gently sloping (57 FR 46325). Much of the native vegetation on the northern

part of East Molokai is intact because of its relative inaccessibility to humans and animals, although destructive ungulates have begun to enter the coastline in recent years (57 FR 46325).

Discussion of the Plant Taxa

Species Endemic to Molokai

Bidens wiebkei (ko oko olau)

Bidens wiebkei, a member of the aster family (Asteraceae), is a short-lived perennial herb which is somewhat woody at the base and grows from 0.5 to 1 m (1.6 to 3.3 ft) tall with opposite, pinnately compound leaves. This plant is distinguished from other *Bidens* species which grow on Molokai by its erect habit and the curved or twisted, winged achenes (57 FR 46325; Ganders and Nagata 1999).

This species was observed in flower during May (Hawaii Natural Heritage Program (HINHP) database 2000). No additional life history information is currently available (United States Fish and Wildlife Service (USFWS) 1996a).

Historically *Bidens wiebkei* was known from Pelekunu and the easternmost section of Molokai at Halawa (HINHP Database 2000). It is found currently in Halawaiki Gulch, Lamaloa Gulch, and below Puu Kolekole on State and privately owned lands (Geographic Decision Systems International (GDSI) 2000; HINHP Database 2000). There are a total of three populations containing more than 200 individuals (HINHP Database 2000).

The currently known populations of *Bidens wiebkei* are scattered along steep, exposed slopes in *Metrosideros polymorpha* (ohia) dominated mesic shrublands and dry or mesic *Metrosideros polymorpha-Styphelia tameiameiae* (pukiawe) lowland shrubland between 250 and 1,050 m (820 to 3,450 ft) in elevation, extending over a distance of 4 by 1.6 km (2.5 by 1 mi) (Gagne and Cuddihy 1999; HINHP Database 2000; Ganders and Nagata 1999). Other associated plant species include *Antidesma* sp. (hame), *Dodonea viscosa* (aalii), *Canthium odoratum* (alahee), *Lysimachia* sp. (kolokolo kuahiwi), *Nestegis sandwicensis* (olopua), *Phyllanthus sandwicensis* (pamakani-mahu), *Pisonia* sp. (papala kepau), and *Scaevola gaudichaudii* (naupaka kuahiwi) (HINHP Database 2000).

The major threats to *Bidens wiebkei* on Molokai, include habitat degradation and possible predation by deer (*Axis axis*) and feral goats (*Capra hircus*); competition with non-native plants, such as *Melinus minutiflora* (molasses grass) and *Schinus terebinthifolius* (Christmas berry); fire; and damage by humans of those plants found along trails (HINHP Database 2000; 57 FR 46325).

Canavalia molokaiensis (awikiwiki)

Canavalia molokaiensis, a member of the legume family (Fabaceae), is a short-lived perennial climbing herb with twining branches with leaves made up of three lance-shaped or sometimes oval leaflets. The only species of this genus found on Molokai, this plant can be distinguished from others in the genus by its narrower leaflets and its larger, rose-purple flowers (57 FR 46325; Wagner and Herbst 1999).

This species has been observed in flower during May and December (HINHP Database 2000). Fruits and flowers were observed in March (HINHP Database 2000). No additional life history information is currently available (USFWS 1996a).

Historically, *Canavalia molokaiensis* was known from East Molokai at Kalaupapa, Pelekunu, and farther south in Kahuaawi Gulch, and the region of Manawai (HINHP Database 2000). It now has a more restricted range, from Kalaupapa to Waialeia, Kaunakakai, Pelekunu, and Kamakou (HINHP Database 2000). There are a total of seven populations containing more than 50 plants on State lands, including lands managed by the National Park Service at Kalaupapa National Historical Park, and privately owned lands (GDSI 2000; HINHP Database 2000).

Canavalia molokaiensis typically grows in exposed sites, both dry and mesic, on steep slopes in *Metrosideros polymorpha-Dodonea viscosa* lowland shrubland and mesic shrublands between 10 and 900 m (30 to 3,060 ft) in elevation (HINHP Database 2000). Associated plant species include *Artemesia* sp. (hinahina), *Chamaesyce* sp. (akoko), *Coprosma* sp. (pilo), *Styphelia tameiameiae*, and Wikstroemia sp. (akia) (HINHP Database 2000).

The threats to this species on Molokai include habitat degradation by feral ungulates such as goats and pigs (*Sus scrofa*), possible predation by feral goats, and competition with non-native plants, such as *Melinis minutiflora* (USFWS 1996a).

Clermonita oblongifolia ssp. brevipes (oha wai)

Clermontia oblongifolia ssp. *brevipes*, a member of the bellflower family (Campanulaceae), is a short-lived perennial shrub or tree which reaches a height of 2 to 7 m (6.6 to 23 ft). This species is distinguished from others in the genus by the structure of its calyx and corolla as well as by the lengths of the flower, the floral lobes, and the green hypanthium. This subspecies differs from others of the species by the shape and length of its leaves, leaf stalks, and flower stalks (Lammers 1988, 1999).

No life history information for this species is currently available (USFWS 1996a).

Clermontia oblongifolia ssp. *brevipes* is known from a single population of five individuals on the privately owned land of the Nature Conservancy of Hawaii's (TNCH) Kamakou Preserve (HINHP Database 2000; USFWS 1996a; Joel Lau, HINHP, *in litt.* 2000). The historical range of this subspecies is not known (USFWS 1996a).

Clermontia oblongifolia ssp. *brevipes* occurs in shallow soil on gulch slopes in the wet *Metrosideros polymorpha*-dominated forest at an elevation between 1,100 and 1,200 m (3,500 and 4,320 ft) (HINHP Database 2000; J. Lau, *in litt.* 2000). Associated plant species include *Cheirodendron trigynum* (olapa), *Cibotium* spp. (hapuu), *Broussaisia argutus* (kanawao), *Hedyotis terminalis* (manono), and *Melicope* sp. (alani) (J. Lau, *in litt.* 2000).

The threats to this species on Molokai are habitat degradation by feral pigs; possible predation on the fruit or plant parts by rats (*Rattus rattus*), as evidence on related species suggests (USFWS 1996a; 57 FR 46325); and random naturally occurring events that may cause the extinction of the entire taxon due to its single population and very low number of individuals.

Cyanea dunbarii (haha)

Cyanea dunbarii, a member of the bellflower family (Campanulaceae), is a short-lived perennial, branched shrub 1.5 to 2 m (4.9 to 6.6 ft) tall with oval to broadly elliptic leaves that have irregularly lobed or cleft margins. This species is distinguished from others in this endemic Hawaiian genus by the lack of prickles on the stems and the irregularly lobed and cleft leaf margins (Lammers 1999).

Cyanea dunbarii was observed in flower, with immature fruit, in September (HINHP Database 2000). No additional life history information is currently available (USFWS 1998a).

Cyanea dunbarii was collected in 1918 at Waihanau and Waialae Valleys, and was not observed again until 1992, when Joel Lau of the Hawaii Natural Heritage Program found it in Mokomoko Gulch on State owned land within Molokai Forest Reserve (GDSI 2000; HINHP Database 2000; 61 FR 53130; Ken Wood, National Tropical Botanical Garden (NTBG), *in litt.* 2000). Currently, it is known from a single population of

approximately 30 mature plants at an elevation of 671 m (2,200 ft) (HINHP Database 2000; K. Wood, *in litt.* 2000).

Cyanea dunbarii occurs on a streambank in a mesic to wet *Dicranopteris linearis* (uluhe)-*Metrosideros polymorpha* lowland forest on moderate to steep slopes (HINHP Database 2000). Associated species include *Diplazium sandwicianum* (hoio), *Charpentiera obovata* (papala), *Perrottetia sandwicensis* (olomea), *Pipturus albidus* (mamaki), *Clermontia kakeana* (ohawai), *Cheirodendron trigynum*, and *Freycinetia arborea* (ieie) (USFWS 1998a).

The major threats to this single population of *Cyanea dunbarii* on Molokai are competition with the non-native plants *Buddleia asiatica* (butterfly bush), *Erigeron karvinskianus* (daisy fleabane), *Rubus rosifolius* (thimbleberry), *Commelina diffusa* (honohono), *Hedychium gardnerianum* (ginger), and *Kalanchoe pinnata* (air plant); and catastrophic extinction by naturally occurring events such as landslides or flooding, and/or reduced reproductive vigor due to the small number of individuals in the only known population. In addition, predation by rats is a potential threat since rats are known to be in the area and are known to eat stems and fruits of other species of *Cyanea*; habitat degradation and predation by axis deer and pigs are other potential threats to this species, because both of these species are known to occur in areas adjacent to the only known population (USFWS 1998a; Cuddihy and Stone 1990).

Cyanea mannii (haha)

Cyanea mannii, a member of the bellflower family (Campanulaceae), is a branched short-lived perennial shrub 1.5 to 3 m (5 to 10 ft) tall with narrowly elliptic or lance-shaped leaves. This species is distinguished from the seven other species of the genus on Molokai by a combination of the following characters: a branched, woody habit; leaves with small, hardened, marginal teeth; and a purplish corolla (Lammers 1999; 57 FR 46325).

Cyanea mannii has been observed in flower during July (HINHP Database 2000). No additional life history information is currently available (USFWS 1996a).

Historically, *Cyanea mannii* was known only from Kalae on East Molokai (HINHP Database 2000). In 1984, a single plant was discovered by Joan Aidem on privately owned land west of Puu Kolekole on East Molokai (HINHP Database 2000; Lammers 1999; USFWS 1996a). Since then, eight additional populations have been discovered in the east and west forks of Kawela Gulch on the privately owned land of TNCH's Kamakou Preserve on East Molokai and within the State's Molokai Forest Reserve (K. Wood, *in litt.* 2000; HINHP Database 2000). These nine populations contain approximately 200 individuals on State and privately owned lands (GDSI 2000; HINHP Database 2000; K. Wood, *in litt.* 2000).

This species typically grows on the sides of deep gulches in *Metrosideros polymorpha* dominated montane mesic forest at elevations between 559 and 1,220 m (1,900 to 4,000 ft) (HINHP Database 2000; Lammers 1999; USFWS 1996a). Associated plant species include *Wiskstroemia* sp., *Dicranopteris linearis*, and *Vaccinium* sp. (ohelo) (USFWS 1996a).

Threats to *Cyanea mannii* on Molokai are habitat degradation by feral pigs; predation by rats who may feed on the fruit or other parts of the plant, as suggested by evidence from related species; catastrophic extinction through naturally occurring events that this species is vulnerable to due to its few populations and small number of individuals (USFWS 1996a).

Cyanea procera (haha)

Cyanea procera, a member of the bellflower family (Campanulaceae), is a palm-like short-lived perennial tree 3 to 9 m (10 to 30 ft) tall with stalkless, lance-shaped leaves 60 to 75 cm (24 to 30 in) long and 10 to 17 cm (3.9 to 6.7 in) wide with tiny hardened teeth along the margins. This species can be distinguished from other species of the genus by its growth habit, its sessile leaves, and the single-lipped appearance of the corolla (Lammers 1999; 57 FR 46325).

No life history information is currently available for this species (USFWS 1996a).

Historically, *Cyanea procera* was known only from an unspecified site in the Kamalo region of East Molokai (HINHP Database 2000). Currently, this species is found on the privately owned lands of Kamakou Preserve and the State's Puu Alii Natural Area Reserve (NAR) in a total of five populations containing at least 10 individuals (GDSI 2000; HINHP Database 2000).

Cyanea procera is found on the walls of steep gulches in wet *Metrosideros polymorpha* dominated lowland mixed forest between 935 and 1,073 m (3,180 to 3,650 ft) elevation (HINHP Database 2000). Associated plant species include various species of *Asplenium, Brousaissia arguta, Coprosma ochracea* (pilo), *Cyanea* spp. (haha), *Cyrtandra macrocalyx* (haiwale), *Dicranopteris linearis, Pipturus albidus, Pisonia* spp., *Scaevola procera* (naupaka kuahiwi), and *Touchardia latifolia* (olona) (USFWS 1996a).

Threats to *Cyanea procera* on Molokai are predation by feral rats (as suggested by evidence on related species) and goats; habitat degradation by feral goats and pigs; habitat destruction through erosion; catastrophic extinction from naturally occurring events due to the vulnerability of a few populations with a small number of individuals (57 FR 46325).

Hibiscus arnottianus ssp. *immaculatus* (kokio ke okeo)

Hibiscus arnottianus ssp. *immaculatus*, a member of the hibiscus family (Malvaceae), is a long-lived perennial tree up to 3 m (10 ft) tall with alternate, oval, toothed leaves measuring 5 to 7 cm (2 to 2.8 in) long and 4 to 6.5 cm (1.6 to 2.6 in) wide. This subspecies is distinguished from other native Hawaiian members of the genus by its white petals and white staminal column (Bates 1999; 57 FR 46325).

This taxon was observed in flower during July (HINHP Database 2000). Currently, no additional life history information is available for this species (USFWS 1996a).

Hibiscus arnottianus ssp. *immaculatus* once ranged from Waihanau Valley east to Papalaua Valley on East Molokai (HINHP Database 2000). Currently this taxon is found only west of Papalaua Valley on privately owned land and in the State's Olokui NAR above Waiehu (GDSI 2000; HINHP Database 2000). There are a total of two populations containing between 20 and 30 individuals (HINHP Database 2000).

Hibiscus arnottianus ssp. *immaculatus* individuals are scattered along steep sea cliffs in mesic forests between 15 and 480 m (50 and 1,600 ft) in elevation (Bates 1999; HINHP Database 2000). Associated native plant species include *Athyrium* spp. (akolea), *Canthium odoratum, Cyanea grimesiana* (haha), *Antidesma platyphyllum* (hame), *Boehmeria grandis* (akolea), *Diospyros sandwicensis* (lama), *Pipturis* spp. (mamaki), *Urera glabra* (opuhe), and *Metrosideros polymorpha* (HINHP Database 2000).

The major threats to *Hibiscus arnottianus* spp. *immaculatus* on Molokai are habitat destruction by feral goats and catastrophic extinction by naturally occurring events due to the vulnerability of the two remaining populations and few individuals (USFWS 1996a).

Labordia triflora (kamakahala)

Labordia triflora, a short-lived perennial member of the logan family (Loganiaceae), is very similar to *Labordia tinifolia* var. *lanaiensis,* except in the following characteristics: the stems of *L. triflora* are climbing; the leaf stalks are only 1 to 3 millimeters (mm) (0.04 to 0.1 in.) long; inflorescence stalks are 40 to 50 mm (1.6 to 2 in.) long; and, each flower stalk is 10 to 25 mm (0.4 to 1 in.) long (Motley 1995).

The flowers of this species are functionally unisexual (Motley 1995; HINHP Database 2000). No additional life history information is available at this time.

Until 1990, *Labordia triflora* was known only from the type collection at Mapulehu, on the island of Molokai (Motley 1995) and was believed to be extinct. In 1990, Joel Lau rediscovered the species in Kua Gulch on Molokai (HINHP Database 2000; Motley 1995). Currently, only 10 individuals are known from privately owned land (GDSI 2000; HINHP Database 2000).

This species occurs in mixed lowland mesic forest, at an elevation of ca. 800 m (2,600 ft). Associated species include *Pouteria sandwicensis* (alaa), the federally endangered *Cyanea mannii* (haha), and *Tetraplasandra* spp. (ohe ohe) (Motley 1995).

The threats to *Labordia triflora* include habitat degradation and destruction by feral pigs and goats; predation by rats that eat seeds; competition with the non-native plant species *Schinus terebinthifolius* (Motley 1995); catastrophic extinction through environmental events and reduced reproductive vigor due to the species' few populations and small number of individuals (64 FR 48307).

Lysimachia maxima (no common name)

Lysimachia maxima, a member of the primrose family (Primulaceae), is a sprawling short-lived perennial shrub with reddish brown bark. This species is differentiated from others in this genus by the leaves borne in groups of three, the broadest portion of the leaf above the middle, and rusty hairs that disappear with maturity (Wagner *et al.* 1999).

Flowers, buds and immature fruit of *Lysimachia maxima* have been observed in late May through July (USFWS 1998a). No other life history information is available for this species (61 FR 53130).

Lysimachia maxima is only known from a single population containing between 45 and 50 individuals on the rim of Pelekunu Valley near Ohialele, on the privately owned land of TNCH's Pelekunu Preserve (GDSI 2000; HINHP Database 2000).

This species occurs in *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest at an elevation of 975 m (3,200 ft). Associated species include *Psychotria* sp. (kopiko), *Vaccinium* sp., *Hedyotis* sp. (No common name), *Dubautia* sp. (na ena e), and *Ilex anomala* (aiae) (HINHP Database 2000).

The major threats to *Lysimachia maxima* are catastrophic extinction from random environmental events (*e.g.,* landslides); reduced reproductive vigor due to the small number of individuals in the only known population (USFWS 1998a); habitat degradation and/or predation by feral pigs and goats that are known from adjacent areas (USFWS 1998a).

Melicope reflexa (alani)

Melicope reflexa, a long-lived perennial of the citrus family (Rutaceae), is a sprawling shrub 1 to 3 m (3.3 to 10 ft) tall with short, yellowish-brown, short-lived hairs on new growth. Opposite leaves with leaf stalks usually over 1 cm (0.4 in) long, larger leaves and fruit, and partially fused sections of capsule separate it from other species of the genus (Stone *et al.* 1999).

Currently, no life history information is available for this species (USFWS 1996a).

Historically, *Melicope reflexa* occurred from a ridge between Hanalilolilo and Pepeopae in Kamakou Preserve to as far east as Halawa on East Molokai (HINHP Database 2000). The three remaining populations of fewer than a total of 1,000 individuals are on State and private lands in Honomuni, the Wailau-Mapulehu summit area, and Kukuinui Ridge in Wailau Valley (GDSI 2000; HINHP Database 2000).

Melicope reflexa typically grows in wet *Metrosideros polymorpha* dominated forest with native trees such as *Cheirodendron* sp. (olapa) at elevations between 760 and 1,190 m (2,490 and 3,900 ft) (Stone *et al.* 1999).

Major threats to *Melicope reflexa* include habitat degradation and predation by ungulates (axis deer and feral pigs); competition with the non-native plant *Clidemia hirta* (Koster's curse); catastrophic extinction from environmental events due to species' few populations and small number of individuals (57 FR 46325; USFWS 1996a).

Pritchardia munroi (loulu)

Pritchardia munroi, a member of the palm family (Arecaceae), is a perennial tree about 4 to 5 m (13 to 16 ft) tall. The leaves and petioles have scattered, mostly deciduous scales and hairs, somewhat larger on the lower leaf ribs. The leaves are deeply divided into segments which have long, drooping tips. Numerous bisexual or functionally male flowers are arranged in clusters on hairy, branching stalks which originate at the leaf bases. The mature fruit is shiny, black, and nearly spherical. This species is distinguished from others of the genus by its relatively smooth leaves; the grayish-brown hair on the inflorescence stalks, which are shorter than the petioles; and the small size of the fruits (Read and Hodel 1999).

Currently, no life history information is available for this species (USFWS 1996a).

Historically and currently *Pritchardia munroi* is found in leeward East Molokai, above Kamalo, near Kapuaokoolau Gulch (HINHP Database 2000, Read and Hodel 1999). The only known wild individual is found on privately owned land (HINHP Database 2000).

The only known wild individual grows near the base of a small ravine in remnant dry to mesic forest at an elevation of about 610 m (2,000 ft) (Read and Hodel 1999). Associated plant species include *Dodonaea viscosa, Metrosideros polymorpha, Styphelia tameiameiae,* and *Pleomele aurea* (hala pepe) (HINHP Database 2000).

Threats to the only known wild individual of *Pritchardia munroi* include habitat degradation by ungulates (axis deer, goats, and pigs) around its fenced exclosure prevent the establishment of seedlings; predation of seeds by rats; catastrophic extinction by random environmental events (*e.g.,* fire) due to its extreme rarity (57 FR 46325; USFWS 1996a).

Schiedea lydgatei (no common name)

Schiedea lydgatei, a member of the pink family (Caryophyllaceae), is a low, hairless perennial plant with branched stems 10 to 40 cm (4 to 16 in) long which are woody at the base. The opposite, three-veined leaves are elliptic. Bisexual flowers are arranged in loosely spreading clusters. The capsules open when mature to reveal dark reddish-brown seeds. The opposite, thin, three-veined leaves with petioles and the smooth, open flower clusters with relatively larger, green sepals separate this species from other members of this endemic Hawaiian genus (Wagner *et al.* 1999).

This species was observed with flowers and fruit in June (HINHP Database 2000). Currently, no additional life history information is available (USFWS 1996a).

Historically, *Schiedea lydgatei* was found in Kalae, Poholua, Makolelau, and Ohia Gulch on East Molokai (HINHP Database 2000). This species is now known from two scattered populations in a more restricted area in Makakupaia, Kawela, and Makolelau. The two populations are distributed over an area of less than 1.6 by 5.6 km (1 by 3.5 mi), totaling fewer than 1,000 individuals on State and privately owned lands (HINHP Database 2000; GDSI 2000).

This species is found along ridges in dry to mesic grassland, shrubland, and forest with scattered native trees. It ranges in elevation from about 600 to 650 m (2,000 to 2,100 ft) (HINHP Database 2000; Wagner *et al.* 1999). Associated plant species include *Dodonaea viscosa, Metrosideros polymorpha, Styphelia tameiameiae,* and *Dicranopteris linearis* (Gagne and Cuddihy 1999).

The major threats to *Schiedea lydgatei* are habitat degradation by feral ungulates; and competition with the non-native plant species *Melinus minutiflora;* and catastrophic extinction due to random environmental events, primarily fire, (57 FR 46325; USFWS 1996a) because in this species' dry, windswept habitat, a single fire potentially could destroy a large part of the populations.

Schiedea sarmentosa (no common name)

Schiedea sarmentosa, a perennial herb of the pink family (Caryophyllaceae), is a many-branched shrub. The opposite leaves are slender, threadlike, and are covered with dense, gladular hairs. There may be as many as 40 to 60 inflorescences on one plant, often with 50 to 100 flowers in each inflorenscence. The flowers are female on some plants and bisexual on others. The green sepals are egg-shaped and somewhat hairy. The staminodes (false stamens) are half as long as the sepals and two-branched at the tip. The fruits are oval capsules. This species differs from others in this endemic Hawaiian genus by its densely bushy habit, leaf width, hairiness, and staminode length (Wagner, *et al.* 1999).

The flowers are female on some plants and bisexual on others. The population on Makolelau Gulch has a frequency 31 percent females. Based on analyses of pollen-ovule ratios, pollen size, inforescence structure, and comparison to other *Schiedea* species tested in a wind tunnel, *Schiedea sarmentosa* could be wind-pollinated. No other life history information for this species is available (USFWS 1998a).

Schiedea sarmentosa has been found in Kawela Gulch, Makolelau, and Onini Gulch (HINHP Database 2000). Currently, only two populations are known to be extant. One population on the boundary of the privately owned land of TNCH's Kamakou Preserve and State owned land in Onini Gulch has approximately 30 individuals (HINHP Database 2000). The other population occurs on privately owned land in Makolelau, and consists of 4 subpopulations totaling approximately 300 to 400 individuals (USFWS 1998a; GDSI 2000). Estimates of the total number of individuals have ranged up to 1,000 (USFWS 1998a). An accurate count is somewhat difficult because this species is interspersed with *Schiedea lydgatei* (USFWS 1998a).

Schiedea sarmentosa is typically found on steep slopes in *Metrosideros polymorpha-Dodonaea viscosa* lowland dry or mesic shrubland between 610 and 790 m (2,000 and 2,600 ft) elevation (HINHP Database 2000; HPCC 2000). Associated species include *Styphelia tameiameiae, Chenopodium oahuensis* (ahe ahea), *Alyxia oliviformis* (maile), *Pleomele* sp. (hala pepe), *Bidens menziesii* (kokoolau), *Carex meynii* (No common name), *Lipochaeta rockii* (nehe), *Nestegis sandwicensis, Nothocestrum latifolium* (aiea), *Nototrichium sandwicense* (kului), *Sida fallax* (ilima), *Sophora chrysophylla* (mamane), and *Chamaesyce* sp. (HINHP Database 2000).

Major threats to *Schiedea sarmentosa* include habitat degradation by feral goats and pigs, competition by the non-native plants *Melinis minutiflora* and *Ricinus communis* (paaila), and fire. The species is also threatened by a risk of extinction from naturally occurring events due to the low number of populations (61 FR 53130; USFWS 1998a).

Silene alexandri (no common name)

Silene alexandri, a member of the pink family (Caryophyllaceae), is an erect, perennial herb, 30 to 60 cm (1 to 2 ft) tall, and woody at the base. The narrow, elliptic leaves are hairless except for a fringe along the margins. Flowers are arranged in open clusters on stalks. The hairless stems, flowering stalks, and sepals and the larger flowers with white petals separate this species from other members of the genus (Wagner, *et al.* 1999).

Currently, no life history information is available for this species.

Historically, *Silene alexandri* was known from Makolelau and Kamalo on East Molokai. Currently, one population comprising fewer than 10 individuals remains in Makolelau on privately owned land (GDSI 2000; HINHP Database 2000).

The only known population is found in remnant dry forest and shrubland at an elevation between 610 and 760 m (2,000 and 2,500 ft) (HINHP Database 2000; Wagner, *et al.* 1999). Associated plant species include *Dodonaea viscosa, Metrosideros polymorpha, Styphelia tameiameiae, Dicranopteris linearis, Chenopodium oahuense,* and *Sophora chrysophylla* (Gagne and Cuddihy 1999).

Threats to the single population of *Silene alexandri* include habitat degradation by feral goats, predation by goats and cattle (*Bos taurus*) may possibly occur, and catastrophic extinction through random environmental events, of which the most serious is fire, due to the vulnerability of this single population (57 FR 46325; USFWS 1996a).

Stenogyne bifida (no common name)

Stenogyne bifida, a nonaromatic member of the mint family (Lamiaceae), is a climbing perennial herb, with smooth or slightly hairy, four-angled stems. The opposite, membranous, toothed leaves are oval or elliptical in shape, and are hairless except for the midribs. Flowers are usually arranged in groups of two to six in each of several whorls at the ends of the stems. The petals are fused into a nearly straight, yellow tube which flares into pale-brown lobes comprising an upper and a lower lip. The fruits are fleshy, black nutlets. The long, narrow calyx teeth and the deep lobe in the upper lip of the yellow corolla separate this species from others of the genus (Weller and Sakai 1999).

Currently, no life history information is available for this species.

Historically, *Stenogyne bifida* was known from scattered populations from Waianui in central Molokai to Pukoo Ridge on East Molokai (HINHP Database 2000). This species is now known from only four East Molokai populations totaling fewer than 10 individuals on Manawai-Kahananui Ridge along the boundary between private and State lands; on Kolo Ridge, at Kamoku flats; and on the eastern fork of Kawela Gulch on the privately owned land of TNCH's Pelekunu Preserve (GDSI 2000; HINHP Database 2000).

Stenogyne bifida typically grows on steep ridges in *Metrosideros polymorpha* dominated montane mesic to wet forest with native species such as *Cibotium* sp., *Hedyotis* sp., *Cyanea* sp., Dicranopteris linearis, Dodonaea viscosa, *Hedyotis hillebrandii* (manono), *Pipturus albidus, Psychotria* sp., *Styphelia tameiameiae, Vaccinium* sp.,

Wikstroemia sp., *Cheirodendron trigynum, Broussaisia arguta*, and *Pouteria sandwicensis* (alaa) at elevations between 450 and 1,200 m (1,450 and 4,000 ft) (HINHP Database 2000; USFWS 1996a).

The most pervasive threat to this species is habitat degradation by ungulates (axis deer, goats, and pigs) (57 FR 46325; USFWS 1996a).

Tetramolopium rockii (no common name)

Tetramolopium rockii, a member of the aster family (Asteraceae), is a glandular, hairy, prostrate perennial shrub which forms complexly branching mats. The species has been divided into two varieties in the most recent treatment of this genus in Hawaii. Leaves of variety *calcisabulorum* have slightly inrolled edges, and are whitish due to the long silky hairs on their surfaces. Variety *rockii* has smaller, less hairy, flat, yellowish-green leaves. The leaves of both varieties are spatula-shaped with glands and smooth margins. Flower heads, arranged singly at the ends of flowering stalks are composed of approximately 60 to 100 white ray florets surround 30 to 55 functionally male, yellow, funnel-shaped disk florets. Fruits are achenes topped with white bristles. This species differs from others of the genus by its growth habit, its hairy and glandular surfaces, its spatulate leaf shape, and its yellow disk florets (Lowrey 1999).

Currently, no life history information is available for this species (USFWS 1996a).

Of the two recognized varieties of *Tetramolopium rockii,* variety *rockii* was first discovered at Moomomi about 80 years ago and is still extant in that area. *Tetramolopium rockii* var. *rockii* is found in three areas, from Kalawao to Kahinaakalani, Keieho Point to Kaplalauoa, and from Moomomi to Kahinaakalani (HINHP Database 2000). Variety *calcisabulorum* is only reported from Keieho Point to Kaplalauoa intergrading with variety *rockii* where their ranges overlap (HINHP Database 2000). The total number of individuals of both varieties in the three populations is estimated to be 174,000; they are located on State lands, including land managed by the National Park Service at Kalaupapa National Historical Park, and privately owned lands (HINHP Database 2000; GDSI 2000).

Tetramolopium rockii is restricted to hardened calcareous sand dunes or ash-covered basalt in the coastal spray zone or coastal dry shrubland and grassland between 10 and 200 m (30 and 650 ft) in elevation (Lowrey 1999). Native plant species associated with this species include *Canthium odoratum, Diospyros sandwicensis, Metrosideros polymorpha, Osteomeles anthyllidifolia* (ulei), *Scaevola* sp. (naupaka), *Fimbristylis cymosa* (mau u aki aki), *Heliotropium anomalum* (ahinahina), *Lipochaeta integrifolia* (nehe), *Sida fallax*, and *Sporobolus virginicus* (akiaki) (USFWS 1996a; HINHP Database 2000).

The major threats to *Tetramolopium rockii* are habitat degradation by ungulate (axis deer and cattle) activity and human recreation, competition with the non-native plant *Prosopis pallida* (kiawe), and catastrophic extinction due to fire (57 FR 46325).

Multi-Island Species

Adenophorus periens (pendant kihi fern)

Adenophorus periens, a short-lived perennial member of the grammitis family (Grammitidaceae), is a small, pendant, epiphytic (not rooted on the ground) fern. This species differs from other species in this endemic Hawaiian genus by having hairs along the pinna margins, by the pinnae being at right angles to the midrib axis, by the placement of the sori on the pinnae, and the degree of dissection of each pinna (USFWS 1999; Linney 1989).

Little is known about the life history of *Adenophorus periens*, which seems to grow only in dense closed-canopy forest with high humidity. Its breeding system is unknown but outbreeding is very likely to be the predominant mode of reproduction. Spores are dispersed by wind, possibly by water, and perhaps on the feet of birds or insects (Linney 1989). Spores lack a thick resistant coat which may indicate their longevity is brief, probably measured in days at most. Due to the weak differences between seasons, there seems to be no evidence of seasonality in growth or reproduction. Additional information on reproductive cycles, longevity, specific environmental requirements, and limiting factors is not available (USFWS 1999).

Historically, *Adenophorus periens* was known from Kauai, Oahu, Lanai, East Maui, and Hawaii Island (HINHP Database 2000). Currently, it is known from several locations on Kauai, Molokai, and Hawaii (HINHP Database 2000). On Molokai, it is found in a single population containing seven individuals on the privately owned land within TNCH's Kamakou Preserve (GDSI 2000; HINHP Database 2000).

This species, an epiphyte usually growing on *Metrosideros polymorpha* trunks, is found in *Metrosideros polymorpha-Myrsine lessertiana* (kolea) forest at elevations between 400 and 1,265 m (1,312 and 4,150 ft) (HINHP Database 2000). It is found in habitats of well-developed, closed canopy providing deep shade and high humidity (Linney 1989). Associated native species include *Broussasia arguta, Cheirodendron trigynum, Coprosma ochracea, Cyanea* sp., *Cyrtandra* sp. (haiwale), *Dicranopteris linearis, Freycinetia arborea, Hedyotis terminalis, Labordia hirtella* (No common name), *Machaerina angustifolia* (uki), *Psychotria hexandra* (kopiko), *Styphelia tameiameiae, Ilex anomala, Vaccinium calycinum* (ohelo), *Cibotium glaucum* (hapuu), *Melicope* sp., *Viola robusta* (pamakani), *Stenogyne kamehamehae* (No common name), *Anoectochilus sandvicensis* (jewel orchid), and *Syzygium sandwicensis* (ohia ha) (HINHP Database 2000; USFWS 1999).

The threats to this species on Molokai are habitat degradation by feral pigs and goats, and competition with the non-native plant *Psidium cattleianum* (strawberry guava) (HINHP Database 2000; 59 FR 56333; USFWS 1999).

Alectryon macrococcus (mahoe)

Alectryon macrococcus, a long-lived perennial member of the soapberry family (Sapindaceae), consists of two varieties, *macrococcus* and *auwahiensis*, both trees with reddish-brown branches and net-veined paper- or leather-like leaves with one to five pairs of sometimes asymmetrical egg-shaped leaflets. The underside of the leaf has dense brown hairs, only when young in *A. macrococcus* var. *macrococcus*, and whether young or mature (persistent) in *A. macrococcus* var. *auwahiensis* (only found on East Maui). The only member of its genus found in Hawaii, this species is distinguished from other Hawaiian members of its family by being a tree with a hard fruit 2.5 cm (0.9 in) or more in diameter (Kimura and Nagata 1980; Wagner *et al*. 1999).

Alectryon macrococcus is a relatively slow-growing tree that grows in xeric to mesic sites and is adapted to periodic drought. Little else is known about the life history of this species. Flowering cycles, pollination vectors, seed dispersal agents, and specific environmental requirements are unknown.

Currently, *Alectryon macrococcus* var. *macrococcus* is known from Kauai, Oahu, Maui, and Molokai. On Molakai, it is found on the privately owned land of TNCH's Kamakou Preserve, along the Puu Kolekole jeep road, Kaunakakai Gulch, and Kamiloloa Gulch in a total

of six populations containing nine individuals on State and privately owned lands (GDSI 2000; HINHP Database 2000).

Alectryon macrococcus var. *macrococcus* typically grows on dry or talus slopes or in gulches within dry or mesic lowland forest between elevations of 360 and 1,070 m (1,181 and 3,510 ft) (HINHP Database 2000; Wagner *et al.* 1999). Associated native plants include *Dodonea viscosa, Nestegis sandwicensis, Nothocestrum* sp. (aiea), *Pleomele* sp., *Psychotria* sp., *Streblus pendulina* (aiai), *Myrsine* sp. (kolea), and *Lipochaeta* sp. (nehe) (USFWS 1997; HINHP Database 2000).

The threats to *Alectryon macrococcus* var. *macrococcus* on Molokai include habitat degradation by feral goats and pigs; competition from non-native plant species such as *Melinus minutiflora, Pennisetum clandestinum* (kikuyu grass), *Schinus terebinthifolius,* and *Psidium cattleianum*; damage from the black twig borer (*Xylosandrus compactus*); seed predation by rats and mice (*Mus domesticus*) and by insects (probably the endemic microlepidopteran *Prays* cf. *fulvocanella*); loss of pollinators; and catastrophic extinction through a single natural or human-caused environmental disturbance (*e.g.,* fire) due to the very small remaining number of individuals and their limited distribution on Molokai (USFWS 1997; 57 FR 20772; HINHP Database 2000).

Brighamia rockii (pua ala)

Brighamia rockii, a long-lived perennial member of the bellflower family (Campanulaceae), grows as an unbranched stem succulent with a thickened stem that tapers from the base. This species is a member of a unique endemic Hawaiian genus with only one other species, found on Kauai, from which it differs by the color of its petals, its longer calyx (fused sepals) lobes, and its shorter flower stalks (Lammers 1999).

Observations of *Brighamia rockii* by Gemmill (1996) have provided the following information: the reproductive system is protandrous, meaning there is a temporal separation between the production of male and female gametes, in this case a separation of several days; only 5 percent of the flowers produce pollen; very few fruits are produced per inflorescence; there are 20 to 60 seeds per capsule; and plants in cultivation have flowers at an age of 9 months (USFWS 1996a). This species was observed in flower during August (HINHP Database 2000).

Historically, *Brighamia rockii* ranged along the northern coast of East Molokai from Kalaupapa to Halawa and may possibly have grown on Lanai and Maui (HINHP Database 2000; Lammers 1999). Currently, it is only extant on Molokai in a total of five populations with between 121 to 131 individual plants occurring on State and privately owned lands (HINHP Database 2000; GDSI 2000). It occurs on steep, inaccessible sea cliffs along East Molokai's northern coastline from Anapuhi Beach to Wailau Valley on private lands, and on the relatively inaccessible State-owned sea stack of Huelo, east of Anapuhi Beach (HINHP Database 2000; K. Wood, *in litt.* 2000).

The plants are found in rock crevices on steep basalt sea cliffs, often within the spray zone, in coastal dry or mesic forest, *Eragrostis variabilis* (kawelu) mixed coastal cliff communities, or shrubland, or *Pritchardia* sp. (loulu) coastal mesic forest between sea level and 470 m (0 and 1,540 ft). Associated native species include *Pritchardia hillebrandii* (loulu), *Chamaesyce celastroides* var. *amplectans* (akoko), *Wikstroemia uva-ursi* (akia), *Carex wahuensis* ssp. *wahuensis* (No common name), *Mariscus phleoides* ssp. *pleoides* (No common name), *Eragrostis variabilis, Dianella sandwicensis* (ukiuki), *Cocculus trilobus* (huehue), *Phymatosorus scolopendria* (lauae), *Crytomium falcatum* (ahina kuahiwi), *Lepidium bidentatum* var. *o-waihiense* (anaunau), *Pittosporum halophilum* (hoawa), *Artemisia* sp., *Bidens* sp. (kookoolau), *Schiedea globosa* (No common name), *Reynoldsia sandwicensis* (ohe), *Pandanus tectorius* (hala), *Peucedanum sandwicensis* (makou), *Hedyotis littoralis* (No common name), *Metrosideros polymorpha, Psydrax odoratum, Diospyros sandwicensis, Osteomeles anthyllidifolia, Tetramolopium cassia* (pamakani), *Senna gaudichaudii* (kolomona), and *Scaevola sericea* (naupaka kahakai) (HINHP Database 2000; Lammers 1999; K. Wood, *in litt.* 2000).

The threats to this species on Molokai are habitat degradation (and possibly predation) by deer and goats; competition with the non-native plants, *Cyperus gracilis* (McCoy grass), *Digitaria ciliaris* (Henry's crabgrass), *Digitaria insularis* (sourgrass), *Ficus microcarpa* (Chinese banyan), *Kalanchoe pinnata, Lantana camara* (lantana), *Oxalis corniculata* (yellow wood sorrel), *Pluchea symphytifolia* (sourbush), *Portulaca oleracea* (pigweed), and *Solanum seaforthianum* (No common name); seed predation by rats; and lack of pollinators (USFWS 1996a; 57 FR 46325; HINHP Database 2000).

Centaurium sebaeoides (awiwi)

Centaurium sebaeoides, a member of the gentian family (Gentianaceae), is an annual herb with fleshy leaves and stalkless flowers. This species is distinguished from *Centaurium erythraea*, which is naturalized in Hawaii, by its fleshy leaves and the unbranched arrangement of the flower cluster (Wagner *et al.* 1999).

Centaurium sebaeoides has been observed flowering in April. Flowering may be induced by heavy rainfall. Populations are found in dry areas, and plants are more likely to be found following heavy rains (USFWS 1995a). This species appears to be a determinate annual; triggered by declining photoperiod, the plant produces seeds and dies (Medeiros *et al.* 1999). Medeiros *et al.* (1999) noted that in the wild seedlings first appeared in March and April; flowers first appeared in April and May; mature capsules were observed beginning in May and continuing through June; and by the first week of July, most plants were dead. No additional life history information is available for this plant (USFWS 1995a).

Historically and currently, *Centaurium sebaeoides* is known from scattered localities on Kauai, Oahu, Molokai, Lanai, and Maui (Wagner *et al.* 1999). Currently on Molokai, there are a total of two populations containing thousands of individuals, near Mokio Point on privately owned land and in Kalaupapa National Historical Park on State and federally owned land that is managed by the National Park Service (Chuck Chimera, formerly with Biological Resources Division (BRD), pers. comm. 2000; GDSI 2000; HINHP Database 2000).

This species typically grows in volcanic or clay soils or on cliffs in arid coastal areas below 120 m (400 ft) elevation on Molokai (56 FR 55770; Wagner *et al.* 1999). Associated species include *Chamaesyce celastroides* (akoko), *Dodonea viscosa, Fimbristylis cymosa, Heteropogon contortus* (pili grass), *Lipochaeta heterophylla* (nehe), *Lipochaeta integrifolia, Lycium sandwicense* (ohelo kai), *Lysimachia mauritiana* (kolokolo kuahiwi), *Mariscus phleoides* (No common name), *Panicum fauriei* (No common name), *Panicum torridum* (kakonakona), *Scaevola sericea, Schiedea globosa, Sida fallax, Wikstroemia uva-ursi, Artemisia* sp., *Bidens* sp., *Jaquemontia ovalifolia* (pa uohi iaka), and *Lipochaeta succulenta* (nehe) (Medeiros et al. 1999; 56 FR 55770).

The major threats to this species on Molokai are displacement by non-native

woody species such as: *Casuarina equisetifolia* (paina), *Casuarina glauca* (saltmarsh), *Laucaena leucocephala* (koa haole), *Prosopis pallida, Schinus terebinthifolius, Syzygium cumini* (Java plum), and *Tournefortia argentea* (tree heliotrope); trampling and habitat degradation by feral goats and cattle; and damage caused by off-road vehicles (Medeiros *et al.* 1999).

Ctenitis squamigera (pauoa)

Ctenitis squamigera is a short-lived perennial and a member of the wood fern family (Dryopteridaceae) (Wagner and Wagner 1992). It has a rhizome (horizontal stem) 5 to 10 mm (0.2 to 0.4 in) thick, creeping above the ground and densely covered with scales similar to those on the lower part of the leaf stalk. The leaf stalks are densely clothed with tan-colored scales up to 1.8 cm (0.7 in) long and 1 mm (0.04 in) wide. The sori are tan-colored when mature and are in a single row one-third of the distance from the margin to the midrib of the ultimate segments (Degener and Degener 1957). The indusium is whitish before wrinkling, thin, suborbicular with a narra sinus extending about half way, glabrous except for a circular margin which is ciliolate with simple several-celled glandular and nonglandular hairs arising directly from the margin or from the deltoid base (Degener and Degener 1957). *Ctenitis squamigera* can be readily distinguished from other Hawaiian species of *Ctenitis* by the dense covering of tan-colored scales on its fronds (Wagner and Wagner 1992).

Reproductive cycles, longevity, specific environmental requirements and limiting factors are unknown (USFWS 1998b).

Historically, *Ctenitis squamigera* was recorded from Kauai, Oahu, Molokai, Lanai, Maui, and Hawaii (HINHP Database 2000). It is currently found on Oahu, Lanai, Molokai, and Maui. There is currently a single population with 20 individuals on the island of Molokai in Wawaia Gulch on privately owned land (GDSI 2000; J. Lau, *in litt.* 2000).

On Molokai, this species is found in mesic forest at an elevation of approximately 865 m (254 ft) (J. Lau, *in litt.* 2000). Associated native plant taxa include *Metrosideros polymorpha, Myrsine lessertiana* (kolea), *Diospyros sandwicensis, Nestegis sandwicensis, Xylosma hawaiiense* (maua), *Pouteria sandwicensis, Nephrolepis exaltata* (kupukupu), *Carex meyenii, Dryopteris unidentata* (No common name), and *Pleomele auwahiensis* (hala pepe) (J. Lau, *in litt.* 2000; USFWS 1998b; 59 FR 49025).

The primary threats to *Ctenitis squamigera* are habitat degradation by goats, and competition with the non-native plant taxa *Schinus terebinthifolius* and *Melinis minutiflora* (J. Lau, *in litt.* 2000; USFWS 1998b; 59 FR 49025).

Cyanea grimesiana ssp. *grimesiana* (haha)

Cyanea grimesiana ssp. *grimesiana,* a short-lived perennial member of the bellflower family (Campanulaceae), is a shrub with pinnately divided leaves. This species is distinguished from others in this endemic Hawaiian genus by the pinnately lobed leaf margins and the width of the leaf blades. This subspecies is distinguished from the other two subspecies by the shape and size of the calyx lobes which overlap at the base (Lammers 1999).

Little is known about the life history of this plant. On Molokai, flowering plants have been observed in July and August. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown (USFWS 1999).

Historically and currently, *Cyanea grimesiana* ssp. *grimesiana* is known from Oahu, Molokai, Lanai, and Maui (USFWS 1999). On Molokai, it is found in a total of three populations containing eight individuals, in Wailau, Puu Kahea and Olokui NAR on State and privately owned lands (GDSI 2000; HINHP Database 2000).

This species is typically found in mesic forest often dominated by *Metrosideros polymorpha* or *Metrosideros polymorpha* and *Acacia koa* (koa), or on cliffs, at elevations between 350 and 945 m (1,150 and 3,100 ft). Associated plants include *Psychotria* sp., *Bobea* sp. (ahakea), *Antidesma* sp., *Syzygium sandwicensis, Xylosma* sp. (maua), *Cibotium* sp., *Doodia* sp. (ohupukupulauii), *Nephrolepis* sp. (kupukupu), *Cyrtandra* sp., *Dicranopteris linearis,* and *Freycinetia arborea* (HINHP Database 2000).

The threats to this species on Molokai are habitat degradation and/or destruction caused by axis deer, feral goats, and pigs; competition with various non-native plants such as *Clidemia hirta*; catastrophic extinction by randomly naturally occurring events (*e.g.,* fire, landslides) due to the small number of existing individuals; trampling by hikers; seed predation by rats; and predation by various slugs (*Milax* sp.) (HINHP Database 2000; 61 FR 53108; USFWS 1999).

Diellia erecta (no common name)

Diellia erecta, a short-lived perennial member of the spleenwort family (Aspleniaceae), is a fern that grows in tufts of 3 to 9 lance-shaped fronds which emerge from a rhizome covered with brown to dark gray scales. This species differs from other members of the genus in having brown or dark gray scales usually more than 2 cm (0.8 in) in length, fused or separate sori along both margins, shiny black midribs that have a hardened surface, and veins that do not usually encircle the sori (Degener and Greenwell 1950; Robinson 1912; Wagner 1952).

Little is known about the life history of this taxon. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown (USFWS 1999).

Historically, *Diellia erecta* was known from Kauai, Oahu, Molokai, Lanai, Maui, and Hawaii Island (USFWS 1999). Currently, it is only known from Molokai, Maui, and Hawaii (USFWS 1999). On Molokai, it is known from a total of 4 populations containing at least 10 individuals in Halawa Valley, Kahuaawi Gulch, Makolelau and Onini Gulch on State and privately owned lands (HINHP Database 2000; K. Wood, *in litt.* 1999).

This species is found in mixed mesic forest and mesic *Diospyros sandwicensis* (lama) forest between elevations of 210 and 1,490 m (700 and 4,900 ft) (HINHP Database 2000; K. Wood, in litt. 1999). Associated native plant species include *Alyxia oliviformis, Metrosideros polymorpha, Bobea* sp., *Coprosma foliosa* (pilo), *Dodonea viscosa, Dryopteris unidentata, Myrsine* sp., *Ochrosia comta* (holei), *Dubautia linearis* ssp. *opposita* (na ena e), *Psychotria* sp., *Pleomele auwahiensis, Sophora chrysophylla, Styphelia tameiameiae, Syzygium sandwicensis,* and *Wikstroemia* sp. (HINHP Database 2000; K. Wood, *in litt.* 1999).

The major threats to *Diellia erecta* on Molokai are habitat degradation by pigs, goats, and deer; competition with the non-native plant species *Fraxinus uhdei* (tropical ash), *Ricinus communis, Melinus minutiflora, Psidium cattleianum, Blechnum occidentale* (No common name); and catastrophic extinction due to random naturally occurring events and reduced reproductive vigor due to the small number of existing individuals (HINHP Database 2000; K. Wood, *in litt.* 1999; 59 FR 56333; USFWS 1999).

Hedyotis mannii (pilo)

Hedyotis mannii, a member of the coffee family (Rubiaceae), is a short-lived perennial with smooth, usually erect stems 30 to 60 cm (1 to 2 ft) long which are woody at the base and four-angled or -winged. The leaves are opposite, thin in texture and elliptic to

sometimes lance-shaped. Stipules (leaf-like appendages), which are attached to the slightly winged leaf stalks where they join and clasp the stem, are triangular. Flowers are arranged in loose clusters up to 30 cm (1 ft) long at the ends of the stems and are either bisexual or female. This species' growth habit; its quadrangular or winged stems; the shape, size, and texture of its leaves; and its dry capsule which opens when mature, separate it from other species of the genus (Wagner *et al.* 1999).

Currently, no life history information is available for this species (USFWS 1996a).

Hedyotis mannii was once widely scattered on Lanai, West Maui, and Molokai (HINHP Database 2000). Currently, this species is extant on Molokai, West Maui, and Lanai. After an absence of 50 years, this species was rediscovered in 1987 by Steve Perlman on private land in Kawela Gulch in TNCH's Kamakou Preserve (GDSI 2000; HINHP Database 2000). Only five plants are known to exist in this area (HINHP Database 2000).

Hedyotis mannii typically grows on dark, narrow, rocky gulch walls in mesic and perhaps wet forests at 150 to 1,050 m (490 to 3,450 ft) in elevation (Wagner *et al.* 1999; HINHP Database 2000). Associated plant species include *Pipturus* sp., *Cibotium* sp., *Cyanea* sp., *Scaevola* sp., and *Psychotria* sp. (HINHP Database 2000; USFWS 1996a).

The threats to *Hedyotis mannii* on Molokai are habitat degradation by feral pigs; competition with the non-native plant *Melinis minutiflora;* and catastrophic extinction through random environmental events to which the limited number of individuals are extremely vulnerable (HINHP Database 2000; 57 FR 46325; USFWS 1996a).

Hesperomannia arborescens (no common name)

Hesperomannia arborescens, a long-lived perennial member of the aster family (Asteraceae), is a small shrubby tree that usually stands 1.5 to 5 m (5 to 16 ft) tall. This member of an endemic Hawaiian genus differs from other *Hesperomannia* species in having the following combination of characters, erect to ascending flower heads, thick flower head stalks, and usually hairless and relatively narrow leaves (Wagner *et al.* 1999).

This species was observed in flower from April through June and fruit during March and June (USFWS 1998c). No other information is available on reproductive cycles, longevity, specific environmental requirements, and limiting factors (USFWS 1998c).

Hesperomannia arborescens was formerly known from Lanai, Molokai, and Oahu (HINHP Database 2000). This species is now known from Oahu, Molokai, and Maui. On Molokai, one population of five individuals is known from the State's Olokui NAR (GDSI 2000; HINHP Database 2000).

Hesperomannia arborescens is found on slopes or ridges in wet *Metrosideros polymorpha-Dicranopteris* linearis lowland forest or mesic *Diospyros sandwicensis-Metrosideros polymorpha* lowland forest transition zones between 360 and 750 m (1,200 and 2,500 ft) in elevation (HINHP Database 2000). Associated native species include *Broussaisia arguta, Freycinetia arborea, Antidesma* sp., *Cibotium glaucum, Psychotria mauiensis* (kopiko), *Elaphoglossum* sp. (ekaha), *Coprosma* sp., *Hedyotis* sp., *Cheirodendron* sp., *Smilax melastomifolia* (hoi kuahiwi), *Clermontia pallida* (oha wai), *Thelypteris* sp. (palapalaia), *Diplopterygium pinnatum* (uluhe lau nui), *Ilex anomala, Myrsine* sp., *Urera glabra, Cyrtandra* sp., *Pipturus* sp., *Boehmeria grandis, Nestegis sandwicensis* (olopua), *Nephrolepis exaltata,* and *Wikstroemia* sp. (HINHP Database 2000).

The major threats to *Hesperomannia arborescens* on Molokai are habitat degradation by feral pigs, goats, and humans; competition with non-native plant taxa such as *Clidemia hirta, Kalanchoe pinnata,* and *Rubus rosifolius;* catastrophic extinction due to random environmental events or reduced reproductive vigor due to this species' limited numbers are significant threats as well (59 FR 14482; HINHP Database 2000).

Ischaemum byrone (Hilo ischaemum)

Ischaemum byrone, a member of the grass family (Poaceae), is a short-lived perennial species with creeping underground and erect stems. *Ischaemum byrone* can be distinguished from other Hawaiian grasses by its tough outer flower bracts, dissimilar basic flower units, which are awned and two-flowered, and a di- or trichotomously-branching inflorescence (O'Connor 1999).

No life history information is currently available for this species (USFWS 1996b).

Ischaemum byrone was historically distributed on Oahu, Molokai, Maui, and Hawaii Island (59 FR 10305). Currently, this species is found on Molokai, Maui, and Hawaii Island. It has also been reported from unconfirmed sightings on Kauai (HINHP Database 2000). On Molokai, there are a total of 2 populations containing between 100 to 1,000 individuals located in Wailau Valley and the eastern edge of Kikipua on State and privately owned lands (GDSI 2000; HINHP Database 2000).

Ischaemum byrone is found in coastal dry shrubland or *Artemisia* cliff communities, near the ocean, among rocks or on basalt cliffs or talus slopes, and elevations between sea level and 75 m (0 and 250 ft) (Gagne and Cuddihy 1999; O'Connor 1999; HINHP Database 2000). Associated taxa include *Bidens molokaiensis* (No common name), *Hedyotis littoralis, Lysimachia mauritiana, Fimbrystylis cymosa,* and *Pandanus tectorius* (hala) (HINHP Database 2000).

The threats to *Ischaemum byrone* on Molokai are competition by non-native grasses, particularly *Digitaria ciliaris;* predation by goats and axis deer; and elimination and degradation of habitat through fire and residential development; (USFWS 1996b).

Mariscus fauriei (no common name)

Mariscus fauriei, a member of the sedge family (Cyperaceae), is a perennial plant with somewhat enlarged underground stems and three-angled, single or grouped aerial stems 10 to 50 cm (4 to 20 in) tall. It has leaves shorter than or the same length as the stems 1 to 3.5 mm (0.04 to 0.1 in) wide. This species differs from others in the genus in Hawaii by its smaller size and its narrower, flattened, and more spreading spikelets (Koyama 1999; 59 FR 56333).

Currently, no life history information is available for this species (USFWS 1996b).

Historically and currently, *Mariscus fauriei* is found on east Molokai and on the island of Hawaii. This species is no longer extant on Lanai. Currently on Molokai, one population with 20 to 30 plants occurs above Kamiloloa on State-owned land (HINHP Database 2000; GDSI 2000).

This species typically grows in *Diospyros sandwicensis* dominated lowland dry forests, often on a lava substrate, at an elevation of 207 m (680 ft) (HINHP Database 2000; Koyama 1999). Associated species include *Canthium odoratum, Peperomia* sp. (ala ala wai nui), and *Rauvolfia sandwicensis* (hao) (HINHP Database 2000).

The threats to *Mariscus fauriei* on Molokai are predation and habitat degradation by feral goats and axis deer. Because there is only one known population on Molokai, the species is threatened by the risk of extinction through random environmental events and through reduced reproductive vigor (USFWS 1996b; 59 FR 56333).

Marsilea villosa (ihi ihi)

Marsilea villos, a member of the family Marsileaceae, is a perennial aquatic to semiaquatic fern similar in appearance to a four-leaved clover. The leaves are born in pairs along a thin rhizome. The leaves and rhizomes vary in pubescence, depending on the aridity of the habitat at the time of development. A hard sporocarp (hard-walled case containing male and female spores) is borne at the base of a leaf pair. The young sporocarp, like the rhizome, is covered with rust-colored hairs which are lost as the sporocarp matures. The plant occurs either in scattered clumps or as a dense interwoven mat, depending on the competition with other species for limited habitat resources. The species is the only member of the genus native to Hawaii and is closely related to *Marsilea vestita* of the western coast of the United States (USFWS 1996c).

Marsilea villosa requires periodic flooding for spore release and fertilization, then a decrease in water levels for the young plants to establish, and finally dry soil for sporocarps to mature. Shading reduces vigor of *Marsilea villosa.* No other life history information is currently available for this species (USFWS 1996c).

Marsilea villosa was known historically from Oahu, Molokai and Niihau. Currently, it is found only on Oahu and Molokai. On Molokai there are four populations with an unspecified number of individuals located at Kamaka ipo, Ilio Point, Kaiehu Point, and from Kaeo to Mokio on State and privately owned lands (HINHP Database 2000; GDSI 2000).

Marsilea villosa typically occurs in shallow depressions in clay soil, or lithified sand dunes overlaid with alluvial clay. All reported populations occur at or below 150 m (500 ft) elevation. While *Marsiliea villosa* can withstand minimal shading, it appears most vigorous growing in open areas. The associated native vegetation of *Marsilea villosa* on Molokai includes *Heteropogon contortus, Sida fallax, Waltheria indica* (uhaloa), *Centaurium sebaeoides* (awiwi), *Tetramolopium sylvae* (pamakani), and *Schiedea globosa* (USFWS 1996c).

The main reason for the decline of *Marsilea villosa* on Molokai is habitat destruction including the destruction of natural hydrology; the encroachment and competition from naturalized, non-native plants such as *Cenchrus ciliaris* (buffelgrass), *Prosopis pallida, Lantana camara, Digitaria insularis,* and *Chamaecrista nictitans* (partridge pea); the disturbance of areas where the plant grows by off-road vehicles or by grazing cattle and axis deer; habitat destruction, degradation, and fragmentation through development, fire, trampling by humans and introduced mammals; catastrophic extinction from random environmental events and reduced reproductive vigor due to few populations and small population sizes (USFWS 1996c; 57 FR 27863).

Melicope mucronulata (no common name)

Melicope mucronulata, a long-lived perennial of the citrus family (Rutaceae) is a small tree up to 13 ft (4 m) tall with oval to elliptic-oval leaves. This species is distinguished from others in the genus by the growth habit, the number of flowers in each flower cluster, the size and shape of the fruit, and the degree of hairiness of the leaves and fruit walls (Stone *et al.* 1999).

Currently, no life history information is available for this species.

First discovered in 1920 in Kanaio, East Maui, *Melicope mucronulata* was not relocated until 1983. One population of two individuals was then found two years later in Kupaia on the border of the privately owned Kamakou Preserve and the State's Molokai Forest Reserve in east Molokai (GDSI 2000; HINHP Database 2000; Stone *et al.* 1999).

Melicope mucronulata occurs on steep, west- or north-facing, dry to mesic, forested lowland slopes at elevations of 670 to 870 m (2,200 to 2,850 ft). Associated native species include *Dodonea viscosa, Metrosideros polymorpha, Styphelia tameiameiae,* and *Dubautia linearis* (naenae) (HINHP Database 2000).

The major threat to the continued existence of this species is catastrophic extinction from random environmental events due to the few extant populations and small number of individuals. Habitat degradation by goats and pigs; predation by goats; and competition with non-native plants, particularly *Melinis minutiflora,* also pose immediate threats to this species (USFWS 1997; 57 FR 20772).

Neraudia sericea (no common name)

Neraudia sericea, a short lived perennial and a member of the nettle family (Urticaceae), is a 3 to 5 m (10 to 16 ft) tall shrub with densely hairy branches. The elliptic or oval leaves have smooth margins or slightly toothed margins on young leaves. The upper leaf surface is moderately hairy and the lower leaf surface is densely covered with irregularly curved, silky gray to white hairs along the veins. The male flowers may be stalkless or have short stalks. The female flowers are stalkless and have a densely hairy calyx that is either toothed, collar-like, or divided into narrow unequal segments. The fruits are achenes with the apical section separated from the basal portion by a deep constriction. Seeds are oval with a constriction across the upper half. *Neraudia sericea* differs from the other four closely related species of this endemic Hawaiian genus by the density, length, color, and posture of the hairs on the lower leaf surface and by its mostly entire leaf margins (Wagner *et al.* 1999).

Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors are generally unknown (USFWS 1999).

Neraudia sericea was known historically from Molokai, Lanai, Maui, and Kahoolawe (HINHP Database 2000). Currently, this species is found only on Maui and Molokai. On Molokai, one population of 50 to 100 individuals is known from Makolelau on privately owned land (GDSI 2000; HINHP Database 2000).

Neraudia sericea generally occurs in lowland dry to mesic *Metrosideros polymorpha-Dodonaea viscosa-Styphelia tameiameiae* shrubland or forest between 670 and 1,370 m (2,200 and 4,500 ft) in elevation (HINHP Database 2000; Wagner *et al.* 1999). Other associated plant species include *Sida fallax, Diospyros sandwicensis, Bobea* sp., *Coprosma* sp., and *Hedyotis* sp. (HINHP Database 2000).

The primary threats to *Neraudia sericea* on Molokai are habitat degradation by feral pigs and goats; competition with the non-native plant, *Melinus minutiflora;* and catastrophic extinction through random environmental events due to the vulnerability of a single population (USFWS 1999; 59 FR 56333).

Peucedanum sandwicense (makou)

Peucedanum sandwicense, a short lived perennial and a member of the parsley family (Apiaceae), is a parsley-scented, sprawling herb. Hollow stems arise from a short, vertical, perennial stem with several fleshy roots. This species is the only member of the genus in the Hawaiian Islands (Constance and Affolter 1999).

Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors are generally unknown (USFWS 1995b).

Historically and currently, *Peucedanum sandwicense* was known from Molokai, Maui, and Kauai (HINHP

Database 2000). Discoveries in 1990 extended the known distribution of this species to the island of Oahu (USFWS 1995b). On Molokai, five populations are known from private and State owned lands in Pelekunu Valley, on Huelo Islet and Mokapu Islet, and State owned lands managed by the National Park Service at Kalaupapa National Historical Park, totaling approximately 50 individuals (GDSI 2000; HINHP Database 2000; K. Wood, *in litt.* 2000).

This species grows in cliff habitats in brown soil and talus in *Chamaesyce celastroides* var. *amplectans-Chenopodium oahuense* coastal dry shrubland or *Diospyros sandwicensis* forest from sea level to above 900 m (3,000 ft) and is associated with native species such as *Eragrostis* sp. (kawelu), *Santalum ellipticum* (iliahialoe), *Pritchardia hillebrandii, Reynoldsia sandwicensis, Osteomeles anthyllidifolia, Scaevola sericea, Senna gaudichaudii, Pittosporum halophilum, Sida fallax, Plumbago zeylanica* (iliee), *Artemisia australis* (ahinahina), *Portulaca lutea* (ihi), *Lepidium bidentatum* var. *o-waihiense, Schiedea globosa, Lipochaeta integrifolia, Peperomia remyi* (No common name), *Plechranthus parviflorus* (ala ala wai nui), Dianella sandwicensis and Metrosideros polymorpha (Constance and Affolter 1999; USFWS 1995b; HINHP Database 2000; K. Wood, *in litt.* 2000).

Threats to *Peucedanum sandwicense* on Molokai are seed predation by rats and competition with the non-native plant species *Ageratum conyzoides* (maile hohono), *Coronopus didymus* (swinecress), *Kalanchoe pinnata, Lantana camara, Malvastrum coromandelianum* ssp. *coromandelianum* (false mallow), *Morinda citrifolia* (Indian mulberry), *Plantago lanceolata* (English plantain), *Pluchea carolinensis* (sourbush), *Portulaca oleracea , Elaphantopus spicatus* (No common name), *Schinus terebinthifolius,* and *Sonchus oleraceus* (pualele) (USFWS 1995b; 59 FR 9304; K. Wood, *in litt.* 2000).

Phyllostegia mannii (no common name)

Phyllostegia mannii, a nonaromatic member of the mint family (Lamiaceae), is a climbing vine with many-branched, four-sided, hairy stems. The opposite, hairy leaves, which are shaped like narrow triangles or narrow triangular ovals have coarsely toothed margins. Clusters of four to six white flowers are arranged in each of several false whorls along an unbranched flowering stem. The fruits are fleshy, dark-green to black nutlets (dry seeds with a hard outer covering). This species is distinguished from others in the genus by its hairiness; its thin, narrow leaves, which are not pinnately divided; and the usually six flowers per false whorl in a terminal inflorescence (Wagner *et al.* 1999).

This species was observed with fruit in July (USFWS 1996a). Currently, no additional life history information is available for this species.

Historically, *Phyllostegia mannii* was found from Hanalilolilo to Ohialele on East Molokai and at Ukulele on East Maui. It has not been seen on Maui for over 70 years and is apparently extirpated on that island (USFWS 1996a). This species is now known only from four individuals at Hanalilolilo within Kamakou Preserve on privately owned land (GDSI 2000; HINHP Database 2000).

Phyllostegia mannii grows in shaded sites in sometimes foggy and windswept, wet, open, *Metrosideros polymorpha*-dominated montane forest with a native shrub and *Cibotium* sp. understory at 347 m (1,140 ft) in elevation (USFWS 1996a). Associated plant species include *Asplenium* sp. (No common name), *Broussaisia arguta, Cheirodendron trigynum, Coprosma ochracea, Cyanea* sp., *Dicranopteris linearis, Hedyotis hillebrandii, Pipturus albidus, Pouteria sandwicensis, Psychotria* sp., *Touchardia latifolia, Vaccinium* sp., and *Wikstromia* sp. (HINHP Database 2000).

The only known population of *Phyllostegia mannii* is threatened by habitat destruction and degradation by feral pigs. Because of the small number of individuals, a natural or human-caused environmental event could extirpate all or a significant portion of the population (USFWS 1996a; 57 FR 46325).

Plantago princeps (ale)

Plantago princeps, a short-lived member of the plantain family (Plantaginaceae), is a small shrub or robust perennial herb. This species differs from other native members of the genus in Hawaii by its large branched stems, flowers at nearly right angles to the axis of the flower cluster, and fruits that break open at a point two-thirds from the base. The four varieties, *anomala, laxiflora, longibracteata,* and *princeps,* are distinguished by the branching and pubescence of the stems; the size, pubescence, and venation of the leaves; the density of the inflorescence; and the orientation of the flowers (Wagner *et al.* 1999).

Little is known about the life history of this plant. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are generally unknown. However, individuals have been observed in fruit from April through September (USFWS 1999).

Plantago princeps is historically and currently found on Kauai, Oahu, Molokai, and Maui. It is no longer extant on the island of Hawaii. *Plantago princeps* var. *anomala* is currently known from Kauai and Oahu; var. *longibracteata* is known from Kauai and Oahu; var. *princeps* is known from Oahu; and var. *laxiflora* is known from Molokai and Maui. On Molokai, there is currently one remaining population of *Plantago princeps* var. *laxiflora* with five individuals in Kawela Gulch on privately owned lands (GDSI 2000; HINHP Database 2000; USFWS 1999).

On Molokai, *Plantago princeps* var. *laxiflora* is typically found on basalt cliffs in *Metrosideros polymorpha* lowland wet forest or *Acacia koa-Metrosideros polymorpha* montane wet forest or Metrosideros polymorpha montane wet shrubland, from 402 to 2,042 m (1,320 to 6,700 ft) elevation (Wagner *et al.* 1999). Associated plant species include *Eragrostis variabilis, Hedyotis formosa* (No common name), and *Dubautia plantaginea* spp. *humile* (na ena e) (HINHP Database 2000; USFWS 1999).

The primary threats to *Plantago princeps* var. *laxiflora* on Molokai are predation and habitat degradation by feral pigs and goats and competition with various non-native plant species (59 FR 56333; USFWS 1999).

Platanthera holochila (no common name)

Platanthera holochila, a short-lived perennial and a member of the orchid family (Orchidaceae), is an erect, deciduous herb. The stems arise from underground tubers, the pale green leaves are lance to egg-shaped and the greenish-yellow flowers occur in open spikes. This is the only species of this genus that occurs in the Hawaiian Islands (Wagner *et al.* 1999).

Little is known about the life history of this plant. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown (USFWS 1999).

Historically, *Platanthera holochila* was known from Maui, Oahu, Molokai, and Kauai (HINHP Database 2000). Currently, *Platanthera holochila* is extant on Kauai, Molokai, and Maui (HINHP Database 2000). On Molokai, one population with less than 10 individuals is reported from Hanalilolilo on the privately owned land of Kamakou Preserve (HINHP Database 2000; GDSI 2000).

Platanthera holochila is found in *Metrosideros polymorpha-Dicranopteris*

linearis montane wet forest or *Metrosideros polymorpha* mixed montane bog between 1,048 and 1,515 m (3,440 and 4,970 ft) elevation. Associated native plants include *Cibotium* sp., *Coprosma ernodeoides* (nene), *Oreobolus furcatus* (No common name), *Styphelia tameiameiae, Wikstroemia* sp., *Scaevola chamissoniana* (naupaka kuahiwi), *Sadleria* sp. (amau), *Lythrum maritimum* (pukamole), *Deschampsia* sp. (hair grass), *Luzula hawaiiensis* (wood rush), *Sisyrinchium acre* (mau u la ili), *Broussaisia arguta, Clermontia* sp. (oha wai), *Lycopodium cernuum* (wawae iole), *Dubautia scabra* (na ena e), *Polypodium pellucidum* (ae), *Gahnia gahniiformis* (No common name), and *Vaccinium reticulatum* (ohelo ai)(61 FR 53108; USFWS 1999).

The primary threats to *Platanthera holochila* on Molokai are habitat degradation and/or destruction by feral pigs; competition with non-native plants; and a risk of extinction from naturally occurring events and/or reduced reproductive vigor, due to the small number of remaining populations and individuals. Predation by slugs may also be a potential threat to this species (61 FR 53108; USFWS 1999).

Schiedea nuttallii (no common name)

Schiedea nuttallii, a member of the pink family (Caryophyllaceae), is a generally hairless, erect subshrub. This species is distinguished from others in this endemic Hawaiian genus by its habit, length of the stem internodes, length of the inflorescence, number of flowers per inflorescence, smaller leaves, smaller flowers, and smaller seeds (Wagner *et al.* 1999).

Little is known about the life history of *Schiedea nuttallii.* Based on field and greenhouse observations, it is hermaphroditic (flowers contain both sexes) (Weller *et al.* 1990). Plants located close to the Makua rim on Oahu have been under observation for 10 years, and they appear to be long-lived (USFWS 1999). *Schiedea nuttallii* appears to be an outcrossing species. Under greenhouse conditions, plants fail to set seed unless pollinated, suggesting that this species requires insects for pollination. Seedlings of *Schiedea* occurring in mesic or wet sites are apparently consumed by introduced slugs and snails. These have been observed feeding on *S. membranacea,* another mesic forest species occurring on Kauai. In contrast to mesic forest species, *Schiedea* occurring in dry areas produce abundant seedlings following winter rains, presumably because there are fewer alien consumers in drier sites (USFWS 1999). Fruits and flowers are abundant in the wet season but can be found throughout the year (Kapua Kawelo, U.S. Dept. of Defense, Army Environmental, *in litt.* 1999). Little is known about the life history of this plant. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown.

Historically *Schiedea nuttallii* was known from scattered locations on southeastern Kauai, Oahu, Molokai, and Maui (HINHP Database 2000). Currently, known populations occur on Kauai, Oahu, and Molokai (USFWS 1999). On Molokai one population with 22 individuals of *Schiedea nuttallii* occurs on the privately owned lands of TNCH's Kamakou Preserve (HINHP Database 2000; GDSI 2000).

Schiedea nuttallii typically grows in diverse lowland mesic forest, often with *Metrosideros polymorpha* dominant, at elevations between 415 and 730 m (1,360 and 2,400 ft). On Molokai, the population is found at 354 m (1,160 ft) elevation. Associated plants include *Cyrtandra hawaiensis* (haiwale), *Antidesma* sp., *Psychotria* sp., *Perottetia sandwicensis, Pisonia* sp., and *Hedyotis acuminata* (au) (HINHP Database 2000).

Schiedea nuttallii on Molokai is seriously threatened by competition with several non-native plants; predation by the black twig borer, slugs, and snails; and a risk of extinction from naturally occurring events (*e.g.,* landslides) and/or reduced reproductive vigor due to the small number of individuals.(USFWS 1999; 61 FR 53108).

Sesbania tomentosa (ohai)

Sesbania tomentosa, a short lived perennial and a member of the pea family (Fabaceae), is typically a sprawling shrub but may also be a small tree. Each compound leaf consists of 18 to 38 oblong to elliptic leaflets which are usually sparsely to densely covered with silky hairs. The flowers are salmon tinged with yellow, orange-red, scarlet or rarely, pure yellow. *Sesbania tomentosa* is the only endemic Hawaiian species in the genus, differing from the naturalized *Sesbania sesban* by the color of the flowers, the longer petals and calyx, and the number of seeds per pod (Geesink *et al.* 1999).

The pollination biology of *Sesbania tomentosa* is being studied by David Hopper, a graduate student in the Department of Zoology at the University of Hawaii at Manoa. His preliminary findings suggest that although many insects visit *Sesbania* flowers, the majority of successful pollination is accomplished by native bees of the genus *Hylaeus* and that populations at Kaena Point on Oahu are probably pollinator limited. Flowering at Kaena Point is highest during the winter-spring rains, and gradually declines throughout the rest of the year (USFWS 1999). Other aspects of this plant's life history are unknown.

Currently, *Sesbania tomentosa* occurs on at least six of the eight main Hawaiian Islands (Kauai, Oahu, Molokai, Kahoolawe, Maui, and Hawaii) and in the Northwestern Hawaiian Islands (Nihoa and Necker). It is no longer extant on Niihau and Lanai (59 FR 56333; GDSI 2000, USFWS 1999; HINHP Database 2000). On Molokai, *Sesbania tomentosa* is known from eight populations with an estimated total of 100 to 150 individuals. Three of the populations occur from Moomomi to Nenehanaupo and five from Kamiloloa to Makolekau on State and privately owned lands (HINHP Database 2000; GDSI 2000).

Sesbania tomentosa is found in *Scaevola sericea* coastal dry shrubland on windswept slopes, sea cliffs and weathered basaltic slopes between sea level and 579 m (0 and 1,900 ft) elevation (HINHP Database 2000). Associated plant species include *Lipochaeta integrifolia, Jacquemontia sandwicensis, Sida fallax,* and *Dodonea viscosa* (HINHP Database 2000; USFWS 1999).

The primary threats to *Sesbania tomentosa* on Molokai are competition with various non-native plant species such as *Lantana camara,* and grass species; habitat degradation by feral cattle; lack of adequate pollination; seed predation by rats, mice and, potentially, non-native insects; and destruction by random environmental events (*e.g.,* fire) and by human activities (*e.g.,* use of off-road vehicles) (59 FR 56333; USFWS 1999).

Silene lanceolata (no common name)

Silene lanceolata, a member of the pink family, is an upright, perennial plant with stems 15 to 50 cm (6 to 20 in) long, which are woody at the base. The narrow leaves are smooth except for a fringe of hairs near the base. Flowers are arranged in open clusters. The flowers are white with deeply-lobed, clawed petals. The capsule opens at the top to release reddish-brown seeds. This species is distinguished from *S. alexandri,* the only other member of the genus found on Molokai, by its smaller flowers and capsules and its stamens, which are shorter than the sepals (Wagner *et al.* 1999).

Currently, no life history information is available for this species (USFWS 1996a).

The historical range of *Silene lanceolata* includes five Hawaiian

Islands: Kauai, Oahu, Molokai, Lanai, and Hawaii Island. *Silene lanceolata* is presently extant on the islands of Molokai, Oahu, and Hawaii. On Molokai, a single population of approximately 100 individuals was found in 1987 on private land near Puu Kolekole (K. Wood, *in litt.* 1999; GDSI 2000; USFWS 1996a).

On Molokai, this species grows on cliff faces and ledges of gullies in dry to mesic shrubland at an elevation of about 800 m (2,600 ft) (USFWS 1996a). Associated native plant species include *Dodonea viscosa, Styphelia tameiameiae,* and *Dubautia linearis* (K. Wood, *in litt.* 1999).

Habitat destruction by feral ungulates (goats and pigs), wildfires, and competition by invading non-native plants are immediate threats to *Silene lanceolata* on Molokai (57 FR 46325; USFWS 1996a).

Spermolepis hawaiiensis (no common name)

Spermolepis hawaiiensis, a member of the parsley family (Apiaceae), is a slender annual herb with few branches. Its leaves, dissected into narrow, lance-shaped divisions, are oblong to somewhat oval in outline and grow on stalks. Flowers are arranged in a loose, compound umbrella-shaped inflorescence arising from the stem, opposite the leaves. *Spermolepis hawaiiensis* is the only member of the genus native to Hawaii. It is distinguished from other native members of the family by being a non-succulent annual with an umbrella-shaped inflorescence (Constance and Affolter 1999).

Little is known about the life history of *Spermolepis hawaiiensis.* Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown (USFWS 1999).

Historically, *Spermolepis hawaiiensis* was known from Kauai, Oahu, Lanai and the island of Hawaii (HINHP Database 2000). Currently, it is extant on Kauai, Oahu, Molokai, Lanai, Maui, and Hawaii (GDSI 2000; 59 FR 56333; HINHP Database 2000). On Molokai, there is one known population with approximately 600 individuals on privately owned land in Kamalo (HINHP Database 2000; GDSI 2000; USFWS 1999).

Spermolepis hawaiiensis is known from shady spots in *Dodonea viscosa* lowland dry shrubland, at an elevation of 219 m (720 ft). Associated plant species include *Eragrostis variabilis, Lipochaeta lavarum* (nehe), *Sida fallax, Myoporum sandwicensis* (naio), *Santalum ellipticum*, and *Heteropogon contortus* (HINHP Database 2000; USFWS 1999).

The primary threats to *Spermolepis hawaiiensis* on Molokai are habitat degradation by feral goats; competition with various non-native plants such as *Melinis minutiflora, Lantana camara*, and grasses; and habitat destruction and extinction due to natural environmental events such as erosion, landslides, and rockslides due to natural weathering (59 FR 56333; USFWS 1999).

Vigna o-wahuensis (no common name)

Vigna o-wahuensis, a member of the pea family (Fabaceae), is a slender twining perennial herb with fuzzy stems. Each leaf is made up of three leaflets which vary in shape from round to linear, and are sparsely or moderately covered with coarse hairs. Flowers, in clusters of one to four, have thin, translucent, pale yellow or greenish yellow petals. The two lowermost petals are fused and appear distinctly beaked. The sparsely hairy calyx has asymmetrical lobes. The fruits are long slender pods that may or may not be slightly inflated and contain 7 to 15 gray to black seeds. This species differs from others in the genus by its thin yellowish petals, sparsely hairy calyx, and thin pods which may or may not be slightly inflated (Geesink *et al.* 1999).

Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors are generally unknown (USFWS 1999).

Historically, *Vigna o-wahuensis* was known from Niihau, Oahu, and Maui (HINHP Database 2000). Currently, *Vigna o-wahuensis* is known from the islands of Molokai, Lanai, Kahoolawe, Maui, and Hawaii (HINHP Database 2000). There are no currently known populations on Niihau or Oahu. On Molokai, two populations with approximately 16 individuals occur on privately owned lands at Onini Gulch and Makolelau (GDSI 2000).

On Molokai, *Vigna o-wahuensis* occurs in dry to mesic grassland and shrubland from 207 to 256 m (680 to 840 ft) in elevation (Geesink *et al.* 1999; HINHP Database 2000). Associated plant species include *Chenopodium oahuense, Cyperus laevigatus, Eragrostis variabilis, Heteropogon contortus, Ipomoea* sp. (morning glory), *Scaevola sericea, Sida fallax, Vitex rotundifolia* (kolokolo kahakai), *Dodonea viscosa*, and *Styphelia tameiameiae* (HINHP Database 2000; USFWS 1999).

The primary threats to *Vigna o-wahuensis* on Molokai are competition with various non-native plant species; and a risk of extinction due to random environmental events (primarily fire), and/or reduced reproductive vigor due to the small number of existing populations and individuals (USFWS 1999; 59 FR 56333).

Zanthoxylum hawaiiense (ae)

Zanthoxylum hawaiiense, a long lived perennial, is a medium-size tree with pale to dark gray bark, and lemon-scented leaves in the rue family (Rutaceae). Alternate leaves are composed of three small triangular-oval to lance-shaped, toothed leaves (leaflets) with surfaces usually without hairs. *Zanthoxylum hawaiiense* is distinguished from other Hawaiian members of the genus by several characters: three leaflets all of similar size, one joint on lateral leaf stalk, and sickle-shape fruits with a rounded tip (Stone *et al.* 1999).

Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors are generally unknown (USFWS 1996b).

Historically, *Zanthoxylum hawaiiense* was known from the islands of Kauai, Molokai, Lanai, southern and southwestern slopes of Haleakala on Maui, and Hawaii. Currently, *Zanthoxylum hawaiiense* is extant on Kauai, Molokai, Maui, and Hawaii. On Molokai, the two extant populations with a total of five individuals are located at Makolelau and Puu Hoi Ridge on private and State lands (HINHP Database 2000; GDSI 2000).

On Molokai, *Zanthoxylum hawaiiense* is found in mesic *Metrosideros polymorpha* or *Diospyros sandwicensis* lowland dry forest with *Nestegis sandwicensis* and *Pleomele auwahiensis* at elevations between 182 and 256 m (600 to 840 ft) (Stone *et al.* 1999; 59 FR 10305; HINHP Database 2000). Associated species include *Pisonia* sp., *Xylosma hawaiiensis, Santalum ellipticum, Alphitonia ponderosa* (kauila), *Osteomeles anthyllidifolia, Alectryon macrococcus* (mahoe), *Charpentiera* sp. (papala), *Melicope* sp., *Dodonea viscosa, Streblus pendulinus, Myrsine lanaiensis* (kolea), and *Sophora chrysophylla* (HINHP Database 2000).

The threats to *Zanthoxylum hawaiiense* on Molokai include browsing, grazing, and trampling by feral goats; competition with non-native plant species; habitat degradation and destruction by humans, and extinction from naturally occurring events (primarily fire) and/or from reduced reproductive vigor due to the small number of individuals and populations (59 FR 10305; USFWS 1996b).

A summary of populations and landownership for these 40 plant species on Molokai is given in Table 3.

TABLE 3.—SUMMARY OF POPULATIONS AND LANDOWNERSHIP FOR 40 SPECIES ON MOLOKAI.

Species	Number of current populations	Landownership		
		Federal	State	Private
Adenophorus periens	1			X
Alectryon macrococcus	6		X	X
Bidens wiebkei	3		X	X
Brighamia rockii	5		X	X
Canavalia molokaiensis	7		X*	X
Centaurium sebaeoides	2	X		X
Clermontia oblongifolia brevipes ssp.	1			X
Ctenitis squamigera	1			X
Cyanea dunbarii	1		X	
Cyanea grimesiana ssp. *grimesiana*	3		X	X
Cyanea mannii	9		X	X
Cyanea procera	5		X	X
Diellia erecta	4		X	X
Hedyotis mannii	1			X
Hesperomannia arborescens	1		X	
Hibiscus arnottianus ssp. *immaculatus*	2		X	X
Ischaemum byrone	2		X	X
Labordia triflora	1			X
Lysimachia maxima	1			X
Mariscus fauriei	1		X	
Marsilea villosa	4		X	X
Melicope mucronulata	1		X	X
Melicope reflexa	3		X	X
Neraudia sericea	1			X
Peucedanum sandwicense	5		X*	X
Phyllostegia mannii	1			X
Plantago princeps	1			X
Platanthera holochila	1			X
Pritchardia munroi	1			X
Schiedea lydgatei	2		X	X
Schiedea nuttallii	1			X
Schiedea sarmentosa	2		X	X
Sesbania tomentosa	8		X	X
Silene alexandri	1			X
Silene lanceolata	1			X
Spermolepis hawaiiensis	1			X
Stenogyne bifida	4		X	X
Tetramolopium rockii	3		X*	X
Vigna o-wahuensis	2			X
Zanthoxylum hawaiiense	2		X	X

*Some populations are on State land that is managed by the National Park Service at Kalaupapa National Historical Park.

Previous Federal Action

Federal action on these plants began as a result of Section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document, *Adenophorus periens, Alectryon macrococcus* (as *Alectryon macrococcum* var. *macrococcum* and *Alectryon mahoe*), *Bidens wiebkei, Brighamia rockii, Canavalia molokaiensis, Hedyotis mannii* (as *Hedyotis thyrsoidea* var. *thyrsoidea*), *Hesperomannia arborescens* (as *Hesperomannia arborescens* var. *bushiana* and var. *swezeyi*), *Hibiscus arnottianus* ssp. *immaculatus* (as *Hibiscus immaculatus*), *Ischaemum byrone, Marsilea villosa, Melicope reflexa* (as *Pelea reflexa*), *Neraudia sericea* (as *Neraudia kahoolawensis*), *Peucedanum sandwicense* (as *Peucedanum kauaiense*), *Plantago princeps* (as *Plantago princeps* var. *elata,* var. *laxifolia,* var. *princeps*), *Pritchardia munroi* (as *Pritchardia munroii*), *Sesbania tomentosa* (as *Sesbania hobdyi* and *Sesbania tomentosa* var. *tomentosa*), *Silene alexandri, Silene lanceolata, Vigna o-wahuensis* (as *Vigna sandwicensis* var. *heterophylla* and var. *sandwicensis*), and *Zanthoxylum hawaiiense* (as *Zanthoxylum hawaiiense* var. *citiodora*) were considered endangered; *Diellia erecta* and *Zanthoxylum hawaiiense* (as *Zanthoxylum hawaiiense* var. *hawaiiense* and var. *velutinosum*) were considered threatened; and, *Labordia triflora, Melicope mucronulata* (as *Pelea mucronulata*), *Plantago princeps* (as *Plantago princeps* var. *acaulis,* var. *denticulata,* and var. *queleniana*), and *Tetramolopium rockii* were considered to be extinct. On July 1, 1975, we published a notice in the **Federal Register** (40 FR 27823) of our acceptance of the Smithsonian report as a petition within the context of Section 4(c)(2) (now Section 4(b)(3)) of the Act, and giving notice of our intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, we published

a proposed rule in the **Federal Register** (41 FR 24523) to determine endangered status pursuant to Section 4 of the Act for approximately 1,700 vascular plant taxa, including all of the above taxa except *Labordia triflora.* The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication.

