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CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
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OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2634

RIN 3209–AA00

Amendment to Clarify Regulatory Intent on Finality of Review for Complaints Regarding Designation of Positions for Employee Confidential Financial Disclosure Reporting

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule; clarifying amendment.

SUMMARY: The Office of Government Ethics is amending the executive branchwide financial disclosure regulation to clarify its original intent that the review provided for therein by an agency head (or his designee) is final for all purposes regarding employee complaints about designation of positions for confidential financial disclosure reporting, and that it constitutes the sole and exclusive means of such review.

EFFECTIVE DATE: March 31, 1998.

ADDRESSES: Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917, Attn.: Mr. G. Sid Smith.

FOR FURTHER INFORMATION CONTACT: G. Sid Smith, Senior Associate General Counsel, Office of Government Ethics, telephone: 202–208–8000; TDD: 202–208–8025; FAX: 202–208–8037.

SUPPLEMENTARY INFORMATION: Six years ago, the Office of Government Ethics issued a regulation at subpart I of 5 CFR part 2634 (under its authority at 5 U.S.C. appendix, section 107(a) and section 201(d) of Executive Order 12674) to govern the confidential financial disclosure reporting system for executive branch employees, effective October 5, 1992. Pursuant to the provisions therein at §§ 2634.904 and 2634.905, each executive branch department and agency designates which positions will require employees to file confidential disclosure reports (primarily OGE Form 450), based on criteria in the regulation. Section 2634.906 established the executive branch procedures for handling employees' complaints about an agency's designation of their positions, whereby review and decision of the agency head or his designee shall be final.

The purpose of this finality, without additional appeals or complaints, is to avoid protracted review of filer designations, which could seriously undermine the effectiveness and orderly administration of the executive branch confidential financial disclosure system. While an agency's decision to require confidential reports by employees in designated positions affects the privacy of employees, there are sufficient safeguards built into the system to adequately minimize privacy intrusions, such that the need for nonpublic financial disclosure clearly outweighs privacy concerns. Therefore, prompt and final decisions about who must file these reports are necessary and appropriate.

The bases for the confidential financial disclosure system and the safeguards that have been built in are described at 5 CFR 2634.901. Specifically, the confidential disclosure system serves the necessary purposes of assisting in the prevention of employee conflicts of interest and maintaining ethical integrity in agency programmatic functions. These reports are strictly confidential, not available to the public under the Freedom of Information Act (5 U.S.C. 552, exemptions (b)(3), (b)(4) and (b)(6)) or otherwise, and protected under the Privacy Act (5 U.S.C. 552a), section 107(a) of the Ethics in Government Act (5 U.S.C. appendix, § 107(a)), and section 201(d) of Executive Order 12674. Additionally, only certain types of positions may be designated, applying the criteria provided, and employees may seek review by the agency head (or designee) of an agency decision to designate their positions for filing, in accordance with the procedure prescribed in § 2634.906.

Given the importance of the confidential reporting system and these built-in protections for employees, OGE determined that it was necessary and appropriate to reach finality as promptly as possible when handling filer designation complaints. That was and continues to be the basis for the statement in the regulatory text at 5 CFR 2634.906 that the decision of the agency head or his designee is final. Because OGE considered the finality language of the regulation to be clear and unambiguous, its meaning was not discussed in the preamble to that regulatory promulgation at 57 **Federal Register** 11800–11830 (April 7, 1992).

It has become apparent, however, that some may be interpreting this finality as limited to the agency's internal decisional mechanism for review, leaving open the possibility of negotiated grievance and arbitration procedures, or other remedies within or outside the agency. See, for example, the Federal Labor Relations Authority's decision in *American Federation of Government Employees, Local 3258 (Union) and U.S. Department of Housing and Urban Development, Boston, Massachusetts (Agency)*, 0–AR–2734 (FLRA, Feb. 19, 1998).

In order to clarify the original intent of the regulation in that regard, OGE is issuing this minor clarifying regulatory amendment, which will state more emphatically that the agency head's (or his designee's) decision upon review of complaints regarding the designation of an employee's position for filing confidential financial disclosure reports is final and conclusive for all purposes, notwithstanding any other provision of law or regulation. Specifically, the amendment to the regulation re-emphasizes, by expressly stating, that this procedure is the sole and exclusive means of seeking such review, and that the final decision by the agency head or designee is intended to preclude administrative or negotiated grievances, arbitration procedures, and any other review or appeal, either within or outside the agency.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553 (b) and (d), as Director of the Office of Government Ethics, I find good cause exists for waiving the general notice of proposed rulemaking, public comment procedures and 30-day delay in effectiveness as to this revision. The notice, comment and delayed effective date are being waived because this minor amendment to OGE financial disclosure regulations concerns a matter of agency

organization, practice and procedure. Furthermore, it is in the public interest that this amendment become effective immediately, in order to preserve the orderly administration of the confidential financial disclosure system. The amendment's sole purpose is to clarify the original intent of the financial disclosure regulation on a discrete matter which has been the subject of recent question.

Executive Order 12866

In promulgating this minor amendment to its regulation, OGE has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This amendment has not been reviewed by the Office of Management and Budget under that Executive order, as it is not deemed "significant" thereunder.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rulemaking will not have a significant economic impact on a substantial number of small entities because it primarily affects Federal executive branch agencies and their employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply, because this rulemaking does not create any additional information collection requirements, but simply clarifies the finality of a procedure for determining which positions require employees to file confidential financial disclosure reports (OGE Form 450), involving an information collection procedure previously approved in February 1996 by the Office of Management and Budget (OMB Control No. 3209–0006).

List of Subjects in 5 CFR Part 2634

Administrative practice and procedure, Certificates of divestiture, Conflict of interests, Financial disclosure, Government employees, Penalties, Privacy, Reporting and recordkeeping requirements, Trusts and trustees.

Approved: March 17, 1998.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Office of Government Ethics is amending part 2634 of chapter XVI of 5 CFR as follows:

PART 2634—[AMENDED]

1. The authority citation for part 2634 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 26 U.S.C. 1043; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

2. Section 2634.906 is amended by revising the second sentence and adding a new final sentence and a note at the end to read as follows:

§ 2634.906 Review of confidential filer status.

* * * A decision by the agency head or designee regarding the complaint shall be final and conclusive for all purposes, notwithstanding any other provision of law or regulation. This procedure is the sole and exclusive means of seeking review of an agency's decision to designate positions and the employees therein for filing confidential financial disclosure reports.

Note: The provision in this section for a final decision by the agency head or designee is intended to preclude administrative or negotiated grievances, arbitration procedures, and any other review or appeal, either within or outside the agency. This finality of the agency head's (or designee's) decision is necessary in order to maintain the prompt and orderly administration of the executive branch confidential financial disclosure system.

[FR Doc. 98–8312 Filed 3–30–98; 8:45 am]

BILLING CODE 6345–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket Number FV–97–302]

RIN 0581–AB51

Fees for Destination Market Inspections of Fresh Fruits, Vegetables and Other Products

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the regulations governing the inspection and certification for fresh fruits, vegetables and other products by increasing by approximately 10 percent the fees charged for the inspection of these products at destination markets. These revisions are necessary in order to recover, as nearly as practicable, the costs of performing inspection services at destination markets under the Agricultural Marketing Act of 1946. The fees charged to persons required to have inspections on imported commodities in accordance with the Agricultural Marketing Agreement Act of 1937 and for imported peanuts under the Agricultural Act of 1949 are also affected. This rule also revises the regulations with regard to the disposition of inspection certificates to require that one copy of the certificate be delivered or mailed to the shipper of the inspected product.

EFFECTIVE DATE: April 6, 1998.

FOR FURTHER INFORMATION CONTACT: Rob Huttenlocker, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, PO Box 96456, Room 2049 South Building, Washington, DC 20090–6456, (202) 720–0297.

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and Regulatory Flexibility Act

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

Also, pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

AMS regularly reviews its user-fee financed programs to determine if the fees are adequate. The Fresh Products Branch (FPB) of the Fruit and Vegetable Programs, AMS, has and will continue to seek out cost saving opportunities and implement appropriate changes to reduce its costs. Such actions can provide alternatives to fee increases. However, even with these efforts, the existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance (four months of costs) as called for by Agency policy (AMS Directive 408.1). Current revenue projections for destination market inspection work during FY 97 are $12.0 million with costs projected at $11.9 million and an end-of-year reserve of $3.0 million. However, FPB's trust fund balance for this program will be approximately $1.0 million under the four-month level of approximately $4.0 million. Further, FPB's costs of operating the destination market program are expected to increase to approximately $12.9 million during FY 98 and to approximately $13.2 million in FY 99. These cost increases will result from both inflationary increases with regard to current FPB operations

and services and the need to improve or expand current services.

Employee salaries and benefits are major program costs that account for approximately 80 percent of FPB's total operating budget. A general and locality salary increase for Federal employees, ranging from 2.30 to 4.66 percent depending on locality, effective January 1997, significantly increased program costs. Another general and locality salary increase ranging from 2.44 to 6.52 percent became effective in January 1998. In addition, inflation also impacts upon FPB's non-salary costs. These increases will increase FPB's costs of operating this program by approximately $300,000 per year.

Additional revenues are also needed to enable FPB to cover the costs of improving program integrity by mailing copies of all destination market certificates to the shippers of the products inspected. FPB estimates that it will cost $200,000 per year for the postage, envelopes and additional staff time to send the approximately 275,000 inspection certificates it issues annually. Additional revenues are also necessary in order that FPB may cover the costs of securing the additional staff ($200,000) needed to increase the timeliness of service delivery in several destination markets which are currently in need of additional staffing (e.g., Dallas, Texas). Finally, FPB needs an additional $200,000 per year for three to four years to cover the costs of securing the equipment (e.g., digital imaging cameras and computers, inspector notebook computers and Agency-mandated information systems upgrades) needed to expand FPB's services and to make existing services more efficient in the future.

This fee increase should result in an estimated $1.2 million in additional revenues per year (only $600,000 during FY 98 since the fee increase will be effective on April 6, 1998) and should enable FPB to cover its costs while maintaining current program reserves (at a level below that provided for by Agency policy).

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The action described herein is being taken for several reasons, including that additional user fee revenues are needed to cover the costs of: (1) Providing current program operations and services; (2) improving program integrity by mailing copies of all destination market certificates to the shippers of the products inspected (the basis for the change in regulation with regard to the disposition of inspection certificates to include that one copy be delivered or mailed to the shipper of the inspected product); (3) improving the timeliness with which inspection services are provided; and (4) acquiring technological advancements (e.g., digital imaging cameras and computers, inspector notebook computers and Agency-mandated information systems upgrades) aimed at expanding FPB's services and making them more efficient in the future. This rule should increase user fee revenue generated under the destination market program by approximately $1.2 million or approximately 10 percent per year. This action is authorized under the Agricultural Marketing Act (AMA) of 1946 (see 7 U.S.C. 1622(h)) which states that the Secretary of Agriculture may assess and collect "such fees as will be reasonable and as nearly as may be to cover the costs of services rendered * * *"

There are more than 2,000 users of FPB's destination market grading services (including applicants who must meet import requirements [1]—inspections which amount to under 2.5 percent of all lot inspections performed). A small portion of these users are small entities under the criteria established by the Small Business Administration (13 CFR 121.601). There will be no additional reporting, recordkeeping, or other compliance requirements imposed upon small entities as a result of this rule. In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements in part 51 have been approved previously by OMB and assigned OMB No. 0581–0125. FPB has not identified any other Federal rules which may duplicate, overlap or conflict with this rule.