General comments received in response to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over two years old be withdrawn. A one-year grace period was given to proposals already over two years old. On December 10, 1979, we published a notice in the **Federal Register** (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. The Service published updated notices of review for plants on December 15, 1980 (45 FR 82479), September 27, 1985 (50 FR 39525), February 21, 1990 (55 FR 6183), September 30, 1993 (58 FR 51144), and February 28, 1996 (61 FR 7596), and September 19, 1977 (62 FR 49398). A summary of the status categories for these 40 plant species in the 1980–1996 notices of review can be found in Table 4(a). We listed the 40 species as endangered or threatened between 1991 and 1999. A summary of the listing actions can be found in Table 4(b).

TABLE 4(a).—SUMMARY OF CANDIDACY STATUS FOR 40 PLANT SPECIES ON MOLOKAI

Species	**Federal Register** Notice of Review				
	1980	1985	1990	1993	1996
Adenophorus periens	C1	C1	C1		
Alectryon macrococcus	C1	C1	C1		
Bidens wiebkei	C1	C1	C1		
Brighamia rockii	C1	C1	C1		
Canavalia molokaiensis	C1	C1	C1		
Centaurium sebaeoides	.....	.....	C1		
Clermontia oblongifolia ssp. *brevipes*	.....	.....	C1		
Ctenitis squamigera	C1	C1	C1		
Cyanea dunbarii.					
Cyanea grimesiana ssp. *grimesiana*	C1	C1	.....	C2	
Cyanea mannii	.....	.....	C1		
Cyanea procera	.....	.....	C1*		
Diellia erecta	C1	C1	C1		
Hedyotis mannii	C1*	C1*	C1		
Hesperomannia arborescens	C1	C1	C1		
Hibiscus arnottianus ssp. *immaculatus*	C1	C1	C1		
Ischaemum byrone	C1	C1	C1		
Labordia triflora	C2	C2	.....	.....	C
Lysmachia maxima	.....	.....	C2	C2	
Mariscus fauriei	.....	.....	C1		
Marsilea villosa	C1	C1	C1		
Melicope mucronulata	C1	C1	C1		
Melicope reflexa	C1	C1	C1		
Neraudia sericea	3A	3A	C1		
Peucedanum sandwicense	C2	C2	C2		
Phyllostegia mannii	.....	.....	C1		
Plantago princeps	C2	C2	C1		
Platanthera holochila	C1	C1	C1	C2	
Pritchardia munroi	C1	C1	C1		
Schiedea lydgatei	.....	C1	C1		
Schiedea nuttallii	.....	.....	.....	C2	
Schiedea sarmentosa	.....	.....	C2	C2	
Sesbania tomentosa	C1*	C1*	C1		
Silene alexandri	C1	C1	C1		
Silene lanceolata	C1	C1	C1		
Spermolepis hawaiiensis	.....	.....	C1		
Stenogyne bifida	.....	.....	C1		
Tetramolopium rockii	C1	C1	C1		
Vigna o-wahuensis	C1	C1	C1		
Zanthoxylum hawaiiense	C1	C1	C1		

Key:

C: Taxa for which the Service has on file sufficient information on the biological vulnerability and threat(s) to support proposals to list them as endangered or threatened species. (The 1996 Notice of Review discontinued the use of different categories of candidates (as described below; candidates were redefined as species meeting the definition of former C1 species.)

C1: Taxa for which the Service has on file enough sufficient information on biological vulnerability and threat(s) to support proposals to list them as endangered or threatened species.

C1*: Taxa of known vulnerable status in the recent past that may already have become extinct.

C2: Taxa for which there is some evidence of vulnerability, but for which there are not enough data to support listing proposals at this time.

3A: Taxa for which the Service has persuasive evidence of extinction. If rediscovered, such taxa might acquire high priority for listing.

Federal Register Notices of Review

1980: 45 FR 82479

1985: 50 FR 39525

1990: 55 FR 6183

1993: 58 FR 51144

1996: 61 FR 7596

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. At the time each plant was listed, we determined that designation of critical habitat was prudent for one of these plants (Labordia triflora) and not prudent for the other 39 plants because it would not benefit the plant and/or would increase the degree of threat to the species.

The not prudent determinations were challenged in *Conservation Council for Hawaii* v. *Babbitt*. 2 F. Supp. 2d 1280 (D. Haw. 1998). On March 9, 1998, the United States District Court for the District of Hawaii (the Court) directed us to review the prudency determinations for 245 listed plant species in Hawaii, including these 39 species. Among other things, the Court held that in most cases we did not sufficiently demonstrate that the species are threatened by human activity or that such threats would increase with the designation of critical habitat. The Court also held that we failed to balance any risks of designating critical habitat against any benefits (*Id.* at 1283–1285).

TABLE 4(b).—SUMMARY OF LISTING ACTIONS FOR 40 PLANT SPECIES ON MOLOKAI

Species	Federal status	Proposed rule		Final rule	
		Date	**Federal Register**	Date	**Federal Register**
Adenophorus periens	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Alectryon macrococcus	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772
Bidens wiebkei	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325
Brighamia rockii	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325
Canavalia molokaiensis	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325
Centaurium sebaeoides	E	09/28/90	55 FR 39664	10/29/91	56 FR 55770
Clermontia oblongifolia ssp. *brevipes*	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325
Ctenitis squamigera	E	06/24/93	58 FR 34231	09/09/94	59 FR 49025
Cyanea dunbarii	E	10/02/95	60 FR 51436	10/10/96	61 FR 53130
Cyanea grimesiana ssp. *grimesiana*	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108
Cyanea mannii	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325
Cyanea procera	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325
Diellia erecta	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Hedyotis mannii	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325
Hesperomannia arborescens	E	10/14/92	57 FR 47028	03/28/94	59 FR 14482
Hibiscus arnottianus ssp. *immaculatus*	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325
Ischaemum byrone	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305
Labordia triflora	E	05/15/97	62 FR 26757	09/03/99	64 FR 48307
Lysmachia maxima	E	10/02/95	60 FR 51436	10/10/96	61 FR 53130
Mariscus fauriei	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305
Marsilea villosa	E	02/15/91	56 FR 6349	06/22/92	57 FR 27863
Melicope mucronulata	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772
Melicope reflexa	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325
Neraudia sericea	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Peucedanum sandwicense	T	10/30/91	56 FR 55862	02/25/94	59 FR 9304
Phyllostegia mannii	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325
Plantago princeps	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Platanthera holochila	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108
Pritchardia munroi	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325
Schiedea lydgatei	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325
Schiedea nuttallii	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108
Schiedea sarmentosa	E	10/02/95	60 FR 51436	10/10/96	61 FR 53130
Sesbania tomentosa	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Silene alexandri	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325
Silene lanceolata	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325
Spermolepis hawaiiensis	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Stenogyne bifida	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325
Tetramolopium rockii	T	09/20/91	56 FR 47718	10/08/92	57 FR 46325
Vigna o-wahuensis	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Zanthoxylum hawaiiense	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305

Key:
E=Endangered
T=Threatened

Regarding our determination that designating critical habitat would have no additional benefits to the species above and beyond those already provided through the section 7 consultation requirement of the Act, the Court ruled that we failed to consider the specific effect of the consultation requirement on each species (*Id.* at 1286–88). In addition, the Court stated that we did not consider benefits outside of the consultation requirements. In the Court's view, these potential benefits include substantive and procedural protections. The Court

held that substantively, designation establishes a ''uniform protection plan'' prior to consultation and indicates where compliance with section 7 of the Act is required. Procedurally, the Court stated that the designation of critical habitat educates the public and State and local governments and affords them an opportunity to participate in the designation (*Id.* at 1288). The Court also stated that private lands may not be excluded from critical habitat designation even though section 7 requirements apply only to Federal agencies. In addition to the potential benefit of informing the public and State and local governments of the listing and of the areas that are essential to the species' conservation, the Court found that there may be Federal activity on the private property in the future, even though no such activity may be occurring there at the present (*Id.* at 1285–88).

On August 10, 1998, the Court ordered us to publish proposed critical habitat designations or non-designations for at least 100 species by November 30, 2000, and to publish proposed designations or non-designations for the remaining 145 species by April 30, 2002 (24 F. Supp. 2d 1074).

At the time we listed *Labordia triflora* (64 FR 48307) we determined that designation of critical habitat was prudent and that we would develop critical habitat designations for this taxon, along with nine others, at the same time we developed designations for the 245 Hawaiian plant species. This timetable was challenged in *Conservation Council for Hawaii* v. *Babbitt.* Civ. No. 99–00283 HG (D. Haw. Aug. 19, 1999, Feb. 16, 2000, and March 28, 2000). The Court agreed, however, that it was reasonable for us to integrate these ten Maui Nui (Maui, Lanai, Molokai, and Kahoolawe) plant taxa into the schedule established for designating critical habitat for the other 245 Hawaiian plants, and ordered us to publish proposed critical habitat designations for the ten Maui Nui species by November 30, 2000, and to publish final critical habitat designations by November 30, 2001. This notice responds to the Court orders.

On November 30, 1998, we published a notice in the **Federal Register** requesting public comments on our reevaluation of whether designation of critical habitat is prudent for the 245 Hawaiian plants at issue (63 FR 65805). The comment period closed on March 1, 1999, and was reopened from March 24, 1999, to May 24, 1999 (64 FR 14209). We received over 100 responses from individuals, non-profit organizations, the State of Hawaii's Division of Forestry and Wildlife, county governments, and Federal agencies (U.S. Department of Defense—Army, Navy, Air Force). Only a few responses offered information on the status of individual plant species or on current management actions for one or more of the 245 Hawaiian plants. While many of the respondents expressed support for the designation of critical habitat for 245 Hawaiian plants, more than 80 percent opposed the designation of critical habitat for these plants. In general, these respondents opposed designation because they believed it will cause economic hardship, chill cooperative projects, polarize relationships with hunters, or potentially increase trespass or vandalism on private lands. In addition, commenters also cited a lack of information on the biological and ecological needs of these plants which, they suggested, may lead to designation based on guesswork. The respondents who supported the designation of critical habitat cited that designation will: provide a uniform protection plan for the Hawaiian Islands; promote funding for management of these plants; educate the public and State government; and protect partnerships with landowners and build trust.

On February 18, 2000, we mailed letters to over 100 landowners on the island of Molokai requesting any information considered germane to the management of any of the 255 plants on his/her property, and containing a copy of the November 30, 1998, **Federal Register** notice, a map showing the general locations of the plants that may be on his/her property, and a handout containing general information on critical habitat. We received 25 written responses to our landowner mailing with varying types of information on their current land management activities. Some landowners reported that they are not conducting conservation management actions on their lands while others provided information on various activities such as fencing, weeding, ungulate control, hunting, control of human access, scientific research, fire control, and propagation and/or planting of native plants. We held one open house on the island of Molokai, at the Mitchell Pauole Community Center, on March 15, 2000, to meet one-on-one with local landowners and other interested members of the public. A total of 14 people attended the open house. In addition we met with Maui County Division of Forestry and Wildlife staff and discussed their management activities on Molokai.

On November 7, 2000, we published the first of the court-ordered prudency determinations and proposed critical habitat designations for Kauai and Niihau plants (65 FR 66808). The prudency determinations and proposed critical habitat designations for Maui and Kahoolwe plants were published on December 18, 2000 (65 FR 79192), and for Lanai plants on December 27, 2000. In those proposals we determined that critical habitat was prudent for 19 species (*Adenophorus periens, Alectryon macrococcus, Centarium sebaeoides, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Diellia erecta, Hedyotis mannii, Hesperomannia arborescens, Ischaemum byrone, Melicope mucronulata, Neraudia sericea, Peucedanum sandwicense, Plantago princeps, Platanthera holochila, Schiedea nuttallii, Sesbania tomentosa, Spermolepis hawaiiensis, Vigna-owahuensis,* and *Zanthoxylum hawaiiense*) that occur on Molokai as well as on Kauai, Niihau, Maui, Kahoolawe, and/or Lanai.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as ''* * * the direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any

of those physical or biological features that were the basis for determining the habitat to be critical.'' Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not afford any additional protections under the Act against such activities.

In order to be included in a critical habitat designation, the habitat must first be ''essential to the conservation of the species.'' Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Section 4 requires that we designate critical habitat at the time of listing and based on what we know at the time of the designation. When we designate critical habitat at the time of listing or under short court—ordered deadlines, we will often not have sufficient information to identify all areas of critical habitat. We are required, nevertheless, to make a decision and thus must base our designations on what, at the time of designation, we know to be critical habitat.

Within the geographic area occupied by the species, we will designate only areas currently known to be essential. Essential areas should already have the features and habitat characteristics that are necessary to sustain the species. We will not speculate about what areas might be found to be essential if better information became available, or what areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then the area should not be included in the critical habitat designation. Within the geographic area occupied by the species, we will not designate areas that do not now have the primary constituent elements , as defined at 50 CFR 424.12(b), that provide essential life cycle needs of the species.

Our regulations state that, ''The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.'' (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species require designation of critical habitat outside of occupied areas, we will not designate critical habitat in areas outside the geographic area occupied by the species.

The Service's Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (Vol.59, p. 34271), provides criteria, establishes procedures, and provides guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. It requires Service biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by states and counties, scientific status surveys and studies, and biological assessments or other unpublished materials (*i.e.*, gray literature).

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, all should understand that critical habitat designations do *not* signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

A. Prudency Redeterminations

As previously stated, designation of critical habitat is not prudent when one or both of the following situations exist: (i) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species; or (ii) such designation of critical habitat would not be beneficial to the species (50 CFR 424.12(a)(1)).

To determine whether critical habitat would be prudent for each of the 20 species at issue, we analyzed the potential threats and benefits for each species in accordance with the court's order. Due to low numbers of individuals and/or populations and their inherent immobility, the 20 plants may be vulnerable to unrestricted collection, vandalism, or disturbance. We have examined the evidence currently available for each of these taxa and have found specific evidence of taking, vandalism, collection or trade for one species of *Pritchardia*, the native palm on Molokai. At the time of listing, we determined that designation of critical habitat was not prudent for *Pritchardia munroi* because it would increase the degree of threat from vandalism or collecting, and would provide no benefit (57 FR 46325). Recently we received information on the commercial trade in palms conducted through the internet (Grant Canterbury, USFWS, *in litt.* 2000). Several nurseries advertise and sell seedlings and young plants, including 13 species of Hawaiian *Pritchardia*. Seven of these species are federally protected, including *Pritchardia munroi*. In light of this information, we believe that designation of critical habitat would likely increase the threat from vandalism or collection to this species of *Pritchardia* on Molokai. First, it is easy to identify, and second, it may be attractive to collectors of rare palms either for their personal use or to trade or sell for personal gain (Johnson 1996). We believe that the evidence shows that this species of palm may be attractive to such collectors. The final listing rule for this species contained only general information on its distribution, but the publication of precise maps and descriptions of critical habitat in the **Federal Register** would make this species more vulnerable to incidents of vandalism or collection, and therefore, make recovery more difficult and contribute to the decline of this species (57 FR 46325).

In addition, we believe that designation would not provide significant benefits that would outweigh these increased risks. First, *Pritchardia munroi* does not occur on Federal land. The private land where it is found is zoned for agriculture, though the single tree has been fenced (HINHP Database 2000). In addition, this species is found in a small ravine in an area that is remote and inaccessible to standard vehicles. It is, therefore, unlikely that the land on which it is found will be developed. Since there does not appear to be any actions in the future that would involve a Federal agency, designation of critical habitat would not provide any additional protection to the species that it does not already have through listing alone. If however in the future any Federal involvement did occur, such as through the permitting process or funding by the U.S. Department of Agriculture, the U.S. Department of Interior, the Corps through section 404 of the Clean Water Act, the U.S. Federal Department of Housing and Urban Development or the Federal Highway Administration, the actions would be subject to consultation under section 7 of the Act.

We acknowledge that critical habitat designation, in some situations, may provide some value to the species, for example, by identifying areas important for conservation and calling attention to those areas in need of special protection. However, for this species, we believe that the benefits of designating critical habitat do not outweigh the potential increased threats from vandalism or collection. Given all of the above considerations, we propose that designation of critical habitat for *Pritchardia munroi* is not prudent.

We examined the evidence for the other 19 taxa and have not, at this time, found specific evidence of taking, vandalism, collection or trade of these taxa or of similarly situated species. Consequently, while we remain concerned that these activities could potentially threaten these 19 plant species in the future, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and the court's discussion of these regulations, we do not find that any of these species are currently threatened by taking or other human activity, which threats would be exacerbated by the designation of critical habitat.

In the absence of finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. The potential benefits include: (1) Triggering section 7 consultation in new areas where it would not otherwise occur because, for example, it is or has become unoccupied or the occupancy is in question; (2) focusing conservation activities on the most essential areas; (3) providing educational benefits to State or county governments or private entities; and, (4) preventing people from causing inadvertent harm to the species.

In the case of these 19 species, there would be some benefits to critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely affects critical habitat. At least four of these species are reported from Federal lands or lands under Federal jurisdiction (*Canavalia molokaiensis, Centaurium sebaeoides, Peucedanum sandwicense,* and *Tetramalopium rockii*) (see Table 3), where most actions would be subject to section 7. While a majority of these species are located exclusively on non-Federal lands with limited Federal activities, there could be Federal actions affecting these lands in the future. While a critical habitat designation for habitat currently occupied by these species would be unlikely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat were designated. There also may be some educational or informational benefits to the designation of critical habitat. Educational benefits include the notification of land owners, land managers, and the general public of the importance of protecting the habitat of these species and dissemination of information regarding their essential habitat requirements.

Therefore, we propose that critical habitat is prudent for 19 plant species: *Bidens wiebkei, Brighamia rockii, Canavalia molokaiensis, Clermontia oblongifolia* ssp. *brevipes, Cyanea dunbarii, Cyanea mannii, Cyanea procera, Hibiscus arnottianus* ssp. *immaculatus, Lysimachia maxima, Mariscus fauriei, Marsilea villosa, Melicope reflexa, Phyllostegia mannii, Schiedea lydgatei, Schiedea sarmentosa, Silene alexandri, Silene lanceolata, Stenogyne bifida,* and *Tetramolopium rockii.*

B. Primary Constituent Elements

In accordance with section 4(b)(2) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features that are essential to the conservation of the species and that may require special management considerations or protection. Such requirements include, but are not limited to, space for individual and population growth, and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring, germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

As stated above in the discussion about each of the 32 species, very little is known about the specific physical and biological requirements of these species. As such, we are proposing to define the primary constituent elements on the basis of general habitat features of the areas in which the plant species are currently found, such as the type of plant community and their physical location (*e.g.*, steep rocky cliffs, talus slopes, stream banks) and elevation. Therefore, the descriptions of the physical elements of the locations of each of these species and the plant community associated with the species, as described in the **SUPPLEMENTARY INFORMATION:** *Discussion of the Plant Taxa* section above, constitute the primary constituent elements for these species.

C. Methods for Selection of Areas for Proposed Critical Habitat Designations

Critical habitat is defined as the specific areas within the geographic area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of the Act, on which are found those physical and biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection (16 U.S.C. 1532(5)(A)(i)). As discussed above, very little is known about the specific physical and biological requirements of most of these 40 species. Therefore, we have defined primary constituent elements based on the general habitat features of the areas in which they currently occur such as the type of plant community the plants are growing in, their physical location (*e.g.*, steep rocky cliffs, talus slopes, stream banks), and elevation. The areas we are proposing to designate as critical habitat provide some or all of the habitat components

essential for the conservation of the plant species.

Critical habitat may also include areas outside the geographic area presently occupied by a species upon determination that such areas are essential to the conservation of the species (16 U.S.C. 1532 (5)(A)(ii)). This may include, for example, potentially suitable unoccupied habitat that is important to the recovery of the species. However, we have not included such areas in the proposed designations for these species because of our limited knowledge of the historical range (the geographical area outside the area presently occupied by the species), and our lack of more detailed information on the specific physical or biological features essential for the conservation of the species that would be needed, for instance, to determine where to reintroduce a species.

The historical (pre-1970) or even post-1970 records for a species may be based on herbarium specimens that contain only the most rudimentary collection information, such as only the name of the island from which the specimen was collected or a general place name (*e.g.,* East Molokai, Kamakou, Pelekunu). In the main Hawaiian Islands, climatic and ecological conditions such as rainfall, elevation, slope, aspect, etc., may vary dramatically within a relatively short distance. Therefore a simple place name does not provide adequate information on the physical and biological features that may have occurred there or may occur there now.

The unpredictable distribution of Hawaiian plant species also makes it difficult to designate potentially suitable unoccupied habitat. For example, currently a species may be known from northern and southern (or eastern and western) locations on an island but not from intervening locations in similar habitat. Based on the best available information, we are unable to determine whether a species once occurred in the intervening areas and disappeared from there prior to Polynesian or European times (thus never having been collected or documented there) or simply never occurred there.

We consider reintroduction (the planting of propagated individuals or seedlings into an area) to be an acceptable method to try to achieve plant species recovery. However, native plant reintroductions are difficult and successful efforts are not common. We do not know enough about these 40 species to identify areas where reintroductions are likely to be successful. We will continue to support experimental efforts to reintroduce species that may eventually provide us with additional information on the physical and biological features essential to the conservation of these species, and thus, may eventually result in identification of unoccupied habitat for future designation.

As required by the Act and regulations (section 4 (b) (2) and 50 CFR 424.12) we used the best scientific information available to determine areas that contain those physical and biological features that are essential for the survival and recovery of the 40 plant species. This information included site-specific species information from the Hawaii Natural Heritage Program (HINHP) and our rare plant database, species information from the Center for Plant Conservation's (CPC) rare plant monitoring database housed at the University of Hawaii's Lyon Arboretum, recent biological surveys and reports, our recovery plans for 39 of these 40 species, discussions with botanical experts, and recommendations (see below) from the Hawaii and Pacific Plant Recovery Coordinating Committee (HPPRCC) (CPC, *in litt.* 1999; HINHP Database 2000, HPPRCC 1998, USFWS 1995a, 1995b, 1996a, 1996b, 1996c, 1997, 1998a, 1998b, 1998c; 1999).

In 1994, the HPPRCC initiated an effort to identify and map habitat it believed to be important for the recovery of 282 endangered and threatened Hawaiian plant species. The HPPRCC identified these areas on most of the islands in the Hawaiian chain, and in 1999 we published them in our *Recovery Plan for the Multi-Island Plants* (USFWS 1999). The HPPRCC expects there will be subsequent efforts to further refine the locations of important habitat areas and that new survey information or research findings may also lead to additional refinements (HPPRCC 1998).

Because the HPPRCC identified essential habitat areas for all listed, proposed, and candidate plant species and evaluated species of concern to determine if essential habitat areas would provide for their habitat needs as well, the HPPRCC's mapping of habitat is distinct from the regulatory designation of critical habitat, as defined by the Act. While these habitat maps are a planning tool to focus conservation efforts on the areas that may be most important to the conservation of Hawaii's listed plant species, as well as other plant species of concern, it does not substitute for the more exacting regulatory process of designating critical habitat. Therefore, the proposed critical habitat designations in this proposed rule do not include all of the habitat, particularly unoccupied habitat, identified by the HPPRCC.

For these plant species from Molokai, currently occupied habitat was examined and critical habitat boundaries were delineated in such a way that locations with a high density of endangered and threatened plants could be depicted clearly (multi-species units). However, these multi-species critical habitat units are not homogenous or uniform in nature. Critical habitat units often encompassed a number of plant community types.

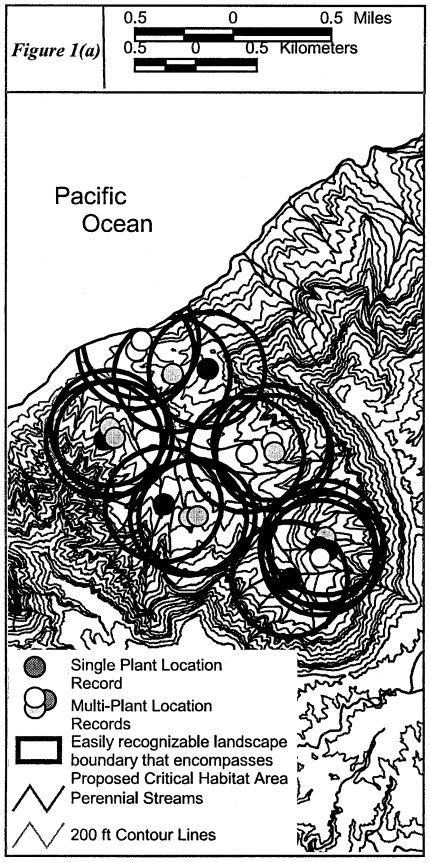
To examine plant occurrences, every current (post-1970) location of every species was delineated within a 536 m (1,760 ft) radius circle with an additional 50 m (164 ft) added to the radius of each location, in order to insure enough area to provide for the proper ecological functioning of the habitat immediately supporting the plant, for a total of 586 m (1,924 ft) radius. The 536 m (1,760 ft) radius is consistent with the accuracy of the mapped locations of the plant(s), and is based on the standard mapping methodology for rare species used by the HINHP (1996). The additional 50 m (164 ft) is consistent with the guidelines identified in the recovery plans for these species for minimum-sized exclosures for rare plants (USFWS 1995a, 1995b, 1996a, 1996b, 1996c, 1997, 1998a, 1998b, 1998c, 1999). In cases where there were isolated species locations, a circular area with a radius of roughly 586 m (1,924 ft) is proposed as critical habitat (HINHP 1996; USFWS 1995a, 1995b, 1996a, 1996b, 1996c, 1997, 1998a, 1998b, 1998c, 1999).

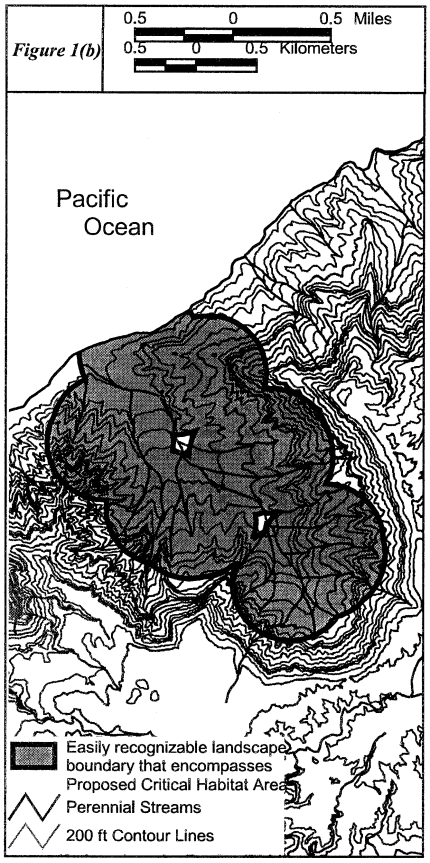
The manner in which we delineated each multi-species proposed critical habitat unit is described below.

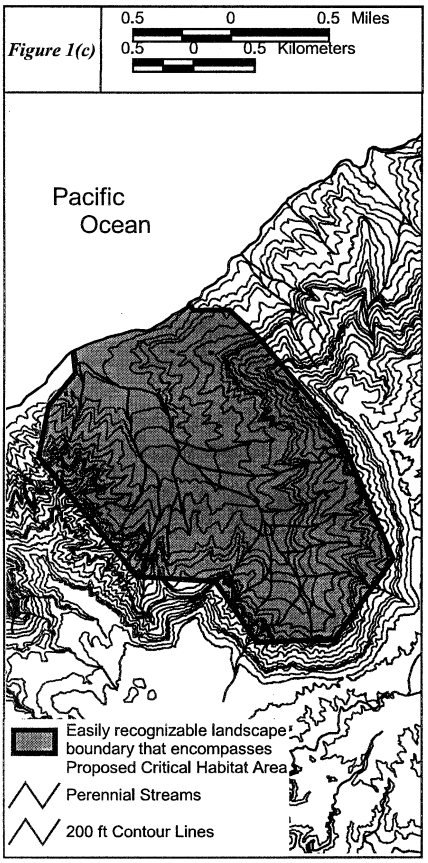
—Known current locations of each species were delineated using the guidelines explained above (Figure 1(a)).

—The perimeter boundaries of individual circular areas were connected to form unit area boundaries (Figure 1(b)).

—Unit area boundaries were delineated to follow significant topographic features (50 CFR 424.12(c)) such as coastlines, ridgelines, and valleys (Figure 1(c)).







These delineation methods were used to facilitate identification of boundary lines and to aid in implementation of on-the-ground conservation measures. In delineating critical habitat units we made an effort to avoid developed areas such as towns, agricultural lands, and other lands unlikely to contribute to the conservation of these 32 species.

Within the critical habitat boundaries, adverse modification generally would only occur if the primary constituent elements are affected. Therefore, not all activities within critical habitat would trigger an adverse modification conclusion. Existing features and structures within proposed areas, such as buildings, roads, aqueducts, telecommunications equipment, arboreta and gardens, heiaus (indigenous places of worship or shrines), and other man-made features, do not contain, and are not likely to develop, constituent elements. Therefore, unless a Federal action related to such features or structures indirectly affected nearby habitat containing the primary constituent elements, operation and maintenance of such features or structures generally would not be impacted by the designation of critical habitat.

All currently occupied sites containing one or more of the primary constituent elements considered essential to the conservation of these 40 plant species were examined to determine if additional special management considerations or protection are required above those currently provided. We reviewed all available management information on these plants at these sites including published reports and surveys; annual performance reports; forestry management plans; grants; memoranda of understanding and cooperative agreements; State of Hawaii, Division of Forestry and Wildlife (DOFAW) planning documents; internal letters and memos; biological assessments and environmental impact statements; and, section 7 consultations. Additionally, each public (*i.e.,* any county, state, or Federal government office holdings) and private landowner on Molokai with a known occurrence of one of the 40 species was contacted by mail. We reviewed all information received during the public comment period, in response to our landowner mailing and at an open house held in Kaunakakai, Molokai on March 15, 2000. When clarification was required on the information provided to us, we followed up with a telephone contact.

Pursuant to the definition of critical habitat in section 3 of the Act, any area so designated must also require ''special managment considerations or protections.'' Adequate special management or protection is provided by a legally operative plan that addresses the maintenance and improvement of the essential elements and provides for the long-term conservation of the species. The Service considers a plan adequate when it meets all of the following three criteria: (1) The plan provides a conservation benefit to the species (*i.e.,* the plan must maintain or provide for an increase in the species' population or the enhancement or restoration of its habitat within the area covered by the plan; (2) the plan provides assurances that the management plan will be implemented (*i.e.,* those responsible for implementing the plan are capable of accomplishing the objectives, have an implementation schedule and/or have adequate funding to implement the management plan); and, (3) the plan provides assurances the conservation plan will be effective (*i.e.,* it identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan and achieve the plan's goals and objectives). If an area is covered by a plan that meets these criteria, it does not constitute critical habitat as defined by the Act.

In determining and weighing the relative significance of the threats that would need to be addressed in

management plans or agreements, we considered the following:

—The factors that led to the listing of the species, as described in the final rules for listing each of the species. For all or nearly all endangered and threatened plants in Hawaii, the major threats include adverse impacts due to non-native plant and animal species. Direct browsing, digging, and trampling by ungulates, including pigs, goats, cattle, sheep, and deer, and direct competition from non-native plants have led to the decline of Hawaii's native flora (Cuddihy and Stone 1990; Loope 1998; Scott *et al.* 1986; Smith 1985; Stone 1985; USFWS 1995a, 1995b, 1996a, 1996b, 1996c, 1997, 1998a, 1998b, 1998c, 1999; Vitousek 1992; Wagner *et al.* 1985). Ungulate activity in most areas results in an increase of non-native plants because most of these non-native plants are able to colonize newly disturbed areas more quickly and effectively than Hawaii's native plants (Cuddihy and Stone 1990; Mack 1992; Scott *et al.* 1986; Smith 1985; Tunison *et al.* 1992; USFWS 1995a, 1995b,1996a, 1996b, 1996c, 1997, 1998a, 1998b, 1998c; 1999).

—The recommendations from the HPPRCC in their 1998 report to the Service (''Habitat Essential to the Recovery of Hawaiian Plants''). As summarized in this report, recovery goals for endangered Hawaiian plant species cannot be achieved with ungulates (*e.g.,* pigs, goats, deer, and sheep) present in Essential Habitat Areas.

—The management actions needed for assurance of survival and ultimate recovery of Hawaii's endangered plants. These actions are described in the Service's recovery plans for 39 of the 40 species (USFWS 1995a, 1995b, 1996a, 1996b, 1996c, 1997, 1998a, 1998b, 1998c, 1999), in the 1998 HPPRCC report to the Service (HPPRCC 1998), and in various other documents and publications relating to plant conservation in Hawaii (Cuddihy and Stone 1990; Mueller-Dombois 1985; Smith 1985; Stone 1985; Stone *et al.* 1992). These actions include, but are not limited to, the following: (1) Feral ungulate control; (2) non-native plant control; (3) rodent control; (4) invertebrate pest control; (5) fire control; (6) maintenance of genetic material of the endangered and threatened plants species; (7) propagation; reintroduction, and/or augmentation of existing populations into areas deemed essential for the recovery of these species; (8) ongoing management of the wild, outplanted, and augmented populations; (9) habitat management and restoration in areas deemed essential for the recovery of these species; and (10) monitoring of the wild, outplanted, and augmented populations.

In general, taking all of the above recommended management actions into account, the following management actions are ranked in order of importance. It should be noted, however, that, on a case-by-case basis, some of these actions may rise to a higher level of importance for a particular species or area, depending on the biological and physical requirements of the species and the location(s) of the individual plants:

—Feral ungulate control;
—Non-native plant control;
—Rodent control;
—Invertebrate pest control;
—Fire control;
—Maintenance of genetic material of the endangered and threatened plant species;
—Propagation; reintroduction and/or augmentation of existing populations into areas deemed essential for the recovery of the species;
—Ongoing management of the wild, outplanted and augmented populations;
—Maintenance of natural pollinators and pollinating systems, when known;
—Habitat management and restoration in areas deemed essential for the recovery of the species;
—Monitoring of the wild, outplanted and augmented populations;
—Rare plant surveys;
—Control of human activities/access.

As shown in Table 3, these 40 species of plants occur on Federal, State, and private lands on the island Molokai. In response to our two public notices, letters to the landowners, open houses, and meetings, along with information in our files, we received varying amounts and various types of information on the conservation management actions occurring on these lands. Some landowners reported that they are not conducting conservation management actions on their lands while others provided information on various activities such as fencing, weeding, ungulate control, hunting, control of human access, scientific research, fire control, and propagation and/or planting of native plants.

Four species (*Canavalia molokaiensis, Centaurium sebaeiodes, Peucedanum sandwicense, Tetramolopium rockii*) are reported from Kalaupapa National Historical Park, Molokai (GDSI 2000; HINHP Database 2000). This national historical park, which is found on state-owned land, is managed by the National Park Service under a cooperative agreement between the State of Hawaii and the National Park Service (Gary Barbano, National Park Service, pers. comm. 2000). Although the National Park Service conducts some conservation management actions on these lands and provides access to others who are conducting such activities, there are no comprehensive management plans for the long-term conservation of endangered and threatened plants on these lands and no assurances that management actions will be implemented. Therefore, we can not at this time find that management on this land under Federal jurisdiction is adequate to preclude a proposed designation of critical habitat.

Twenty-three species (*Adenophorous periens, Alectryon macrococcus, Brighamia rockii, Canavalia molokaiensis, Clermontia oblongifolia ssp. brevipes, Ctenitis squamigera, Cyanea mannii, Cyanea procera, Diellia erecta, Hedyotis mannii, Lysimachia maxima, Marsilea villosa, Melicope mucronulata, Peucedanum sandwicense, Phyllostegia mannii, Plantago princeps, Platanthera holochila, Schiedea nuttallii, Schiedea sarmentosa, Stenogyne bifida, Tetramolopium rockii, Vigna o-wahuense, Zanthoxylum hawaiiense*) are reported from The Nature Conservancy's Moomomi, Kamakou, and Pelekunu Preserves which are located on the northwest coast (Moomomi) and in the East Molokai mountains (Kamakou and Pelekunu) (GDSI 2000; HINHP database 2000; The Nature Conservancy of Hawaii (TNCH) 1993, 1994a, 1994b, 1997, 1999a, 1999b, 1999c). Two of the preserves (Moomomi and Pelekunu) are owned by The Nature Conservancy while Kamakou was established by a grant of perpetual conservation easement from the private landowner to TNCH. All three preserves are included in the state's Natural Area Partnership (NAP) program which provides matching funds for the management of private lands that have been permanently dedicated to conservation (TNCH 1993, 1994a, 1994b, 1997, 1999a, 1999b, 1999c).

Under the NAP program, the State of Hawaii provides matching funds on a two-for-one basis for management of private lands dedicated to conservation. In order to qualify for this program, the land must be dedicated in perpetuity through transfer of fee title or a conservation easement to the State or a cooperating entity. The land must be managed by the cooperating entity or a

qualified landowner according to a detailed management plan approved by the Board of Land and Natural Resources. Once approved, the six-year partnership agreement between the State and the managing entity is automatically renewed each year so that there is always six years remaining in the term, although the management plan is updated and funding amounts are re-authorized by the board at least every six years. By April 1 of any year the managing partner may notify the state that it does not intend to renew the agreement; however, in such case the partnership agreement remains in effect for the balance of the existing six year term, and the conservation easement remains in full effect in perpetuity. The conservation easement may be revoked by the landowner only if state funding is terminated without the concurrence of the landowner and cooperating entity. Prior to terminating funding, the State must conduct one or more public hearings. The NAP program is funded through real estate conveyance taxes which are placed in a Natural Area Reserve Fund. Participants in the NAP program must provide annual reports to the Department of Land and Natural Resources (DLNR) and DLNR makes annual inspections of the work in the reserve areas. *See* Haw. Rev. Stat. §§ 195–1–195–11; Hawaii Administrative Rules § 13–210.

Management programs within the preserves are documented in long-range management plans and yearly operational plans. These plans detail management measures that protect, restore, and enhance the rare plants and their habitats within the preserves and in adjacent areas (TNCH 1993, 1994a, 1994b, 1997, 1999a, 1999b, 1999c). These management measures address factors which led to the listing of the 23 species including control of non-native species of ungulates, rodents, weeds, and fire. In addition, habitat restoration and monitoring are also included in these plans.

Kamakou Preserve

The primary management goals within Kamakou Preserve are to (1) prevent degradation of native forest by reducing feral ungulate damage; (2) improve or maintain the integrity of native ecosystems in selected areas of the preserve by reducing the effects of non-native plants; and (3) suppress wildfires.

Specific management actions to address feral ungulate impacts include the construction of fences, including strategic fencing (fences placed in proximity to natural barriers such as cliffs); staff hunting; and implementation of organized hunting through the Molokai Hunters Working Group. By monitoring ungulate activity within the preserve, the staff are able to direct hunters to problem areas, thereby increasing hunting success. If increased hunting pressure does not reduce feral ungulate activity in the preserve, the preserve staff will work with the hunting group to identify and implement alternative methods (TNCH 1994, 1999).

The non-native plant control program within Kamakou Preserve focuses on habitat modifying non-native plants (weeds) and prioritizes them according to the degree of threat to native ecosystems. A weed priority list has been compiled for the preserve, and control and monitoring of the highest priority species are on-going. Weeds are controlled manually, chemically, or a through a combination of both. Preventative measures (prevention protocol) are required by all (volunteers, riders to the Preserve and hiking participants) who enter the Preserve. This protocol includes such things as brushing footgear before entering the Preserve to remove seeds of non-native plants. In addition, the staff are actively promoting awareness of alien plants in Hawaii and their impacts to native ecosystems in the local communities on Molokai through public education at schools, fairs, and displays at the airport.

Wildfire presuppression and response plans are coordinated with the Maui County Fire Department and the DOFAW Maui District Forester. The Kamakou Wildfire Management Plan is reviewed annually with the fire department and updated as necessary (TNCH 1994, 1999). In the event of fires in areas bordering the preserve staff from Kamakou assist with fire suppression in concert with DOFAW staff.

Natural resource monitoring and research addresses the need to track the biological and physical resources of the preserve and evaluate changes in these resources to guide management programs. Vegetation is monitored throughout the preserve to document long term ecological changes; rare plant species are monitored to assess population status; and, following fires on the boundaries or within the preserve, burned areas are assessed for ingress of weeds and recovery of native plants. In addition, the preserve staff provide logistical support to scientists and others who are conducting research within the preserve.

In addition, TNCH, DOFAW, USFWS and other Federal agencies including the National Park Service, and neighboring landowners of East Molokai's watershed areas have formed a partnership (East Molokai Watershed Partnership) through a memorandum of understanding to ensure the protection of over 22,000 acres on the island. While the partnership is still in its infancy, the members have agreed, in principle, to participate in cooperative management activities within the East Molokai watershed because they believe that effective management is best achieved through the coordinated actions of all major landowners in the watershed.

Moomomi Preserve

The primary management goals within Moomomi Preserve are to (1) prevent degradation of natural communities by reducing feral ungulate damage; and (2) improve or maintain the integrity of native ecosystems in selected areas of the preserve by reducing the effects of non-native plants (TNCH 1999).

Specific management actions to address feral ungulate impacts include the construction of a perimeter fence to keep out livestock and an agreement with the neighboring landowner, Molokai Ranch, in which they will remove livestock within 48 hours of ingress. Analysis of the monitoring data collected within the axis deer exclosure will guide future management strategies (TNCH 1999).

As with the Kamakou Preserve, the non-native plant control program within Moomomi Preserve focuses on habitat modifying non-native plants (weeds) and prioritizes them according to the degree of threat to native ecosystems. A weed priority list has been compiled for the preserve, and control and monitoring of the highest priority species are on-going. Weeds are controlled manually, chemically, or a through a combination of both. Preventative measures (prevention protocol) are required by all (volunteers, riders to the Preserve and hiking participants) who enter the Preserve. This protocol includes such things as brushing footgear before entering the Preserve to remove seeds of non-native plants. In addition, the staff are actively promoting awareness of alien plants in Hawaii and their impacts to native ecosystems in the local communities on Molokai through public education at schools, fairs, and displays at the airport (TNCH 1999).

Natural resource monitoring and research addresses the need to track the biological and physical resources of the preserve and evaluate changes in these resources to guide management programs. Vegetation is monitored

throughout the preserve to document long term ecological changes; rare plant species are monitored to assess population status. In addition, the preserve staff provide logistical support to scientists and others who are conducting research within the preserve (TNCH 1999).

Pelekunu Preserve

The primary management goals within Pelekunu Preserve are to (1) prevent degradation of native forest by reducing feral ungulate damage; and (2) improve or maintain the integrity of native ecosystems in selected areas of the preserve by reducing the effects of non-native plants.

Specific management actions to address feral ungulate impacts include staff hunting; implementation of organized hunting through the Molokai Hunters Working Group; and quarterly transect and aerial monitoring of ungulate activity. By monitoring ungulate activity within the preserve, the staff are able to direct hunters to problem areas, thereby increasing hunting success. If increased hunting pressure does not reduce feral ungulate activity in the preserve, the preserve staff work with the hunting group to identify and implement alternative methods (TNCH 1999).

As with the other two preserves on Molokai, the non-native plant control program within Pelekunu Preserve focuses on habitat modifying non-native plants (weeds) and prioritizes them according to the degree of threat to native ecosystems. A weed priority list has been compiled for the preserve, and control and monitoring of the highest priority species are on-going. Weeds are controlled manually, chemically, or a through a combination of both. Preventative measures (prevention protocol) are required by all (volunteers, riders to the Preserve and hiking participants) who enter the Preserve. This protocol includes such things as brushing footgear before entering the Preserve to remove seeds of non-native plants. In addition, the staff are actively promoting awareness of alien plants in Hawaii and their impacts to native ecosystems in the local communities on Molokai through public education at schools, fairs, and displays at the airport.

Natural resource monitoring and research addresses the need to track the biological and physical resources of the preserve and evaluate changes in these resources to guide management programs. Vegetation is monitored throughout the preserve to document long term ecological changes; and rare plant species are monitored to assess population status. In addition, the preserve staff provide logistical support to scientists and others who are conducting research within the preserve.

Because these plants and their habitats within the preserves receive long-term protection and management these lands are not in need of special management considerations or protection. Therefore, we have determined that the private lands within Moomomi Preserve, Kamakou Preserve, and Pelekunu Preserve do not meet the definition of critical habitat in the Act, and we are not proposing designation of these lands as critical habitat. Should the status of these reserves change, for example by non-renewal of a partnership agreement or termination of NAP funding, we will reconsider whether it then meets the definition of critical habitat. If so, we have the authority to proposed to amend critical habitat to include such area at that time. 50 CFR 424.12(g). Critical habitat is not proposed for six species, *Adenophorous periens, Hedyotis mannii, Phyllostegia mannii, Plantago princeps, Platanthera holochila,* and *Schiedea nuttallii,* that are currently only found in Kamakou Preserve and for one species, *Lysimachia maxima,* that is only found in Pelekunu Preserve.

For the 40 species in this proposed rule for which primary constituent elements are known, we believe that Kamakou Preserve, Moomomi Preserve, and Pelekunu Preserve are the only potential critical habitat areas on Molokai at this time that do not require special management considerations or protection. However, we are specifically soliciting comments on the appropriateness of this approach.

If we receive information during the public comment period that any of the lands within the proposed designations are actively managed to promote the conservation and recovery of the 40 listed species at issue in this proposed designation, in accordance with long term conservation management plans or agreements, and there are assurances that the proposed management actions will be implemented and effective, the Service can consider this information when making a final determination of critical habitat.

In addition, we are aware that other private landowners and the State of Hawaii are considering the development of land management plans or agreements that may promote the conservation and recovery of endangered and threatened plant species on the island of Molokai. The Service supports these efforts and provides technical assistance whenever possible. We are also soliciting comments on whether future development and approval of conservation measures (*e.g.,* Conservation Agreements, Safe Harbor Agreements) should trigger revision of designated critical habitat to exclude such lands and, if so, by what mechanism.

In summary, the proposed critical habitat areas described below constitute our best assessment of the physical and biological features needed for the conservation of 32 plant species (*Alectryon macrococcus, Bidens wiebkei, Brighamia rockii, Canavalia molokaiensis, Centarium sebaeoides, Clermontia oblongifolia* ssp. *brevipes, Ctenitis squamigera, Cyanea dunbarii, Cyanea grimesiana* ssp. *grimesiana, Cyanea mannii, Cyanea procera, Diellia erecta, Hesperomannia arborescens, Hibiscus arnottianus* ssp. *immaculatus, Ischaemum byrone, Labordia triflora, Mariscus fauriei, Marsilea villosa, Melicope mucronulata, Melicope reflexa, Neraudia sericea, Peucedanum sandwicense, Schiedea lydgatei, Schiedea sarmentosa, Sesbania tomentosa, Silene alexandri, Silene lanceolata, Spermolepis hawaiiensis, Stenogyne bifida, Tetramolopium rockii, Vigna o-wahuensis,* and *Zanthoxylum hawaiiense*) and the special management needs of the species, and are based on the best scientific and commercial information available and described above. We put forward this proposal acknowledging that we have incomplete information regarding many of the primary biological and physical requirements for these species. However, both the Act and the relevant court orders require us to proceed with designation at this time based on the best information available. As new information accrues, we may reevaluate which areas warrant critical habitat designation. We anticipate that comments received through the public review process and from any public hearings, if requested, will provide us with additional information to use in our decision making process and in assessing the potential impacts of designating critical habitat for one or more of these species.

The approximate areas of proposed critical habitat, by land ownership, are shown in Table 5. Proposed critical habitat includes habitat for 32 species predominantly on the east side of Molokai. Lands proposed as critical habitat have been divided into 28 units.

A brief description of each unit is presented below.

Descriptions of Critical Habitat Units

Molokai A

The proposed unit Molokai A provides critical habitat for one species: *Marsilea villosa.* This unit contains a total of 73 hectares (ha) (180 acres (ac)). The land contained within this unit is owned by a private entity. The natural feature found in this unit is the western most portion of Kamakaipo Gulch.

Molokai B

The proposed unit Molokai B provides critical habitat for one species: *Marsilea villosa.* This unit contains a total of 49 ha (121 ac). The land contained within this unit is owned by the State. The natural features found in this unit are Ilio Point, Kawaihau and Keonehanau.

TABLE 5.—APPROXIMATE PROPOSED CRITICAL HABITAT AREA BY UNIT AND LAND OWNERSHIP, MOLOKAI, MAUI COUNTY, HAWAII

Unit name	State	Private	Federal	Total
Molokai A	N/A	73 ha (180 ac)	N/A	73 ha (180 ac)
Molokai B	49 ha (121 ac)	N/A	N/A	49 ha (121 ac)
Molokai C	N/A	254 ha (628 ac)	N/A	254 ha (628 ac)
Molokai D	213 ha (526 ac)	95 ha (235 ac)	N/A	308 ha (761 ac)
Molokai E	72 ha (178 ac)	N/A	N/A	72 ha (178 ac)
Molokai F	77 ha (190 ac)	N/A	N/A	77 ha (190 ac)
Molokai G	N/A	649 ha (1,604 ac)	N/A	649 ha (1,604 ac)
Molokai H	637 ha (1,574 ac)	302 ha (746 ac)	N/A	939 ha (2,320 ac)
Molokai I	204 ha (504 ac)	N/A	N/A	204 ha (504 ac)
Molokai J	298 ha* (736 ac)	416 ha (1,028 ac)	N/A	714 ha (1,764 ac)
Molokai K	36 ha (89 ac)	91 ha (225 ac)	N/A	127 ha (314 ac)
Molokai L	N/A	137 ha (339 ac)	N/A	137 ha (339 ac)
Molokai M	N/A	122 ha (301 ac)	N/A	122 ha (301 ac)
Molokai N	N/A	300 ha (741 ac)	N/A	300 ha (741 ac)
Molokai O	N/A	44 ha (109 ac)	N/A	44 ha (109 ac)
Molokai P	66 ha (163 ac)	52 ha (128 ac)	N/A	118 ha (291 ac)
Molokai Q	83 ha (205 ac)	202 ha (499 ac)	N/A	285 ha (704 ac)
Molokai R	30 ha (74 ac)	92 ha (227 ac)	N/A	122 ha (301 ac)
Molokai S	N/A	199 ha (492 ac)	N/A	199 ha (492 ac)
Molokai T	N/A	125 ha (309 ac)	N/A	125 ha 309 ac)
Molokai U	166 ha (410 ac)	28 ha (69 ac)	N/A	194 ha (479 ac)
Molokai V	136 ha (336 ac)	147 ha (363 ac)	N/A	283 ha (699 ac)
Molokai W	1 ha (2 ac)	N/A	N/A	1 ha (2 ac)
Molokai X	424 ha* (1,048 ac)	N/A	N/A	424 ha (1,048 ac)
Molokai Y	70 ha* (173 ac)	45 ha (111 ac)	N/A	115 ha (284 ac)
Molokai Z	N/A	111 ha (274 ac)	N/A	111 ha (274 ac)
Molokai Aa	109 ha (269 ac)	N/A	5 ha (12 ac)	114 ha (281 ac)
Molokai Bb	4 ha (10 ac)	N/A	N/A	4 ha (10 ac)
Total	2,674 ha (6,608 ac)	3,483 ha (8,608 ac)	5 ha (12 ac)	6,163 ha (15,228 ac)

* Portions of unit are found in Kalaupapa National Historical Park which is managed by the National Park Service.

Molokai C

The proposed unit Molokai C provides critical habitat for two species: *Centaurium sebaeoides* and *Marsilea villosa.* This unit contains a total of 254 ha (628 ac). The land contained within this unit is owned by a private entity. The natural features found in this unit are Pueoao, Kaeo and Mokio Point.

Molokai D

The proposed unit Molokai D provides critical habitat for two species: *Sesbania tomentosa* and *Tetramolopium rockii.* This unit contains a total of 308 ha (761 ac). The lands contained within this unit is owned by the State's Department of Hawaiian Homelands and a private entity. The natural features found in this unit are Kawaaloa, Moomomi, Naaukahihi, Kawahuha, Kahinaakalani and Anahaki.

Molokai E

The proposed unit Molokai E provides critical habitat for one species: *Sesbania tomentosa.* This unit contains a total of 72 ha (178 ac). The land contained within this unit is owned by the State's Department of Hawaiian Homelands. The natural feature found in this unit is Nenehanaupo.

Molokai F

The proposed nit Molokai F provides critical habitat for one species: *Cyanea procera.* This unit contains a total of 77 ha (190 ac). The land contained within this unit is owned by the State of Hawaii and is located within Puu Alii NAR. The natural features found in this unit are portions of the Waikolu Stream and Hanalilolilo.

Molokai G

The proposed unit Molokai G provides critical habitat for 13 species: *Alectryon macrococcus, Bidens wiebkei, Cyanea mannii, Diellia erecta, Neraudia sericea, Schiedea lydgatei, Schiedea sarmentosa, Sesbania tomentosa, Silene lanceolata, Silene alexandri, Spermolepis hawaiiensis, Vigna o-wahuensis* and *Zanthoxylum hawaiiensis.* This unit contains a total of 649 ha (1,604 ac). The lands contained within this unit are owned by private entities and are partially found within the Molokai Forest Reserve. The natural features found in this unit are Puu kolekole, Na Puu Kulua, Waiakuilani Gulch, Kapuaokoolau Gulch, Wahuaalapai and Makolelau.

Molokai H

The proposed unit Molokai H provides critical habitat for six species: *Alectryon macrococcus, Mariscus fauriei, Melicope mucronulata, Schidea lydgatei, Schiedea sarmentosa,* and *Sesbania tomentosa.* This unit contains a total of 939 ha (2,320 ac). The lands contained within this unit are owned by

the State of Hawaii, including the Department of Hawaiian Homelands, and a private entity and are partially found within the State's Molokai Forest Reserve and Kamiloloa Plant Sanctuary. The natural features found in this area are Kamiloloa, Makakupaia, Onini Gulch, Ooa, Makakupaia 2, a portion of the south fork of Kaunakakai and Kamiloloa Gulches.

Molokai I

The proposed unit Molokai I provides critical habitat for two species: *Alectryon macrococcus* and *Canavalia molokaiensis.* This unit contains a total of 204 ha (504 ac). The land contained within this unit is owned by the State of Hawaii and is found in the Molokai Forest Reserve. The natural features found in this unit are Kaunakakai Gulch, Puu Makaliilii and Kupaia Gulch.

Molokai J

The proposed unit Molokai J provides critical habitat for three species: *Canavalia molokaiensis, Cyanea dunbarii* and *Cyanea mannii.* This unit contains a total of 714 ha (1,764 ac). The lands contained within this unit are owned by the State of Hawaii and private owners, and are found in the State's Molokai Forest Reserve, and lands under Federal management at Kalaupapa National Historical Park. The natural features found in this unit are Kapuna Spring, Mokomoka Gulch, Kalamaula, Waihanau Stream, Maunahui, Kaunakakai Gulch, Kaunakakai and Kahuaawi Gulch.

Molokai K

The proposed unit Molokai K provides critical habitat for one species: *Sesbania tomentosa.* This unit contains a total of 127 ha (314 ac). The lands contained within this unit are owned by the State's Department of Hawaiian Homelands and private entities. The natural feature found in this unit is Onini Gulch.

Molokai L

The proposed unit Molokai L provides critical habitat for one species: *Sesbania tomentosa.* This unit contains a total of 137 ha (339 ac). The lands contained within this unit are owned by private entities.

Molokai M

The proposed unit Molokai M provides critical habitat for one species: *Sesbania tomentosa.* This unit contains a total of 122 ha (301 ac). The lands contained within this unit are owned by private entities.

Molokai N

The proposed unit Molokai N provides critical habitat for three species: *Ctenitis squamigera, Cyanea mannii,* and *Labordia triflora.* This unit contains a total of 300 ha (741 ac). The lands contained within this unit are owned by private entities. The natural features found in this unit are Puu Haha, Kaapahu, Haha Falls, Kalapa Konomanu, Kumueli Gulch, Helani Ridge, Kumueli, Kalapamoa Ridge, Kua Gulch, Wawaia Gulch and Helani Gulch.

Molokai O

The proposed unit Molokai O provides critical habitat for one species: *Clermontia oblongifolia* ssp. *brevipes.* This unit contains a total of 44 ha (1089 ac). The lands contained within this unit are owned solely by a private owner. The natural features found in this unit are portions of the headwaters of the Kamalo Stream.

Molokai P

The proposed unit Molokai P provides critical habitat for one species: *Stenogyne bifida.* This unit contains a total of 118 ha (291 ac). The lands contained within this unit are owned by the State and private entities, and are located partially within the State's Molokai Forest Reserve. The natural features found in this unit are Pelekunu Gulch, Manawai Gulch, Kahananui Gulch and Ohia Gulch.

Molokai Q

The proposed unit Molokai Q provides critical habitat for one species: *Melicope reflexa.* This unit contains a total of 285 ha (704 ac). The lands contained within this unit are owned by the State and private entities, and are partially found within the State's Molokai Forest Reserve. The natural features found within this unit are Kapuna Gulch, Puu Lua, Kaupuuiki, Puu Lua Wailau, Puu ohelo, Kawaiuliuli, Waiopipi, Honomuni Gulch, Uluwini Gulch and Kupeke Gulch.

Molokai R

The proposed unit Molokai R provides critical habitat for one species: *Diellia erecta.* This unit contains a total of 122 ha (301 ac). The lands contained within this unit are owned by the State and private entities, and are partially located within the State's Molokai Forest Reserve. The natural features found in this unit are Popaakai Gulch, Nawaihulili Stream, Moaula Stream, Hipuapua Stream, Hipuapua Falls, Moaula Falls, Halawa Valley, Halawa Stream, and Poala.

Molokai S

The proposed unit Molokai S provides critical habitat for one species: *Bidens wiebkei.* This unit contains a total of 199 ha (492 ac). The land contained within this unit is owned by a private entity. The natural features found in this unit are Kawaikapu, Kepuna Gulch, Lamaloa Gulch, Halawaiki Gulch, Kuinanaho Gulch, Kaonihu and Lamaloa Head.

Molokai T

The proposed unit Molokai T provides critical habitat for two species: *Hibiscus arnottianus* ssp. *immaculatus* and *Ischaemum byrone.* This unit contains a total of 125 ha (309 ac). The lands contained within this unit are owned by private entities. The natural features found in this unit are Kikipua Point, Waiokala, Papalaua Valley, Kahiwa Gulch and Kahiwa Falls.

Molokai U

The proposed unit Molokai U provides critical habitat for two species: *Cyanea grimesiana* ssp. *grimesiana* and *Melicope reflexa.* This unit contains a total of 194 ha (479 ac). The lands contained within this unit are owned by the State and private owners, and are partially contained within the State's Molokai Forest Reserve. The natural features found in this unit are Kukuinai Ridge and Naehu.

Molokai V

The proposed Unit V provides critical habitat for six species: *Brighamia rockii, Cyanea grimesiana* ssp. *grimesiana, Hesperomannia arborescens, Hibiscus arnottianus* ssp. *immaculatus, Ischaemum byrone,* and *Peucedanum sandwicense.* This unit contains a total of 283 ha (699 ac). The lands contained within this unit are owned by the State and private owners, and are partially contained within the State's Olokui NAR and Molokai Forest Reserve. The natural features found in this unit are Waiehu, Wailele Falls, Wailau Stream, Kahawaiiki Stream and Lepau Point.

Molokai W

The proposed unit Molokai W provides critical habitat for two species: *Brighamia rockii* and *Peucedanum sandwicense.* This unit contains a total of 1 ha (2 ac) and is owned by the State. This unit is the entire islet of Huelo which is the Huelo Bird Sanctuary.

Molokai X

The proposed Unit X on the island of Molokai provides critical habitat for two species: *Canavalia molokaiensis* and *Tetramolopium rockii.* This unit contains a total of 424 ha (1,048 ac). The

land contained within this unit is owned by the State and is managed by the National Park Service at Kalaupapa National Historical Park. The natural features in this unit are Kiloia, Ka Lae, Keanakua, Kaaia, Meaula Ridge, Puu Kauwa, Kepono, Keawaiki, Waialeia Stream, Mokio, Makalii, Kalawao, Kuololimu, Alau and Kaupikiawa.

Molokai Y

The proposed unit Molokai Y provides critical habitat for one species: *Peucedanum sandwicense.* This unit contains a total of 115 ha (284 ac). The lands contained within this unit are owned by the State's Department of Hawaiian Homelands and a private entity, and are found partially within the federally managed Kalaupapa National Historical Park and partially within the State's Palaau State Park. The natural features found in this unit are Awahua and Puwahi.

Molokai Z

The proposed unit Molokai Z provides critical habitat for one species: *Tetramolopium rockii.* This unit contains a total of 111 ha (274 ac). The land contained within this unit is owned by a private owner. This unit is located on the southwestern edge of TNCH's Moomomi Preserve.

Molokai Aa

The proposed unit Molokai Aa provides critical habitat for one species: *Centarium sebaeoides.* This unit contains a total of 114 ha (281 ac). The land contained within this unit is federally (Department of Treasury) and State owned, and managed by the National Park Service. This unit is located in Kalaupapa National Historical Park on the Kalaupapa Peninsula. The natural features found in this unit are Kapapakikane, Kahui Point, Lae Hoolehua, and Kaupikiawa.

Molokai Bb

The proposed unit Molokai Bb provides critical habitat for one species: *Peucedanum sandwicensis.* This unit contains a total of 4 ha (10 ac). The land contained within this unit is owned by the State. This unit is the entire islet of Mokapu which is the Mokapu Bird Sanctuary.

Effects of Critical Habitat Designation

Section 7(a) of the Act requires Federal agencies to ensure that actions they fund, authorize, or carry out do not jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat. Destruction or adverse modification of critical habitat is defined by our regulations as a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical (50 CFR 402.02). Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act means that Federal agencies must evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us. If, at the conclusion of consultation, we issue a biological opinion concluding that the project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat.

Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain biological opinion that is prepared according to 50 CFR 402.12, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no significant new information or changes in the action alter the content of the opinion. *See* 50 CFR 402.10(d).

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions under certain circumstances, including instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control has been retained or is authorized by law. Consequently, some Federal agencies may request consultation or conferencing with us on actions for which formal consultation has been completed if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Activities on lands being proposed as critical habitat for these 32 species or activities that may indirectly affect such lands and that conducted by a Federal agency, funded by a Federal agency or require a permit from a Federal agency will be subject to the section 7 consultation process. Federal actions not affecting critical habitat, as well as actions on non-Federal lands that are not federally funded or permitted, will not require Section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly describe and evaluate in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to the extent that the value of critical habitat for both the survival and recovery of any one of the 32 species is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species. Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat include, but are not limited to:

(1) Activities that appreciably degrade or destroy habitat defined in the discussion of primary constituent elements including but not limited to: overgrazing; maintenance of feral ungulates; clearing, cutting of native live trees and shrubs, whether by burning or mechanical, chemical, or other means (*e.g.,* woodcutting, bulldozing, construction, road building, mining, herbicide application, etc.); introducing or enabling the spread of non-native species; and taking actions that pose a risk of fire.

(2) Water diversion or impoundment, groundwater pumping, or other activity that alters water quality or quantity to an extent that wet forest or bog vegetation is significantly affected; and,

(3) Recreational activities that appreciably degrade vegetation.

Actions affected by designation of critical habitat may include, but are not limited to:

(1) Regulation of activities affecting waters of the United States by the Army Corps of Engineers under section 404 of the Clean Water Act;

(2) Development requiring permits from Federal agencies such as Housing and Urban Development;

(3) Federally funded silviculture/forestry projects and research by the U.S. Department of Agriculture (Natural Resource Conservation Service and Forest Service);

(4) Regulation of airport improvement activities by the Federal Aviation Administration jurisdiction;

(5) Road construction and maintenance by, or funded by, the U.S. Department of Transportation;

(6) Federally funded importation of alien species for research, agriculture, and aquaculture, and the release or authorization of release of biological control agents by the U.S. Department of Agriculture;

(7) Regulation of activities affecting point source pollution discharges into waters of the United States by the Environmental Protection Agency under section 402 of the Clean Water Act;

(8) Hazard mitigation and post-disaster repairs funded by the Federal Emergency Management Agency;

(9) Installation and maintenance of U.S. Coast Guard navigational aids;

(10) Construction of communication sites licensed by the Federal Communications Commission; and

(11) Construction activities by the U.S. Department of Interior (National Park Service);

(12) Activities not mentioned above funded or authorized by the U.S. Department of Agriculture (Forest Service, Natural Resources Conservation Service), Department of Defense, Department of Transportation, Department of Energy, Department of Interior (U.S. Geological Survey, National Park Service), Department of Commerce (National Oceanic and Atmospheric Administration) or any other Federal agency.

If you have questions regarding whether specific activities will constitute adverse modification of critical habitat, contact the Field Supervisor, Pacific Islands Ecological Services Field Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and plants and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species/Permits.

Economic and Other Relevant Impacts Analysis

Section 4(b)(2) of the Act requires that we designate critical habitat on the basis of the best scientific and commercial information available and consider the economic and other relevant impacts of designating a particular area as critical habitat. Consideration of economic and other impacts will take place in the final rule. *See* 50 CFR 424.19. Although at this time we cannot identify any incremental effects of this proposed critical habitat designation above those impacts of listing, we will conduct an economic analysis to further evaluate this issue. We will conduct the economic analysis for this proposal prior to a final determination. When the draft economic analysis is completed, we will announce its availablility with a notice in the **Federal Register**, and we will have a comment period for 30 days at that time to accept comments.

We will utilize the final economic analysis, and take into consideration all comments and information regarding economic or other impacts submitted during the public comment period and any public hearings, if requested, to make final critical habitat designations. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as part of critical habitat; however, we cannot exclude areas from critical habitat when such exclusion will result in the extinction of the species.

Public Comments Solicited

It is our intent that any final action resulting from this proposal be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry or any other interested party concerning this proposed rule.

In this rule, we do not propose to designate critical habitat on the private lands within Moomomi, Pelekunu, and Kamakou Preserves because these areas are dedicated to conservation and are managed for the benefit of the federally protected plant species found there. We believe that these areas are not in need of special management considerations or protection and, therefore, do not meet the definition of critical habitat in the Act. We are, however, specifically soliciting comments on the appropriateness of this approach.

We also invite comments from the public that provide information on whether lands within proposed critical habitat are currently being managed to address conservation needs of these listed plants. As stated earlier in this proposed rule, if we receive information that any of the areas proposed as critical habitat are adequately managed, we may delete such areas from the final rule because they would not meet the definition in section 3(5)(A)(i) of the Act. In determining adequacy of management, we must find that the management effort is sufficiently certain to be implemented and effective so as to contribute to the elimination or adequate reduction of relevant threats to the species.

In determining whether an action is likely to be implemented, we will generally consider the following:

—Whether or not a management plan or agreement exists which specifies the management actions being implemented, or if to be implemented, the schedule for implementation;

—Whether there are responsible party(ies), and funding source(s) or other resources necessary to implement the actions, with a high level of certainty that the funding will be provided; and

—The authority and long-term commitment of the party(ies) to the agreement or plan to implement the management action, as demonstrated, for example, by a legal instrument providing enduring protection and management of the lands.

In determining whether an action is likely to be effective, we will generally consider whether or not the plan is specific concerning the threats to be addressed by the management actions; whether such actions have been successful in the past; whether there are provisions for monitoring and assessment of the effectiveness of the management actions; and whether adaptive management principles have been incorporated into the plan.

We are aware that the State of Hawaii and some private landowners may be considering the development and implementation of land management plans or agreements that may promote the conservation and recovery of endangered and threatened plant species on the island of Molokai. We are soliciting comments in this proposed rule on whether current land management plans or practices applied within the areas proposed as critical habitat adequately address the threats to

these listed species. We are also soliciting comments on whether future development and approval of conservation measures (*e.g.,* Conservation Agreements, Safe Harbor Agreements, *etc.*) should be excluded from critical habitat, and if so, by what mechanism.

In addition, we are seeking comments on the following:

(1) The reasons why critical habitat for any of these species is prudent or not prudent as provided by section 4 of the Act and 50 CFR 424.12(a)(1), including whether the benefits of designation would outweigh any threats to these species due to designation;

(2) The reasons why any particular area should or should not be designated as critical habitat for any of these species, as critical habitat is defined by section 3 of the Act (16 U.S.C. 1532 (5));

(3) Specific information on the amount and distribution of habitat for *Adenophorous periens, Alectryon macrococcus, Bidens wiebkei, Brighamia rockii, Canavalia molokaiensis, Centarium sebaeoides, Clermontia oblongifolia* ssp. *brevipes, Ctenitis squamigera, Cyanea dunbarii, Cyanea grimesiana* ssp. *grimesiana, Cyanea mannii, Cyanea procera, Diellia erecta, Hedyotis mannii, Hesperomannia arborescens, Hibiscus arnottianus* ssp. *immaculatus, Ischaemum byrone, Labordia triflora, Lysimachia maxima, Mariscus fauriei, Marsilea villosa, Melicope mucronulata, Melicope reflexa, Neraudia sericea, Peucedanum sandwicense, Phyllostegia mannii, Plantago princeps, Platanthera holochila, Pritchardia munroi, Schiedea lydgatei, Schiedea nuttallii, Schiedea sarmentosa, Sesbania tomentosa, Silene alexandri, Silene lanceolata, Spermolepis hawaiiensis, Stenogyne bifida, Tetramolopium rockii, Vigna o-wahuensis,* and *Zanthoxylum hawaiiense,* and what habitat is essential to the conservation of the species and why;

(4) Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(5) Any economic or other impacts resulting from the proposed designations of critical habitat, including, any impacts on small entities or families; and

(6) Economic and other potential values associated with designating critical habitat for the above plant species such as those derived from non-consumptive uses (*e.g.,* hiking, camping, birding, enhanced watershed protection, increased soil retention, ''existence values,'' and reductions in administrative costs).

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, 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. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing and critical habitat decisions are based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule to these peer reviewers immediately following publication in the **Federal Register**. We will invite the peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designations of critical habitat.

We will consider all comments and data received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the document? (5) What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this notice easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. You may e-mail your comments to this address: Execsec@ios.doi.gov.

Required Determinations

1. Regulatory Planning and Review

In accordance with Executive Order (EO) 12866, this action was submitted for review by the Office of Management and Budget (OMB). We are in the process of preparing an economic analysis to determine the economic consequences of designating the specific areas identified as critical habitat. If our economic analysis reveals that the economic impacts of designating any area as critical habitat outweigh the benefits of designation, we may exclude those areas from consideration, unless such exclusion will result in the extinction of the species.

(a) While we will prepare an economic analysis to assist us in considering whether areas should be excluded pursuant to section 4 of the Act, at this time we do not believe this rule will have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. Therefore we do not believe a cost benefit and economic analysis pursuant to EO 12866 is required.

The plants at issue were listed as endangered or threatened species between the years 1991 and 1999. The areas proposed for critical habitat are currently occupied by one or more of these species. Under section 7 of the Act, critical habitat may not be destroyed or adversely modified by a Federal agency action; it does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency (See Table 6). Section 7 also requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Because of their limited number of individuals and populations, and limited range, we

conclude that any Federal action or authorized action that could potentially cause an adverse modification of the proposed critical habitat for any of the 32 species would also likely cause ''jeopardy'' to that species. Accordingly, the designation of currently occupied areas as critical habitat would not have any additional incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. Non-Federal persons that do not have a Federal involvement in their actions are not restricted by the designation of critical habitat.

(b) This rule will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions not jeopardize the continued existence of the 32 plant species since their listing between 1991 and 1999. The prohibition against adverse modification of critical habitat would not be expected to impose any additional restrictions to those that currently exist because all proposed critical habitat is currently occupied.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and as discussed above we do not anticipate that the adverse modification prohibition resulting from critical habitat designation will have any incremental effects.

TABLE 6.—IMPACTS OF CRITICAL HABITAT DESIGNATION FOR 32 PLANTS FROM MOLOKAI

Categories of activities	Activities potentially affected by species listing only	Additional activities potentially affected by critical habitat designation [1]
Federal Activities Potentially Affected [2]	Activities conducted by the Army Corps of Engineers, Department of Transportation, Department of Defense, Department of Agriculture, Environmental Protection Agency, Federal Emergency Management Agency, Federal Aviation Administration..	Activities by these Federal Agencies in any unoccupied critical hatitat areas.
Private or other non-Federal Activities Potentially Affected [3]	Activities that require a Federal action (permit, authorization, or funding) and may remove or destroy habitat for these plants by mechanical, chemical, or other means (*e.g.,* overgrazing, clearing, cutting native live trees and shrubs, water diversion, impoundment, groundwater pumping, road building, mining, herbicide application, recreational use, *etc.*) or appreciably habitat value or quality through indirect effects (*e.g.,* edge effects, invasion of exotic plants or animals, fragmentation of habitat)..	Funding, authorization, or permitting actions by Federal Agencies in any unoccupied critical habitat areas.

[1] This column represents activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.
[2] Activities initiated by a Federal agency.
[3] Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

(d) This rule will not raise novel legal or policy issues. The proposed rule follows the requirements for determining critical habitat contained in the Endangered Species Act.

2. Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

In the economic analysis, we will determine whether designation of critical habitat will have a significant effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above, this rule is not expected to result in any restrictions in addition to those currently in existence. As indicated on Table 5 (see ''Methods for Selection of Areas for Proposed Critical Habitat Designations'') we have designated property owned by Federal and State governments, and private property.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Regulation of activities affecting waters of the United States by the Army Corps of Engineers under section 404 of the Clean Water Act;

(2) Development on private or State lands requiring permits from other Federal agencies such as Housing and Urban Development;

(3) Federally funded silviculture/forestry projects and research by the U.S. Department of Agriculture (Natural Resource Conservation Service and Forest Service);

(4) Regulation of airport improvement activities by the Federal Aviation Administration jurisdiction;

(5) Road construction and maintenance by, or funded by, the U.S. Department of Transportation;

(6) Federally funded importation of alien species for research, agriculture, and aquaculture, and the release or authorization of release of biological control agents by the U.S. Department of Agriculture;

(7) Regulation of activities affecting point source pollution discharges into waters of the United States by the Environmental Protection Agency under section 402 of the Clean Water Act.;

(8) Hazard mitigation and post-disaster repairs funded by the Federal Emergency Management Agency;

(9) Installation and maintenance of U.S. Coast Guard navigational aids;

(10) Construction of communication sites licensed by the Federal Communications Commission; and

(11) Construction activities by the U.S. Department of Interior (National Park Service);

(12) Activities not mentioned above funded or authorized by the U.S. Department of Agriculture (Forest Service, Natural Resources Conservation Service), Department of Defense, Department of Transportation, Department of Energy, Department of Interior (U.S. Geological Survey, National Park Service), Department of Commerce (National Oceanic and Atmospheric Administration) or any other Federal agency.

Many of these activities authorized or funded by Federal agencies within the proposed critical habitat areas are carried out by small entities (as defined by the Regulatory Flexibility Act) through contract, grant, permit, or other Federal authorization. As discussed in section 1 above, these actions are currently required to comply with the protections of the Act that are triggered by listing, such as avoiding jeopardy to these species, and the designation of critical habitat is not anticipated to have any additional effects on these activities.

For actions on non-Federal property that do not have a Federal connection

(such as funding or authorization), the current State restrictions concerning take of listed threatened or endangered plant species remain in effect, and this rule would impose no additional restrictions.

3. Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions in the economic analysis, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

4. Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Small governments will only be affected to the extent that any Federal funds, permits or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed in section 1, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

5. Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal agency actions. The rule will not increase or decrease the current restrictions on private property concerning take of the 32 plant species. We do not anticipate that property values will be affected by the critical habitat designations. Landowners in areas that are included in the designated critical habitat will continue to have opportunity to utilize their property in ways consistent with State law and with the continued survival of the plant species.

6. Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. As discussed above, the designation of critical habitat in areas currently occupied by the 32 plant species would have little incremental impact on State and local governments and their activities. The designations may have some benefit to these governments in that the areas essential to the conservation of these species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long range planning rather than waiting for case-by-case section 7 consultation to occur.

7. Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We designate critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the 32 plant species.

8. Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which OMB approval under the Paperwork Reduction Act is required.

9. National Environmental Policy Act

We have determined that an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act, as amended. A notice outlining our reason for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment.

10. Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2, we understand that Federally recognized Tribes must be related to on a Government-to-Government basis. The 1997 Secretarial Order on Native Americans and the Act clearly states that Tribal lands should not be designated unless absolutely necessary for the conservation of the species. According to the Secretarial Order, ''Critical habitat shall not be designated in an area that may impact Tribal trust resources unless it is determined essential to conserve a listed species. In designating critical habitat, the Services shall evaluate and document the extent to which the conservation needs of a listed species can be achieved by limiting the designation to other lands.''

We determined that no Tribal lands are essential for any of the 18 plantsspecies for which critical habitat designation is proposed because none of these plants are known to occur on Tribal lands.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Pacific Islands Ecoregion Office (see **ADDRESSES** section).

Authors

The primary authors of this notice are Christa Russell, Michelle Stephens, and Marigold Zoll (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.12(h) revise the entries for *Alectryon macrococcus, Bidens wiebkei, Brighamia rockii, Canavalia molokaiensis, Centarium sebaeoides, Clermontia oblongifolia* ssp. *brevipes, Cyanea dunbarii, Cyanea grimesiana*

ssp. *grimesiana, Cyanea mannii, Cyanea procera, Hesperomannia arborescens, Hibiscus arnottianus* ssp. *immaculatus, Ischaemum byrone, Labordia triflora, Mariscus fauriei, Melicope (=Pelea) mucronulata, Melicope reflexa, Neraudia sericea, Peucedanum sandwicense, Schiedea lydgatei, Schiedea sarmentosa, Sesbania tomentosa, Silene alexandri, Silene lanceolata, Spermolepis hawaiiensis, Stenogyne bifida, Tetramolopium rockii, Vigna o-wahuensis,* and *Zanthoxylum hawaiiense* under ''FLOWERING PLANTS'' and *Ctenitis squamigera, Diellia erecta* and *Marsilea villosa,* under ''FERNS AND ALLIES'' to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*		*
Alectryon macroccoccus.	Mahoe	U.S.A. (HI)	Sapindaceae-Soapberry.	E	467	17.96(a)	NA
*	*	*	*	*	*		*
Bidens wiebkei	Kookoolau	U.S.A. (HI)	Asteraceae-Sunflower.	E	480	17.96(a)	NA
*	*	*	*	*	*		*
Brighamia rockii	Olulu	U.S.A. (HI)	Campanulaceae-Bell flower.	E	530	17.96(a)	NA
*	*	*	*	*	*		*
Canavalia molokaiensis.	Awikiwiki	U.S.A. (HI)	Fabaceae-Legume	E	480	17.96(a)	NA
*	*	*	*	*	*		*
Centaurium sebaeoides.	Awiwi	U.S.A. (HI)	Gentianaceae-Gentian.	E	448	17.96(a)	NA
*	*	*	*	*	*		*
Clermontia oblongifolia ssp. *brevipes.*	Oha wai	U.S.A. (HI)	Campanulaceae-Bell flower.	E	480	17.96(a)	NA
*	*	*	*	*	*		*
Cyanea dunbarii	Haha	U.S.A. (HI)	Campanulaceae-Bell flower.	E	594	17.96(a)	NA
*	*	*	*	*	*		*
Cyanea grimesiana ssp. *grimesiana.*	Haha	U.S.A. (HI)	Campanulaceae-Bell flower.	E	592	17.96(a)	NA
*	*	*	*	*	*		*
Cyanea mannii	Haha	U.S.A. (HI)	Campanulaceae-Bell flower.	E	480	17.96(a)	NA
*	*	*	*	*	*		*
Cyanea procera	Haha	U.S.A. (HI)	Campanulaceae-Bell flower.	E	480	17.96(a)	NA
*	*	*	*	*	*		*
Hesperomannia arborescens.	None	U.S.A. (HI)	Asteraceae-Sunflower.	E	536	17.96(a)	NA
*	*	*	*	*	*		*
Hibiscus arnottianus ssp. *immaculatus.*	Kokio keokeo	U.S.A. (HI)	Malvaceae-Mallow	E	480	17.96(a)	NA
*	*	*	*	*	*		*
Ischaemum bryone	Hilo ischaemum	U.S.A. (HI)	Poaceae-Grass	E	532	17.96(a)	NA
*	*	*	*	*	*		*
Labordia triflora	Kamakahala	U.S.A. (HI)	Loganiaceae-Logan	E	666	17.96(a)	NA
*	*	*	*	*	*		*
Mariscus fauriei	None	U.S.A. (HI)	Cyperaceae-Sedge	E	532	17.96(a)	NA

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*		*
Melicope (=Pelea) mucronulata.	Alani	U.S.A. (HI)	Rutaceae-Rue	E	467	17.96(a)	NA
*	*	*	*	*	*		*
Melicope reflexa	Alani	U.S.A. (HI)	Rutaceae-Rue	E	480	17.96(a)	NA
*	*	*	*	*	*		*
Neraudia sericea	None	U.S.A. (HI)	Urticaceae-Nettle	E	559	17.96(a)	NA
*	*	*	*	*	*		*
Peucedanum sandwicense.	Makou	U.S.A. (HI)	Apiaceae-Parsley	T	530	17.96(a)	NA
*	*	*	*	*	*		*
Schiedea lydgatei	None	U.S.A. (HI)	Caryophyllaceae-Pink.	E	480	17.96(a)	NA
*	*	*	*	*	*		*
Schiedea sarmentosa.	None	U.S.A. (HI)	Caryophyllaceae-Pink.	E	594	17.96(a)	NA
*	*	*	*	*	*		*
Sesbania tomentosa	Ohai	U.S.A. (HI)	Fabaceae-Legume	E	559	17.96(a)	NA
*	*	*	*	*	*		*
Silene alexandri	None	U.S.A. (HI)	Caryophyllaceae-Pink.	E	480	17.96(a)	NA
*	*	*	*	*	*		*
Silene lanceolata	None	U.S.A. (HI)	Caryophyllaceae-Pink.	E	480	17.96(a)	NA
*	*	*	*	*	*		*
Spermolepis hawaiiensis.	None	U.S.A. (HI)	Apiaceae-Parsley	E	559	17.96(a)	NA
*	*	*	*	*	*		*
Stenogyne bifida	None	U.S.A. (HI)	Lamiaceae-Mint	E	480	17.96(a)	NA
*	*	*	*	*	*		*
Tetramolopium rockii	None	U.S.A. (HI)	Asteraceae-Sunflower.	T	480	17.96(a)	NA
*	*	*	*	*	*		*
Vigna o-wahuensis	None	U.S.A. (HI)	Fabaceae-Legume	E	559	17.96(a)	NA
*	*	*	*	*	*		*
Zanthoxylum hawaiiense.	Ae	U.S.A. (HI)	Rutaceae-Rue	E	532	17.96(a)	NA
*	*	*	*	*	*		*
FERNS AND ALLIES							
*	*	*	*	*	*		*
Ctenitis squamigera	Pauoa	U.S.A. (HI)	Aspleniaceae-Spleenwort.	E	553	17.96(a)	NA
*	*	*	*	*	*		*
Diellia erecta	Asplenium leaved diellia.	U.S.A. (HI)	Aspleniaceae-Spleenwort.	E	559	17.96(a)	NA
*	*	*	*	*	*		*
Marsilea villosa	Ihiihi	U.S.A. (HI)	Marsileaceae-Marselia.	E	474	17.96(a)	NA
*	*	*	*	*	*		*

3. In § 17.96, as proposed to be amended at 65 FR 66865, November 7, 2000, add introductory text to paragraph (a)(1)(i), add paragraph (a)(1)(i)(F), and revise paragraphs (a)(1)(ii)(A) and (a)(1)(ii)(B) to read as follows:

§ 17.96 Critical habitat—plants.

(a) * * *

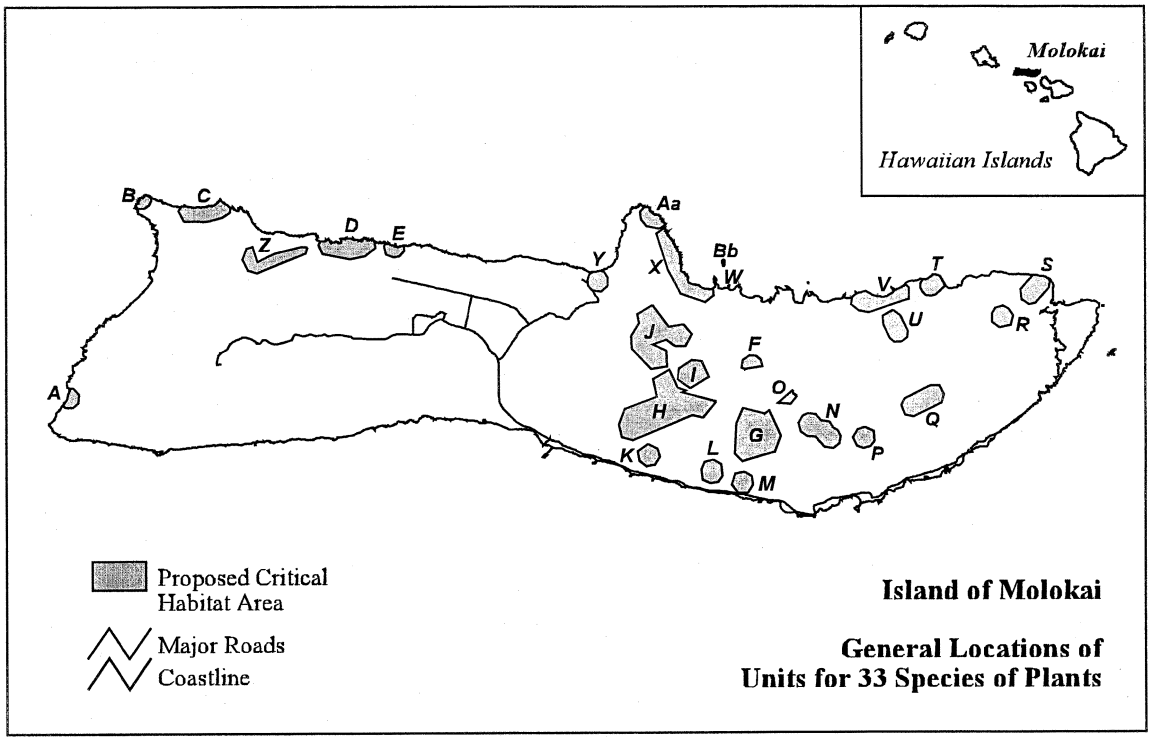
(1) * * *

(i) *Maps and critical habitat unit descriptions.* The following sections contain the legal descriptions of the critical habitat units designated for each of the Hawaiian islands. Existing features and structures within proposed areas, such as buildings, roads, aquaducts, telecommunication equipment, arboreta and gardens, heiaus (indigenous place of worship, shrine) and other man-made features do not contain, and are not likely to develop, the constituent elements described for each species in paragraphs (a)(1)(ii)(A) and (a)(1)(ii)(B) of this section. Therefore, these features or structures are not included in the critical habitat designation.