Inasmuch as the destination market grading services are voluntary (except when required for imported commodities), and since the fees charged to users of these services vary with usage, the impact on all businesses, including small entities, is very similar. Further, even though fees will be raised, the increase is small (approximately ten percent) and should not significantly affect these entities. Finally, except for those persons who are required to obtain inspections, most of these businesses are typically under no obligation to use these inspection services, and, therefore, any decision on their part to discontinue the use of the services should not prevent them from marketing their products.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Action

The AMA authorizes official inspection, grading and certification, on a user-fee basis, of fresh fruits, vegetables and other products such as raw nuts, Christmas trees and flowers. The AMA provides that reasonable fees be collected from the users of the services to cover, as nearly as practicable, the costs of the services rendered. This rule will amend the schedule for fees and charges for inspection services rendered to the fresh fruit and vegetable industry to reflect the costs necessary to operate the program.

AMS regularly reviews its user-fee programs to determine if the fees are adequate. While FPB continues to search for opportunities to reduce its costs, the existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance (four months of costs) as called for by Agency policy (AMS Directive 408.1). Current revenue projections for destination market inspection work during FY 97 are $12.0 million with costs projected at $11.9 million and an end-of-year reserve of $3.0 million.

[1] Section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), requires that whenever the Secretary of Agriculture issues grade, size, quality or maturity regulations under domestic marketing orders for certain commodities, the same or comparable regulations on imports of those commodities must be issued. Import regulations apply during those periods when domestic marketing order regulations are in effect.

Currently, there are 15 commodities subject to 8e import regulations: avocados, dates (other than dates for processing), filberts, grapefruit, kiwifruit, limes, olives (other than Spanish-style green olives), onions, oranges, Irish potatoes, prunes, raisins, table grapes, tomatoes and walnuts. A current listing of the regulated commodities can be found under 7 CFR Parts 944, 980 and 999. Section 999.600 establishes minimum quality, identification, certification and safeguard requirements for foreign produced farmers stock, shelled and cleaned in-shell peanuts presented for importation into the United States. Import requirements applicable to peanuts may be found under subparagraph (f)(2) of section 108B of the Agricultural Act of 1949 (7 U.S.C. 1445c–3), as amended November 28, 1990, and August 10, 1993, and section 155 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7271).

However, FPB's trust fund balance for this program will be approximately $1.0 million under the four-month level of approximately $4.0 million. Further, FPB's costs of operating the destination market program are expected to increase to approximately $12.9 million during FY 98 and to approximately $13.2 million in FY 99. These cost increases (which are outlined below) will result from both inflationary increases with regard to current FPB operations and services and the need to improve or expand current services.

Employee salaries and benefits are major program costs that account for approximately 80 percent of FPB's total operating budget. A general and locality salary increase for Federal employees, ranging from 2.30 to 4.66 percent depending on locality, effective January 1997, significantly increased program costs. Another general and locality salary increase ranging from 2.44 to 6.52 percent became effective in January 1998. In addition, inflation also impacts upon FPB's non-salary costs. These increases will increase FPB's costs of operating this program by approximately $300,000 per year.

Additional revenues are also needed to enable FPB to cover the costs of improving program integrity by mailing copies of all destination market certificates to the shippers of the products inspected. This is an essential step in FPB's ongoing effort to improve the integrity of the inspection process. This action will assist in preventing industry participants from using falsified inspection certificates to alter the terms of sales between shippers and receivers. In accordance with this effort, the regulations with regard to the disposition of inspection certificates in 7 CFR 51.21 are to be revised to require that one copy of the certificate be provided to the shipper of the inspected product. FPB estimates that it will cost $200,000 per year for the postage, envelopes and additional staff time to send the approximately 275,000 inspection certificates it issues annually.

Additional revenues are also necessary in order that FPB may cover the costs of securing the additional staff ($200,000) needed to increase the timeliness of service delivery in several destination markets which are currently in need of additional staffing (e.g., Dallas, Texas). This action responds to industry feedback to FPB's FY 1996 Customer Service Survey which emphasized the importance of timeliness far more than cost containment.

Finally, FPB needs an additional $200,000 per year for three to four years to cover the costs of securing the equipment (e.g., digital imaging cameras and computers, inspector notebook computers and Agency-mandated information systems upgrades) needed to expand FPB's services and to make existing services more efficient in the future.

This fee increase should result in an estimated $1.2 million in additional revenues per year (only $600,000 during FY 98 since the fee increase will be effective on April 6, 1998) and should enable FPB to cover its costs while maintaining current program reserves. In order to reach a four month reserve, further increases in fees will be likely in future years.

Based on the aforementioned analysis of this program's increasing costs, AMS is hereby increasing the fees for destination market inspection services. The following table compares current fees and charges with the revised fees and charges for fresh fruit and vegetable inspection as found in 7 CFR 51.38. Unless otherwise provided for by regulation or written agreement between the applicant and the Administrator, the charges in the schedule of fees as found in § 51.38 are:

Service	Current	Revised
Quality and condition inspections of one to four products each in quantities of 51 or more packages and unloaded from the same land or air conveyance:		
—Over a half carlot equivalent of each product	$78	$86.
—Half carlot equivalent or less of each product	$65	$72.
—For each additional lot of the same product	$13	$14.
Condition only inspections of one to four products each in quantities of 51 or more packages and unloaded from the same land or air conveyance:		
—Over a half carlot equivalent of each product	$65	$72.
—Half carlot equivalent or less of each product	$60	$66.
—For each additional lot of the same product	$13	$14.
Quality and condition and condition only inspections of five or more products each in quantities of 51 or more packages and unloaded from the same land or air conveyance:		
—For the first five products	$277	$305.
—For each additional product	$39	$43.
—For each additional lot of any of the same product	$13	$14.
Quality and condition and condition only inspections of products each in quantities of 50 or less packages unloaded from the same land or air conveyance:		
—For each product	$39	$43.
—For each additional lot of any of the same product	$13	$14.
Dock-side inspections of an individual product unloaded directly from the same ship:		
—For each package weighing less than 15 pounds	1 cent	1.1 cents.
—For each package weighing 15 to 29 pounds	2 cents	2.2 cents.
—For each package weighing 30 or more pounds	3 cents	3.3 cents.
—For each additional lot of any of the same product	$13	$14.
—Minimum charge per individual product	$78	$86.
Inspections performed for other purposes during the grader's regularly scheduled work week	$39 per hour	$43 per hour.
Overtime or holiday premium rate (per hour additional) for all inspections performed outside the grader's regularly scheduled work week.	$19.50 per hour	21.50 per hour.

A notice of proposed rulemaking was published in the **Federal Register** (62 FR 66033) on December 17, 1997, with a 60-day comment period: The comment period closed on February 17, 1998. Interested persons were invited to participate in this rulemaking by submitting written comments on the proposal to AMS. One comment in opposition to the fee increase was received.

The comment was received from a law firm representing an association (of producers) which exports products into the U.S. The comment opposed the increase in fees for inspections of fresh fruits and vegetables at destination markets. The commentor went on to reiterate its long-standing opposition to mandatory marketing orders based upon general economic principles such as their promotion of anti-competitive practices in restraint of trade and because different inspection criteria are applied to foreign product than are applied to domestic product at comparable points in the distribution chain, thereby violating principles of free trade. Lastly, the commentor went on to conclude that the mandatory inspections and their costs would further enhance unfair trade practices. The comment argued that the increased fees would have a disproportionate impact on commodities such as table grapes and kiwifruit subject to section 8e requirements because foreign shippers cannot elect to discontinue the use of inspections, unlike domestic shippers.

The Agency disagrees with the positions taken in the comment and the conclusions reached therein. Section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), requires that whenever the Secretary of Agriculture issues grade, size, quality or maturity regulations under domestic marketing orders for certain commodities, the same or comparable regulations on imports of those commodities must be issued. Import regulations apply during those periods when domestic marketing order regulations are in effect. The regulations governing the section 8e program, including requirements for inspections and the fees charged in connection therewith, are consistent with the provisions of its authorizing statute and other applicable law.

Further, the tremendous growth in demand for fruits and vegetables in the U.S. market strongly supports the need to provide consumers with consistent, quality products. Quality standards are in the best interest of both U.S. producers and those who export products to the U.S. market.

Under the marketing order program, fruit and vegetable producers agree in a referendum vote to authorize minimum quality requirements on their products. Domestic shippers subject to marketing order minimum quality requirements must, in fact, have their product inspected and certified, under the supervision of the Agency, meeting the applicable requirements. Under section 8e, comparable quality requirements are simply extended to imported fruits and vegetables.

For most imported commodities subject to minimum quality requirements, U.S. total and per capita consumption has increased significantly. The association's exporter members generally ship products into the U.S. which are produced during a growing season that is different from that of the U.S. Thus, in large measure, such production is complimentary to U.S. production and not subject to mandatory requirements. By making quality product available to U.S. consumers on a consistent basis, the agricultural sectors in both countries benefit.

Accordingly, in light of the continuing need to maintain the AMS grading program on a financially sound basis, the Agency has decided to proceed with the fee increase as set forth in the proposal.

Pursuant to 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The fiscal year 1998 reserve balance of the program's trust fund is projected to be approximately $1 million under the desired level necessary to ensure the program's fiscal viability; (2) the fee changed adopted herein should be implemented as soon as possible to begin replenishing the operating reserve and bring revenue in line with costs; and (3) the first available billing cycle begins April 6, 1998. Accordingly, the effective date is April 6, 1998.

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Trees, Vegetables.

For reasons set forth in the preamble, 7 CFR part 51 is amended as follows:

PART 51—[AMENDED]

1. The authority citation for 7 CFR part 51 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

2. Section 51.21 is revised to read as follows:

§ 51.21 Disposition of inspection certificates.

(a) The original certificate, and not to exceed four copies (if requested by applicant prior to issuance), shall be delivered or mailed promptly to the applicant or to a person designated by him. One copy shall be delivered or mailed to the shipper of the inspected product. One copy shall be filed in the office of the inspector when the inspection is made by a Federal Government employee, otherwise, it shall be filed in the appropriate office of the cooperating Federal-State Inspection Agency. Unless otherwise directed by the Administrator, two copies of each official certificate issued on products received in destination markets shall be forwarded to the Administrator to be kept on file in Washington and no copies of official certificates issued at shipping point need be so forwarded. In the case of any product covered by a marketing agreement and/or order effective pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), at least one copy of each certificate covering the inspection of such product shall, on request, be delivered to the administrative agency established thereunder, subject to such terms and conditions as the Administrator may prescribe. Copies may be furnished to other interested parties as outlined in § 51.41.