* * * * *

(F) *Molokai.* Critical habitat areas are described below. Coordinates are in UTM Zone 4 with units in meters using North American Datum of 1983 (NAD83). The following map shows the general locations of the 28 critical habitat units designated on the island of Molokai.

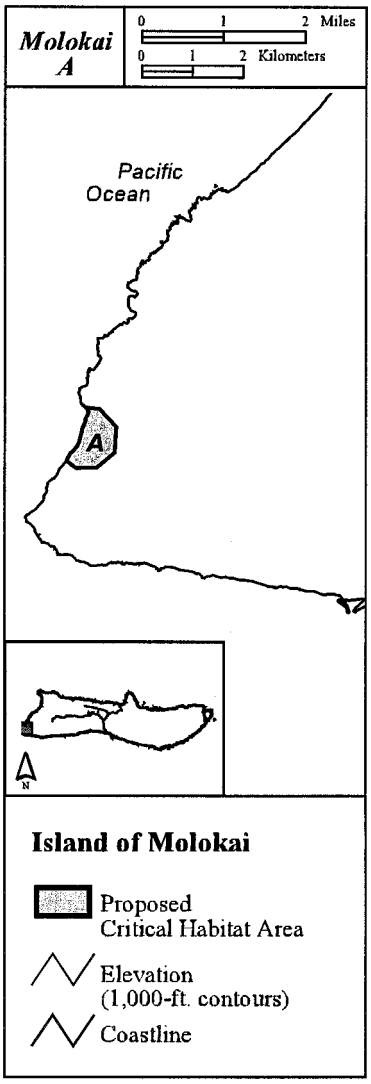
Note: Map follows:



Critical Habitat Molokai Unit A (73 ha; 180 ac)

Unit consists of the following nine points and the intermediate coastline: 676640, 2336512; 676640, 2336514; 676904, 2336494; 677235, 2336150; 677203, 2335634; 676861, 2335347; 676443, 2335339; 676250, 2335477; 676251, 2335477.

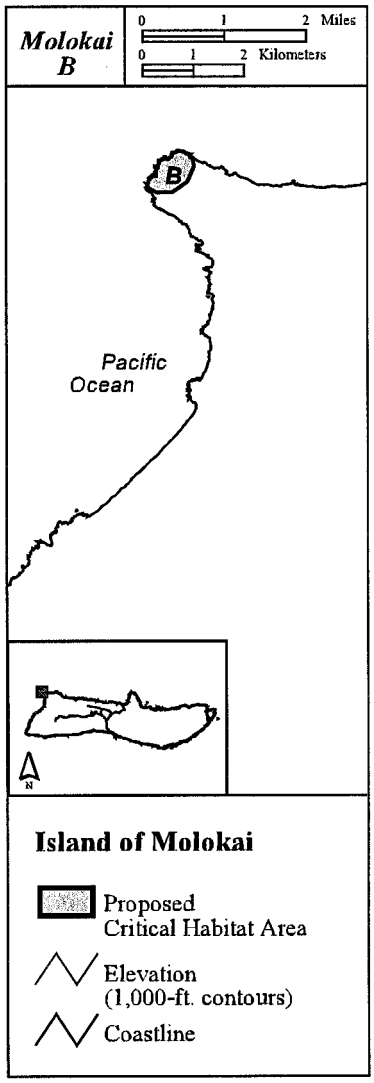
Note: Map follows:



Critical Habitat Molokai Unit B (49 ha; 121 ac)

Unit consists of the following seven points and the intermediate coastline: 681491, 2347819; 681525, 2347655; 681398, 2347338; 681107, 2347147; 680780, 2347124; 680587, 2347237; 680587, 2347242.

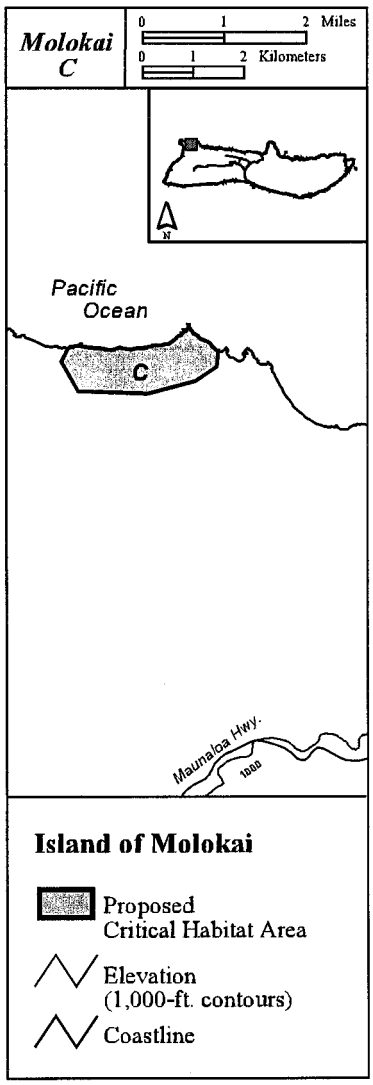
Note: Map follows:



Critical Habitat Molokai Unit C (254 ha; 628 ac)

Unit consists of the following seven points and the intermediate coastline: 686185, 2347195; 686152, 2346870; 685737, 2346591; 684786, 2346346; 683426, 2346387; 683093, 2346978; 683235, 2347250.

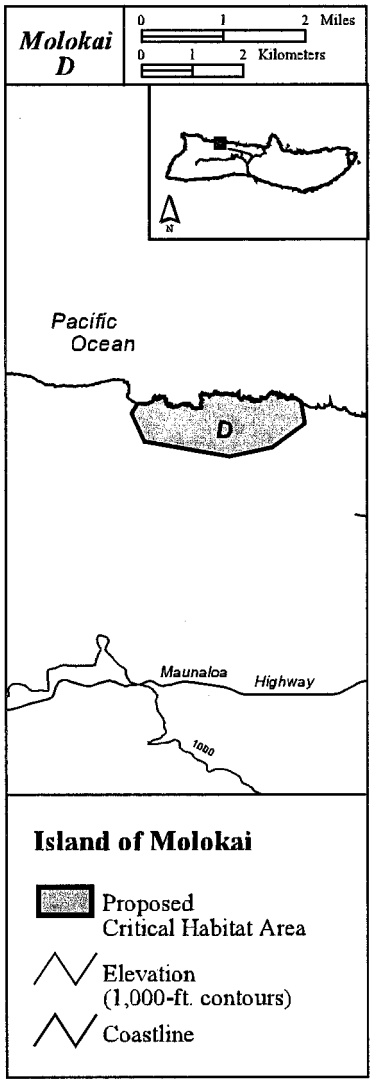
Note: Map follows:



Critical Habitat Molokai Unit D (308 ha; 761 ac)

Unit consists of the following seven points and the intermediate coastline: 694720, 2345197; 694782, 2344764; 694149, 2344287; 693299, 2344108; 691629, 2344413; 691383, 2344965; 691494, 2345158.

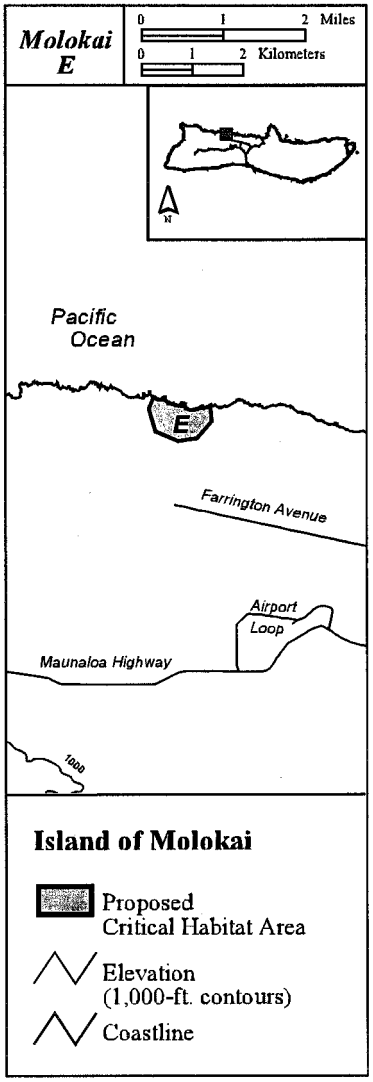
Note: Map follows:



Critical Habitat Molokai Unit E (72 ha; 178 ac)

Unit consists of the following eight points and the intermediate coastline: 696491, 2344923; 696492, 2344923; 696513, 2344602; 696230, 2344266; 695857, 2344202; 695415, 2344391; 695282, 2344860; 695376, 2345085.

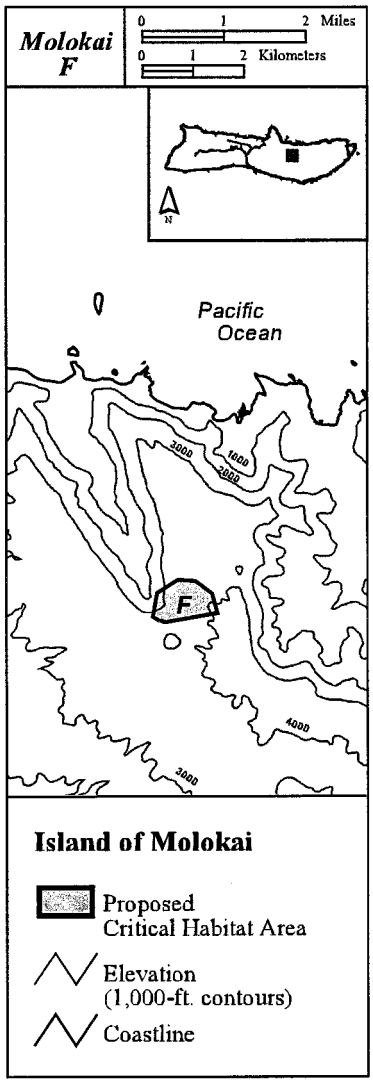
Note: Map follows:



Critical Habitat Molokai Unit F (77 ha; 190 ac)

Unit consists of the following twelve boundary points: 716712, 2337581. 716580, 2337654; 716662, 2338123; 717072, 2338381; 717424, 2338357; 717740, 2338123; 717849, 2337728; 716851, 2337552; 716804, 2337550; 716798, 2337555; 716769, 2337574; 716713, 2337581.

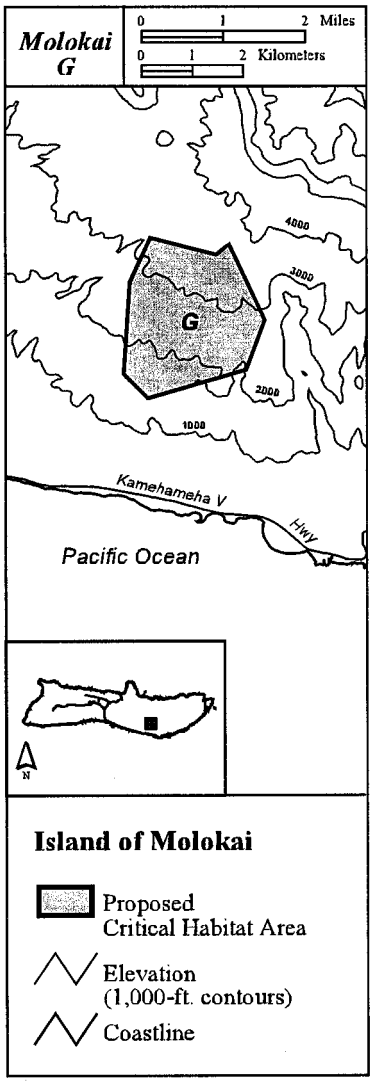
Note: Map follows:



Critical Habitat Molokai Unit G (649 ha; 1,604 ac)

Unit consists of the following eleven boundary points: 718149, 2335058; 718210, 2335097; 718915, 2333601; 718541, 2332609; 716606, 2332055; 716139, 2332523; 716247, 2334342; 716654, 2335225; 717898, 2334905; 717955, 2334888; 717969, 2334907.

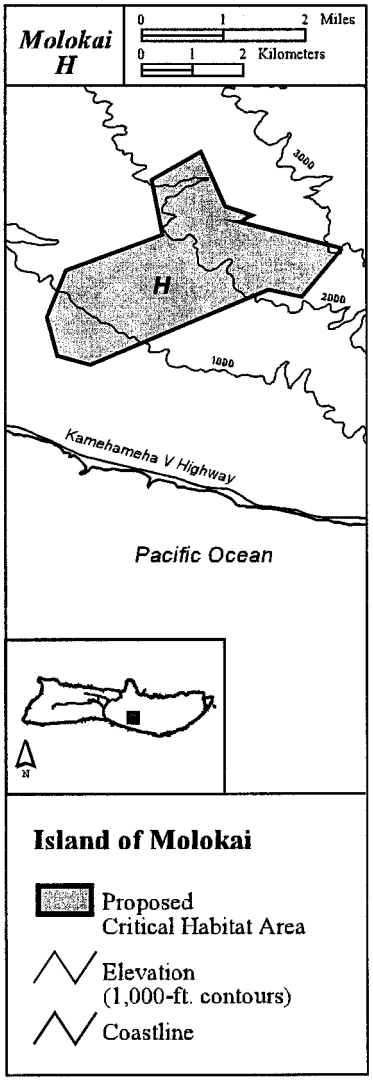
Note: Map follows:



Critical Habitat Molokai Unit H (939 ha; 2,320 ac)

Unit consists of the following fifteen boundary points: 715073, 2335632; 714272, 2334677; 713628, 2334820; 710107, 2333328; 709463, 2333507; 709260, 2334271; 709630, 2335202; 711539, 2335906; 711325, 2336985; 712291, 2337541; 712769, 2336467; 713291, 2336291; 713217, 2336246; 713076, 2336161; 713071, 2336154.

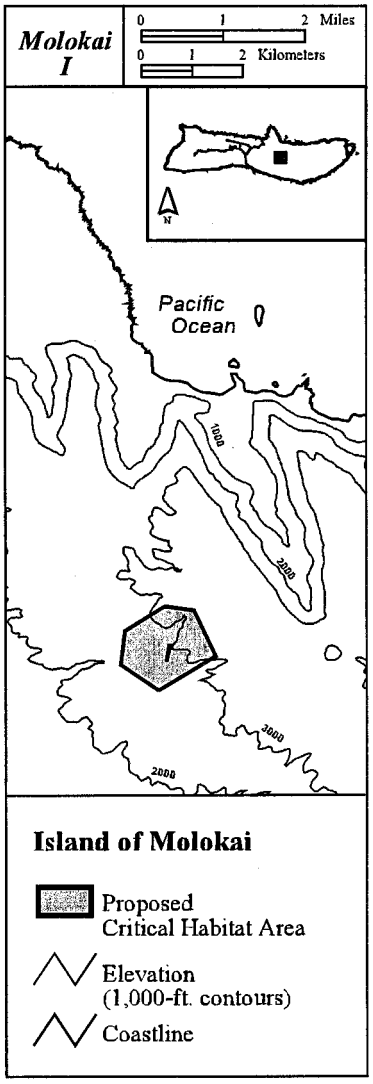
Note: Map follows:



Critical Habitat Molokai Unit I (204 ha; 504 ac)

Unit consists of the following seven boundary points: 713530, 2336433; 712780, 2336945; 712864, 2337613; 713640, 2338102; 714224, 2338019; 714651, 2337113; 714627, 2337098.

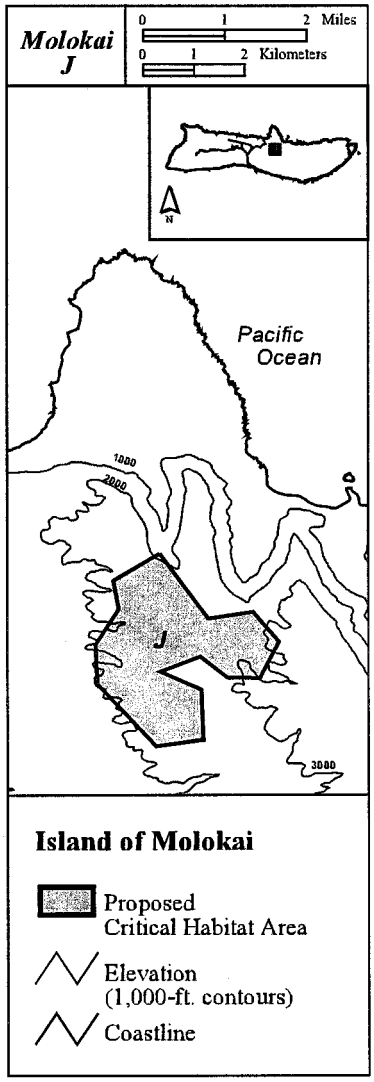
Note: Map follows:



Critical Habitat Molokai Unit J (714 ha; 1,764 ac)

Unit consists of the following fifteen boundary points: 711289, 2341384; 712255, 2340095; 713126, 2340227; 713640, 2339630; 713258, 2338914; 712625, 2338926; 712088, 2339332; 711301, 2339045; 712112, 2338687; 712148, 2337708; 711217, 2337577; 710059, 2338794; 710024, 2339570; 710489, 2340286; 710382, 2340847.

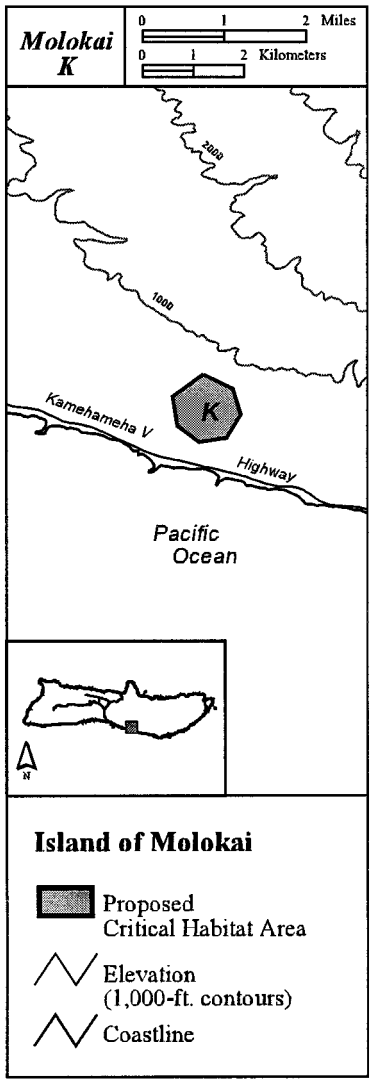
Note: Map follows:



Critical Habitat Molokai Unit K (127 ha; 314 ac)

Unit consists of the following seven boundary points: 710982, 2333123; 711568, 2332839; 711717, 2332325; 711434, 2331869; 710900, 2331777; 710472, 2332099; 710381, 2332686.

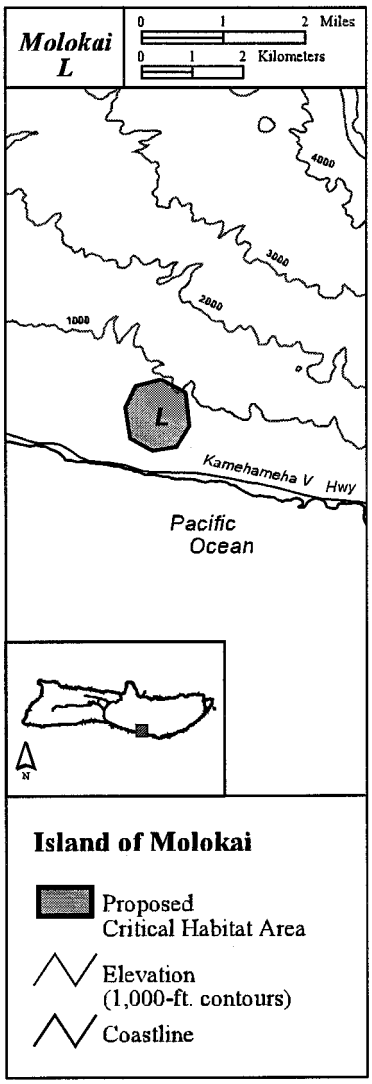
Note: Map follows:



Critical Habitat Molokai Unit L (137 ha; 339 ac)

Unit consists of the following eight boundary points: 714885, 2332152; 715357, 2331885; 715429, 2331230; 715183, 2330831; 714703, 2330746; 714265, 2330992; 714167, 2331587; 714367, 2332021.

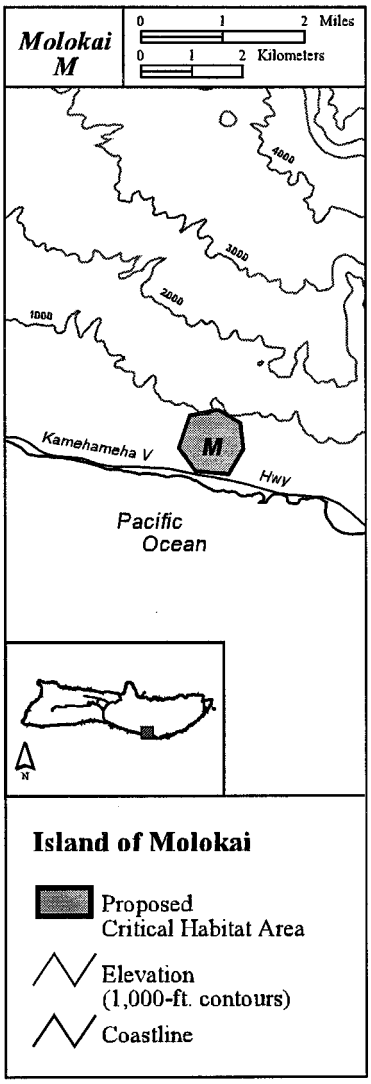
Note: Map follows:



Critical Habitat Molokai Unit M (122 ha; 301 ac)

Unit consists of the following seven boundary points: 716748, 2331446; 717191, 2331185; 717253, 2330676; 716951, 2330171; 716313, 2330233; 715973, 2330692; 716191, 2331324.

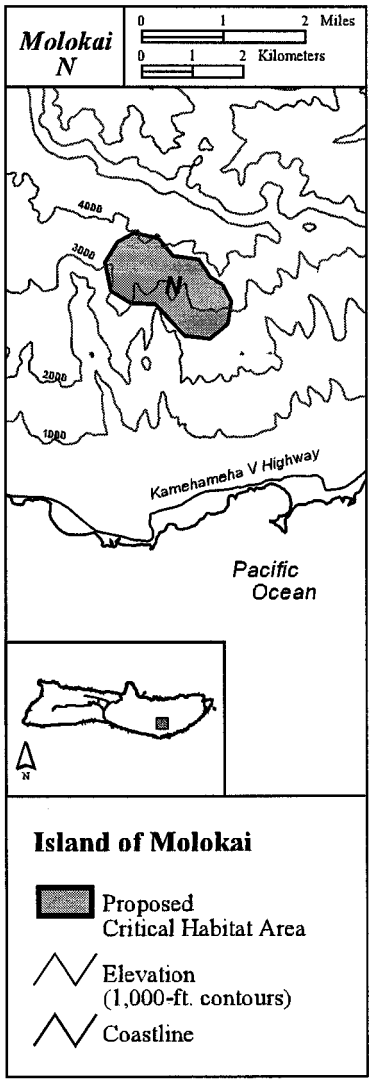
Note: Map follows:



Critical Habitat Molokai Unit N (300 ha; 741 ac)

Unit consists of the following fifteen boundary points: 722270, 2333916; 722443, 2333591; 722371, 2333139; 722016, 2332844; 721535, 2332903; 720951, 2333534; 720468, 2333549; 720075, 2333794; 719953, 2334346; 720198, 2334756; 720518, 2334933; 721004, 2334828; 721295, 2334481; 721807, 2334411; 722031, 2334064.

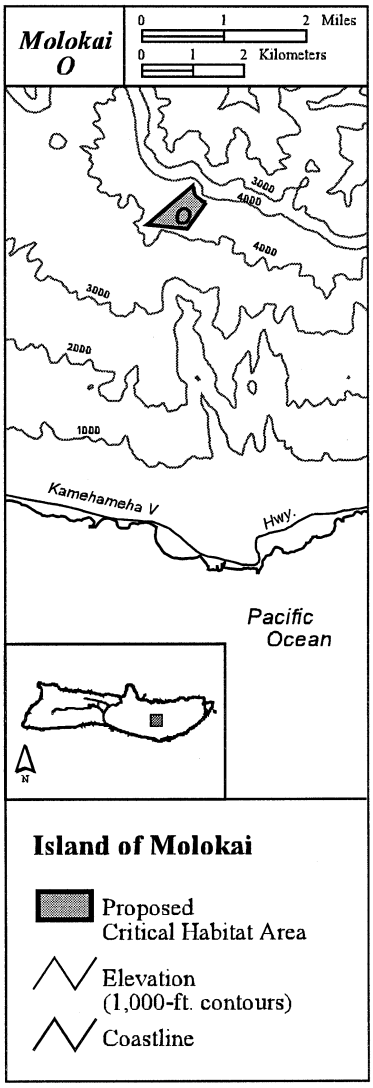
Note: Map follows:



Critical Habitat Molokai Unit O (44 ha; 109 ac)

Unit consists of the following seventeen boundary points: 719860, 2335968; 719493, 2335459; 718713, 2335538; 719597, 2336291; 719603, 2336276; 719620, 2336255; 719626, 2336226; 719623, 2336191; 719631, 2336157; 719639, 2336135; 719657, 2336101; 719672, 2336081; 719694, 2336066; 719735, 2336045; 719755, 2336030; 719781, 2336002; 719794, 2335992.

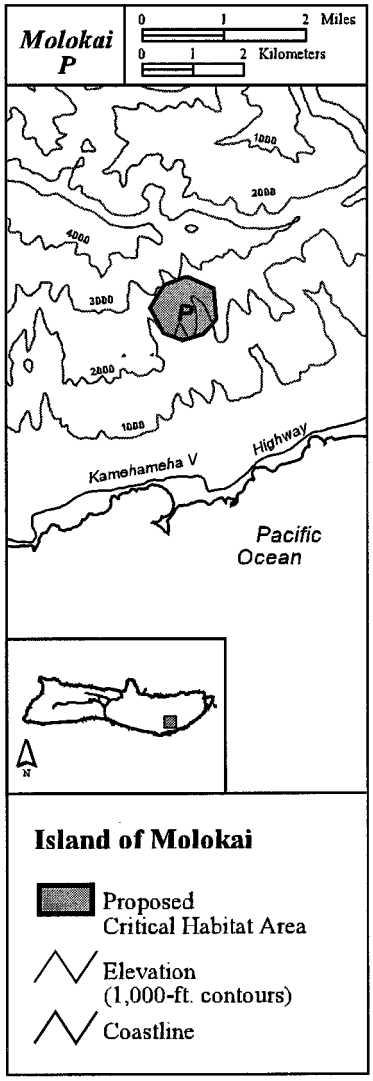
Note: Map follows:



Critical Habitat Molokai Unit P (118 ha; 291 ac)

Unit consists of the following eight boundary points: 723887, 2334107; 724418, 2333859; 724467, 2333254; 724204, 2332957; 723802, 2332837; 723440, 2332990; 723160, 2333488; 723454, 2333941.

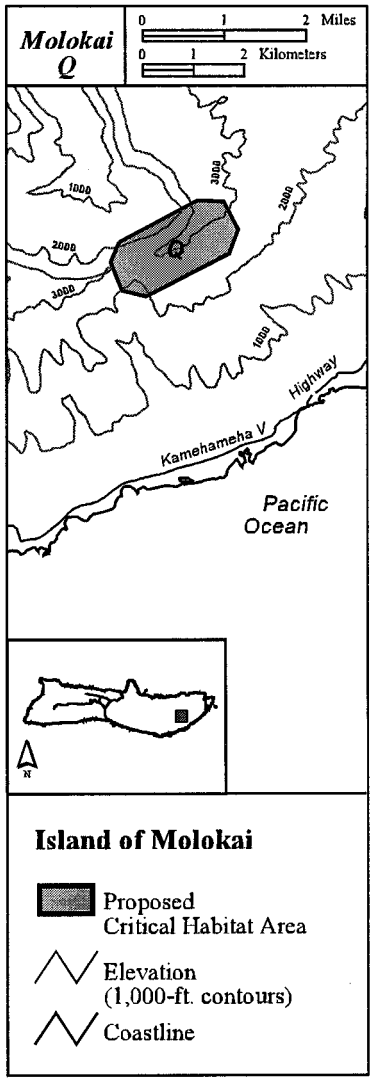
Note: Map follows:



Critical Habitat Molokai Unit Q (285 ha; 704 ac)

Unit consists of the following eight boundary points: 726254, 2335771; 727798, 2336579; 728318, 2336555; 728597, 2336013; 728426, 2335538; 726780, 2334697; 726306, 2334816; 726089, 2335373.

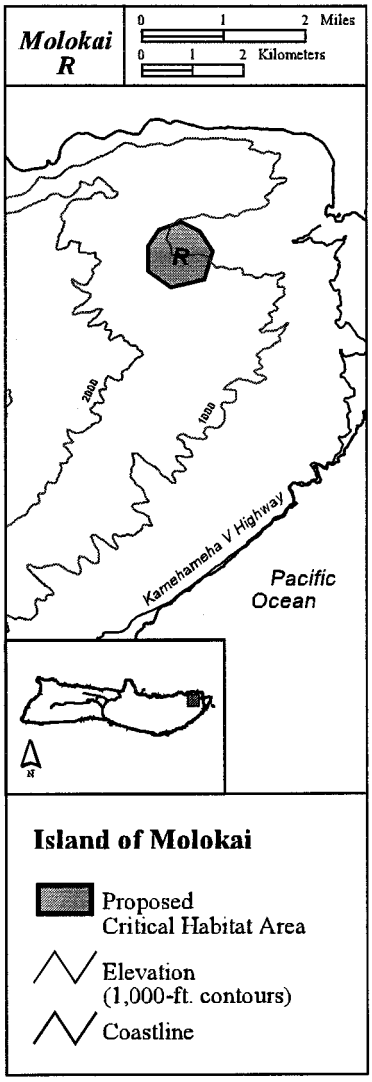
Note: Map follows:



Critical Habitat Molokai Unit R (122 ha; 301 ac)

Unit consists of the following eight boundary points: 732455, 2341104; 732704, 2340714; 732545, 2340158; 731888, 2339994; 731435, 2340323; 731441, 2340821; 731645, 2341140; 732093, 2341287.

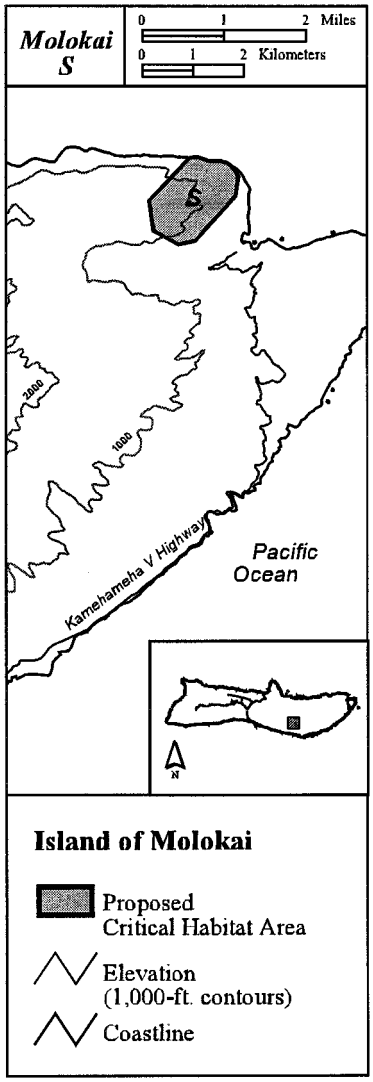
Note: Map follows:



Critical Habitat Molokai Unit S (199 ha; 492 ac)

Unit consists of the following nine points and the intermediate coastline: 734741, 2342919; 734879, 2342711; 734820, 2342320; 734020, 2341450; 733685, 2341380; 733205, 2341646; 733120, 2342247; 733902, 2343068; 733923, 2343082.

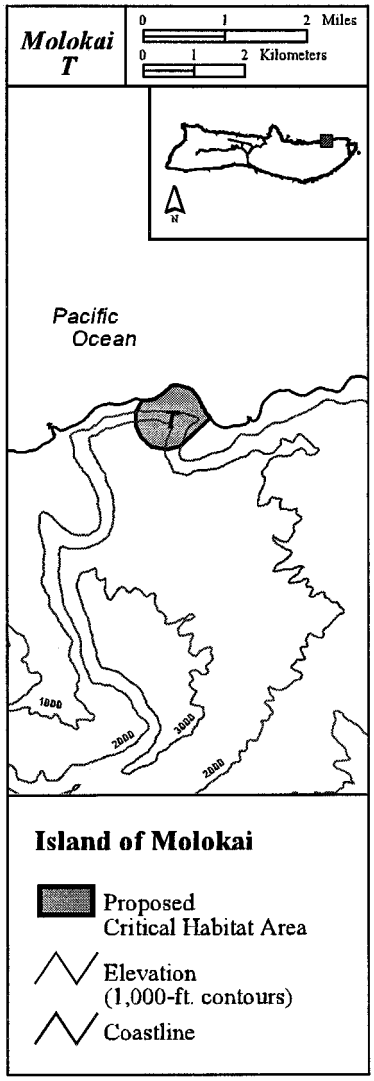
Note: Map follows:



Critical Habitat Molokai Unit T (125 ha; 309 ac)

Unit consists of the following eight points and the intermediate coastline: 728702, 2342486; 728109, 2341927; 727848, 2341860; 727550, 2341914; 727329, 2342114; 727236, 2342328; 727235, 2342611; 727358, 2342827.

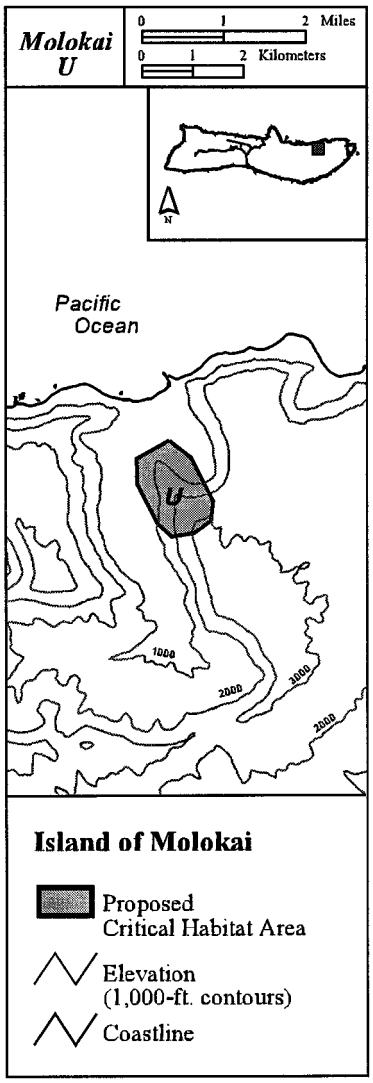
Note: Map follows:



Critical Habitat Molokai Unit U (194 ha; 479 ac)

Unit consists of the following nine boundary points: 725621, 2341045; 726046, 2340710; 726486, 2339828; 726437, 2339432; 726103, 2339195; 725666, 2339128; 725392, 2339392; 724991, 2340179; 724976, 2340681.

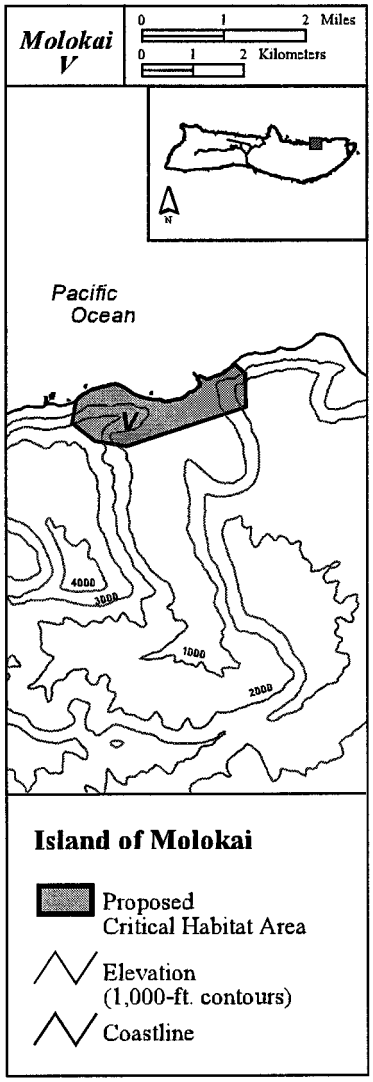
Note: Map follows:



Critical Habitat Molokai Unit V (283 ha; 699 ac)

Unit consists of the following eight points and the intermediate coastline: 726312, 2342554; 726525, 2342355; 726532, 2341699; 724187, 2340913; 723553, 2341022; 723113, 2341371; 723183, 2341795; 723236, 2341873.

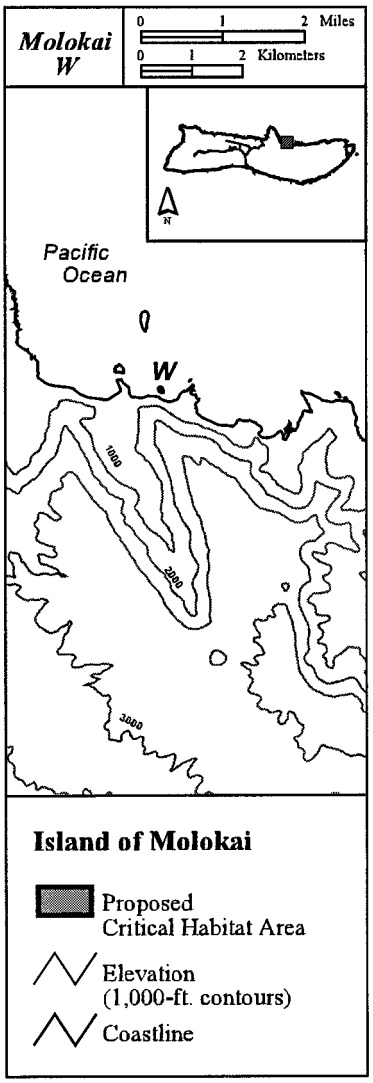
Note: Map follows:



Critical Habitat Molokai Unit W (1 ha; 2 ac)

Unit consists of the entire island, located at 715835, 2342456.

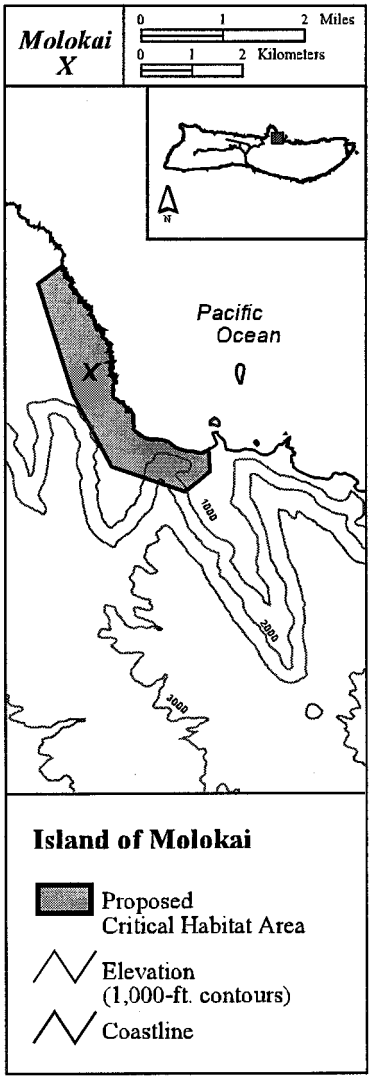
Note: Map follows:



Critical Habitat Molokai Unit X (424 ha; 1,048 ac)

Unit consists of the following eight points and the intermediate coastline: 714892, 2342337; 714895, 2342336; 714921, 2341907; 714427, 2341515; 712984, 2342002; 712223, 2343400; 711532, 2345604; 712012, 2345954.

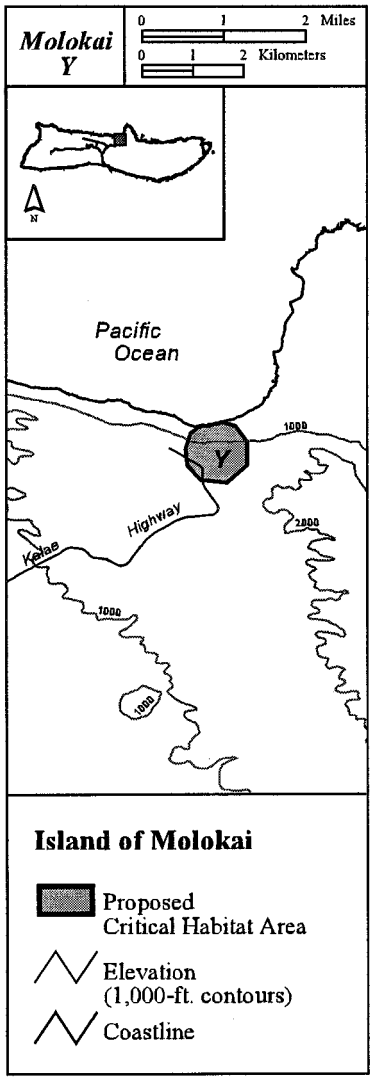
Note: Map follows:



Critical Habitat Molokai Unit Y (115 ha; 284 ac)

Unit consists of the following ten points and the intermediate coastline: 708130, 2343363; 708406, 2343292; 708634, 2342975; 708627, 2342526; 708224, 2342169; 707709, 2342227; 707456, 2342514; 707423, 2342848; 707514, 2343152; 707727, 2343294.

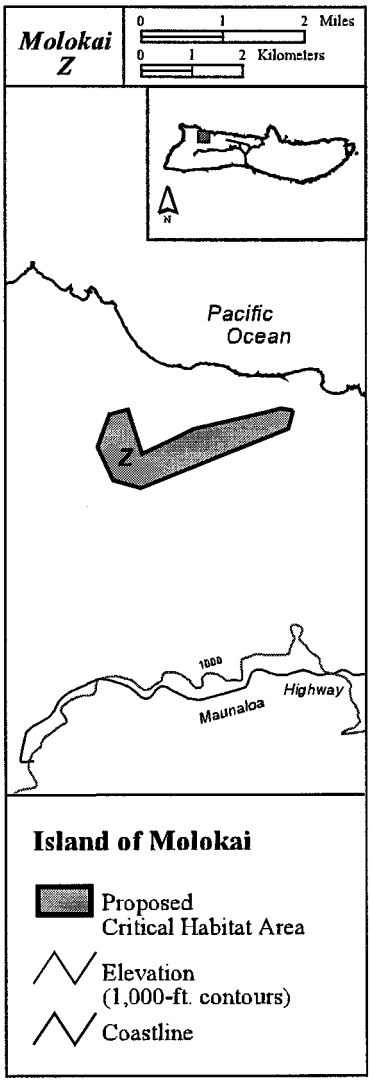
Note: Map follows:



Critical Habitat Molokai Unit Z (111 ha; 274 ac)

Unit consists of the following six boundary points: 689443, 2345663; 689444, 2345664; 689460, 2345662; 689479, 2345646; 689461, 2345661; 689448, 2345663.

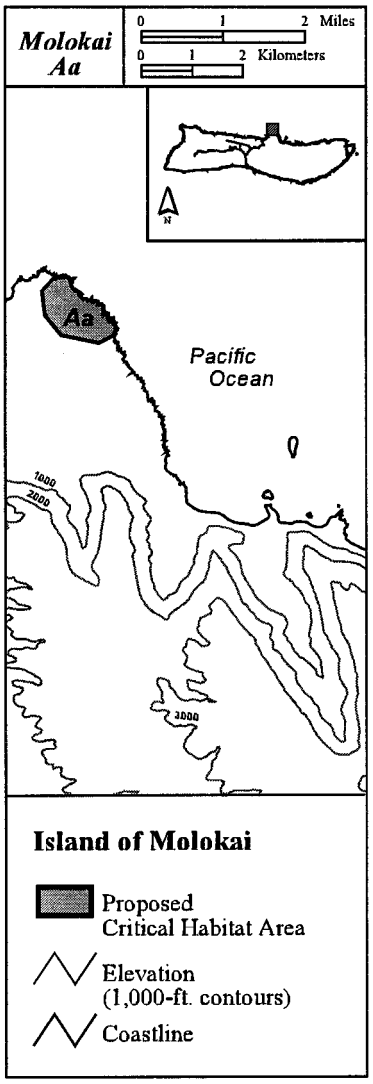
Note: Map follows:



Critical Habitat Molokai Unit Aa (114 ha; 281 ac)

Unit consists of the following six points and the intermediate coastline: 711994, 2346034; 711678, 2345884; 710942, 2346030; 710630, 2346428; 710562, 2346895; 710826, 2347185.

Note: Map follows:



Critical Habitat Molokai Unit Bb (4 ha; 10 ac)

Unit consists of the entire island, located 715510, 2343836.

Note: Map follows:

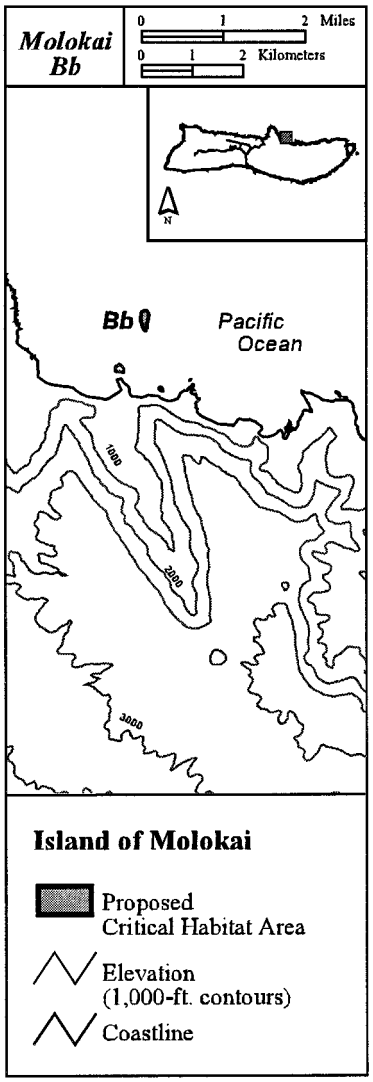


TABLE (a)(1)(i)(F)—PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR MOLOKAI

Unit name	Species
Molokai A	*Marsilea villosa*
Molokai B	*Marsilea villosa*
Molokai C	*Centaurium sebaeoides; Marsilea villosa*
Molokai D	*Sesbania tomentosa; Tetramolopium rockii*
Molokai E	*Sesbania tomentosa*
Molokai F	*Cyanea procera*
Molokai G	*Alectryon macrococcus; Bidens wiebkei; Cyanea mannii; Diellia erecta; Neraudia sericea; Schiedea lydgatei; Schiedea sarmentosa; Sesbania tomentosa; Silene lanceolata; Silene alexandri; Spermolepis hawaiiensis; Vigna o-wahuensis; Zanthoxylum hawaiiensis*
Molokai H	*Alectryon macrococcus; Mariscus fauriei; Melicope mucronulata; Schidea lydgatei; Schiedea sarmentosa; Sesbania tomentosa*
Molokai I	*Alectryon macrococcus; Canavalia molokaiensis*
Molokai J	*Canavalia molokaiensis; Cyanea dunbarii; Cyanea mannii*
Molokai K	*Sesbania tomentosa*
Molokai L	*Sesbania tomentosa*
Molokai M	*Sesbania tomentosa*
Molokai N	*Ctenitis squamigera, Cyanea mannii,* and *Labordia triflora*
Molokai O	*Clermontia oblongifolia* ssp. *brevipes*
Molokai P	*Stenogyne bifida*
Molokai Q	*Melicope reflexa*
Molokai R	*Diellia erecta*
Molokai S	*Bidens wiebkei*
Molokai T	*Hibiscus arnottianus* ssp. *immaculatus; Ischaemum byrone*
Molokai U	*Cyanea grimesiana* ssp. *grimesiana; Melicope reflexa*

TABLE (a)(1)(i)(F)—PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR MOLOKAI—Continued

Unit name	Species
Molokai V	*Brighamia rockii; Cyanea grimesiana* ssp. *grimesiana; Hesperomannia arborescens; Hibiscus arnottianus* ssp. *immaculatus; Ischaemum byrone; Peucedanum sandwicense*
Molokai W	*Brighamia rockii; Peucedanum sandwicense*
Molokai X	*Canavalia molokaiensis; Tetramolopium rockii*
Molokai Y	*Peucedanum sandwicense*
Molokai Z	*Tetramolopium rockii*
Molokai Aa	*Centaurium sebaeoides*
Molokai Bb	*Peucedanum sandwicensis*

(ii) *Hawaiian plants—Constituent elements.*

(A) *Flowering plants.*

Family Apiaceae: *Peucedanum sandwicense* (makou)

i. Kauai F, G, I, and M, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Peucedanum sandwicense* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Cliff habitats (a) in mixed shrub coastal dry cliff communities or diverse mesic forest and (b) containing one or more of the following associated native plant species: *Hibiscus kokio, Brighamia insignis, Bidens* sp., *Artemisia* sp., *Lobelia niihauensis, Wilkesia gymnoxiphium, Canthium odoratum, Dodonaea viscosa, Psychotria* sp., *Acacia koa, Kokio kauaiensis, Carex meyenii, Panicum lineale, Chamaesyce celastroides, Eragrostis* sp., *Diospyros* sp., or *Metrosideros polymorpha*; and (2) elevations from sea level to above 915 m (3,000 ft).

ii. Molokai units V, W, Y and Bb, identified in the legal descriptions in paragraph (a)(1)(i)(F) of this section constitute critical habitat for *Peucedanum sandwicense* on Molokai. Within this unit the currently known primary constituent elements of critical habitat for *Peucedanum sandwicense* are the habitat components that provide: (1) Cliff habitats with brown soil and talus—(a) in *Chamaesyce celastroides* var. *amplectans—Chenopodium oahuense* coastal dry shrubland or *Diospyros sandwicensis* forest and (b) containing one or more of the following associated native species: *Eragrostis* sp., *Santalum ellipticum, Pritchardia hillebrandii, Reynoldsia sandwicensis, Osteomeles anthyllidifolia, Scaevola sericea, Senna gaudichaudii, Pittosporum halophilum, Sida fallax, Plumbago zeylanica, Artemisia australis, Portulaca lutea, Lepidium bidentatum* var. *o-waihiense, Schiedea globosa, Lipochaeta integrifolia, Peperomia remyi, Plechranthus parviflorus, Dianella sandwicensis*, or *Metrosideros polymorpha*; and (2) from sea level to above 900 m (3,000 ft).

Family Apiaceae: *Spermolepis hawaiiensis* (no common name)

i. Kauai B and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Spermolepis hawaiiensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) *Metrosideros polymorpha* forests or *Dodonaea viscosa* lowland dry shrubland containing one or more of the following associated plant species: *Eragrostis variabilis, Bidens sandvicensis, Schiedea spergulina, Lipochaeta* sp., *Cenchrus agrimonioides, Sida fallax, Doryopteris* sp., or *Gouania hillebrandii*; and (2) elevations of about 305 to 610 m (1,000 to 2,000 ft).

ii. Molokai unit G, identified in the legal description in paragraph (a)(1)(i)(F) of this section constitutes critical habitat for *Spermolepis hawaiiensis* on Molokai. Within this unit the currently known primary constituent elements of critical habitat for *Spermolepis hawaiiensis* are the habitat components that provide: (1) shady spots in *Dodonea viscosa* lowland dry shrubland and containing one or more of the following associated native species: *Eragrostis variabilis, Lipochaeta lavarum, Sida fallax, Myoporum sandwicensis, Santalum elipticum*, and *Heteropogon contortus*; and (2) an elevation of 219 m (720 ft).

Family Apocynaceae: *Pteralyxia kauaiensis* (kaulu)

Kauai F, G, I, M, Q, T, and U, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Pteralyxia kauaiensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Diverse mesic or wet forests containing one or more of the following associated plant taxa: *Pisonia sandwicensis, Euphorbia haeleeleana, Charpentiera elliptica, Pipturus* sp., *Neraudia kauaiensis, Hedyotis terminalis, Pritchardia* sp., *Gardenia remyi, Syzygium* sp., *Pleomele* sp., *Cyanea* sp., *Hibiscus* sp., *Kokia kauaiensis, Alectryon macrococcus, Canthium odoratum, Nestegis sandwicensis, Bobea timonioides, Rauvolfia sandwicensis, Nesoluma polynesicum, Myrsine lanaiensis, Caesalpinia kauaiensis, Tetraplasandra* sp., *Acacia koa, Styphelia tameiameiae, Dodonaea viscosa, Gahnia* sp., *Freycinetia arborea, Psychotria mariniana, Diplazium sandwichianum, Zanthoxylum dipetalum, Carex* sp., *Delissea* sp., *Xylosma hawaiiense, Alphitonia ponderosa, Santalum freycinetianum, Antidesma* sp., *Diospyros* sp., *Metrosideros polymorpha, Dianella sandwicensis, Poa sandwicensis, Schiedea stellarioides, Peperomia macraeana, Claoxylon sandwicense*, or *Pouteria sandwicensis*; and (2) elevations between 250 to 610 m (820 to 2,000 ft).

Family Araliaceae: *Munroidendron racemosum* (no common name)

Kauai G, I, M, and N, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Munroidendron racemosum* on Kauai. Within these units the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Steep exposed cliffs or ridge slopes (a) in coastal or lowland mesic forest and (b) containing one or more of the following associated plant taxa: *Pisonia umbellifera, Canavalia galeata, Sida fallax, Brighamia insignis, Canthium odoratum, Psychotria* sp., *Nestegis sandwicensis, Tetraplasandra* sp., *Bobea timonioides, Rauvolfia sandwicensis, Pleomele* sp., *Pouteria sandwicensis*, or *Diospyros* sp.; and (2) elevations between 120 to 400 m (395 to 1,310 ft).

Family Asteraceae: *Bidens wiebkei* (kookoolau)

Molokai units G and S, identified in the legal descriptions in paragraph (a)(1)(i)(F) of this section constitute critical habitat for *Bidens wiebkei* on Molokai. Within these units the currently known primary constituent elements of critical habitat for *Bidens wiebkei* are the habitat components that provide: (1) Steep, exposed slopes—(a) in *Metrosideros polymorpha* dominated mesic shrublands or dry or mesic *Metrosideros polymorpha—Styphelia tameiameiae* lowland shrubland and (b) containing one or more of the following associated native plant species: *Antidesma* sp., *Dodonea viscosa, Canthium odoratum, Lysimachia* sp., *Nestegis sandwicensis, Phyllanthus sandwicensis, Pisonia* sp., or *Scaevola gaudichaudii*; and (2) elevations between 250 and 1,050 m (820 and 3,450 ft).

Family Asteraceae: *Dubautia latifolia* (na'ena'e)

Kauai G and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Dubautia latifolia* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Gentle or steep slopes on well drained soil in (a) semi-open or closed, diverse montane mesic forest dominated by *Acacia koa* and/or *Metrosideros polymorpha* and (b) containing one or more of the following native plant species: *Pouteria sandwicensis, Dodonaea viscosa, Nestegis sandwicensis, Diplazium sandwichianum, Elaeocarpus bifidus, Claoxylon sandwicense, Bobea* sp., *Pleomele* sp., *Antidesma* sp., *Cyrtandra* sp., *Xylosma* sp., *Alphitonia ponderosa, Coprosma waimeae, Dicranopteris linearis, Hedyotis terminalis, Ilex anomala, Melicope anisata, Psychotria mariniana*, or *Scaevola* sp.; and (2) elevations between 800 to 1,220 m (2,625 to 4,000 ft).

Family Asteraceae: *Dubautia pauciflorula* (na'ena'e)

Kauai L, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Dubautia pauciflorula* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Lowland wet forest within stream drainages; and (2) elevations between 670–700 m (2,200–2,300 ft).

Family Asteraceae: *Hesperomannia arborescens* (No common name)

Molokai unit V, identified in the legal description in paragraph (a)(1)(i)(F) of this section constitute critical habitat for *Hesperomannia arborescens* on Molokai. Within this unit the currently known primary constituent elements of critical habitat for *Hesperomannia arborescens* are the habitat components that provide: (1) Slopes or ridges—(a) in wet *Metrosideros polymorpha—Dicranopteris linearis* lowland forest or mesic *Diospyros sandwicensis—Metrosideros polymorpha* lowland forest transition zones and (b) containing one or more of the following associated native plant species: *Broussaisia arguta, Freycinetia arborea, Antidesma* sp., *Cibotium glaucum, Psychotria mauiensis, Elaphoglossum* sp., *Coprosma* sp., *Hedyotis* sp., *Cheirodendron* sp., *Smilax melastomifolia, Clermontia pallida, Thelypteris* sp., *Diplopterygium pinnatum, Ilex anomala, Myrsine* sp., *Urera glabra, Cyrtandra* sp., *Pipturus* sp., *Boehmeria grandis, Nestegis sandwicensis, Nephrolepis exaltata*, or *Wikstroemia* sp.; and (2) elevations between 360 and 750 m (1,200 and 2,500 ft).

Family Asteraceae: *Hesperomannia lydgatei* (no common name)

Kauai F, L, and P, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Hesperomannia lydgatei* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Stream banks with rich brown soil and silty clay (a) in *Metrosideros polymorpha* or *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest and (b) containing one or more of the following associated native plant species: *Adenophorus* sp., *Antidesma* sp., *Broussaisia arguta, Cheirodendron* sp., *Elaphoglossum* sp., *Freycinetia arborea, Hedyotis terminalis, Labordia lydgatei, Machaerina angustifolia, Peperomia* sp., *Pritchardia* sp., *Psychotria hexandra*, and *Syzygium sandwicensis*; and (2) elevations between 410–915 m (1,345–3,000 ft).

Family Asteraceae: *Lipochaeta fauriei* (nehe)

Kauai G, I, and U, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Lipochaeta fauriei* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Moderate shade to full sun on the sides of steep gulches (a) in diverse lowland mesic forests and (b) containing one or more of the following native species: *Diospyros* sp., *Myrsine lanaiensis, Euphorbia haeleeleana, Acacia koa, Pleomele aurea, Sapindus oahuensis, Nestegis sandwicensis, Dodonaea viscosa, Psychotria mariniana, Psychotria greenwelliae, Kokia kauaiensis*, or *Hibiscus waimeae*; and (2) elevations between 480 and 900 m (1,575 and 2,950 ft).

Family Asteraceae: *Lipochaeta micrantha* (nehe)

i. Kauai I and M, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Lipochaeta micrantha* on Kauai. Within these units the currently known primary constituent elements of critical habitat for *Lipochaeta micrantha* var. *exigua* are habitat components that provide: (1) Cliffs, ridges, or slopes (a) in grassy, shrubby or dry mixed communities and (b) containing one or more of the following associated native plant species: *Artemisia australis, Bidens sandvicensis, Plectranthus parviflorus, Chamaesyce celastroides, Diospyros* sp., *Canthium odoratum, Neraudia* sp., *Pipturus* sp., *Hibiscus kokio, Sida fallax, Eragrostis* sp., or *Lepidium bidentatum*; and (2) elevations between 305–430 m (1,000–1,400 ft).

ii. Within these units, the currently known primary constituent elements of critical habitat for *Lipochaeta micrantha* var. *micrantha* are habitat components that provide: (1) Basalt cliffs, stream banks, or level ground (a) in mesic or diverse *Metrosideros polymorpha-Diospyros* sp. forest and (b) containing one or more of the following associated native plant species: *Lobelia niihauensis, Chamaesyce celastroides* var. *hanapepensis, Neraudia kauaiensis, Rumex* sp., *Nontrichium* sp. (kului), *Artemisia* sp., *Dodonaea viscosa, Antidesma* sp., *Hibiscus* sp., *Xylosma* sp., *Pleomele* sp., *Melicope* sp., *Bobea* sp., and *Acacia koa*; and (2) elevations between 610–720 m (2,000–2,360 ft).

Family Asteraceae: *Lipochaeta waimeaensis* (nehe)

Kauai B, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Lipochaeta waimeaensis* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Precipitous, shrub-covered gulch (a) in diverse lowland forest and

(b) containing the native species *Dodonaea viscosa* or *Lipochaeta connata*; and (2) elevations between 350 and 400 m (1,150 and 1,310 ft).

Family Asteraceae: *Remya kauaiensis* (no common name)

Kauai G, I, and U, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Remya kauaiensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Steep, north or northeast facing slopes (a) in *Acacia koa-Metrosideros polymorpha* lowland mesic forest and (b) containing one or more of the following associated native plant species: *Chamaesyce* sp., *Nestegis sandwicensis, Diospyros* sp., *Hedyotis terminalis, Melicope* ssp., *Pouteria sandwicensis, Schiedea membranacea, Psychotria mariniana, Dodonaea viscosa, Dianella sandwicensis, Tetraplasandra kauaiensis*, or *Claoxylon sandwicensis*; and (2) elevations between 850 to 1,250 m (2,800 to 4,100 ft).

Family Asteraceae: *Remya montgomeryi* (no common name)

Kauai G and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Remya montgomeryi* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Steep, north or northeast-facing slopes, cliffs, or stream banks near waterfalls (a) in *Metrosideros polymorpha* mixed mesic forest and (b) containing one or more of the following associated native plant species: *Lysimachia glutinosa, Lepidium serra, Boehmeria grandis, Poa mannii, Stenogyne campanulata, Myrsine linearifolia, Bobea timonioides, Ilex anomala, Zanthoxylum dipetalum, Claoxylon sandwicensis, Tetraplasandra* spp., *Artemisia* sp., *Nototrichium* sp., *Cyrtandra* sp., *Dubautia plantaginea, Sadleria* sp., *Cheirodendron* sp., *Scaevola* sp., or *Pleomele* sp.; and (2) elevations between 850 to 1,250 m (2,800 to 4,100 ft).

Family Asteraceae: *Tetramolopium rockii* (No common name)

Molokai units D, X and Z, identified in the legal descriptions in paragraph (a)(1)(i)(F) of this section constitutes critical habitat for *Tetramolopium rockii* on Molokai. Within these units the currently known primary constituent elements of critical habitat for *Tetramolopium rockii* are the habitat components that provide: (1) Hardened calcareous sand dunes or ash-covered basalt—(a) in the coastal spray zone or coastal dry shrublands and grasslands and (b) containing one or more of the following associated native species: *Canthium odoratum, Diospyros sandwicensis, Metrosideros polymorpha, Osteomeles anthyllidifolia, Scaevola* sp., *Fimbristylis cymosa, Heliotropium anomalum, Lipochaeta integrifolia, Sida fallax,* and *Sporobolus virginicus;* and (2) between 10 and 200 m (30 and 650 ft) in elevation.

Family Asteraceae: *Wilkesia hobdyi* (dwarf iliau)

Kauai G and J, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Wilkesia hobdyi* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Coastal dry cliffs or very dry ridges containing one or more of the following associated native plant species: *Artemisia* sp., *Wilkesia gymnoxiphium, Lipochaeta connata, Lobelia niihauensis, Peucedanum sandwicensis, Hibiscus kokio* ssp. *saint johnianus, Canthium odoratum, Peperomia* sp., *Myoporum sandwicense, Sida fallax, Waltheria indica, Dodonaea viscosa,* or *Eragrostis variabilis;* and (2) elevations between 275 to 400 m (900 to 1,310 ft).

Family Campanulaceae: *Brighamia insignis* (‘olulu)

Kauai E, G, and M, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, and Niihau B, identified in the legal descriptions in paragraph (a)(1)(i)(B) of this section, constitute critical habitat for *Brighamia insignis* on Kauai and Niihau. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Rocky ledges with little soil or steep sea cliffs (a) in lowland dry grasslands or shrublands with annual rainfall that is usually less than 170 cm (65 in.) and (b) containing one or more of the following native plant species: *Artemisia* sp., *Chamaesyce celastroides, Canthium odoratum, Eragrostis variabilis, Heteropogon contortus, Hibiscus kokio, Hibiscus saintjohnianus, Lepidium serra, Lipochaeta succulenta, Munroidendron racemosum,* or *Sida fallax;* and (2) elevations between sea level to 480 m (1,575 ft) elevation.

Family Campanulaceae: *Brighamia rockii* (Pua ala)

Molokai units V and W, identified in the legal descriptions in paragraph (a)(1)(i)(F) of this section constitute critical habitat for *Brighamia rockii* on Molokai. Within this unit the currently known primary constituent elements of critical habitat for *Brighamia rockii* are the habitat components that provide: (1) Rock crevices on steep basalt sea cliffs, often within the spray zone—(a) in coastal dry or mesic forest, *Eragrostis variabilis* mixed coastal cliff communities, or shrubland, or *Pritchardia* sp. coastal mesic forest and (b) containing one or more of the following associated native plant species: *Pritchardia hillebrandii, Chamaesyce celastroides* var. *amplectans, Wikstoremia uva-ursi, Carex wahuensis* ssp. *wahuensis, Mariscus phleoides* ssp. *pleoides, Eragrstis variabilis, Dianella sandwicensis, Cocculus trilobus, Phymatosorus scolopendria, Crytomium falcatum, Lepidium bidentatum* var. *o-waihiense, Pittosporum halophilum, Artemisia* sp., *Bidens* sp., *Schiedea globosa, Reynoldsia sandwicensis, Pandanus tectorius, Peucedanum sandwicensis, Hedyotis littoralis, Metrosideros polymorpha, Psydrax odoratum, Diospyros sandwicensis, Osteomeles anthyllidifolia, Tetramolopium cassia, Senna gaudichaudii,* or *Scaevola sericea;* and (2) elevations between sea level and 470 m (0 and 1,540 ft).

Family Campanulaceae: *Clermontia oblongifolia* ssp. *brevipes* (oha wai)

Molokai unit O, identified in the legal description in paragraph (a)(1)(i)(F) of this section constitute critical habitat for *Clermontia oblongifolia* ssp. *brevipes* on Molokai. Within this unit the currently known primary constituent elements of critical habitat for *Clermontia oblongifolia* ssp. *brevipes* are the habitat components that provide: (1) Shallow soil on gulch slopes—(a) in wet *Metrosideros polymorpha* dominated forests and (b) containing one or more of the following associated native plant species: *Cheirodendron trigynum, Cibotium* spp., *Broussaisia argutus, Hedyotis terminalis,* or *Melicope* sp.; and (2) elevations between 1,100 and 1,200 m (3,500 and 4,320 ft).

Family Campanulaceae: *Cyanea asarifolia* (haha)

Kauai R and T, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Cyanea asarifolia* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Pockets of soil on sheer rock cliffs (a) in lowland wet forests and (b) containing one or more of the following

native plant species: *Hedyotis elatior, Machaerina angustifolia, Metrosideros polymorpha, Touchardia latifolia,* or *Urera glabra;* and (2) elevations between 330 to 730 m (1,080 to 2,400 ft).

Family Campanulaceae: *Cyanea dunbarii* (haha)

Molokai unit J, identified in the legal description in paragraph (a)(1)(i)(F) of this section constitute critical habitat for *Cyanea dunbarii* on Molokai. Within this unit the currently known primary constituent elements of critical habitat for *Cyanea dunbarii* are the habitat components that provide: (1) Streambanks on moderate to steep slopes—(a) in mesic to wet *Dicranopteris linearis-Metrosideros polymorpha* lowland forest and (b) containing one or more of the following associated native plant species: *Diplazium sanwicianum, Charpentiera obovata, Perrottetia sandwicensis, Pipturus albidus, Clermontia kakeana, Cheirodendron trigynum,* or *Freycinetia arborea;* and (2) elevation of 671 m (2,200 ft).

Family Campanulaceae: *Cyanea grimesiana* ssp. *grimesiana* (haha)

Molokai units U and V, identified in the legal descriptions in paragraph (a)(1)(i)(F) of this section constitute critical habitat for *Cyanea grimesiana* ssp. *grimesiana* on Molokai. Within these units the currently known primary constituent elements of critical habitat for *Cyanea grimesiana* ssp. *grimesiana* are the habitat components that provide: (1) cliffs, or (2) mesic forest dominated by *Metrosideros polymorpha* or *Metrosideros polymorpha* and *Acacia koa* and containing one or more of the following associated native plant species: *Psychotria* sp., *Bobea* sp., *Antidesma* sp., *Syzygium sndwicensis, Xylosma* sp., *Cibotium* sp., *Doodia* sp., *Nephrolepis* sp., *Cyrtandra* sp., *Dicranopteris linearis,* or *Freycinetia arborea;* and (2) elevations between 350 and 945 m (1,150 and 3,100 ft).

Family Campanulaceae: *Cyanea mannii* (haha)

Molokai units G, J, and N, identified in the legal descriptions in paragraph (a)(1)(i)(F) of this section constitute critical habitat for *Cyanea mannii* on Molokai. Within these units the currently known primary constituent elements of critical habitat for *Cyanea mannii* are the habitat components that provide: (1) Sides of deep gulches—(a) in *Metrosideros polymorpha* dominated montane mesic forest and (b) containing one or more of the following associated native plant species: *Wiskstroemia* sp., *Dicranopteris linearis,* or *Vaccinium* sp.; and (2) elevations between 559 and 1,220 m (1,900 and 4,000 ft).

Family Campanulaceae: *Cyanea procera* (haha)

Molokai unit F, identified in the legal description in paragraph (a)(1)(i)(F) of this section constitute critical habitat for *Cyanea procera* on Molokai. Within this unit the currently known primary constituent elements of critical habitat for *Cyanea procera* are the habitat components that provide: (1) Walls of steep gulches—(a) in wet *Metrosideros polymorpha* dominated lowland mixed forest and (b) containing one or more of the following associated native plant species: *Asplenium* sp., *Brousaissia arguta, Coprosma ochracea, Cyanea* sp., *Cyrtandra macrocalyx, Dicranopteris linearis, Pipturus albidus, Pisonia* sp., *Scaevola procera,* or *Touchardia latifolia;* and (2) elevations between 935 and 1,073 m (3,180 and 3,650 ft).

Family Campanulaceae: *Cyanea recta* (haha)

Kauai K, O, P, and R, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Cyanea recta* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Gulches or slopes (a) in lowland wet or mesic *Metrosideros polymorpha* forest or shrubland and (b) containing one or more of the following native plant species: *Dicranopteris linearis, Psychotria* sp., *Antidesma* sp., *Cheirodendron platyphyllum, Cibotium* sp., or *Diplazium* sp.; and (2) elevations between 400 to 1,200 m (1,310 to 3,940 ft).

Family Campanulaceae: *Cyanea remyi* (haha)

Kauai L, P, R, and T, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Cyanea remyi* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Lowland wet forest or shrubland and containing one or more of the following native plant species: *Antidesma* sp., *Cheirodendron* sp., *Diospyros* sp., *Broussaisia arguta, Metrosideros polymorpha, Freycinetia arborea, Hedyotis terminalis, Machaerina angustifolia, Perrottetia sandwicensis, Psychotria hexandra,* or *Syzygium sandwicensis;* and (2) elevations between 360 to 930 m (1,180 to 3,060 ft).

Family Campanulaceae: *Cyanea undulata* (haha)

Kauai L, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Cyanea undulata* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Pristine, undisturbed sites along shady stream banks or steep to vertical slopes; and (2) elevations between 630 to 800 m (2,070 to 2,625 ft).

Family Campanulaceae: *Delissea rhytidosperma* (no common name)

Kauai F, G, and M, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Delissea rhytidosperma* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Well-drained soils with medium or fine-textured subsoil (a) in diverse lowland mesic forests or *Acacia koa* dominated lowland dry forests and (b) containing one or more of the following native species: *Euphorbia haeleeleana, Psychotria hobdyi, Pisonia* sp., *Pteralyxia* sp., *Dodonaea viscosa, Cyanea* sp., *Hedyotis* sp., *Dianella sandwicensis, Diospyros sandwicensis, Styphelia tameiameiae,* or *Nestegis sandwicensis;* and (2) elevations between 120 and 915 m (400 and 3,000 ft).

Family Campanulaceae: *Delissea rivularis* (‘oha)

Kauai G, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Delissea rivularis* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Steep slopes near streams (a) in *Metrosideros polymorpha—Cheirodendron trigynum* montane wet or mesic forest and (b) containing one or more of the following native plant species: *Broussaisia arguta, Carex* sp., *Coprosma* sp., *Melicope clusiifolia, M. anisata, Psychotria hexandra, Dubautia knudsenii, Diplazium sandwichianum, Hedyotis foggiana, Ilex anomala,* or *Sadleria* sp.; and (2) elevations between 1,100 to 1,220 m (3,610 to 4,000 ft).

Family Campanulaceae: *Delissea undulata* (no common name)

Kauai G, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Delissea undulata* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat

are habitat components that provide: (1) Dry or mesic open *Sophora chrysophylla-Metrosideros polymorpha* forests containing one or more of the following native plant species: *Diospyros sandwicensis, Dodonaea viscosa, Psychotria mariniana, P. greenwelliae, Santalum ellipticum, Nothocestrum breviflorum,* or *Acacia koa;* and (2) elevations between 610–1,740 m (2,000–5,700 ft).

Family Campanulaceae: *Lobelia niihauensis* (no common name)

Kauai F, G, I, and J, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Lobelia niihauensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Exposed mesic mixed shrubland or coastal dry cliffs containing one or more of the following associated native plant species: *Eragrostis* sp., *Bidens* sp., *Plectranthus parviflorus, Lipochaeta* sp., *Lythrum* sp., *Wilkesia hobdyi, Hibiscus kokio* ssp. *saint johnianus, Nototrichium* sp., *Schiedea apokremnos, Chamaesyce celastroides, Charpentiera* sp., or *Artemisia* sp.; and (2) elevations between 100 to 830 m (330 to 2720 ft).

Family Caryophyllaceae: *Alsinidendron lychnoides* (kuawawaenohu)

Kauai G and H, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Alsinidendron lychnoides* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Montane wet forests (a) dominated by *Metrosideros polymorpha* and *Cheirodendron* sp., or by *Metrosideros polymorpha* and *Dicranopteris linearis* and (b) containing one or more of the following native plant species: *Carex* sp., *Cyrtandra* sp., *Machaerina* sp., *Vaccinium* sp., *Peperomia* sp., *Hedyotis terminalis, Astelia* sp., or *Broussaisia arguta;* and (2) elevations between 1,100 and 1,320 m (3,610 and 4,330 ft).

Family Caryophyllaceae: *Alsinidendron viscosum* (no common name)

Kauai I, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Alsinidendron viscosum* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Steep slopes (a) in *Acacia koa-Metrosideros polymorpha* lowland, montane mesic, or wet forest and (b) containing one or more of the following native plant species: *Alyxia olivaeformis, Bidens cosmoides, Bobea* sp., *Carex* sp., *Coprosma* sp., *Dodonaea viscosa, Gahnia* sp., *Ilex anomala, Melicope* sp., *Pleomele* sp., *Psychotria* sp., or *Schiedea stellarioides;* and (2) elevations between 820 and 1,200 m (2,700 and 3,940 ft).

Family Caryophyllaceae: *Schiedea apokremnos* (ma'oli'oli)

Kauai G and J, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Schiedea apokremnos* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Crevices of near-vertical coastal cliff faces (a) in sparse dry coastal shrub vegetation and (b) containing one or more of the following associated native plant species: *Heliotropium* sp., *Chamaesyce* sp., *Bidens* sp., *Artemisia australis, Lobelia niihauensis, Wilkesia hobdyi, Lipochaeta connata, Myoporum sandwicense, Canthium odoratum,* or *Peperomia* sp.; and (2) elevations between 60 to 330 m (200 to 1,080 ft).

Family Caryophyllaceae: *Schiedea helleri* (no common name)

Kauai I, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Schiedea helleri* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Ridges and steep cliffs (a) in closed *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest, or *Metrosideros polymorpha-Cheirodendron* sp. montane wet forest, or *Acacia koa-Metrosideros polymorpha* montane mesic forest, and (b) containing one or more of the following associated native plant species: *Dubautia raillardioides, Scaevola procera, Hedyotis terminalis, Syzygium sandwicensis, Melicope clusifolia, Cibotium* sp., *Broussaisia arguta, Cheirodendron* sp., *Cyanea hirtella, Dianella sandwicensis, Viola wailenalenae,* or *Poa sandvicensis;* and (2) elevations between 1,065–1,100 m (3,490–3,610 ft).

Family Caryophyllaceae: *Schiedea kauaiensis* (no common name)

Kauai G, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Schiedea kauaiensis* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Steep slopes (a) in diverse mesic or wet forest and (b) containing one or more of the following associated plant taxa: *Psychotria mariniana, Psychotria hexandra, Canthium odoratum, Pisonia* sp., *Microlepia speluncae, Exocarpos luteolus, Diospyros* sp., *Peucedanum sandwicense,* or *Euphorbia haeleeleana;* and (2) elevations between 680–790 m (2,230–2,590 ft).

Family Caryophyllaceae: *Schiedea lydgatei* (No common name)

Molokai units G and H, identified in the legal descriptions in paragraph a)(1)(i)(F) of this section constitutes critical habitat for *Schiedea lydgatei* on Molokai. Within these units the currently known primary constituent elements of critical habitat for *Schiedea lydgatei* are the habitat components that provide: (1) Along ridges—(a) in dry to mesic grasslands, shrublands, and forests with scattered native trees and (b) containing one or more of the following associated native species: *Dodonaea viscosa, Metrosideros polymorpha, Styphelia tameiameiae,* and *Dicranopteris linearis;* and (2) elevations from about 600 to 650 m (2,000 to 2,100 ft).

Family Caryophyllaceae: *Schiedea membranacea* (no common name)

Kauai G, I, and K, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Schiedea membranacea* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Cliffs or cliff bases (a) in mesic or wet habitats, (b) in lowland, or montane shrubland, or forest communities dominated by *Acacia koa, Pipturus* sp. or *Metrosideros polymorpha* and (c) containing one or more of the following associated native plant species: *Hedyotis terminalis, Melicope* sp., *Pouteria sandwicensis, Poa mannii, Hibiscus waimeae, Psychotria mariniana, Canthium odoratum, Pisonia* sp., *Perrottetia sandwicensis, Scaevola procera, Sadleria cyatheoides, Diplazium sandwicensis, Thelypteris sandwicensis, Boehmeria grandis, Dodonaea viscosa, Myrsine* sp., *Bobea brevipes, Alyxia olivaeformis, Psychotria greenwelliae, Pleomele* sp., *Alphitonia ponderosa, Joinvillea ascendens* ssp. *ascendens, Athyrium sandwichianum, Machaerina angustifolia, Cyrtandra paludosa, Touchardia latifolia, Thelypteris cyatheoides, Lepidium serra, Eragrostis variabilis, Remya kauaiensis, Lysimachia kalalauensis, Labordia*

helleri, Mariscus pennatiformis, Asplenium praemorsum, or *Poa sandvicensis;* and (2) elevations between 520 and 1,160 m (1,700 and 3,800 ft).

Family Caryophyllaceae: *Schiedea nuttallii* (no common name)

Kauai M, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Schiedea nuttallii* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Diverse lowland mesic forest, often with *Metrosideros polymorpha* dominant, containing one or more of the following associated native plant species: *Antidesma* sp, *Psychotria* sp., *Perrottetia sandwicensis, Pisonia* sp., or *Hedyotis acuminata;* and (2) elevations between 415 and 790 m (1,360 and 2,590 ft).

Family Caryophyllaceae: *Schiedea sarmentosa* (No common name)

Molokai units G and H, identified in the legal descriptions in paragraph (a)(1)(i)(F) of this section constitutes critical habitat for *Schiedea sarmentosa* on Molokai. Within these units the currently known primary constituent elements of critical habitat for *Schiedea sarmentosa* are the habitat components that provide: (1) Steep slopes—(a) in *Metrosideros polymorpha-Dodonaea viscosa* lowland dry or mesic shrubland and (b) containing one or more of the following associated native species: *Styphelia tameiameiae, Chenopodium oahuensis, Alyxia oliviformis, Pleomele* sp., *Bidens menziesii, Carex meynii, Lipochaeta rockii, Nestegis sandwicensis, Nothocestrum latifolium, Nototrichium sandwicense, Sida fallax, Sophora chrysophylla,* and *Chamaesyce* sp.; and (2) between 610 and 790 m (2,000 and 2,600 ft) elevation.

Family Caryophyllaceae: *Schiedea spergulina* var. *leiopoda* (no common name)

Kauai C, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Schiedea spergulina* var. *leiopoda* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Bare rock outcrops or sparsely vegetated portions of rocky cliff faces or cliff bases (a) in diverse lowland mesic forests and (b) containing one or more of the following native plants: *Bidens sandvicensis, Doryopteris* sp., *Peperomia leptostachya,* or *Plectranthus parviflorus;* and (2) elevations between 180 and 800 m (590 and 2,625 ft).

Family Caryophyllaceae: *Schiedea spergulina* var. *spergulina* (no common name) Kauai G and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Schiedea spergulina* var. *spergulina* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Bare rock outcrops or sparsely vegetated portions of rocky cliff faces or cliff bases (a) in diverse lowland mesic forests and (b) containing one or more of the following associated plant taxa: *Heliotropium* sp., or *Nototrichium sandwicense;* and (2) elevations between 180 and 800 m (590 and 2,625 ft).

Family Caryophyllaceae:*Schiedea stellarioides* (laulihilihi (=ma‘oli‘oli))

Kauai I, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Schiedea stellarioides* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Steep slopes (a) in closed *Acacia koa-Metrosideros polymorpha* lowland or montane mesic forest or shrubland and (b) containing one or more of the following native plant species: *Nototrichium* sp., *Artemisia* sp., *Dodonaea viscosa, Melicope* sp., *Dianella sandwicensis, Bidens cosmoides, Mariscus* sp., or *Styphelia tameiameiae;* and (2) elevations between 610 and 1,120 m (2,000 and 3,680 ft).

Family Caryophyllaceae: *Silene alexandri* (No common name)

Molokai unit G, identified in the legal description in paragraph (a)(1)(i)(F) of this section constitutes critical habitat for *Silene alexandri* on Molokai. Within this unit the currently known primary constituent elements of critical habitat for *Silene alexandri* are the habitat components that provide: (1) Remnant dry forest and shrubland and containing one or more of the following associated native species: *Dodonaea viscosa, Metrosideros polymorpha, Styphelia tameiameiae,* and *Dicranopteris linearis, Chenopodium oahuense,* and *Sophora chrysophylla;* and (2) elevations between 610 and 760 m (2,000 and 2,500 ft).

Family Caryophyllaceae: *Silene lanceolata* (No common name)

Molokai unit G , identified in the legal description in paragraph (a)(1)(i)(F) of this section constitutes critical habitat for *Silene lanceolata* on Molokai. Within this unit the currently known primary constituent elements of critical habitat for *Silene lanceolata* are the habitat components that provide: (1) Cliff faces and ledges of gullies—(a) in dry to mesic shrubland and (b) containing one or more of the following associated native species: Associated native plant species include *Dodonea viscosa, Styphelia tameiameiae,* and *Dubautia linearis;* and (2) an elevation of about 800 m (2,600 ft).

Family Convolvulaceae: *Bonamia menziesii* (no common name)

Kauai G and L, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Bonamia menziesii* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Dry, mesic or wet forests containing one or more of the following native plant species: *Metrosideros polymorpha, Canthium odoratum, Dianella sandwicensis, Diospyros sandwicensis, Dodonaea viscosa, Hedyotis terminalis, Melicope anisata, Melicope barbigera, Myoporum sandwicense, Nestegis sandwicense, Pisonia* sp., *Pittosporum* sp., *Pouteria sandwicensis,* or *Sapindus oahuensis;* and (2) elevations between 150 and 850 m (500 and 2,800 ft).

Family Cyperaceae: *Cyperus trachysanthos* (pu‘uka‘a)

Kauai G, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, and Niihau A, identified in the legal descriptions in paragraph (a)(1)(i)(B) of this section, constitute critical habitat for *Cyperus trachysanthos* on Kauai and Niihau. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Wet sites (mud flats, wet clay soil, or wet cliff seeps) (a) on coastal cliffs or talus slopes and (b) containing the native plant species *Hibiscus tiliaceus;* and (2) elevations between 3 and 160 m (10 and 525 ft).

Family Cyperaceae: *Mariscus fauriei* (No common name)

Molokai unit H, identified in the legal description in paragraph (a)(1)(i)(F) of this section constitutes critical habitat for *Mariscus fauriei* on Molokai. Within this unit the currently known primary constituent elements of critical habitat for *Mariscus fauriei* are the habitat components that provide: (1) aa substrate—(a) *Diospyros sandwicensis* dominated lowland dry forests and (b) containing one or more of the following associated native species: *Canthium odoratum, Peperomia* sp., and *Rauvolfia*

sandwicensis; and (2) at an elevation of 207 m (680 ft).