3. Section 51.38 is revised to read as follows:

§ 51.38 Basis for fees and rates.

(a) When performing inspections of product unloaded directly from land or air transportation, the charges shall be determined on the following basis:

(1) For products in quantities of 51 or more packages:

(i) Quality and condition inspection of 1 to 4 products unloaded from the same conveyance:

(A) $86 for over a half carlot equivalent of an individual product.

(B) $72 for a half carlot equivalent or less of an individual product.

(C) $14 for each additional lot of the same product.

(ii) Condition only inspection of 1 to 4 products unloaded from the same conveyance:

(A) $72 for over a half carlot equivalent of an individual product.

(B) $66 for a half carlot equivalent or less of an individual product.

(C) $14 for each additional lot of the same product.

(iii) Quality and condition inspection and/or condition only inspection of 5 or more products unloaded from the same conveyance:

(A) $305 for the first 5 products.

(B) $43 for each additional product.

(C) $14 for each additional lot of any of the same product.

(2) For quality and condition inspection and/or condition only inspection of products in quantities of 50 or less packages unloaded from the same conveyance:

(i) $43 for each individual product.

(ii) $14 for each additional lot of any of the same product.

(b) When performing inspections of palletized products unloaded directly from sea transportation or when palletized product is first offered for inspection before being transported from the dock-side facility, charges shall be determined on the following basis:

(1) For each package inspected according to the following rates:

(i) 1.1 cent per package weighing less than 15 pounds;

(ii) 2.2 cents per package weighing 15 to 29 pounds; and

(iii) 3.3 cents per package weighing 30 or more pounds.

(2) $14 for each additional lot of any of the same product.

(3) A minimum charge of $86 for each product inspected.

(c) When performing inspections of products from sea containers unloaded directly from sea transportation or when palletized products unloaded directly from sea transportation are not offered for inspection at dockside, the carlot fees in § 51.38(a) shall apply.

(d) When performing inspections for Government agencies, or for purposes other than those prescribed in the preceding paragraphs, including weight-only and freezing-only inspections, fees for inspection shall be based on the time consumed by the grader in connection with such inspections, computed at a rate of $43 an hour: *Provided*, That:

(1) Charges for time shall be rounded to the nearest half hour;

(2) The minimum fee shall be two hours for weight-only inspections, and one-half hour for other inspections; and

(3) When weight certification is provided in addition to quality and/or condition inspection, a one-hour charge shall be added to the carlot fee.

(4) When inspections are performed to certify product compliance for Defense Personnel Support Centers, the daily or weekly charge shall be determined by multiplying the total hours consumed to conduct inspections by the hourly rate. The daily or weekly charge shall be prorated among applicants by multiplying the daily or weekly charge by the percentage of product passed and/or failed for each applicant during that day or week. Waiting time and overtime charges shall be charged directly to the applicant responsible for their incurrence.

(e) When performing inspections at the request of the applicant during periods which are outside the grader's regularly scheduled work week, a charge for overtime or holiday work shall be made at the rate of $21.50 per hour or portion thereof in addition to the carlot equivalent fee, package charge, or hourly charge specified in this subpart. Overtime or holiday charges for time shall be rounded to the nearest half hour.

(f) When an inspection is delayed because product is not available or readily accessible, a charge for waiting time shall be made at the prevailing hourly rate in addition to the carlot equivalent fee, package charge, or hourly charge specified in this subpart. Waiting time shall be rounded to the nearest half hour.

Dated: March 25, 1998.

Sharon Bomer Lauritsen,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–8391 Filed 3–30–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 911 and 915

[Docket No. FV98–911–1 FR]

Limes and Avocados Grown in Florida; Establishment of a Continuing Assessment Rate for Limes and a Decrease in the Continuing Assessment Rate for Avocados

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes an assessment rate for the Lime Administrative Committee (LAC) under Marketing Order No. 911 for the 1998–99 and subsequent fiscal years and decreases the assessment rate established for the Avocado Administrative Committee (AAC) under Marketing Order No. 915 for the 1998–99 and subsequent fiscal years. The Lime and Avocado Administrative Committees (Committees) are responsible for local administration of the marketing orders which regulate the handling of limes and avocados grown in Florida. Authorization to assess lime and avocado handlers enables the Committees to incur expenses that are reasonable and necessary to administer the programs. The fiscal years begin April 1 and end March 31. The assessment rates will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: April 1, 1998.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Southeast Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, PO Box 2276, Winter Haven, FL 33883–2276; telephone: (941) 299–4770, Fax: (941) 299–5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 126 and Marketing Order No. 911, both as amended (7 CFR part 911), regulating the handling of limes grown in Florida, and Marketing Agreement No. 121 and Marketing Order No. 915, both as amended (7 CFR part 915), regulating the handling of avocados grown in Florida, hereinafter referred to as the "orders." The marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing orders now in effect, Florida lime and avocado handlers are subject to assessments. Funds to administer the orders are derived from such assessments. It is intended that the assessment rates as issued herein will be applicable to all assessable limes and avocados beginning April 1, 1998, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any

district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule establishes an assessment rate for the LAC for the 1998–99 and subsequent fiscal years of $0.16 per bushel container. This rule also deceases the assessment rate established for the AAC for the 1998–99 and subsequent fiscal years from $0.16 per bushel container to $0.08 per bushel container.