Family Euphorbiaceae: *Chamaesyce halemanui* (no common name)

Kauai G and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Chamaesyce halemanui* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Steep slopes of gulches (a) in mesic *Acacia koa* forests and (b) containing one or more of the following native plant species: *Metrosideros polymorpha, Alphitonia ponderosa, Antidesma platyphyllum, Bobea brevipes, Cheirodendron trigynum, Coprosma* sp., *Diospyros sandwicensis, Dodonaea viscosa, Elaeocarpus bifidus, Hedyotis terminalis, Kokia kauaiensis, Melicope haupuensis, Pisonia* sp., *Pittosporum* sp., *Pleomele aurea, Psychotria mariniana, Psychotria greenwelliae, Pouteria sandwicensis, Santalum freycinetianum,* or *Styphelia tameiameiae;* and (2) elevations between 660 to 1,100 m (2,165 to 3,610 ft).

Family Euphorbiaceae: *Euphorbia haeleeleana* (‘akoko)

Kauai G, I, and U, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Euphorbia haeleeleana* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Lowland mixed mesic or dry forest that (a) is often dominated by *Metrosideros polymorpha, Acacia koa,* or *Diospyros* sp. and (b) containing one or more of the following native plant species: *Acacia koaia, Antidesma platyphyllum, Claoxylon* sp., *Carex meyenii, Carex wahuensis, Diplazium sandwichianum, Dodonaea viscosa, Erythrina sandwicensis, Kokia kauaiensis, Pleomele aurea, Psychotria mariniana, P. greenwelliae, Pteralyxia sandwicensis, Rauvolfia sandwicensis, Reynoldsia sandwicensis, Sapindus oahuensis, Tetraplasandra kauaiensis, Pouteria sandwicensis, Pisonia sandwicensis,* or *Xylosma* sp.; and (2) elevations between 205 and 670 m (680 and 2,200 ft).

Family Euphorbiaceae: *Flueggea neowawraea* (mehamehame)

Kauai F, G, and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Flueggea neowawraea* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Dry or mesic forests containing one or more of the following native plant species: *Alectryon macrococcus, Bobea timonioides, Charpentiera* sp., *Caesalpinia kauaiense, Hibiscus* sp., *Melicope* sp., *Metrosideros polymorpha, Myrsine lanaiensis, Munroidendron racemosum, Tetraplasandra* sp., *Kokia kauaiensis, Isodendrion* sp., *Pteralyxia kauaiensis, Psychotria mariniana, Diplazium sandwichianum, Freycinetia arborea, Nesoluma polynesicum, Diospyros* sp., *Antidesma pulvinatum, A. platyphyllum, Canthium odoratum, Nestegis sandwicensis, Rauvolfia sandwicensis, Pittosporum* sp., *Tetraplasandra* sp., *Pouteria sandwicensis, Xylosma* sp., *Pritchardia* sp., *Bidens* sp., or *Streblus pendulinus;* and (2) elevations of 250 to 1,000 m (820 to 3,280 ft).

Family Fabaceae: *Canavalia molokaiensis* (awikiwiki)

Molokai units I, J and X, identified in the legal descriptions in paragraph (a)(1)(i)(F) of this section constitute critical habitat for *Canavalia molokaiensis* on Molokai. Within these units the currently known primary constituent elements of critical habitat for *Canavalia molokaiensis* are the habitat components that provide: (1) Exposed dry and mesic sites on steep slopes—(a) in *Metrosideros polymorpha-Dodonea viscosa* lowland shrubland or mesic shrublands and (b) containing one or more of the following associated native plant species: *Artemesia* sp., *Chamaesyce* sp., *Coprosma* sp., *Styphelia tameiameiae,* or *Wikstroemia* sp.; and (2) elevations between 10 and 900 m (30 and 3,060 ft).

Family Fabaceae: *Sesbania tomentosa* (‘ohai)

i. Kauai J, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Sesbania tomentosa* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Sandy beaches, dunes, soil pockets on lava, or pond margins (a) in coastal dry shrublands, or open *Metrosideros polymorpha* forests, or mixed coastal dry cliffs, and (b) containing one or more of the following associated native plant species: *Sida fallax, Heteropogon contortus, Myoporum sandwicense, Sporobolus virginicus, Scaevola sericea,* or *Dodonaea viscosa;* and (2) elevations between sea level and 12 m (0 and 40 ft).

ii. Molokai units D, E, G, H, K, L and M, identified in the legal descriptions in paragraph (a)(1)(i)(F) of this section constitutes critical habitat for *Sesbania tomentosa* on Molokai. Within these units the currently known primary constituent elements of critical habitat for *Sesbania tomentosa* are the habitat components that provide: (1) Windswept slopes, sea cliffs and weathered basaltic slopes—(a) in *Scaevola sericea* coastal dry shrublands and (b) containing one or more of the following associated native species: *Lipochaeta integrifolia, Jacquemontia sandwicensis, Sida fallax,* and *Dodonea viscosa;* and (2) elevations between sea level and 579 m (0–1,900 ft).

Family Fabaceae: *Vigna o-wahuense* (No common name)

Molokai unit G, identified in the legal description in paragraph (a)(1)(i)(F) of this section constitutes critical habitat for *Vigna o-wahuensis* on Molokai. Within this unit the currently known primary constituent elements of critical habitat for *Vigna o-wahuensis* are the habitat components that provide: (1) Dry to mesic grassland and shrubland and containing one or more of the following associated native species: *Chenopodium oahuense, Cyperus laevigatus, Eragrostis variabilis, Heteropogon contortus, Ipomoea* sp., *Scaevola sericea, Sida falax, Vitex rotindifolia, Dodonea viscosa,* and *Styphelia tameiameiae;* and (2) from 207 to 256 m (680–840 ft) in elevation.

Family Flacourtiaceae: *Xylosma crenatum* (no common name)

Kauai G and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Xylosma crenatum* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Diverse *Acacia koa-Metrosideros polymorpha* montane mesic forest, or *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest, or *Acacia koa-Metrosideros polymorpha* montane wet forest, and containing one or more of the following associated native plant species: *Tetraplasandra kauaiensis, Hedyotis terminalis, Pleomele aurea, Ilex anomala, Claoxylon sandwicense, Myrsine alyxifolia, Nestegis sandwicensis, Streblus pendulinus, Psychotria* sp., *Diplazium sandwichianum, Pouteria sandwicensis, Scaevola procera, Coprosma* sp., *Athyrium sandwichianum, Touchardia latifolia, Dubautia knudsenii, Cheirodendron* sp., *Lobelia yuccoides, Cyanea hirta, Poa sandwicensis,* or

Diplazium sandwichianum; and (2) elevations between 975 to 1,065 m (3,200 to 3,490 ft).

Family Gentianaceae: *Centaurium sebaeoides* (awiwi)

i. Kauai G, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Centaurium sebaeoides* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Volcanic or clay soils or cliffs (a) in arid coastal areas and (b) containing one or more of the following native plant species; *Artemisia* sp., *Bidens* sp., *Chamaesyce celastroides, Dodonaea viscosa, Fimbristylis cymosa, Heteropogon contortus, Jaquemontia ovalifolia, Lipochaeta succulenta, Lipochaeta heterophylla, Lipochaeta integrifolia, Lycium sandwicense, Lysimachia mauritiana, Mariscus phloides, Panicum fauriei, P. torridum, Scaevola sericea, Schiedea globosa, Sida fallax,* or *Wikstroemia uva-ursi;* and (2) elevations above 250 m (800 ft).

ii. Molokai units C and Aa, identified in the legal descriptions in paragraph (a)(1)(i)(F) of this section constitute critical habitat for *Centaurium sebaeoides* on Molokai. Within these units the currently known primary constituent elements of critical habitat for *Centaurium sebaeoides* are the habitat components that provide: (1) Volcanic or clay soils or cliffs—(a) in arid coastal areas and (b) containing one or more of the following associated native plant species: *Chamaesyce celastroides, Dodonea viscosa, Fimbristylis cymosa, Heteropogon contortus, Lipochaeta heterophylla, Lipochaeta integrifolia, Lycium sandwicense, Lysimachia mauritiana, Mariscus phleoides, Panicum fauriei, Panicum torridum, Scaevola sericea, Schiedea globosa, Sida fallax, Wikstroemia uva-ursi, Artemisia* sp., *Bidens* sp., *Jaquemontia ovalifolia,* or *Lipochaeta succulenta;* and (2) elevations below 120 m (400 ft).

Family Gesneriaceae: *Cyrtandra cyaneoides* (mapele)

Kauai K, P, and R, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Cyrtandra cyaneoides* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Steep slopes or cliffs near streams or waterfalls (a) in lowland or montane wet forest or shrubland dominated by *Metrosideros polymorpha* or a mixture of *Metrosideros polymorpha* and *Dicranopteris linearis* and (b) containing one or more of the following native species: *Perrottetia sandwicensis, Pipturus* sp., *Bidens* sp., *Psychotria* sp., *Pritchardia* sp., *Freycinetia arborea, Cyanea* sp., *Cyrtandra limahuliensis, Diplazium sandwichianum, Gunnera* sp., *Coprosma* sp., *Stenogyne* sp., *Machaerina* sp., *Boehmeria grandis, Pipturus* sp., *Cheirodendron* sp., *Hedyotis terminalis,* or *Hedyotis tryblium;* and (2) elevations between 550 and 1,220 meter (1,800 and 4,000 ft).

Family Gesneriaceae: *Cyrtandra limahuliensis* (ha'iwale)

Kauai A, F, K, L, O, P, Q, R, and T, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Cyrtandra limahuliensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Stream banks (a) in lowland wet forests and (b) containing one or more of the following native plant species: *Antidesma* sp., *Cyrtandra kealiea, Pisonia* sp., *Pipturus* sp., *Cibotium glaucum, Eugenia* sp, *Hedyotis terminalis, Dubautia* sp., *Boehmeria grandis, Touchardia latifolia, Bidens* sp., *Hibiscus waimeae, Charpentiera* sp., *Urera glabra, Pritchardia* sp., *Cyanea* sp., *Perrottetia sandwicensis, Metrosideros polymorpha, Dicranopteris linearis, Gunnera kauaiensis,* or *Psychotria* sp.; and (2) elevations between 245 and 915 m (800 and 3,000 ft).

Family Lamiaceae: *Phyllostegia knudsenii* (no common name)

Kauai I, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Phyllostegia knudsenii* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) *Metrosideros polymorpha* lowland mesic or wet forest containing one or more of the following associated native plant species: *Perrottetia sandwicensis, Cyrtandra kauaiensis, Cyrtandra paludosa, Elaeocarpus bifidus, Claoxylon sandwicensis, Cryptocarya mannii, Ilex anomala, Myrsine linearifolia, Bobea timonioides, Selaginella arbuscula, Diospyros* sp., *Zanthoxylum dipetalum, Pittosporum* sp., *Tetraplasandra* spp., *Pouteria sandwicensis,* or *Pritchardia minor;* and (2) elevations between 865–975 m (2,840–3,200 ft).

Family Lamiaceae: *Phyllostegia wawrana* (no common name)

Kauai G, I, and R, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Phyllostegia wawrana* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) *Metrosideros polymorpha* dominated lowland or montane wet or mesic forest with (a) *Cheirodendron* sp. or *Dicranopteris linearis* as co-dominants, and (b) containing one or more of the following associated native plant species: *Delissea rivularis, Diplazium sandwichianum, Vaccinium* sp., *Broussaisia arguta, Myrsine lanaiensis, Psychotria* sp., *Dubautia knudsenii, Scaevola procera, Gunnera* sp., *Pleomele aurea, Claoxylon sandwicense, Elaphoglossum* sp., *Hedyotis* sp., *Sadleria* sp., and *Syzygium sandwicensis;* and (2) elevations between 780–1,210 m (2,560–3,920 ft).

Family Lamiaceae: *Stenogyne bifida* (No common name)

Molokai unit P, identified in the legal description in paragraph (a)(1)(i)(F) of this section constitutes critical habitat for *Stenogyne bifida* on Molokai. Within this unit the currently known primary constituent elements of critical habitat for *Stenogyne bifida* are the habitat components that provide: (1) Steep ridges—(a) in *Metrosideros polymorpha*-dominated montane mesic to wet forests and (b) containing one or more of the following associated native species: *Cibotium* sp., *Hedyotis* sp., *Cyanea* sp., *Dicranopteris linearis, Dodonaea viscosa, Hedyotis hillebrandii, Pipturus albidus, Psychotria* sp., *Styphelia tameiameiae, Vaccinium* sp., *Wikstromia* sp., *Cheirodendron trigynum, Broussaisia arguta,* and *Pouteria sandwicensis;* and (2) elevations between 450 and 1,200 m (1,450 and 4,000 ft).

Family Lamiaceae: *Stenogyne campanulata* (no common name)

Kauai G, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Stenogyne campanulata* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Rock faces of nearly vertical, north-facing cliffs (a) in diverse lowland or montane mesic forest and (b) containing one or more of the following associated native plant species: *Heliotropium* sp., *Lepidium serra,*

Lysimachia glutinosa, Perrottetia sandwicensis, or *Remya montgomeryi;* and (2) an elevation of 1,085 m (3,560 ft).

Family Loganiaceae: *Labordia lydgatei* (kamakahala)

Kauai F, K, L, P, R, and T, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Labordia lydgatei* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest containing one or more of the following associated native plant species: *Psychotria* sp., *Hedyotis terminalis* sp., *Cyanea* sp., *Cyrtandra* sp., *Labordia hirtella, Antidesma platyphyllum* var. *hillebrandii, Syzygium sandwicensis, Ilex anomala,* or *Dubautia knudsenii;* and (2) elevations between 635 and 855 m (2,080 to 2,800 ft).

Family Loganiaceae: *Labordia tinifolia* var. *wahiawaensis* (kamakahala)

Kauai L, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Labordia tinifolia* var. *wahiawaensis* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Streambanks (a) in lowland wet forests dominated by *Metrosideros polymorpha* and (b) containing one or more of the following associated species: *Cheirodendron* sp., *Dicranopteris linearis, Cyrtandra* sp, *Antidesma* sp., *Psychotria* sp., *Hedyotis terminalis,* or *Athyrium microphyllum;* and (2) elevations between 300 to 920 m (985 to 3,020 ft).

Family Loganiaceae: *Labordia triflora* (kamakahala)

Molokai unit N, identified in the legal description in paragraph (a)(1)(i)(F) of this section constitute critical habitat for *Labordia triflora* on Molokai. Within this unit the currently known primary constituent elements of critical habitat for *Labordia triflora* are the habitat components that provide: (1) Mixed lowland mesic forest containing one or more of the following associated native plant species: *Pouteria sandwicensis, Cyanea mannii,* or *Tetraplasandra* sp.; and (2) elevation of ca. 800 m (2,600 ft).

Family Malvaceae: *Hibiscadelphus woodii* (hau kuahiwi)

Kauai G, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Hibiscadelphus woodii* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Basalt talus or cliff walls (a) in *Metrosideros polymorpha* montane mesic forest and (b) containing one or more of the following associated native plant species: *Bidens sandwicensis, Artemisia australis, Melicope pallida, Dubautia* sp., *Lepidium serra, Lipochaeta* sp., *Lysimachia glutinosa, Carex meyenii, Chamaesyce celastroides* var. *hanapepensis, Hedyotis* sp., *Nototrichium* sp., *Panicum lineale, Myrsine* sp., *Stenogyne campanulata, Lobelia niihauensis,* or *Poa mannii;* and (2) elevations around 915m (3,000 ft).

Family Malvaceae: *Hibiscus arnottianus* ssp. *immaculatus* (kokio ke okeo)

Molokai units T and V, identified in the legal descriptions in paragraph (a)(1)(i)(F) of this section constitute critical habitat for *Hibiscus arnottianus* ssp. *immaculatus* on Molokai. Within this unit the currently known primary constituent elements of critical habitat for Hibiscus arnottianus ssp. immaculatus are the habitat components that provide: (1) steep sea cliffs—(a) in mesic forests and (b) containing one or more of the following associated native plant species: *Athyrium* sp., *Canthium odoratum, Cyanea grimesiana, Antidesma platyphyllum, Boehmeria grandis, Diospyros sandwicensis, Pipturis* sp., *Urera glabra,* or *Metrosideros polymorpha;* and (2) elevations between 15 and 480 m (50 and 1,600 ft).

Family Malvaceae: *Hibiscus clayi* (Clay's hibiscus)

Kauai N, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Hibiscus clayi* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Slopes (a) in *Acacia koa* or *Diospyros* sp.-*Pisonia* sp.-*Metrosideros polymorpha* lowland dry or mesic forest and (b) containing one or more of the following associated native plant species: *Hedyotis acuminata, Pipturus* sp., *Psychotria* sp., *Cyanea hardyi, Artemisia australis,* or *Bidens* sp.; and (2) elevations between 230 to 350 m (750 to 1,150 ft).

Family Malvaceae: *Hibiscus waimeae* ssp. *hannerae (koki'o ke'oke'o)*

Kauai F, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Hibiscus waimeae* ssp. *hannerae* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) *Metrosideros polymorpha-Dicranopteris linearis* or *Pisonia* sp.-*Charpentiera elliptica* lowland wet or mesic forest and containing one or more of the following associated native plant species: *Antidesma* sp., *Psychotria* sp., *Pipturus* sp., *Bidens* sp., *Bobea* sp., *Sadleria* sp., *Cyrtandra* sp., *Cyanea* sp., *Cibotium* sp., *Perrottetia sandwicensis,* or *Syzygium sandwicensis;* and (2) elevations between 190 and 560 m (620 and 1,850 ft).

Family Malvaceae: *Kokia kauaiensis* (koki'o)

Kauai G and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Kokia kauaiensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Diverse mesic forest containing one or more of the following associated native plant species: *Acacia koa, Metrosideros polymorpha, Bobea* sp., *Diospyros sandwicensis, Hedyotis* sp., *Pleomele* sp., *Pisonia* sp., *Xylosma* sp., *Isodendrion* sp., *Syzygium sandwicensis, Antidesma* sp., *Alyxia olivaeformis, Pouteria sandwicensis, Streblus pendulinus, Canthium odoratum, Nototrichium* sp., *Pteralyxia kauaiensis, Dicranopteris linearis, Hibiscus* sp., *Flueggea neowawraea, Rauvolfia sandwicensis, Melicope* sp., *Diellia laciniata, Tetraplasandra* sp., *Chamaesyce celastroides, Lipochaeta fauriei, Dodonaea viscosa, Santalum* sp., *Claoxylon* sp., or *Nestegis sandwicensis;* and (2) elevations between 350–660 m (1,150–2,165 ft).

Family Marsileaceae: *Marsilea villosa* (ihi ihi)

Molokai units A, B and C, identified in the legal descriptions in paragraph (a)(1)(i)(F) of this section constitutes critical habitat for *Marsilea villosa* on Molokai. Within these units the currently known primary constituent elements of critical habitat for *Marsilea villosa* are the habitat components that provide: (1) Minimally shaded or open areas in shallow depressions in clay soil, or lithified sand dunes overlaid with alluvial clay and containing one or more of the following associated native species: *Heteropogon contortus, Sida fallax, Waltheria indica, Centaurium sebaeoides, Tetramolopium sylvae* and *Schiedea globosa;* and (2) at or below 150 m (500 ft) elevation.

Family Myrsinaceae: *Myrsine linearifolia* (kolea)

Kauai F, G, H, I, L, and P, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Myrsine linearifolia* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Diverse mesic or wet lowland or montane *Metrosideros polymorpha* forest with (a) *Cheirodendron* sp. or *Dicranopteris linearis* as co-dominants, and (b) containing one or more of the following associated native plant species: *Dubautia* sp., *Cryptocarya mannii, Sadleria pallida, Myrsine* sp., *Syzygium sandwicensis, Machaerina angustifolia, Freycinetia arborea, Hedyotis terminalis, Cheirodendron* sp., *Bobea brevipes, Nothocestrum* sp., *Melicope* sp., *Eurya sandwicensis, Psychotria* sp., *Lysimachia* sp., or native ferns; and (2) elevations between 585 to 1,280 m (1,920 to 4,200 ft).

Family Orchidaceae: *Platanthera holochila* (no common name)

Kauai H, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Platanthera holochila* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest or *M. polymorpha* mixed bog containing one or more of the following associated native plants: *Myrsine denticulata, Cibotium* sp., *Coprosma ernodeoides, Oreobolus furcatus, Styphelia tameiameiae,* or *Vaccinium* sp.; and (2) elevations between 1,050 and 1,600 m (3,450 and 5,245 ft).

Family Plantaginaceae: *Plantago princeps* (laukahi kuahiwi)

Kauai G, K, P, and T, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Plantago princeps* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Steep slopes, rock walls, or bases of waterfalls (a) in mesic or wet *Metrosideros polymorpha* forest and (b) containing one or more of the following associated native plant species: *Dodonaea viscosa, Psychotria* sp., *Dicranopteris linearis, Cyanea* sp., *Hedyotis* sp., *Melicope* sp., *Dubautia plantaginea, Exocarpos luteolus, Poa siphonoglossa, Nothocestrum peltatum, Remya montgomeryi, Stenogyne campanulata, Xylosma* sp., *Pleomele* sp., *Machaerina angustifolia, Athyrium* sp., *Bidens* sp., *Eragrostis* sp., *Lysimachia filifolia, Pipturus* sp., *Cyrtandra* sp., or *Myrsine linearifolia;* and (2) elevations between 480 to 1,100 m (1,580 to 3,610 ft).

Family Poaceae: *Ischaemum byrone* (Hilo ischaemum)

Molokai units T and V, identified in the legal descriptions in paragraph (a)(1)(i)(F) of this section constitute critical habitat for *Ischaemum byrone* on Molokai. Within these units the currently known primary constituent elements of critical habitat for *Ischaemum byrone* are the habitat components that provide: (1) Rocks, basalt cliffs or talus slopes—(a) in coastal dry shrubland or *Artemisia* cliff communities and (b) containing one or more of the following associated native plant species: *Bidens molokaiensis, Hedyotis littoralis, Lysimachia mauritiana, Fymbrystylis cymosa,* or *Pandanus tectorius;* and (2) elevations between sea level and 75 m (0 and 250 ft).

Family Poaceae: *Panicum niihauense* (lau ʻehu)

Kauai J, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Panicum niihauense* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Sand dunes (a) in coastal shrubland and (b) containing one or more of the following associated native plant species: *Dodonaea viscosa, Cassytha filiformis, Scaevola sericea, Sida fallax, Vitex rotundifolia,* or *Sporobolus* sp.; and (2) elevations of 100 m or less (330 ft).

Family Poaceae: *Poa mannii* (Mann's bluegrass)

Kauai G, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Poa mannii* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Cliffs, rock faces, or stream banks (a) in lowland or montane wet, dry, or mesic *Metrosideros polymorpha* or *Acacia koa-Metrosideros polymorpha* montane mesic forest and (b) containing one or more of the following associated native plant species: *Alectryon macrococcus, Antidesma platyphyllum, Bidens cosmoides, Chamaesyce celastroides* var. *hanapepensis, Artemisia australis, Bidens sandwicensis, Lobelia sandwicensis, Wilkesia gymnoxiphium, Eragrostis variabilis, Panicum lineale, Mariscus phloides, Luzula hawaiiensis, Carex meyenii, C. wahuensis, Cyrtandra wawrae, Dodonaea viscosa, Exocarpos luteolus, Labordia helleri, Nototrichium* sp., *Schiedea amplexicaulis, Hedyotis terminalis, Melicope anisata, M. barbigera, M. pallida, Pouteria sandwicensis, Schiedea membranacea, Diospyros sandwicensis, Psychotria mariniana, P. greenwelliae,* or *Kokia kauaiensis;* and (2) elevations between 460 and 1,150 m (1,510 and 3,770 ft).

Family Poaceae: *Poa sandvicensis* (Hawaiian bluegrass)

Kauai G and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Poa sandvicensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Wet, shaded, gentle or steep slopes, ridges, or rock ledges (a) in semi-open or closed, mesic or wet, diverse montane forest dominated by *Metrosideros polymorpha* and (b) containing one or more of the following associated native species: *Dodonaea viscosa, Dubautia* sp., *Coprosma* sp., *Melicope* sp., *Dianella sandwicensis, Alyxia olivaeformis, Bidens* sp., *Dicranopteris linearis, Schiedea stellarioides, Peperomia macraeana, Claoxylon sandwicense, Acacia koa, Psychotria* sp., *Hedyotis* sp., *Scaevola* sp., *Cheirodendron* sp., or *Syzygium sandwicensis;* and (2) elevations between 1,035 to 1,250 m (3,400 to 4,100 ft).

Family Poaceae: *Poa siphonoglossa* (no common name)

Kauai G, I, and U, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Poa siphonoglossa* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Shady banks near ridge crests (a) in mesic *Metrosideros polymorpha* forest and (b) containing one or more of the following associated native plant species: *Acacia koa, Psychotria* sp., *Scaevola* sp., *Alphitonia ponderosa, Zanthoxylum dipetalum, Tetraplasandra kauaiensis, Dodonaea viscosa, Hedyotis* sp., *Melicope* sp., *Vaccinium* sp., *Styphelia tameiameiae, Carex meyenii, Carex wahuensis,* or *Wilkesia gymnoxiphium;* and (2) elevations between 1,000 to 1,200 m (3,300 and 3,900 ft).

Family Primulaceae: *Lysimachia filifolia* (no common name)

Kauai T, identified in the legal description in paragraph (a)(1)(i)(A) of

this section, constitutes critical habitat for *Lysimachia filifolia* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Mossy banks at the base of cliff faces within the spray zone of waterfalls or along streams in lowland wet forests and containing one or more of the following associated native plant species: mosses, ferns, liverworts, *Machaerina* sp., *Heteropogon contortus,* or *Melicope* sp.; and (2) elevations between 240 to 680 m (800 to 2,230 ft).

Family Rhamnaceae: *Gouania meyenii* (no common name)

Kauai G and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Gouania meyenii* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Rocky ledges, cliff faces, or ridge tops (a) in dry shrubland or *Metrosideros polymorpha* lowland mesic forest and (b) containing one or more of the following native plant species: *Dodonaea viscosa, Chamaesyce* sp., *Psychotria* sp., *Hedyotis* sp., *Melicope* sp., *Nestegis sandwicensis, Bidens* sp., *Carex meyenii, Diospyros* sp., *Lysimachia* sp., or *Senna gaudichaudii;* and (2) elevations between 490 to 880 m (1,600 to 2,880 ft).

Family Rubiaceae: *Hedyotis cookiana* (‘awiwi)

Kauai G, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Hedyotis cookiana* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) streambeds or steep cliffs close to water sources in lowland wet forest communities; and (2) elevations between 170 and 370 m (560 and 1,210 ft).

Family Rubiaceae: *Hedyotis st.-johnii* (Na Pali beach Hedyotis)

Kauai G and J, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Hedyotis st.-johnii* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Crevices of north-facing, near-vertical coastal cliff faces within the spray zone (a) in sparse dry coastal shrubland and (b) containing one or more of the following native plant species: *Myoporum sandwicense, Eragrostis variabilis, Lycium sandwicense, Heteropogon contortus, Artemisia australis* or *Chamaesyce celastroides;* and (2) elevations above 75 m (250 ft).

Family Rutaceae: *Melicope haupuensis* (alani)

Kauai G and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Melicope haupuensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Moist talus slopes (a) in *Metrosideros polymorpha* dominated lowland mesic forests or *Metrosideros polymorpha-Acacia koa* montane mesic forest and (b) containing one or more of the following associated native plant species: *Dodonaea viscosa, Diospyros* sp., *Psychotria mariniana, P. greenwelliae, Melicope ovata, M. anisata, M. barbigera, Dianella sandwicensis, Pritchardia minor, Tetraplasandra waimeae, Claoxylon sandwicensis, Cheirodendron trigynum, Pleomele aurea, Cryptocarya mannii, Pouteria sandwicensis, Bobea brevipes, Hedyotis terminalis, Elaeocarpus bifidus,* or *Antidesma* sp; and (2) elevations between 375 to 1,075 m (1,230 to 3,530 ft).

Family Rutaceae: *Melicope knudsenii* (alani)

Kauai G and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Melicope knudsenii* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Forested flats or talus slopes (a) in lowland dry or montane mesic forests and (b) containing one or more of the following associated native plant species: *Dodonaea viscosa, Antidesma* sp., *Metrosideros polymorpha, Xylosma* sp., *Hibiscus* sp., *Myrsine lanaiensis, Diospyros* sp., *Rauvolfia sandwicensis, Bobea* sp., *Nestegis sandwicensis, Hedyotis* sp., *Melicope* sp., *Psychotria* sp., or *Pittosporum kauaiensis;* and (2) elevations between 450 to 1,000 m (1,480 to 3,300 ft).

Family Rutaceae: *Melicope mucronulata* (alani)

Molokai unit H, identified in the legal description in paragraph (a)(1)(i)(F) of this section constitutes critical habitat for *Melicope mucronulata* on Molokai. Within this unit the currently known primary constituent elements of critical habitat for *Melicope mucronulata* are the habitat components that provide: (1) Steep, west-or north-facing, lowland slopes—(a) in dry to mesic, forests and (b) containing one or more of the following associated native species: *Dodonea viscosa, Metrosideros polymorpha, Styphelia tameiameiae,* and *Dubautia linearis;* and (2) elevations between 670 and 870 m (2,200 and 2,850 ft).

Family Rutaceae: *Melicope pallida* (alani)

Kauai G and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Melicope pallida* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Steep rock faces (a) in lowland or montane mesic or wet forests or shrubland and (b) containing one or more of the following associated native plant species: *Dodonaea viscosa, Lepidium serra, Pleomele* sp., *Boehmeria grandis, Coprosma* sp., *Hedyotis terminalis, Melicope* sp., *Pouteria sandwicensis, Poa mannii, Schiedea membranacea, Psychotria mariniana, Dianella sandwicensis, Pritchardia minor, Chamaesyce celastroides* var *hanapepensis, Nototrichium* sp., *Carex meyenii, Artemisia* sp., *Abutilon sandwicense, Alyxia olivaeformis, Dryopteris* sp., *Metrosideros polymorpha, Pipturus albidus, Sapindus oahuensis, Tetraplasandra* sp., or *Xylosma hawaiiense;* and (2) elevations between 490 to 915 m (1,600 to 3,000 ft).

Family Rutaceae: *Melicope reflexa* (alani)

Molokai units Q and U, identified in the legal descriptions in paragraph (a)(1)(i)(F) of this section constitutes critical habitat for *Melicope reflexa* on Molokai. Within these units the currently known primary constituent elements of critical habitat for *Melicope reflexa* are the habitat components that provide: (1) Wet *Metrosideros polymorpha* dominated forests with native trees such as *Cheirodendron* sp.; and (2) elevations between 760 and 1,190 m (2,490 and 3,900 ft).

Family Rutaceae: *Zanthoxylum hawaiiense* (ae)

i. Kauai I, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Zanthoxylum hawaiiense* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Lowland dry or mesic forests, or montane dry forest, (a) dominated by *Metrosideros polymorpha* or *Diospyros sandwicensis,* and (b) containing one or more of the following associated plant species: *Pleomele*

auwahiensis, Antidesma platyphyllum, Pisonia sp., *Alectryon macrococcus, Charpentiera* sp., *Melicope* sp., *Streblus pendulinus, Myrsine lanaiensis, Sophora chrysophylla,* or *Dodonaea viscosa;* and (2) elevations between 550 and 730 m (1,800 and 2,400 ft).

ii. Molokai unit G, identified in the legal description in paragraph (a)(1)(i)(F) of this section constitutes critical habitat for *Zanthoxylum hawaiiense* on Molokai. Within this unit the currently known primary constituent elements of critical habitat for *Zanthoxylum hawaiiense* are the habitat components that provide: (1) Mesic *Metrosideros polymorpha* or *Diospyros sandwicensis* lowland dry forest with *Nestegis sandwicensis* and *Pleomele auwaiensis* and containing one or more of the following associated native species: *Pisonia* sp., *Xylosma hawaiiensis, Santalum ellipticum, Alphitonia ponderosa, Osteomeles anthylidifolia, Alectryon macrococcus, Charpentiera* sp., *Melicope* sp., *Dodonea viscosa, Streblus pendulinus, Myrsine lanaiensis,* and *Sophora chrysophylla;* and (2) elevations between 182 and 256 m (600 and 840 ft).

Family Santalaceae: *Exocarpos luteolus* (heau)

Kauai G, H, I, L, and S, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Exocarpos luteolus* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Wet places bordering swamps; open, dry ridges (a) in lowland or montane *Metrosideros polymorpha* dominated wet forest communities and (b) containing one or more of the following native plant species: *Acacia koa, Cheirodendron trigynum, Pouteria sandwicensis, Dodonaea viscosa, Pleomele aurea, Psychotria mariniana, Psychotria greenwelliae, Bobea brevipes, Hedyotis terminalis, Elaeocarpus bifidus, Melicope haupuensis, Dubautia laevigata, Dianella sandwicensis, Poa sandvicensis, Schiedea stellarioides, Peperomia macraeana, Claoxylon sandwicense, Santalum freycinetianum, Styphelia tameiameiae*, or *Dicranopteris linearis*; and (2) elevations between 475 and 1,290 m (1,560 and 4,220 ft).

Family Sapindaceae: *Alectryon macrococcus* (mahoe)

i. Kauai G, I, and U, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Alectryon macrococcus* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Dry slopes or gulches (a) in *Diospyros* sp.-*Metrosideros polymorpha* lowland mesic forest, *Metrosideros polymorpha* mixed mesic forest, or *Diospyros* sp. mixed mesic forest, (b) containing one or more of the following native plant species: *Nestegis sandwicensis, Psychotria* sp., *Pisonia* sp., *Xylosma* sp., *Streblus pendulinus, Hibiscus* sp., *Antidesma* sp., *Pleomele* sp., *Acacia koa, Melicope knudsenii, Hibiscus waimeae, Pteralyxia* sp., *Zanthoxylum* sp., *Kokia kauaiensis, Rauvolfia sandwicensis, Myrsine lanaiensis, Canthium odoratum, Canavalia* sp., *Alyxia oliviformis, Nesoluma polynesicum, Munroidendron racemosum, Caesalpinia kauaiense, Tetraplasandra* sp., *Pouteria sandwicensis*, or *Bobea timonioides*; and (2) elevations between 360 to 1,070 m (1,180 to 3,510 ft).

ii. Molokai units G, H and I, identified in the legal descriptions in paragraph (a)(1)(i)(F) of this section constitute critical habitat for *Alectryon macrococcus* on Molokai. Within this unit the currently known primary constituent elements of critical habitat for *Alectryon macrococcus* are the habitat components that provide: (1) Dry or talus slopes or gulches—(a) in dry or mesic lowland forests and (b) containing one or more of the following associated native plant species: *Dodonea viscosa, Nestegis sandwicensis, Nothocestrum* sp., *Pleomele* sp., *Psychotria* sp., *Streblus pendulinus, Myrsine* sp., *or Lipochaeta* sp.; and (2) elevations between 360 and 1,070 m (1,181 and 3,510 ft).

Family Solanaceae: *Nothocestrum peltatum* (‘aiea)

Kauai G and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Nothocestrum peltatum* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Rich soil on steep slopes (a) in montane or lowland mesic or wet forest dominated by *Acacia koa* or a mixture of *Acacia koa* and *Metrosideros polymorpha*, and (b) containing one or more of the following associated native plant species: *Antidesma* sp., *Dicranopteris linearis, Bobea brevipes, Elaeocarpus bifidus, Alphitonia ponderosa, Melicope anisata, M. barbigera, M. haupuensis, Pouteria sandwicensis, Dodonaea viscosa, Dianella sandwicensis, Tetraplasandra kauaiensis, Claoxylon sandwicensis, Cheirodendron trigynum, Psychotria mariniana, P. greenwelliae, Hedyotis terminalis, Ilex anomala, Xylosma* sp., *Cryptocarya mannii, Coprosma* sp., *Pleomele aurea, Diplazium sandwicensis, Broussaisia arguta*, or *Perrottetia sandwicensis*; and (2) elevations between 915 to 1,220 m (3,000 to 4,000 ft).

Family Solanaceae: *Solanum sandwicense* (‘aiakeaakua, popolu)

Kauai D, G, and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Solanum sandwicense* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Open, sunny areas (a) in diverse lowland or montane mesic or wet forests and (b) containing one or more of the following associated plants: *Alphitonia ponderosa, Ilex anomala, Xylosma* sp., *Athyrium sandwicensis, Syzygium sandwicensis, Bidens cosmoides, Dianella sandwicensis, Poa siphonoglossa, Carex meyenii, Hedyotis* sp., *Coprosma* sp., *Dubautia* sp., *Pouteria sandwicensis, Cryptocarya mannii, Acacia koa, Metrosideros polymorpha, Dicranopteris linearis, Psychotria* sp., or *Melicope* sp.; and (2) elevations between 760 and 1,220 m (2,500 and 4,000 ft).

Family Urticaceae: *Neraudia sericea* (No common name)

Molokai unit G, identified in the legal description in paragraph (a)(1)(i)(F) of this section constitutes critical habitat for *Neraudia sericea* on Molokai. Within this unit the currently known primary constituent elements of critical habitat for *Neraudia sericea* are the habitat components that provide: (1) Lowland dry to mesic *Metrosideros polymorpha-Dodonaea viscosa-Styphelia tameiameiae* shrubland or forest and containing one or more of the following associated native species: *Sida fallax, Diospyros sandwicensis, Bobea* sp., *Coprosma* sp., and *Hedyotis* sp.; and (2) between 670 and 1,370 m (2,200 and 4,500 ft) in elevation.

Family Violaceae: *Isodendrion laurifolium* (aupaka)

Kauai G, I, and U, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Isodendrion laurifolium* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Diverse mesic or wet forest (a) dominated by *Metrosideros polymorpha, Acacia koa*, or *Diospyros* sp. and (b) containing one or more of the following associated native plant

species: *Kokia kauaiensis, Streblus* sp., *Elaeocarpus bifidus, Canthium odoratum, Antidesma* sp., *Xylosma hawaiiense, Hedyotis terminalis, Pisonia* sp., *Nestegis sandwicensis, Dodonaea viscosa, Euphorbia haeleeleana, Pleomele* sp., *Pittosporum* sp., *Melicope* sp., *Claoxylon sandwicense, Alphitonia ponderosa, Myrsine lanaiensis*, or *Pouteria sandwicensis*; and (2) elevations between 490 and 820 m (1,600 and 2,700 ft).

Family Violaceae: *Isodendrion longifolium* (aupaka)

Kauai F, G, L, M, and P, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Isodendrion longifolium* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Steep slopes, gulches, or stream banks (a) in mesic or wet *Metrosideros polymorpha* forests and (b) containing one or more of the following native species: *Dicranopteris linearis, Eugenia* sp., *Diospyros* sp., *Pritchardia* sp., *Canthium odoratum, Melicope* sp., *Cheirodendron* sp., *Ilex anomala, Pipturus* sp., *Hedyotis fluviatilis, Peperomia* sp., *Bidens* sp., *Nestegis sandwicensis, Cyanea hardyi, Syzygium* sp., *Cibotium* sp., *Bobea brevipes, Antidesma* sp., *Cyrtandra* sp., *Hedyotis terminalis, Peperomia* sp., *Perrottetia sandwicensis, Pittosporum* sp., or *Psychotria* sp.; and (2) elevations between 410 to 760 m (1,345 to 2,500 ft).

Family Violaceae: *Viola helenae* (no common name)

Kauai L, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Viola helenae* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Stream banks or adjacent valley bottoms with light to moderate shade in *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest; and (2) elevations between 610–855 m (2,000–2,800 ft).

Family Violaceae: *Viola kauaiensis* var. *wahiawaensis* (nani wai'ale'ale)

Kauai L, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Viola kauaiensis* var. *wahiawaensis* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Open montane bog or wet shrubland containing one or more of the following native plant species: *Dicranopteris linearis, Diplopterygium pinnatum, Syzygium sandwicensis*, or *Metrosideros polymorpha*; and (2) elevations between 640 and 865 m (2,100 and 2,840 ft).

(B) *Ferns and Allies.*

Family Aspleniaceae: *Ctenitis squamigera* (pauoa)

Molokai unit N, identified in the legal description in paragraph (a)(1)(i)(F) of this section constitutes critical habitat for *Ctenitis squamigera* on Molokai. Within this unit the currently known primary constituent elements of critical habitat for *Ctenitis squamigera* are the habitat components that provide: (1) Mesic forest containing one or more of the following associated native plant taxa: *Metrosideros polymorpha, Myrsine lessertiana, Diospyros sandwicensis, Nestegis sandwicensis, Xylosma hawaiiense, Pouteria sandwicensis, Nephrolepis exaltata, Carex meyenii, Dryopteris unidentata*, or *Pleomele auwahiensis*; and (2) an elevation of approximately 865 m (254 ft).

Family Aspleniaceae: *Diellia erecta* (No common name)

Molokai units G and R, identified in the legal descriptions in paragraph (a)(1)(i)(F) of this section constitute critical habitat for *Diellia erecta* on Molokai. Within this unit the currently known primary constituent elements of critical habitat for *Diellia erecta* are the habitat components that provide: (1) Mixed mesic forest or mesic *Diospyros sandwicensis* forest containing one or more of the following associated native plant species: *Alyxia oliviformis, Metrosideros polymorpha, Bobea* sp., *Coprosma foliosa, Dodonea viscosa, Dryopteris unidentata, Myrsine* sp., *Ochrosia comta, Dubautia linearis* ssp. *opposita, Psychotria* sp., *Pleomele auwahiensis, Sophora chrysophylla, Styphelia tameiameiae, Syzygium sandwicensis*, or *Wikstroemia* sp.; and (2) elevations between 210 and 1,490 m (700 and 4,900 ft).

Family Aspleniaceae: *Diellia pallida* (no common name)

Kauai G and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Diellia pallida* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Bare soil on steep, rocky, dry slopes (a) in lowland mesic forests and (b) containing one or more of the following native plant species: *Acacia koa, Alectryon macrococcus, Antidesma platyphyllum, Metrosideros polymorpha, Myrsine lanaiensis, Zanthoxylum dipetalum, Tetraplasandra kauaiensis, Psychotria mariniana, Carex meyenii, Diospyros hillebrandii, Hedyotis knudsenii, Canthium odoratum, Pteralyxia kauaiensis, Nestegis sandwicensis, Alyxia olivaeformis, Wilkesia gymnoxiphium, Alphitonia ponderosa, Styphelia tameiameiae*, or *Rauvolfia sandwicensis*; and (2) elevations between 530 to 915 m (1,700 to 3,000 ft).

Family Grammitidaceae: *Adenophorus periens* (pendant kihi fern)

Kauai F, G, K, L, P, and R, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Adenophorus periens* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Well-developed, closed canopy that provides deep shade or high humidity (a) in *Metrosideros polymorpha-Cibotium glaucum* lowland wet forests, open *Metrosideros polymorpha* montane wet forest, or *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest, and (b) containing one or more of the following native plant species: *Athyrium sandwicensis, Broussaisia* sp., *Cheirodendron trigynum, Cyanea* sp., *Cyrtandra* sp., *Dicranopteris linearis, Freycinetia arborea, Hedyotis terminalis, Labordia hirtella, Machaerina angustifolia, Psychotria* sp., *Psychotria hexandra*, or *Syzygium sandwicensis*; and (2) elevations between 400 and 1,265 m (1,310 and 4,150 ft).

* * * * *

Dated: November 30, 2000.

Kenneth L. Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 00–31079 Filed 12–28–00; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Friday,
December 29, 2000

Part IV

Department of Education

Office of Special Education and Rehabilitative Services; List of Correspondence; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; List of Correspondence

AGENCY: Department of Education.

ACTION: List of correspondence from April 1, 2000 through June 30, 2000.

SUMMARY: The Secretary is publishing the following list pursuant to section 607(d) of the Individuals with Disabilities Education Act (IDEA). Under section 607(d) of IDEA, the Secretary is required, on a quarterly basis, to publish in the **Federal Register** a list of correspondence from the Department of Education received by individuals during the previous quarter that describes the interpretations of the Department of Education of IDEA or the regulations that implement IDEA.

FOR FURTHER INFORMATION CONTACT: Melisande Lee or JoLeta Reynolds. Telephone: (202) 205–5507. If you use a telecommunications device for the deaf (TDD) you may call (202) 205–5465 or the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of this notice in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to Katie Mincey, Director of the Alternate Formats Center. Telephone: (202) 205–8113.

SUPPLEMENTARY INFORMATION: The following list identifies correspondence from the Department issued between April 1, 2000 through June 30, 2000.

Included on the list are those letters that contain interpretations of the requirements of IDEA and its implementing regulations, as well as letters and other documents that the Department believes will assist the public in understanding the requirements of the law and its regulations. The date and topic addressed by a letter are identified, and summary information is also provided, as appropriate. To protect the privacy interests of the individual or individuals involved, personally identifiable information has been deleted, as appropriate.

Part A: General Provisions

Section 602—Definitions

Topic Addressed: Child With a Disability

• Letter dated June 3, 2000 to individual, (personally identifiable information redacted), regarding the obligation of States and LEAs to appropriately evaluate children with attention deficit hyperactive disorder (ADHD) under Part B of IDEA, and clarifying the relationship of relevant State requirements to applicable Part B requirements.

Topic Addressed: Educating Children With Particular Disabilities

• Notice of Policy Guidance dated June 5, 2000 entitled ''Educating Blind and Visually Impaired Students: Policy Guidance,'' updating guidance issued in 1995 for consistency with the IDEA Amendments of 1997.

Part B: Assistance for Education of All Children With Disabilities

Section 611—Authorization; Allotment; Use of Funds; Authorization of Appropriations

Topic Addressed: Distribution of Funds

• OSEP memorandum 00–15 dated May 18, 2000 regarding formula allocations to States and required adjustments to the December 1, 1998 child count.

• OSEP memorandum 00–17 dated June 26, 2000 regarding implementation of the new funding formula under IDEA and the year of age cohorts for which FAPE is ensured.

Section 612—State Eligibility

Topic Addressed: Free Appropriate Public Education

• Letter dated June 9, 2000 to American Music Therapy Association Executive Director Andrea H. Farbman regarding the provision of music therapy as a related service for students with disabilities.

Topic Addressed: Least Restrictive Environment

• Letters dated May 22, 2000 to individuals (personally identifiable information redacted), clarifying that under the IDEA Amendments of 1997, the first placement option considered for each disabled student is the regular classroom with appropriate supplementary aids and services.

Topic Addressed: Children Enrolled By Their Parents In Private Schools

• OSEP memorandum 00–14 dated May 4, 2000 restating and consolidating guidance on the nature and extent of school districts' obligations to parentally-placed private school children under Part B.

Topic Addressed: Home-Schooling

• Letters dated April 20, 2000 and April 27, 2000 to individuals, (personally identifiable information redacted), clarifying the nature and extent of school districts' obligations to children with disabilities who are home-schooled by their parents and that State law determines whether home schools are included in the definition of private schools.

Topic Addressed: State Educational Agency General Supervisory Authority

• Letter dated March 30, 2000 to Virgin Islands Department of Health Commissioner William K. Callender and Department of Education Commissioner Ruby Simmonds, regarding special conditions placed on expenditure of funds because of these Virgin Island agencies' status as high risk grantees.

• Letters dated June 21, 2000 to California Department of Education Superintendent of Public Instruction Delaine Eastin and Assistant Superintendent of Public Instruction Alice Parker, regarding the status of California's compliance with the requirements of Part B of IDEA.

Topic Addressed: Information Required for Receipt of Grant Awards

• OSEP memorandum 00–16 dated June 13, 2000 regarding review of eligibility documents and issuance of grant awards to States for Federal Fiscal Year 2000.

Section 613—Local Educational Agency Eligibility

Topic Addressed: Charter Schools

• Letter dated April 20, 2000 to Louisiana Department of Education Deputy Superintendent Marlyn Langley, clarifying the basis under which an SEA can distribute sliver grants and set-aside funds to charter schools that are established as LEAs.

Topic Addressed: Use of Federal Funds

• Letter dated May 12, 2000 to New York State Education Department Deputy Commissioner Lawrence Gloeckler, clarifying that a State cannot require an LEA to use its Part B flow-through funds to make payments to a private school that provided special education and related services to a child with a disability.

Section 614—Evaluations, Eligibility Determinations, Individualized Education Programs, and educational placements.

Topic Addressed: Evaluations and Reevaluations

• Letters dated March 29, 2000 to Michigan Department of Education Special Education Services Director Jacquelyn J. Thompson and to individuals (personally identifiable information redacted), and June 27, 2000 to U.S. Senator Don Nickles, regarding requirements applicable to a

parent's right to an independent educational evaluation at public expense.

• Letter dated June 7, 2000 to Attorney Jennifer L. Scheinz clarifying that parents who disagree with a functional behavioral assessment which is not part of an initial evaluation, a required reevaluation, or in response to any disciplinary action, but is conducted to develop an appropriate IEP, are entitled to an independent educational evaluation at public expense.

Topic Addressed: Individualized Education Programs

• Letter dated May 26, 2000 to Pennsylvania School Counselors Association Executive Director Robert B. Cormany regarding the use of school counselors as public agency representatives on the IEP team.

• OSEP memo 00–19 dated June 30, 2000 regarding guidance on the Part B IEP requirements for children with disabilities, including preschool-aged children.

Section 615—Procedural Safeguards

Topic Addressed: Prior Written Notice

• Letter dated April 20, 2000 to individual, (personally identifiable information redacted), regarding the requirement for prior written notice before a change in educational placement.

Topic Addressed: Due Process Hearings

• Letter dated May 1, 2000; to Paul L. Erickson, Esquire, regarding North Carolina's application of a 60-day limitation period to administrative reviews for all claims under IDEA.

Part C: Infants and Toddlers With Disabilities

Sections 631–641

Topic Addressed: Provision of A Free Appropriate Public Education to Children With Disabilities Below Age 3

• Letter dated May 17, 2000 to Vermont Department of Education Manager for Special Education Susan Cano, clarifying that when a child below age three receives FAPE, States must comply with the requirements of: (1) Both Parts B and C of IDEA when Part B funds are used, and (2) with Part C even if no IDEA Part B or C funds are used for that child as long as the State receives any Part C funds.

Topic Addressed: Natural Environments

• Letter dated May 12, 2000 to individual (personally identifiable information redacted), regarding a State's responsibility to ensure the provision of early intervention services in natural environments, to the maximum extent appropriate to the needs of the child, and the Individualized Family Service Plan Team's responsibility to determine the location in which those services are provided.

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(Catalog of Federal Domestic Assistance Number 84.027, Assistance to States for Education of Children with Disabilities)

Dated: December 21, 2000.

Curtis L. Richards,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 00–33131 Filed 12–28–00; 8:45 am]

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Federal Register

Friday,
December 29, 2000

Part V

Environmental Protection Agency

Federal Agency Hazardous Waste Compliance Docket; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6924–7]

Federal Agency Hazardous Waste Compliance Docket

AGENCY: Environmental Protection Agency.

ACTION: Notice of thirteenth update of the Federal Agency Hazardous Waste Compliance Docket, pursuant to CERCLA section 120(c).

SUMMARY: Section 120(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), requires the Environmental Protection Agency (EPA) to establish a Federal Agency Hazardous Waste Compliance Docket. The docket is to contain certain information about Federal facilities that manage hazardous waste or from which hazardous substances have been or may be released. (As defined by CERCLA section 101(22), a release is any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.) CERCLA requires that the docket be updated every six months, as new facilities are reported to EPA by Federal agencies. The following list identifies the Federal facilities to be included in this thirteenth update of the docket and includes facilities not previously listed on the docket and reported to EPA since the last update of the docket, 65 FR 36994, June 12, 2000, which was current as of December 1, 1999. SARA, as amended by the Defense Authorization Act of 1997, specifies that, for each Federal facility that is included on the docket during an update, evaluation shall be completed in accordance with a reasonable schedule. Such site evaluation activities will help determine whether the facility should be included on the National Priorities List (NPL) and will provide EPA and the public with valuable information about the facility. In addition to the list of additions to the docket, this notice includes a section that comprises revisions (that is, corrections and deletions) of the previous docket list. This update contains 27 additions and 6 deletions since the previous update, as well as numerous other corrections to the docket list. At the time of publication of this notice, the new total number of Federal facilities listed on the docket is 2,232.

DATES: This list is current as of August 28, 2000.

FOR FURTHER INFORMATION CONTACT: Electronic versions of the docket may be obtained at http://www.epa.gov/oeca/fedfac/oversight/oversight.html.

SUPPLEMENTARY INFORMATION:

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2.0 Revisions of the Previous Docket
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1.0 Introduction

Section 120(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 United States Code (U.S.C.) 9620(c), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), required the establishment of the Federal Agency Hazardous Waste Compliance Docket. The docket contains information on Federal facilities that is submitted by Federal agencies to the U.S. Environmental Protection Agency (EPA) under sections 3005, 3010, and 3016 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6925, 6930, and 6937, and under section 103 of CERCLA, 42 U.S.C. 9603. Specifically, RCRA section 3005 establishes a permitting system for certain hazardous waste treatment, storage, and disposal (TSD) facilities; RCRA section 3010 requires waste generators and transporters and TSD facilities to notify EPA of their hazardous waste activities; and RCRA section 3016 requires Federal agencies to submit biennially to EPA an inventory of hazardous waste sites that the Federal agencies own or operate. CERCLA section 103(a) requires that the National Response Center (NRC) be notified of a release. CERCLA section 103(c) requires reporting to EPA the existence of a facility at which hazardous substances are or have been stored, treated, or disposed of and the existence of known or suspected releases of hazardous substances at such facilities.

The docket serves three major purposes: (1) To identify all Federal facilities that must be evaluated to determine whether they pose a risk to human health and the environment sufficient to warrant inclusion on the National Priorities List (NPL); (2) to compile and maintain the information submitted to EPA on such facilities under the provisions listed in section 120(c) of CERCLA; and (3) to provide a mechanism to make the information available to the public.

The initial list of Federal facilities to be included on the docket was published on February 12, 1988 (53 FR 4280). Updates of the docket have been published on November 16, 1988 (54 FR 46364); December 15, 1989 (54 FR 51472); August 22, 1990 (55 FR 34492); September 27, 1991 (56 FR 49328); December 12, 1991 (56 FR 64898); July 17, 1992 (57 FR 31758); February 5, 1993 (58 FR 7298); November 10, 1993 (58 FR 59790); April 11, 1995 (60 FR 18474); June 27, 1997 (62 FR 34779); November 23, 1998 (63 FR 64806); and June 12, 2000 (65 FR 36994). This notice constitutes the thirteenth update of the docket.

Today's notice is divided into three sections: (1) Additions, (2) deletions, and (3) corrections. The additions section lists newly identified facilities that have been reported to EPA since the last update and that now are being included on the docket. The deletions section lists facilities that EPA is deleting from the docket. The corrections section lists changes in information about facilities already listed on the docket.

The information submitted to EPA on each Federal facility is maintained in the docket repository located in the EPA Regional office of the Region in which the facility is located (see 53 FR 4280 (February 12, 1988) for a description of the information required under those provisions). Each repository contains the documents submitted to EPA under the reporting provisions and correspondence relevant to the reporting provisions for each facility. Contact the following docket coordinators for information on Regional docket repositories:

Gerardo Milla(a)n-Ramos (HBS), US EPA Region 1, #1 Congress St., Suite 1100, Boston, MA 02114–2023, (617) 918–1377

Helen Shannon (ERRD), US EPA Region 2, 290 Broadway, 18th Floor, New York, NY 10007–1866, (212) 637–4260

Alida Karas (ERRD), US EPA Region 2, 290 Broadway, New York, NY 10007–1866, (212) 637–4276

Todd Richardson (3HS50), US EPA Region 3, 841 Chestnut Bg., Philadelphia, PA 19107, (215) 814–5264

Ann Cole (4WD–FFB), US EPA Region 4, 61, Forsyth St., SW, Atlanta, GA 30303, (404) 562–9638

Alan Gebien (SE–5J), US EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–1304

Philip Ofosu (6SF–RA), US EPA Region 6, 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–3178

D. Karla Asberry (FFSC), US EPA Region 7, 726 Minnesota Avenue, Kansas City, KS 66101, (913) 551–7595
Stan Zawistowski (EPR–F), US EPA Region 8, 999 18th Street, Suite 500, Denver, CO 80202–2466, (303) 312–6255
Avonda D. East (SFD–8), US EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–2468
Mark Ader (ECL–115), US EPA Region 10, SW 1200 Sixth Avenue, Seattle, WA 98101 (206) 553–1808
Monica Lindeman (ECL, SACU2), US EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101 (206) 553–5113.

2.0 Revisions of the Previous Docket

Following is a discussion of the revisions of the previous docket, including additions, deletions, and corrections.

2.1 Additions

Today, 27 facilities are being added to the docket, primarily because of new information obtained by EPA (for example, recent reporting of a facility pursuant to RCRA sections 3005, 3010, or 3016 or CERCLA section 103). SARA, as amended by the Defense Authorization Act of 1997, specifies that, for each Federal facility that is included on the docket during an update, evaluation shall be completed in accordance with a reasonable schedule.

Of the 27 facilities being added to the docket, none are facilities that have reported to the NRC the release of a reportable quantity (RQ) of a hazardous substance. Under section 103(a) of CERCLA, a facility is required to report to the NRC the release of a hazardous substance in a quantity that equals or exceeds the established RQ. Reports of releases received by the NRC, the U.S. Coast Guard (USCG), and EPA are transmitted electronically to the Transportation Systems Center at the U.S. Department of Transportation (DOT), where they become part of the Emergency Response Notification System (ERNS) database. ERNS is a national computer database and retrieval system that stores information on releases of oil and hazardous substances. Facilities being added to the docket and facilities already listed on the docket for which an ERNS report has been filed are identified by the notation ''103(a)'' in the ''Reporting Mechanism'' column.

It is EPA's policy generally not to list on the docket facilities that are small-quantity generators (SQG) and that have never generated more than 1,000 kilograms (kg) of hazardous waste in any single month. If a facility has generated more than 1,000 kg of hazardous waste in any single month (that is, if the facility is an episodic generator), it will be added to the docket. In addition, facilities that are SQGs, but that have reported releases under CERCLA section 103 or hazardous waste activities pursuant to RCRA section 3016 will be listed on the docket and will undergo site evaluation activities, such as a PA and, when appropriate, an SI. All such facilities will be listed on the docket, whether or not they are SQGs pursuant to RCRA. As a result, some of the facilities that EPA is adding to the docket today are SQGs that had not been listed on the docket but that have reported releases or hazardous waste activities to EPA under another reporting provision.

In the process of compiling the documents for the Regional repositories, EPA identified a number of facilities that had previously submitted PA reports, SI reports, Department of Defense (DOD) Installation Restoration Program (IRP) reports, or reports under another Federal agency environmental restoration program, but do not appear to have notified EPA under CERCLA section 103. Section 120(c)(3) of CERCLA requires that EPA include on the docket, among other things, information submitted under section 103. In general, section 103 requires persons in charge of a facility to provide notice of certain releases of hazardous substances. The reports under various Federal agency environmental restoration programs may contain information regarding releases of hazardous substances similar to that provided pursuant to section 103. EPA believes that CERCLA section 120(c) authorizes the agency to include on the docket a facility that has provided information to EPA through documents such as a report under a Federal agency environmental restoration program, regardless of the absence of section 103 reporting. Therefore, some of the facilities that EPA is adding today are being placed on the docket because they have submitted the documents described above that contain reports of releases of hazardous substances.

EPA also includes privately owned, government-operated (POGO) facilities on the docket. CERCLA section 120(c) requires that the docket contain information submitted under RCRA sections 3005, 3010, and 3016 and CERCLA section 103, all of which impose duties on operators as well as owners of facilities. In addition, other subsections of CERCLA section 120 refer to facilities ''owned or operated'' by an agency or other instrumentality of the Federal government. That terminology clearly includes facilities that are operated by the Federal government, even if they are not owned by it. Specifically, CERCLA section 120(e), which sets forth the duties of the Federal agencies after a facility has been listed on the NPL, refers to the Federal agency that ''owns or operates'' the facility. In addition, the primary basis for assigning responsibility for conducting PAs and SIs, as required when a facility is listed on the docket, is Executive Order 12580, which assigns that responsibility to the Federal agency having ''jurisdiction, custody, or control'' over a facility. An operator may be deemed to have jurisdiction, custody, or control over a facility.

Deletions

Today, 6 facilities are being deleted from the docket for various reasons, such as incorrect reporting of hazardous waste activity, change in ownership, and exemption as an SQG under RCRA (40 Code of Federal Regulations [CFR] Part 262.44). Facilities being deleted no longer will be subject to the requirements of CERCLA section 120(d).

2.3 Corrections

Changes necessary to correct the previous docket were identified by both EPA and Federal agencies. The changes needed varied from simple changes in addresses or spelling to corrections of the recorded name and ownership of a facility. In addition, some changes in the names of facilities were made to establish consistency in the docket. Many new entries are simply corrections of typographical errors. For each facility for which a correction has been entered, the original entry (designated by an ''O''), as it appeared in the February 12, 1988 notice or subsequent updates, is shown directly below the corrected entry (designated by a ''C'') for easy comparison.

3.0 Process for Compiling the Updated Docket

In compiling the newly reported facilities for the update being published today, EPA extracted the names, addresses, and identification numbers of facilities from four EPA databases—ERNS, the Biennial Inventory of Federal Agency Hazardous Waste Activities, the Resource Conservation and Recovery Information System (RCRIS), and the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS)—that contain information about Federal facilities submitted under the four provisions listed in CERCLA section 120(c).

Extensive computer checks compared the current docket list with the information obtained from the databases identified above to determine which facilities were, in fact, newly reported and qualified for inclusion on the update. In spite of the quality assurance efforts EPA has undertaken, state-owned or privately owned facilities that are not operated by the Federal government may have been included. Such problems are caused by procedures historically used to report and track data on Federal facilities; EPA is working to resolve them. Representatives of Federal agencies are asked to write to EPA's docket coordinator at the following address if revisions of this update information are necessary: Federal Agency Hazardous Waste Compliance Docket Coordinator, Federal Facilities Enforcement Office (Mail Code 2261A), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

4.0 Facilities Not Included

As explained in the preamble to the original docket (53 FR 4280), the docket does not include the following categories of facilities (note, however, that any of these types of facilities may, when appropriate, be listed on the NPL):

- Facilities formerly owned by a Federal agency and now privately owned will not be listed on the docket. However, facilities that are now owned by another Federal agency will remain on the docket and the responsibility for conducting PAs and SIs will rest with the current owner.
- SQGs that have never produced more than 1,000 kg of hazardous waste in any single month and that have not reported releases under CERCLA section 103 or hazardous waste activities under RCRA section 3016 will not be listed on the docket.
- Facilities that are solely transporters, as reported under RCRA section 3010, will not be listed on the docket.

5.0 Information Contained on Docket Listing

As discussed above, the update information below is divided into three separate sections. The first section is a list of new facilities that are being added to the docket. The second section is a list of facilities that are being deleted from the docket. The third section comprises corrections of information included on the docket. Each facility listed for the update has been assigned a code(s) that indicates a more specific reason(s) for the addition, deletion, or correction. The code key precedes the lists.

SARA, as amended by the Defense Authorization Act of 1997, specifies that, for each Federal facility that is included on the docket during an update, evaluation shall be completed in accordance with a reasonable schedule. Therefore, all facilities on the additions list to this thirteenth docket update must submit a PA and, if warranted, an SI to EPA. The PA must include existing information about a site and its surrounding environment, including a thorough examination of human, food-chain, and environmental targets, potential waste sources, and migration pathways. From information in the PA or other information coming to EPA's attention, EPA will determine whether a follow-up SI is required. An SI augments the data collected in a PA. An SI may reflect sampling and other field data that are used to determine whether further action or investigation is appropriate. This policy includes any facility for which there is a change in the identity of the responsible Federal agency. The reports should be submitted to the Federal facilities coordinator in the appropriate EPA Regional office.

The facilities listed in each section are organized by state and then grouped alphabetically within each state by the Federal agency responsible for the facility. Under each state heading is listed the name and address of the facility, the Federal agency responsible for the facility, the statutory provision(s) under which the facility was reported to EPA, and the correction code(s).

The statutory provisions under which a facility reported are listed in a column titled ''Reporting Mechanism.'' Applicable mechanisms are listed for each facility: for example 3010, 3016, and 103(c).

The complete list of Federal facilities that now make up the docket and the list of facilities classified as no further remedial action planned (NFRAP) are not being published today. However, the lists are available to interested parties and can be obtained by calling the HQ Docket Coordinator at (202) 564–2468. As of today, the total number of Federal facilities that appear on the docket is 2,232.

6.0 Facility Status Reporting

In response to numerous requests from Federal agencies, EPA has expanded the docket database to include information on the NFRAP status of facilities listed. A prevalent concern has been the inability to identify facilities that, after submitting all necessary site assessment information, were found to warrant no further involvement on the part of EPA at the time. Accordingly, EPA has expanded the docket database to include a column indicating the facility's status.

The status codes are:

U=Undetermined
N=No further remedial action planned (NFRAP)
P=Currently proposed for the NPL

NFRAP is a term used in the Superfund site assessment program to identify facilities for which EPA has found that currently available information indicates that listing on the NPL is not likely and further assessment is not appropriate at the time. NFRAP status does not represent an EPA determination that no environmental threats are present at the facility or that no further environmental response action of any kind is necessary. NFRAP status means only that the facility does not appear, from the information available to EPA at this time, to warrant listing on the NPL and that, therefore, EPA anticipates no further involvement by EPA in site assessment or cleanup at the facility. However, additional CERCLA response actions by the Federal agency that owns or operates the facility, whether remedial or removal actions, may be necessary at a facility that has NFRAP status. The status information contained in the docket database is the result of Regional evaluation of information taken directly from CERCLIS. (CERCLIS is a database that helps EPA Headquarters and Regional personnel manage sites, programs, and projects. It contains the official inventory of all CERCLA (NPL and non-NPL) sites and supports all site planning and tracking functions. It also integrates financial data from preremedial, remedial, removal and enforcement programs.) The status information was taken from CERCLIS and sent to the Regional docket coordinators for review. The results of those reviews were incorporated into the status field in the docket database. Subsequently, a list of all facilities having NFRAP status (those for which an ''N'' appears in the status field) was generated; the list is being published today.

Important limitations apply to the list of facilities that have NFRAP status. First, the information is accurate only as of November 2, 2000. Second, a facility's status may change at any time because of any number of factors, including new site information or changing EPA policies. Finally, the list of facilities that have NFRAP status is based on Regional review of CERCLIS data, is provided for information purposes only, and should not be considered binding upon either the

Federal agency responsible for the facility or EPA.

The status information in the docket database will be reviewed, and a new list of facilities classified as NFRAP will be published at each docket update.

Dated: December 21, 2000.

Craig E. Hooks,

Director, Federal Facilities Enforcement Office.

Docket Revisions

Categories of Revisions for Docket Update by Correction Code

Categories for Deletion of Facilities

(1) Small-Quantity Generator
(2) Not Federally Owned
(3) Formerly Federally Owned
(4) No Hazardous Waste Generated
(5) (This correction code is no longer used.)
(6) Redundant Listing/Site on Facility
(7) Combining Sites Into One Facility/Entries Combined
(8) Does Not Fit Facility Definition
(9) (This correction code is no longer used.)
(10) (This correction code is no longer used.)
(11) (This correction code is no longer used.)
(12) (This correction code is no longer used.)
(13) (This correction code is no longer used.)
(14) (This correction code is no longer used.)

Categories for Addition of Facilities

(15) Small-Quantity Generator With Either a RCRA 3016 or CERCLA 103 Reporting Mechanism
(16) One Entry Being Split Into Two/Federal Agency Responsibility Being Split
(17) New Information Obtained Showing That Facility Should Be Included
(18) Facility Was a Site on a Facility That Was Disbanded; Now a Separate Facility
(19) Sites Were Combined Into One Facility
(19A) New Facility

Categories for Corrections of Information About Facilities

(20) Reporting Provisions Change
(20A) Typo Correction/Name Change/Address Change
(21) Changing Responsible Federal Agency (New Responsible Federal Agency Must Submit PA)
(22) Changing Responsible Federal Agency and Facility Name (New Responsible Must Submit PA)
(23) New Reporting Mechanism Added at Update
(24) Reporting Mechanism Determined to Be Not Applicable After Review of Regional Files

Note: Further information on definitions of categories can be obtained by calling the HQ Docket Coordinator at (202) 564–2468.

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #13 ADDITIONS

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Addition code
AFSC—BUCKLEY EAST 6TH AVE SITE.	BUCKLEY AFB	AURORA	CO	80011	AIR FORCE	103c	19A
ATLAS E MISSILE SITE #11	SIX MILES NORTH OF NUNN.	NUNN	CO	80648	AIR FORCE	103c	19A
GENERAL SERVICES ADMINISTRATION.	DENVER FEDERAL CENTER BUILDING 41.	LAKEWOOD	CO	80225	GENERAL SERVICES ADMINISTRATION.	3010	19A
HARTWELL PROJECT	6961 ANDERSON HWY.	HARTWELL	GA	30643	ARMY	3010	19A
POLK COUNTY (EXT) NATIONAL GUARD TARGET RANGE.			IA		ARMY	103c	19A
PALZO MINE	SHAWNEE NATIONAL FOREST.	HARRISBURG	IL	62946	AGRICULTURE	103c	19A
ARMY RESERVE PERSONNEL COMMAND WAREHOUSE.	RTE 3 & NEIDRINGHAUS	GRANITE CITY	IL	62040	ARMY	3010	19A
GENERAL SERVICES ADMINISTRATION.	212 S THIRD AVE	MINNEAPOLIS	MN	55401	GENERAL SERVICES ADMINISTRATION.	3010	19A
AIR FORCE (EX) PLANT #84	LAMBERT AIRPORT	ST LOUIS	MO		AIR FORCE	103c	19A
BELTON COMMUNICATION FACILITY.	HWY 71 AT BELTON 2.5 MILES 187TH STREET.	BELTON	MO		ENERGY	103c	19A
KANSAS CITY RECORDS CENTER.	601–607 HARDESTY	KANSAS CITY	MO	64124	GENERAL SERVICES ADMINISTRATION.	103c	19A
US EPA ANNEX	79 T W ALEXANDER DR	RTP	NC	27711	EPA	3010	19A
ORE HILL MINE SITE, WHITE MOUNTAIN NATIONAL FOREST.	719 MAIN STREET	LACONIA	NH	03246	AGRICULTURE	103c	19A
DLA/DNSC SCOTIA DEPOT	ROUTE 5	SCOTIA	NY	12302–1039	GENERAL SERVICES ADMINISTRATION.	3016	19A
NIAGARA STATION		YOUNGSTOWN	NY	14174	GENERAL SERVICES ADMINISTRATION.	103c	19A
US POSTAL SERVICE—JAF BLDG.	8TH AVE & 33RD STREET.	NEW YORK	NY	10199	POSTAL SERVICE.	3010	19A
GUS KEFURT ARMY RESERVE CENTER.	399 MILLER STREET	YOUNGSTOWN	OH	44507	ARMY	3010	19A
KINGS MILLS MILITARY RESERVATION.	6195 STRIKER ROAD	HAMILTON TOWNSHIP.	OH	45034	ARMY	103c	19A
GREENSBURG AMSA 104 W	2150 HUNTER ROAD	GREENSBURG	PA	15601	ARMY	3010	19A
"NEW" ARMY AVIATION SUPPORT.	ISLA GRANDE ROAD OFF HACIA FERNANDEZ.	SAN JUAN	PR		ARMY	103c	19A

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #13 ADDITIONS—Continued

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Addition code
US ARMY CORPS OF ENGINEERS.	1000 IDAHO STREET	GREENVILLE	SC	29605	ARMY	3010	19A
U.S. FOREST SERVICE NEMO WORKSTATION SITE.	NEMO	NEMO	SD	57754	AGRICULTURE	103c	19A
FEDERAL OFFICE BUILDING NO 2.	ROOM 1090 BUILDING MANAGER'S OFFICE.	ARLINGTON	VA	20370	GENERAL SERVICES ADMINISTRATION.	3010	19A
FS—OKANOGAN–WENATCHEE NF: NORTH CASCADES SMOKE JUMPER BASE.	23 INTERCITY AIRPORT RD 5 MI N OF TWISP.	TWISP	WA	98862	AGRICULTURE	103c	19A
FS—OKANOGAN–WENATCHEE NF: WINTHROP LOWER COMPUND.	HWY 20, 300 FT W OF DOWNTOWN WINTHROP.	WINTHROP	WA	98862	AGRICULTURE	103c	19A
POLE MOUNTAIN FORMER TARGET AND MANEUVER AREA.	7 MILES EAST OF LARAMIE.	LARAMIE	WY	82070	AIR FORCE	103c	19A
WYOMING ARNG OMS NO. 4	5500 BISHOP BOULEVARD.	CHEYENNE	WY	82009–3320	ARMY	103c	19A

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #13 DELETIONS

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Deletion code
US COAST GUARD COMMUNICATIONS CENTER.	900 FERRY STREET	MARSHFIELD	MA	02050	TRANSPORTATION.	103c	2
DEFENSE REUTILIZATION AND MARKETING SERVICE.	74 N WASHINGTON AVE	BATTLE CREEK	MI	49017	DEFENSE LOGISTICS AGENCY.	3010	4
NEWARK POST OFFICE	300 S MAIN ST	NEWARK	NY	14513	POSTAL SERVICE.	3010	4
TULSA AIR NATIONAL GUARD	138FG/EMO 4200 N 93RD E AVENUE.	TULSA	OK		AIR FORCE	103a	1
AMTRAK—LANCASTER C&S	55 MCGOVERN AVE	LANCASTER	PA	17602	TRANSPORTATION.	3010	2
ANGELINA NATIONAL FOREST	VICINITY STATE HIGHWAY 103 AND US 59.	LUFKIN	TX	75901	AGRICULTURE	103a	4

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #13 CORRECTIONS

	Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction code
C	FS—TONGASS NF: BOHEMIA BASIN EXPLORATION CAMPS.	T45S R56E S8 & T45S R55E S12, CRM 6 MI W OF CY.	PELICAN	AK	99832	AGRICULTURE	103c	20A
O	FS—TONGASS NF: BOHEMIA BASIN EXPLORATION CAMPS.	E SIDE YAKOBY ISLAND, N END LISLANSKY STRAIT.	HOONAH	AK	99829	AGRICULTURE	103c	
C	FWS—AK MARITIME NWR: LITTE KISKA ISLAND.	300 MI W OF CY, 51° 58′ N, 177° 33′ E, 6 MI E OF KISKA ISL HARBOR 60 MI NW OF AMCHITKA ISL.	ATKA	AK	99547	INTERIOR	103c	20A
O	FWS—AK MARITIME NWR: LITTE KISKA ISLAND.	300 MI W OF ATKA	ATKA	AK	99547	INTERIOR	103c	
C	AFSPC—BUCKLEY AIR NATIONAL GUARD BASE.	BUCKLEY ROAD AND EAST 6TH AVE.	AURORA	CO	80011–9599	AIR FORCE	3016, 103c, 3010	20A
O	BUCKLEY AIR NATIONAL GUARD BASE.	BUCKLEY ROAD AND EAST 6TH AVE.	AURORA	CO	80011–9599	AIR FORCE	3016, 103c, 3010	
C	US DOE SPR WEEKS ISLAND.	LA HWY 83 7 M S LYDIA	LYDIA	LA	70569	ENERGY	3010, 103c	20A, 23
O	SPR—WEEKS ISLAND	2 MI NW OF CYPREMONT	CYPREMONT	LA	70560	ENERGY	103c	
C	HANSCOM FIELD/ HANSCOM AIR FORCE BASE.	3245 ABG/CC ENVIRONMENTAL SITE 66CES4/ CEVR 12TH.	BEDFORD	MA	01731	AIR FORCE	3005, 3010, 3016, 103c 103a	20A
O	HANSCOM FIELD/ HANSCOM AIR FORCE BASE.	3245 ABG/CC ENVIRONMENTAL SITE 66CES4/ CEVR 12TH.	HANSCOM AFB	MA	01731	AIR FORCE	3005, 3010, 3016, 103c, 103a	
C	MASSACHUSETTS AIR NATIONAL GUARD WORCESTER.	SKYLINE DR	WORCESTER	MA	01605	AIR FORCE	103c	20A
O	MASSACHUSETTS AIR NATIONAL GUARD WORCHESTER.	SKYLINE DR	WORCHESTER	MA	01605	AIR FORCE	103c	

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #13 CORRECTIONS—Continued

	Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction code
C	BARNES AIR NATIONAL GUARD BASE.	BARNES MUNICIPAL AIRPORT.	WESTFIELD	MA	01085	AIR FORCE	103c, 3010	20A
O	WESTFIELD AIR NATIONAL GUARD (104TFG).	BARNES MUNICIPAL AIRPORT.	WESTFIELD	MA	01085	AIR FORCE	103c, 3010	
C	FORT DEVENS	BUENA VISTA ST	AYER—SHIRLEY	MA	01432	ARMY	3005, 3010, 3016, 103c, 103a	20A
O	FORT DEVENS	BUENA VISTA ST	AYER	MA	01432	ARMY	3005, 3010, 3016, 103c, 103a	
C	BOSTON AREA NIKE BATTERY.	OXBOW ST	WAYLAND	MA	01778	ARMY	103c	20A
O	WAYLAND ARMORY NATIONAL GUARD ARMORY.	OXBOW ST	WAYLAND	MA	01778	ARMY	103	
C	OLD LANDFILL AREA/ BIRCH HILL DAM.	BIRCH HILL DAM	ROYALSTON	MA		CORPS OF ENGINEERS, CIVIL.	103c	20A
O	ROYALSTON TOWN DUMP.	BIRCH HILL DAM	ROYALSTON	MA		CORPS OF ENGINEERS, CIVIL.	103c	
C	CASCO BAY DEFENSE FUEL SUPPORT POINT.	RT 123	HARPSWELL (SOUTH).	ME	04079	DEFENSE LOGISTICS AGENCY.	3010, 3016, 103c	20A
O	CASCO BAY DEFENSE FUEL SUPPORT POINT.	RT 123	SOUTH HARPSWELL NECK.	ME	04079	DEFENSE LOGISTICS AGENCY.	3010, 3016, 103c	
C	USACE—WAYNE INTERIM STORAGE.	868 BLACK OAK RIDGE RD.	WAYNE	NJ	07470	CORPS OF ENGINEERS, CIVIL.	3010, 3016, 103c	21, 23
O	WAYNE INTERIM STORAGE SITE (WR GRACE AND CO).	868 BLACK OAK RIDGE RD.	WAYNE	NJ	07470	ENERGY	3016, 103c	
C	NPS—SARATOGA NATIONAL HISTORICAL PARK.	648 RT 32	STILLWATER	NY	12170	INTERIOR	103c	20A
O	NPS—SARATOGA NATIONAL HISTORICAL PARK.	648 RT 32	SARATOGA SPRINGS.	NY	12170	INTERIOR	103c	
C	BRADFORD ISLAND LANDFILL.	T2N R7E S22 SW¼, WILLAMETTE MERIDIAN.	CASCADE LOCKS.	OR	97014	CORPS OF ENGINEERS, CIVIL.	103c	20A
O	BRADFORD ISLAND LANDFILL.	T2N R7E S22 S22 SW1/4, WILLAMETTE MERIDIAN.	CASCADE LOCKS.	OR	97014	CORPS OF ENGINEERS, CIVIL.	103c	
C	SAN JUAN POST OFFICE AND COURTHOUSE.	COMERICO ST AND TANCA ST.	SAN JUAN	PR	00906	GENERAL SERVICES ADMINISTRATION.	3010, 103c	23
O	SAN JUAN POST OFFICE & COURTHOUSE.	COMERCIO ST & TANCA ST.	SAN JUAN	PR	00906	GENERAL SERVICES ADMINISTRATION.	3010	
C	NEW RIVER AMMUNITION STORAGE DEPOT.	STATE RTE 11	DUBLIN	VA	24084	ARMY	3005, 3010, 3016, 103c, 103a	20A
O	RADFORD ARMY AMMUNITION PLANT.	STATE RTE 114	RADFORD	VA	24141	ARMY	3005, 3010, 3016, 103c, 103a	
C	NIOSH—FORMERLY ATLAS E MISSILE FACILITY S–9 SITE.	T27N R39E S36, 9 MI N OF REARDAN.	REARDAN	WA	99029	HEALTH AND HUMAN SERVICES.	103c	20A
O	NIOSH—FORMERLY ATLAS E MISSILE FACILITY S–9 SITE.	T27N R39E S36, 9 MI N OF REARDON.	REARDON	WA	99029	HEALTH AND HUMAN SERVICES.	103c	

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET NFRAP STATUS FACILITIES

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism
CHUGACH NF; KENAI LAKE WORK CENTER.	MI 23.5 SEWARD HIGHWAY.	SEWARD	AK	99664	AGRICULTURE	103c, 3010, 3016
FS—TONGASS NF; BOHEMIA BASIN EXPLORATION CAMPS.	T45S R56E 28 & T45S R55E S12, CRM 6 MI W OF CY.	PELICAN	AK	99832	AGRICULTURE	103c
ANVIL MOUNTAIN WHITE ALICE COMMUNICATIONS SITE.	6.5 MI N OF NOME	NOME	AK	99762	AIR FORCE	103c, 3016
BEAR CREEK AIR FORCE STATION.	YUKON RIVER ON N SHORE.	TANANA	AK	99777	AIR FORCE	103c, 3010, 3016
BETHEL AIR FORCE STATION	AIRPORT—W END OF MAIN ROAD.	BETHEL	AK	99559	AIR FORCE	3010, 3016, 103c

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET NFRAP STATUS FACILITIES—Continued

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism
BIG MOUNTAIN AIR FORCE STATION.	S SHOURE ILIAMNA/S SIDE BIG MTN.	BIG MOUNTAIN AFS.	AK	99501	AIR FORCE	3010, 103c, 3016
CAMPION AIR FORCE STATION	4 MILES NE OF GALENA	GALENA	AK	99765	AIR FORCE	3016, 3010, 103c
CANYON CREEK RADIO RELAY STATION.	T7S R7E S27 FM	BIG DELTA	AK	99737	AIR FORCE	3010, 103c, 3016
CAPE ROMANZOF AIR FORCE STATION.	20 MI N OF HOOPER DAY, YUKON DELTA NWR.	HOOPER BAY	AK	99604	AIR FORCE	3010, 103c, 3016
CLEAR AIR FORCE STATION	HWY 3 & NENANA RD	ANDERSON	AK	99704	AIR FORCE	3010, 103c, 3005
DEWLINE SITE LIZ–2: POINT LAY LLRS.	KASEGALUK LAGOON & KOKOLIK RIVER.	POINT LAY	AK	99579	AIR FORCE	3010, 103c, 3016
DEWLINE SITE LIZ–3: WAINWRIGHT.	KUK RIVER AND CHUKSI SEA.	WAINWRIGHT	AK	99782	AIR FORCE	3010, 103c, 3016
DEWLINE SITE POW–1: PT. LONELY.	PITT POINT, 85 MI SE OF BARROW.	BARROW	AK	99723	AIR FORCE	3010, 103c, 3016
DEWLINE SITE POW–2: OLIKTOK	40 MI W OF DEADHORSE	OLIKTOK	AK	99599	AIR FORCE	3010, 103c, 3016
DEWLINE SITE POW–MAIN: POINT BARROW.	BETWEEN N SALT LAGOON & IMIKPUK LAKE.	BARROW	AK	99723	AIR FORCE	3010, 103c, 3016
DRIFTWOOD BAY AIR FORCE STATION.	N COAST UNALASKA ISLAND.	DRIFTWOOD BAY	AK	99553	AIR FORCE	103c, 3016
FORT YUKON AIR FORCE STATION.	N OF YLLOTA SLOUGH	FORT YUKON	AK	99740	AIR FORCE	3010, 103c, 3016
GOLD KING CREEK RADIO RELAY STATION.	T8S R2W SEC 22, 27	VALDEZ	AK	99686	AIR FORCE	103c, 3010, 3016
GRANITE MOUNTAIN AIR FORCE STATION.	14 MI NW OF CY	HAYCOCK	AK	99762	AIR FORCE	103c, 3010, 3016
INDIAN MOUNTAIN AIR FORCE STATION.	NW SOURCE OF INDIAN RIVER.	BETTLES	AK	99720	AIR FORCE	3010, 103c, 3016
KALAKAKET CREEK	S SHORE OF KALA CREEK.	GALENA	AK	99741	AIR FORCE	3010, 103c, 3016
MURPHY DOME AIR FORCE STATION.	CHATINIKA RIVER	MURPHY DOME	AK	99701	AIR FORCE	3010, 3016, 103c
NIKOLSKI AIR FORCE STATION	W COAST TO UMNAK IS	NIKOLSKI	AK	99638	AIR FORCE	103c, 3016
NORTH RIVER WHITE ALICE COMMUNICATIONS (WAC) SITE.	8 MI OF UNALAKLEET	UNALAKLEET	AK	99684	AIR FORCE	3016
PILLAR MOUNTAIN WHITE ALICE COMMUNICATIONS SITE.	T27S R20W S36 SM	KODIAK	AK	99615	AIR FORCE	103c
PORT HEIDEN AIR FORCE STATION.	NW SHORE OF HEIDEN BAY.	PORT HEIDEN	AK	99549	AIR FORCE	103c, 3016, 3010
PORT MOLLER AIR FORCE STATION.	55D58M41SN, 160D29M45SW.	PORT MOLLER	AK	99571	AIR FORCE	3010, 103c, 3016
SPARREVOHN AIR FORCE STATION.	HOOK CREEK, 18 MI SW OF CITY.	LIME VILLAGE	AK	99557	AIR FORCE	3010, 103c, 3016
TATALINA AIR FORCE STATION	9 MI SW OF MCGRATH	MCGRATH	AK	99627	AIR FORCE	3010, 103c, 3016
TIN CITY AIR FORCE STATION	1 MI NE OF TIN CITY	TIN CITY	AK	99783	AIR FORCE	3010, 103c, 3016
GERSTLE RIVER TEST SITE	T13S R 14E SEC 9, 15, 16	FORT GREELY	AK	98733	ARMY	3005, 3010, 3016, 103c
HAINES PETROLEUM, OIL & LUBRICANTS (POL) TERMINAL.	LUTEK POINT	HAINES	AK	99827	ARMY	103c
NOATAK NATIONAL GUARD ARMORY.	55 MI N OF KOTZEBUE	NOATAK	AK	99761	ARMY	103c, 3016
NOAA–NATIONAL MARINE FISHERIES SERVICE.	PRIBIL OF ISLAND	SAINT PAUL ISLANDS.	AK	99660	COMMERCE	103c, 3010
ANCHORAGE DEFENSE FUEL SUPPORT POINT.	1217 ANCHORAGE PORT ROAD.	ANCHORAGE	AK	99501	DEFENSE	3016, 3010, 103c
WHITTIER TANK FARM	¾ MI N OF TOWN	WHITTIER	AK	99723	DEFENSE	103c, 3016, 3010
BLM—CHANDALAR DUMP	T16S R11E S9 UM, 155 MI SE OF BARROW.	BARROW	AK	99723	INTERIOR	103c
BLM—FEATHER RIVER AIRSTRIP	T7S R37W S34&35 & T8S R37W S2&3.	NOME	AK	99762	INTERIOR	103c
BLM—FORT EGBERT DUMP	T1S, R33E, SEC 31	EAGLE	AK	99738	INTERIOR	103c
BLM—MACLAREN GLACIER MINE	T19S R6E S14NE S11 FAIRBANKS MERIDIAN.	PAXSON	AK	99737	INTERIOR	103c
BLM—O'BRIAN CREEK DUMP	T7S R32E S9 NW¼, 50 MI S OF CITY.	EAGLE	AK	99738	INTERIOR	103c
BLM—OLD MAN CAMP SITE	T19N R14W S19 AND T19N R15W S24.	ALLAKAKET	AK	99720	INTERIOR	103c
BLM—PAXSON DUMP	T22S R12E S5 SW¼ SW¼ COPPER RIVER MERIDIAN.	PAXSON	AK	99737	INTERIOR	103c
BLM—PEARD BAY DEWLINE	50 MI SW OF BARROW	BARROW	AK	99723	INTERIOR	103c, 3010
BLM—PUMP STATION 12 DUMP SITE.	T4S R1E S26 NWSW	COPPER CENTER.	AK	99573	INTERIOR	103c
BLM—RED TOP RETORT SITE	T10S R55W SEWARD MERIDIAN.	ALEKNAGIK	AK	99555	INTERIOR	103c
BLM—SAG RIVER DUMP	T8S R14E S8	DEADHORSE	AK	99734	INTERIOR	103c
BLM—SKULL CLIFF LORAN STATION.	23 MILES SW OF BARROW ON COAST.	BARROW	AK	99723	INTERIOR	103c
BLM—SLANA DUMP SITE	MILE 67 OF DENALI HWY	CANTWELL	AK	99729	INTERIOR	103c
BLM—TANACROSS AIRFIELD	63D22MOOSW	TANACROSS	AK	99776	INTERIOR	103c
BLM—TANGLE LAKES DUMP SITE	MILE 22 DENALI HWY	PAXSON	AK	99737	INTERIOR	103c

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET NFRAP STATUS FACILITIES—Continued

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism
BLM—WALKER FORK DUMP	T26N R22E S4 N½ N½, 49 MI N OF CITY.	CHICKEN	AK	99732	INTERIOR	103c
FWS—ALASKA MARITIME NWR: CAPE THOMPSON.	MILVIKSAAQAQ DR	POINT HOPE	AK	99766	INTERIOR	103c
FWS—ALASKA MARITIME NWR: CATON ISLAND.	55 MI S OF CITY	COLD BAY	AK	99571	INTERIOR	103c
FWS—ALASKA MARITIME NWR: GREAT SITKIN ISLAND.	51°59′05″ N, 176°06′26″ W, 25 MI NE OF ADAK.	ADAK	AK	98546	INTERIOR	103c
FWS—ALASKA MARITIME NWR: LITTLE KISKA ISLAND.	300 MI W OF CY, 51°58′ N, 177°33′ E, 6 MI E OF KISKA ISL HARBOR 60 MI NW OF AMCHITKA ISL.	ATKA	AK	99547	INTERIOR	103c
FWS—ALASKA MARITIME NWR: SEMISOPOCHNOI ISLAND.	300 MI W OF ATKA	ATKA	AK	99547	INTERIOR	103c
FWS—ARCTIC NWR: BROWNLOW POINT DEWLINE SITE.	70 MI E OF DEADHORSE/ PRUDHOE BAY.	DEADHORSE	AK	99734	INTERIOR	103c, 3016
FWS—ARCTIC NWR: COLLINSON POINT DEWLINE SITE.	37 MI W OF KAKTOVIK	KAKTOVIK	AK	99747	INTERIOR	103c
FWS—ARCTIC NWR: DEMARCATION POINT DEWLINE SITE.	65 MI SE OF KAKTOVIK	KAKTOVIK	AK	99747	INTERIOR	103c, 3016
FWS—ARCTIC NWR: LAKE PETERS & MARSH FORK NARL SITE.	70 MI SW OF KAKTOVIK 69°16′60″ N, 145°02′00″ W & 69°10′00″ N, 145;°47′30″ W.	KAKTOVIK	AK	99747	INTERIOR	103c
FWS—ARTIC NWR: PORCUPINE RVR DEWLINE STAGING AREA.	T14S R48E S33 NE 1/4 NE 1/4.	ARCTIC VILLAGE	AK	99722	INTERIOR	103c
FWS—KENAI NWR: SKILAK GUARD STATION.	SKILAK LAKE RD, MI 4.5, 60D31M00SN, 150D28M00SW.	STERLING	AK	99672	INTERIOR	103c, 3016
FWS—KENAI NWR: SWAN LAKE MOOSE RESEARCH STATION.	SWAN LAKE RD, 15 MI S OF SWANSON RIVER RD, 60D44M30SN, 150D28M00SW.	SOLDOTNA	AK	99619	INTERIOR	103c
FWS—KENAI NWR: SWANSON RIVER OIL FIELD.	SWANSON LAKE RD, 60D43M00SN, 150D51M00SW.	KENAI	AK	99611	INTERIOR	3016, 103c
NPS—BERING LAND BRIDGE NP: LAVA LAKE.	45 MI SW OF DEERING	DEERING	AK	99736	INTERIOR	103c, 3016, 3010
NPS—DENALI NATIONAL PARK AND PRESERVE.	MI 237, GEORGE PARKS HWY.	DENALI PARK	AK	99755	INTERIOR	3016, 103c
NPS—DENALI NATIONAL PARK: RED TOP MINE.	DENALI NATIONAL PARK	DENALI PARK	AK	99765	INTERIOR	103c
NPS—GLACIER BAY NATIONAL PARK AND PRESERVE.	BARTLETT COVE	GUSTAVUS	AK	99826	INTERIOR	3016, 103c
NPS—KATMAI NP&P: NAKNEK RECREATION SITE ι2.	T17S R44W S25 & T18S R44W S4.	KING SALMON	AK	99613	INTERIOR	103c
NPS—NAGLATUK HILL	CAPE KRUSENSTERN NATIONAL MONUMENT.	KOTZEBUE	AK	99752	INTERIOR	3016, 103c, 3010
CAPE PRINCE OF WALES STATION.	0.3 MI S OF AIRSTRIP, 65D36M30SN, 168D03M50SW.	WALES	AK	99783	NAVY	103c, 3010
CAPE SABINE DEW LINE SITE	55 MI SW OF POINT LAY, MOUTH OF KAHKATAK CREEK, 69D01M00SN, 163D51M00SW.	POINT LAY	AK	99759	NAVY	103c
FORMER NAVAL ARCTIC RESEARCH LABORATORY BARROW.	MAIN ST, 4 MI N OF CY, 71°19′42″ N, 156°40′18″.	BARROW	AK	99723	NAVY	103c, 3010
NORTHEAST CAPE ST. LAWRENCE ISLAND.	70 MI E OF SAVOONGA ST. LAWRENCE.	NORTHEAST CAPE.	AK	99769	NAVY	3010, 3016, 103c
POINT MCINTYRE DEWLINE SITE	15 NW OF CITY	DEADHORSE	AK	99734	NAVY	103c
TIN CITY WHITE ALICE SITE	1.25 MI N OF AIRPORT	TIN CITY	AK	99783	NAVY	103c
FAIRBANKS VEHICLE MAINTENANCE FACILITY.	5400 MAIL TRAIL WAY	FAIRBANKS	AK	99709	POSTAL SERVICE	3010, 103c
CG—CAPE SARICHEF	UNIMAK ISLAND, W COAST.	UNIMAK	AK	99685	TRANSPORTATION	103c
CG—EDNA BAY ENTRANCE LIGHT	EDNA BAY, 32 MI NW OF CITY.	CRAIG	AK	99921	TRANSPORTATION	3010
CG—KODIAK SUPPORT CENTER	WOMANS BAY KODIAK ISL.	KODIAK	AK	99619	TRANSPORTATION	3010, 103c, 3016, 3005
CG—LORAN STATION ON SITKINAK.	SITKINAK ISLAND	OLD HARBOR	AK	99643	TRANSPORTATION	103c
CG—POINT SPENCER DUMP SITE	PORT CLARENCE—60 MI NW OF CY.	NOME	AK	99762	TRANSPORTATION	103c, 3010
CG—ST PAUL ISLAND LORAN STATION.	SAINT PAUL AIRPORT, 1.5 MI FROM FUNWAY #2.	SAINT PAUL ISLAND.	AK	99660	TRANSPORTATION	3010, 103c
FAA—AIR ROUTE TRAFFIC CENTER.	5400 DAVIS HIGHWAY	ANCHORAGE	AK	99506	TRANSPORTATION	103c, 3010
FAA—ANIAK STATION	ANIAK AIRPORT	ANIAK	AK	99557	TRANSPORTATION	103c

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET NFRAP STATUS FACILITIES—Continued

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism
FAA—ANNETTE ISLAND	ANNETTE AIRPORT NAV AIDS.	ANNETTE	AK	99926	TRANSPORTATION	103c
FAA—BARROW AIR NAVIGATION STATION.	BARROW AIRPORT AREA	BARROW	AK	99723	TRANSPORTATION	103c, 3010
FAA—BETHEL STATION	T8N R72W S13 SEWARD MERIDIAN.	BETHEL	AK	99559	TRANSPORTATION	103c
FAA—BETTLES STATION	BETTLES AIRPORT	BETTLES	AK	99726	TRANSPORTATION	103c, 3016
FAA—BIG LAKE VORTAC SITE	61D33M00SN, 149D52M00SW.	BIG LAKE	AK	99652	TRANSPORTATION	103c
FAA—BIG LEVEL ISLAND AIR NAVIGATION STATION.	56D27M00SN, 133D05M00SW, 75 MI SE OF PETERSBURG.	PETERSBURG	AK	99833	TRANSPORTATION	103c, 3016
FAA—BIORKA ISLAND	6 MI W OF SITKA	SITKA	AK	99835	TRANSPORTATION	3010, 1016, 103c
FAA—CAPE YAKATAGA STATION	60D04M57SN, 142D29M30SW.	CORDOVA	AK	99574	TRANSPORTATION	3010; 3016, 103c
FAA—CHANDALAR STATION	67D30M02SN, 148D28M00SW, 112 MI NW OF FORT YUKON.	CHANDALAR	AK	99740	TRANSPORTATION	103c
FAA—COGHLAN ISLAND STATION	58D21M10SN, 134D42M09SW, 4 MI W OF JUNEAU.	JUNEAU	AK	99821	TRANSPORTATION	3016, 103c
FAA—COLD BAY STATION	COLD BAY AIRPORT	COLD BAY	AK	99571	TRANSPORTATION	103c
FAA—CORDOVA STATION	COPPER RIVER HIGHWAY 10 M S OF CY.	CORDOVA	AK	99574	TRANSPORTATION	103c
FAA—DEADHORSE STATION	DEADHORSE AIRPORT NAV AIDS.	DEADHORSE	AK	99734	TRANSPORTATION	103c
FAA—DILLINGHAM AIRPORT	DILLINGHAM	DILLINGHAM	AK	99576	TRANSPORTATION	3016, 103c
FAA—DUNCAN CANAL, KUPREANOF ISLAND, INDIAN POINT.	56D45M00SN, 133D51M00SW, 10 MI SW OF PETERSBURG.	PETERSBURG	AK	99833	TRANSPORTATION	103c
FAA—DUTCH HARBOR STATION	DUTCH HARBOR AIRPORT.	DUTCH HARBOR	AK	99692	TRANSPORTATION	103c, 3010
FAA—FAIRBANKS STATION	5640 AIRPORT WAY	FAIRBANKS	AK	99790	TRANSPORTATION	103c
FAA—FAIRWELL STATION	62D30M24SN, 153D53M37SW.	MCGRATH	AK	99627	TRANSPORTATION	3010, 103c, 3016
FAA—FIRE ISLAND NAVIGATION STATION.	61D08M00SN, 150D13M00SW, 6 MI W OF ANCHORAGE.	ANCHORAGE	AK	99506	TRANSPORTATION	3010, 3016, 103c
FAA—FORT YUKON AIR NAVIGATION STATION.	FORT YUKON AIRPORT	FORT YUKON	AK	99740	TRANSPORTATION	3016, 103c
FAA—GALENA STATION	64D44M10SN, 156D56M04SW, GALENA AIRPORT NAV AIDS.	GALENA	AK	99741	TRANSPORTATION	103c
FAA—GULKANA STATION	GULKANA AIRPORT	GULKANA	AK	99586	TRANSPORTATION	103c
FAA—GUSTAVUS	GUSTAVUS AIRPORT NAV AIDS.	GUSTAVUS	AK	99826	TRANSPORTATION	103c
FAA—HAINES AIR NAVIGATION STATION.	2 MI S ON FAA/HAINES RD, 59D14M42SN, 135D31M19SW.	HAINES	AK	99827	TRANSPORTATION	103c, 3010
FAA—HOMER AIRPORT	HOMER	HOMER	AK	99603	TRANSPORTATION	3016, 103c
FAA—ILIAMNA SITE	ILIAMNA	ILIAMNA	AK	99606	TRANSPORTATION	3016, 103c
FAA—JOHNSTONE POINT AIR NAVIGATION STATION.	NW HINCHINBROOK ISLAND, 60D28M00SN, 146D34M00SW.	CORDOVA	AK	99574	TRANSPORTATION	3016, 103c
FAA—JUNEAU STATION	9341 GLACIER HIGHWAY NAV AIDS.	JUNEAU	AK	99801	TRANSPORTATION	103c
FAA—KENAI STATION	KENAI MUNICIPAL AIRPORT.	KENAI	AK	99611	TRANSPORTATION	3010, 103c
FAA—KING SALMON STATION	AIRPORT S OF CY NAV AIDS.	KING SALMON	AK	99613	TRANSPORTATION	103c
FAA—KOTZEBUE AIRPORT	KOTZEBUE AIRPORT	KOTZEBUE	AK	99752	TRANSPORTATION	3016, 103c
FAA—LAKE HOOD FACILITY	T13N R4W S34 NE	ANCHORAGE	AK	99518	TRANSPORTATION	103c, 3010
FAA—LAKE MINCHUMINA STATION.	RAMP AT LAKE MINCHUMINA AIRPORT.	LAKE MINCHUMINA.	AK	99757	TRANSPORTATION	3010, 3016, 103c, 3005
FAA—MCGRATH STATION	AIRPORT N OF CITY, NAV AIDS.	MCGRATH	AK	99627	TRANSPORTATION	103c
FAA—MIDDLETON ISLAND STATION.	59D27M02SN, 146D18M24SW, 80 MI S OF CORDOVA.	CORDOVA	AK	99574	TRANSPORTATION	3016, 103c
FAA—MOSES POINT AIR NAVIGATION STATION.	MOSES POINT AIRFIELD, 64D41M53SN, 162D03M26SW.	ELIM	AK	99739	TRANSPORTATION	3010, 3016, 103c
FAA—NENANA/NORTH NENANA STATION.	NENANA AIRPORT, 64D32M56SN, 149D042M24SW.	NENANA	AK	99760	TRANSPORTATION	3016, 103c
FAA—NOME AIR NAVIGATION STATION.	NOME MUNICIPAL AIRPORT, 64D30M47SN, 165D26M34SW.	NOME	AK	99762	TRANSPORTATION	103c, 3010

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET NFRAP STATUS FACILITIES—Continued

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism
FAA—NORTHWAY STAGING FIELD	NORTHWAY VILLAGE	NORTHWAY VILLAGE.	AK	99764	TRANSPORTATION	3016, 103c, 3010
FAA—PETERSBURG FACILITY	UNMANNED SITE MITKOF ISLAND.	PETERSBURG	AK	99833	TRANSPORTATION	103c
FAA—POINT WORONZOF RTR FACILITY.	ANCHORAGE INTERNATIONAL AIRPORT AREA.	ANCHORAGE	AK	99502	TRANSPORTATION	103c, 3010
FAA—PUNTILLA AIR NAVIGATION STATION.	PUNTILLA LAKE, 62D04M24SN, 152D43M59SW.	SKWENTNA	AK	99667	TRANSPORTATION	3016, 103c
FAA—SAINT MARY'S AIR NAVIGATION STATION.	YUKON DELTA NATIONAL WILDLIFE REFUGE.	SAINT MARY'S	AK	99658	TRANSPORTATION	103c
FAA—SAND POINT STATION	2 MI W OF SANDPOINT, 55D18M54SN, 160D31M03SW.	SANDPOINT	AK	99661	TRANSPORTATION	103c
FAA—SHUYAK STATION	SHUYAK ISLAND 60M N OF KODIAK.	KODIAK	AK	99615	TRANSPORTATION	103c, 3010
FAA—SISTERS ISLAND	58D10M40SN, 135D15M24SW.	JUNEAU	AK	99803	TRANSPORTATION	103c
FAA—SITKA STATION	57D03M07SW, 135D21M45SW, JAPONSKI ISLAND AIRPORT.	SITKA	AK	99835	TRANSPORTATION	103c, 3010
FAA—SKWENTNA AIR NAVIGATION STATION.	SKWENTNA AIRPORT	SKWENTNA	AK	99667	TRANSPORTATION	3010, 3016, 103c
FAA—SLANA FACILITY	SLANA ARPRT COPPER RV LOWLAND.	SLANA	AK	99586	TRANSPORTATION	103c, 3010
FAA—STRAWBERRY POINT	POINT BENTINCK NAV AIDS.	CORDOVA	AK	99574	TRANSPORTATION	103c
FAA—SUMMIT AIR NAVIGATION STATION.	CANTWELL PKS HWY 5 MI S.	SUMMIT	AK	99729	TRANSPORTATION	3016, 3010, 103c
FAA—TALKEETNA AIRPORT	TALKEETNA AIRPORT	TALKEETNA	AK	99676	TRANSPORTATION	3016, 103c
FAA—TANANA AIR FIELD STATION	TANANA AIRPORT NAV AIDS.	TANANA	AK	99777	TRANSPORTATION	103c
FAA—UMIAT AIRSTRIP STAGING AREA.	N BANK COLVILLE RIVER	UMIAT	AK	99723	TRANSPORTATION	103c
FAA—UNALAKLEET STATION	UNALAKLEET AIRPORT	UNALAKLEET	AK	99684	TRANSPORTATION	3016, 103c
FAA—WOODY ISLAND STATION	WOODY ISLAND	KODIAK	AK	99615	TRANSPORTATION	3016, 103c
FAA—YAKUTAT AIR NAVIGATION STATION.	YAKUTAT AIRPORT	YAKUTAT	AK	99689	TRANSPORTATION	103c
FRA—ARCTIC COOPERAGE	932 WHITNEY ROAD	ANCHORAGE	AK	99501	TRANSPORTATION	103c
BELLEFONTE NUCLEAR PLANT	OFF US HWY 72	HOLLYWOOD	AL	36401	TENNESSEE VALLEY AUTHORITY.	3005, 3010, 103c
BROWNS FERRY NUCLEAR PLANT	US HWY 72	ATHENS	AL	35611	TENNESSEE VALLEY AUTHORITY.	3010, 103c
COLBERT FOSSIL PLANT	OFF US HWY 72 W	TUSCUMBIA	AL	35674	TENNESSEE VALLEY AUTHORITY.	3005, 3010, 103c, 103a
GUNTERSVILLE HYDRO PLANT	OFF US HWY 431, 11 MI NW OF GUNTERSVILLE.	GUNTERSVILLE	AL	35976	TENNESSEE VALLEY AUTHORITY.	3010, 103c
MUSCLE SHOALS POWER SERVICE CENTER.	AL HWY 133	MUSCLE SHOALS.	AL	35660	TENNESSEE VALLEY AUTHORITY.	3005, 3010, 3016, 103a, 103c
NATIONAL FERTILIZER AND ENVIRONMENTAL RESEARCH CTR.	WILSON DAM ROAD	MUSCLE SHOALS.	AL	35660	TENNESSEE VALLEY AUTHORITY.	3005, 3010, 3016, 103c
WIDOWS CREEK FOSSIL PLANT	OFF US HWY 72 W	STEVENSON	AL	35772	TENNESSEE VALLEY AUTHORITY.	3005, 3010, 103c
WILSON HYDRO PLANT	AL HWY 133	FLORENCE	AL	35660	TENNESSEE VALLEY AUTHORITY.	3010, 103c
GUAM NAVAL MAGAZINE	APRA HBR HTS AREA BY FENA RESV.	APRA HARBOR	AQ	96910	NAVY	103c
SOUTH CENTRAL FAMILY FARM RESEARCH CENTER.	RT. 2, BOX 144A HWY 23 SOUTH.	BOONEVILLE	AR		AGRICULTURE	3016
FORT CHAFFEE	BUILDING 239	FORT CHAFFEE	AR	72905	ARMY	3005, 3010, 3016, 103c
MILLWOOD RESIDENT ENGINEERS OFFICE.	ROUTE 1	ASHDOWN	AR		CORPS OF ENGINEERS, CIVIL.	103c
COMBUSTION RESEARCH FACILITY.	NCTR, BLDG. 45	JEFFERSON	AR	72079	EPA	3005, 3010, 3016, 103c
SKY HARBOR INTERNATIONAL AIRPORT.	2001 S. 32ND ST	PHOENIX	AZ	85034	AIR FORCE	3010, 103c
DOUGLAS RANGE	1401 EIGHTH ST	DOUGLAS	AZ	85607	ARMY	3016, 103c
SAFFORD RANGE	4001 FIRST AVE	SAFFORD	AZ	85546	ARMY	3016, 103c
USAG FORT HUACHUCA	A T Z S E H B	FORT HUACHUCA.	AZ	85613	ARMY	3010, 3016, 103c, 103a, 3005
AQUATIC WEED CONTROL RESEARCH LABORATORY.	3116 WICKSON HALL UNIVERSITY OF CALIF.	DAVIS	CA	95616	AGRICULTURE	3016, 103c
COTTON RESEARCH CENTER	17053 SHAFTER AVENUE	SHAFTER	CA	93263	AGRICULTURE	3010, 3016, 103c
SIERRA NF: BASS LAKE LANDFILL	1130 O ST. ROOM 3017	FRESNO	CA	93721	AGRICULTURE	103c, 3016
PLANT #19	4297 PACIFIC COAST HWY.	SAN DIEGO	CA	92101–5001	AIR FORCE	103c, 3016, 3010
NORWALK DEFENSE FUEL SUPPLY CENTER.	15306 NORWALK BLVD	NORWALK	CA	90650	DEFENSE LOGISTICS AGENCY.	3010, 3016, 103c

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET NFRAP STATUS FACILITIES—Continued

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism
LAWRENCE BERKELEY LABORATORY.	1 CYCLOTRON RD	BERKELEY	CA	94720	ENERGY	3005, 3010, 3016, 103a, 103c
STANFORD LINEAR ACCELERATOR CENTER.	2575 SANDHILL RD	MENLO PARK	CA	94305	ENERGY	3010, 3016, 103c, 103a
TEXACO SECTION 8 CENTRAL SOLID WASTE SITE.	T32S/R24E MBD&M	TAFT	CA	93268	ENERGY	103c
TEXACO SECTION 8 GAS PLANT	T32S/R24E MDB&M	TAFT	CA	93268	ENERGY	103c
BLM—A&W SMELTER		ROSAMUND	CA		INTERIOR	103c
BLM—AFTERTHOUGHT MINE	T35N, R2W, SEC. 10&11	BELLAVISTA	CA	96008	INTERIOR	103c
BLM—AFTON CANYON/UNION PACIFIC RAILROAD.	T10—11R4–6SEC4–22	AFTON	CA	92365	INTERIOR	3016, 103c
BLM—BLACKROCK MINE	T3S, R31E, SEC 13 & 14 MDM.	BISHOP	CA	93514	INTERIOR	103c, 3016
BLM—BLUE ROCK MILLSITE	T8SR37ESEC8SESE	BIG PINE	CA	93513	INTERIOR	103c
BLM—BODIE MINE	T4N, R21E, SEC 9&8 MDM	BRIDGEPORT	CA	93517	INTERIOR	103c, 3016
BLM—BRAWLEY DRUG LAB	NEAR BRAWLEY	BRAWLEY	CA		INTERIOR	103c
BLM—CALIFORNIA DESERT DISTRICT.	T10NR2WSEC7	BARSTOW	CA	92311	INTERIOR	103c
BLM—CUYAMA DRUG LABORATORY.	T10N, R28W, SEC 15, NESE.	SANTA BARBARA	CA		INTERIOR	3016
BLM—DESERT SITE	9 MI.WEST OF YUMA, AZ		CA		INTERIOR	103c
BLM—DUCK FLAT	T36NR19ESEC7NWSE		CA		INTERIOR	103c, 3016
BLM—EL CAPITAN QUARRY	T15SR7ESEC1	LAKESIDE	CA	92040	INTERIOR	3016, 103c
BLM—FORT SODA DISPOSAL SITE	T12NR8ESCE11	BAKERSFIELD	CA	92390	INTERIOR	103c
BLM—INDIO HILLS	1 MI. E. OF DILLON RD		CA		INTERIOR	103c
BLM—KLAU MINE	S½, SEC 33, T26S, R10E, MT DIABLO.	SAN LUIS COUNTY.	CA		INTERIOR	103c
*BLM—LASSEN COLLEGE SITE	HWY 139 PO–BOX 3000	SUSANVILLE	CA	96130	INTERIOR	3016
BLM—OSAGE INDUSTRIES	60TH WEST	ROSAMOND	CA	93560	INTERIOR	103c
BLM—RIVERSIDE COUNTY DUMP	1000 MIDLAND RD	BLYTHE	CA	92225	INTERIOR	103c
BLM—SALAMBO MINE	T25, R15E, SEC 32, NE ¼, MDM.	COULTERVILLE	CA	95311	INTERIOR	103c, 3016
BLM—SHELL OIL CO. OF CALIFORNIA GORE B.	T31SR22ESEC21	TAFT	CA		INTERIOR	103c
BLM—SIMCAL CHEMICAL CORPORATION.	50 W. DANNENBERG RD.	EL CENTRO	CA		INTERIOR	103C, 3010
BLM—STATELINE DUMP (LANDFILL).	N/A		CA		INTERIOR	3016, 103c
BLM—SUSANVILLE HORSE CORRALS SITE.	T29NR15ESEC9 6 MI NW OF SUSANVILLE.	SUSANVILLE	CA	96130	INTERIOR	103c, 3016
BLM—SWANSEA SITE	T16S,R. 37E., SEC 24, SE SW, MT DIABLO M.	KEELER	CA		INTERIOR	103c, 3016
BLM—UNION CARBIDE, JOE MINE	T18SR12ESEC24&25	COALINGA	CA	93210	INTERIOR	103c
BLM—UPPER MIDDLE PARK CANYON TRESPASS DUMP.	T22 S., R.45E., SEC 27	BALLARAT	CA	93562	INTERIOR	103c
BLM—VALLECITOS OILFIELD	T16S R11E SEC 25	HOLLISTER	CA	95023	INTERIOR	103c
BLM—VICTORY MILLSITE	T11NR12WSEC32, SILVER QUEEN ROAD.	MOJAVE	CA	93501	INTERIOR	103c
NPS—EL PORTAL RR FLAT	HWY 140	EL PORTAL	CA	95318	INTERIOR	103c
NPS—SEQUOIA & KINGS CANYON NATIONAL PARK.	ASH MOUNTAIN	THREE RIVERS	CA	93271	INTERIOR	3005, 3010, 3016, 103c
CIVIL ENGINEERING LABORATORY.	NCBC	PORT HUENEME	CA	93043	NAVY	3010, 103a, 103c, 3016
CROWS LANDING NAVAL AIR LOGISTICS FORCE.	NALF CROWS LANDING	CROWS LANDING.	CA	95313	NAVY	3010, 3016, 103c
IMPERIAL BEACH NAVAL COMMUNICATION STATION.	OUTLYING LANDING FIELD BLDG 162 RT 75 & PALM AVE.	IMPERIAL BEACH	CA	92032	NAVY	3005, 3010, 103c, 103a
MONTEREY NAVAL POSTGRADUATE SCHOOL ANNEX.	1 GRACE HOPPER AVENUE.	MONTEREY	CA	93940	NAVY	3010
NAVAL WEAPONS STATION SEAL BEACH DETACHMENT FALLBROOK.	700 AMMUNITION RD	FALLBROOK	CA	92028	NAVY	103c, 3016, 103a
OAKLAND NAVAL REGIONAL MEDICAL CENTER.	8750 MOUNTAIN BLVD	OAKLAND	CA	94627	NAVY	3010, 103c, 3016
POINT SUR NAVAL FACILITY	NAVAL FACILITY POINT SUR.	BIG SUR	CA	93920	NAVY	3010, 103c
SALTON SEA TEST BASE	HWY 86	SALTON CITY	CA	92275	NAVY	103c, 3005, 3010
SAN DIEGO NAVAL FACILITIES ENGINEERING COMMAND.	WESTERN DIVISION	SAN DIEGO	CA	92136	NAVY	103c
SAN NICOLAS ISLAND OUTLYING LANDING FIELD.		SAN NICOLAS ISLAND.	CA	93042	NAVY	3010
SANTA CRUZ NAVAL INDUSTRIAL RESERVE ORDNANCE PLANT.	16020 EMPIRE GRADE RD..	SANTA CRUZ	CA	95060	NAVY	103c
SKAGGS ISLAND NAVAL SECURITY GROUP ACTIVITY.	SKAGGS ISLAND	SONOMA	CA	95476	NAVY	3010, 3016, 103c
ALAMEDA COAST GUARD SUPPORT CENTER.	COAST GUARD GOVERNMENT ISLAND.	ALAMEDA	CA	94501	TRANSPORTATION	3010, 103c
FORT MACARTHUR	PACIFIC AVENUE	SAN PADRO	CA	90731	TRANSPORTATION	103c

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET NFRAP STATUS FACILITIES—Continued

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism
MIDDLETOWN COAST GUARD LORAN C STATION.	LORAN C STATION	MIDDLETOWN	CA	95461	TRANSPORTATION	103c
SAN FRANCISCO COAST GUARD BASE.	YERBA BUENA ISLAND	SAN FRANCISCO	CA	94130	TRANSPORTATION	3010, 103c
COLORADO SPRINGS ACADEMY	AFA/DE	COLORADO SPRINGS.	CO	80840	AIR FORCE	3010, 103c
LOWRY AIR FORCE BASE	3415 CES/DE	LOWRY AFB	CO	80230	AIR FORCE	3005, 3010, 3016, 103c, 103a
PETERSON AIR FORCE BASE	1003 SSG/CC	PETERSON AFB	CO	80914	AIR FORCE	3005, 3010, 103c
GRAND JUNCTION PROJECTS OFFICE.	3597 B–¾ RD PO 2567	GRAND JUNCTION.	CO	81502–5504	ENERGY	3016, 103c, 3005, 3010
SOLAR ENERGY RESEARCH INSTITUTE.	1617 COLE BLVD.	GOLDEN	CO	80401	ENERGY	3005, 3010, 3016, 103c
*WPA—POWER OPERATIONS	1800 S. RIO GRANDE AVE	MONTROSE	CO	81401	ENERGY	103c, 3010
NATIONAL ENFORCEMENT INVESTIGATION CENTER.	DFC	DENVER	CO	80225	EPA	3010, 103c
BLM—BOOKCLIFF LANDFILL	T1NR101WSEC6, UTEPM, 4 MI E. OF GRAND JUNCTION.	GRAND JUNCTION.	CO	81501	INTERIOR	103c
BLM—CHAFFEE COUNTY LANDFILL.	T.51.NR.8.E.SEC.21, US HWY 285 10M NORTH OF SALIDA.	SALIDA	CO		INTERIOR	103c
BLM—DELTA COUNTY LANDFILL	T14NR95WSEC 10, 6THPM.	ECKERT	CO	81418	INTERIOR	3010, 103c
BLM—EAGLE COUNTY LANDFILL	T4NR83WSEC10&11		CO		INTERIOR	103c
BLM—FREMONT	T48NR12ESEC19	CATA PAXI	CO		INTERIOR	103c
BLM—MONTROSE COUNTY DUMP	T48NR19WSEC22	MONTROSE	CO		INTERIOR	103c
BLM—ORCHARD MESA LANDFILL	T2SR1ESEC4,5 HWY 50-SW OF 29¾ RD.	GRAND JUNCTION.	CO	81506	INTERIOR	103c
BLM—SAN MIGUEL LANDFILL #1	T44NR15WSEC26	NATAURITA	CO		INTERIOR	103c
BLM—SAN MIGUEL LANDFILL #2	T44NR17WSEC18	SLICK ROCK	CO		INTERIOR	103c
BLM—SAWPIT TRAM SITE (ORE STORAGE).	T43NR10WSEC18	SAW PIT	CO	81435	INTERIOR	103c
BLM—TOWN OF MESA LANDFILL	T10S, R96W, SEC22	MOLINA	CO		INTERIOR	103c
BR—LOVELAND	910 VAN BUREN	LOVELAND	CO	80537	INTERIOR	3010, 103c
GS—NATIONAL WATER QUALITY LABORATORY.	5293 WARD RD	DENVER	CO	80225	INTERIOR	3010, 3016, 103c
NPS—DENVER SERVICE CENTER	755 PARFET ST., BOX 25287.	DENVER	CO	80225	INTERIOR	3016, 103c
NPS—ROCKY MOUNTAIN NATIONAL PARK.	ESTES PARK	ESTES PARK	CO		INTERIOR	103c, 3010
DENVER BULK MAIL CENTER	7755 E. 56TH AVE	DENVER	CO	80238	POSTAL SERVICE	3016, 103c
CENTRAL DIRECT FED. DIVISION MATERIALS—FHWA.	6TH ST., BLDG. 52, DFC	DENVER	CO	80225	TRANSPORTATION	3005, 3010, 103c, 3016
TRANSPORTATION TEST CENTER	21 MILES NE PUEBLO MEM AIRPORT.	DOT TEST TRACK RD.	CO	81001	TRANSPORTATION	3005, 3010, 3016, 103c
STRATFORD ARMY ENGINE PLANT.	550 SOUTH MAIN STREET	STRATFORD	CT	06497	ARMY	3005, 3010, 3016, 103c
KNOLLS ATOMIC POWER LABORATORY—WINDSOR SITE.	PROSPECT HILL ROAD	WINDSOR	CT	06095	ENERGY	3005, 3010, 3016, 103c, 103a
NEW LONDON NAVAL UNDERWATER SYSTEMS CENTER.	NEW LONDON LABORATORY.	NEW LONDON	CT	06320	NAVY	3010, 103c, 103a
FORT MCNAIR	350 P STREET, S.W	WASHINGTON	DC	20319	ARMY	3010, 103c, 103a
U.S. SOLDIERS AND AIRMENS HOME.	MICHIGAN AVE, N.E	WASHINGTON	DC	20317	DEFENSE	3010, 3016, 103c
CUSTOMS FILED OFFICE	1200 PENNSYLVANIA AVENUE.	WASHINGTON	DC	20004	GENERAL SERVICES ADMINISTRATION.	3010, 103c
WASHINGTON NAVAL RESEARCH LABORATORY.	4555 OVERLOOK AVE	WASHINGTON	DC	20375	NAVY	3005, 3010, 3016, 103c, 103a
BUREAU OF ENGRAVING & PRINTING.	14TH & C STS SW	WASHINGTON	DC	20228	TREASURY	3005, 3010, 103c, 103a
CANAL SITE	MAIN ST, NORTH ST GEORGES.	NEWCASTLE	DE	19733	CORPS OF ENGINEERS, CIVIL.	3016, 103c
WILDLIFE RESEARCH FIELD STATION.	2820 E UNIVERSITY AVE	GAINESVILLE	FL	32601	AGRICULTURE	103c
AVON PARK AIR FORCE BASE	56 COMBAT SUPPORT GROUP/DE.	MACDILL AFB	FL	33608	AIR FORCE	3005, 3010, 3016, 103c
MACDILL AIR FORCE BASE	56 COMBAT SUPPORT GROUP/DE.	MACDILL AFB	FL	33608	AIR FORCE	3005, 3010, 3016, 103c, 103a
LYNN HAVEN DEFENSE FUEL SUPPORT POINT.	W END OF 10TH STREET	LYNN HAVEN	FL	32444	DEFENSE LOGISTICS AGENCY.	3010, 3016, 103c
TAMPA DEFENSE FUEL SUPPORT POINT.	BOX 13736	TAMPA	FL	33611	DEFENSE LOGISTICS AGENCY.	3010, 3016, 103c
NAVAL AIR STATION KEY WEST	BLDG A827; BOCA CHICA KEY.	KEY WEST	FL	33040	NAVY	3005, 3010, 3016, 103c, 103a
NRL UNDERWATER SOUND REFERENCE DETACHMENT.	755 GATLIN AVE	ORLANDO	FL	32806	NAVY	3010, 103c
PANAMA CITY COASTAL SYSTEMS STATION.	HWY 98 CODE 631OMC	PANAMA CITY	FL	32407	NAVY	3005, 3010, 3016, 103a, 103c
KEY WEST COAST GUARD STATION.		KEY WEST	FL	33040	TRANSPORTATION	3010, 103c

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET NFRAP STATUS FACILITIES—Continued

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism
MAYPORT COAST GUARD BASE	PO BOX 385	MAYPORT	FL	32267	TRANSPORTATION	3010, 103c, 103a
MIAMI BEACH COAST GUARD BASE.	100 MACARTHUR CSWY	MIAMI BEACH	FL	33139	TRANSPORTATION	3005, 3010, 103c
ST. PETERSBURG COAST GUARD STATION.	600 8TH AVE SE	ST PETERSBURG	FL	33701	TRANSPORTATION	3010, 103c
TAMIAMI INTERNATIONAL FLIGHT SERVICE TRANSMITTER.	WEST OF CHROME AVENUE.	MIAMI	FL		TRANSPORTATION	103a
DOBBINS AIR RESERVE BASE	94 SPTG/CEV	DOBBINS AIR FORCE BASE.	GA	30069	AIR FORCE	3016, 103c, 3010
MOODY AIR FORCE BASE	347 CSG/DE	MOODY AFB	GA	31669	AIR FORCE	3005, 3010, 3016, 103c
PLANT #6 (LOCKHEED)	86 S COBB DRIVE ZONE 54.	MARIETTA	GA	30063	AIR FORCE	3005, 3010, 3016, 103c
FORT BENNING	GA, HWY 1 & US 27	FORT BENNING	GA	31905	ARMY	3005, 3010, 3016, 103c, 103a
FORT GILLEM	ATTN AFZK–EH–C	FOREST PARK	GA	30330	ARMY	3005, 3010, 3016, 103c
FORT STEWART	24TH INFANTRY DIV AFZP-DEN-E.	FORT STEWART	GA	31314	ARMY	3005, 3010, 3016, 103c
HUNTER ARMY AIRFIELD	24TH INFANTRY DIV AFZP–DEN–E.	FORT STEWART	GA	31314	ARMY	3005, 3010, 3016, 103c
USA FORT GORDON & HQ USA	HQ US ARMY SIGNAL CENTER.	FORT GORDON	GA	30905	ARMY	3005, 3010, 3016, 103c, 103a
ATLANTA PENITENTIARY	615 MCDONOUGH BLVD	ATLANTA	GA	30315	JUSTICE	3016, 103c
KINGS BAY NAVAL SUBMARINE BASE.	GA STATE HWY SPUR	KINGS BAY	GA	31547	NAVY	3005, 3010, 3016, 103c, 103a
ATLANTA MEDICAL CENTER	1670 CLAIRMONT ROAD	DECATUR	GA	30033	VETERANS AFFAIRS	3005, 3010, 3016, 103c
VA MEDICAL CENTER	1 FREEDOM WAY	AUGUSTA	GA	30904	VETERANS AFFAIRS	3010
GUAM NAVAL HOSPITAL	NAVAL HOSP GUAM	NAVAL HOSP GUAM.	GU	96638	NAVY	103c, 3010
FWS—HOWLAND ISLAND NATIONAL WILDLIFE REFUGE.	300 ALA MOANA BLVD	HONOLULU	HI	96813	INTERIOR	3016, 103c
WAPA—HINTON	PO BOX 1012	HINTON	IA	51024	ENERGY	3005, 3010, 3016, 103c
URBANDALE BULK MAIL CENTER	4000 NW 19TH STREET	URBANDALE	IA	50395	POSTAL SERVICE	3016, 103c, 3005
BOISE NF: KIRBY DAM MONARCH MINE STAMP MILL.	T5N R11E S4&5 BOISE MERIDIAN.	ATLANTA	ID	83601	AGRICULTURE	103c, 3016
CARIBOU NF: PARIS WORK CENTER.	94 EAST 100 SOUTH	PARIS	ID	83261	AGRICULTURE	3010, 103c
CLEARWATER NF: CLAYTON CREEK DUMP.	T39N, R11E, SEC 21	HEADQUARTERS	ID	83534	AGRICULTURE	103c, 3016
FS—LAZY C H RANCH	STAR RT 1, 15 MI SW OF CITY.	MONTPELIER	ID	83254	AGRICULTURE	3010
IDAHO PANHANDLE NF: BIG CREEK BRIDGE.	FS RD 2354, 8 MI SE OF CITY.	KELLOGG	ID	83837	AGRICULTURE	3010, 103c
IDAHO PANHANDLE NF: HUDLOW CAMP DUMP.	FS RD 392, 30 MI NNE OF CITY.	COEUR D'ALENE	ID	83814	AGRICULTURE	3016, 103c
IDAHO PANHANDLE NF: PRIEST LAKE RS DUMP.	SR 57, 4 MI S OF CITY	NORDMAN	ID	83848	AGRICULTURE	103c
IDAHO PANHANDLE NF: SHOSHONE WORK CENTER DUMP.	FS RD 208, 25 MI N OF CITY.	KINGSTON	ID	83839	AGRICULTURE	103c
SAWTOOTH NF: BLACK PINE HISTORIC MINE TAILINGS.	65 MI SE OF CITY/15 MI W OF I–84 EXIT 263.	BURLEY	ID	83318	AGRICULTURE	103c
SHEEP EXPERIMENT STATION	115 N	DUBOIS	ID	83423	AGRICULTURE	3016, 103c
SOIL AND WATER MANAGEMENT RESEARCH UNIT.	ROUTE 1, BOX 186, 3600 EAST.	KIMBERLY	ID	83341	AGRICULTURE	3016, 103c
TARGHEE NF: SNAKE RIVER WORK CENTER.	HWY 26 5 MI W OF CY	SWAN VALLEY	ID	83449	AGRICULTURE	3016, 103c
BOISE AIR NATIONAL GUARD–GOWEN FIELD.	43D33M00SN, 116D13M00SW.	BOISE	ID	83705	AIR FORCE	3005, 3010, 103c, 3016
BLM—BLACK MESA DUMP	T6S, R10E, SEC13	GLENNIS FERRY	ID	83623	INTERIOR	103c
BLM—BLUE DOME UNAUTHORIZED DUMP.	HWY 28, T10N R30E S30	BLUE DOME	ID	83464	INTERIOR	103c, 3016
BLM—BROWNS GULCH	T6S, R7E, SEC 10, W½	BRUNEAU	ID	83604	INTERIOR	103c
BLM—BRUNEAU OPEN DUMP	T9S, R5E, SEC 4	BRUNEAU	ID	83604	INTERIOR	3016, 103c
BLM—BUTTE NORTH ISOLATED TRACT HAZARDOUS SITE.	T12S, R21E, SEC 5	BURLEY	ID	83318	INTERIOR	103c
BLM—CASSIA COUNTY #1	T13S, R21E, SEC 13	OAKLEY	ID	83346	INTERIOR	103c
BLM—CASSIA COUNTY #2	T12S, R21E, SEC 32	OAKLEY	ID	83346	INTERIOR	103c
BLM—CASSIA COUNTY #3	T12S, R21E, SEC 31	OAKLEY	ID	83346	INTERIOR	103c
BLM—CASTLEFORD BUTTE	T10S, R12E, SEC 23	CASTLEFORD	ID	83321	INTERIOR	103c
BLM—CEDAR BUTTE S. END DUMPSITE.	T23S R32E S15	ROCKFORD	ID	83221	INTERIOR	103c
BLM—CENTRAL COVE LANDFILL	T3N, R4W, SEC 8 AND 9	CALDWELL	ID	83605	INTERIOR	3016, 103c
BLM—CLARKS AIR SERVICE AIRSTRIP–JARBRIDGE RA.	T6S, R9E, SEC 27	GLENNS FERRY	ID	83623	INTERIOR	103c, 3016
BLM—CLOVER HOLLOW ILLEGAL AIRSTRIP.	T5S R7E SEC 7 SESW 8 MI S OF CY.	MOUTAIN HOME	ID	83647	INTERIOR	103c
BLM—COURIER GULCH	0.3 MI N OF CITY	TRIUMPH	ID	83333	INTERIOR	103c

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET NFRAP STATUS FACILITIES—Continued

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism
BLM—COW HOLLOW HAZARDOUS WASTE DUMP.	T14S R31E S34	JUNIPER	ID	83346	INTERIOR	103c
BLM—CREAM CAN JUNCTION	T5S R26E S35 SW¼ SW¼ BM.	MINIDOKA	ID	83343	INTERIOR	3010
BLM—DELAMAR SILVER MINE	T15S R35E S4–9, 8 MI W OF CITY.	SILVER CITY	ID	83650	INTERIOR	103c
BLM—DOBSON PASS	T48N R4E S1 LOT 9	WALLACE	ID	83873	INTERIOR	3010
BLM—DRY LAKES AIR SERVICE AIRSTRIP—CASCADE RA.	T1N R3W S26	MELBA	ID	83641	INTERIOR	103c
BLM—EDMONDS UNAUTHORIZED DUMP.	T7N R38E SEC 24 & 25	EDMONDS	ID	83445	INTERIOR	103c
BLM—GEM COUNTY LANDFILL	DEWEY LAND, 10M EAST OF EMMETT.	EMMETT	ID	83617	INTERIOR	103c
BLM—GERMAN LAKE	T7S R25E SEC 10	MINIDOKA	ID	83343	INTERIOR	103c, 3016
BLM—GRACE ILLEGAL DUMP	T10S R39E S24 NE SE NE	GRACE	ID	83241	INTERIOR	103c
BLM—HAMMETT DUMP	T5S R9E S28 SE NE	HAMMETT	ID	83627	INTERIOR	103c
BLM—HELL'S HALF ACRE—EAST FINGER DUMP.	T1S R36E S4, 2.3 MI FROM JUNCTION OF BASELINE AND LAVA ROADS.	FIRTH	ID	83236	INTERIOR	103c
BLM—HELL'S HALF ACRE—WEST FINGER DUMP.	TIS R36E S32, 3.5 MI W OF SHELLEY.	FIRTH	ID	83236	INTERIOR	103c
BLM—HOFF ROAD SITE	T2S R32E SEC T35 SW OF SW.	BLACKFOOT	ID	83221	INTERIOR	3010, 103c
BLM—HULET DUMP	T3S R1E S15 NE NE	MURPHY	ID	83650	INTERIOR	103c, 3016
BLM—HWS GOLD & SILVER MINE ELK CITY.	T29N R8E S23	ELK CITY	ID	83525	INTERIOR	3016, 103c
BLM—JEROME COUNTY LANDFILL	T8S R17E S14, 4 MI W OF CITY.	JEROME	ID	83338	INTERIOR	103c
BLM—LESLIE DUMP SITE–1	T7N R25E S34, 1.5 MI N OF CITY.	LESLIE	ID	83249	INTERIOR	103c
BLM—LESLIE DUMP SITE–4 SW	T6N R24E S18, 4 MI SW OF CITY.	LESLIE	ID	83249	INTERIOR	103c
BLM—LIBERTY DUMP	T3S R33E S19, 20, 21 & 30, 5 MI SW OF CITY.	LIBERTY	ID	83221	INTERIOR	103c
BLM—MENAN UNAUTORIZED DUMP.	T6N R38E S27 SE1/4	MADISON	ID	83440	INTERIOR	103c
BLM—MONTVIEW	T8N, R34E, SEC22, NWNW E OF CITY.	MONTVIEW	ID	83435	INTERIOR	103c
BLM—MORGAN'S PASTURE	T1N R35E SEC 33 & 34	SHELLY	ID	83274	INTERIOR	3010, 103c
BLM—MUD LAKE AIRPORT	T6N R34E SECT 18 NE OF NE.	MUD LAKE	ID	83450	INTERIOR	3010, 103c
BLM—NATIONAL GUARD IMPACT AREA.	SEC (ALL) T2&3S, R2&3E	UNINCORP	ID	83709	INTERIOR	103c, 3016
BLM—NORTH CREEK MILL	T6NR29ESEC6	HOWE	ID	83244	INTERIOR	103c
BLM—OWYHEE CO. GRANDVIEW LANDFILL.	T6SR4ESEC14	BRUNEAU	ID	83604	INTERIOR	103c
BLM—OWYHEE CO. MARSING/ HOMEDALE LANDFILL.	JOHNSON RD. T4N R5W S32 SW 1/4.	MARSING—HOMEDALE.	ID	83639	INTERIOR	103c
BLM—OWYHEE CO. WILSON CREEK LANDFILL.	T1SR34ESEC13	MARSING	ID	83639	INTERIOR	103c
BLM—PRESTICIDE DUMP MURPHY.	T3S R1W S35	MURPHY	ID	83650	INTERIOR	103c
BLM—PESTICIDE DUMP REYNOLDS.	T2S R3W S31	REYNOLDS	ID	83650	INTERIOR	103c
BLM—PICKLES BUTTE (DAVIDSON'S AIR SERVICE).	T2NR3WSEC28 MISSOURI AV 2.5MI W—MORA CANAL.	NAMPA	ID	83651	INTERIOR	103c
BLM—REEDER FLYING SERVICE AIRSTRIP #1.	T6SR12ESEC33	GLENNS FERRY	ID	83623	INTERIOR	103c
BLM—REEDER FLYING SERVICE AIRSTRIP #2.	T9S R12E S13 W1/2 SE 1/4.	BUHL	ID	83316	INTERIOR	103c
BLM—REEDER FLYING SERVICE AIRSTRIP #3.	T8S, R13E, SEC6	GLENNS FERRY	ID	83623	INTERIOR	103c, 3010, 3005
BLM—SHOSHONE (GWINN CAVE)	T4S R17E S14	SHOSHONE	ID	83352	INTERIOR	3016, 103c
BLM—SPRINGFIELD UNAUTHORIZED DUMPSITE.	T3S R32E S15, 6 MI N OF CITY.	SPRINGFIELD	ID	83277	INTERIOR	103c
BLM—TWIN FALLS CO #4	T12S R19E S11	MURTAUGH	ID	83344	INTERIOR	103c
BLM—TWIN FALLS CO #5	T12S R19E S12	MURTAUGH	ID	83344	INTERIOR	103c
BLM—TWIN FALLS CO MURTAUGH (EAST) LANDFILL.	T11S R19E S10	MURTAUGH	ID	83344	INTERIOR	103c, 3016
BLM—UPPER LITTLE LOST UNAUTHORIZED DUMP.	T11N R26E S10, 12 MI NW OF CITY.	CYLDE	ID	83244	INTERIOR	103c
BLM—WARRIOR ROAD	T35N R1W S11, NEAREST CITY KUNA.	KONA	ID	83634	INTERIOR	103c
BLM—WIREGRASS RESERVOIR SITE.	TIIS R36E SECT 13 NW OF NE.	DOWNEY	ID	83234	INTERIOR	3010, 103c
BR—MINIDOKA DAM	13 MI NE OF CY	RUPERT	ID	83350	INTERIOR	3010, 3016, 103c
BR—MINIDOKA LANDFILL	T9S R23E S3, 4.5 MI NW OF CITY.	RUPERT	ID	83343	INTERIOR	103c

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET NFRAP STATUS FACILITIES—Continued

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism
NPS—CRATERS OF THE MOON: MARTIN MINE.	15 MI SW OF CITY ON HWY 93.	ARCO	ID	83213	INTERIOR	103c
BAYVIEW NAV SURFACE WARFARE CTR/CARDEROCK DIV DET.	HWY 54 & MAIN AVE	BAYVIEW	ID	83083	NAVY	103c, 3010
CHICAGO SITE	CALUMET HARBOR	CHICAGO	IL	60606	CORPS OF ENGINEERS, CIVIL.	3010
NORTH RIVERSIDE ARMY MAINTENANCE CENTER.	8660 WEST CERMAK RD	NORTH RIVERSIDE.	IL	60546	CORPS OF ENGINEERS, CIVIL.	3016
FERMI NATIONAL ACCELERATOR LABORATORY.	KIRK RD & PINE ST PO BOX 500.	BATVAIA	IL	60510	ENERGY	3005, 3010, 3016, 103c
DANVILLE MEDICAL CENTER HOSPITAL.	1900 E MAIN ST	DANVILLE	IL	61832	VETERANS AFFAIRS	103c, 3010
NEWPORT ARMY AMMUNITION PLANT.	STATE RTE 63 2 MILES S. OF NEWPORT VERMILLION COUNTY.	NEWPORT	IN	47966	ARMY	3005, 3010, 3016, 103c
NEW HAVEN DEFENSE LOGISTICS AGENCY DEPOT.	STATE RT. 14	NEW HAVEN	IN	46774	DEFENSE LOGISTICS AGENCY.	3010, 103c
REGION 7, ENVIRONMENTAL SERVICES DIVISION LAB.	25 FUNSTON ROAD	KANSAS CITY	KS	66115	EPA	3005, 3010, 3016, 103c
LEXINGTON—BLUEGRASS ARMY DEPOT.	HALEY RD	LEXINGTON	KY	40511	ARMY	3005, 3010, 3016, 103c, 103a
USAARMC & FORT KNOX	US HWY 32 WEST	FORT KNOX	KY	40121	ARMY	3005, 3010, 3016, 103a, 103c
FORMER NAVAL ORDANCE STATION LOUISVILLE.	118 ROCHESTER DR	LOUISVILLE	KY	40214	NAVY	3005, 3010, 3016, 103c
SOUTHERN REGIONAL RESEARCH CENTER.	1100 ROBERT E. LEE BLVD.	NEW ORLEANS	LA	70124	AGRICULTURE	3010, 3016, 103c
ENGLAND AIR FORCE BASE	23 CSG/DE	ENGLAND AFB	LA	71311	AIR FORCE	3005, 3010, 3016, 103c
NEW ORLEANS MILITARY OCEAN TERMINAL.	4400 DAUPHINE ST	NEW ORLEANS	LA	70145	ARMY	103c
SPR—WEEKS ISLAND	2 MI NW OF CYPREMONT	CYPREMONT	LA	70560	ENERGY	103c
SPR—WEST HACKBERRY	3.8 MI W OF HACKBERRY, HWY 390.	HACKBERRY	LA		ENERGY	103c
FWS—LACASSINE NATIONAL WILDLIFE REFUGE.	HCR 63, BOX 186	LAKE ARTHUR	LA	70549	INTERIOR	103c
NEW ORLEANS NAVAL SUPPORT ACTIVITY.	2600 GEN MEYER AVE BLDG 101.	NEW ORLEANS	LA		NAVY	103c, 3010
NEW ORLEANS COAST GUARD BASE.	4640 URQUHART STREET	NEW ORLEANS	LA	70117	TRANSPORTATION	3010, 103c
NEW ORLEANS MEDICAL CENTER	1601 PERDIDO STREET	NEW ORLEANS	LA	70112	VETERANS AFFAIRS	3010, 103c
BOSTON POSTAL SERVICE	135 A STREET	BOSTON	MA	02210	POSTAL SERVICE	3010, 103c
WOODS HOLE COAST GUARD BASE.	LITTLE HARBOR ROAD	FALMOUTH	MA	02543	TRANSPORTATION	3010, 103c
ANNAPOLIS NAVAL ACADEMY	ANNAPOLIS NAVAL COMPLEX.	ANNAPOLIS	MD	21402	NAVY	3005, 3010, 3016, 103c
CASCO BAY DEFENSE FUEL SUPPORT POINT.	RT 123	SOUTH HARPSWELL NECK.	ME	04079	DEFENSE LOGISTICS AGENCY.	3010, 3016, 103c
SEARSPORT DEFENSE FUEL SUPPORT POINT.	TRUNDY ROAD BOX 112	SEARSPORT	ME	04974	DEFENSE LOGISTICS AGENCY.	3010, 3016, 103c
FWS—SEAL ISLAND NATIONAL WILDLIFE REFUGE.	P.O. BOX 1077	CALAIS	ME	04619	INTERIOR	103c
GOULDSBORO NAVAL SECURITY GROUP ACTIVITY.	BLDG 41 (OPERATIONS SITE).	GOULDSBORO	ME	04624	NAVY	103c
NAVAL SECURITY GROUP ACTIVITY WINTER HARBOR.	10 FABBRI GREEN STE 10	WINTER HARBOR.	ME	04693	NAVY	3010, 103c
HIAWATHA NF: MUNISING LANDFILL.	T46N R18W S19 SW¼	MUNISING TOWNSHIP.	MI	49829	AGRICULTURE	103c, 3016
HURON—MANISTEE NF: WHITE CLOUD.	12 N CHARLES AVE	WHITE CLOUD	MI	49349	AGRICULTURE	103c, 3010, 3016
PHELPS/COLLINS AIRPORT	AIRPORT ROAD	ALPENA	MI	49707	AIR FORCE	3010, 3016, 103a, 103c
TANK AUTOMOTIVE COMMAND	6501 E. 11 MILE RD, MACOMB COUNTY.	WARREN	MI	48090	ARMY	3005, 3010, 3016, 103c, 103a
LAKESHORE TERMINAL COMPANY, HARRISVILLE DFSP.	US HWY 23	HARRISVILLE	MI	48740	DEFENSE	103c, 3010
ANN ARBOR MOTOR VEHICLE EMISSION LABORATORY.	2565 PLYMOUTH RD, WASHTENAW COUNTY.	ANN ARBOR	MI	48105	EPA	3010, 103c
FAA—PECK VOR	2250 E PECK RD	CROSWELL	MI	48422	TRANSPORTATION	3010
BATTLE CREEK MEDICAL CENTER	5600 ARMSTRONG RD	BATTLE CREEK	MI	49016	VETERANS AFFAIRS	3010
MINNEAPOLIS ST. PAUL BULK MAIL CENTER.	3165 S. LEXINGTON AVE	ST. PAUL	MN	55121	POSTAL SERVICE	3010, 103c
DULUTH COAST GUARD STATION	1201 MINNESOTA AVE	DULUTH	MN	55802	TRANSPORTATION	3010, 3016, 103c
FDA—KANSAS CITY SITE	1009 CHERRY ST	KANSAS CITY	MO	64106	AGRICULTURE	3010
SCHUSTER FARM	T55N R33W S58 S17	GOWER	MO	64454	AGRICULTURE	103c
MO AVIATION CLASSIFICATION & REPAIR ACTIVITY DEPOT.	2501 LESTER JONES AVE	SPRINGFIELD	MO	65803	ARMY	103c, 3010
MOBILE INCINERATOR—DEMMRY FARM.	SE ¼ NW ¼ NW ¼ SEC 20.	MCDOWELL	MO	65769	EPA	3010, 103c, 3016, 3005

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET NFRAP STATUS FACILITIES—Continued

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism
NPS—NOLAND HOUSE	216 N DELAWARE	INDEPENDENCE	MO	64052	INTERIOR	3010
COLUMBUS AIR FORCE BASE	US HWY 45 NORTH	COLUMBUS AFB	MS	39701	AIR FORCE	3005, 3010, 3016, 103c, 103A
ENGINEERING ENVIRONMENTAL WATERWAY LABORATORY.	PO BOX 631	VICKSBURG	MS	39180	ARMY	3005, 3010, 3016, 103c
GRENADA	YOUNGS LANDING	GRENADA	MS	38901	CORPS OF ENGINEERS, CIVIL.	103a
GULFPORT NAVAL CONSTRUCTION BATTALION CENTER.	5200 CBC 2ND STREET	GULFPORT	MS	39501	NAVY	3010, 103c, 103a
FORT KEOGH LIVESTOCK AND RANGE RESEARCH LABORATORY.	ROUTE 1, BOX 2021	MILES CITY	MT	59301	AGRICULTURE	3016, 103c
MALMSTROM AIR FORCE BASE	FACILITY 1501 PERIMETER RD.	GREAT FALLS	MT	59402	AIR FORCE	3005, 3010, 3016, 103c, 103a
BPA—HOT SPRINGS SUBSTATION TLM COMPLEX.	HWY 28, S. OF HOT SPRINGS, SEC 14 T21N RW.	HOT SPRINGS	MT	59845	ENERGY	103c
BLM—ILLEGAL AIRSTRIP JOHN GREYTAK.	SECTION 6 T11N R27E	FLATWILLOW	MT		INTERIOR	103c
BLM—JET FUEL REFINERY SITE	T14N R31E 4 MI E OF MOSBY.	MOSBY	MT	59058	INTERIOR	103c, 3010
BLM—ROUNDUP LANDFILL	1.5 MILES NORTHWEST OF ROUNDUP.	ROUNDUP	MT		INTERIOR	103c
BLM—SLUICE GULCH LEAKING ADIT.	T6S R15W SEC 5		MT		INTERIOR	103c
BLM—STEAMBOAT POINT	T25N R10E SEC 18 PMM	LOMA	MT		INTERIOR	103c
BLM—THORIUM CITY WASTE DUMP.	T105 R15W SEC 21, 22, 27, 28.	GRANT	MT	59734	INTERIOR	3016, 103c
BLM—TUNGSTEN MILL TAILINGS	T45W 9W SEC 4, 5, 9	GLEN	MT	59732	INTERIOR	103c
FWS—CHARLES M. RUSSEL NATIONAL WILDLIFE REFUGE.	P.O. BOX 110	LEWISTOWN	MT	59457	INTERIOR	3010, 103c
FWS—NATIONAL BISON RANGE	CNTY RD 212 IN MOIESE	MOIESE	MT	59824	INTERIOR	3010, 103c
LYONS STATION	45 MI. SO OF ENNIS ON HWY 287.	ENNIS	MT	59749	INTERIOR	3010, 103c
WEST FORK RANGER STATION	15 MILES SOUTH OF DARBY MT ON.	WEST FORK RS	MT	59829	INTERIOR	3010, 103c
POPE AIR FORCE BASE	43 CES/CEV 560 INTERCEPTOR RD.	POPE AIR FORCE BASE.	NC	28308	AIR FORCE	3005, 3010, 103c, 3016
ALBEMARLE ARMY RESERVE CENTER.	1816 E MAIN ST	ALBEMARLE	NC	28001	ARMY	3010, 103c
ASHEVILLE ARMY RESERVE CENTER.	224 LOUISIANA	ASHEVILLE	NC	28806	ARMY	3010, 103c
BREVARD ARMY RESERVE CENTER.	E FRENCH BROAD ST	BREVARD	NC	28712	ARMY	3010, 103c
CHARLOTTE #1 ARMY RESERVE CENTER.	1300 WESTOVER DR	CHARLOTTE	NC	28205	ARMY	3010, 103c
DURHAM #1 ARMY RESERVE CENTER.	1228 CARROL ST	DURHAM	NC	27701	ARMY 3010, 103c.	
DURHAM #2 ARMY RESERVE CENTER.	724 FOSTER ST	DURHAM	NC	27701	ARMY	3010, 103c
GARNER ARMY RESERVE CENTER.	2017 GARNER ST	GARNER	NC	27529	ARMY	3010, 103c
GREENSBORO ARMY RESERVE CENTER.	1120 CHURCH ST	GREENSBORO	NC	27405	ARMY	3010, 103c
GREENVILLE ARMY RESERVE CENTER.	1391 N MEM DR	GREENVILLE	NC	27834	ARMY	3010, 103c
HICKORY ARMY RESERVE CENTER.	1500 12TH STREET NW	HICKORY	NC	28601	ARMY	3010, 103c
HIGH POINT ARMY RESERVE CENTER.	156 PARRIS AVE	HIGH POINT	NC	28307	ARMY	3010, 103c
LUMBERTON ARMY RESERVE CENTER.	1400 CARTHAGE RD	LUMBERTON	NC	28358	ARMY	3010, 103c
MOREHEAD CITY ARMY RESERVE CENTER.	405 FISHER ST	MOREHEAD CITY	NC	28557	ARMY	3010, 103c
RALEIGH ARMY RESERVE CENTER.	3115 WESTERN BLVD	RALEIGH	NC	27606	ARMY	3005, 3010, 103c
ROCKY MOUNT ARMY RESERVE CENTER.	804 FAIRVIEW RD	ROCKY MOUNT	NC	28701	ARMY	3010, 103c
SALISBURY ARMY RESERVE CENTER.	1825 WOODLEAF RD, PO BOX 1927.	SALISBURY	NC	28114	ARMY	3010, 103c
TARHEEL ARMY MISSILE PLANT	204 GRAHAM-HOPEDALE ROAD.	BURLINGTON	NC	27215	ARMY	103c
WILMINGTON ARMY RESERVE CENTER.	2144 LAKESHORE DR	WILMINGTON	NC	28401	ARMY	3010, 103c
NATIONAL INSTITUTE OF ENVIRONMENTAL HEALTH SCIENCE.	S ON ALEXANDER DR	RESEARCH TRIANGLE PARK.	NC	27709	HEALTH AND HUMAN SERVICES.	3005, 3010, 103c
BOGUE BURN PIT MARINE CORPS AUXILARY LANDING BOGU.	MCALF BOGUE	MOREHEAD CITY	NC	28557	NAVY	3016, 103c
HARVEY POINT DEFENSE TESTING ACTIVITY.	RT 5	HERTFORD	NC	27944	NAVY	103c, 3010

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET NFRAP STATUS FACILITIES—Continued

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism
FAA—RALEIGH DURHAM INTERNATIONAL AIRPORT.		RALEIGH	NC		TRANSPORTATION	103a
FORT MACON COAST GUARD STATION.	PO BOX 237	ATLANTIC BEACH.	NC	28512	TRANSPORTATION	3010, 103c
NORTH DAKOTA AGRICULTURAL EXPERIMENT STATION.	1605 W. COLLEGE ST	FARGO	ND	58105	AGRICULTURE	3010, 3016, 103c
NORTHERN GREAT PLAINS RESEARCH LABORATORY.	PO BOX 459, HWY 6 S	MANDAN	ND	58554	AGRICULTURE	3016, 103c
MINOT AIR FORCE BASE	41 CSG/CC	MINOT AFB	ND	58705	AIR FORCE	3005, 3010, 3016, 103c
GRAND FORKS DEFENSE FUEL SUPPORT POINT.	GRAND FORKS AFB 42ND STREET.	GRAND FORKS	ND	58201	DEFENSE LOGISTICS AGENCY.	3010, 3016, 103c
SECTION 5 IMPOUNDMENT	SW ¼ NW ¼ SE ¼ OF SEC 5.	GLENVIL TOWNSHIP.	NE		AGRICULTURE	103c
BAYONNE MILITARY OCEAN TERMINAL.	FOOT OF 32ND STREET	BAYONNE	NJ	07002	ARMY	3005, 3010, 3016, 103c, 103a
BRITTON ARMY RESERVE CENTER.	39TH ST & FEDERAL ST	CAMDEN	NJ	08105	ARMY	3010, 103c
CAVEN POINT ARMY RESERVE CENTER.	1 CHAPEL AVENUE	JERSEY CITY	NJ	07305	ARMY	3010, 103c
FORT MONMOUTH	TINTON & PINEBROOK	TINTON FALLS	NJ	07724	ARMY	3010, 3016, 103c, 103a
FORT MONMOUTH EVANS AREA #1.	MARCONI ROAD	WALL TOWNSHIP	NJ	07719	ARMY	3010, 3016, 103c
KILMER ARMY RESERVE CENTER	BLDG 1007	EDISON	NJ	08817	ARMY	3010
PEDRICKTOWN SUPPORT FACILITY.	ROUTE 130 & ARTILLERY AVE.	PEDRICKTOWN	NJ	08067	ARMY	3010, 103c
STORCH ARMY RESERVE CENTER.	SHORE RD & DOLPHIN NORTHFIELD.	NORTHFIELD	NJ	08225	ARMY	3010, 103c
STRYKER ARMY RESERVE CENTER.	2150 NOTTINGHAM WAY	TRENTON	NJ	08619	ARMY	3010, 103c
NOAA/NMFS/NEFC	SANDY HOOK LABORATORY.	HIGHLANDS	NJ	07732	COMMERCE	3005, 3010, 103c
NEW BRUNSWICK LABORATORY-ERDA.	986 JERSEY AVENUE	NEW BRUNSWICK.	NJ	08903	ENERGY	3016, 103c
RARITAN DEPOT	4700 WOODBRIDGE AVENUE.	EDISON	NJ	08817	EPA	3005, 3010, 3016, 103c
CLARKSON FISHER FEDERAL BUILDING & COURTHOUSE.	402 E STATE ST	TRENTON	NJ	08608	GENERAL SERVCIES ADMINISTRATION.	3010
RARITAN DEPOT	4700 WOODBRIDGE AVENUE.	EDISON	NJ	08817	GENERAL SERVICES ADMINISTRATION.	3005, 3010, 3016, 103c
SOMERVILLE DEPOT	ROUTE 206	SOMERVILLE	NJ	08876	GENERAL SERVICES ADMINISTRATION.	103c, 3010
FWS—BARNEGAT DIVISION, EDWIN B. FORSYTHE NWR.	PO BOX 544	BARNEGAT	NJ	08005	INTERIOR	3016, 103c
FWS—GREAT SWAMP NATIONAL WILDLIFE REFUGE.	RD 1, BOX 152	BASKING RIDGE	NJ	07920	INTERIOR	3016, 103c, 3010
NPS—GATEWAY NATIONAL RECREATIONAL AREA.	FORT HANCOCK	SANDY HOOK–BROOKLYN.	NJ	07732	INTERIOR	3010, 3016, 103c
NPS—MORRISTOWN NATIONAL HISTORICAL PARK.	WASHINGTON PLACE	MORRISTOWN	NJ	07960	INTERIOR	103c
TRENTON NAVAL AIR WARFARE CENTER, AIRCRAFT DIV.	PARKWAY AVE	TRENTON	NJ	08628	NAVY	3005, 3010, 3016, 103c, 103a
BELLMAWR VEHICLE MAINTENANCE FACILITY.	421 BENIGNO BLVD & HAAG AVE.	BELLMAWR	NJ	08099	POSTAL SERVICE	3010
SANDY HOOK COAST GUARD STATION.	HARTSHORNE DRIVE	HIGHLANDS	NJ	07732	TRANSPORTATION	3010, 103c
EAST ORANGE MEDICAL CENTER	TREMONT AVE	EAST ORANGE	NJ	07019	VETERANS AFFAIRS	3010, 103c
HILLSBOROUGH SUPPLY DEPOT	ROUTE 206	HILLSBOROUGH TWP.	NJ	08853	VETERANS AFFAIRS	103c, 3010
LYONS HOSPITAL	KNOLLCRAFT ROAD	LYONS	NJ	07939	VETERANS AFFAIRS	3010, 103c
CIBOLA NF: COBB RESOURCES CORPORATION.	CIBOLA NATIONAL FOREST.	MAGDALENA	NM	87825	AGRICULTURE	103c, 3016
JORNADA EXPERIMENTAL RANGE	1700 JORNADA ROAD	LAS CRUCES	NM	88001	AGRICULTURE	3016
LINCOLN NF: HIGH ROLLS MINING DISTRICT.	3.3 M S OF INTER. OF W US 82.	HIGH ROLLS	NM	88325	AGRICULTURE	103c, 3016
SANTA FE NF: LA BAJADA MINE	1.25 MI UPSTREAM FROM LA BAJADA.	LA BAJADA	NM		AGRICULTURE	103c
MELROSE RANGE	25 MI W OF CANNON AFB	MELROSE	NM	88124	AIR FORCE	3005, 3010, 3016
FORT WINGATE DEPOT ACTIVITY	10 MILES EAST OF GALLUP ON I–10.	GALLUP	NM	87310	ARMY	3005, 3010, 3016, 103c
GASBUGGY	T29N, R4W, S36; 55 M E. OF FARMINGTON.	DULCE (NEAR)	NM		ENERGY	103c
LOVELACE INHALATION TOXICOLOGY RESEARCH INSTITUTE.	BLDG. 9200, KIRTLAND AFB EAST.	ALBUQUERQUE	NM	87185	ENERGY	103c, 3016, 3010
BLM—AMAX CHEMICAL COMPANY	EDDY COUNTY	ARTESIA	NM	88201	INTERIOR	103c, 3016
BLM—ANTHONY LANDFILL	T26S, R4E SEC30 NW¼ + E½ OF LOT 2.	ANTHONY	NM	88021	INTERIOR	103c, 3016
BLM—ARTESIA LANDFILL	T17SR25ESEC10	ARTESIA	NM	88210	INTERIOR	103c, 3016
BLM—BLANCO LANDFILL	T29NR10WSEC13	BLANCO	NM	87412	INTERIOR	103c, 3016

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET NFRAP STATUS FACILITIES—Continued

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism
BLM—BLOOMFIELD LANDFILL	T29N, R11W, SEC34	BLOOMFILED	NM	87413	INTERIOR	3016, 103c
BLM—BLUE CANYON ALLOTMENT	T20SR5WSEC8	HATCH	NM	87937	INTERIOR	103c, 3016
BLM—CARLSBAD LANDFILL	T21S, R27E, S27, W .5, SE¼, SW¼.	CARLSBAD	NM	88220	INTERIOR	103c, 3016
BLM—CHAPARRAL LANDFILL	T26SR5ESEC14	CHAPARRAL	NM		INTERIOR	103c, 3016
BLM—EDDY POTASH COMPANY	3071 POTASH MINE ROAD.	CARLSBAD	NM	88220	INTERIOR	103c, 3016
BLM—ESPANOLA LANDFILL	T20N R9E SEC 6N MPH	ESPANOLA	NM	87532	INTERIOR	103c, 3016
BLM—HATCH LANDFILL	T19S, R3W, SEC4, LOT1	HATCH	NM	87937	INTERIOR	103c, 3016
BLM—HILL LANDFILL	T22SR1ESECS3&4NMPH	HILL	NM		INTERIOR	103c, 3016
BLM—HYDE MINE	35/32/46 & 108/41/26	GALLUP	NM	87301	INTERIOR	103c, 3016
BLM—INTERNATIONAL MINERAL AND CHEMICAL.	P.O. BOX 71	CARLSBAD	NM	88220	INTERIOR	103c, 3016
BLM—KERR MCGEE POTASH COMPANY.	LEE COUNTY	HOBBS	NM	88240	INTERIOR	103c
BLM—KIRTLAND LANDFILL	T30NR14WSEC31	KIRTLAND	NM	87412	INTERIOR	3016, 103c
BLM—MESA LANDFILL	T25S, R2E, SEC34	LA MESA	NM	88044	INTERIOR	103c, 3016
BLM—LA UNION LANDFILL	T27SR3ESEC18 DONA ANA CO.	LA UNION	NM	88021	INTERIOR	3016, 103c
BLM—LAS CRUCES LANDFILL	T23SR2ESEC11	LAS CRUCES	NM	88001	INTERIOR	3016, 103c
BLM—LEMITAR LANDFILL	T2SR1WSECS13&24	LEMITAR	NM		INTERIOR	103c, 3016
BLM—MESILLA DAM LANDFILL	T24W, R1E, SEC14	MESILLA	NM	88046	INTERIOR	103c, 3016
BLM—MESQUITE LANDFILL	T24SR3ESEC29NMPH	MESQUITE	NM		INTERIOR	103c, 3016
BLM—NATIONAL POTASH COMPANY.	EDDY & LEE COUNTYS	CARLSBAD	NM	88220	INTERIOR	103c, 3016
BLM—OROGRANDE LANDFILL	T22SR8ESEC14SWSESW	OROGRANDE	NM		INTERIOR	103c, 3016
BLM—SAN ANTONIO LANDFILL	T5SR1ESEC6NMPH	SAN ANTONIA	NM		INTERIOR	103c, 3016
BLM—SOUTH FARMINGTON LANDFILL.	T29, R13W, SEC20	FARMINGTON	NM	87401	INTERIOR	3016, 103c
BLM—STANDARD TRANSPIPE CORP..	SO. OF ALAMOGORDO, NM ON HWY 54.	ALAMOGORDO	NM	88310	INTERIOR	103c, 3016
BLM—THOREAU LANDFILL	T14NR13WSEC20NMPH	THOREAU	NM		INTERIOR	103c, 3016
BLM—VELARDE LANDFILL	T22NR9ESEC20NMPH	VELARDE	NM	87582	INTERIOR	103c, 3016
BLM—WASTE ELEC. TRANSFORMER SITE NO. 1.	T4SR1WSEC17,20	SOCORRO	NM	87801	INTERIOR	103c
BLM—WATERFLOW LANDFILL	T30 NR 16W SEC 35	WATERFLOW	NM	87421	INTERIOR	103c, 3016
ALBUQUERQUE HOSPITAL	2100 RIDGECREST	ALBUQUERQUE	NM	87106	VETERANS AFFAIRS	3005, 3010, 3016, 103c
TONOPAH TEST RANGE	140 MI NW OF LAS VEGAS.	TONOPAH	NV	89049	ENERGY	3005, 3010, 103c, 103a, 3016
BLM—AARON MINING	T28NR4ESEC9	ESMERELDA	NV	89421	INTERIOR	103c
BLM—ALL MINERALS INC.	T12NR46ESEC10	NYE	NV	89045	INTERIOR	103c
BLM—AMERICAN BORATE COMPANY.	T18SR49ESEC1	NYE	NV	89020	INTERIOR	103c
BLM—ANTELOPE VALLEY PESTICIDE SITE.	T25NR42ESEC18	LANDER	NV	89310	INTERIOR	103c, 3016
BLM—ARGENTUM MILL	NE ¼ SEC 17 T3N R36E	ESMERELDA COUNTY.	NV	89010	INTERIOR	103c
BLM—AUSTIN WELL	T40NR35ESEC32	NUMBOLDT	NV	98445	INTERIOR	103c
BLM—BAR RESOURCES INC. BUCKHORN MINE.	T26NR49ESEC30	CARLIN	NV	89822	INTERIOR	103c
BLM—BUNKER HILL COMPANY	T1NR67ESEC29	LINCOLN	NV	89043	INTERIOR	103c, 3016
BLM—CANDELARIA PARTNERS OMC.	T34NR35ESEC2233435	MINA	NV	89422	INTERIOR	3010, 103c
BLM—CARLIN GOLD MINE	T35NR50ESEC14	CARLIN	NV	89822	INTERIOR	103c
BLM—CHROMALLOY MINING & MILLING.	T42NR63ESEC11	ELKO	NV	89801	INTERIOR	103c
BLM—CHROMALLOY MINING & MILLING.	T42NR62ESEC17	ELKO	NV	89801	INTERIOR	103c
BLM—CLOSED CALIENTE LANDFILL.	T3S, R67E, SEC28	LINCOLN COUNTY.	NV	89008	INTERIOR	103c
BLM—CORTEZ JOINT VENTURE	T27NR47ESEC13	BEOWAWE	NV	89821	INTERIOR	3010, 103c
BLM—CRESCENT MINING LTD (REST MINE).	T28SR1ESEC31	SEARCHLIGHT	NV	89046	INTERIOR	103c
BLM—CRESCENT VALLEY MILL	T29NR48ESEC24	CRESCENT VALLEY.	NV	89821	INTERIOR	103c
BLM—CYPRUS MINING CORP.	T13NR46ESEC18	NYE	NV	89045	INTERIOR	103c
BLM—D&Z EXPLORATION COMPANY.	T28NR34ESEC32	LOVELOCK	NV	89419	INTERIOR	103c
BLM—DEE GOLD MINING COMPANY.	T37NR50ESEC6	ELKO	NV	89801	INTERIOR	103c
BLM—DOUBLE EAGLE INC., LOWER ROCHESTER.	T28NR34ESEC18	LOVELOCK	NV	89419	INTERIOR	103c
BLM—DOUGLAS COUNTY LANDFILL.	T12NR21ESEC18	GARDNERVILLE	NV	89410	INTERIOR	103c
BLM—DRESSER MINERALS, GREYSTON MINE.	T28NR46ESEC16	BATTLE MOUNTAIN.	NV	89820	INTERIOR	103c, 3010
BLM—DUVAL CORP. MINE SITE	T31NR43ESEC23, 24, 25	BATTLE MOUNTAIN.	NV	89820	INTERIOR	103c
BLM—EISMAN CHEMICAL COMPANY.	T34NR62ESEC32	CARLIN	NV	89822	INTERIOR	103c

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET NFRAP STATUS FACILITIES—Continued

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism
BLM—ELY CRUDE OIL COMPANY	T9NR57ESEC35	ELY	NV	89301	INTERIOR	103c
BLM—IMCO SERVICES INC	T28NR44ESEC4 AND T28NR46ESEC32.	BATTLE MOUNTAIN.	NV	89620	INTERIOR	103c
BLM—INTERMOUNTAIN EXPLORATION.	T26SR64ESEC9	BOULDER CITY	NV	89005	INTERIOR	103c
BLM—JUPITER GOLD COMPANY	T33NR37ESEC1	WINNEMUCCA	NV	89445	INTERIOR	103c
BLM—KEMCO BUSTER MINE	T5SR39ESEC25, 26	GOLDFIELD	NV	89013	INTERIOR	103c
BLM—MCDERMITT MINE	T47NR37ESEC20212729	MCDERMITT	NV	89421	INTERIOR	103c, 3010
BLM—MINERALS CONCENTRATES	T35NR37ESEC12	HUMBOLDT	NV	89445	INTERIOR	103c
BLM—MINERALS MANAGEMENT, INC.—ARGENTUM MILL.	T3NR36SSEC65—BETWEEN HWY 6 & 95.	COLUMBUS MARSH.	NV	89010	INTERIOR	103c
BLM—MONELLO SHELLITE	T40NR69ESEC34	MONTELLO	NV	89830	INTERIOR	103c
BLM—MT. HOPE MINE	T22NR51ESEC12	ELY	NV	89301	INTERIOR	103c
BLM—MULTI-METALLICS INC.	T37NR1ESEC25	WINNEMUCCA	NV	89445	INTERIOR	103c
BLM—NEW PASS RESOURCES INC.	T20NR40ESEC10	AUSTIN	NV	89310	INTERIOR	103c
BLM—ORMSBY LANDFILL	T15NR20–21ESEC1, 12, 7700 HWY 50E.	CARSON CITY	NV	89701	INTERIOR	103c
BLM—OSAGE MILL SITE	T24S R57E S27 NE ¼ SW ¼.	SANDY VALLEY	NV	89019	INTERIOR	103c
BLM—QUINN RIVER VALLEY	T43NR36ESEC18	HUMBOLDT COUNTY.	NV	89445	INTERIOR	103c, 3016
BLM—SEARCHLIGHT LANDFILL	T29S R63E S12	SEARCHLIGHT	NV	89046	INTERIOR	103c
BLM—SILVERADO MILL SITE	T18N R55E S19, 20 MI N OF EUREKA.	EUREKA	NV	89316	INTERIOR	3016, 103c
BLM—SMOKEY VALLEY MINING COMPANY.	T10NR44ESEC18–20, 29	ROUND MOUNTAIN.	NV	89045	INTERIOR	103c
BLM—STANDARD GOLD MINE	T30NR33ESEC1	IMLAY	NV	89418	INTERIOR	103c
BLM—UNION CARBIDE CORP (EMERSON MINE).	T3SR56ESEC26	LINCOLN	NV	89001	INTERIOR	103c
BLM—UNION PACIFIC R/W	T8SR67ESEC23	LINCOLN	NV	89008	INTERIOR	3016, 103c
BLM—UNIVERSAL GAS INC.	R35NR50ESEC10	EUREKA	NV	89316	INTERIOR	103c
BLM—UTAH INTERNATIONAL INC.	T34NR34ESEC35, 36	IMLAY	NV	89418	INTERIOR	103c
BLM—VETA GRANDE MINING COMPANY.	T11NR21ESEC3, 4, 9, HWY 395S.	GARDNERVILLE	NV	89410	INTERIOR	103c
BLM—WEST COAST OIL & GAS CORP.	T19NR22ESEC26, 36, 20 MI E OF RENO OFF HWY 80.	STOREY COUNTY.	NV	89400	INTERIOR	3010, 103c
BLM—WESTERN WINDFALL LTD	T18NR53ESEC1, 2	EUREKA	NV	89316	INTERIOR	103c
PLUM ISLAND ANIMAL DISEASE CENTER.	PLUM ISLAND	ORIENT POINT	NY	11957	AGRICULTURE	3016, 103c, 3010
HANCOCK FIELD	TAFT AND THOMPSON ROADS.	NORTH SYRACUSE.	NY	13212	AIR FORCE	3010, 3016, 103c, 3005
NIAGARA FALLS AIR FORCE RESERVE FACILITY.	914 TAG/DE PO BOX F LASALLE STATION.	NIAGARA FALLS IAP.	NY	14304	AIR FORCE	3005, 3010, 3016, 103c
PLANT #38	PORTER & BALMER RDS	PORTER TWP	NY	14131	AIR FORCE	3005, 3010, 3016, 103c
PLANT #59	600 MAIN STREET	JOHNSON CITY	NY	13790	AIR FORCE	3016, 103c, 3010
STEWART AIR NATIONAL GUARD BASE.	STEWART INTERNATIONAL AIRPORT.	NEWBURGH	NY	12550	AIR FORCE	103c, 3010, 3016
YOUNGSTOWN TEST ANNEX	BALMER RD	PORTER CENTER.	NY	14131	AIR FORCE	103c, 3016
AMHERST ARMY RESERVE CENTER.	100 N FOREST RD	BUFFALO	NY	14221	ARMY	3010, 103c
BELLMORE MAINTENANCE FACILITY.	2755 MAPLE AVE	BELLMORE	NY	11710	ARMY	3010, 3016, 103c
ELIHU ROOT ARMY RESERVE CENTER.	96 BURRSTONE RD	UTICA	NY	13502	ARMY	3010, 103c
FLOYD ANNEX SITE	KOENING ROAD	FLOYD	NY	13440	ARMY	103c
FORT HAMILTON	FT HAMILTON	BROOKLYN	NY	11252	ARMY	3010, 103c, 3016
FORT TOTTEN	BAYSIDE	QUEENS	NY	11359	ARMY	3010, 103c, 3016
NIAGARA FALLS FACILITY	9400 PORTER ROAD	NIAGARA FALLS	NY		ARMY	103a
PFC CHARLES DEGLOPPER ARMY RESERVE CENTER.	2393 COLVIN BLVD	TONAWANDA	NY	14150	ARMY	3010, 103c
ROCHESTER COMBINED SUPPORT SHOP & US FISCAL OFFICE.	1500 HENRIETTA RD	ROCHESTER	NY	14623	ARMY	103c, 3010
ROOSEVELT ARMY RESERVE CENTER.	101 OAK ST	HEMPSTEAD	NY	11550	ARMY	3010, 103c
SAGE COMPLEX	510 STEWART DR W	NORTH SYRACUSE.	NY	13212	ARMY	3010, 103c
STEWART ANNEX/SUBPOST	USMA NEWBURG LANDFILL, STEWART AIRPORT, RT 17.	NEWBURG	NY	12550	ARMY	3016, 3010, 103c
TSG H.C. LOCKWOOD ARMY RESERVE CENTER.	111 FINNEY BLVD	MALONE	NY	12953	ARMY	3010, 103c
WATERVLIET ARSENAL	BROADWAY	WATERVLIET	NY	12189	ARMY	3005, 3010, 3016, 103a, 103c
WEBSTER ARMY MAINTENANCE SUPPORT ACTIVIT–7.	517 OLD RIDGE ROAD	WEBSTER	NY	14580	ARMY	3010, 103c