The Florida lime and avocado marketing orders provide authority for the Committees, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the programs. The members of the Committees are producers and handlers of Florida limes and avocados. They are familiar with the Committees' needs and with the costs for goods and services in their local area and are thus in a position to formulate appropriate budgets and assessment rates. The assessment rates are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1996–97 and subsequent fiscal years, the AAC recommended, and the Department approved, an assessment rate that would continue in effect from fiscal year to fiscal year indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary. The LAC has not assessed handlers since the 1995–96 fiscal year. It has used reserve funds to cover authorized expenses.

The Committees met on December 10, 1997, and the LAC unanimously recommended 1998–99 expenditures of $130,785 and an assessment rate of $0.16 per bushel container of limes. The AAC also met on December 10, 1997, and unanimously recommended 1998–99 expenditures of $166,844 and an assessment rate of $0.08 per bushel container of avocados.

In comparison, last year's budgeted expenditures were $101,630 for the LAC and $123,000 for the AAC. The assessment rate for the LAC of $0.16 is the same as the rate established for the 1995–96 fiscal year, the last year handlers were assessed. The assessment rate for the AAC of $0.08 is $0.08 lower than the rate currently in effect.

In an effort to reduce industry costs and assist with the recovery from Hurricane Andrew which hit southern Florida in August of 1992, the LAC has been operating from its reserve funds for the past two years. With the lime industry beginning to recover and reserve funds reduced, the LAC voted to establish an assessment rate to cover operating expenses.

The AAC has excess reserve funds. They voted to decrease the assessment rate and use reserve funds to cover operating expenses and reduce reserve levels.

The major expenditures recommended by the LAC for the 1998–99 year include $46,000 for salaries, $25,000 for local and national enforcement, $9,448 for employee benefits, $9,000 for research, $8,287 for insurance and bonds, and $4,500 for travel. The LAC budgeted expenses for these items in 1997–98 were $40,000, $15,595, $5,500, $5,000, $0, and $3,000, respectively.

The major expenditures recommended by the AAC for the 1998–99 year include $46,000 for salaries, $34,000 for research, $32,000 for local and national enforcement, $9,778 for employee benefits, $8,516 for insurance and bonds, and $7,000 for travel. The AAC budgeted expenses for these items in 1997–98 were $40,000, $7,000, $26,595, $6,380, $7,937, and $7,000, respectively.

The assessment rates recommended by the Committees were derived by dividing anticipated expenses by expected shipments of Florida limes and avocados. Lime shipments for the year are estimated at 600,000 bushel containers which should provide $96,000 in assessment income. Avocado shipments for the year are estimated at 900,000 bushel containers which should provide $72,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committees' authorized reserves, should be adequate to cover budgeted expenses. Funds in the reserves will be kept within the maximum permitted by the orders (§§ 911.42 and 915.42—three fiscal years' operational expenses, permissible reserves of approximately $392,000 for limes and $501,000 for avocados). Reserves for limes are currently around $100,000, and reserves for avocados stand at around $250,000.

The assessment rates established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committees or other available information.

Although these assessment rates will be in effect for an indefinite period, the Committees will continue to meet prior to or during each fiscal year to recommend budgets of expenses and consider recommendations for modification of the assessment rates. The dates and times of Committee meetings are available from the Committees or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rates is needed. Further rulemaking will be undertaken as necessary. The Committees' 1998–99 budgets and those for subsequent fiscal years will be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 111 producers of limes and 141 producers of avocados in the production area and approximately 33 lime handlers and 49 avocado handlers subject to regulation under the marketing orders. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Based on the Florida Agricultural Statistical Service and Committee data, the average price for fresh limes during the 1995–96 season was $8.05 per 88 pound box equivalent and total shipments were 371,413 bushels. Approximately 20 percent of all handlers handled 86 percent of Florida lime shipments. The average price for fresh avocados during the 1996–97 season was $13.20 per 55 pound bushel box equivalent for all domestic

shipments and the total shipments were 917,861 bushels. Approximately 10 percent of all handlers handled 90 percent of Florida avocado shipments. Many lime and avocado handlers ship other tropical fruit and vegetable products which are not included in the Committee data but would contribute further to handler receipts.

Using the average prices, about 90 percent of lime and avocado handlers could be considered small businesses under SBA's definition and about 10 percent of the handlers could be considered large businesses. The majority of Florida lime and avocado handlers and producers may be classified as small entities.

This rule establishes an assessment rate for the LAC and collected from handlers for the 1998–99 and subsequent fiscal years of $0.16 per bushel container. The LAC unanimously recommended 1998–99 expenditures of $130,785 and an assessment rate of $0.16 per bushel container for 1998–99 and subsequent fiscal years. The assessment rate of $0.16 is the same as the rate established for the 1995–96 fiscal year, the last year handlers were assessed. The quantity of assessable limes for the 1998–99 fiscal year is estimated at 600,000 containers. Thus, the $0.16 rate for limes should provide $96,000 in assessment income. The assessment income, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses for 1998–99.

This rule also decreases the assessment rate established for the AAC and collected from handlers for the 1998–99 and subsequent fiscal years from $0.16 per bushel container to $0.08 per bushel container. The AAC unanimously recommended 1998–99 expenditures of $166,844 and an assessment rate of $0.08 per bushel container of avocados. The assessment rate of $0.08 is $0.08 lower than the 1997–98 rate. The quantity of assessable avocados for the 1998–99 fiscal year is estimated at 900,000 containers. Thus, the $0.08 rate for avocados should provide $72,000 in assessment income. The assessment income, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses.