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET NFRAP STATUS FACILITIES—Continued

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism
WEST POINT MILITARY ACADEMY	RT 9W–BLDG 733	WEST POINT	NY	10996	ARMY	3005, 3010, 3016, 103c, 103a
YOUNGSTOWN WEEKEND TRAINING SITE.	BALMER RD	YOUNGSTOWN	NY	14174	ARMY	103c, 3016
VERONA DEFENSE FUEL SUPPORT POINT.	MAIN ST.	VERONA	NY	13478	DEFENSE LOGISTICS AGENCY.	3010, 3016, 103c
COLONIE INTERIM STORAGE SITE	1130 CENTRAL AVE	COLONIE	NY	12205	ENERGY	3005, 3010, 3016, 103c
KNOLLS ATOMIC POWER LABORATORY—KESSELRING SITE.	ATOMIC PROJECT ROAD	WEST MILTON	NY	12020	ENERGY	3005, 3010, 3016, 103c, 103a
KNOLLS ATOMIC POWER LABORATORY—KNOLLS SITE.	2401 RIVER RD	NISKAYUNA	NY	12309	ENERGY	3005, 3010, 3016, 103c
NIAGARA FALLS STORAGE SITE	1397 PLETCHER ROAD	LEWISTOWN	NY	14092	ENERGY	3016, 103c
BROOKLYN INFORMATION AGENCY.	29TH & 3RD AVE, DOOR 15.	BROOKLYN	NY	11232	GENERAL SERVICES ADMINISTRATION.	3010, 103c
EMMANUEL CELLARD FEDERAL BUILDING.	225 CADMAN PLAZA	BROOKLYN	NY	11201	GENERAL SERVICES ADMINISTRATION.	3010, 103c
FEDERAL BUILDING	252 7TH AVE	NEW YORK	NY	10001	GENERAL SERVICES ADMINISTRATION.	3010, 103c
MERCHANDISE CONTROL SALES SECTION.	6 WORLD TRADE CENTER.	NEW YORK	NY	10048	GENERAL SERVICES ADMINISTRATION.	3010, 103c
NEW YORK	201 VARICK ST	NEW YORK	NY	10014	GENERAL SERVICES ADMINISTRATION.	3010, 103c
FWS—IROQUOIS NATIONAL WILDLIFE REFUGE.	PO BOX 517	ALABAMA	NY	14003	INTERIOR	3016, 103c
FWS—MONTEZUMA NATIONAL WILDLIFE REFUGE.	3395 ROUTE 5 & 20 EAST	SENECA FALLS	NY	13148	INTERIOR	3010,3016, 103c
NPS—FIRE ISLAND NATIONAL SEASHORE.	120 LAUREL STREET	PATCHOGUE	NY	11772	INTERIOR	3016, 3010, 103c
NPS—GATEWAY NATIONAL RECREATIONAL AREA.	FLOYD BENNETT FIELD	BROOKLYN	NY	11234	INTERIOR	103c, 3010
NPS—SARATOGA NATIONAL HISTORICAL PARK.	648 RT 32	SARATOGA SPRINGS.	NY	12170	INTERIOR	103c
NPS—STATUE OF LIBERTY NATL MONUMENT: ELLIS ISLAND.	NATIONAL MONUMENT LIBERTY ISLAND.	LIBERTY ISLAND	NY	10004	INTERIOR	3010
NPS—UNITED NUCLEAR	OLD RTE. 55	PAWLING	NY	12564	INTERIOR	103c, 3010
PENNSYLVANIA AVE/FOUNTAIN AVE LANDFILLS.	PENNSYLVANIA AVE, SHORE PKWY.	BROOKLYN	NY	11207	INTERIOR	3010, 103c
BROOKLYN NAVAL AND MARINE CORPS RESERVE CENTER.	FLOYD BENNETT FIELD	BROOKLYN	NY	11234	NAVY	103c
FORT WADSWORTH	FT. WADSWORTH	STATEN ISLAND	NY	10305	NAVY	3010, 103c
MITCHEL FIELD HOUSING FACILITY.	NAVSTA NEW YORK HOUSING OFFICE, BLDG. 19, WEST ROAD, MITCHEL FIELD.	GARDEN CITY	NY	11530	NAVY	103c, 3010
MITCHEL MANOR HOUSING FACILITY.	NAVSTA NEW YORK HOUSING OFFICE, 85 A MITCHEL AVENUE.	EAST MEADOW	NY	11554	NAVY	103C
NEW YORK NAVAL STATION	207 FLUSHING AVE	BROOKLYN	NY	11251	NAVY	3010, 103c
ROCHESTER NAVAL INDUSTRIAL RESERVE ORDNANCE PLANT.	121 LINCOLN AVENUE	ROCHESTER	NY	14653	NAVY	103c
STAPLETON NAVAL STATION	STAPLETON	STATEN ISLAND	NY	10304	NAVY	3010, 103c
BINGHAMTOM POST OFFICE	111 HENRY STREET	BINGHAMTON	NY	13902	POSTAL SERVICE	3010, 103c
MANHATTAN GENERAL MAIL FACILITY.	WEST 29TH ST AND 9TH AVE.	NEW YORK	NY	10001	POSTAL SERVICE	3010, 103c
NEWARK POST OFFICE	300 S MAIN ST	NEWARK	NY	14513	POSTAL SERVICE	3010
AIDS TO NAVIGATION TEAM	7063 LIGHTHOUSE DRIVE	SAUGERTIES	NY	12477	TRANSPORTATION	3010, 103c
MORICHES COAST GUARD GROUP.	100 MORICHES ISLAND RD.	EAST MORICHES	NY	11940	TRANSPORTATION	3010, 103c
SHINNECOCK COAST GUARD STATION.	SHINNECOCK STATION	HAMPTON BAYS	NY	11946	TRANSPORTATION	3010, 103c
SUPPORT CENTER GOVERNOR'S ISLAND.	C/O US COAST GUARD GROUP.	GOVERNOR'S ISLAND.	NY	10004	TRANSPORTATION	3010, 103c
WEST SAYVILLE IFS TRANSMITTER.	CHERRY AVE	WEST SAYVILLE	NY	11796	TRANSPORTATION	3010, 3016, 103c
CASTLE POINT HOSPITAL	RTE. 9D	CASTLE PT.	NY	12511	VETERANS AFFAIRS	3010, 103c
COLUMBUS DEFENSE CONSTRUCTION SUPPLY CENTER.	3990 E. BROAD ST. FRANKLIN COUNTY.	COLUMBUS	OH	43215	ARMY	3005, 3010, 3016, 103c
LIMA ARMY TANK CENTER	1155 BUCKEYE RD, ALLEN COUNTY.	LIMA	OH	45804–1898	ARMY	3010, 3016, 103c
CAESAR CREEK LAKE BRIDGE	BRIDGE AT CAESAR CREEK LAKE.	WAYNESVILLE	OH	45068	CORPS OF ENGINEERS, CIVIL.	3010
WEST FORK LAKE BRIDGE	BRIDGE AT WEST FORK LAKE.	CINCINNATI	OH	45240	CORPS OF ENGINEERS, CIVIL.	3010
DAYTON DEFENSE ELECTRONIC SUPPLY CENTER.	1507 WILMINGTON PIKE MONTGOMERY COUNTY.	DAYTON	OH	45444	DEFENSE	3010, 3016, 103c
CINCINNATI DEFENSE FUEL SUPPORT PLANT.	4820 RIVER RD HAMILTON COUNTY.	CINCINNATI	OH	45233	DEFENSE LOGISTICS AGENCY.	3010, 3016, 103c
ANDREW W. BREIDENBACH ENVIRONMENTAL RESEARCH CTR.	26 W MARTIN LUTHER KING DR.	CINCINNATI	OH	45268	EPA	3005, 3010, 3016, 103c

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET NFRAP STATUS FACILITIES—Continued

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism
CENTER HILL HAZARDOUS WASTE ENGRG RESEARCH LAB.	5595 CENTER HILL ROAD	CINCINNATI	OH	45268	EPA	3005, 3010, 3016, 103c
TESTING AND EVALUATION FACILITY.	1600 GEST ST	CINCINNATI	OH	45204	EPA	3005, 3010, 3016, 103c
GLENN RESEARCH CENTER PLUM BROOK STATION.	6100 COLUMBUS AVENUE	SANDUSKY	OH	44870	NASA	3010, 3016, 103c, 103a, 3005
GRAZINGLANDS RESEARCH	P.O. BOX 1199	EL RENO	OK	73036	AGRICULTURE	3016, 103c
PLANT SCIENCES AND WATER CONSERVATION LABORATORY.	1301 N. WESTERN RD	STILLWATER	OK	74076	AGRICULTURE	3016, 103c
RANGE AND PASTURE RESEARCH	2000 18TH STREET	WOODWARD	OK	73801	AGRICULTURE	103c, 3016
137TH TACTICAL AIRLIFT WING	WILL ROGERS WORLD AIRPORT.	OKLAHOMA CITY	OK		AIR FORCE	103c
VANCE AIR FORCE BASE	71 ABG/DE	ENID	OK	73702	AIR FORCE	3005, 3010, 3016, 103c
FIELD ARTILLERY TNG CT	2930 CURRIE RD ATTN ATZR–B.	FORT SILL	OK	73503	ARMY	3005, 3010, 3016, 103c
FORT GIBSON LAKE		PRYOR	OK	74361	CORPS OF ENGINEERS, CIVIL.	3016, 103c
ROBERT S. KERR LOCK DAM & RESEVOIR.	STAR ROUTE 4	SALLISAW	OK	74063	CORPS OF ENGINEERS, CIVIL.	3005, 3010, 3016, 103c
BIA—CADDO COUNTY LANDFILL #1.	SE/4 SEC7 T5N R11W SW/4 SEC8.	APACHE	OK		INTERIOR	103c
FWS—WICHITA MOUNTAINS NATIONAL WILDLIFE REFUGE.	RT 1	INDIAHOMA	OK	73552	INTERIOR	3016, 103c
FREMONT NF: ANGEL PEAK MINE SITE.	T37S R17E S32, 30 MI W OF LAKEVIEW.	LAKEVIEW	OR	97630	AGRICULTURE	103c
FREMONT NF: ANGEL PEAK ROADS.	42D22M30SN, 120D45M00SW.	LAKEVIEW	OR	97630	AGRICULTURE	103c
FREMONT NF: SILVER LAKE R.D. PENTA SITE.	HWY 31, 55 MI NW OF PAISLEY.	SILVER LAKE	OR	97638	AGRICULTURE	103c, 3010, 3016
MT. HOOD NF: BORROW PIT	3 MI SE OF CITY, T1N R6E S31.	BRIDAL VEIL	OR	97010	AGRICULTURE	103c
MT. HOOD NF: SITE B	T1N R6E S7 FS RD 1509, 3 MI SE OF CITY.	BRIDAL VEIL	OR	97010	AGRICULTURE	103c
OCHOCO NF: CROOKED RIVER GRASSLANDS.	T12S R14E S34	MADRAS	OR	99741	AGRICULTURE	3010, 103c
SIUSLAW NF: MT. HEBO AIR FORCE STATION.	8 MI E. OF HWY 22	HEBO	OR	97122	AGRICULTURE	103c, 3010, 3016
WILLAMETTE NF: LOWELL RANGER STATION.	FS RD 1806–433, SPUR 477, 44D02M01SN, 122D35M06SW.	LOWELL	OR	97452	AGRICULTURE	3010, 103c
WILLAMETTE NF: SHINY ROCK MINE.	HIGHWAY 125 35 MI E OF CY.	EUGENE	OR	97440	AGRICULTURE	3016, 103c
WILLAMETTE NF: SWEET HOME WORK CENTER.	4431 HWY 20	SWEET HOME	OR	97386	AGRICULTURE	103c
KENO AIR FORCE STATION	HAYMAKER MT RD PEAK END OF RD.	KENO	OR	97627	AIR FORCE	3010, 103c
KINGSLEY FIELD	JOE WRIGHT RD, 5 MI S OF CITY.	KLAMATH FALLS	OR	97603	AIR FORCE	3010, 3016, 103c
NORTH BEND AIR NATIONAL GUARD STATION.	T25S R13W SEC9	NORTH BEND	OR	97459	AIR FORCE	103c
ASTORIA FIELD OFFICE	HWY 30 & MARITIME RD	ASTORIA	OR	97103	CORPS OF ENGINEERS, CIVIL.	3010, 3016, 103c
BRADFORD ISLAND LANDFILL	T2N R7E S22 SW¼, WILLAMETTE MERIDIAN.	CASCADE LOCKS.	OR	97014	CORPS OF ENGINEERS, CIVIL.	103c
ELK CREEK DAM PROJECT	27 MI N OF CITY	MEDFORD	OR	97503	CORPS OF ENGINEERS, CIVIL.	103c
PORTLAND 3 MILE CANYON SITE	I84 1.2 MI W OF EXIT 147	ARLINGTON	OR	97812	CORPS OF ENGINEERS, CIVIL.	3010, 103c
PORTLAND MOORINGS	8010 NW ST HELENS RD	PORTLAND	OR	97210	CORPS OF ENGINEERS, CIVIL.	3010, 103c
THE DALLES DAM	EXIT 88	THE DALLES	OR	97058	CORPS OF ENGINEERS, CIVIL.	3010, 103c
WILLAMETTE FALLS LOCKS	WEST LINN	WEST LINN	OR	97068	CORPS OF ENGINEERS, CIVIL.	103c, 3016
BPA—ALVEY SUBSTATION	86000 FRANKLIN	EUGENE	OR	97405	ENERGY	3010, 103c
BPA—CELILO CONVERTER STATION.	3920 COLUMBIA VIEW DR E.	THE DALLES	OR	97058	ENERGY	3010, 103c
BPA—OREGON CITY SUBSTATION: OSTRANDER.	16885 EADEN ROAD	OREGON CITY	OR	97045	ENERGY	103a, 103c
BPA—TROUTDALE SUBSTATION	SUNDIAL RD	TROUTDALE	OR	97060	ENERGY	3010, 103c
CORVALLIS ENVIRONMENTAL RESEARCH LABORATORY.	200 SW 35TH ST	CORVALLIS	OR	97333	EPA	3010, 103c
BLM—LYTLE BOULEVARD DUMP	T19S R46E S31 & T20S R46E S31.	VALE	OR	97918	INTERIOR	3016, 103c
BLM—MERLIN LANDFILL	T35SR6WSEC27	MERLIN	OR	97532	INTERIOR	3016, 103c
BLM—MIDDLE CREEK BATTERY DUMP SITE.	T27S R11W S13	NORTH BEND	OR	97459	INTERIOR	103c
BLM—MINEXCO MILLSITE	T9SR42ESEC8	BAKER	OR	97814	INTERIOR	3016, 103c
BLM—SLIDES DUMP SITE	T15SR46ESEC35, LOTS1,2	ONTARIO	OR	97914	INTERIOR	3016, 103c

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET NFRAP STATUS FACILITIES—Continued

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism
BLM—VALE CITY DUMPSITE	T18SR45SEC32	VALE	OR	97918–0008	INTERIOR	3016, 103c
BLM—ALBANY RESEARCH CENTER.	1450 SW QUEEN AVE	ALBANY	OR	97321	INTERIOR	3010, 3016, 103c
NPS—CRATER LAKE NATIONAL PARK.	HWY 62 NW OF FORT KLAMATH.	CRATER LAKE	OR	97604	INTERIOR	3010, 103c
TONGUE POINT JOB CORPS CENTER.	BETWN MP 95 & 96 HWY 30.	ASTORIA	OR	97103	LABOR	3010, 103c
ASTORIA COAST GUARD BASE	HWY 30 AT TONGUE POINT.	ASTORIA	OR	97103	TRANSPORTATION	3010, 103c
CG—COOS BAY ANT	4333 BOAT BASIN RD	CHARLESTON	OR	97420	TRANSPORTATION	3010, 103c
PORTLAND MARINE SAFETY COAST GUARD STATION.	6767 N BASIN	PORTLAND	OR	97217	TRANSPORTATION	3010, 103c
GREATER PITTSBURG INTERNATIONAL AIRPORT.	911 TAG/DE	PITTSBURGH	PA	15231	AIR FORCE	3016, 103c
CHARLES E. KELLY SUPPORT CENTER.	US ARMY	OAKDALE	PA	15071	ARMY	3010, 103c
PHILADELPHIA DEFENSE PERSONNEL SUPPORT CENTER.	2800 S 20TH ST	PHILADELPHIA	PA	19101	ARMY	3005, 3010, 3016, 103c
NPS—GETTYSBURG NATIONAL MILITARY PARK.	RD 1	GETTYSBURG	PA	17325	INTERIOR	103c
CAMP SANTIAGO	ROUTE 1	SALINAS	PR	00751	ARMY	103c, 3010, 3016
FORT BUCHANAN	ROUTE 28	SAN JUAN	PR	00934	ARMY	3005, 3010, 103c, 3016
CENTER FOR ENERGY AND ENVIRONMENTAL RESEARCH.	ROAD 108 KM 1.1	MAYAQUEZ	PR	00708	ENERGY	3016, 103c, 3010
SAN JUAN POST OFFICE & COURTHOUSE.	COMERCIO ST & TANCA ST.	SAN JUAN	PR	00906	GENERAL SERVICES ADMINISTRATION.	3010
CEIBA NAVAL STATION	ROOSEVELT ROADS	CEIBA	PR	00635	NAVY	3005, 3010, 3016, 103c
ROOSEVELT ROADS NAVAL STATION.	VILLA VERDE STREET DRYDOCK & REPAIR FACILITY.	MIRAMAR	PR	00903	NAVY	3005, 3010, 3016, 103c
SAN JUAN NAS HANGAR 21	PORT OF SAN JUAN HARBOR.	SAN JUAN	PR	00906	NAVY	3016, 103c
VIEQUES EAST	VIEQUES	VIEQUES	PR	00765	NAVY	103c, 3005, 3010, 3016
VIEQUES NAVAL AMMUNITION FACILITY.	ROUTE 70	VIEQUES	PR	00765	NAVY	3005, 3010, 3016, 103c
BORINQUEN COAST GUARD AIR STATION.	RAMEY AIR FORCE BASE	AQUADILLA	PR	00604	TRANSPORTATION	3010, 103c
BEAUFORT NAVAL HOSPITAL	SC HIGHWAY 280	BEAUFORT	SC	29902	NAVY	3010
CHARLESTON NAVAL SHIPYARD	VIADUCT ROAD	CHARLESTON	SC	29408	NAVY	3005, 3010, 3016
BLACK HILLS NF: CUSTER RANGER DISTRICT.	647 NORTH 3RD ST	CUSTER	SD	57730	AGRICULTURE	3010, 3016, 103c
BLACK HILLS NF: SPOKANE MUNITIONS.	R6E, T25, SW1/4, SEC26	SPOKANE	SD		AGRICULTURE	103c, 3016
SILVER KING MINES INC	US HWY. 18	EDGEMONT	SD	57735	TENNESSEE VALLEY AUTHORITY.	3010, 103c
HOLSTON ARMY AMMUNITION PLANT.	WEST STONE DRIVE	KINGSPORT	TN	37660	ARMY	3005, 3010, 3016, 103c, 103a
MEMPHIS NAVAL AIR STATION	MILLINGTON-ARLINGTON ROAD.	MILLINGTON	TN	38054	NAVY	3005, 3010, 3016, 103c, 103a
ALLEN FOSSIL PLANT	2574 PLANT RD	MEMPHIS	TN	38109	TENNESSEE VALLEY AUTHORITY.	3005, 3010, 3016, 103c, 103a
BOONE HYDRO PLANT	TN HWY 75/8 MI SE OF	KINGSPORT	TN	37662	TENNESSEE VALLEY AUTHORITY.	103a, 3010
BULL RUN FOSSIL PLANT	EDGEMOOR RD., 6 MI SE OF OAK RIDGE.	OAK RIDGE	TN	37930	TENNESSEE VALLEY AUTHORITY.	3010, 103c
CUMBERLAND FOSSIL PLANT	815 CUMBERLAND CITY RD.	CUMBERLAND CITY.	TN	37050	TENNESSEE VALLEY AUTHORITY.	3010, 103a, 103c
HARTSVILLE SITE	TN HWY 25	HARTSVILLE	TN	37050	TENNESSEE VALLEY AUTHORITY.	3010, 103a, 103c
JOHN SEVIER FOSSIL PLANT	TN HWY 70E	ROGERSVILLE	TN	37134	TENNESSEE VALLEY AUTHORITY.	3005, 3010, 103c, 103a
KINGSTON FOSSIL PLANT	OFF I–40 EAST	KINGSTON	TN	37763	TENNESSEE VALLEY AUTHORITY.	3005, 3010, 103c
SEQUOYAH NUCLEAR PLANT	HIXSON PIKE RD	DAISYS	TN	37319	TENNESSEE VALLEY AUTHORITY.	3005, 3010, 103c, 103a
WATAUGA HYDRO PLANT	WILBUR DAM RD 5 MI E OF.	ELIZABETHTON	TN	37643	TENNESSEE VALLEY AUTHORITY.	3010
WATTS BAR NUCLEAR PLANT	TN HWY 68	SPRING CITY	TN	37381	TENNESSEE VALLEY AUTHORITY.	3005, 3010, 103c
CONSERVATION AND PRODUCTION RESEARCH LABORATORY.	1/2 MILE W., T–40 S	BUSHLAND	TX	79012	AGRICULTURE	3016, 103c
COTTON INSECTS RESEARCH LABORATORY.		BROWNSVILLE	TX	78520	AGRICULTURE	103c
HONEY BEE RESEARCH LABORATORY.		WESLACO	TX	78520	AGRICULTURE	103c
KNIPLING-BUSHLAND LIVERSTOCK INSECTS LABORATORY.	INTERSECTION SH 16 AND IH 10.	KERRVILLE	TX	78028	AGRICULTURE	3016, 3005

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET NFRAP STATUS FACILITIES—Continued

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism
SUBTROPICAL AGRICULTURE RESEARCH LABORATORY.	FM 1015, SOUTH EXPRESSWAY 83.	WESLACO	TX	76115	AGRICULTURE	3010, 3016, 103c
147TH WING AT ELLINGTON FIELD	CLOTHIER AVENUE	HOUSTON	TX	77209	AIR FORCE	103c, 3016, 3010
BERGSTROM AIR FORCE BASE	67 CSG/DE	BERGSTROM AFB.	TX	78743	AIR FORCE	3005, 3010, 3016, 103c, 103a
DYESS AIR FORCE BASE	96 CSG/CC	ABILENE	TX	79607	AIR FORCE	3005, 3010, 3016, 103c, 103a
NEDERLAND AIR NATIONAL GUARD.	HIGHWAY 69	NEDERLAND	TX	77627	AIR FORCE	103c
SHEPPARD AIR FORCE BASE	3750 ABG/DE	WICHITA FALLS	TX	76311	AIR FORCE	3005, 3010, 3016, 103c
CANYON LAKE RECREATION AREA.	NORTH SIDE OF CANYON LAKE (BY DAM).	SAN ANTONIO	TX	78234	ARMY	103c
CORPUS CHRISTI ARMY MAINTENANCE SUPPORT ACTIVITY.	2022 SARATOGA	CORPUS CHRISTI.	TX	78415	ARMY	3005, 3010, 103c, 103a
FORT BLISS AIR DEFENSE CENTER.	ENVIRON MGMT OFC BLDG 1105 W.	FORT BLISS	TX	79916	ARMY	3005, 3010, 3016, 103c, 103a
FUELS & LUBRICANT RESEARCH LABORATORY.	6220 CUEVRA	SAN ANTONIO	TX	78284	ARMY	103c
SAGINAW AIRCRAFT PLANT	BLUE MOUND ROAD HIGHWAY 156.	SAGINAW	TX	76131	ARMY	3010, 103c
TERRELL NIKE MISSILE SITE	½ MI E. OF HWY 205	TERRELL	TX	75160	ARMY	103c
LAKE LAVON-NORTH GULLY SITE 1.	HIGHWAY 380	WYLIE	TX	75077	CORPS OF ENGINEERS. CIVIL.	3016, 103c
LAKE LAVON-ST PAUL SITE 2	S END ROLLING MEADOWS ST.	WYLIE	TX	75098	CORPS OF ENGINEERS, CIVIL.	103c, 3010
HOUSTON LABORATORY	6608 HORNWOOD DR	HOUSTON	TX	77074	EPA	3010, 103c
FWS—LAGUAN ATASCOSA NATIONAL WILDLIFE REFUGE.	P.O. BOX 450	RIO HONDO	TX	78583	INTERIOR	103c
NPS—PADRE ISLAND	PARK ROAD 22	CORPUS CHRISTI.	TX	78418	INTERIOR	3010, 3016, 103c
BASTROP FEDERAL CORRECTIONAL INSTITUTION.	HWY95 8MI NE OF BASTROP.	BASTROP	TX	78602	JUSTICE	3010, 3016, 103c
L.B. JOHNSON SPACE CENTER	2101 NASA ROAD	HOUSTON	TX	77058	NASA	3005, 3016, 103a, 103c
CHASE FIELD NAVAL AIR STATION	SW 202 5 MI E. OF BEEVILLE.	BEEVILLE	TX	78103	NAVY	3005, 3010, 103c
KINGSVILLE NAVAL AIR STATION	554 MCCAIN ST STE 310	KINGSVILLE	TX	78363	NAVY	3010, 103c, 103a, 3005
PLANT #78	35 MI. NW OF BRIGHAM CITY MAIL STOP 250.	BRIGHAM CITY	UT	84302	AIR FORCE	3010, 3016, 103c
BLM—CHEVRON RED WASH UNIT	T7SRESEC22	VERNAL	UT	84078	INTERIOR	3016, 103c, 103a
BLM—DESERT MOUND MINE	T35NR13WSEC35	CEDAR CITY	UT	84720	INTERIOR	3016, 103c
BLM—EAST SUMMIT MINING CLAIMS.	T31WR20WSEC11,14		UT		INTERIOR	3016, 103c
BLM—FRYE CANYON TAILING	T36SR16SEC34	HITE	UT	84511	INTERIOR	1016, 103c
BLM—MERCUR CANYON OUTWASH.	HIGHWAY 73, EAST OF TOOELE ARMY DEPOT.	TOOELE	UT	84074	INTERIOR	3016, 103c
BLM—SILVER MAPLE CLAIMS	T2SR4ESEC3,4 UTAH HWY 248.	PARK CITY	UT	84060	INTERIOR	3016, 103c
BLM—SNOWVILLE LANDFILL	T14N, R9W, SEC32	SNOWVILLE	UT	84336	INTERIOR	103c
BLM—WENDOVER LANDFILL	T1S, R19W, SEC3, LOTS 1 AND 2, 3 MI E OF WENDOVER.	WENDOVER	UT	84083	INTERIOR	103c, 3016
COTTONWOOD CANYON	T37SR21ESEC3	HITE	UT	84511	INTERIOR	3016, 103c
ORE BUYING STATION—MOAB	T26SR22ESEC6 PARCLABC.	MOAB	UT	84532	INTERIOR	3016, 103c
ARLINGTON MARINE CORPOS BATTALION HEADQUARTERS ARL.	HENDERSON HALL	ARLINGTON	VA	22214	NAVY	103c
ROANOKE NAVY AND MARINE CORPS RESERVE.	5301 BARNES AVE	ROANOKE	VA	24019	NAVY	3010, 103c
BLAIR HANGAR ARMY AIR SUPPORT FACILITY.	ALEX HAMILTON AIRPORT.	ST. CROIX	VI	00850	ARMY	3016, 103c
FS—OKANOGAN NF: ALDER CREEK.	T33N R21E S24 WM NE¼ SW ¼.	TWISP	WA	98856	AGRICULTURE	103c
OKANOGAN NF: BONAPARTE	T39N R303 S10 WM	CHESAW	WA	98844	AGRICULTURE	103c
OKANOGAN NF: EIGHT MILE RANCH.	T36N R21E S23 QSSE WM	WINTHROP	WA	98862	AGRICULTURE	103c
OKANOGAN NF: EIGHT MILE RANCH.	T36N R21E S23 QSSE WM	WINTHROP	WA	98862	AGRICULTURE	103c
OKANOGAN NF: KEBR	T35 R24E S23 WM	CONCONULLY	WA	98819	AGRICULTURE	103c
OKANOGAN NF: LOST LAKE	T39N R30E S28&29 QSNE WM.	OROVILLE	WA	98844	AGRICULTURE	103c
OKANOGAN NF: MINNIE MINE	T32N R22E S23, 8 MI S OF	TWISP	WA	98856	AGRICULTURE	3016, 103c
OKANOGAN NF: TONASKET	T37N R27e S16 WM, OKANOGAN RIVER VALLEY.	TONASKET	WA	98855	AGRICULTURE	103c
OKANOGAN NF: TWISP	T33N R22E S17 SW¼ NW¼ WM.	TWISP	WA	98856	AGRICULTURE	103c

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET NFRAP STATUS FACILITIES—Continued

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism
PACIFIC N.W. FOREST RANGE EXPERIMENT STATION.	3625 93RD AVE S.	TUMWATER	WA	98501	AGRICULTURE	3016, 103c
WENATCHEE NF: CHINOOK PASS WORK CENTER.	T16N R15E S7 SE¼ NW¼	NACHES	WA	98937	AGRICULTURE	103c
WENATCHEE NF: STELIKO	T26N R20E S20 NW¼ NW¼ VM.	ARDENVOIR	WA	98811	AGRICULTURE	103c
WENATCHEE NF: VEHICLE WASH SUMP.	600 SHERBOURNE ST	LEAVENWORTH	WA	98826	AGRICULTURE	103c
WENATCHEE NF: WHITE PASS WORK CENTER.	T14N R14E S28 NE¼ NE¼.	NACHES	WA	98937	AGRICULTURE	103c
PAINE FIELD AIR NATIONAL GUARD STATION.	2701 112TH ST SW	EVERETT	WA	98204	AIR FORCE	103c, 3010
SEATTLE AIR NATIONAL GUARD STATION.	6736 ELLIS AVE S, KING CNTY INT'L AIRPRT.	SEATTLE	WA	98108	AIR FORCE	103c
KENT NATIONAL GUARD BUREAU	24410 MILITARY ROAD	KENT	WA	98032	ARMY	103c, 3016
REDMOND NATIONAL GUARD BUREAU.	17230 NE 95TH STREET	REDMOND	WA	98052	ARMY	103c
VANCOUVER NATIONAL GUARD BARRACKS.	HQ, VANCOUVER BARRACKS B–638.	VANCOUVER	WA	98661	ARMY	3016, 103c
YAKIMA FIRING CENTER	184 4 MI N OF CITY	YAKIMA	WA	98901	ARMY	3005, 3010, 3016, 103c
EDA—COLUMBIA GARDENS	COLUMBIA GARDENS	PASCO	WA	99301	COMMERCE	103c, 3016
CHIEF JOSEPH DAM PROJECT	HWY 17 & HWY 173	BRIDGEPORT	WA	98813	CORPS OF ENGINEERS, CIVIL.	103c
WALLA WALLA DISTRICT HEADQUARTERS.	CHERRY ST & SUMAC ST, 3RD AVE & 4TH AVE.	WALLA WALLA	WA	99362	CORPS OF ENGINEERS, CIVIL.	103c
BPA—BELL SUBSTATION	E 2400 HAWTHORNE RD	MEAD	WA	98021	ENERGY	3010, 3016, 103c, 103a
BPA—COLUMBIA SUBSTATION	ST HWY 28 6 MI S OF CY	ROCK ISLAND	WA	98850	ENERGY	3016, 103c
BPA—MIDWAY SUBSTATION	PRIEST RAPIDS OFF HWY 24.	SUNNYSIDE	WA	98944	ENERGY	3010, 3016, 103c
BPA—OLYMPIA SUBSTATION	5240 TROSPER ST SW	OLYMPIA	WA	98502	ENERGY	3010, 3016, 103c, 103a
BPA—PORT ANGELES	1400 E PARK STREET	PORT ANGELES	WA	98362	ENERGY	3010, 3016, 103c, 103a
NIOSH—FORMER ATLAS E	T27N R39e S36, 9 MI N OF	REARDAN	WA	99029	HEALTH AND	103c
BLM—ENLO POWERHOUSE AKA SIMILKAMEEN.	T40NR27ESEC13	OROVILLE	WA	98844	INTERIOR	103c
BLM—OROVILLE LANDFILL	T40NR27ESEC18	OROVILLE	WA	98844	INTERIOR	103c, 3016
BR—CHANDLER POWER & PUMPING PLANT.	OLD INLAND EMPIRE HWY.	BENTON CITY	WA	99320	INTERIOR	103c
BR—FORT SIMCOE JOB CORPS CENTER.	W END OF HWY 220 T10N R16E S21.	WHITE SWAN	WA	98952	INTERIOR	3010, 103c
BR—GRAND COULEE DAM PROJECT.	HWY 155 N OF JCT HWY 174.	COULEE DAM	WA	99116	INTERIOR	3010, 3016, 103c
BR—SMITH WASTEWAY	5 MI. E. OF PASCO	PASCO	WA	99301	INTERIOR	3016, 103c
CAMP WESLEY HARRIS MARINE FACILITY.	SEABECK HWY 3 MI W OF CY.	BREMERTON	WA	98310	NAVY	103c
NAVAL RADIO STATION T JIM CREEK.	21027 JIM CREEK RD; 4 MI E OF HWY 530 AT OSO.	OSO	WA	98223	NAVY	103c, 3010
PUGET SOUND NAVAL STATION	7500 SAND POINT WAY NE.	SEATTLE	WA	98115	NAVY	3010, 103a, 103c
FAA—MICA PEAK	T24N, R45E, S14	MICA	WA	99023	TRANSPORTATION	103c, 3016
SEATTLE COAST GUARD SUPPORT CENTER.	1519 ALASKAN WAY S	SEATTLE	WA	98134	TRANSPORTATION	3010, 3016, 103c
SEATTLE COAST GUARD SUPPORT CENTER ANNEX.	2700 W COMMODORE WAY.	SEATTLE	WA	98119	TRANSPORTATION	3010, 103c
FOREST PRODUCTS LABORATORY.	1 GIFFORD PINCHOT DR, DANE COUNTY.	MADISON	WI	53705	AGRICULTURE	3005, 3010, 3016, 103c
NICOLET NF: TIPLER DUMP	0.51 MI E ON SHANNON RD & HWY 139.	TIPLER TOWNSHIP.	WI	54542	AGRICULTURE	103c
PEWAUKEE ARMY RESERVE CENTER.	619 W WISCONSIN AVE	PEWAUKEE	WI	53072	ARMY	3010, 103c
FWS—ST. CROIX WETLAND MANAGEMENT DISTRICT.	1618 220TH AVE (RURAL AREA), ST. CROIX COUNTY.	NEW RICHMOND	WI	54017	INTERIOR	3010
MILWAUKEE COAST GUARD GROUP BASE.	2420 LINCOLN MEMORIAL DR.	MILWAUKEE	WI	53207	TRANSPORTATION	3010, 103c
APPALACHIAN SOIL & WATER RESEARCH LABORATORY.	AIRPORT RD	BEAVER	WV	25813	AGRICULTURE	3010
HIGH PLAINS GRASSLAND RESEARCH STATION.	8408 HILDRETH ROAD	CHEYENNE	WY	82009	AGRICULTURE	3016, 103c
HOE CREEK		GILLETTE	WY		ENERGY	103c
WAPA—CASPER FIELD BR	W OF MT VIEW ON SPIDER RD.	MILLS	WY	82644	ENERGY	103c
BLM—BAROIL LANDFILL	T26NR90WSEC26	BAROIL	WY		INTERIOR	103c
BLM—BIRCH CREEK SITE	T27NR113WSEC34	WORLAND	WY		INTERIOR	103c
BLM—BOULDER LANDFILL	T31NR108WSEC3	BOULDER	WY		INTERIOR	103c
BLM—CODY LANDFILL	T52NR101WSEC20	CODY	WY		INTERIOR	103c

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET NFRAP STATUS FACILITIES—Continued

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism
BLM—NORTHWEST PIPELINE-BARREL SPRINGS.	T16N R92W S18 SE¼ NW ¼.	CARBON	WY	82324	INTERIOR	3010, 103c
BLM—OLD LYSITE LANDFILL	T30NR91WSEC1		WY		INTERIOR	103c
BLM—RIVERTON LANDFILL	T34NR96WSEC26, ½ MI E OF RIVERTON.	RIVERTON	WY	82501	INTERIOR	103c
BLM—SOUTH BIGHORN COUNTY LANDFILL.	T52NR93WSEC20		WY		INTERIOR	103c
BLM—WORLAND LANDFILL	T47NR93WSEC23	WORLAND	WY		INTERIOR	103c

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December 29, 2000

Part VI

Department of Agriculture

Food and Nutrition Service

7 CFR Part 246

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Food Delivery Systems; Final Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

RIN 0584–AA80

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Food Delivery Systems

AGENCY: Food and Nutrition Service, USDA

ACTION: Final rule.

SUMMARY: This final rule amends the regulations governing the Special Supplemental Nutrition Program for Women, Infants and Children. It strengthens vendor management in retail food delivery systems by establishing mandatory selection criteria, training requirements, criteria to be used to identify high-risk vendors, and monitoring requirements, including compliance investigations. In addition, the rule strengthens food instrument accountability and sanctions for participants who violate program requirements. It also streamlines the vendor appeals process. The rule will increase program accountability and efficiency in food delivery and related areas and decrease vendor violations of program requirements and loss of program funds.

DATES: This rule is effective February 27, 2001. State agencies must implement the provisions of this rule no later than February 27, 2002.

FOR FURTHER INFORMATION CONTACT: Debra Whitford, Branch Chief, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 542, Alexandria, Virginia 22302, (703) 305–2730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be ''significant'' and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Pursuant to that review, Shirley R. Watkins, Under Secretary, Food, Nutrition, and Consumer Services, has certified that this rule would not have a significant impact on a substantial number of small entities. This rule amends vendor selection, training, monitoring, and appeal procedures and/or systems. The effect of these changes falls primarily on State agencies. Local agencies and vendors will also be affected, some of which are small entities. However, the impact on small entities is not expected to be significant.

Whereas extensive data is collected regarding program participants, the WIC Program does not collect data on the size of businesses that are authorized as vendors. Of the 45,000 authorized vendors, it is estimated that approximately 20,000 of them may be small businesses. Stores choose whether to apply for program authorization. All authorized vendors, regardless of their size, agree to comply with the program requirements. Although this rule strengthens some of the program requirements regarding vendors, many State agencies have already implemented similar provisions using their current authority. For example, although specific selection criteria are now mandated, most State agencies already use the noted criteria. As such, we do not foresee dramatic future decreases in the number of smaller vendors. Likewise, training is routinely provided to vendors. This final rule allows such training to be provided on-site at the vendor, off-site classroom style, or via a training video or newsletter. In addition, although the State agency is responsible for designating the date, time, and location of the training, the State agency must offer the vendor at least one alternative date on which to attend the training.

Executive Order 12372

The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) is listed in the Catalog of Federal Domestic Assistance Programs under 10.557. For the reasons set forth in the final rule in 7 CFR 3015, Subpart V, and related Notice (48 FR 29115), this program is included in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12988

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

Executive Order 13132

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Although the proposed rule was published before the Executive Order was issued, we considered the impact on State agencies when we developed both the proposed and final rules.

Before drafting both the proposed and final rules, we received input from State agencies at various times. Because the Program is a State-administered, federally funded program, our regional offices have formal and informal discussions with State and local officials on an ongoing basis. These discussions involve implementation and policy issues. This arrangement allows State agencies to provide feedback that forms the basis for many discretionary decisions in this and other Program rules. In addition, FNS officials attend regional, national, and professional conferences to discuss issues and receive feedback from State officials at all levels.

Lastly, the comments on the proposed rule from State officials were carefully considered in drafting this final rule. For example, in response to comments from State agencies we revised the proposed rule to leave the following areas to State agency discretion: (1) Use of limiting criteria, (2) use of training receipts, (3) development of alternative criteria for identifying high-risk vendors, and (4) use of abbreviated rather than full administrative review procedures. The preamble below contains a more detailed discussion of our response to all the comments received on the rule.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531–38) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the Food and Nutrition Service (FNS) 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 or tribal governments, in the aggregate, or the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a

reasonable number of regulatory alternatives and adopt the most cost-effective or least burdensome alternative that achieves the objectives of the rule.

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

Paperwork Reduction Act of 1995

The reporting and recordkeeping requirements associated with this final rule have been submitted for approval to the Office of Management and Budget (OMB) under OMB No. 0584–0043. This submission includes a revised reporting requirement for State Plan submissions (Section 246.4) and new reporting requirements for vendor training (Section 246.12(i)(1)), vendor monitoring (Section 246.12(j)(4)), food instrument disposition (Section 246.12(q)), and targeted local agency reviews (Section 246.19(b)(5)). In addition, the submission includes new recordkeeping requirements for vendor training (Section 246.12(i)(4)), vendor monitoring (Section 246.12(j)(6)), and participant claims disposition (Section 246.23(c)(1)). These new requirements will be effective upon OMB approval.

1. Background

Major final amendments to the WIC Program regulations regarding food delivery systems were last published on May 28, 1982 at 47 FR 23626 in response to audits and management evaluations disclosing problems in the food delivery area that could result in the loss of WIC Program funds. Both the National Vendor Audit issued by our Office of Inspector General in 1988 and the WIC Vendor Issues Study in 1993 indicated that significant levels of vendor violations persisted. (See section 21 of this preamble for the full citations to the reference materials mentioned in the preamble.)

In response to the National Vendor Audit, we published a proposed rule on December 28, 1990 at 55 FR 53446 to strengthen State agency operations in vendor management and related food delivery areas. We provided a 120-day comment period that closed on April 29, 1991. During the comment period, we received 1,066 comments from State and local agencies, vendors and associated groups, public interest groups, members of Congress, members of the public, and WIC participants. They indicated that significant modifications to the December 1990 proposed rulemaking were still required, and that the extent of such modifications would warrant another opportunity for public input. In addition, several members of Congress requested that the rule be proposed again in light of its potential impact on certain State agency food delivery systems.

In response, we proposed a new food delivery rule on June 16, 1999 at 64 FR 32308. We subsequently extended the comment period from 90 days to 120 days after receiving requests to do so from several potential commenters. We proposed to amend the WIC regulations to address the original OIG audit recommendations by strengthening vendor management systems. We also proposed to implement three provisions of the William F. Goodling Child Nutrition Reauthorization Act of 1998, P.L. 105–336 (Goodling Act), which amended the Child Nutrition Act of 1966, 42 U.S.C. 1771–1791 (Child Nutrition Act). These provisions require the State agency to: (1) Identify high-risk vendors, (2) conduct compliance buys on high-risk vendors, and (3) consider prices in the selection of vendors.

We received 4,601 comment letters, including three form letters from 4,481 participants in California, 22 WIC-only stores in California, and 7 food store owners in California. This resulted in 94 distinct comment letters, which fell into the following categories: State agencies (28), local agencies (13), State agency staff (2), Federal agencies (2), industry groups (23), vendors (7), public interest groups (7), general public (2), and participants (1). After the end of the comment period, several members of Congress wrote us to express their concern about certain aspects of the proposal. We thoroughly analyzed the comments and made revisions to the proposal consistent with the mission of the WIC Program.

a. Summary of This Preamble

This preamble addresses our response to the comments. In general, we only discuss the comments that opposed proposed provisions and the areas of the proposal that are changed by this final rule. We organized the preamble by topic rather than the order in which provisions appear in the final rule. The headings in the preamble identify the sections of the final rule that are discussed in that part of the preamble. To help in using the preamble, we included an outline of the areas covered in the preamble below.

1. Background
2. Definitions of ''Vendor'' and ''Vendor Authorization'' and General Provisions for Vendor Authorization and Agreements
3. Vendor Limiting Criteria
4. Vendor Selection Criteria
5. Food Instrument Requirements
6. Vendor Violations, Vendor Overcharges, and Vendor Claims
7. Miscellaneous Vendor Agreement Specifications
8. Vendor Training
9. Vendor Monitoring and Identifying High-Risk Vendors
10. Vendor Administrative Review Procedures
11. Vendor Authorization and Local Agency Selection Subject to Procurement Procedures
12. Preventing and Identifying Dual Participation
13. Participant Provisions
14. Home Food Delivery Systems and Direct Distribution Food Delivery Systems
15. General Requirements for Food Delivery Systems
16. Vendor Management Staffing
17. Participant Access Criteria in State Plan
18. Management Evaluations and Monitoring Reviews
19. Conflict of Interest
20. Confidentiality
21. References

b. Plain Language

In addition to the changes we made in response to the comments, we made changes throughout the proposed regulatory language to make the rule easier to read. We added paragraph headings and made other changes to use plain language. Eventually, the entire WIC regulations at 7 CFR Part 246 will be revised similarly.

c. Implementation of This Rule

One commenter requested that we provide State agencies with at least one year to implement this final rule. Another commenter suggested that the implementation period for the final rule provide for the gradual implementation of the provisions to avoid disruption in State agency vendor services. In their comment letters, many commenters indicated that their State agencies had already implemented a number of the provisions in response to our December 28, 1990 proposal, because they had anticipated that we would finalize that rule. Consequently, State agencies will vary in the amount of effort necessary to implement this final rule. We made this rule effective 60 days after publication and require State agencies to fully implement its provisions no later than one year after the effective date.

The one-year implementation period recognizes the variations among State agency operations and provides adequate time for State agencies to incorporate these changes into their

food delivery systems. Not all provisions from this final rule must be implemented at the same time. For example, a State agency that enters into vendor agreements on a rolling basis may decide to amend the agreements as new ones are entered into, provided that agreements reflecting the new requirements are in place for all vendors prior to the end of the implementation period. Many State agencies have established vendor councils to facilitate communication between the State agency and its vendor community. We have found that such councils can be helpful as State agencies implement changes to their food delivery systems. We recommend that State agencies either establish vendor councils or use existing ones to ensure the timely implementation of this rule.

2. Definitions of ''Vendor'' and ''Vendor Authorization'' and General Provisions for Vendor Authorization and Vendor Agreements

a. Definition of ''Vendor'' (Section 246.2)

Commenters generally supported the proposed definition of ''vendor.'' However, thirteen commenters suggested that we modify the definition to use the term ''retailer'' instead of ''vendor,'' because the term retailer is used by vendors, State governments, and the Food Stamp Program. Although we acknowledge the two terms are often used interchangeably, the fact remains that the requirements for WIC vendors and Food Stamp Program retailers differ in several basic ways. The term vendor uniquely identifies stores authorized for the WIC Program. Therefore, we did not make this modification.

Seven commenters noted that the definition of vendor did not include several types of business entities that may operate stores, such as limited liability companies, limited partnerships, and franchisers/franchisees. Rather than attempt to list all types of business entities in the definition, we decided to specify the more common types of business entities and include a reference to ''or other business entity'' to cover all other business entities. This approach also will accommodate any new types of business entities that may be created in the future.

Several commenters requested that we distinguish between the concept of vendor as a business entity and the concept of vendor as the location of the business (i.e., the store itself). One commenter asserted that this change is necessary to make the definition of vendor consistent with the definition of ''vendor violation,'' because a vendor violation requires an intentional or unintentional action by the vendor, which cannot be committed by a store. Another commenter noted that requiring the State agency to enter into separate agreements with each store, instead of entering into one agreement to cover multiple stores operated by the same business entity, would triple the State agency's administrative burden of contracting with its vendors.

Once again, we believe the commenters' suggestions and concerns have merit, but we believe for a number of reasons that the concept of ''vendor'' must refer to a single store operated by a business entity. For instance, if the concept of vendor only referred to the business entity, including a corporation operating multiple stores, what would happen if one manager at one store of the largest chain in the State is convicted of trafficking? Similarly, what would happen if one store of the largest chain is disqualified for three years from the Food Stamp Program (FSP)? Would such sanctions require the State agency to disqualify the business entity, including all of its stores, from the WIC Program? If so, would business entities operating multiple stores always receive civil money penalties in lieu of disqualification because their disqualification would always result in inadequate participant access?

We believe that the State agency should be able to disqualify a single store of a large chain, provided that participants have adequate access to other vendors operating in the same area. Consequently, we revised the definition of vendor to clarify that each store operated by a single business entity must be authorized separately. However, Section 246.12(h)(1) of this final rule continues to permit the State agency to use a single agreement to cover multiple vendors (i.e., multiple authorized stores) operated by the same business entity. Under this approach, the State agency will still be able to sanction multiple vendors for a vendor violation committed by owners, officers, or managers of a single business entity, if the State agency determines that the vendor violation involves multiple vendors.

One commenter suggested that the term vendor refer to the business entity only so that the State agency must authorize all of a business entity's stores and not arbitrarily authorize some of the business entity's stores while denying authorization to some of its other stores. As discussed below in section 4 of this preamble, vendor authorization is not an arbitrary process. To be authorized, each vendor applicant must meet or exceed the State agency's selection criteria, unless the State agency allows for exceptions, such as for mobile stores or for pharmacies that provide only exempt infant formula and/or WIC-eligible medical foods. The State agency's authorization decisions must balance its need to provide adequate participant access with its need to ensure effective vendor management, oversight, and review. Chain stores must apply for vendor authorization in the same manner as any other store, and the State agency is not obligated to authorize all stores operated by a business entity.

One commenter suggested that we delete the reference to mobile stores from the definition of vendor, because such stores create opportunities for fraud and abuse and can be difficult to monitor. The State agency may only authorize mobile stores when they are necessary to ensure adequate participant access. Although we understand the commenter's concerns, these stores, when authorized, must fall under the definition of a vendor to be held accountable for compliance with the Program's vendor requirements. For this reason, we did not accept the commenter's suggestion.

b. Definition of ''Vendor Authorization'' (Section 246.2)

In response to the proposed definition of the term ''vendor authorization,'' one commenter noted that the definition improperly uses the term ''vendor'' when referring to a store that has not yet been authorized as a vendor. We revised the definition to use ''store'' rather than ''vendor.'' We made conforming changes throughout the rule to use ''store'' or ''vendor applicant'' when referring to a store that is not yet authorized.

c. Entering into Vendor Agreements (Sections 246.12(h)(1) and 246.4(a)(14)(iii))

To become a vendor, a store must apply for program authorization, meet or exceed the State agency's selection criteria, and enter into an agreement with the State agency. In Section 246.12(h)(1), we proposed to require vendor agreements to be signed by ''a representative who has legal authority to obligate the vendor and a representative of the State agency.'' We proposed this change to ensure that vendors are authorized consistently statewide. Fifteen commenters opposed this proposed change for a variety of reasons, including: local agencies need to sign vendor agreements to establish authority over and communication with vendors as well as to be accountable to the State agency for vendor oversight;

local agencies can use a standard agreement and carry out this activity using the State agency's procedures and guidance; and requiring the State agency to enter into all vendor agreements would increase costs, may cause such agreements to fall under the State's procurement procedures, and may expose the State agency to additional financial liability. To address the commenters' concerns, the final rule adds Section 246.12(h)(1)(ii) to allow the State agency to delegate the signing of vendor agreements to local agencies as long as such delegation authority is indicated in its State Plan (Section 246.4(a)(14)(iii)) and the State agency provides supervision and instruction to ensure the uniformity and quality of local agency activities. Although the State agency may delegate certain vendor authorization and management activities to its local agencies, it is the State agency that is ultimately responsible for such activities and the language in this final rule reflects that responsibility.

d. Length of Vendor Agreements (§ 246.12(h)(1)) and Limiting Periods for Vendor Applications (§ 246.12(g)(7))

In Section 246.12(h)(1), we also proposed to limit the length of vendor agreements to a period not to exceed three years. Under this proposed requirement, to continue as an authorized vendor, a store periodically would need to reapply for program authorization. Whereas eleven commenters supported this proposed provision, sixteen opposed the three-year limit on vendor agreements for a variety of reasons, including: the provision would be counter-productive to State agencies that use more resource-efficient, automatic renewal or annual renewal systems; the provision would discourage stores from applying for authorization; and the provision would result in stores exiting and re-entering the Program, causing confusion for participants.

One commenter suggested that, rather than requiring stores to reapply every three years, the State agency be permitted to automatically renew vendor agreements if there are no vendor violations. Although we understand the commenter's viewpoint, we believe only stores that can demonstrate they continue to meet or exceed the State agency's current selection criteria should continue to be authorized. Requiring vendors to reapply for authorization at least every three years does not preclude the State agency from developing a streamlined system for accepting reapplication information from current vendors. However, such systems must ensure that the store provides updated information regarding all of the selection criteria, including information regarding its current prices, quantities and varieties of the supplemental foods it stocks, and business integrity, as well as updated information regarding the store's ownership and management. Regardless of whether a store is applying for reauthorization or initial authorization, the State agency must select vendors based on its current selection criteria. For these reasons, we retained the three-year limit on vendor agreements.

A majority of commenters opposed the portion of the provision in proposed Section 246.12(g)(6) that provides that the State agency may limit the periods during which it will accept and process applications for vendor authorization, except that applications must be accepted and processed at least once every three years. Many commenters misunderstood this provision as requiring all State agencies to only accept applications once every three years. The commenters noted a wide variety of arguments against such limited application periods. However, the State agency has always had the discretion to restrict its timeframes for accepting and processing vendor applications. Some State agencies have found such restrictions very useful in establishing annual workplans for their limited staffs. The proposal would only have specifically incorporated this discretion in the program regulations and clarified that if the State agency chose this approach, applications must be accepted ''at least once every three years.'' The proposal also would have required the State agency to develop procedures for processing vendor applications outside of its timeframes when it determines there will be inadequate participant access unless additional vendors are authorized. This provision is consistent with the three-year limit on vendor agreements and is adopted in Section 246.12(g)(7) of the final rule.

e. Vendor Reassessment (§§ 246.12(g)(3) and (h)(3)(xxiv))

One commenter suggested that, rather than requiring vendors to reapply every three years, the State agency should be permitted to conduct annual reviews of vendor qualifications. The requirement for three-year agreements is not inconsistent with a State agency's periodic review of vendor qualifications. In Section 246.12(g)(3), we proposed to authorize the State agency to reassess any authorized vendor at any time during the vendor's agreement period using the vendor selection criteria in effect at that time. One commenter suggested that we modify the provision so that a vendor that fails to meet a selection criterion during a reassessment be given the opportunity to correct the deficiency. The State agency may include as part of both its vendor selection process and its reassessment process an opportunity to correct any deficiency that would otherwise lead to nonselection or termination of the vendor agreement. However, this is at the discretion of the State agency, and the State agency must make this clear in its procedures for implementing its vendor selection criteria.

Another commenter pointed out that the vendor agreement section of the proposal did not clearly reflect the requirement in this section that specifies that the State agency must terminate the agreements with vendors that no longer meet its selection criteria. In addition, we noticed that the vendor agreement section did not make clear that vendors must comply with the vendor selection criteria throughout the agreement period. We agree with the commenter and added Section 246.12(h)(3)(xxiv) in the final rule to make these clarifications.

f. Vendor Agreement Not a License or Property Interest (§ 246.12(h)(3)(xxi))

We proposed in Section 246.12(h)(3)(xxi) to clarify that the vendor agreement does not constitute a license or a property interest and if the vendor wishes to continue to be authorized beyond the period of its current agreement, the vendor must reapply for authorization. Although commenters overwhelmingly supported this provision, fourteen commenters questioned whether a vendor that has been disqualified for a period of time that is less than the remaining term of its agreement should be allowed to resume its authorization without reapplying. Commenters indicated that when a vendor is disqualified, its slot may need to be filled immediately to ensure adequate participant access. In addition, they also noted that this is inconsistent with the State agency's authority to reassess a vendor at any time during the agreement period and terminate the vendor's agreement if it no longer meets the selection criteria. In response to the commenters' concern, we revised Section 246.12(h)(3)(xxi) to notify vendors that the State agency will terminate the agreements of vendors that are disqualified. A store may reapply for vendor authorization after the expiration of its disqualification period.

g. Compliance with Applicable Statutes, Regulations, Policies, and Procedures (§ 246.12(h)(3)(xxii)) and Notifying Vendors of Changes (§ 246.12(h)(7))

All five commenters supported our proposal to require vendor agreements to make clear that vendors must comply with any changes to the Program statute and regulations and State policies and procedures. One commenter pointed out that we needed to reference State laws and regulations as well as State policies and procedures. We revised this provision to clarify that vendors must comply with the vendor agreement and Federal and State statutes, regulations, policies, and procedures governing the Program, including any changes made during the agreement period. To ensure that vendors are notified of such changes, we also added Section 246.12(h)(7) in the final rule to require the State agency to provide vendors with notice of changes to Federal or State statutes, regulations, policies, and procedures governing the Program at the time they are implemented by the State agency. We encourage the State agency to provide as much advance notice of such changes as possible. In addition, the State agency is required by Section 246.12(i)(2) to include changes to program requirements in their annual vendor training.

h. Notification of Changes in Vendor Ownership, Store Location, or Cessation of Operations (§ 246.12(h)(3)(xvii))

In Section 246.12(h)(3)(xvii), we proposed to require vendors to provide the State agency with at least 45 days advance notification in writing of a change in vendor ownership, store location, or cessation of operations. A majority of commenters opposed the 45-day advance notification and recommended a variety of alternative timeframes, including 30 days, 21 days, 15 days, promptly, as soon as practicable, and a number of days specified by the State agency in the vendor agreement. Two commenters noted that the proposed 45-day notice is unenforceable because in most situations the vendor allows its agreement to expire. Several commenters noted that a 45-day notice is impractical because businesses cease operations, buy and sell stores, and change ownership on short notice. In addition, many business transactions, such as a change in ownership, contain confidentiality requirements that prohibit the disclosure of information until the deal is consummated in order to maintain employees and customers.

Several commenters requested that we delete the last sentence of the provision regarding changes in business structure. One commenter noted that vendor agreements are nontransferable; therefore, a transfer of a majority interest in a store renders the agreement null and void. Another commenter warned that phrases like ''changes in business structure'' and ''corporate reorganization'' open the door for hidden ownership changes. Another commenter indicated that the State agency must verify changes in business structure through its Secretary of State's business division, because past experience has shown that some corporations will call a change in ownership a restructuring in order to maintain their WIC authorization.

Several commenters asked that we either delete or clarify the exception for the State agency to ''permit vendors to move short distances without voiding the agreement.'' One commenter suggested that we delete the exception to send a clear message to vendors that if a store changes location, then the vendor must reapply to be a vendor at the new location. Another commenter indicated that in an urban area a move across the street may result in a change in zip code, and allowing a vendor to move into another zip code without voiding its agreement may result in denial of another vendor in that same zip code without providing equal review of both potential locations.

In response to commenters' concerns, we modified Section 246.12(h)(3)(xvii) in the final rule to remove the specific length of advance notice required and to clarify that it is within the State agency's discretion to determine: the length of advance notice required for vendors reporting changes under this provision, whether a change in location qualifies as a short distance, and whether a change in business structure constitutes a change in ownership. In addition, we clarified that the notice must be in writing and revised this provision to use the term ''terminated,'' instead of the term ''voided,'' when referring to vendor agreements.

i. Sale of Store to Circumvent a WIC Sanction (§ 246.12(g)(5))

In Section 246.12(g)(4), we proposed to prohibit the State agency from authorizing a vendor applicant when it determines that the store has been sold (i.e., a change in ownership) to circumvent a WIC sanction. Seventeen commenters supported this provision. One commenter suggested we modify the provision to prohibit authorization of a store that has been sold until the disqualification period is over, because this would be easier for the State agency to implement. We did not accept this comment because it could impair the owner from selling the store to a legitimate buyer for its fair market value. One commenter indicated that a denial of authorization based on this provision would be difficult to uphold on appeal. Another commenter suggested that a new owner could be required to sign an affidavit during the application process stating that the previous owner has no interest and is not involved in the business. We believe that through its application and selection process the State agency will be able to prevent and detect situations in which owners sell stores to circumvent WIC sanctions. Consequently, we retained this provision in Section 246.12(g)(5) of the final rule.

j. Data Collection at Authorization (§ 246.12(g)(8))

The proposal included a provision that would require the State agency to collect a vendor applicant's shelf prices and its FSP authorization number if it participates in that program. One commenter asked that we clarify whether a vendor applicant had to be authorized by the FSP to be selected for WIC authorization and whether a WIC application should be delayed until the vendor applicant provides its FSP authorization number. Another commenter suggested that we require vendor applicants to be authorized by the FSP in order to be WIC authorized. We proposed this requirement in part to improve the State agency's coordination with the FSP in the reciprocity of sanctions, as required by the WIC/Food Stamp Program Vendor Disqualification final rule published on March 18, 1999 at 64 FR 13311 (Vendor Disqualification final rule). If a vendor applicant that is authorized in the FSP fails to provide its FSP authorization number, the State agency must delay or deny authorization, because this provision requires the State agency to collect this information at the time of application. Although some State agencies may require FSP authorization as a condition of WIC authorization, Federal regulations do not include such a requirement.

In this provision, we also proposed that the State agency collect the vendor applicant's shelf prices, ''unless the State agency uses competitive bidding to set vendor prices for such foods.'' In retrospect, we believe that the exception is inappropriate because a State agency that uses a competitive bidding system needs the vendor applicant's shelf prices to ensure that the vendor applicant's bid prices do not exceed its shelf prices. For this reason, we deleted

the exception. We added a heading to this provision, ''Data collection at authorization,'' and retained it in Section 246.12(g)(8) of the final rule.

3. Vendor Limiting Criteria (§§ 246.12(g)(2) and 246.4(a)(14)(ii))

We proposed to require the State agency to limit the number of vendors it authorizes to a level that ensures adequate participant access as well as effective State agency management, oversight, and review of authorized vendors. Although current regulations permit the State agency to limit its number of authorized vendors, commenters overwhelmingly opposed the proposed provision to require vendor limitation. Commenters stated that mandatory limitation would be impossible to implement consistently throughout the State agency's jurisdiction, add another layer to the authorization process, be an unnecessary administrative burden, be costly to implement, create access problems for participants, impede the State agency's ability to adapt to growth during agreement cycles, result in more appeals and litigation, and create ill will among cooperating vendors.

A majority of those who opposed mandatory limitation suggested that Federal rules focus on selection rather than limitation and that limitation should remain at the State agency's discretion. The rationale for this compromise is that strong selection criteria limit the number of authorized vendors without the problems associated with limiting criteria. The General Accounting Office (GAO) study (''Efforts to Control Fraud and Abuse in the WIC Program Can Be Strengthened'') released in August 1999 states that ''42 of the 51 State agencies [surveyed] reported making some effort to limit the number of authorized vendors.'' However, more State agencies reported using strong selection criteria to limit their number of authorized vendors than reported using limiting criteria. The GAO recommended that we ''[a]mend the regulations on vendor management to ensure that the States limit their authorized vendors to a number they can effectively manage and issue guidance to States on the specific criteria we will use to assess their compliance with the regulations and the actions they would need to take if we determine that they have authorized more vendors than they can effectively manage.''

We believe the compromise noted above, to require strong selection criteria and retain limitation at the State agency's discretion, will achieve our goal of reducing vendor fraud and abuse and still address the GAO's recommendation. Through the management evaluation process, we assess whether the State agency effectively manages its vendors and requires the corrective actions when necessary. For these reasons, we adopted strong selection criteria, as discussed below, and retained the State agency's authority to establish criteria to limit the number of vendors it authorizes. We also made a conforming change to Section 246.4(a)(14)(ii) to clarify that the State agency is only required to include limiting criteria in its State Plan if the State agency opts to use such criteria.

4. Vendor Selection Criteria

A substantial majority of the comments we received on the use of mandatory vendor selection criteria supported the provision as proposed. Commenters pointed out that making vendors meet or exceed strong selection criteria in order to be authorized is more effective than conducting compliance investigations on vendors after they have been authorized. One commenter noted that selection criteria will keep vendors honest and may improve vendors' attitudes toward participants, because vendors will not take for granted that they automatically qualify for WIC authorization. Those few commenters opposing mandatory selection criteria asserted that the State agency should have the discretion to establish the selection criteria and that the proposed mandatory selection criteria were too stringent and would impair the viability of some vendors.

As noted in the preamble to the proposed rule and by those who commented on the proposal, State agency experience has shown that strong selection criteria can provide a cost-effective means of both cost containment and prevention of vendor violations. Therefore, this final rule retains the requirement for mandatory vendor selection criteria. We discuss the comments and changes to the individual selection criteria below.

a. Competitive Price and Price Limitations (§§ Sections 246.12(g)(3)(i) and 246.14(b)(2))

A majority of the commenters supported the competitive price selection criterion, although a number of those commenters suggested modifications. Some commenters recommended that we either delete the competitive price criterion or make it a State agency option. Others indicated that we should allow the marketplace to establish the prices of supplemental foods.

As noted in the preamble to the proposed rule, section 17(h)(11) of the Child Nutrition Act (42 U.S.C. 1786(h)(11)) requires the State agency to take into consideration the prices a store charges for supplemental foods compared to other stores when selecting stores for program authorization. This section also requires the State agency to establish procedures to ensure that authorized stores do not subsequently raise their prices for supplemental foods to levels that would otherwise make them ineligible for authorization. Therefore, we retained the competitive price selection criterion in the final rule. However, we revised this provision to address commenters' concerns and to clarify the requirements for this criterion.

First, we clarified the distinction between the ''competitive price selection criterion'' and ''price limitations.'' The competitive price selection criterion is the process of considering, at the time of vendor authorization, the prices a vendor applicant charges for supplemental foods as compared to the prices charged by other vendor applicants and authorized vendors. The State agency may evaluate a vendor applicant based on its shelf prices or on the prices it bids for supplemental foods, which may not exceed its shelf prices.

The State agency also must establish price limitations that the authorized vendor may not exceed during its agreement period. The price limitations must be designed to ensure that the State agency does not pay a vendor at a level that would otherwise make the vendor ineligible for authorization. This term is also used in the vendor agreement section in connection with the provision in Section 246.12(h)(4) that requires the State agency's redemption procedures ensure that the vendor is not paid more than the price limitations applicable to that vendor and in Section 246.12(k)(1) in the context of the requirements for State agency review of food instruments (and discussed further in section 6.d of the preamble). We also made a conforming change to Section 246.14(b)(2) to make clear that for food costs to be allowable, they may not exceed the price limitations applicable to the vendor.

Several commenters noted the importance of giving the State agency the flexibility to determine the best method to implement the competitive price criterion. In response, we included a description of this requirement in the final rule to clarify the range of flexibility the State agency has in implementing the competitive price criterion. In response to a number of

questions from commenters, the final rule also clarifies that the State agency may establish competitive price criteria and price limitations for different vendor peer groups.

Another commenter suggested that we permit the State agency to except pharmacies that only provide exempt infant formula and/or WIC-eligible medical foods from the competitive price criterion and price limitations because pharmacies often do not know the price of exempt infant formula and/or WIC-eligible medical foods until they order it. This final rule authorizes such an exception.

Several commenters indicated that the competitive price criterion would have a negative effect on smaller stores that may have higher operating costs or that may be unable to offer supplemental foods at prices below their costs. As noted in the preamble to the proposed rule, in many areas smaller vendors are essential to ensuring participant access. As with all aspects of its food delivery system, the State agency must ensure adequate participant access when it establishes its competitive price criterion and price limitations. Developing appropriate vendor peer groups is one way the State agency can both ensure adequate participant access and consider prices during the vendor selection process. Contrary to one commenter's suggestion, the State agency continues to retain the discretion to decide whether and how to establish its vendor peer groups.

Both supporting and opposing commenters questioned how to handle price fluctuations that may occur during the agreement period due to government and market forces beyond a vendor's control. We clarified in the final rule that the State agency may include a factor in its price limitations to account for fluctuations in wholesale prices. For example, the State agency could include an inflation factor in its price limitations.

Commenters also asked us whether certain scenarios would satisfy the requirement to ensure compliance with the price limitations throughout the agreement period. The following scenarios would satisfy the requirement:

Scenario 1: The State agency assigns vendors to peer groups upon authorization and then makes price adjustments to its payments to vendors based on the price limitations applicable to the vendor's peer group.

Scenario 2: The State agency compares the prices a vendor applicant charges for supplemental foods with those charged by other vendor applicants and authorized vendors to determine which vendors to authorize and then periodically conducts a reassessment of the vendor's prices to ensure they meet the applicable price limitations.

Scenario 3: The State agency establishes a maximum price it will pay for each type of food instrument and then includes a provision in the vendor agreement that the State agency will not pay vendors in excess of the maximum price established for each food instrument.

b. Minimum Variety and Quantity of Supplemental Foods (§ 246.12(g)(3)(ii))

Almost all of the commenters supported the requirement to consider as part of the selection process whether vendor applicants stock a minimum variety and quantity of supplemental foods. Commenters noted that the minimum variety/quantity requirement is one of the best selection criteria and is more effective at limiting the number of vendors the State agency authorizes than using limiting criteria. One commenter noted that the proposed rule did not make clear that authorized vendors must maintain the minimum variety and quantity of supplemental foods at all times, not just at the time of authorization. As discussed in section 2.e of this preamble, Section 246.12(h)(3)(xxiv) of this final rule puts vendors on notice that they must comply with all the vendor selection criteria, including this one, throughout the vendor agreement period.

Four commenters suggested that we adopt the same criterion for minimum variety and quantity as the FSP has proposed to establish for its authorized retailers. The FSP proposal would require retailers to offer for sale at least three varieties of staple food intended for home preparation and consumption in each of four categories of staple foods (meat, poultry, or fish; bread or cereals; vegetables or fruit; and dairy products). The inherent differences in the types of food that program participants may obtain with food stamps versus WIC food instruments makes this definition inappropriate for the WIC Program. Furthermore, the variations in the supplemental foods approved by each State agency make it difficult to establish a standard definition for the WIC Program. Therefore, this final rule does not adopt a standard definition of the minimum variety and quantity of supplemental foods that vendor applicants must stock. Rather, such decisions are left to State agency discretion.

Several commenters suggested that we establish some flexibility or tolerance in this requirement or consider supplemental foods that a vendor can document it has ordered. Two commenters suggested that the State agency be permitted to authorize stores that do not stock infant formula or to authorize pharmacies that only provide exempt infant formula and/or WIC-eligible medical foods to participants. The State agency may accommodate such stores when it determines that they are necessary to ensure adequate participant access. As with the competitive price criterion, it is critical that the State agency clearly incorporate any necessary flexibility in its selection criteria at the time the criteria are established so that all vendor applicants are held to the same standards. In recognition of the wide range of stores that serve as vendors, this rule clarifies that the State agency may establish different minimum variety and quantity standards for different vendor peer groups. However, we must emphasize the importance of establishing appropriate minimums so that participants are able to obtain all of the authorized supplemental foods on their food instruments. Vendors may not provide substitutions, cash, or credit (including rainchecks) if the authorized supplemental foods are not available. Authorizing vendors that do not maintain the required minimum stocks of supplemental foods undermines the nutritional goals of the Program.

c. Business Integrity (§ 246.12(g)(3)(iii))

Although a majority of commenters supported the proposal to require the State agency to consider the business integrity of vendors in the selection process, many commenters suggested modifications to the business integrity criteria. We proposed three criteria in this category: (1) Lack of a record of criminal conviction or civil judgment for certain offenses that indicate a lack of business integrity; (2) lack of a history of serious vendor violations; and (3) lack of a history of serious FSP violations.

Even those commenters who agreed with the substance of these criteria found them confusing. We completely rewrote this section to clarify the requirements. In addition, we strengthened the regulatory language to emphasize that the State agency may rely solely on facts already known to it and representations made by vendor applicants on their vendor applications. This change responds to the many commenters who asked whether costly background checks were required and whether the State agency would be held accountable for authorizing vendors whose criminal records were not known to the State agency.

Several commenters indicated that the proposal did not make clear what would happen if the State agency discovered that a vendor had lied on its application. This final rule adds a sentence to the termination provision in Section 246.12(h)(3)(xvi) notifying the vendor that the State agency will terminate its agreement if the State agency determines that it has provided false information in connection with its application. Two commenters questioned the value of vendor self-declarations on applications. We believe that adding a requirement to terminate the vendor agreement when a vendor is found to have provided false information will deter such behavior among vendor applicants.

Several commenters questioned the people covered by the business integrity criteria. One commenter suggested that the criteria include immediate family members of the owners, officers or partners, managers, and any stockholders who have a substantial role in the operation of a store. Two other commenters questioned who would be covered in a publicly traded company. The proposed rule would have applied the business integrity criteria to the business entity itself and its current owners, officers, directors, or partners. We revised this provision in the final rule to cover only the vendor's current owners, officers, and managers. This change conforms the coverage to parallel the FSP rule and recognizes the important role managers play with respect to a vendor applicant's business integrity.

i. No Criminal Conviction or Civil Judgment

We also had a number of questions and suggestions about the specific business integrity criteria. With respect to the criteria requiring a lack of a record of a criminal conviction or civil judgment for certain offenses that indicate a lack of business integrity, commenters wanted to know whether the State agency would be limited to the listed activities, whether to consider felonies or misdemeanors or both, and what is meant by ''business integrity'' and ''business honesty.'' Four commenters opposed this provision on the grounds that once a person has served a criminal sentence, that person should not be further penalized through denial of authorization. Two other commenters suggested that rather than denying authorization for such offenses, stores that cannot meet this selection criterion should be authorized and then identified as high-risk vendors subject to compliance investigations. Another commenter opposed this selection criterion because it would be difficult for the State agency to apply in a fair and consistent manner. Two commenters requested that we clarify the number of years that constitutes a vendor applicant's ''history.''

Vendors play a valuable role in most State agencies' food delivery systems. We believe it is critical that the State agency consider business integrity in the selection of its vendors, because the integrity of vendors reflects on the integrity of the WIC Program. Congress made clear its concern about the integrity of vendors when it required: high-risk identification and compliance investigations of vendors; permanent disqualification for vendors convicted of trafficking; and disqualification of vendors that have been disqualified as retailers in the FSP. We substantially revised the business integrity criterion in the final rule to clarify that only criminal convictions and civil judgments imposed in the six years prior to the application must be considered and to clarify the areas of this criterion in which the State agency has discretion. We have not distinguished between felonies and misdemeanors because of the wide variation among States in designating these criminal offenses as felonies vs. misdemeanors.

ii. No Serious WIC Program Vendor Violations and No Serious Food Stamp Program Violations

Commenters were divided on the merits of the proposed selection criteria for a lack of a history of serious WIC violations and a lack of a history of serious FSP violations. Many commenters believed that both criteria went too far because serious WIC and FSP violations are those that give rise to a disqualification, criminal conviction, or civil judgment. Furthermore, if violations do not rise to such a level, then they should not be used as a basis to deny authorization. Two commenters noted that this criterion could effectively extend a one-year disqualification for up to six more years. Other opposing commenters reiterated their views that the business integrity criteria are confusing and bureaucratic and that vendor integrity is better handled through vendor monitoring. On the other hand, one commenter suggested that we permit the State agency to set a timeframe of longer than the proposed six years for cases of particularly egregious violations.

We did not include these two criteria in the final rule, even though we believe serious WIC and FSP violations do reflect on the business integrity of vendor applicants. Rather than make such violations mandatory vendor selection criteria, we decided to give the State agency the discretion to establish selection criteria for serious WIC and FSP violations or use such vendor information to identify high-risk vendors.

We want to point out that we proposed to make failure to participate in the annual vendor training a basis for nonselection. Although this is not required by the selection criteria in the final rule, many State agencies have found this to be an effective means of vendor management. The State agency continues to have the authority to establish failure to attend vendor training as a selection criterion.

iii. Sanctions Imposed by Another WIC State Agency (§ 246.12(l)(2)(iii))

A number of commenters responded to our request for comments on whether to make mandatory vendor sanctions imposed by another WIC State agency a mandatory selection criterion. Almost all commenters supported this idea, although most suggested various modifications. Three commenters requested that, if established, the selection criterion should permit the State agency to rely on the representations made by vendor applicants on their vendor applications. Other commenters suggested that we maintain a database for State agencies to use for this purpose. Under the final rule, the State agency has the discretion to establish a selection criterion to consider WIC sanctions imposed by another State agency.

Two commenters asked how the State agency would be able to uphold a denial of authorization on appeal if it denied authorization to a vendor based on a WIC sanction imposed by another State agency or based on a FSP sanction. These commenters suggested that information about WIC sanctions imposed by other State agencies be used to identify high-risk vendors rather than as a selection criterion. Three commenters believed that only the mandatory sanctions, not State agency-established sanctions, imposed by another State agency should result in nonselection. Whereas one commenter raised concerns about the time and costs of denying authorization based on WIC sanctions imposed by another State agency, another commenter asserted that if a vendor commits vendor violations in one State agency's WIC Program, the vendor is likely to commit such violations in another State agency's WIC Program.

For a State agency that opts to deny authorization based a prior WIC sanction, a WIC sanction by another

State agency, or a FSP withdrawal of authorization or prior FSP disqualification, we made a corresponding change to the administrative review procedures. This change specifies that if the State agency denies authorization to a vendor applicant based on a WIC sanction (regardless of which State agency imposed the sanction) or a FSP withdrawal of authorization or disqualification, the State agency is only required to provide the vendor applicant with an abbreviated administrative review. We made this change because the vendor applicant already had an opportunity to appeal the facts underlying the WIC sanction or FSP withdrawal/disqualification; therefore, it is not necessary to provide a second review of these facts. An abbreviated administrative review provides the vendor applicant with the opportunity to appeal such narrow factual issues as whether its store is the same one that received the sanction and whether the sanction occurred during the applicable period.

One commenter questioned the appropriateness of denying authorization of a vendor applicant for a vendor violation that did not result in a sanction. The commenter indicated that the vendor applicant would be denied authorization based on information that it did not have an opportunity to examine or refute. If a State agency denies authorization on this basis, the State agency must include a description of the vendor violation in the notice of adverse action and must give the vendor an opportunity to appeal the adverse action.

d. No Current Food Stamp Program Disqualification or Civil Money Penalty for Hardship (§ 246.12(g)(3)(iv))

Twenty-four of the twenty-six commenters supported the proposed requirement to deny authorization to vendor applicants that are currently disqualified from the FSP or that have received a FSP civil money penalty for hardship and the period for the FSP disqualification that would otherwise have been imposed has not expired. Three supporting commenters suggested that we require FSP authorization as a prerequisite for WIC authorization. We did not make this change because of the differences in the populations served and the benefits provided under the two programs.

e. Considering Participant Access in Authorization Determinations

In drafting the final rule, we noticed that it was not clear whether the State agency would be required to deny authorization to a vendor applicant that did not meet one or more of the selection criteria. We clarified in the final rule that a vendor applicant that does not meet the competitive price and minimum variety/quantity criteria may not be authorized, even if such denial of authorization would result in inadequate participant access. For the competitive price criterion, the State agency must compare the prices of the vendor applicant against those of other vendor applicants and authorized vendors. Consequently, the State agency is able to adjust its competitive price criterion to select enough vendors to ensure adequate participant access. As for the minimum quantity/variety criterion, we believe that a vendor applicant that does not meet or exceed this criterion must be denied authorization because such a store cannot provide participants all the authorized supplemental foods on their food instruments.

We clarified that the remaining two vendor selection criteria, business integrity and a current disqualification/civil money penalty for hardship in the FSP, that the State agency may authorize a vendor applicant that fails to meet these criteria if necessary to ensure adequate participant access. We believe this requirement strikes the necessary balance between program integrity and participant access, similar to that balance struck when a State agency decides to impose a civil money penalty in lieu of a disqualification in order to ensure adequate participant access.

5. Food Instrument Requirements

No commenters opposed the food instrument requirements in proposed Sections 246.12(f)(1), (f)(2)(i), (f)(2)(iv), (f)(2)(v), (f)(2)(vi), and (f)(3). Consequently, we adopted these provisions as proposed with minor revisions to conform to language used throughout the final rule. Below are separate discussions of the food instrument proposals that received opposing comments.

a. Printed Food Instrument Requirements (§§ 246.12(f)(2)(ii), (f)(2)(iii), (f)(2)(vii), and (r)(5))

One commenter opposed the proposed provisions in Sections 246.12(f)(2)(ii) and (f)(2)(iii), requiring the ''first date of use'' and the ''last date of use'' to be printed on food instruments, because vendors are often penalized when they accept food instruments either before or after the specified dates. The commenter indicated that the State agency issues food instruments too far ahead of the ''first date of use'' and suggested that food instruments be more specific and to the point. A major responsibility of vendors is to make sure that they accept food instruments only during their valid dates. This requirement is similar to accepting manufacturers' coupons, which are for specific food items and contain expiration dates. Cashiers must be familiar enough with the food instruments used by the State agency to identify whether or not a food instrument is valid for transaction. We believe the requirements as adopted in Sections 246.12(f)(2)(i) through (f)(2)(vii) of the final rule address the commenter's concerns in that they require ''[e]ach printed food instrument must clearly bear on its face'' the authorized supplemental foods, the first date of use, the last date of use, the redemption period, the serial number, and spaces for the purchase price and the signature.

In response to the commenter's concern about issuing food instruments too far in advance, program regulations that require the State agency to issue no more than a three-month supply of food instruments at any one time have been in place since 1982 and were included in the proposal. No other opposing comments were received on these regulations. Cashiers need to examine the dates on a food instrument to ensure it is valid, regardless of when the food instrument was issued. Requiring shorter issuance cycles would neither eliminate the need for such an examination nor be a cost-effective solution to the commenter's concern. However, in our review of this provision, we did note that although a three-month supply of food instruments is acceptable, a three-month supply of supplemental foods is not. Consequently, we modified this provision in Section 246.12(r)(5) so that ''no more than a * * * one-month supply of authorized supplemental foods is issued at any one time. * * *''

b. Electronic Benefits Transfer (EBT) (§§ 246.12(a) and (h)(3)(iv))

In the Vendor Disqualification final rule, we amended the definition of ''food instrument'' to include an electronic benefits transfer card (EBT). We made this change to recognize that some State agencies are using EBT cards in place of printed food instruments. For the same reason, we proposed to include a statement in Section 246.12(a) to acknowledge that the current regulations do not specify separate requirements or exceptions for EBT systems and that the operation of EBT systems may require modifications of some regulatory provisions.

One commenter suggested that we delete the reference to EBT systems in Section 246.12(a). Another commenter opposed our ''piecemeal and potentially premature approach toward WIC EBT.'' This commenter suggested that we implement a new series of EBT pilot programs and evaluate them in public forums before we make modifications to the regulations regarding EBT systems. In addition, three commenters requested that we clarify the purpose of this proposed change and suggested that we wait until EBT is fully implemented and then issue a more practical final rule.

The EBT provision in Section 246.12(a) is intended to recognize the emergence of EBT systems in the WIC Program and acknowledge that these systems will not always conform with current regulatory provisions that apply to printed food instruments. We believe that this authority is a necessary first step toward the further development of EBT systems in the WIC Program.

The suggestion that we wait until EBT is fully implemented before issuing a final rule is unworkable. We do not have separate authority to modify regulatory requirements for pilot projects. Further, some of the provisions in this rulemaking are in response to statutory deadlines, most of the new requirements in this rulemaking will be unaffected by EBT implementation, and EBT may not be implemented for decades in areas where it is not a cost-effective alternative to printed food instruments. Nevertheless, we revised this provision to clarify the situations in which we will modify a regulatory provision to accommodate a particular EBT system.

c. Food Instrument Issuance and Security (§§ 246.12(r)(1) through (r)(5) and (p) and 246.4(a)(14)(xii))

We received only one comment regarding the proposed provisions in Sections 246.12(r)(1) through (r)(4), which concern food instrument issuance. The commenter supported the proposed amendments except for the use of the term ''proxy.'' The commenter's concern is addressed below in our discussion of the definition of proxy in section 13.a of this preamble. We made minor changes to the provisions in Sections 246.12(r)(1) through (r)(5) to incorporate ''parents or caretakers of infant and child participants'' and to make these provisions conform to language used throughout the final rule.