Due to the devastation of Hurricane Andrew in August of 1992, the LAC has been operating from its reserve funds for the past two years. The industry has now adequately recovered from the loss. In order not to deplete reserve funds further, the LAC voted to establish an assessment rate for 1998–99 and subsequent fiscal years. The assessments, along with interest income and reserves, will cover committee operating expenses.

The AAC has a surplus in its reserve fund. The AAC voted to decrease the assessment rate and use funds from the reserves. The assessments, along with interest income and reserves, will cover committee operating expenses.

The LAC reviewed and unanimously recommended 1998–99 expenditures of $130,785 which include increases in salaries, office space, aerial photo/tree count, and office equipment. The AAC reviewed and unanimously recommended 1998–99 expenditures of $166,844 which include increases in salaries, office space, and aerial photo/tree count. Prior to arriving at this budget, the Committees considered information from various sources, such as the Committees' Budget Subcommittees. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research projects to the lime and avocado industries. The LAC budgeted $9,000 and the AAC budgeted $34,000 for research.

The assessment rate of $0.16 per bushel container of assessable limes was then determined by dividing the total recommended budget by the quantity of assessable limes, estimated at 600,000 bushel containers for the 1998–99 fiscal year. This is approximately $35,000 below the anticipated expenses, which the LAC determined to be acceptable. The assessment rate of $0.08 per bushel container of assessable avocados was then determined by dividing the total recommended budget by the quantity of assessable avocados, estimated at 900,000 bushel containers for the 1998–99 fiscal year. This is approximately $171,000 below the anticipated expenses, which the AAC determined to be acceptable.

A review of historical information indicates that the grower price for the 1998–99 season could range between $4.16 and $9.50 per container of limes. Therefore, the estimated assessment revenue for the 1998–99 crop year as a percentage of total grower revenue could range between 1.6 and 3.8 percent.

A review of historical information indicates that the grower price for the 1998–99 season could range between $13.20 and $14.90 per container of avocados. Therefore, the estimated assessment revenue for the 1998–99 crop year as a percentage of total grower revenue could range between .5 and .6 percent.

This action increases the assessment obligation imposed on lime handlers and decreases the assessment obligation imposed on avocado handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing orders. In addition, the Committees' meetings were widely publicized throughout the Florida lime and avocado industries and all interested persons were invited to attend the meetings and participate in deliberations on all issues. Like all LAC and AAC meetings, the December 10, 1997, meetings were public meetings and all entities, both large and small, were able to express views on this issue. In addition, interested persons were invited to submit information on the regulatory and information impacts of this action on small businesses.

This rule imposes no additional reporting or recordkeeping requirements on either small or large Florida lime and avocado handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on February 10, 1998 (63 FR 6679). Copies of the proposed rule were also mailed or sent via facsimile to all Florida lime and avocado handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register.

A 30-day comment period ending March 12, 1998, was provided for interested persons to respond to the proposal. No comments were received in response to the proposal.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committees and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the crop year begins on April 1, 1998, and the assessment rate applies to all limes and avocados received during the 1998–99 and subsequent seasons. Further, handlers are aware of this rule which was recommended at public meetings. Also, a 30-day comment period was

provided for in the proposed rule, and no comments were received.

List of Subjects

7 CFR Part 911

Limes, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 911 and 915 are amended as follows:

1. The authority citation for both 7 CFR parts 911 and 915 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 911—LIMES GROWN IN FLORIDA

2. A new subpart titled "Assessment Rates" and a new § 911.234 are added to read as follows:

Note: This section will appear in the Code of Federal Regulations.

Subpart—Assessment Rates

§ 911.234 Assessment rate.

On and after April 1, 1998, an assessment rate of $0.16 per bushel container is established for Florida limes.

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

3. A new subpart titled "Assessment Rates" is added and § 915.235 is revised to read as follows:

Note: This section will appear in the Code of Federal Regulations.

Subpart—Assessment Rates

§ 915.235 Assessment rate.

On and after April 1, 1998, an assessment rate of $0.08 per bushel container is established for South Florida avocados.

Dated: March 25, 1998.

Sharon Bomer Lauritsen,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–8392 Filed 3–30–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 51

[Docket No. 98–016–1]

Brucellosis; Increased Indemnity for Cattle and Bison

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations governing Federal indemnity paid under the brucellosis eradication program to increase the amount of indemnity that may be paid for certain cattle and bison destroyed because of brucellosis. This action will accelerate the eradication of brucellosis from the United States by giving owners sufficient financial incentive to destroy brucellosis-exposed cattle and bison by promptly depopulating brucellosis-affected herds. A number of owners of cattle and bison are reluctant to depopulate their affected herds, thereby increasing the risk of disease spread in the eradication program's last scheduled year.

DATES: Interim rule effective March 24, 1998. Consideration will be given only to comments received on or before June 1, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98–016–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–016–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. R. T. Rollo, Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road, Unit 36, Riverdale, MD 20737–1231, (301) 734–7709.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease affecting animals and humans caused by bacteria of the genus *Brucella.* In humans, brucellosis initially causes flulike symptoms, but the disease may develop into a number of chronic conditions, such as arthritis. In cattle and bison, brucellosis causes, among other things, decreased milk production, weight loss, and loss of young through abortion or birth of weak calves. Humans can be treated for brucellosis with antibiotics; there is no feasible means of curing brucellosis in animals.

Brucellosis is commonly transmitted to susceptible animals by direct contact with infected animals. The disease is also transmitted to susceptible animals in contact with an environment that has been contaminated by discharges from infected animals. Infected pregnant cows may discharge billions of *Brucella* bacteria at calving or abortion. Although it is not common, infected bulls can spread the disease to cows during breeding. Because brucellosis is transmitted by sexually intact animals, steers and spayed heifers do not pose a risk of transmitting brucellosis.