Ten commenters expressed various concerns about the food instrument security requirements in Section 246.12(p) of the proposal. Three commenters asked that we clarify how this provision applies to State agencies with print-on-demand technology. Another commenter asked that we clarify what the term ''perpetual inventory'' means and whether a system that maintains inventory and receipt of food instruments would be sufficient to meet this regulatory requirement.

A perpetual inventory refers to an ongoing record maintained by local agencies and, if applicable, clinics of the food instruments received from the State agency and the food instruments issued to participants. The perpetual inventory is a running inventory of a local agency or clinic's supply of food instruments, and the monthly physical inventory is used to reconcile the perpetual inventory with the supply of food instruments on hand. For local agencies and clinics that use a print-on-demand technology to produce their food instruments, this requirement would apply only to their supplies of special check stock, if used, and, if applicable, to their supply of emergency, back-up, pre-printed food instruments. For local agencies and clinics that issue EBT cards, this requirement would only apply to the supplies of EBT cards maintained on premises.

One commenter indicated that monthly physical inventories would be administratively burdensome for integrated local agencies and were unnecessary due to the State agency's use of electronic acknowledgment of receipts of food instruments by local agencies. Three commenters suggested that the physical inventory be conducted on a quarterly rather than on a monthly basis; however, one commenter suggested that monthly inventories are preferable to quarterly inventories because they become part of the local agency's monthly routine. Another commenter indicated that monthly inventories are unnecessary because the State agency uses a one-to-one reconciliation of food instruments, which is a better and more cost-effective control.

As noted in the preamble to the proposed rule, the purpose of perpetual and physical inventories is to prevent and detect employee fraud. Neither an electronic acknowledgment of receipt of food instruments nor a one-to-one reconciliation of food instruments after redemption provides for the accountability and security of a local agency or clinic's food instruments on hand. We believe the most effective means to prevent employee fraud is to have controls in place to account for and limit the access to food instruments from the time they are created or received until the time they are issued to participants. A monthly reconciliation of perpetual and physical inventories provides local agencies and clinics with a method to detect when food instruments are missing from their inventories.

One commenter requested that we modify this provision so that local agencies are only required to maintain perpetual inventory records for seven years, because record retention is both expensive and time-consuming. We did not specify a time limit for the retention of such records and do not expect that the records be retained beyond the State agency's current record retention schedule for other WIC records.

Two commenters opposed the proposed provision in Section 246.4(a)(14)(xii), which would require the State agency to include a description of its system for ensuring food instrument security in its State Plan. As noted above, we believe that such a system provides a necessary protection against employee fraud. In addition, we believe that inclusion of a description of the State agency's system in its State Plan is essential to ensuring that the system is put into place in the local agencies and clinics under the State agency's jurisdiction. One commenter recommended that State agencies currently designing data systems include a food instrument inventory component in their data systems that is automated at the local agency as well as at the State agency level. We agree that automation of the local agency or clinic's perpetual inventory of food instruments on hand would be a worthwhile component of any data system.

d. Definition of ''Authorized Supplemental Foods'' (§ 246.2)

In Section 246.2, we proposed to define the term ''authorized supplemental foods.'' One commenter suggested that we delete the phrase ''for a particular participant'' from the definition, so that this term will not be confused with the existing term ''supplemental foods.'' The commenter did not understand our need to narrow the definition to ''a particular participant.'' Current regulations at 7 CFR 246.2 state: ''*Supplemental foods* means those foods containing nutrients determined to be beneficial for pregnant, breastfeeding, and postpartum women, infants and children, as prescribed by the Secretary in § 246.10.'' The proposed definition of authorized supplemental foods was intended to distinguish between the general categories of supplemental foods contained in Section 246.10 from the specific supplemental foods authorized

for a particular participant, which are listed on the participant's food instruments.

The commenter further indicated that her State agency uses to term ''authorized supplemental foods'' to refer to the supplemental foods approved by the State agency for use in the WIC Program. We are aware that State agencies use various terms for the supplemental foods approved by the State agency for program use, including the term ''WIC-approved foods.'' We did not propose to define a term for those foods approved by the State agency for program use, so we do not believe it would be appropriate to include such a definition in this final rule. However, we adopted the definition for authorized supplemental foods as proposed because the definition provides us with a concise term to refer to the specific supplemental food items authorized by the State agency for a particular participant and listed on that participant's food instruments. The term authorized supplemental foods captures both the type and quantities of the supplemental foods, which we believe is essential to understanding other regulatory provisions. For example, in this final rule, Section 246.12(l)(1)(iv) states: ''The State agency must disqualify a vendor for one year for a pattern of providing unauthorized food items in exchange for food instruments, including charging for supplemental foods provided in excess of those listed on the food instrument.'' In this provision, ''unauthorized food items'' not only refers to any type of food item not listed on the food instrument, such as an unauthorized brand of cereal, but also refers a quantity of supplemental food item in excess of those listed on the food instrument, such as an extra box of an authorized brand of cereal.

e. No Substitutions, Cash, Credit, Refunds, or Exchanges (§ 246.12(h)(3)(ii))

In Section 246.12(h)(3)(ii), we proposed to expand the regulatory language that ''vendors shall only provide the supplemental foods specified on the food instrument'' to specify that vendors must not provide unauthorized or non-food items, cash, credit, rainchecks, or refunds in exchange for food instruments. We proposed only one exception to this provision, to permit exchanges of ''identical supplemental foods.'' The only opposition to this proposed provision concerned the exception. Two commenters asked that we clarify the circumstances under which an exchange may be permitted. One commenter requested that we delete the exception because it would be the same thing as offering a raincheck or credit. We clarified in the final rule that exchanges are only permitted for ''an identical authorized supplemental food item when the original authorized supplemental food item is defective, spoiled, or has exceeded its 'sell by' or 'best if used by' date.''

Another commenter requested that we delete the exception because the State agency has found that during administrative reviews an exchange for a ''similar'' food item is considered to be an exchange for an ''identical'' supplemental food item. The commenter warned that State agencies would lose administrative reviews regarding the substitution of non-rebate infant formulas for the authorized infant formula because preamble language is not considered part of the regulation. We believe there is a clear distinction between the words ''similar'' and ''identical.'' Nonetheless, we added a sentence to this provision in the final rule to clarify that an ''identical authorized supplemental food item means the exact brand and size as the original authorized supplemental food item obtained and returned by the participant.''

f. Food Instrument Transaction and Redemption (§§ 246.12(h)(3)(iv) through (h)(3)(vi), (h)(3)(viii), and (h)(4))

In the final rule, we added headings to all the paragraphs in Section 246.12(h) and reordered some of the paragraphs in Section 246.12(h)(3). In addition to making the information in this section more accessible to readers, we made these changes to help readers understand the distinction between the concepts of ''transaction'' and ''redemption'' as they apply to food instruments. Food instrument transaction refers to the process in which a participant, parent/caretaker, or proxy tenders a food instrument to a vendor in exchange for authorized supplemental foods. Food instrument redemption refers to the process in which a vendor submits food instruments for redemption and the State agency (or its financial agent) makes payment to the vendor for the food instruments.

The proposed rule contained a single paragraph that addressed the procedures for entering both the purchase price and the signature on food instruments. Three commenters requested that we delete the provision because vendors will be penalized for not following the requirements. Vendors should not be paid for food instruments that lack purchase prices or signatures. This provision is necessary so vendors understand these requirements.

Another commenter requested that we delete the preamble language that discusses allowing the participant to enter the purchase price on food instruments, because errors made by the participant when entering the purchase price, which may result in vendor overcharges or undercharges, would be attributed to the vendor. Another commenter suggested that we clarify that the participant or proxy must sign the food instrument ''in the presence of the cashier'' and that the purchase price must be entered before the ''food instrument is tendered.'' In Sections 246.12(h)(3)(v) and (h)(3)(vi) of the final rule, we clarify that: (1) It is the vendor's responsibility to ensure that a purchase price is entered on the food instrument in accordance with the State agency's procedures; (2) the State agency has the discretion to determine whether the vendor or the participant enters the purchase price; (3) the purchase price must be entered before the food instrument is signed; and (4) the participant, parent/caretaker, or proxy must sign the food instrument in the presence of the cashier.

As discussed below in section 6.b of this preamble, the variety of redemption systems employed by State agencies combined with the proliferation of various cost containment measures has made a concise definition of a ''vendor overcharge'' that is applicable to all State agencies impossible. In recognition of this, we revised the definition of vendor overcharge to mean intentionally or unintentionally charging the State agency more for supplemental foods than is permitted under the vendor agreement. This approach provides the needed flexibility to accommodate the wide variety of systems that State agencies have developed for entering purchase prices and redeeming food instruments. We made a corresponding change to the vendor agreement provisions to require in Section 246.12(h)(4) that the State agency describe in the vendor agreement its purchase price and redemption procedures.

These changes also necessitated a change to the proposed requirement in § 246.12(h)(3)(viii) that vendors may not charge the State agency more than the price charged other customers or the current shelf price, whichever is less, or, when the State agency uses competitive bidding, the contract price. Whereas the proposed provision focused on the amount a vendor may ''charge'' the State agency, in the final rule the provision focuses on the State agency's procedures for submitting food instruments for

redemption. The provision also puts the vendor on notice that the State agency may make price adjustments to the purchase price on food instruments to ensure compliance with the price limitations applicable to the vendor.

g. Food Instrument Disposition (§ 246.12(q)) and Adjustments to Expenditures (§ 246.13(h))

We proposed to replace the heading of Section 246.12(n), ''Reconciliation of food instruments,'' with the heading, ''Food instrument disposition,'' and to move this provision to Section 246.12(q). We also proposed to amend the language in this paragraph to clarify the food instrument disposition process and to include language regarding the food disposition process in EBT systems. One commenter requested that we clarify the meaning of the terms used in this provision, including the terms ''redeemed,'' ''expired,'' ''duplicate,'' and ''enrollment record.'' Although we made a few changes to the terminology used in the proposed provision, most of the terms are unchanged. Nevertheless, we believe a review of the meanings of the terminology used in this provision may be helpful for many readers.

The term ''issued'' refers to food instruments that have been issued to a participant. The term ''voided'' refers to food instruments that have been invalidated by the State or local agency or clinic, including food instruments that were voided after they were issued. All food instruments that are no longer on hand (i.e., those food instruments that were received/created that are no longer in inventory) must be identified as either issued or voided, and as either ''redeemed'' (i.e., submitted for redemption by a vendor and payment has been made by the State agency) or ''unredeemed'' (i.e., no payment was has been made by the State agency).

All redeemed food instruments must be identified as falling into one of the following categories: (1) ''validly issued'' (i.e., the food instrument matches a participant's enrollment and issuance record); (2) ''lost'' (i.e., the food instrument was reported lost by a participant or by the State or local agency or clinic); (3) ''stolen'' (i.e., the food instrument was reported stolen by a participant or by the State or local agency or clinic); (4) ''expired'' (i.e., the food instrument was submitted by the vendor after the specified period for redemption and the State agency provided payment to the vendor in accordance with Section 246.12(k)(5)); (5) ''duplicate'' (i.e., the food instrument was issued to a participant to replace a lost, stolen, or voided food instrument); or (6) ''not matching valid enrollment and issuance records'' (i.e., the food instrument does not match a participant's enrollment and issuance record).

One commenter characterized accounting for voided, lost, and stolen food instruments as not beneficial, unnecessary, and overly burdensome. We disagree. It is necessary to account for voided food instruments because otherwise such food instruments would seem to be missing when the State or local agency or clinic reconciles its perpetual inventory with its monthly physical inventory. When the State agency makes payment on a voided, lost, or stolen food instrument, there is evidence of fraud or abuse. It is the State agency's responsibility to investigate such incidences to determine if the fraud or abuse was committed by a participant, an employee, a vendor, or an unauthorized person. If the State agency detects criminal activity, it must report it to the proper authorities for investigation.

The commenter also characterized accounting for unredeemed food instruments as solving a problem that does not exist, because such food instruments do not represent an expenditure of grant funds. We disagree. In § 246.13(h), we proposed to require the State agency to ''adjust projected expenditures to account for redeemed food instruments and other changes as appropriate.'' This provision, which received no negative comments and has been adopted as proposed, requires the State agency to adjust its obligations to account for food instruments that have been paid (i.e., issued and redeemed) as well as those that have been deobligated (i.e., voided or unredeemed). Consequently, the State agency needs to account for both voided and unredeemed food instruments in order to remove them from its obligations. In addition, we would like to point out that anytime a food instrument is issued there is an associated nutrition services and administration cost, regardless of whether the food instrument is redeemed. An examination of unredeemed food instruments may reveal irregularities or waste, such as instances of dual enrollment.

One commenter suggested that we modify § 246.12(q) to differentiate between accounting for automated food instruments and accounting for manual food instruments that contain no participant data. The commenter noted that: manual food instruments represent 11.2% of the State agency's total redemptions, only 0.57% of these manual food instruments are recorded without participant data, and the State agency has never uncovered an instance of fraud in its investigations of such food instruments. The commenter recommended that we permit the reconciliation of a sample of manual food instruments that contain no participant data to ensure ''with reasonable statistical certainty'' that they were issued as a result of human error rather than as a result of fraud.

Although we understand the commenter's concern about the effort involved in the reconciliation of manual food instruments without participant data, we believe the fact that a manual food instrument lacks participant data represents a lapse in program integrity that should be addressed by the State agency. Such instances should be investigated, and procedures should be put in place to ensure that all manual food instruments contain participant data, which allows them to be reconciled without excessive effort. In addition, we believe that as State agencies employ new technologies, such as print-on-demand food instruments and EBT, to issue food instruments, the use of manual food instruments should decline steadily until there is no longer a need for them. For these reasons, we did not accept the commenter's recommendation.

Whereas two commenters supported the proposed amendments to § 246.12(q) because their systems currently meet these requirements, three commenters asked that we acknowledge the additional costs for some State agencies to the implement this provision. We realize that some State agencies will incur significant costs to reprogram their systems in order to link participant enrollment records with food instrument issuance and redemption data. However, we believe this step is necessary to provide a level of accountability that ensures the integrity of the Program.

One commenter noted that in § 246.12(q) of the proposal we use the term ''PIN'' (Personal Identification Number) when we mean ''PAN'' (Primary Account Number). The proposed provision reads: ''In an EBT system, evidence of matching redeemed food instruments to a valid issuance and enrollment record may be satisfied through the linking of the PIN associated with the electronic transaction to a valid issuance and enrollment record.'' In this instance, the correct term is PAN, which is a standard term used in the banking industry for the account number embossed on credit and bank cards. In an EBT system, the PAN is used to link redemption data to enrollment and issuance records; the PIN refers to the number entered by the participant at the point-of-sale device to

access and transact program benefits. Consequently, we amended the proposal to reflect this correction.

h. Claims Against the State Agency (§ 246.23(a)(4))

One commenter asked that we clarify whether all three conditions listed in §§ 246.23(a)(4)(i) through (a)(4)(iii) must be satisfied to avoid a claim against the State agency for failing to account for the disposition of all redeemed food instruments. To avoid a claim, the State agency must satisfy all three conditions, which make up a three-step process in which the State agency has: (1) ''Made every reasonable effort to comply with the requirement;'' (2) ''Identified the reasons for its inability to account for the disposition of each redeemed food instrument; and'' (3) ''Provided assurances that, to the extent considered necessary by FNS, it will take appropriate actions to improve its procedures'' (emphasis added).

One commenter was concerned that the term ''reasonable effort'' is subjective and open to various interpretations by Federal and State auditors. Another commenter requested that we clarify what is meant by ''made every reasonable effort.'' We believe that what constitutes ''every reasonable effort'' will vary based on the specific situation and cannot be defined in such a manner that could be applied to all situations. Because all three conditions of this provision must be met, what constitutes every reasonable effort will be driven by whether the State agency's efforts result in both the identification of the source of the problem and the State agency's assurance that improvements will be made to its procedures to correct the problem. For example, in the situation described above regarding the inability of the State agency to reconcile its manual food instruments that lack participant data, if the State agency were to investigate a sample of such food instruments, identify that the problem is due to local agency staff inadvertently omitting the participant data, and implement a procedure that requires local agency staff to use a checklist, which includes entering participant data, when issuing manual food instruments, then the State agency would satisfy the conditions of § 246.23(a)(4) and avoid a claim. If the State agency is unable to satisfy the conditions in § 246.23(a)(4) and we recommend additional efforts that the State agency could undertake to identify and correct its accounting problem and the State agency refuses to make such efforts, then the State agency has failed to make every reasonable effort and will be subject to a claim.

One State agency recommended that we establish an unbiased mediation process to review cases in which our determination of what constitutes ''every reasonable effort'' is in question. We did not propose an unbiased mediation process be established for vendor or State agency claims and do not believe that such a process is necessary in either case. Similar to the provision in § 246.18(a)(1)(iii)(F) that prohibits the administrative review of vendor claims, current regulations at 7 CFR 246.22(a) make clear that we will not provide a hearing or review for claims against the State agency arising under § 246.23(a). In addition, similar to the requirements in Section 246.12(k)(3), which provide vendors with ''an opportunity to justify or correct'' a food instrument error that results in a claim, we provide the State agency with an opportunity to justify or correct the situation that results in its inability to reconcile all of its food instruments and believe this is sufficient.

One commenter suggested that we allow for the withholding of a portion of the State agency's next year's grant, until the issue is resolved, rather than withholding up to 100% of the State agency's current funding, which could result in participants not being served. Section 246.23(a)(4) sets forth the requirements for establishing a claim against the State agency for failing to account for the disposition of all of its redeemed food instruments and for failing to take appropriate actions to correct its accounting problems. This provision does not address withholding nutrition services and administration funds but rather establishing a claim for an amount that corresponds to the State agency's unreconciled food instruments. Such claims are not allowable nutrition services and administration costs for the State agency and must be paid with State funds.

6. Vendor Violations, Vendor Overcharges, and Vendor Claims

a. Definition of ''Vendor Violation'' (§ 246.2) and Vendor Responsibility for Employee Actions (§ 246.12(h)(3)(xiii))

Seventeen of the nineteen commenters on the proposed definition of ''vendor violation'' supported the definition. Commenters did suggest a number of modifications. Seven commenters indicated that focusing on the acts of the vendor did not make sense, in light of the definition of vendor as a business entity that operates a store. We revised the definition to state that a vendor violation is an action of a vendor's current owners, officers, manager, or employees. Another commenter recommended that we add ''agents'' to the definition to cover situations in which friends or relatives are asked by owners to act as substitute cashiers. We accepted the commenter's recommendation and revised the definition accordingly.

Another commenter focused on the part of the definition that refers to actions that violate the Program statute or regulations or State agency policies or procedures. The commenter recommended that the definition include actions that violate State law, rules, and regulations as well. We accepted this recommendation and revised the definition to include actions that violate ''the vendor agreement or Federal or State statutes, regulations, policies, or procedures governing the Program.''

The two commenters who opposed the definition unless we modified it focused on the inclusion of unintentional actions in the definition. As noted in the discussion of the definition of vendor violation in the proposed rule, we believe vendors should be held accountable for all violations, whether they are deliberate attempts to violate program requirements or inadvertent errors, because both ultimately result in increased food costs and fewer participants being served. We acknowledged the complexity of WIC transactions and noted that even with training and supervision, cashiers may occasionally make unintentional errors. We also stated that the State agency has a wide range of actions that it may take as a result of a vendor violation, including assessing a claim, requiring increased training, identifying the vendor as a high-risk vendor subject to compliance investigation, and imposing a sanction. One supporting commenter questioned whether this statement is contrary to the mandatory vendor sanctions required by the Vendor Disqualification final rule. We want to emphasize that not all vendor violations will give rise to a vendor sanction. For example, even though an inadvertent mistake in entering the purchase price on a food instrument may constitute both a vendor violation and a vendor overcharge, it would not necessarily trigger a sanction. Only a pattern of vendor overcharges triggers the mandatory sanction. Consequently, we retained the ''unintentional action'' language in the vendor violation definition, as well as the State agency's discretion to take a variety of actions against a vendor when vendor violations do not rise to a level that triggers a sanction.

One commenter suggested that the provision in proposed § 246.12(h)(3)(xiii) provide an exception similar to the one in § 246.12(l)(1)(i)(B), which provides the State agency with an option to impose a civil money penalty in lieu of permanent disqualification when the vendor had, at the time of the violation, an effective program and policy in effect to prevent trafficking and the ownership of the vendor was not aware of, did not approve of, and was not involved in the conduct of the violation. Another commenter asserted that if a vendor is doing everything it can to comply with program requirements and fires the employee who committed the vendor violations, the vendor should be able to retain its authorization. Otherwise, when a vendor is disqualified, participants are forced to go to a less convenient store or even drop off the Program completely.

For the same reasons we did not remove unintentional actions from the definition of vendor violation, we retained in § 246.12(h)(3)(xiii) of the final rule the requirement that vendor agreements include a statement concerning the responsibility of the vendor for the actions of its employees. To be consistent with the definition of vendor violation, we included a reference in this provision to the vendor's accountability for the actions of its owners, officers, and managers. Also, rather than limiting this provision to actions relating to the ''handling of food instruments,'' we revised the provision to require accountability for ''vendor violations.'' As we noted above, not every vendor violation results in a sanction. Furthermore, for most mandatory sanctions, if the State agency determines that disqualification of the vendor would result in inadequate participant access, the State agency must impose a civil money penalty, except in the case of third or subsequent mandatory sanctions.

b. Definitions of ''Vendor Overcharge'' and ''Price Adjustment'' (§ 246.2)

Nineteen of the twenty-one commenters supported the proposed definition of ''vendor overcharge.'' Two commenters suggested removing the word ''pattern,'' noting that although a pattern of overcharging is required to trigger the mandatory sanction for vendor overcharges, it is unnecessarily limiting to include the pattern requirement in the definition itself. We agree and made this change in the final rule.

Two commenters objected to the word ''unintentional.'' As noted in the discussion of the definition of vendor violation above and the discussion of vendor overcharges in the preamble to the Vendor Disqualification final rule, we believe that limiting the scope of vendor overcharges only to those that are intentional or fraudulent would undermine the integrity of the WIC Program. It also puts an additional burden on the State agency to prove the intent of the person who commits the vendor overcharge. Funds lost due to vendor overcharges, whether intentional or inadvertent, are not available to serve program participants. Therefore, we did not remove the word ''unintentional.''

Five of the supporting commenters and one opposing commenter pointed out that the proposed definition of vendor overcharge did not adequately distinguish between a vendor overcharge and what they termed an ''overpriced food instrument'' or ''overage.'' The commenters described an overpriced food instrument as a food instrument on which the vendor properly entered purchase price but due to a pre- or post-payment edit is paid by the State agency an amount lower than the purchase price.

We agree with the commenters and, in the final rule, added a new definition of ''price adjustment,'' which is defined as ''an adjustment made by the State agency, in accordance with the vendor agreement, to the purchase price on a food instrument after it has been submitted by a vendor for redemption to ensure that the payment to the vendor for the food instrument complies with the State agency's price limitations.'' We made a conforming change to the definition of vendor overcharge to clarify that a vendor overcharge does not occur when the State agency makes a price adjustment to the purchase price of a food instrument in accordance with the procedures outlined in the vendor agreement.

The definition of price adjustment recognizes the increasing number of State agency systems under which adjustments routinely are made to the purchase price on food instruments after they have been submitted for redemption. For example, in one State agency, prices are established for supplemental foods through competitive bids. The purchase price entered by the vendor on the food instrument corresponds to the current shelf prices for the authorized supplemental food items provided to the participant. The State agency bills the vendor at the end of each month for the difference between the purchase prices on its food instruments and the vendor's contract prices for the supplemental foods. These adjustments are not made to account for errors but as a regular part of the State agency's system for redeeming food instruments. Another State agency may have a system under which the State agency has established maximum prices for each type of food instrument and does not pay vendors in excess of that amount, regardless of their shelf prices for the supplemental foods. These situations are not properly categorized as overcharges, because the price adjustments are a regular part of the State agency's redemption system.

We also recognize that sometimes the price adjustments are not made directly by State agencies, but rather by the banks they contract with to redeem food instruments. In these cases, the banks, acting as financial agents of the State agency, redeem the food instruments and make price adjustments pursuant to their contracts with the State agency. Thus, the price adjustments made by contractors of the State agency would be considered to be price adjustments made by the State agency and would not be considered vendor overcharges.

A vendor still could commit a vendor overcharge in a system that uses price adjustments. For example, a vendor agreement may establish a maximum price by food instrument type but still requires the vendor to enter a purchase price that corresponds to its shelf prices. Under this arrangement, anytime the vendor enters a purchase price that exceeds its shelf prices, the vendor has committed an overcharge. A pattern of such vendor overcharges would trigger a mandatory sanction under § 246.12(k)(1)(iii)(C).

We also revised the definition of vendor overcharge to replace the reference to charging participants more than non-WIC customers or the shelf or contract price with ''charging the State agency more for authorized supplemental foods than is permitted under the vendor agreement.'' We made this modification to recognize the wide variety of State agency redemption systems. In most cases, the vendor will be required to enter the purchase price corresponding to the shelf prices or prices charged non-WIC customers, whichever is less. However, in some cases the vendor may be required to enter a purchase price that does not exceed the food instrument's maximum price before submitting it to the State agency for redemption.

Two commenters suggested incorporating a dollar threshold in the definition of vendor overcharge. As we have discussed in our guidance on the mandatory sanction for vendor overcharges, the severity of an overcharge should be taken into account in establishing a pattern of vendor overcharges. However, we believe it is

important to have a firm definition of what constitutes a vendor overcharge and then for the State agency to establish a threshold for imposing a sanction or other action according to the number and severity of the vendor overcharges.

Another commenter recommended that we limit vendor overcharges to actions that are proven through compliance buys. Most vendor overcharges will be established through compliance buys. However, State agencies may be able to develop edits or other means to detect vendor overcharges that provide sufficient evidence to support their sanction actions.

We made a conforming change to the mandatory sanction in § 246.12(k)(1)(iii)(C) to use the defined term ''vendor overcharge'' rather than repeating the substance of the definition within the sanction provision. Finally, one opposing commenter noted that the definition should not reference ''charging participants'' because the State agency, not the participant, is charged for authorized supplemental foods obtained from a vendor. We agree with commenter and made this change.

c. Review of Food Instruments (§ 246.12(k)(1))

Thirteen of the fifteen commenters on § 246.12(k)(1) supported the proposal to require the State agency to have systems to identify vendor overcharges and other errors on redeemed food instruments not less frequently than quarterly, although a number of the supporting commenters recommended that we modify the provision. Several commenters questioned how a State agency could have a system to detect vendor overcharges because they thought that compliance buys are the only way to establish vendor overcharges. We agree that compliance buys are the best way to support sanctioning a vendor for vendor overcharge violations. These comments pointed out that our reference to a system to ''identify'' vendor overcharges and other errors needed modification to apply to all State agencies.

We revised this provision to clarify that the State agency must have a system to detect ''questionable food instruments, suspected vendor overcharges, and other errors. * * *'' This language both responds to the concern that in most instances a review of food instruments will not be able to identify an actual vendor overcharge, just a suspected vendor overcharge, and parallels the current language in 7 CFR 246.12(r)(5)(i) on this point. This revision also takes into account the need to detect other food instruments that may contain something questionable, but not clearly an error, that requires follow up.

We also revised this provision to require that the system ensure compliance with the applicable price limitations. As discussed in section 4.a of this preamble, section 17(h)(11) of the Child Nutrition Act (42 U.S.C. 1786(h)(11)) now requires that the State agency establish procedures to ensure that authorized stores do not raise their prices after authorized, to levels that would otherwise make them ineligible for authorization. As a result, we required in § 246.12(g)(3)(i) that the State agency establish price limitations and in § 246.12(h)(4) that the State agency's redemption procedures must ensure that it does not pay a vendor more than the applicable price limitations. To further implement this statutory mandate, we revised the requirement for the review of food instruments to ensure compliance with the applicable price limitation. The final rule also makes clear that the review must include a price comparison or other edit designed to ensure compliance with the applicable price limitations and to detect suspected vendor overcharges.

Two commenters asked that we clarify whether this requirement could be satisfied by inspecting a representative sample of food instruments. It was always our intention to permit the State agency to review only a representative sample of the food instruments submitted for redemption. We revised this provision to clarify that the State agency may review either all or a representative sample of food instruments and that the review may be done either before or after the State agency makes payment to the vendor on the food instruments. However, as State agencies continue to automate their food instrument redemption systems, they should design their systems to include a review of all food instruments before they make payment on them.

One commenter suggested that we modify the requirement to detect ''redemption of expired food instruments'' to read ''food instruments redeemed outside of valid dates.'' We revised this provision to read ''transacted or redeemed after the specified date'' to capture both food instruments that vendors accept after the date for transacting them and food instruments submitted for redemption after the specified date.

Finally, we clarified what we meant when we proposed that the system must detect vendor overcharges and other errors at least quarterly. We did not mean that the review was to be conducted quarterly. Instead, we were trying to establish a timeframe for follow-up action on any suspected vendor overcharges and other errors. In the final rule, we specify that the State agency must take follow-up action within 120 days of detecting any questionable food instruments, suspected vendor overcharges, or other errors. The review itself must be done on a continuing basis.

d. Delaying Payment and Establishing Claims (§§ 246.12(k)(2) and 246.12(h)(3)(ix))

The majority of the commenters supported the proposed requirement that the State agency assess claims resulting from vendor violations identified during inventory audits or other reviews. However, in reviewing the proposed rule, we noted that we did not clearly establish a general requirement to establish claims against vendors that have committed vendor violations that affect the payment to the vendor. The final rule makes this clear in §§ 246.12(k)(2) and 246.12(h)(3)(ix) and also clarifies that the State agency may delay payment in cases in which the vendor violation is discovered before payment has been made.

In response to proposed § 246.12(h)(3)(ix), a number of commenters asserted that an ''overpriced food instrument'' should give rise to a claim and a ''vendor overcharge'' should give rise to a sanction. As noted above, a price adjustment is not a vendor overcharge and does not trigger a claim. Price adjustments, which must be described in the vendor agreement, are part of the method used by the State agency to determine the amount a vendor is paid for a food instrument.

We want to make clear that claims and sanctions are not mutually exclusive. Claims arise in situations in which the vendor has not complied with the requirements for food instrument redemption, such as recording the wrong price or accepting food instruments without signatures. In these cases, the State agency must either deny payment of the food instrument or assert a claim. Sanctions arise as a result of vendor violations, such as a pattern of vendor overcharges.

One commenter requested that we clarify that in addition to assessing claims, the State agency may sanction vendors for a pattern of vendor overcharges. The commenter indicated this clarification is necessary to avoid dealing with vendor assertions that as long as they paid claims resulting from vendor overcharges, they cannot be

sanctioned for vendor overcharge violations. We revised § 246.12(h)(3)(ix) to clarify that: ''In addition to denying payment or assessing a claim, the State agency may sanction the vendor for vendor overcharges or other errors in accordance with the State agency's sanction schedule.''

Three commenters suggested that a pattern of overcharges be used to identify high-risk vendors. Another commenter indicated that having a variable maximum price that is not printed on the food instrument eliminates the opportunity for systemic and excessive overcharging, lessening the need for pursuing claims, regardless of the cause or the size of vendor overcharges. Although we believe both of these approaches would improve program integrity, they should be used in addition to, and not in lieu of, strong requirements to pursue claims.

e. Collecting the Full Purchase Price of Food Instruments Containing Vendor Overcharges or Other Errors (§§ 246.12(k)(2) and 246.12(h)(3)(ix))

Both Sections 246.12(k)(2) and 246.12(h)(3)(ix) in the proposed rule would have permitted, but not required, the State agency to withhold payment or collect from the vendor the full redeemed value of a food instrument containing a vendor overcharge or other error. Just under half of the commenters on each of these provisions opposed this authority for two reasons. First, they pointed out that it treated inadvertent cashier errors the same as intentional fraud. They asserted that there is no deterrent effect when human error is the cause. Second, they noted that establishing a claim for the full purchase price of the food instrument failed to compensate vendors for the amount of the supplemental foods that were properly provided to participants. One commenter suggested that we permit claim assessment for a percentage of the food instrument value rather than for the full amount. Another commenter was particularly concerned about this provision in light of the proposal to limit vendors' ability to appeal claims.

The ability to establish a claim for the full purchase price of a food instrument can provide a powerful incentive for vendors to ensure that their cashiers are properly trained in order to reduce inadvertent errors during WIC transactions. As such, we retained this option for the State agency.

f. Opportunity to Justify or Correct Errors (§ 246.12(k)(3))

Two commenters supported retaining the current provision requiring the State agency to give vendors the opportunity to justify or correct errors before denying payment or assessing a claim. One commenter indicated that our example was inadequate because some State agencies do not pay for food instruments with missing purchase prices or signatures and do not permit, under their vendor agreements, vendors to make these types of corrections after a food instrument has been submitted for redemption. We agree with the commenter and deleted this example.

One commenter on the claims provision of the vendor agreement noted that we had removed the current provision requiring the State agency to give vendors an opportunity to justify or correct food instrument errors. To emphasize that vendors must still be provided this opportunity, we added a reference to this opportunity in the claims provision of the vendor agreement.

g. Timeframe for Initiating Claims (§ 246.12(k)(4))

Two commenters pointed out that requiring the State agency to begin collection efforts before an investigation is complete could jeopardize the investigation. We agree and revised the requirement for initiating collection action to read ''the date of detection of the vendor violation or the completion of the review or investigation giving rise to the claim, whichever is later.'' We also reordered paragraph (k) to clarify that the opportunity to justify or correct must occur within the 90 days the State agency has to make a final decision to deny a payment or initiate claims collection action.

h. Food Instruments Redeemed after the Specified Period (§ 246.12(k)(5))

Two commenters suggested that we raise the dollar limit for permitting the State agency to pay vendors for food instruments submitted for redemption after the specified date without our approval. They indicated that this dollar limit was outdated. We agree and raised the limit for prior FNS Regional Office approval from $200 to $500.

7. Miscellaneous Vendor Agreement Specifications

a. Recordkeeping (§ 246.12(h)(3)(xv))

We proposed to require the vendor agreement to provide that vendors must maintain inventory records used for Federal tax reporting purposes and other records the State agency may require for a period of time specified by the State agency. One commenter recommended that we set the length of time in the final rule, rather than defer to the State agency. Other commenters requested that we specify what records must be retained and that we require that shelf price records be maintained to facilitate follow-up on suspected vendor overcharges. Finally, one commenter questioned whether the records may be kept off-site.

This rule adopts the provision largely as proposed. We left it to the State agency to specify the record retention period. We clarified that the time period must be specified by the State agency in the vendor agreement. The State agency has the discretion to require as part of the vendor agreement that the vendor maintain shelf price records. Finally, this rule retains the requirement that the records be available at any reasonable time and place. This means that records may be kept off-site as long as they are readily accessible.

b. Sanction Schedule (§ 246.12(h)(5))

All commenters supported our proposal to require the State agency to include its sanction schedule as part of the vendor agreement. This provision would replace the current approach of separately listing in the program regulations the mandatory sanctions that the State agency must include in its vendor agreement. Several commenters suggested that we clarify that the sanction schedule may be included as an attachment to the vendor agreement. Another commenter requested that we permit cross-reference to State laws or regulations in areas in which the State agency's sanction schedule has been incorporated in State law or regulations. We made these changes and also revised the provision to clarify that the sanction schedule must include both the mandatory and State agency vendor sanctions.

One commenter suggested that the required sanction schedule only include the mandatory sanctions, because the State agency needs some flexibility in assessing the State agency sanctions in order to take into account the nuances of each case. We disagree. A State agency may build some flexibility into its sanction schedule, such as factors that will be taken into account in determining the length of a disqualification. However, vendors need advance notice of the consequences of committing vendor violations. We believe that allowing the State agency to either attach the sanction schedule to or cross-reference it in the vendor agreement provides the State agency with an efficient and effective means to provide vendors with such advance notice.

Two commenters asked whether the State agency would be permitted to

continue to include its sanction schedules in the vendor handbook that is provided to vendors along with the vendor agreement. This practice is permissible only if the sanction schedule section of the vendor handbook is referenced in the vendor agreement. Providing vendors with advance notice of the sanction schedule through the vendor agreement prevents vendors from arguing during administrative reviews that they were unaware of the sanctions for various vendor violations.

c. Adverse Actions Subject to Administrative Review and Administrative Review Procedures (§ 246.12(h)(6))

We proposed to require the State agency to include with the vendor agreement a list of the actions a vendor may appeal and a copy of the State agency's administrative review procedures. Commenters generally supported this provision, but suggested some modifications to provide the State agency with some flexibility in the implementation of this provision. One commenter asked that we clarify that such procedures may be included in a vendor handbook or as an attachment to the agreement. Another commenter suggested that when the procedures are included in State law or regulations, that the vendor agreement just cross-reference those documents. Finally, one commenter asked whether this provision is necessary in light of the requirement that the State agency must provide such procedures to the vendor along with its notice of an adverse action that is subject to review.

The final rule incorporates many of these suggestions. It permits the State agency to include the list of adverse actions and the administrative review procedures either in the agreement or as an attachment to it. If these items are included in State law or regulations or in another document, such as a vendor handbook, provided at the time the vendor is authorized, the State agency may simply include an appropriate cross-reference in the vendor agreement. As an alternative to these approaches for the administrative review procedures, the State agency may include a statement in the vendor agreement that the administrative review procedures are available upon request and applicable procedures will be provided along with a notice of adverse action that is subject to review.

One commenter indicated that the vendor agreement should include a list of the adverse actions that are not subject to administrative review, rather than a list of the adverse actions that are subject to administrative review. The commenter asserted that an all-inclusive list of all actions that may be subject to administrative review is impossible. We did not intend the State agency to include a laundry list of all possible adverse actions. However, we also do not believe that simply providing a list of adverse actions not subject to administrative review is appropriate in light of the two categories of administrative reviews established under this rule (full and abbreviated administrative reviews). We expect the State agency to list the adverse actions in the same level of detail as they are described in Section 246.18. We revised this provision to require the State agency to list the adverse actions that are not subject to review as well. As with the sanction schedule, we believe it is critical that vendors receive advance notice of the consequences of their actions and whether they will be able to obtain administrative review in the event of an adverse action by the State agency.

8. Vendor Training

The proposal included several provisions that would strengthen the vendor training requirements. The goal of these changes is to improve vendors' understanding of program rules and requirements in order to prevent program noncompliance and errors. The proposal specified where vendor training would take place, who would be required to attend training, how often training would take place, and what type of training would be provided. Commenters were primarily concerned about the costs associated with the proposed changes.

a. Location of Training (§ 246.12(i)(1)), Preauthorization Visits (§ 246.12(g)(4)), and Personnel Required to Attend Training (§§ 246.12(h)(3)(xi) and (i)(1))

The most common concern among commenters was the location of vendor training. The proposal would have required the State agency to provide training to new vendors ''on the site of the vendor.'' This provision was intended to combine the initial vendor training with the documented on-site visit that currently is required by § 246.12(e)(1) prior to or at the time of initial authorization of a new vendor. Most of those who commented on this aspect of the provision indicated that on-site training was ineffective for a variety of reasons, including constant interruptions, inadequate space in stores for training, and inefficiency due to training vendors individually rather than training a large group of vendors at the same time. Three commenters preferred on-site training because off-site training creates a burden for small businesses with few employees. To address commenters' concerns, we decided to revise this provision to give the State agency discretion to determine the appropriate location for vendor training. When possible, we believe that the State agency should attempt to accommodate requests from small businesses to provide on-site vendor training. To accommodate this revision, we retained the current requirement that the State agency conduct an on-site visit prior to or at the time of a vendor's initial authorization. This requirement appears in § 246.12(g)(4) of the final rule.

Proposed § 246.12(h)(3)(xi) would have required ''the manager of the vendor or other member of management'' to participate in vendor training. Commenters were divided on the issue of who should be required to attend training. One commenter suggested that we require store owners and/or general managers as well as key store personnel to participate in annual training. Another commenter indicated that requiring ''management'' to attend training was inappropriate. A third commenter asserted that, because the vendor is responsible for its employees' actions regardless of who commits violations or attends training, the vendor should have the discretion to determine who is in the best position to participate in the training and to provide training information and materials to other store employees. Based on the comments we received, it appears that there are a variety of successful formats for vendor training, ranging from large, off-site, train-the-trainer programs to on-site, cashier training programs. To allow for a variety in formats, we believe it is necessary to provide both the State agency and vendors with discretion regarding the appropriate audience for vendor training. Consequently, we revised both the vendor agreement and vendor training provisions to clarify that at least one representative from each vendor is required to participate in the training and that the State agency will designate the audience (e.g., managers, cashiers, etc.) to which the training is directed.

b. Frequency and Format of Training (§§ 246.12(i)(1) and (h)(3)(xi))

Of the seven commenters who requested that we delete the annual training requirement: two misunderstood the proposed provision and opposed it because attending off-site training on an annual basis would be a burden, three opposed it because they do not think it would be the best

use of limited resources, one opposed it because it would prohibit the State agency from directing its resources to vendors that need more training than others, and one commenter just opposed annual training. Due to the high turnover in vendor personnel, which was noted by a few commenters, and the complexities of and periodic changes in program requirements, we believe that an annual training requirement is both reasonable and necessary. Providing vendors with training materials on current program requirements on an annual basis is not overly burdensome for the State agency. Similarly, examining training materials provided by the State agency on an annual basis is not overly burdensome for the vendor. Consequently, we decided to adopt the annual training requirement as proposed.

Several commenters opposed attaching the frequency of the required face-to-face training to the agreement period, especially for State agencies that use probationary or one-year agreement periods. One commenter indicated that State agencies would adopt longer agreement periods to avoid the costs of providing more frequent face-to-face training. Three commenters suggested that we modify the provision to require face-to-face training once every three years. We accepted this suggestion and made a corresponding change in the final rule because it creates a standard requirement for all State agencies irrespective of the length of their vendor agreements.

Another area of commenter concern was the proposed requirement for ''face-to-face'' training. Three commenters suggested that we use the term ''interactive'' instead of ''face-to-face'' because it would give the State agency the flexibility to use new technologies, such as video teleconferencing. Several commenters made a related point that group training is often more successful than on-site training because some group members ask questions that are informative to other trainees. Our rationale for requiring face-to-face training was to provide vendor representatives with the opportunity to ask questions in order to fully understand how the program requirements apply to their store operations. We agree with the commenters' suggestion that this goal can be achieved through other interactive formats. For this reason, we accepted the commenters' suggestion and revised the provision so that ''interactive'' training is required prior to or at the time of a vendor's initial authorization and once every three years thereafter. We also added language to clarify that interactive training ''includes a contemporaneous opportunity for questions and answers.''

c. Training Content (§ 246.12(i)(2)) and Training Documentation (§ 246.12(i)(4))

In § 246.12(i)(2), we proposed to require that specific topics be covered by the annual training. One commenter indicated that the required subjects could not, as suggested in the preamble, be effectively communicated by simply revising the handbook or using audio tapes. The proposed provision states that the ''annual training shall include instruction'' on the required subjects. Whereas the vendor agreement must contain very specific information about the program requirements, annual training is intended to provide more general information about how these requirements apply to vendor operations. For instance, instruction on the vendor sanction system may reference where the sanction schedule is located in the vendor agreement and generally cover the process the State agency uses to impose sanctions and the procedures that vendors must follow to appeal sanctions. To clarify our intent, we revised this provision to delete the requirement that the training cover the vendor agreement in order to avoid the implication that the entire vendor agreement must be reviewed each year. Instead, § 246.12(i)(2) requires the annual training to cover any changes to program requirements since the last training.

Five commenters suggested that we delete the ''training receipt'' requirement in proposed §§ 246.12(i)(4) and (h)(3)(xi) because they believe it is clear that the State agency will hold vendors responsible for violations regardless of whether they are intentional or inadvertent and regardless of who commits the violations or who attends vendor training. We proposed this requirement because some State agencies have indicated in the past that violative vendors have argued during administrative reviews that they were not appropriately trained on their program responsibilities. A signed receipt, acknowledging the vendor's receipt and understanding of training, would provide the State agency with evidence that vendors received training and understand program requirements. Nevertheless, we believe that by signing their agreements vendors have accepted the terms of the agreement and are legally responsible for understanding program requirements. Vendors should thoroughly read and understand their vendor agreements prior to signing them. Vendor training is not intended to educate vendors on every aspect of the vendor agreement; vendor training is provided by the State agency to assist vendors in understanding program requirements in order to reduce program errors, prevent program noncompliance, and improve program service. We accepted the commenters' suggestion and amended § 246.12(i)(4) to require the State agency to document the content of its annual training but not to require vendor receipts. This change holds the State agency accountable for covering the training subjects required by Section 246.12(i)(2) and provides the State agency with the discretion of whether to require signed receipts for vendor training. Consequently, if the State agency finds such receipts helpful during administrative reviews, it has the option to require signed receipts for vendor training. We also made a conforming change to § 246.12(h)(3)(xi).

d. Training of Staff by Vendor (§ 246.12(h)(3)(xii)) and Vendor Accountability (§ 246.12(h)(3)(xiii))

We received no comments opposing proposed Section 246.12(h)(3)(xii), which requires the vendor to inform and train cashiers and other staff on program requirements. This provision is related to Section 246.12(h)(3)(xiii), which establishes the vendor's accountability for the actions of its employees in the handling of food instruments. We adopted both of these provisions in the final rule with technical and conforming changes to make them consistent with language used throughout the final rule.

9. Vendor Monitoring and Identifying High-Risk Vendors

a. Definitions of ''High-Risk Vendor,'' ''Compliance Buy,'' ''Inventory Audit,'' and ''Routine Monitoring'' (§ 246.2)

Ten commenters supported the proposed definition of ''high-risk vendor.'' One commenter opposed the proposed definition, unless it is modified to distinguish between intentional and unintentional conduct. As discussed in the preamble to the Vendor Disqualification final rule, the violations that trigger mandatory sanctions do not require the State agency to distinguish between fraudulent (intentional) and abusive (unintentional) vendor violations, because both types of vendor violations result in loss of program funds. The State agency is not required to demonstrate that a vendor intended to commit a vendor violation(s) to support its sanction. Instead, the State agency is required to provide evidence that the vendor committed the vendor violation(s) and that the evidence is

sufficient to support the sanction being imposed. For this reason, we did not accept the commenter's recommendation and adopted the definition with one revision to incorporate the defined term ''vendor violation.''

Ten commenters also supported the proposed definition of ''compliance buy.'' One commenter suggested that we modify the definition to cover situations in which an investigator poses as a proxy. We accepted this recommendation and also added language to the definition to cover situations in which an investigator poses as a ''parent or caretaker of an infant or child participant.''

Whereas ten commenters supported our proposed definition of ''inventory audit,'' one commenter requested that we delete the definition because inventory audits rely on internal store records, which should not form the basis of a compliance investigation. We did not accept the commenter's request because inventory audits are useful in investigating vendors who may be, for example, redeeming food instruments for unauthorized stores, exchanging unauthorized food or non-food items for food instruments, or trafficking. Another commenter suggested that we modify the definition to include the ''examination of beginning and ending inventory levels and food invoices.'' We did not accept this commenter's suggestion because the meaning of the phrase ''during a given period of time'' implies an examination that covers a specific period, which naturally must have a beginning and an ending point. We adopted the definition in the final rule with one modification to conform to language used throughout the final rule.

Of the ten commenters who supported the definition of ''routine monitoring,'' one commenter noted that it was odd that in the proposal we replaced ''representative monitoring'' with routine monitoring and then dropped the requirement for routine monitoring. The routine monitoring requirement is discussed below in section 9.d of this preamble. We adopted the definition of routine monitoring as proposed.

b. Vendor Monitoring (§ 246.12(j)(1))

Two commenters suggested that we add language to proposed § 246.12(j)(1) to permit the State agency to delegate all of its vendor monitoring to another State agency by written agreement. We did not accept this comment for two reasons. First, if one State agency pays another State agency for compliance investigation services, then the State agency that conducts the investigations would be considered a contractor under this provision. No additional regulatory language is necessary to address this type of agreement. Second, even if one State agency chooses to meet its entire requirement for compliance investigations by counting the compliance investigations conducted by another State agency, the first State agency still will need to establish its own vendor monitoring system to address the monitoring activities that may not be delegated. Each State agency must conduct its own routine monitoring visits, identify its high-risk vendors, and track its progress toward meeting the thresholds for routine monitoring visits and compliance investigations. The circumstances under which a State agency may count the compliance investigations conducted by another State agency are discussed in Section 9.d of this preamble.

c. Identifying High-Risk Vendors (§ 246.12(j)(3))

Of the forty-one commenters who addressed proposed § 246.12(j)(2), which covers the requirements for the identification of high-risk vendors, thirty opposed it for a variety of reasons. Many opposed it because we did not include our high-risk criteria in the regulatory language or discuss the specifics of these criteria in the preamble. We believe that these criteria should not be included in the regulatory language because doing so would compromise State agency investigative techniques. Unscrupulous vendors may use this information to avoid being identified as high-risk vendors subject to compliance investigations. Although some stores post signs warning their customers that shoplifters will be subject to criminal prosecution, no stores post signs that specifically disclose the techniques they use to identify potential shoplifters. Most vendors, like most shoppers, are honest and have no reason to be concerned about investigative techniques.

Several commenters criticized the provision as a ''one-size-fits-all'' approach that would require all State agencies to use the same high-risk identification criteria and asserted that State agencies are in the best position to determine which criteria are most effective. Our experience with State agency-established criteria is mixed. According to The Integrity Profile (TIP) report for fiscal year 1998, the two most common indicators that State agencies use in their high-risk systems were complaints from participants, local agencies, and other vendors and WIC business volume. Complaints do not take into account vendor redemption patterns, and WIC business volume simply identifies larger vendors. Of the seven most commonly used high-risk indicators reported by State agencies for the fiscal year 1989 through fiscal year 1994 Vendor Activity Monitoring Profile (VAMP) reports, complaints and WIC business volume ranked fifth and sixth at identifying vendors that subsequently committed overcharge violations during compliance buys.

We believe there is sufficient data to support the effectiveness of particular high-risk identification criteria and that State agencies are not making the best use of these criteria. However, to address commenters' concerns about the potential ineffectiveness of our criteria, we revised the regulatory language to permit the State agency to use other statistically-based criteria we approve in lieu of the our criteria. This revision gives the State agency the flexibility to employ other criteria when it believes that our criteria are ineffective in its jurisdiction.

Several commenters were concerned about the length of the advance notice we would provide to the State agency prior to changing our high-risk identification criteria. One commenter suggested that we provide the State agency with a minimum of eighteen months advance notice, while another commenter suggested that we agree to use our criteria for five years prior to making changes. Commenters were concerned about the length of time it takes to make changes to their automated systems and the costs associated with frequent changes. Strengthening high-risk identification systems certainly will require a commitment of resources by State agencies. However, the result of this effort will be a more efficient compliance investigation system, which identifies and removes violative vendors from the Program. We will not change our high-risk identification criteria more frequently than once every two years and will change the criteria only when more effective criteria have been identified. To address commenter's concerns about the time required for implementing changes, we revised this provision to provide State agencies with ''adequate advance notice,'' which will allow for various implementation timeframes depending on the change.

One commenter suggested that we modify the provision to specify the period for identifying high-risk vendors. We accepted this suggestion and revised the provision to require high-risk identification ''at least once a year.'' Establishing this as an annual requirement is consistent with the period during which the State agency

must conduct the specified number of compliance investigations. In addition, the commenter suggested that we specify that vendors appearing on multiple lists be given a higher priority for compliance investigations. This is a valid comment, but we believe that such direction should be provided to State agencies as part of the guidance that contains our high-risk criteria rather than be included in regulatory language.

d. Routine Monitoring (§ 246.12(j)(2)) and Compliance Investigations (§§ 246.12(j)(4), 246.12(l)(2)(iii), and 246.18(a)(1)(ii)(H))

Many of those who commented on the requirement in proposed Section 246.12(j)(3)(i), which would require the State agency to conduct compliance investigations on ten percent of its vendors, were concerned that the ten percent level was too high, too expensive, a ''one-size-fits-all'' approach, and would make routine monitoring prohibitive due to the cost of the required compliance investigations, and shift resources away from nutrition education and breastfeeding promotion. As noted in the Fiscal Year 1998 TIP report, State agencies vary widely in the areas of high-risk identification and compliance investigations. Whereas some State agencies reported identifying no high-risk vendors, others reported identifying over one third of their vendors as high-risk. Similarly, some State agencies reported conducting no compliance investigations; others reported conducting compliance investigations on nearly all of their vendors. Currently, the State agency must design and implement a high-risk identification system and have the capability to conduct compliance buys. Some State agencies would need to do very little to implement this proposed provision; others would need to modify their systems to identify high-risk vendors to incorporate our criteria and begin conducting compliance buys on their vendors.

Section 203(f) of the Goodling Act amended section 17(f)(24) of the Child Nutrition Act (42 U.S.C. 1786(f)(24)) to require each State agency to identify high-risk vendors and conduct compliance investigations of the vendors. A number of commenters indicated that their number of high-risk vendors is well below ten percent and suggested that we modify the provision to a lower percentage, such as three or five percent, or that the State agency be granted discretion to determine the percentage of vendors that should be monitored. Under the current regulations, which allow for State agency discretion, a number of State agencies neither identify high-risk vendors, nor conduct compliance investigations. To implement a provision consistent with the Goodling Act, we must require the State agency both to identify high-risk vendors and to conduct compliance investigations. Setting a minimum percentage for compliance investigations is the most effective means of ensuring that the legislative mandate is implemented consistently by State agencies.

One suggested modification that was supported by ten commenters was to modify the provision so that the State agency must monitor ten percent of its vendors and conduct compliance investigations on half of those vendors subject to monitoring. This compromise would set a standard for compliance investigations, as we proposed, as well as retain a standard for routine monitoring, as recommended by thirteen commenters. The compromise would address the majority of commenters' concerns regarding this provision. Consequently, we adopted the compromise but clarified that the standards for routine monitoring and compliance investigations are separate standards—five percent routine monitoring and five percent compliance investigations. This compromise retains half of the current requirement for ten percent routine (representative) monitoring and reduces the proposed ten percent compliance investigations requirement by half, thereby reducing the amount of resources necessary to carry out this provision. To accommodate these changes, this rule reorganizes and renumbers the requirements for compliance investigations in proposed § 246.12(j)(3) into two paragraphs, § 246.12(j)(2), *Routine monitoring,* and § 246.12(j)(4), *Compliance investigations.* Throughout this final rule, we used the term ''compliance investigations'' to refer to both inventory audits and compliance buys.

Several commenters expressed concern that requiring compliance buys would set up an adversarial relationship with vendors. Others commented that the most effective vendor monitoring system is a preventive approach. Although we agree that vendor training and routine monitoring, including ''educational buys,'' are effective methods to curb vendor abuse by reducing cashier errors that result in the loss of program funds, preventive methods are ineffective at addressing vendor fraud, because vendors do not inadvertently commit fraud. By mandating that we require State agencies to conduct compliance investigations of high-risk vendors, Congress has directed that program resources be used to combat vendor fraud. In the final rule, we balanced our desire to continue to commit resources toward preventive methods, such as strengthening the vendor training requirements and retaining a routine monitoring requirement, with our responsibility to remove fraudulent vendors from the Program.

Two commenters suggested that we modify this provision to require compliance investigators to notify vendors of violations detected during compliance buys in a timely manner. One of these commenters suggested that the required timely notification should be either when violations occur or within seven days of their occurrence. One commenter indicated that it is unfair to notify vendors of violations 45–60 days after they were discovered, because such late notification may limit the vendor's ability to discipline cashiers under their labor agreements. Another commenter suggested that compliance investigators assist checkers with honest mistakes.

Although we understand the concerns expressed by these commenters, we do not believe that corresponding modifications to the regulatory language are justified. As defined by this final rule, a compliance buy is ''a covert, on-site investigation in which a representative of the Program poses as a participant, parent or caretaker of an infant or child participant, or proxy, transacts one or more food instruments, and does not reveal his or her identity during the visit.'' Unlike personnel conducting a routine monitoring visit, compliance investigators must adhere to strict procedures in order for their compliance buys to be admissible as evidence in administrative reviews and, if necessary, judicial proceedings. These procedures prohibit investigators from revealing their identity and the fact that the vendor is under investigation, because revealing this type of information could compromise both current and on-going investigations. For the same reasons, we included a provision in the proposed rule and this final rule to protect the identity of compliance investigators when they testify in administrative reviews. Whereas timely feedback is essential to the effectiveness of monitoring visits, often it is contrary to the effectiveness of compliance investigations.

Three commenters suggested that we modify this provision to permit the State agency to count toward the proposed ten percent standard compliance investigations conducted by another WIC State agency on vendors authorized by both State agencies,

especially in situations in which one of the State agencies is an Indian Tribal Organization. The proposed rule would have allowed the State agency to ''waive'' conducting a compliance investigation on a high-risk vendor if the State agency documented that the vendor was under investigation by a Federal, State, or local law enforcement agency or for some other such compelling reason. To clarify this provision, we revised it to allow the State agency to ''count'' toward this requirement investigations conducted by a Federal, State, or local law enforcement agency, provided that such investigations include the investigation of either WIC or FSP fraud or abuse. In addition, we accepted the commenter's suggestion and revised this provision so that the State agency may count compliance investigations conducted by another State agency on shared vendors, provided that certain conditions are met.

In order for a State agency to count compliance investigations conducted by another WIC State agency on vendors shared by the two State agencies, the final rule requires the State agency to implement a system for reciprocal sanctions with the other WIC State agency. This means that the State agency counting the compliance investigations of another WIC State agency must take reciprocal action based on mandatory sanctions imposed by the other State agency. To take such reciprocal action, the State agency must include in its sanction schedule, which is a required part of the vendor agreement, a sanction that requires disqualification for any mandatory sanction imposed by the other State agency. This serves to put vendors on notice of the reciprocal effect of the mandatory sanctions imposed by the other WIC State agency. Prior to imposing a disqualification, the State agency must consider whether disqualification of the vendor would result in inadequate participant access. If disqualification of the vendor would result in inadequate participant access, then the State agency must impose a civil money penalty in lieu of disqualification. This provision does not permit the State agency to impose a civil money penalty in response to a civil money penalty for a mandatory sanction imposed by the other WIC State agency. Vendors that appeal a sanction based on another State agency's mandatory sanction must be provided an abbreviated administrative review in accordance with the procedures in § 246.18(c). The areas subject to administrative review are limited to: (1) Whether the vendor received a disqualification for a mandatory sanction from the other WIC State agency and (2) whether the State agency's sanction schedule included a sanction based on a mandatory sanction imposed by the other WIC State agency.

To incorporate this change, we made conforming changes to the sanction and administrative review sections of the regulations. We added § 246.12(l)(2)(iii) to the final rule to clarify that the State agency has the option to establish a sanction based on a mandatory sanction imposed by another WIC State agency. We also added § 246.18(a)(1)(ii)(H) to clarify that the State agency may provide abbreviated administrative reviews, rather than full administrative reviews, to vendors that appeal a ''disqualification or a civil money penalty imposed in lieu of disqualification based on a mandatory sanction imposed by another WIC State agency.'' In addition, we want to clarify that although compliance investigations conducted by other State agencies may be counted toward a State agency's five percent compliance investigations requirement, these activities should not be reported on the TIP report as compliance buys or inventory audits conducted by the State agency, because such double counting would lead to inflated numbers.

Another area of concern was the number of compliance buys necessary to close a compliance investigation in which no vendor violations are found. The proposal would have established two separate standards: three negative compliance buys within a twelve-month period to close compliance investigations of high-risk vendors and State agency discretion to close compliance investigations of non-high-risk vendors. Several commenters recommended that we establish a single standard for all compliance investigations. As part of the compromise discussed above, ten commenters suggested that the State agency be provided with the discretion to determine when to close all compliance investigations. However, as noted in the WIC Vendor Issues Study, compliance investigations that consist of more than one compliance buy are more effective at uncovering vendor violations than compliance investigations consisting of a single compliance buy. In addition, conducting compliance investigations on non-high-risk vendors helps to verify the effectiveness of the high-risk identification criteria used by the State agency. If the same standard is not used to close compliance investigations of both high-risk and non-high-risk vendors, then the results of the two types of compliance investigations cannot be compared to verify the effectiveness of the high-risk criteria. For these reasons, we revised this provision to require at least two compliance buys be conducted before the State agency may close a compliance investigation in which no vendor violations are detected. The reduction in the number of negative compliance buys to close an investigation of a high-risk vendor should offset the corresponding increase in the number of negative buys necessary to close compliance investigations of non-high-risk vendors.

One commenter recommended that we specify the time period during which compliance buys must be conducted. Another commenter suggested that we delete the twelve-month limit on compliance buys for compliance investigations and allow the State agency to conduct compliance investigations without a strict time limitation. Once again, rather than specifying such detail in regulations, we believe that the period of time a compliance investigation remains open depends on the type of investigation and should be based on the State agency's investigative techniques. We established above that high-risk identification must be done on an annual basis. Due to the time it takes to identify high-risk vendors, plan and conduct compliance buys, and examine redeemed food instruments used during compliance buys, we believe some investigations, especially those in which violations are detected, may take longer than twelve months. For this reason, we deleted the twelve-month timeframe contained in the proposal. We still believe that a twelve-month timeframe is reasonable, but we want to ensure that the State agency has sufficient time to obtain the evidence necessary to support its sanctions and uphold them upon appeal.

In situations in which the State agency is unable to establish the level of evidence necessary to support a sanction, we recommend that the State agency issue a warning to the vendor identifying the vendor violations found and recommending corrective actions, such as additional training. Providing the vendor with a warning that violations are occurring puts the vendor on notice and also provides support for sanctions in the event that additional violations are uncovered during future compliance investigations. One commenter suggested that the regulations include timeframes for follow-up compliance buys after warning letters are issued. Once again, we believe that such investigative

techniques should be discussed in guidance rather than being included in the regulations.

As in the proposed rule, the final rule specifies that, when the number of vendors identified as high-risk is below five percent of the State agency's total number of vendors, the State agency must conduct compliance investigations of randomly selected non-high-risk vendors to reach the five-percent requirement. When the number of vendors identified as high-risk exceeds five percent, the State agency must conduct compliance investigations on the high-risk vendors it determines to have the greatest risk for program noncompliance and/or loss of program funds. Vendors identified as high-risk by multiple criteria should receive higher priority for compliance investigations. In the event they are subsequently identified as high-risk vendors, high-risk vendors not subject to compliance investigations due to the priority system should be subject to compliance investigations the following year. Over time, we anticipate that State agencies will be able to conduct thorough compliance investigations on all vendors identified as high-risk and that the percentage of high-risk vendors will decrease as noncompliant vendors are removed from the Program.

e. Report on Vendor Monitoring Results (§ 246.12(j)(5))

One commenter requested that we clarify that the required report in proposed § 246.12(j)(4) refers to the TIP report or replaces the TIP report, because the commenter opposes any additional reporting requirements. This provision does refer to submission of TIP report data to us. We did not specifically identify the TIP report in the regulatory language because the names of reports occasionally change when the reports are updated. For example, the TIP report was previously known as the VAMP report. For this reason, we adopted the regulatory language as proposed.

f. Documentation of Monitoring Visits (§ 246.12(j)(6))

One commenter suggested that, instead of documenting the price charged for each item purchased during a compliance buy, investigators only document the price shown on the item, shelf, or sign. In order to determine whether a vendor has committed an overcharge violation, the investigator must document both the current shelf price, or price charged other customers, and the price the vendor actually charged for each item. Consequently, we did not accept the commenter's suggestion.

Two commenters requested that we delete the requirement that reviewers or investigators document for all monitoring visits their ''observation that the vendor appears to be in compliance with program requirements.'' One commenter noted that an investigator would not know if a food instrument being transacted contains an overcharge until after it is redeemed. The other commenter noted that a reviewer conducting a routine monitoring visit who makes this kind of judgment in writing can destroy the effectiveness of months of covert monitoring, because attorneys for vendors appealing sanctions have used this type of documentation to cast doubt on the findings of compliance investigations. To address the commenters' concerns, we deleted this requirement from the provision in the final rule.

10. Vendor Administrative Review Procedures

We proposed to amend the procedures for administrative review of vendor appeals by limiting the types of actions subject to administrative review, establishing abbreviated administrative review procedures for certain adverse actions, and extending the timeframe for rendering a review decision. As part of limiting the types of actions subject to administrative review, we proposed to create three categories: (1) Adverse actions subject to full administrative reviews; (2) adverse actions subject to abbreviated administrative reviews; and (3) actions not subject to administrative review. Commenters were divided on the issue of limiting the types of actions subject to administrative reviews. Commenters were especially concerned about the proposal to eliminate administrative reviews of vendor claims. Regardless of whether they supported or opposed our efforts to streamline the administrative review process, commenters were concerned that limiting the administrative review of some actions may violate a vendor's due process protections.

We have always held that authorization as a WIC vendor is not a license and does not convey property rights to a store or business entity. To clarify our position, we included a provision to this effect in the proposed rule, which we adopted in the final rule at § 246.12(h)(3)(xxi). In any case, due process does not always include full trial-type hearings, and sometimes does not require hearings at all. We re-evaluated the three categories of adverse actions in the proposed rule and continue to believe that the proposed procedures do not present due process implications. With respect to claims, we want to point out that anytime the State agency delays payment to a vendor or establishes a claim the State agency must provide the vendor an opportunity to justify or correct a vendor overcharge or other error.

However, in recognition of possible State procedures that require all administrative reviews to meet certain procedural requirements, the final rule provides the State agency with the option to provide full administrative reviews of the adverse actions listed in § 246.18(a)(1)(ii) of the final rule, which covers the adverse actions subject to abbreviated administrative reviews. In addition, we want to emphasize that the procedural requirements set forth in the regulations for both full and abbreviated administrative reviews are minimum requirements. The State agency may include additional procedural requirements in its administrative review procedures.

a. Adverse Actions Subject to Abbreviated Administrative Reviews (§ 246.18(a)(1)(ii))

Several commenters suggested that the termination of a vendor agreement based on changes in ownership or location or cessation of operations be moved to the category of actions receiving no administrative review. Another commenter made a similar suggestion with regard to the denial of authorization because the vendor submitted its application outside the timeframe for accepting applications. Although we agree that in most cases these determinations will be clear-cut, we believe that an abbreviated review provides an appropriate level of review in cases in which the vendor disputes the State agency's determination.

Two commenters suggested we add permanent disqualifications based on trafficking convictions to the list of actions that are not subject to administrative review. We believe that a permanent disqualification based on a trafficking conviction presents a narrow factual question: Was the sanctioned vendor convicted of trafficking? Consequently, we added permanent disqualifications based on trafficking convictions to the list of adverse actions subject to abbreviated administrative reviews.

We also want to point out that we retained the requirement that a denial of authorization based on vendor limiting criteria is subject to an abbreviated administrative review. This requirement only applies to those State agencies that choose to use vendor limiting criteria.

b. Actions Not Subject to Administrative Reviews (§ 246.18(a)(1)(iii))

Several commenters asserted that eliminating or restricting the administrative review of certain actions would force vendors to seek judicial review of these actions, which in the long run would create an administrative burden on the State agency. Although we understand the commenters' concerns, we believe that, by carefully limiting the actions that are not subject to review, we can streamline the administrative review procedures without shifting these matters to the courts. Therefore, the final rule retains the proposed categories of actions that are not subject to administrative review. We did clarify in this final rule that, like the participant access determinations themselves, the validity and appropriateness of the participant access criteria are not subject to administrative review.

In response to commenters, the final rule includes a cross-reference to the requirement in § 246.12(k)(3) that the State agency must provide vendors the opportunity to justify or correct vendor overcharges or other errors. In addition, we added to the list of actions not subject to administrative reviews the State agency's determinations of whether the vendor has an effective policy and program in effect to prevent trafficking. Both the statute (section 17(o)(4)(A) of the Child Nutrition Act (42 U.S.C. 1786(o)(4)(A))) and the regulations (§ 246.12(l)(1)(i)) commit this determination to the sole discretion of the State agency.

c. Effective Date of Adverse Actions (§ 246.18(a)(2))

Although they generally supported the effective date provision in proposed § 246.18(a)(3), commenters raised a number of issues. One suggested that we set an effective date for all adverse actions against vendors, another asked that we clarify the standard for determining when to postpone the effective date. A third commenter noted the potential hardship on vendors when adverse actions are made effective after 15 days and review decisions are not rendered for 90 days. We believe that the State agency is in the best position to balance these competing concerns. In the final rule, § 246.18(a)(2) provides the State agency with the discretion to make its adverse actions effective no earlier than 15 days after the date of the notice and no later than 90 days after the date of the notice or, in the case of an adverse action that is subject to administrative review, the date the vendor receives the review decision. As always, the State agency should make adequate participant access the chief concern in determining the effective date of such actions.

d. Full Administrative Review Procedures (§ 246.18(b))

We proposed in § 246.18(b)(1) to require the State agency to notify a vendor receiving a mandatory disqualification that: ''This disqualification from WIC may result in a disqualification as a retailer from the Food Stamp Program.'' One commenter recommended that we modify the required statement to provide that the WIC disqualification ''will'' result in a FSP disqualification, rather than ''may'' result in a FSP disqualification. Most, but not all, disqualifications that are mandatory vendor sanctions require reciprocal FSP disqualifications. Consequently, it is inappropriate to use ''will'' instead of ''may.'' The complete list of WIC disqualifications that give rise to reciprocal FSP disqualifications appears in the FSP regulations at 7 CFR 278.6(e)(8). Accordingly, we did not accept the commenter's recommendation.

A number of comments concerned the proposed changes to the procedures for full administrative reviews. Five commenters indicated that the proposed provision permitting cross-examination of WIC program investigators ''in camera'' was confusing. We clarified this concept in § 246.18(b)(5) of the final rule.

Another commenter questioned whether the provision in § 246.18(b)(7), which would give appellant vendors the opportunity to examine the evidence upon which an adverse action is based, would require the State agency to divulge its high-risk identification criteria. This provision does not require the State agency to turn over its complete vendor file. Only the documents, both pro and con, the State agency relied upon to take the adverse action under review must be provided. The State agency's high-risk identification criteria are only used to determine which vendors will be subject to compliance investigations. It is the information found as a result of a compliance investigation or periodic review of the vendor's qualifications that will normally form the basis for the adverse action.

One commenter suggested that we retain the current provision in 7 CFR 246.18(b)(8), which requires the decision-maker to make his or her decision based solely on the statutory and regulatory provisions governing the Program. We agree with the commenter that the proposed revision to this section did not fully convey our intent that the decision-maker for an administrative review must base his or her decision solely on applicable statutes, regulations, policies and procedures, including the policies and procedures established by the State agency. The decision-maker must then apply these standards to the factual evidence in the case at hand. The decision-maker should not, however, be in the position of determining the validity of Federal or State requirements. These are legal issues that should be reserved for the courts. We clarified this point in the final rule.

Most commenters supported the proposal to increase from 60 to 90 days the time for rendering a decision on a full administrative review. Five commenters suggested that we extend the timeframe to 120 days. Opposing commenters asserted that this provision violated due process requirements, citing the possibility that a State agency could make an adverse action effective 15 days after providing notice, leaving the vendor in an unauthorized status until the review decision is rendered. We acknowledge the competing needs of the State agency and needs of the vendor, and encourage the State agency to ensure that review decisions are made as quickly as possible. We believe that this final rule streamlines the administrative review process and assists the State agency in reducing the time it takes to render review decisions. However, as noted by several commenters, even with these changes some State agencies may not be able to consistently meet the current 60-day timeframe. Therefore, this final rule retains the proposed 90-day timeframe. We clarified in § 246.18(b)(9) of the final rule that this timeframe is only an administrative requirement for the State agency and is not jurisdictional. This means that the failure of a decision-maker to render a decision within 90 days may not be cited as a basis for overturning a State agency adverse action.

e. Effective Date of Review Decisions (§ 246.18(e)) and Judicial Review (§ 246.18(f))

One commenter suggested that the effective date of review decisions be left up to the decision-maker. We still believe that once a decision is rendered it must take effect immediately; therefore, we retained the proposed provision in § 246.18(e) that requires decisions to take effect on the date of receipt of the review decision, if the adverse action has not previously taken effect.

Three commenters objected to the proposed modification to the current provision requiring the State agency to explain the right to judicial review. As we noted in the preamble to the proposed rule, the availability and type of judicial review of State agency adverse actions is a matter of State law and may vary depending on the action taken. This change was not intended to preclude or discourage vendors from seeking judicial review, but to avoid putting the State agency in the position of determining the appropriate avenue of judicial review. Accordingly, this final rule adopts § 246.18(f) as proposed. State agencies that have the ability to determine the details of available judicial review are free to provide this information to their vendors.

11. Vendor Authorization and Local Agency Selection Subject to Procurement Procedures (§ 246.18(a)(1)(iii)(D) and (a)(3)(ii)(B))

We proposed in § 246.18(a)(1)(iii)(D) to include in the category of actions not subject to administrative review those vendor authorization determinations that are subject to the procurement procedures of the State agency. We proposed this change in recognition of the procedural safeguards built into procurement requirements that would be duplicated if included in the administrative review requirements of the WIC regulations. The one commenter on this provision indicated that some State agencies select their local agencies using State procurement procedures as well. The commenter suggested that we modify the proposal so that local agency selection determinations that are subject to procurement procedures are not subject to administrative review. We accepted this comment and added a provision to this effect to § 246.18(a)(3)(ii)(B). We clarified in both the vendor and local agency provisions that the exception from administrative review applies only to administrative reviews pursuant to section 246.18 and also made other revisions to clarify the coverage of these exceptions.

12. Preventing and Identifying Dual Participation (§§ 246.4(a)(15), 246.7(l), and 246.23(c)(2))

Nine of the fifteen commenters supported the proposal to require the periodic identification of dual participation. However, two commenters recommended that the rule require semiannual, rather than quarterly detection. Those commenters noted that the six-month certification periods for most participants make quarterly detection unnecessary. They also cited their experience that the cost of detecting the dual participants far outweighed the improperly issued benefits. Commenters also noted that the new requirements for verifying identity and residency will assist in preventing dual participation. We agree that a balance must be struck between the goal of detecting and preventing program fraud and the cost of doing so. Accordingly, this rule requires dual participation detection semiannually, rather than quarterly, and that follow-up action must be taken within 120 days of detecting instances of suspected dual participation.

Two of the opposing commenters objected to reporting on dual participation. The proposed changes to the requirements for detecting dual participation do not establish reporting requirements. However, as with all program operations the State agency must keep records of its efforts to identify and follow up on instances of dual participation. The State agency's compliance with these requirements will then be assessed during our management evaluations of the State agency.

One commenter questioned whether a system designed to detect dual *enrollment* would meet the proposed requirement to detect dual *participation.* Dual enrollment occurs when a participant enrolls in more than one clinic or program, but actually receives benefits from only one of them. Dual participation is when benefits are actually obtained from more than one clinic or program. In order to receive benefits from more than one clinic or program, a participant would have to be enrolled in more than one. Therefore, a system to detect dual enrollment would satisfy the requirement to detect dual participation, provided the State agency takes appropriate follow-up action for persons identified as dual enrolled. Such action would include terminating the individuals from all clinics and programs, except the one in which they are currently participating.

The majority of the commenters approved of the proposal to require interstate detection of dual participation where geographical or other factors make it likely that participants travel regularly between contiguous local service agencies located across State agency borders. However, both supporting and opposing commenters thought that this requirement could be costly, especially when the level of automation varies significantly between the adjoining State and for States that have a large number of bordering States. One commenter asked whether additional funds would be available and another thought we would need to provide significant assistance to State agencies as they implemented this requirement.

The State agency is already required to coordinate dual participation detection efforts with Commodity Supplemental Food Program State agencies and WIC Indian State agencies. The State agency should be able to draw on this experience in expanding such efforts to adjoining States. In addition, we recognize that the methods for coordination may be limited by the systems used by the various State agencies. Finally, the State agency should remember that it needs to develop interstate systems only in areas where participants travel regularly across State lines.

Commenters generally supported the proposed provisions requiring disqualification, and in some instances claims, for participants who are found to be participating in more than one program. Similarly, commenters also supported the proposal that FNS will assert a claim against the State agency if the State agency fails to take adequate steps to pursue participant disqualification and claims as a result of dual participation. The comments raised on these provisions mostly concerned larger issues relating to participant claims and sanctions and are discussed in section 13 of this preamble. We did notice that we inappropriately used the term ''disqualification'' in § 246.7(l)(1)(iii) when referring to cases of dual participation that did not result from intentional misrepresentation. Disqualification means terminating the participation of a participant and prohibiting further participation for a specified period and is only used in cases of intentional misrepresentations. In all other situations, the appropriate action is to ''terminate'' the participation of the participant in one of the programs or clinics. We revised this provision accordingly.

13. Participant Provisions

a. Definition of ''Proxy'' (§ 246.2)

Fifteen of twenty-three commenters supported the proposed definition of ''proxy.'' The most prevalent comment, made by both supporting and opposing commenters, concerned the inclusion in the proxy definition of parents or caretakers who apply for program benefits on behalf of infants or children. These commenters noted that this approach did not reflect the common usage of this term by their State agencies. One commenter asserted that the parent or caretaker applying on behalf of an infant or child participant

is actually the person authorized to designate a proxy. Another commenter noted that the proxy definition did not clearly permit a woman participant to designate a proxy. Finally, one commenter recommended that the proxy definition require proxies to be approved by the State or local agency.

In response to commenters' concerns and recommendations, we revised the definition of proxy to clarify that a parent or caretaker applying on behalf of an infant or child participant is not a proxy and that such a parent/caretaker may designate another person, such as a spouse, other family member, or friend, as a proxy for an infant or child participant. We made conforming changes throughout this rule to incorporate this change and to clarify which persons are authorized to take certain actions. We also clarified in the definition of proxy that proxies must be designated consistent with the State agency's procedures established pursuant to § 246.12(r)(1).

b. Definition of ''Participant Violation'' (§ 246.2)

All ten commenters supported the inclusion of dual participation as a type of participant violation. In order to emphasize that participant violations include all intentional acts that violate Federal or State statutes, regulations, policies, or procedures governing the Program, we included a new definition of ''participant violation'' in § 246.2, which includes the examples that were in § 246.12(u)(1) of the proposed rule. The participant violation definition clarifies that a participant violation may be committed by a participant, a parent or caretaker of an infant or child participant, or a proxy.

c. Participant Sanctions (§ 246.12(u)(1) through (u)(4))

Sixteen of the twenty commenters supported increasing the maximum disqualification period for a participant sanction to one year. Commenters generally supported requiring a disqualification for participant violations that give rise to a claim. However, a number of commenters suggested that State and local agencies be given the discretion to adjust the length of the mandatory disqualification to correspond to the period of the dual participation or the amount of the claim. Another commenter noted that claim amounts are normally small and that participants often make restitution quickly. The four opposing commenters objected to any action that affects benefits for infant and child participants.

Participant claims are only imposed when a participant commits a participant violation. Participant violations must involve intentional actions by a participant, parent/caretaker, or proxy. Although we believe that these situations are generally serious enough to warrant a mandatory one-year disqualification, we agree with commenters that the State agency should have the flexibility to determine whether to disqualify a participant in cases of small claims. Therefore, this rule requires a one-year disqualification only in cases of claims of $100 or more, claims resulting from dual participation, or second or subsequent claims of any amount.

One commenter thought that the determination of whether a participant (or parent/caretaker or proxy) intended to commit the action giving rise to disqualification or a claim should not be left to the judgment of a WIC eligibility worker or supervisor. We acknowledge that the decision to assert a claim or to disqualify a participant requires the exercise of discretion. However, this is but one of many decisions that WIC staff must make about program participation. In all cases, the State agency is responsible for ensuring that the decisions made by State and local agency staff are made in accordance with the regulatory requirements. In this instance, it means ensuring that the WIC staff knows the standards for determining when to assert a claim or disqualify a participant, and how to correctly apply those standards. If the State agency fails to do so, it will find that it is unable to sustain these determinations when participants appeal the decisions. This rule does not change the requirement in § 246.9 that the State agency must have a hearing procedure under which participants may appeal claims of any amount and disqualifications of any length. Further, §§ 246.12(u)(4) and 246.23(c)(1)(i) of this rule require the State agency to advise participants of the procedures to follow to obtain a fair hearing at the time they are notified of a claim or disqualification.

Other commenters suggested that we permit a pregnant or breastfeeding woman to continue program participation if an acceptable proxy can be found, which would be consistent with the proposal to permit infant and children participants to avoid disqualification if a proxy is approved. If adopted, this change would extend the proxy exception to all program participants, except for postpartum women. We did not accept the commenters' suggestion. However, this rule does permit the State agency to approve proxies in lieu of disqualification for participants under age 18 in addition to infant and child participants.

The final rule retains the proposed provision permitting the State agency to allow a disqualified participant to reapply to the Program if restitution is made. In response to a suggestion made by two commenters, we clarified in the final rule that if restitution is made or a repayment plan is agreed to within 30 days of the receipt of the letter demanding repayment of the claim, the State agency may permit the participant to continue participation without disqualification.

d. Participant Claims (§ 246.23(c)(1))

Although only seven of the twenty-five commenters supported the proposed participant claims provisions, a majority of the objections reflected a misunderstanding of the provisions. First, many commenters objected to the provision concerning in-kind restitution. Those commenters indicated that this practice would not be cost-effective. One commenter was concerned about allowing participants who are being punished for program violations to work in a clinic setting. We want to emphasize that, like the proposal, the final rule makes in-kind restitution the option of the State agency, and not the participant.

Second, commenters asserted that collection efforts should be pursued only to the extent that they are cost-effective. Again, we wish to emphasize that, like the proposal, the final rule requires the State agency to pursue claims collection after the initial letter demanding repayment only to the extent that it is cost-effective. To clarify this point, we added a sentence to require the State agency to establish standards, based on a cost benefit analysis, for determining when collection actions are not longer cost-effective. This provision is the same as in current 7 CFR 246.23(c). One commenter suggested that we establish a $500 threshold for pursuing claims. Although the final rule requires demand letters to be sent out for *all* claims, the State agency could include dollar thresholds for the subsequent steps in the collection process as part of its standards for claims collection.

Six commenters indicated that establishing mandatory restitution for all claims would preclude the State agency from considering the family's ability to pay a claim. Two commenters opposed both requiring participant restitution in all cases and permitting the State agency to force participants to ''work off'' claims resulting from State

agency mistakes. This rule requires claims collection actions only in the case of intentional acts of the participant, parent/caretaker, or proxy. The State agency is not required to assess claims in cases of unintentional participant error or State agency error. Although we believe we need to protect the Program's integrity by pursuing claims resulting from participant violations, we also recognize the financial circumstances of program participants. In the final rule, we balance these considerations by requiring claims collection only in cases of intentional actions that qualify as participant violations and by providing the State agency with the discretion to enter into repayment schedules with participants and to allow in-kind restitution. The final rule also clarifies that the State agency must assess claims for both benefits that have been obtained improperly and disposed of improperly. Benefits that have been disposed of improperly include exchanging food instruments for cash or credit or selling supplemental foods that were obtained with food instruments.

One of the supporting commenters suggested permitting collection through offset of future program benefits, provided that the participant agrees to this arrangement. Section 17(f)(14) of the CNA requires overissuances of food benefits resulting from intentional actions to be collected in cash. Therefore, this rule does not permit collection through offset.

14. Home Food Delivery Systems and Direct Distribution Food Delivery Systems (§§ 246.2, 246.12(m), 246.12(n), 246.12(o), and 246.12(s))

Only one commenter opposed our proposed amendments to the provisions concerning home food delivery and direct distribution food delivery systems. The commenter suggested that home food delivery systems be categorically banned and that we grandfather in State agencies that currently operate such systems. Although most State agencies currently operate retail food delivery systems and we encourage their use, we did not propose to eliminate home food delivery systems and do not want to limit the options available to the State agency at this time. For this reason, we adopted the proposed amendments to the home food delivery and direct distribution food delivery systems with minor revisions to make them consistent with changes made by this rule.

15. General Requirements for Food Delivery Systems

a. Food Delivery System Contracts Must Conform with 7 CFR Part 3016 (§ 246.12(a)(4))

We proposed to retain the requirement that all contracts or agreements entered into by the State or local agency for the management or operation of food delivery systems must be in conformance with the requirements of 7 CFR Part 3016. Part 3016 sets forth the general requirements applicable to grants to State and local governments. One of the three supporting commenters suggested that we delete the reference to contracts or agreements entered into by the local agency, in light of the requirement in § 246.12(h)(1) that all vendor agreements must be entered into by the State agency. We retained the reference to local agencies because this provision covers home food delivery and direct distribution contracts as well as vendor agreements.

b. No Charge for Authorized Supplemental Foods (§ 246.12(c) and (h)(3)(x))

Currently, 7 CFR 246.12(c) reads: ''Participants shall receive the Program's supplemental foods free of charge.'' We proposed to amend this provision to read: ''State and local agencies shall provide participants the Program's supplemental foods free of charge.'' Our intent with this change was to make clear that the burden was on State and local agencies to ensure that supplemental foods are provided to participants free of charge, regardless of whether they are provided through a home food delivery system, direct distribution food delivery system, or retail food delivery system.

One commenter supported this proposed change, whereas another commenter indicated that the proposed language was confusing. Nine commenters opposed the proposed language and recommended that we either retain the language from the current rule or modify the proposed language, because the proposal makes it sound as if State and local agencies provide supplemental foods directly to participants. To address the commenters' concerns and to clarify our intent, we amended this provision to read: ''The State agency must ensure that participants receive their authorized supplemental foods free of charge.'' We also added a sentence to § 246.12(h)(3)(x) to require the vendor agreement to include a provision that the vendor may not charge participants, parents or caretakers of infant and child participants, or proxies for authorized supplemental foods obtained with food instruments.

16. Vendor Management Staffing (§ 246.3(e)(5))

Commenters were split about evenly on the merits of the proposed provision that would require State agencies with more than fifty vendors to employ one full-time or equivalent vendor management specialist. Supporters noted that the provision would ensure that resources are allocated to vendor management and that they would be surprised if there was any resistance to the provision. Those who opposed the proposed provision indicated that: there is no evidence that relates vendor staffing equivalents to desired outcomes; centralization of vendor management functions to one position is not cost-effective; the provision would create an inequitable burden on small State agencies; and the requirement would result in a diversion of resources from client services and local agencies. Two commenters noted that some State agencies might circumvent this staffing requirement either by limiting the number of vendors they authorize to fewer than fifty or by modifying their position descriptions to meet the requirement without making any meaningful change in responsibilities.

As a compromise, two commenters suggested that we modify the provision to require the State agency to designate a staff person responsible for vendor management and place all vendor management functions under the direct supervision of this person. Another commenter noted that State agencies are responsive to our use of State Technical Assistance Review (STAR) findings to cite staffing needs, which allows for more flexibility in small State agencies. We believe it is essential that each State agency have at least one staff member who is knowledgeable about its entire food delivery system, who thoroughly understands the regulations and policies regarding vendor management, and who can be held accountable for resolving issues and problems involving the food delivery side of program operations. We accepted the suggested compromise and revised this provision to read: ''A staff person designated for food delivery system management. The person to whom the State agency assigns this responsibility may perform other duties as well.''

17. Participant Access Criteria in State Plan (§ 246.4(a)(14)(xiv))

The proposal contained a provision to require the State agency to include in its State Plan ''[a] description of the State

agency's participant access determination criteria consistent with § 246.12(l)(8).'' Six commenters supported adopting this provision as proposed. One commenter suggested that we modify the provision to allow for some flexibility, because there is no single objective standard that could be applied and defended statewide. Another commenter opposed the provision, unless it is modified to read: ''A statement that the State agency uses or does not use a 'participant access policy' to assist in the determination of vendor participation in the WIC Program.'' A third commenter opposed including the participant access determination criteria in the State Plan, because participant access must be determined on a case-by-case basis and each community requires different criteria. We believe it is necessary for the State agency to include its participant access determination criteria in its State Plan because the State agency's participant access determinations are not subject to administrative review. The State Plan approval process provides the public with an opportunity to comment on the criteria the State agency proposes to use to make these determinations. We also made a conforming change to § 246.12(l)(8) to clarify the State agency's responsibility to establish participant access determination criteria.

Section 246.12(l)(8) specifies that, when making participant access determinations, the State agency must consider ''the availability of other authorized vendors in the same area as the violative vendor and any geographic barriers to using such vendors.'' We understand that the various urban, suburban, and rural areas under a State agency's jurisdiction may require the use of different participant access criteria. We do not expect the State agency to be able to include every variation of its criteria in its State Plan. However, we do expect the State agency to include in its State Plan the general criteria that it uses to make its participant access determinations. For instance, a State agency may use such general criteria as: (1) A minimum vendor-to-participant ratio in the local agency or clinic service area; (2) the number of other vendors within a specified distance of the violative vendor, where the distance used depends on whether the area is classified as urban, suburban, or rural; and (3) the existence of any geographical barriers to the other vendors, such as rivers or mountains that increase driving distances to other vendors. None of these criteria specify the actual ratios, numbers, or mileage used by the State agency to make its participant access determinations. However, the criteria do provide the public with some assurance that the State agency's participant access determinations rely on objective measures.

18. Management Evaluations and Monitoring Reviews

a. State Agency Corrective Action Plans (§ 246.19(a)(2))

The majority of commenters supported the proposal to require the State agency to develop a corrective action plan if we make negative findings about its administration of the WIC Program. The specific objections to this provision were that ''negative findings'' is not a precise enough standard, 60 days are not long enough to develop a corrective action plan, and some negative findings may be too minor to warrant a corrective action plan.

Although ''negative findings'' is a frequently used term in audits and evaluations, we revised this provision to say ''findings that the State agency did not comply with agency program requirements.'' With respect to the concern about the timeframe, we want to point out that the 60-day period is not the period during which corrective action must be taken, but just the period during which a corrective action plan, outlining the corrective action to be taken, must be developed and submitted. In addition, even findings that are easily corrected must be documented in the corrective action plan. In many cases, the State agency will be able to describe corrective action that it already took in response to such findings.

Several commenters addressed the portion of this provision that is in current regulations concerning the withholding of nutrition services and administration funds for various types of program noncompliance. Those commenters indicated that there needs to be a better definition of the situations in which such withholding may occur and also specific remedial actions that must be taken before such withholding may occur. We do not think it is possible to list more specifically the situations that would trigger withholding. The specific remedial actions will generally be those agreed to in the State agency's corrective action plan.

b. Standard Areas of Review of Local Agencies (§ 246.19(b)(2))

Five of the six commenters supported the minor revisions to the requirements for the areas of local agency activities that the State agency must review. One commenter questioned the meaning of the added area of ''participant services.'' We added this provision to make sure that the State agency evaluates not only certification and nutrition education, but also the many other contacts that local agencies have with participants, such as setting up appointments, issuing food instruments and explaining their use, and referring participants to other health and social services.

Another commenter suggested that the State agency's review of vendor training conducted by its local agencies be limited to verifying whether the training was conducted, and not the effectiveness of the training. Although we agree that it can sometimes be difficult to determine the effectiveness of training, we believe it is critical that any State agency that delegates training activities look closely at the content of the training and any vendor feedback on the training. In recognition of the new provision in § 246.12(h)(1)(ii) that permits the State agency to delegate signing of vendor agreements to its local agencies, we also added a provision to this section requiring the State agency to review the local agencies' effectiveness in conducting this activity.

c. Areas of In-Depth Review of Local Agencies (§ 246.19(b)(5))

The majority of commenters opposed the proposal to require the State agency to conduct in-depth reviews of specified areas of local agency operations during monitoring reviews when requested to do so by us. Commenters both pro and con were confused about whether these focused reviews would be a part of, or in addition to, the currently required monitoring reviews. Three local agency commenters indicated that in-depth reviews are not necessary, because local agencies are already subject to State and Federal monitoring, almost to the point of over-evaluation.

First, we want to clarify that the in-depth review of these areas would be a part of the regular monitoring reviews of local agencies and would be an area of focus within the standard areas required to be reviewed. Second, we do not expect that we would routinely specify focused areas for review. Instead, we would use this when necessary to get a better understanding of a particular aspect of local agency operations or to monitor compliance with a particular

program requirement that has been identified as a problem area nationally.

Several commenters expressed concern that adding these areas of in-depth review would further strain the limited State agency resources available for local agency reviews. To address this concern, one commenter suggested that we drop one area that would normally be required to be covered in the review in years in which an in-depth review is required. Another commenter suggested that we limit areas of in-depth review to no more than two areas every other year in order to limit the burden and to conform to the two-year cycle for local agency reviews. We recognize the additional work that may be required to conduct in-depth review of a particular area. As a result, we proposed to limit the number of areas to two in any fiscal year and to give at least six months' advance notice. We further revised this provision in the final rule to require that the areas not be added or changed more often than once every two fiscal years. We did not adopt the suggestion that we drop one of the standard areas of review in years in which we require an in-depth review of an area. The areas of in-depth review will be areas of focus within the standard review areas. Further, we believe that requiring review of the standard review areas is critical to ensuring the uniformity of local agency reviews and the effectiveness of program operations.

d. Local Agency Corrective Action Plans (§ 246.19(b)(4))

The majority of the commenters supported the proposal to require local agencies to prepare corrective action plans to address deficiencies identified by the State agency during monitoring reviews. However, many of the commenters recommended that we increase the time for submitting the corrective action plan from 45 days to 60 days. We made this change. We also moved this provision to § 246.19(b)(4) in order to integrate it better with the existing regulatory language requiring the State agency to establish a corrective action process for local agencies. Finally, we revised the wording to parallel the new requirements for State agency corrective action plans.

19. Conflict of Interest (§ 246.12(t) and 246.12(h)(3)(xix))

All the comments on the conflict of interest provision supported the amendment, although some commenters suggested modifications. Most of these comments concerned the need to clarify what is meant by ''conflict of interest.'' One commenter asked whether a conflict of interest exists when a person with a financial interest in a vendor is employed by the WIC Program, but has no involvement in vendor selection or vendor management.

In the preamble to the proposed rule, we stated our view that this is an area which is based more appropriately on State laws or regulations governing conflict of interest. For that reason, we decided not to include a definition of ''conflict of interest'' in the WIC regulations. We continue to believe that the State agency is in the best position to make these determinations, based on its knowledge of the structure of the State agency and the responsibilities of its staff. We did not intend our discussion in the preamble to indicate that no one employed by the State agency could have any financial interest in a vendor. This determination must be made on a case-by-case basis taking into account State laws, regulations, and policies and the particular facts of the situation, such as the size of the financial interest and whether the employee has any responsibilities for vendor selection or management.

One commenter suggested that the provision be amended to prohibit ''known'' conflicts of interest. We did not make this change. This provision is designed to require the State agency to establish standards for avoiding conflicts of interest. These may be actual or apparent conflicts. Just because a State agency does not know of a conflict does not relieve the State agency from the burden of taking the necessary steps to ensure that it avoids such conflicts and to take action when a conflict is discovered.

20. Confidentiality

a. Vendor Information (§ 246.26(e))

We proposed to restrict the use and disclosure of vendor information. The vast majority of the commenters supported the proposal, although several of those who supported the provision recommended modifications. Two commenters questioned how this provision would apply to information requested under State freedom of information acts or other open record laws. These commenters indicated that because the WIC regulations currently are silent on this point some State agencies have had to disclose vendor information under these laws. It is up to the State agency to make sure it complies with all WIC Program requirements and if there is a conflict with State law, to ensure that it takes the necessary steps to remove the conflict. Therefore, we urge the State agency to consult with its legal counsel on the effect of this provision on any State laws concerning public access to State records.

One of the commenters who opposed this provision asserted that, unlike participants, vendors do not have comparable expectations of privacy that justify the creation of new privacy rights. The reason for limiting the use and disclosure of vendor information is two-fold—to encourage vendors to provide the information necessary to authorize and monitor vendors and to avoid compromising State agency investigative techniques. We believe that these benefits outweigh the commenter's concern.

The other commenter who opposed this provision suggested that applicant vendors be allowed full access to information concerning an adverse action against them. In the proposal, we specified that the State agency could disclose confidential vendor information to appellant vendors to the extent that the information provided the basis of an action under review. However, this comment pointed out to us that we needed to broaden and clarify this category of disclosure in order to take into account those adverse actions that are not subject to administrative review, such as claims. The final rule permits disclosure of confidential vendor information to a vendor that is subject to an adverse action, including claims, to the extent that the information concerns the vendor subject to the adverse action and the information to be disclosed is related to the adverse action.

Some commenters suggested we clarify that vendor information may be disclosed to other WIC State agencies. As noted in the preamble to the proposed rule, other WIC State agencies would be authorized to receive vendor information. They fall in the category of persons directly connected with the administration or enforcement of a Federal law (i.e., the Child Nutrition Act, which authorizes the WIC Program). In order to avoid confusion, we revised this provision to list separately the use and disclosure of confidential vendor information to personnel directly connected with the administration and the enforcement of the WIC Program and Food Stamp Program who the State determines have a need to know for the purposes of these programs. In addition, we listed personnel from WIC local agencies and other WIC Sate agencies and persons investigating or prosecuting WIC Program or FSP violations as examples of the persons who fall in this category.

One commenter objected to the requirement for a written agreement as administratively unworkable,

particularly within the short timeframes for vendor administrative reviews. We assume the commenter was referring to situations in which the administrative reviews are conducted for the WIC State agency by another agency of the State and the commenter's perception that a written agreement would be required before disclosing vendor information to the agency providing the administrative review. We revised this provision to clarify that written agreements are not required prior to disclosing confidential vendor information for purposes of WIC Program and Food Stamp Program administration, which includes administrative reviews.

Further, in any situations in which the State agency needs to disclose confidential vendor information on a regular basis for other permitted purposes, the State agency may enter into a single written agreement that generically covers the disclosure and use of confidential vendor information for such activities. Individual agreements for each disclosure of information are not necessary.

One commenter suggested that we give the State agency the discretion to release non-proprietary vendor information to the extent that the State agency determines the disclosure to be for the benefit of the Program. We think that this approach is overly complicated and did not accept this suggestion.

We did revise this provision in the final rule to clarify that only information that individually identifies a vendor (other than its name, address, and authorization status) is considered confidential. Aggregate data about vendors and other data that does not individually identify a vendor are not subject to these limitations on use and disclosure. This change addresses a commenter who requested that we permit redemption data to be used in community meetings as part of program outreach and expansion. Putting this data in aggregate or other forms that does not identify the vendor should serve this purpose.

b. Food Stamp Program Retailer Information (§ 246.26(f))

Commenters generally supported the proposal to restrict the use and disclosure of FSP retailer information to persons directly connected with the administration or enforcement of the WIC Program. The one opposing comment questioned whether vendor information should be afforded any confidentiality. As noted in the preamble to the proposed rule, section 9(c) of the Food Stamp Act of 1977, as amended, 7 U.S.C. 2011–2036 (Food Stamp Act) (7 U.S.C. 2018(c)) specifically restricts the use and disclosure of information obtained from FSP retailers to two areas: (1) Federal and State law enforcement and investigative agencies for the purposes of administering or enforcing any Federal or State law or implementing regulations; and (2) WIC State agencies for the purposes of administering the Child Nutrition Act and implementing regulations. Therefore, we must retain the proposed restriction on the use of information obtained from FSP retailers. The preamble to the proposed rule also discussed the need to restrict the use of information obtained from the FSP even when it is not protected under section 9(c) of the Food Stamp Act. Subsequently, we realized that the regulatory language in the proposed rule was not clear on this point. This final rule revises proposed § 246.26(f) to clarify that all information obtained from the FSP may be used only in the administration or enforcement of the WIC Program.

c. Access by USDA and Comptroller General of the United States (§ 246.26(g))

This final rule also clarifies that the confidentiality provisions do not relieve the State agency of its responsibility to provide USDA and the Comptroller General of the United States access to all program records pursuant to § 246.25(a)(4). We added a new paragraph (g) to § 246.26 to this effect.

21. References

(1) WIC State Agency Guide to Vendor Monitoring and Fraud and Abuse Control: Grant No. FNS–59–3198–0–96 (April 1982). Prepared by Arthur W. Burger and Steven Stollmack, ANALOGS, Incorporated. This study identifies methods for reducing vendor fraud and abuse in the WIC Program.

(2) Applied Research on Vendor Abuse: Grant No. FNS–59–3198–1–117 (June 1985). Produced by David Kornetsky, Nancy Wogman, and the Massachusetts WIC Program. This study worked with a consortium of ten States to design a high-risk vendor identification system.

(3) WIC Compliance Buy Handbook: produced by the USDA, June 1985. This handbook provides guidance for State agencies in conducting WIC compliance investigations.

(4) National Vendor Audit: Audit Report 27661–2–Ch, Special Supplemental Food Program for Women, Infants and Children—Vendor Monitoring and Food Instrument Delivery Systems, June 15, 1988. Conducted by the Office of Inspector General (OIG), U.S. Department of Agriculture.

(5) Vendor Management Study (1990): Contract No. 53–3198–5–33 (December 1990). Conducted for FNS by Professional Management Associates. This study surveyed the 50 geographic WIC State agencies and the District of Columbia, excluding Vermont and Mississippi, which provide benefits exclusively through home food delivery and direct distribution, respectively.

(6) WIC Vendor Issues Study: Contract No. 53–3198–9–53 (May 1991). Conducted for FNS by Aspen Systems Corporation. This study investigated the extent of program losses due to fraud and regulatory noncompliance from vendor overcharging in the WIC Program.

(7) The WIC Files: Case Studies of Vendor Audits and Investigations in the WIC Program, June 1991. Produced by the vendor managers of Southeast Region in cooperation with the Florida WIC Program.

(8) National Association of WIC Directors (NAWD) National Vendor Management Roundup Survey (1995). This survey, designed by FNS and the NAWD Vendor Committee representatives, provided profile date on State vendor management information systems.

(9) Vendor Activity Monitoring Profile (VAMP) and The Integrity Profile (TIP): VAMP reports produced annually by USDA through 1997 and TIP reports annually thereafter. These reports analyze WIC State agency vendor monitoring activities.

(10) Efforts to Control Fraud and Abuse Can Be Strengthened: GAO/RCED–99–224 (August 1999). Report to Congressional Committees by the United States General Accounting Office (GAO). For its review, GAO collected information, through surveys and interviews, from FNS and State and local WIC agencies on the extent of fraud and abuse in the Program.

List of Subjects in 7 CFR Part 246

Food assistance programs, Food donations, Grant programs—Social programs, Infants and children, Maternal and child health, Nutrition education, Public assistance programs, WIC, Women.

For reasons set forth in the preamble, 7 CFR Part 246 is amended as follows:

PART 246—SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN

1. The authority citation for Part 246 continues to read as follows:

Authority: 42 U.S.C. 1786.

2. In Section 246.2, add in alphabetical order the definitions of *Authorized supplemental foods, Compliance buy, High-risk vendor, Home food delivery contractor, Inventory audit, Participant violation, Price adjustment, Proxy, Routine monitoring, Vendor, Vendor authorization, Vendor limiting criteria, Vendor overcharge, Vendor selection criteria, Vendor violation,* and *WIC* to read as follows:

§ 246.2 Definitions.

* * * * *

Authorized supplemental foods means those supplemental foods authorized by the State or local agency for issuance to a particular participant.

* * * * *

Compliance buy means a covert, on-site investigation in which a representative of the Program poses as a participant, parent or caretaker of an infant or child participant, or proxy, transacts one or more food instruments, and does not reveal during the visit that he or she is a program representative.

* * * * *

High-risk vendor means a vendor identified as having a high probability of committing a vendor violation through application of the criteria established in § 246.12(j)(3) and any additional criteria established by the State agency.

Home food delivery contractor means a sole proprietorship, partnership, cooperative association, corporation, or other business entity that contracts with a State agency to deliver authorized supplemental foods to the residences of participants under a home food delivery system.

* * * * *

Inventory audit means the examination of food invoices or other proofs of purchase to determine whether a vendor has purchased sufficient quantities of supplemental foods to provide participants the quantities specified on food instruments redeemed by the vendor during a given period of time.

* * * * *

Participant violation means any intentional action of a participant, parent or caretaker of an infant or child participant, or proxy that violates Federal or State statutes, regulations, policies, or procedures governing the Program. Participant violations include intentionally making false or misleading statements or intentionally misrepresenting, concealing, or withholding facts to obtain benefits; exchanging food instruments or supplemental foods for cash, credit, non-food items, or unauthorized food items, including supplemental foods in excess of those listed on the participant's food instrument; threatening to harm or physically harming clinic or vendor staff; and dual participation.

* * * * *

Price adjustment means an adjustment made by the State agency, in accordance with the vendor agreement, to the purchase price on a food instrument after it has been submitted by a vendor for redemption to ensure that the payment to the vendor for the food instrument complies with the State agency's price limitations.

* * * * *

Proxy means any person designated by a woman participant, or by a parent or caretaker of an infant or child participant, to obtain and transact food instruments or to obtain supplemental foods on behalf of a participant. The proxy must be designated consistent with the State agency's procedures established pursuant to § 246.12(r)(1). Parents or caretakers applying on behalf of child and infant participants are not proxies.

* * * * *

Routine monitoring means overt, on-site monitoring during which program representatives identify themselves to vendor personnel.

* * * * *

Vendor means a sole proprietorship, partnership, cooperative association, corporation, or other business entity operating one or more stores authorized by the State agency to provide authorized supplemental foods to participants under a retail food delivery system. Each store operated by a business entity constitutes a separate vendor and must be authorized separately from other stores operated by the business entity. Each store must have a single, fixed location, except when the authorization of mobile stores is necessary to meet the special needs described in the State agency's State Plan in accordance with § 246.4(a)(14)(xiv).

Vendor authorization means the process by which the State agency assesses, selects, and enters into agreements with stores that apply or subsequently reapply to be authorized as vendors.

Vendor limiting criteria means criteria established by the State agency to determine the maximum number and distribution of vendors it authorizes pursuant to § 246.12(g)(2).

Vendor overcharge means intentionally or unintentionally charging the State agency more for authorized supplemental foods than is permitted under the vendor agreement. It is not a vendor overcharge when a vendor submits a food instrument for redemption and the State agency makes a price adjustment to the food instrument.

Vendor selection criteria means the criteria established by the State agency to select individual vendors for authorization consistent with the requirements in § 246.12(g)(3).

Vendor violation means any intentional or unintentional action of a vendor's current owners, officers, managers, agents, or employees (with or without the knowledge of management) that violates the vendor agreement or Federal or State statutes, regulations, policies, or procedures governing the Program.

WIC means the Special Supplemental Nutrition Program for Women, Infants and Children authorized by section 17 of the Child Nutrition Act of 1966, 42 U.S.C. 1786.

* * * * *

3. In Section 246.3:

a. Redesignate paragraph (e)(5) as paragraph (e)(6); and

b. Add a new paragraph (e)(5).

The addition reads as follows:

§ 246.3 Administration.

* * * * *

(e) * * *

(5) A staff person designated for food delivery system management. The person to whom the State agency assigns this responsibility may perform other duties as well.

* * * * *

4. In § 246.4:

a. Add a heading to paragraph (a)(14)(i);

b. In paragraph (a)(14)(v), add a heading and remove the reference to ''§ 246.12(k)(1)(i)'' and add a reference to ''§ 246.12(l)(1)(i)'' in its place;

c. Revise paragraphs (a)(14)(ii), (a)(14)(iii), (a)(14)(iv), and (a)(14)(vi);

d. Remove paragraph (a)(14)(vii) and redesignate paragraphs (a)(14)(viii) through (a)(14)(xi) as paragraphs (a)(14)(vii) through (a)(14)(x), respectively;

e. In newly redesignated paragraph (a)(14)(vii), add a heading and remove the words ''food vendors'' and add ''vendors'' in its place;

f. In newly redesignated paragraph (a)(14)(viii), add a heading;

g. In newly redesignated paragraphs (a)(14)(ix) and (a)(14)(x), add headings and remove the periods at the end and add semicolons in their place;

h. Add new paragraphs (a)(14)(xi) through (a)(14)(xiv);

i. Revise the first sentence of paragraph (a)(15); and

j. In paragraph (a)(21), remove the reference to ''§ 246.12(r)(8)'' and add a reference to ''§ 246.12(r)(4)'' in its place.

The revisions and additions read as follows:

§ 246.4 State plan.

(a) * * *

(14) * * *

(i) *Type of system.* * * *

(ii) *Vendor limiting and selection criteria.* Vendor limiting criteria, if used by the State agency, and the vendor selection criteria established by the State agency consistent with the requirements in § 246.12(g)(3);

(iii) *Vendor agreement.* A sample vendor agreement, including the sanction schedule, which may be incorporated as an attachment or, if the sanction schedule is in the State agency's regulations, through citation to the regulations. State agencies that intend to delegate signing of vendor agreements to local agencies must describe the State agency supervision and instruction that will be provided to ensure the uniformity and quality of local agency activities;

(iv) *Vendor monitoring.* The system for monitoring vendors to ensure compliance and prevent fraud, waste, and program noncompliance, and the State agency's plans for improvement in the coming year in accordance with § 246.12(j). The State agency must also include the criteria it will use to determine which vendors will receive routine monitoring visits. State agencies that intend to delegate any aspect of vendor monitoring responsibilities to a local agency or contractor must describe the State agency supervision and instruction that will be provided to ensure the uniformity and quality of vendor monitoring;

(v) *Options regarding trafficking convictions.* * * *

(vi) *Food instruments.* A facsimile of the food instrument, if used, and a description of the system the State agency will use to account for the disposition of food instruments in accordance with § 246.12(q);

(vii) *Names of contractors.* * * *

(viii)*Nutrition services and administration funds conversion.* * * *

(ix) *Homeless participants.* * * *

(x) *Cost containment systems.* * * *

(xi) *Vendor training.* The procedures the State agency will use to train vendors in accordance with § 246.12(i). State agencies that intend to delegate any aspect of training to a local agency, contractor, or vendor representative must describe the State agency supervision and instruction that will be provided to ensure the uniformity and quality of vendor training;

(xii) *Food instrument security.* A description of the State agency's system for ensuring food instrument security in accordance with § 246.12(p);

(xiii) *Participant access determination criteria.* A description of the State agency's participant access determination criteria consistent with § 246.12(l); and

(xiv) *Mobile stores.* The special needs necessitating the authorization of mobile stores, if the State agency chooses to authorize such stores.

(15) The State agency's plans to prevent and identify dual participation in accordance with § 246.7(l)(1)(i) and (l)(1)(ii). * * *

* * * * *

5. In § 246.7:

a. In paragraph (f)(2)(iv), remove the reference to ''§ 246.12(r)(8)'' and add a reference to ''§ 246.12(r)(4)'' in its place;

b. In paragraph (h)(1)(i), remove the reference to ''§ 246.12(k)(2)'' and add the words ''the definition of *Participant violation* in § 246.2'' in its place; and

c. Revise paragraph (l)(1).

The revision reads as follows:

§ 246.7 Certification of participants.

* * * * *

(l) * * *

(1) The State agency is responsible for the following:

(i) In conjunction with WIC local agencies, the prevention and identification of dual participation within each local agency and between local agencies under the State agency's jurisdiction, including actions to identify suspected instances of dual participation at least semiannually. The State or local agency must take follow-up action within 120 days of detecting instances of suspected dual participation;

(ii) In areas where a local agency serves the same population as an Indian State agency or a CSFP agency, and in areas where geographical or other factors make it likely that participants travel regularly between contiguous local service areas located across State agency borders, entering into an agreement with the other agency for the detection and prevention of dual participation. The agreement must be made in writing and included in the State Plan;

(iii) Immediate termination from participation in one of the programs or clinics for participants found in violation due to dual participation; and

(iv) In cases of dual participation resulting from intentional misrepresentation, the collection of improperly issued benefits in accordance with § 246.23(c)(1) and disqualification from both programs in accordance with § 246.12(u)(2).

* * * * *

6. Revise § 246.12 to read as follows:

§ 246.12 Food delivery systems.

(a) *General.* This section sets forth design and operational requirements for food delivery systems. In recognition of emergent electronic benefits transfer (EBT) technology, FNS may, on a case-by-case basis, modify regulatory provisions to the extent FNS determines the particular EBT system provides adequate safeguards that serve the purpose of the provisions being modified.

(1) *Management.* The State agency is responsible for the fiscal management of, and accountability for, food delivery systems under its jurisdiction. The State agency may permit only authorized vendors, home food delivery contractors, and direct distribution sites to accept food instruments.

(2) *Design.* The State agency must design all food delivery systems to be used by its local agencies.

(3) *FNS oversight.* FNS may, for a stated cause and by written notice, require revision of a proposed or operating food delivery system and will allow a reasonable time for the State agency to effect such a revision.

(4) *Part 3016.* All contracts or agreements entered into by the State or local agency for the management or operation of food delivery systems must conform to the requirements of Part 3016 of this title.

(b) *Uniform food delivery systems.* The State agency may operate up to three types of food delivery systems under its jurisdiction—retail, home delivery, or direct distribution. Each system must be procedurally uniform throughout the jurisdiction of the State agency and must ensure adequate participant access to supplemental foods. When used, food instruments must be uniform within each type of system.

(c) *No charge for authorized supplemental foods.* The State agency must ensure that participants receive their authorized supplemental foods free of charge.

(d) *Compatibility of food delivery system.* The State agency must ensure that the food delivery system(s) selected is compatible with the delivery of health and nutrition education services to participants.

(e) *Retail food delivery systems: General.* Retail food delivery systems are systems in which participants, parents or caretakers of infant and child

participants, and proxies obtain authorized supplemental foods by submitting a food instrument to an authorized vendor.

(f) *Retail food delivery systems: Food instrument requirements.* (1) *General.* State agencies using retail food delivery systems must use food instruments that comply with the requirements of paragraph (f)(2) of this section.

(2) *Printed food instruments.* Each printed food instrument must clearly bear on its face the following information:

(i) *Authorized supplemental foods.* The supplemental foods authorized to be obtained with the food instrument;

(ii) *First date of use.* The first date on which the food instrument may be used to obtain supplemental foods;

(iii) *Last date of use.* The last date on which the food instrument may be used to obtain authorized supplemental foods. This date must be a minimum of 30 days from the first date on which it may be used, except for the participant's first month of issuance, when it may be the end of the month or cycle for which the food instrument is valid. Rather than entering a specific last date of use on each instrument, all instruments may be printed with a notice that the participant must transact them within a specified number of days after the first date on which the food instrument may be used;

(iv) *Redemption period.* The date by which the vendor must submit the food instrument for redemption. This date must be no more than 90 days from the first date on which the food instrument may be used. If the date is fewer than 90 days, then the State agency must ensure that the allotted time provides the vendor sufficient time to submit the food instrument for redemption without undue burden;

(v) *Serial number.* A unique and sequential serial number;

(vi) *Purchase price.* A space for the purchase price to be entered. At the discretion of the State agency, a maximum price may be printed on the food instrument that is higher than the expected purchase price of the authorized supplemental foods for which it will be used, but that is low enough to protect against potential loss of funds. When a maximum price is printed on the food instrument, the space for the purchase price must be clearly distinguishable from the maximum price. For example, the words ''purchase price'' or ''actual amount of sale'' could be printed larger and in a different area of the food instrument than the maximum price; and

(vii) *Signature space.* A space where participants, parents or caretakers of infant or child participants, or proxies must sign.

(3) *Vendor identification.* The State agency must implement procedures to ensure each food instrument submitted for redemption can be identified by the vendor that submitted the food instrument. Each vendor operated by a single business entity must be identified separately. The State agency may identify vendors by requiring that all authorized vendors stamp their names and/or enter a vendor identification number on all food instruments prior to submitting them for redemption.

(g) *Retail food delivery systems: Vendor authorization.* (1) *General.* The State agency must authorize an appropriate number and distribution of vendors in order to ensure adequate participant access to supplemental foods and to ensure effective State agency management, oversight, and review of its authorized vendors.

(2) *Vendor limiting criteria.* The State agency may establish criteria to limit the number of stores it authorizes. The State agency must apply its limiting criteria consistently throughout its jurisdiction. Any vendor limiting criteria used by the State agency must be included in the State Plan in accordance with § 246.4(a)(14)(ii).

(3) *Vendor selection criteria.* The State agency must develop and implement criteria to select stores for authorization. The State agency must apply its selection criteria consistently throughout its jurisdiction. The State agency may reassess any authorized vendor at any time during the vendor's agreement period using the vendor selection criteria in effect at the time of the reassessment and must terminate the agreements with those vendors that fail to meet them. The vendor selection criteria must include the following categories and requirements and must be included in the State Plan in accordance with § 246.4(a)(14)(ii).

(i) *Competitive price and price limitations.* The State agency must consider the prices a vendor applicant charges for supplemental foods as compared to the prices charged by other vendor applicants and authorized vendors. The State agency may evaluate a vendor applicant based on its shelf prices or on the prices it bids for supplemental foods, which may not exceed its shelf prices. The State agency must also establish price limitations on the amount that it will pay vendors. The price limitations must be designed to ensure that the State agency does not pay a vendor at a level that would otherwise make the vendor ineligible for authorization. The State agency may establish different competitive price requirements and price limitations for different vendor peer groups, may include a factor to reflect fluctuations in wholesale prices in its price limitations, and may except pharmacy vendors that supply only exempt infant formula and/or WIC-eligible medical foods from both the competitive price selection criterion and the price limitations.

(ii) *Minimum variety and quantity of supplemental foods.* The State agency must establish minimum requirements for the variety and quantity of supplemental foods that a vendor applicant must stock to be authorized. The State agency may not authorize a vendor applicant unless it determines that the vendor applicant meets these minimums. The State agency may establish different minimums for different vendor peer groups.

(iii) *Business integrity.* The State agency must consider the business integrity of a vendor applicant. In determining the business integrity of a vendor applicant, the State agency may rely solely on facts already known to it and representations made by the vendor applicant on its vendor application. The State agency is not required to establish a formal system of background checks for vendor applicants. Unless denying authorization of a vendor applicant would result in inadequate participant access, the State agency may not authorize a vendor applicant if during the last six years the vendor applicant or any of the vendor applicant's current owners, officers, or managers have been convicted of or had a civil judgment entered against them for any activity indicating a lack of business integrity. Activities indicating a lack of business integrity include fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, and obstruction of justice. The State agency may add other types of convictions or civil judgments to this list.

(iv) *Current Food Stamp Program disqualification or civil money penalty for hardship.* Unless denying authorization of a vendor applicant would result in inadequate participant access, the State agency may not authorize a vendor applicant that is currently disqualified from the Food Stamp Program or that has been assessed a Food Stamp Program civil money penalty for hardship and the disqualification period that would otherwise have been imposed has not expired.

(4) *On-site preauthorization visit.* The State agency must conduct an on-site

visit prior to or at the time of a vendor's initial authorization.

(5) *Sale of store to circumvent WIC sanction.* The State agency may not authorize a vendor applicant if the State agency determines the store has been sold by its previous owner in an attempt to circumvent a WIC sanction. The State agency may consider such factors as whether the store was sold to a relative by blood or marriage of the previous owner(s) or sold to any individual or organization for less than its fair market value.

(6) *Impact on small businesses.* The State agency is encouraged to consider the impact of authorization decisions on small businesses.

(7) *Application periods.* The State agency may limit the periods during which applications for vendor authorization will be accepted and processed, except that applications must be accepted and processed at least once every three years. The State agency must develop procedures for processing vendor applications outside of its timeframes when it determines there will be inadequate participant access unless additional vendors are authorized.

(8) *Data collection at authorization.* At the time of application, the State agency must collect the vendor applicant's Food Stamp Program authorization number if the vendor applicant is authorized in that program. In addition, the State agency must collect the vendor applicant's current shelf prices for supplemental foods.

(h) *Retail food delivery systems: Vendor agreements.* (1) *General.* (i) *Entering into agreements.* The State agency must enter into written agreements with all authorized vendors. The agreements must be for a period not to exceed three years. The agreement must be signed by a representative who has legal authority to obligate the vendor and a representative of the State agency. When the vendor representative is obligating more than one vendor, the agreement must specify all vendors covered by the agreement. When more than one vendor is specified in the agreement, the State agency may add or delete an individual vendor without affecting the remaining vendors. The State agency must require vendors to reapply at the expiration of their agreements and must provide vendors with not less than 15 days advance written notice of the expiration of their agreements.

(ii) *Delegation to local agencies.* The State agency may delegate to its local agencies the authority to sign vendor agreements if the State agency indicates its intention to do so in its State Plan in accordance with § 246.4(a)(14)(iii). In such cases, the State agency must provide supervision and instruction to ensure the uniformity and quality of local agency activities.

(2) *Standard vendor agreement.* The State agency must use a standard vendor agreement throughout its jurisdiction, although the State agency may make exceptions to meet unique circumstances provided that it documents the reasons for such exceptions.

(3) *Vendor agreement provisions.* The vendor agreement must contain the following specifications, although the State agency may determine the exact wording to be used:

(i) *Acceptance of food instruments.* The vendor may accept food instruments only from participants, parents or caretakers of infant and child participants, or proxies.

(ii) *No substitutions, cash, credit, refunds, or exchanges.* The vendor may provide only the authorized supplemental foods listed on the food instrument. The vendor may not provide unauthorized food items, non-food items, cash, or credit (including rainchecks) in exchange for food instruments. The vendor may not provide refunds or permit exchanges for authorized supplemental foods obtained with food instruments, except for exchanges of an identical authorized supplemental food item when the original authorized supplemental food item is defective, spoiled, or has exceeded its ''sell by,'' ''best if used by,'' or other date limiting the sale or use of the food item. An identical authorized supplemental food item means the exact brand and size as the original authorized supplemental food item obtained and returned by the participant.

(iii) *Treatment of participants, parents/caretakers, and proxies.* The vendor must offer program participants, parents or caretakers of infant of child participants, and proxies the same courtesies offered to other customers.

(iv) *Time periods for transacting food instruments.* The vendor may accept a food instrument only within the specified time period.

(v) *Purchase price on food instruments.* The vendor must ensure that the purchase price is entered on food instruments in accordance with the procedures described in the vendor agreement. The State agency has the discretion to determine whether the vendor or the participant enters the purchase price. The purchase price must include only the authorized supplemental food items actually provided and must be entered on the food instrument before it is signed.

(vi) *Signature on food instruments.* For printed food instruments, the vendor must ensure the participant, parent or caretaker of an infant or child participant, or proxy signs the food instrument in the presence of the cashier. In EBT systems, a Personal Identification Number (PIN) may be used in lieu of a signature.

(vii) *Sales tax prohibition.* The vendor may not collect sales tax on authorized supplemental foods obtained with food instruments.

(viii) *Food instrument redemption.* The vendor must submit food instruments for redemption in accordance with the redemption procedures described in the vendor agreement. The vendor may redeem a food instrument only within the specified time period. As part of the redemption procedures, the State agency may make price adjustments to the purchase price on food instruments submitted by the vendor for redemption to ensure compliance with the price limitations applicable to the vendor.

(ix) *Vendor claims.* When the State agency determines the vendor has committed a vendor violation that affects the payment to the vendor, the State agency will delay payment or establish a claim. The State agency may delay payment or establish a claim in the amount of the full purchase price of each food instrument that contained the vendor overcharge or other error. The State agency will provide the vendor with an opportunity to justify or correct a vendor overcharge or other error. The vendor must pay any claim assessed by the State agency. In collecting a claim, the State agency may offset the claim against current and subsequent amounts to be paid to the vendor. In addition to denying payment or assessing a claim, the State agency may sanction the vendor for vendor overcharges or other errors in accordance with the State agency's sanction schedule.

(x) *No charge for authorized supplemental foods or restitution from participants.* The vendor may not charge participants, parents or caretakers of infant and child participants, or proxies for authorized supplemental foods obtained with food instruments. In addition, the vendor may not seek restitution from these individuals for food instruments not paid or partially paid by the State agency.

(xi) *Training.* At least one representative of the vendor must participate in training annually. Annual vendor training may be provided by the State agency in a variety of formats, including newsletters, videos, and

interactive training. The State agency will have sole discretion to designate the date, time, and location of all interactive training, except that the State agency will provide the vendor with at least one alternative date on which to attend such training.

(xii) *Vendor training of staff.* The vendor must inform and train cashiers and other staff on program requirements.

(xiii) *Accountability for owners, officers, managers, and employees.* The vendor is accountable for its owners, officers, managers, agents, and employees who commit vendor violations.

(xiv) *Monitoring.* The vendor may be monitored for compliance with program requirements.

(xv) *Recordkeeping.* The vendor must maintain inventory records used for Federal tax reporting purposes and other records the State agency may require for the period of time specified by the State agency in the vendor agreement. Upon request, the vendor must make available to representatives of the State agency, the Department, and the Comptroller General of the United States, at any reasonable time and place for inspection and audit, all food instruments in the vendor's possession and all program-related records.

(xvi) *Termination.* The State agency will immediately terminate the agreement if it determines that the vendor has provided false information in connection with its application for authorization. Either the State agency or the vendor may terminate the agreement for cause after providing advance written notice of a period of not less than 15 days to be specified by the State agency.

(xvii) *Change in ownership or location or cessation of operations.* The vendor must provide the State agency advance written notification of any change in vendor ownership, store location, or cessation of operations. In such instances, the State agency will terminate the vendor agreement, except that the State agency may permit vendors to move short distances without terminating the agreement. The State agency has the discretion to determine the length of advance notice required for vendors reporting changes under this provision, whether a change in location qualifies as a short distance, and whether a change in business structure constitutes a change in ownership.

(xviii) *Sanctions.* In addition to claims collection, the vendor may be sanctioned for vendor violations in accordance with the State agency's sanction schedule. Sanctions may include administrative fines, disqualification, and civil money penalties in lieu of disqualification. The State agency does not have to provide the vendor with prior warning that violations were occurring before imposing such sanctions.

(xix) *Conflict of interest.* The State agency will terminate the agreement if the State agency identifies a conflict of interest, as defined by applicable State laws, regulations, and policies, between the vendor and the State agency or its local agencies.

(xx) *Criminal penalties.* A vendor who commits fraud or abuse in the Program is liable to prosecution under applicable Federal, State or local laws. Those who have willfully misapplied, stolen or fraudulently obtained program funds will be subject to a fine of not more than $10,000 or imprisonment for not more than five years or both, if the value of the funds is $100 or more. If the value is less than $100, the penalties are a fine of not more than $1,000 or imprisonment for not more than one year or both.

(xxi) *Not a license/property interest.* The vendor agreement does not constitute a license or a property interest. If the vendor wishes to continue to be authorized beyond the period of its current agreement, the vendor must reapply for authorization. If a vendor is disqualified, the State agency will terminate the vendor's agreement, and the vendor will have to reapply in order to be authorized after the disqualification period is over. In all cases, the vendor's new application will be subject to the State agency's vendor selection criteria and any vendor limiting criteria in effect at the time of the reapplication.

(xxii) *Compliance with vendor agreement, statutes, regulations, policies, and procedures.* The vendor must comply with the vendor agreement and Federal and State statutes, regulations, policies, and procedures governing the Program, including any changes made during the agreement period.

(xxiii) *Nondiscrimination regulations.* The vendor must comply with the nondiscrimination provisions of Departmental regulations (Parts 15, 15a and 15b of this title).

(xxiv) *Compliance with vendor selection criteria.* The vendor must comply with the vendor selection criteria throughout the agreement period, including any changes to the criteria. Using the current vendor selection criteria, the State agency may reassess the vendor at any time during the agreement period. The State agency will terminate the vendor agreement if the vendor fails to meet the current vendor selection criteria.

(xxv) *Reciprocal Food Stamp Program disqualification for WIC Program disqualifications.* Disqualification from the WIC Program may result in disqualification as a retailer in the Food Stamp Program. Such disqualification may not be subject to administrative or judicial review under the Food Stamp Program.

(4) *Purchase price and redemption procedures.* The State agency must describe in the vendor agreement its purchase price and redemption procedures. The redemption procedures must ensure that the State agency does not pay a vendor more than the price limitations applicable to the vendor.

(5) *Sanction schedule.* The State agency must include its sanction schedule in the vendor agreement or as an attachment to it. The sanction schedule must include all mandatory and State agency vendor sanctions and must be consistent with paragraph (l) of this section. If the sanction schedule is in State law or regulations or in a document provided to the vendor at the time of authorization, the State agency instead may include an appropriate cross-reference in the vendor agreement.

(6) *Actions subject to administrative review and review procedures.* The State agency must include the adverse actions a vendor may appeal and those adverse actions that are not subject to administrative review. The State agency also must include a copy of the State agency's administrative review procedures in the vendor agreement or as an attachment to it or must include a statement that the review procedures are available upon request and the applicable review procedures will be provided along with an adverse action subject to administrative review. These items must be consistent with § 246.18. If these items are in State law or regulations or in a document provided to the vendor at the time of authorization, the State agency instead may include an appropriate cross-reference in the vendor agreement.

(7) *Notification of program changes.* The State agency must notify vendors of changes to Federal or State statutes, regulations, policies, or procedures governing the Program before the changes are implemented. The State agency should give as much advance notice as possible.

(i) *Retail food delivery systems: Vendor training.* (1) *General requirements.* The State agency must provide training annually to at least one representative of each vendor. Prior to or at the time of a vendor's initial authorization, and at least once every

three years thereafter, the training must be in an interactive format that includes a contemporaneous opportunity for questions and answers. The State agency must designate the date, time, and location of the interactive training and the audience (e.g., managers, cashiers, etc.) to which the training is directed. The State agency must provide vendors with at least one alternative date on which to attend interactive training. Examples of acceptable vendor training include on-site cashier training, off-site classroom-style train-the-trainer or manager training, a training video, and a training newsletter. All vendor training must be designed to prevent program errors and noncompliance and improve program service.

(2) *Content.* The annual training must include instruction on the purpose of the Program, the supplemental foods authorized by the State agency, the minimum varieties and quantities of authorized supplemental foods that must be stocked by vendors, the procedures for transacting and redeeming food instruments, the vendor sanction system, the vendor complaint process, the claims procedures, and any changes to program requirements since the last training.

(3) *Delegation.* The State agency may delegate vendor training to a local agency, a contractor, or a vendor representative if the State agency indicates its intention to do so in its State Plan in accordance with § 246.4(a)(14)(xi). In such cases, the State agency must provide supervision and instruction to ensure the uniformity and quality of vendor training.

(4) *Documentation.* The State agency must document the content of and vendor participation in vendor training.

(j) *Retail food delivery systems: Monitoring vendors and identifying high-risk vendors.* (1) *General requirements.* The State agency must design and implement a system for monitoring its vendors for compliance with program requirements. The State agency may delegate vendor monitoring to a local agency or contractor if the State agency indicates its intention to do so in its State Plan in accordance with § 246.4(a)(14)(iv). In such cases, the State agency must provide supervision and instruction to ensure the uniformity and quality of vendor monitoring.

(2) *Routine monitoring.* The State agency must conduct routine monitoring visits on a minimum of five percent of the number of vendors authorized by the State agency as of October 1 of each fiscal year in order to survey the types and levels of abuse and errors among authorized vendors and to take corrective actions, as appropriate. The State agency must develop criteria to determine which vendors will receive routine monitoring visits and must include such criteria in its State Plan in accordance with § 246.4(a)(14)(iv).

(3) *Identifying high-risk vendors.* The State agency must identify high-risk vendors at least once a year using criteria developed by FNS and/or other statistically-based criteria developed by the State agency. FNS will not change its criteria more frequently than once every two years and will provide adequate advance notification of changes prior to implementation. The State agency may develop and implement additional criteria. All State agency-developed criteria must be approved by FNS.

(4) *Compliance investigations.* (i) *High-risk vendors.* The State agency must conduct compliance investigations of a minimum of five percent of the number of vendors authorized by the State agency as of October 1 of each fiscal year. The State agency must conduct compliance investigations on all high-risk vendors up to the five percent minimum. The State agency may count toward this requirement a compliance investigation of a high-risk vendor conducted by a Federal, State, or local law enforcement agency. The State agency also may count toward this requirement a compliance investigation conducted by another WIC State agency provided that the State agency implements the option to establish State agency sanctions based on mandatory sanctions imposed by the other WIC State agency, as specified in paragraph (l)(2)(iii) of this section. A compliance investigation of a high-risk vendor may be considered complete when the State agency determines that a sufficient number of compliance buys have been conducted to provide evidence of program noncompliance, when two compliance buys have been conducted in which no program violations are found, or when an inventory audit has been completed.

(ii) *Randomly selected vendors.* If fewer than five percent of the State agency's authorized vendors are identified as high-risk, the State agency must randomly select additional vendors on which to conduct compliance investigations sufficient to meet the five-percent requirement. A compliance investigation of a randomly selected vendor may be considered complete when the State agency determines that a sufficient number of compliance buys have been conducted to provide evidence of program noncompliance, when two compliance buys are conducted in which no program violations are found, or when an inventory audit has been completed.

(iii) *Prioritization.* If more than five percent of the State agency's vendors are identified as high-risk, the State agency must prioritize such vendors so as to perform compliance investigations of those determined to have the greatest potential for program noncompliance and/or loss of funds.

(5) *Monitoring report.* For each fiscal year, the State agency must send FNS a summary of the results of its vendor monitoring containing information stipulated by FNS. The report must be sent by February 1 of the following fiscal year. Plans for improvement in the coming year must be included in the State Plan in accordance with § 246.4(a)(14)(iv).

(6) *Documentation.*

(i) *Monitoring visits.* The State agency must document the following information for all monitoring visits, including routine monitoring visits, inventory audits, and compliance buys:

(A) the date of the monitoring visit, inventory audit, or compliance buy;

(B) the name(s) and signature(s) of the reviewer(s); and

(C) the nature of any problem(s) detected.

(ii) *Compliance buys.* For compliance buys, the State agency must also document:

(A) the date of the buy;

(B) a description of the cashier involved in each transaction;

(C) the types and quantities of items purchased, current shelf prices or prices charged other customers, and price charged for each item purchased, if available. Price information may be obtained prior to, during, or subsequent to the compliance buy; and

(D) the final disposition of all items as destroyed, donated, provided to other authorities, or kept as evidence.

(k) *Retail food delivery systems: Vendor claims.* (1) *System to review food instruments.* The State agency must design and implement a system to review food instruments submitted by vendors for redemption to ensure compliance with the applicable price limitations and to detect questionable food instruments, suspected vendor overcharges, and other errors. This review must examine either all or a representative sample of the food instruments and may be done either before or after the State agency makes payments on the food instruments. The review must include a price comparison or other edit designed to ensure compliance with the applicable price limitations and to assist in detecting vendor overcharges. For printed food instruments, the system also must detect

the following errors: purchase price missing; participant, parent/caretaker, or proxy signature missing; vendor identification missing; food instruments transacted or redeemed after the specified time periods; and, as appropriate, altered purchase price. The State agency must take follow-up action within 120 days of detecting any questionable food instruments, suspected vendor overcharges, and other errors and must implement procedures to reduce the number of errors when possible.

(2) *Delaying payment and establishing a claim.* When the State agency determines the vendor has committed a vendor violation that affects the payment to the vendor, the State agency must delay payment or establish a claim. Such vendor violations may be detected through compliance investigations, food instrument reviews, or other reviews or investigations of a vendor's operations. The State agency may delay payment or establish a claim in the amount of the full purchase price of each food instrument that contained the vendor overcharge or other error.

(3) *Opportunity to justify or correct.* When payment for a food instrument is delayed or a claim is established, the State agency must provide the vendor with an opportunity to justify or correct the vendor overcharge or other error. If satisfied with the justification or correction, the State agency must provide payment or adjust the proposed claim accordingly.

(4) *Timeframe and offset.* The State agency must deny payment or initiate claims collection action within 90 days of either the date of detection of the vendor violation or the completion of the review or investigation giving rise to the claim, whichever is later. Claims collection action may include offset against current and subsequent amounts owed to the vendor.

(5) *Food instruments redeemed after the specified period.* With justification and documentation, the State agency may pay vendors for food instruments submitted for redemption after the specified period for redemption. If the total value of such food instruments submitted at one time exceeds $500.00, the State agency must obtain the approval of the FNS Regional Office before payment.

(l) *Retail food delivery systems: Vendor sanctions*—(1) *Mandatory vendor sanctions*—(i) *Permanent disqualification.* The State agency must permanently disqualify a vendor convicted of trafficking in food instruments or selling firearms, ammunition, explosives, or controlled substances (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) in exchange for food instruments. A vendor is not entitled to receive any compensation for revenues lost as a result of such violation. If reflected in its State Plan, the State agency may impose a civil money penalty in lieu of a disqualification for this violation when it determines, in its sole discretion, and documents that:

(A) Disqualification of the vendor would result in inadequate participant access; or

(B) The vendor had, at the time of the violation, an effective policy and program in effect to prevent trafficking; and the ownership of the vendor was not aware of, did not approve of, and was not involved in the conduct of the violation.

(ii) *Six-year disqualification.* The State agency must disqualify a vendor for six years for:

(A) One incidence of buying or selling food instruments for cash (trafficking); or

(B) One incidence of selling firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments.

(iii) *Three-year disqualification.* The State agency must disqualify a vendor for three years for:

(A) One incidence of the sale of alcohol or alcoholic beverages or tobacco products in exchange for food instruments;

(B) A pattern of claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for a specific period of time;

(C) A pattern of vendor overcharges;

(D) A pattern of receiving, transacting and/or redeeming food instruments outside of authorized channels, including the use of an unauthorized vendor and/or an unauthorized person;

(E) A pattern of charging for supplemental food not received by the participant; or

(F) A pattern of providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments.

(iv) *One-year disqualification.* The State agency must disqualify a vendor for one year for a pattern of providing unauthorized food items in exchange for food instruments, including charging for supplemental foods provided in excess of those listed on the food instrument.

(v) *Second mandatory sanction.* When a vendor, who previously has been assessed a sanction for any of the violations in paragraphs (l)(1)(ii) through (l)(1)(iv) of this section, receives another sanction for any of these violations, the State agency must double the second sanction. Civil money penalties may only be doubled up to the limits allowed under paragraph (l)(1)(x)(C) of this section.

(vi) *Third or subsequent mandatory sanction.* When a vendor, who previously has been assessed two or more sanctions for any of the violations listed in paragraphs (l)(1)(ii) through (l)(1)(iv) of this section, receives another sanction for any of these violations, the State agency must double the third sanction and all subsequent sanctions. The State agency may not impose civil money penalties in lieu of disqualification for third or subsequent sanctions for violations listed in paragraphs (l)(1)(ii) through (l)(1)(iv) of this section.

(vii) *Disqualification based on a Food Stamp Program disqualification.* The State agency must disqualify a vendor who has been disqualified from the Food Stamp Program. The disqualification must be for the same length of time as the Food Stamp Program disqualification, may begin at a later date than the Food Stamp Program disqualification, and is not subject to administrative or judicial review under the WIC Program.

(viii) *Voluntary withdrawal or nonrenewal of agreement.* The State agency may not accept voluntary withdrawal of the vendor from the Program as an alternative to disqualification for the violations listed in paragraphs (l)(1)(i) through (l)(1)(iv) of this section, but must enter the disqualification on the record. In addition, the State agency may not use nonrenewal of the vendor agreement as an alternative to disqualification.

(ix) *Participant access determinations.* Prior to disqualifying a vendor for a Food Stamp Program disqualification pursuant to paragraph (l)(1)(vii) of this section or for any of the violations listed in paragraphs (l)(1)(ii) through (l)(1)(iv) of this section, the State agency must determine if disqualification of the vendor would result in inadequate participant access. The State agency must make the participant access determination in accordance with paragraph (l)(8) of this section. If the State agency determines that disqualification of the vendor would result in inadequate participant access, the State agency must impose a civil money penalty in lieu of disqualification. However, as provided in paragraph (l)(1)(vi) of this section, the State agency may not impose a civil money penalty in lieu of

disqualification for third or subsequent sanctions for violations in paragraphs (l)(1)(ii) through (l)(1)(iv) of this section. The State agency must include documentation of its participant access determination and any supporting documentation in the file of each vendor who is disqualified or receives a civil money penalty in lieu of disqualification.

(x) *Civil money penalty formula.* For each violation subject to a mandatory sanction, the State agency must use the following formula to calculate a civil money penalty imposed in lieu of disqualification:

(A) Determine the vendor's average monthly redemptions for at least the 6-month period ending with the month immediately preceding the month during which the notice of adverse action is dated;

(B) Multiply the average monthly redemptions figure by 10 percent (.10);

(C) Multiply the product from paragraph (l)(1)(x)(B) of this section by the number of months for which the store would have been disqualified. This is the amount of the civil money penalty, provided that the civil money penalty shall not exceed $10,000 for each violation. For a violation that warrants permanent disqualification, the amount of the civil money penalty shall be $10,000. When during the course of a single investigation the State agency determines a vendor has committed multiple violations, the State agency must impose a CMP for each violation. The total amount of civil money penalties imposed for violations investigated as part of a single investigation may not exceed $40,000.

(xi) *Notification to FNS.* The State agency must provide the appropriate FNS office with a copy of the notice of adverse action and information on vendors it has either disqualified or imposed a civil money penalty in lieu of disqualification for any of the violations listed in paragraphs (l)(1)(i) through (l)(1)(iv) of this section. This information must include the name of the vendor, address, identification number, the type of violation(s), and the length of disqualification or the length of the disqualification corresponding to the violation for which the civil money penalty was assessed, and must be provided within 15 days after the vendor's opportunity to file for a WIC administrative review has expired or all of the vendor's WIC administrative reviews have been completed.

(xii) *Multiple violations during a single investigation.* When during the course of a single investigation the State agency determines a vendor has committed multiple violations (which may include violations subject to State agency sanctions), the State agency must disqualify the vendor for the period corresponding to the most serious mandatory violation. However, the State agency must include all violations in the notice of administration action. If a mandatory sanction is not upheld on appeal, then the State agency may impose a State agency-established sanction.

(2) *State agency vendor sanctions.* (i) *General requirements.* The State agency may impose sanctions for vendor violations that are not specified in paragraphs (l)(1)(i) through (l)(1)(iv) of this section as long as such vendor violations and sanctions are included in the State agency's sanction schedule. State agency sanctions may include disqualifications, civil money penalties assessed in lieu of disqualification, and administrative fines. The total period of disqualification imposed for State agency violations investigated as part of a single investigation may not exceed one year. A civil money penalty or fine may not exceed $10,000 for each violation. The total amount of civil money penalties and administrative fines imposed for violations investigated as part of a single investigation may not exceed $40,000.

(ii) *Food Stamp Program civil money penalty for hardship.* The State agency may disqualify a vendor that has been assessed a civil money penalty for hardship in the Food Stamp Program, as provided under § 278.6 of this chapter. The length of such disqualification must correspond to the period for which the vendor would otherwise have been disqualified in the Food Stamp Program. If a State agency decides to exercise this option, the State agency must:

(A) Include notification that it will take such disqualification action in its sanction schedule; and

(B) Determine if disqualification of the vendor would result in inadequate participant access in accordance with paragraph (l)(8) of this section. If the State agency determines that disqualification of the vendor would result in inadequate participant access, the State agency may not disqualify the vendor or impose a civil money penalty in lieu of disqualification. The State agency must include documentation of its participant access determination and any supporting documentation in each vendor's file.

(iii) *A mandatory sanction by another WIC State agency.* The State agency may disqualify a vendor that has been disqualified or assessed a civil money penalty in lieu of disqualification by another WIC State agency for a mandatory vendor sanction. The length of the disqualification must be for the same length of time as the disqualification by the other WIC State agency or, in the case of a civil money penalty in lieu of disqualification assessed by the other WIC State agency, for the same length of time for which the vendor would otherwise have been disqualified. The disqualification may begin at a later date than the sanction imposed by the other WIC State agency. If a State agency decides to exercise this option, the State agency must:

(A) Include notification that it will take such action in its sanction schedule; and

(B) Determine if disqualification of the vendor would result in inadequate participant access in accordance with paragraph (l)(8) of this section. If the State agency determines that disqualification of the vendor would result in inadequate participant access, the State agency must impose a civil money penalty in lieu of disqualification, except that the State agency may not impose a civil money penalty in situations in which the vendor has been assessed a civil money penalty in lieu of disqualification by the other WIC State agency. Any civil money penalty in lieu of disqualification must be calculated in accordance with paragraph (l)(2)(x) of this section. The State agency must include documentation of its participant access determination and any supporting documentation in each vendor's file.

(3) *Prior warning.* The State agency does not have to provide the vendor with prior warning that violations were occurring before imposing any of the sanctions in paragraph (l) of this section.

(4) *Administrative reviews.* The State agency must provide administrative reviews of sanctions to the extent required by § 246.18.

(5) *Installment plans.* The State agency may use installment plans for the collection of civil money penalties and administrative fines.

(6) *Failure to pay a civil money penalty.* If a vendor does not pay, only partially pays, or fails to timely pay a civil money penalty assessed in lieu of disqualification, the State agency must disqualify the vendor for the length of the disqualification corresponding to the violation for which the civil money penalty was assessed (for a period corresponding to the most serious violation in cases where a mandatory sanction included the imposition of multiple civil money penalties as a result of a single investigation).

(7) *Actions in addition to sanctions.* Vendors may be subject to actions in

addition to the sanctions in this section, such as claims pursuant to paragraph (k) of this section and the penalties set forth in § 246.23(c) in the case of deliberate fraud.

(8) *Participant access determination criteria.* The State agency must develop participant access criteria. When making participant access determinations, the State agency must consider the availability of other authorized vendors in the same area as the violative vendor and any geographic barriers to using such vendors.

(9) *Termination of agreement.* When the State agency disqualifies a vendor, the State agency must also terminate the vendor agreement.

(m) *Home food delivery systems.* Home food delivery systems are systems in which authorized supplemental foods are delivered to the participant's home. Home food delivery systems must provide for:

(1) *Procurement.* Procurement of supplemental foods in accordance with § 246.24, which may entail measures such as the purchase of food in bulk lots by the State agency and the use of discounts that are available to States.

(2) *Accountability.* The accountable delivery of authorized supplemental foods to participants. The State agency must ensure that:

(i) Home food delivery contractors are paid only after the delivery of authorized supplemental foods to participants;

(ii) A routine procedure exists to verify the correct delivery of authorized supplemental foods to participants, and, at a minimum, such verification occurs at least once a month after delivery; and

(iii) Records of delivery of supplemental foods and bills sent or payments received for such supplemental foods are retained for at least three years. Federal, State, and local authorities must have access to such records.

(n) *Direct distribution food delivery systems.* Direct distribution food delivery systems are systems in which participants, parents or caretakers of infant or child participants, or proxies pick up authorized supplemental foods from storage facilities operated by the State agency or its local agencies. Direct distribution food delivery systems must provide for:

(1) *Storage and insurance.* Adequate storage and insurance coverage that minimizes the danger of loss due to theft, infestation, fire, spoilage, or other causes;

(2) *Inventory.* Adequate inventory control of supplemental foods received, in stock, and issued;

(3) *Procurement.* Procurement of supplemental foods in accordance with § 246.24, which may entail measures such as purchase of food in bulk lots by the State agency and the use of discounts that are available to States;

(4) *Availability.* The availability of program benefits to participants and potential participants who live at great distance from storage facilities; and

(5) *Accountability.* The accountable delivery of authorized supplemental foods to participants.

(o) *Participant, parent/caretaker, proxy, vendor, and home food delivery contractor complaints.* The State agency must have procedures to document the handling of complaints by participants, parents or caretakers of infant or child participants, proxies, vendors, home food delivery contractors, and direct distribution contractors. Complaints of civil rights discrimination must be handled in accordance with § 246.8(b).

(p) *Food instrument security.* The State agency must develop standards for ensuring the security of food instruments from the time the food instruments are created to the time they are issued to participants, parents/caretakers, or proxies. For pre-printed food instruments, these standards must include maintenance of perpetual inventory records of food instruments throughout the State agency's jurisdiction; monthly physical inventory of food instruments on hand throughout the State agency's jurisdiction; reconciliation of perpetual and physical inventories of food instruments; and maintenance of all food instruments under lock and key, except for supplies needed for immediate use. For EBT and print-on-demand food instruments, the standards must provide for the accountability and security of the means to manufacture and issue such food instruments.

(q) *Food instrument disposition.* The State agency must account for the disposition of all food instruments as either issued or voided, and as either redeemed or unredeemed. Redeemed food instruments must be identified as validly issued, lost, stolen, expired, duplicate, or not matching valid enrollment and issuance records. In an EBT system, evidence of matching redeemed food instruments to valid enrollment and issuance records may be satisfied through the linking of the Primary Account Number (PAN) associated with the electronic transaction to valid enrollment and issuance records. This process must be performed within 150 days of the first valid date for participant use of the food instruments and must be conducted in accordance with the financial management requirements of § 246.13. The State agency will be subject to claims as outlined in § 246.23(a)(4) for redeemed food instruments that do not meet the conditions established in paragraph (q) of this section.

(r) *Issuance of food instruments and authorized supplemental foods.* The State agency must:

(1) *Parents/caretakers and proxies.* Establish uniform procedures that allow parents and caretakers of infant and child participants and proxies to obtain and transact food instruments or obtain authorized supplemental foods on behalf of a participant. In determining whether a particular participant or parent/caretaker should be allowed to designate a proxy or proxies, the State agency must require the local agency or clinic to consider whether adequate measures can be implemented to provide nutrition education and health care referrals to that participant or, in the case of an infant or child participant, to the participant's parent or caretaker;

(2) *Signature requirement.* Ensure that the participant, parent or caretaker of an infant or child participant, or proxy signs for receipt of food instruments or authorized supplemental foods, except as provided in paragraph (r)(4) of this section;

(3) *Instructions.* Ensure that participants, parents or caretakers of infant and child participants, and proxies receive instructions on the proper use of food instruments, or on the procedures for obtaining authorized supplemental foods when food instruments are not used. The State agency must also ensure that participants, parents or caretakers of infant and child participants, and proxies are notified that they have the right to complain about improper vendor and home food delivery contractor practices with regard to program responsibilities;

(4) *Food instrument pick up.* Require participants, parents and caretakers of infant and child participants, and proxies to pick up food instruments in person when scheduled for nutrition education or for an appointment to determine whether participants are eligible for a second or subsequent certification period. However, in all other circumstances the State agency may provide for issuance through an alternative means such as EBT or mailing, unless FNS determines that such actions would jeopardize the integrity of program services or program accountability. If a State agency opts to mail food instruments, it must provide justification, as part of its alternative issuance system in its State Plan, as

required in § 246.4(a)(21), for mailing food instruments to areas where food stamps are not mailed. State agencies that opt to mail food instruments must establish and implement a system that ensures the return of food instruments to the State or local agency if a participant no longer resides or receives mail at the address to which the food instruments were mailed; and

(5) *Maximum issuance of food instruments.* Ensure that no more than a three-month supply of food instruments or a one-month supply of authorized supplemental foods is issued at any one time to any participant, parent or caretaker of an infant or child participant, or proxy.

(s) *Payment to vendors and home food delivery contractors.* The State agency must ensure that vendors and home food delivery contractors are paid promptly. Payment must be made within 60 days after valid food instruments are submitted for redemption. Actual payment to vendors and home food delivery contractors may be made by local agencies.

(t) *Conflict of interest.* The State agency must ensure that no conflict of interest exists, as defined by applicable State laws, regulations, and policies, between the State agency and any vendor or home food delivery contractor, or between any local agency and any vendor or home food delivery contractor under its jurisdiction.

(u) *Participant violations and sanctions.* (1) *General requirements.* The State agency must establish procedures designed to control participant violations. The State agency also must establish sanctions for participant violations. Participant sanctions may include disqualification from the Program for a period of up to one year.

(2) *Mandatory disqualification.* (i) *General.* Except as provided in paragraphs (u)(2)(ii) and (u)(2)(iii) of this section, whenever the State agency assesses a claim of $100 or more, assesses a claim for dual participation, or assess a second or subsequent claim of any amount, the State agency must disqualify the participant for one year.

(ii) *Exceptions to mandatory disqualification.* The State agency may decide not to impose a mandatory disqualification if, within 30 days of receipt of the letter demanding repayment, full restitution is made or a repayment schedule is agreed on, or, in the case of a participant who is an infant, child, or under age 18, the State or local agency approves the designation of a proxy.

(iii) *Terminating a mandatory disqualification.* The State agency may permit a participant to reapply for the Program before the end of a mandatory disqualification period if full restitution is made or a repayment schedule is agreed upon or, in the case of a participant who is an infant, child, or under age 18, the State or local agency approves the designation of a proxy.

(3) *Warnings before sanctions.* The State agency may provide warnings before imposing participant sanctions.

(4) *Fair hearings.* At the time the State agency notifies a participant of a disqualification, the State agency must advise the participant of the procedures to follow to obtain a fair hearing pursuant to § 246.9.

(5) *Referral to law enforcement authorities.* When appropriate, the State agency must refer vendors, home food delivery contractors, and participants who violate program requirements to Federal, State, or local authorities for prosecution under applicable statutes.

7. Revise § 246.13(h) to read as follows:

§ 246.13 Financial management system.

* * * * *

(h) *Adjustment of expenditures.* The State agency must adjust projected expenditures to account for redeemed food instruments and for other changes as appropriate.

* * * * *

8. In § 246.14:

a. Revise paragraph (b)(2); and

b. In paragraph (e)(3)(i), remove the reference to ''§ 246.12(r)(5)(iii)'' and add a reference to ''§ 246.12(k)(3)'' in its place.

The revision reads as follows:

§ 246.14 Program costs.

* * * * *

(b) * * *

(2) For costs to be allowable, the State agency must ensure that food costs do not exceed the customary sales price charged by the vendor, home food delivery contractor, or supplier in a direct distribution food delivery system. In addition, food costs may not exceed the price limitations applicable to the vendor.

* * * * *

9. Revise § 246.18 to read as follows:

§ 246.18 Administrative review of State agency actions.

(a) *Adverse actions subject to administrative reviews.* (1) *Vendor appeals.* (i) *Adverse actions subject to full administrative reviews.* Except as provided elsewhere in paragraph (a)(1) of this section, the State agency must provide full administrative reviews to vendors that appeal the following adverse actions:

(A) denial of authorization based on the vendor selection criteria for competitive price or for minimum variety and quantity of authorized supplemental foods (§ 246.12(g)(3)(i) and (g)(3)(ii)) or on a determination that the vendor is attempting to circumvent a sanction (§ 246.12(g)(4));

(B) termination of an agreement for cause;

(C) disqualification; and

(D) imposition of a fine or a civil money penalty in lieu of disqualification.

(ii) *Adverse actions subject to abbreviated administrative reviews.* The State agency must provide abbreviated administrative reviews to vendors that appeal the following adverse actions, unless the State agency decides to provide full administrative reviews for any of these types of adverse actions:

(A) denial of authorization based on the vendor selection criteria for business integrity or for a current Food Stamp Program disqualification or civil money penalty for hardship (§ 246.12(g)(3)(iii) and (g)(3)(iv));

(B) denial of authorization based on a State agency-established vendor selection criterion if the basis of the denial is a WIC vendor sanction or a Food Stamp Program withdrawal of authorization or disqualification;

(C) denial of authorization based on the State agency's vendor limiting criteria (§ 246.12(g)(2));

(D) denial of authorization because a vendor submitted its application outside the timeframes during which applications are being accepted and processed as established by the State agency under § 246.12(g)(7);

(E) termination of an agreement because of a change in ownership or location or cessation of operations (§ 246.12(h)(3)(xvii));

(F) disqualification based on a trafficking conviction (§ 246.12(l)(1)(i));

(G) disqualification based on the imposition of a Food Stamp Program civil money penalty for hardship (§ 246.12(l)(2)(ii)); and

(H) disqualification or a civil money penalty imposed in lieu of disqualification based on a mandatory sanction imposed by another WIC State agency (§ 246.12(l)(2)(iii)).

(iii) *Actions not subject to administrative reviews.* The State agency may not provide administrative reviews pursuant to this section to vendors that appeal the following actions:

(A) the validity or appropriateness of the State agency's vendor limiting or selection criteria (§ 246.12(g)(2) and (g)(3));

(B) the validity or appropriateness of the State agency's participant access criteria and the State agency's participant access determinations;

(C) the State agency's determination whether a vendor had an effective policy and program in effect to prevent trafficking and that the ownership of the vendor was not aware of, did not approve of, and was not involved in the conduct of the violation (§ 246.12(l)(1)(i)(B));

(D) denial of authorization if the State agency's vendor authorization is subject to the procurement procedures applicable to the State agency;

(E) the expiration of a vendor's agreement;

(F) disputes regarding food instrument payments and vendor claims (other than the opportunity to justify or correct a vendor overcharge or other error, as permitted by § 246.12(k)(3); and

(G) disqualification of a vendor as a result of disqualification from the Food Stamp Program (§ 246.12(l)(1)(vii)).

(2) *Effective date of adverse actions against vendors.* The State agency must make denials of authorization and disqualifications imposed under § 246.12(l)(1)(i) effective on the date of receipt of the notice of adverse action. The State agency must make all other adverse actions effective no earlier than 15 days after the date of the notice of the adverse action and no later than 90 days after the date of the notice of adverse action or, in the case of an adverse action that is subject to administrative review, no later than the date the vendor receives the review decision.

(3) *Local agency appeals.* (i) *Adverse actions subject to full administrative reviews.* Except as provided in paragraph (a)(3)(ii) of this section, the State agency must provide full administrative reviews to local agencies that appeal the following adverse actions:

(A) denial of a local agency's application;

(B) disqualification of a local agency; and

(C) any other adverse action that affects a local agency's participation.

(ii) *Actions not subject to administrative reviews.* The State agency may not provide administrative reviews pursuant to this section to local agencies that appeal the following actions:

(A) expiration of the local agency's agreement; and

(B) denial of a local agency's application if the State agency's local agency selection is subject to the procurement procedures applicable to the State agency;

(iii) *Effective date of adverse actions against local agencies.* The State agency must make denials of local agency applications effective immediately. The State agency must make all other adverse actions effective no earlier than 60 days after the date of the notice of the adverse action and no later than 90 days after the date of the notice of adverse action or, in the case of an adverse action that is subject to administrative review, no later than the date the local agency receives the review decision.

(b) *Full administrative review procedures.* The State agency must develop procedures for a full administrative review of the adverse actions listed in paragraphs (a)(1)(i) and (a)(3) of this section. At a minimum, these procedures must provide the vendor or local agency with the following:

(1) Written notification of the adverse action, the procedures to follow to obtain a full administrative review and the cause(s) for and the effective date of the action. When a vendor is disqualified due in whole or in part to violations in § 246.12(l)(1), such notification must include the following statement: ''This disqualification from WIC may result in disqualification as a retailer in the Food Stamp Program. Such disqualification is not subject to administrative or judicial review under the Food Stamp Program.''

(2) The opportunity to appeal the adverse action within a time period specified by the State agency in its notification of adverse action.

(3) Adequate advance notice of the time and place of the administrative review to provide all parties involved sufficient time to prepare for the review.

(4) The opportunity to present its case and at least one opportunity to reschedule the administrative review date upon specific request. The State agency may set standards on how many review dates can be scheduled, provided that a minimum of two review dates is allowed.

(5) The opportunity to cross-examine adverse witnesses. When necessary to protect the identity of WIC Program investigators, such examination may be conducted behind a protective screen or other device (also referred to as an ''in camera'' examination).

(6) The opportunity to be represented by counsel.

(7) The opportunity to examine prior to the review the evidence upon which the State agency's action is based.

(8) An impartial decision-maker, whose determination is based solely on whether the State agency has correctly applied Federal and State statutes, regulations, policies, and procedures governing the Program, according to the evidence presented at the review. The State agency may appoint a reviewing official, such as a chief hearing officer or judicial officer, to review appeal decisions to ensure that they conform to approved policies and procedures.

(9) Written notification of the review decision, including the basis for the decision, within 90 days from the date of receipt of a vendor's request for an administrative review, and within 60 days from the date of receipt of a local agency's request for an administrative review. These timeframes are only administrative requirements for the State agency and do not provide a basis for overturning the State agency's adverse action if a decision is not made within the specified timeframe.

(c) *Abbreviated administrative review procedures.* Except when the State agency decides to provide full administrative reviews for the adverse actions listed in paragraph (a)(1)(ii) of this section, the State agency must develop procedures for an abbreviated administrative review of the adverse actions listed in paragraph (a)(1)(ii) of this section. At a minimum, these procedures must provide the vendor with the following:

(1) Written notification of the adverse action, the procedures to follow to obtain an abbreviated administrative review, the cause(s) for and the effective date of the action, and an opportunity to provide a written response; and

(2) A decision-maker who is someone other than the person who rendered the initial decision on the action and whose determination is based solely on whether the State agency has correctly applied Federal and State statutes, regulations, policies, and procedures governing the Program, according to the information provided to the vendor concerning the cause(s) for the adverse action and the vendor's response; and

(3) Written notification of the review decision, including the basis for the decision, within 90 days of the date of receipt of the request for an administrative review. This timeframe is only an administrative requirement for the State agency and does not provide a basis for overturning the State agency's adverse action if a decision is not made within the specified timeframe.

(d) *Continuing responsibilities.* Appealing an action does not relieve a local agency or a vendor that is permitted to continue program operations while its appeal is in process from the responsibility of continued compliance with the terms of any written agreement with the State agency.

(e) *Finality and effective date of decisions.* The State agency procedures must provide that review decisions rendered under both the full and abbreviated review procedures are the final State agency action. If the adverse action under review has not already taken effect, the State agency must make the action effective on the date of receipt of the review decision by the vendor or the local agency.

(f) *Judicial review.* If the review decision upholds the adverse action against the vendor or local agency, the State agency must inform the vendor or local agency that it may be able to pursue judicial review of the decision.

10. In § 246.19, revise the section heading and revise paragraphs (a)(2), (b)(2), (b)(4), and (b)(5) to read as follows:

§ 246.19 Management evaluation and monitoring reviews.

(a) * * *

(2) The State agency must submit a corrective action plan, including implementation timeframes, within 60 days of receipt of an FNS management evaluation report containing a finding that the State agency did not comply with program requirements. If FNS determines through a management evaluation or other means that during a fiscal year the State agency has failed, without good cause, to demonstrate efficient and effective administration of its program, or has failed to comply with its corrective action plan, or any other requirements contained in this part or the State Plan, FNS may withhold an amount up to 100 percent of the State agency's nutrition services and administration funds for that year.

* * * * *

(b) * * *

(2) Monitoring of local agencies must encompass evaluation of management, certification, nutrition education, participant services, civil rights compliance, accountability, financial management systems, and food delivery systems. If the State agency delegates the signing of vendor agreements, vendor training, or vendor monitoring to a local agency, it must evaluate the local agency's effectiveness in carrying out these responsibilities.

* * * * *

(4) The State agency must promptly notify a local agency of any finding in a monitoring review that the local agency did not comply with program requirements. The State agency must require the local agency to submit a corrective action plan, including implementation timeframes, within 60 days of receipt of a State agency report of a monitoring review containing a finding of program noncompliance. The State agency must monitor local agency implementation of corrective action plans.

(5) As part of the regular monitoring reviews, FNS may require the State agency to conduct in-depth reviews of specified areas of local agency operations, to implement a standard form or protocol for such reviews, and to report the results to FNS. No more than two such areas will be stipulated by FNS for any fiscal year and the areas will not be added or changed more often than once every two fiscal years. These areas will be announced by FNS at least six months before the beginning of the fiscal year.

* * * * *

11. In § 246.23, revise paragraphs (a)(4) and (c) to read as follows:

§ 246.23 Claims and penalties.

(a) * * *

(4) FNS will establish a claim against any State agency that has not accounted for the disposition of all redeemed food instruments and taken appropriate follow-up action on all redeemed food instruments that cannot be matched against valid enrollment and issuance records, including cases that may involve fraud, unless the State agency has demonstrated to the satisfaction of FNS that it has:

(i) Made every reasonable effort to comply with this requirement;

(ii) Identified the reasons for its inability to account for the disposition of each redeemed food instrument; and

(iii) Provided assurances that, to the extent considered necessary by FNS, it will take appropriate actions to improve its procedures.

* * * * *

(c) *Claims.* (1) *Claims against participants.* (i) *Procedures.* If the State agency determines that program benefits have been obtained or disposed of improperly as the result of a participant violation, the State agency must establish a claim against the participant for the full value of such benefits. For all claims, the State agency must issue a letter demanding repayment. If full restitution is not made or a repayment schedule is not agreed on within 30 days of receipt of the letter, the State agency must take additional collection actions until restitution is made or a repayment schedule is agreed on, unless the State agency determines that further collection actions would not be cost-effective. The State agency must establish standards, based on a cost benefit analysis, for determining when collection actions are no longer cost-effective. At the time the State agency issues the demand letter, the State agency must advise the participant of the procedures to follow to obtain a fair hearing pursuant to § 246.9 and that failure to pay the claim may result in disqualification. In addition to establishing a claim, the State agency must determine whether disqualification is required by § 246.12(u)(2).

(ii) *Types of restitution.* In lieu of financial restitution, the State agency may allow participants or parents or caretakers of infant or child participants for whom financial restitution would cause undue hardship to provide restitution by performing in-kind services determined by the State agency. Restitution may not include offsetting the claim against future program benefits, even if agreed to by the participant or the parent or caretaker of an infant or child participant.

(iii) *Disposition of claims.* The State agency must document the disposition of all participant claims.

(2) *Claims against the State agency.* FNS will assert a claim against the State agency for losses resulting from program funds improperly spent as a result of dual participation, if FNS determines that the State agency has not complied with the requirements in § 246.7(l)(1).

(3) *Delegation of claims responsibility.* The State agency may delegate to its local agencies the responsibility for collecting participant claims.

* * * * *

12. In § 246.26, revise the heading of paragraph (d), and add new paragraphs (e), (f), and (g) to read as follows.

§ 246.26 Other provisions.

* * * * *

(d) *Confidentiality of applicant and participant information.* * * *

(e) *Confidentiality of vendor information.* Confidential vendor information is any information about a vendor (whether it is obtained from the vendor or another source) that individually identifies the vendor, except for vendor's name, address and authorization status. Except as otherwise permitted by this section, the State agency must restrict the use or disclosure of confidential vendor information to:

(1) Persons directly connected with the administration or enforcement of the WIC Program or the Food Stamp Program who the State agency determines have a need to know the information for purposes of these programs. These persons may include personnel from its local agencies and other WIC State and local agencies and

persons investigating or prosecuting WIC or Food Stamp Program violations under Federal, State, or local law;

(2) Persons directly connected with the administration or enforcement of any Federal or State law. Prior to releasing the information to one of these parties (other than a Federal agency), the State agency must enter into a written agreement with the requesting party specifying that such information may not be used or redisclosed except for purposes directly connected to the administration or enforcement of a Federal, or State law; and

(3) A vendor that is subject to an adverse action, including a claim, to the extent that the confidential information concerns the vendor subject to the adverse action and is related to the adverse action.

(f) *Confidentiality of Food Stamp Program retailer information.* Except as otherwise provided in this section, the State agency must restrict the use or disclosure of information about Food Stamp Program retailers obtained from the Food Stamp Program, including information provided pursuant to Section 9(c) of the Food Stamp Act of 1977 (7 U.S.C. 2018(c)) and § 278.1(q) of this chapter, to persons directly connected with the administration or enforcement of the WIC Program.

(g) *USDA and the Comptroller General.* The State agency must provide the Department and the Comptroller General of the United States access to all WIC Program records, including confidential vendor information, pursuant to § 246.25(a)(4).

Dated: December 21, 2000.

Shirley R. Watkins,

Under Secretary, Food, Nutrition, and Consumer Services.

[FR Doc. 00–33111 Filed 12–28–00; 8:45 am]

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Friday,
December 29, 2000

Part VII

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 12 and 16

Federal Acquisition Regulation; Contract Types for Commercial Item Acquisitions; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 12 and 16

[FAR Case 2000–013]

RIN 9000–AJ03

Federal Acquisition Regulation; Contract Types for Commercial Item Acquisitions

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to provide clarification on what contract-types are authorized for commercial item acquisitions.

DATES: Interested parties should submit comments in writing on or before February 27, 2001 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to: farcase.2000__013@gsa.gov.

Please submit comments only and cite FAR case 2000–013 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAR case 2000–013.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends FAR 12.207 and 16.2 to more closely parallel the contract-type requirements in Section 8002(d) of FASA (Pub. L. 103–355). FASA states that agencies must use firm-fixed price (FFP) contracts and fixed-price contracts with economic price adjustments (FP/EPA) to the maximum extent practicable for commercial item acquisitions. FASA also prohibits the use of cost-type contracts. The rule revises FAR 12.207 to—

- Reflect the ''to the maximum extent practicable'' caveat in FASA.
- Authorize the use of noncost-based incentives such as award fees and performance or delivery incentives.
- Add language that discusses pricing mechanisms for acquiring commercial services available on a time-and-material or labor-hour basis within the Part 12 contract type restrictions.
- Revise FAR 16.202 and 16.203 to indicate that noncost-based award fee and performance or delivery incentives may be used in conjunction with FFP contracts and FP/EPA without changing the FFP or FP/EPA nature of the contract.

The changes made in this rule are intended to facilitate greater use of FAR Part 12 for commercial services acquisitions by providing the contract type flexibility embodied in statute.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because changes made by the rule primarily clarify language pertaining to the contract types currently authorized by statute for commercial item acquisitions and does not change existing policy. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR parts 12 and 16 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2000–013), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 12 and 16

Government procurement.

Dated: December 22, 2000.

Al Matera,

Acting Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose that 48 CFR parts 12 and 16 be amended as set forth below:

1. The authority citation for 48 CFR parts 12 and 16 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 12—ACQUISITION OF COMMERCIAL ITEMS

2. In section 12.207, remove the undesignated paragraph.

3. Add sections 12.207–1 and 12.207–2 to read as follows:

12.207–1 Authorized contract types.

(a) Agencies must use, to the maximum extent practicable, firm-fixed-price contracts or fixed-price contracts with economic price adjustment for the acquisition of commercial items. These contract types may be used in conjunction with an award fee incentive and performance or delivery incentives when the award fee or incentive is based solely on factors other than cost (see 16.202–1 and 16.203–1).

(b) Agencies may use indefinite-delivery contracts (see 16.5) when the task or delivery orders are issued under one of the authorized contract types in paragraph (a) of this subsection. Contracting officers must follow the procedures in 16.505 when placing orders.

(c) Use of cost-type contracts or contracts with incentives based on cost is prohibited.

12.207–2 Commercial services available on a time-and-material or labor-hour basis.

Some services are available in the commercial market on a time-and-material or labor-hour basis. Contracting officers may acquire these types of services under part 12 by using the following pricing strategies when cost-effective and consistent with commercial practice:

(a) An indefinite-delivery contract with established fixed hourly rates that permit negotiating orders (including any required material) under one of the authorized contract types in 12.207–1.

(b) Sequential contract actions that acquire the requirement in modular components using the authorized contract types in 12.207–1 (*e.g.,* a preliminary firm-fixed-price ''diagnostic'' effort allowing the contractor to understand the scope of work sufficiently to propose the large requirement on a firm-fixed-price basis).

PART 16—TYPES OF CONTRACTS

4. In section 16.202–1, add the following sentences to the end of the paragraph to read as follows:

16.202–1 Description.

* * * The contracting officer may use a fixed-price contract in conjunction with an award-fee incentive (see 16.404) and performance or delivery incentives (see 16.402–2 and 16.402–3) when the award fee or incentive is based solely on factors other than cost. The contract type remains firm-fixed-price when used with these incentives.

5. In section 16.203–1, redesignate the introductory text as paragraph (a), and paragraphs (a) through (c) as (1) through (3), respectively; and add paragraph (b) to read as follows:

16.203–1 Description.

* * * * *

(b) The contracting officer may use a fixed-price contract with economic price adjustment in conjunction with an award-fee incentive (see 16.404) and performance or delivery incentives (see 16.402–2 and 16.402–3) when the award fee or incentive is based solely on factors other that cost. The contract type remains fixed-price with economic price adjustment when used with these incentives.

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The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

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Intelligence Authorization Act for Fiscal Year 2001 (Dec. 27, 2000; 114 Stat. 2831)

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