The regulations in part 78 of title 9 of the Code of Federal Regulations (CFR) govern the interstate movement of cattle, bison, and swine to help prevent the interstate spread of brucellosis. The regulations are part of a cooperative Federal and State program, administered by the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture (USDA), to eradicate brucellosis from the United States. Program officials are striving to eradicate the field strain of *Brucella abortus* from domestic cattle and bison herds by December 1998. The regulations in part 78 provide, among other things, a system for classifying States or portions of States (areas) according to the rate of *B. abortus* infection present and the general effectiveness of the brucellosis control and eradication program conducted in the State or area. The classifications are Class Free, Class A, Class B, Class C, and quarantined States or areas. Quarantined States or areas indicate States or areas with the highest rates of brucellosis infection, and Class Free States or areas are those in which there have been no findings of brucellosis infection for the 12 months preceding classification. As of March 1998, there were only 9 known affected cattle herds and 1 known affected bison herd, and APHIS had declared 41 States, Puerto Rico, and the U.S. Virgin Islands free of the disease. The nine remaining States are all Class A States.

The basic approach to brucellosis eradication in cattle and bison has been to test cattle and bison for infection and send infected and exposed animals to slaughter. Brucellosis-exposed cattle and brucellosis-exposed bison have a high probability of contracting

brucellosis, and may, in fact, be contagious before they react to an official test for brucellosis. The incubation period varies: Usually, cattle and bison develop a positive reaction to the blood test for brucellosis within 2 to 12 weeks after infection, but some may not do so for 8 months or longer. Meanwhile, any exposed sexually intact cattle and bison are potential transmitters of the disease. Because the continued presence of brucellosis in a herd seriously threatens the health of animals in that herd and other herds, the prompt destruction of brucellosis-affected cattle or bison is critical.

To encourage destruction of sexually intact cattle and bison infected with or exposed to brucellosis, USDA offers indemnity to certain owners. The regulations in 9 CFR part 51 (referred to below as the regulations) provide for payment of Federal indemnity to owners of certain animals destroyed because of brucellosis. Paragraphs (a)(1) through (a)(4) of § 51.3 of the regulations, "Payment to owners for animals destroyed," pertain to cattle and bison. According to § 51.3(a), the APHIS Administrator may authorize the payment of Federal indemnity by the USDA to any owner whose cattle or bison are destroyed as affected with brucellosis. Specifically, in accordance with paragraphs (a)(1) through (a)(4), the APHIS Administrator may authorize the payment of Federal indemnity by the USDA to any owner: Whose cattle or bison are destroyed as brucellosis reactors, whose herd of cattle or bison is destroyed because the Administrator has determined that destruction of all cattle and bison in the herd will contribute to the brucellosis eradication program, whose exposed female calf or calves are destroyed because of brucellosis, and who has brucellosis-exposed cattle or bison destroyed that were previously sold or traded from any herd that has, subsequent to the sale or trade, been found to be affected with brucellosis.

Currently, § 51.3 (a)(1) through (a)(4) allow, with a few exceptions, the following maximum per-head amounts for Federal indemnity:

(1) For reactors that are not part of a whole-herd depopulation: $250 for registered cattle and nonregistered dairy cattle and $50 for bison and nonregistered cattle other than dairy cattle.

(2) For cattle and bison in herds approved for depopulation:

- In States other than Class Free States: $250 for any nonregistered cattle other than dairy cattle; $250 for bison; and the lesser of 95 percent of appraised value, minus salvage value, or $750, for any registered cattle or nonregistered dairy cattle.
- In Class Free States: For any registered cattle, nonregistered dairy cattle, and any cattle or bison from herds affected with brucellosis, the lesser of 95 percent of appraised value, minus salvage value, or $750.

(3) For sexually intact exposed female calves: $50 (except for sexually intact female calves destroyed as part of a whole-herd depopulation, in which case the owners of such calves would receive the amounts listed in (2) above).

(4) For exposed cattle and bison sold or traded from a herd that has subsequently been found to be affected with brucellosis: $250 for registered cattle and nonregistered dairy cattle and $150 for bison and nonregistered cattle other than dairy cattle.

The regulations also include different indemnity rates for certain types of animals approved for indemnity under the brucellosis eradication program in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands because transportation costs to those locations make market prices for replacement animals higher than for animals in the contiguous United States.

Without sufficient financial incentive to destroy exposed animals or depopulate affected herds, many owners prefer to quarantine exposed animals or, when the exposed animals in a herd cannot be isolated, the entire herd. Quarantining is a lengthy and expensive process for both an owner and the USDA. The USDA has to pay to have the quarantined herd tested periodically, until the herd is found to be free of brucellosis, and the owner may not sell or move any animals while they are under quarantine, except for slaughter, which provides less revenue than sales for breeding purposes.

To provide additional financial incentive for owners to choose depopulation when USDA offers to pay indemnity for destruction of a herd, we are amending § 51.3 (a)(1) through (a)(4). The amendments change the method of determining the indemnity to be paid for all cattle and bison destroyed under the program, except for individual reactors and sexually intact exposed female calves that are not part of a whole-herd depopulation. Under this rule, the Administrator may authorize the payment of indemnity by USDA to any owner of the following animals destroyed under the brucellosis eradication program: (1) Cattle and bison identified as reactors as a result of a complete herd test and any sexually intact exposed female calves (defined in § 51.1 as "a female bovine less than 6 months of age that is nursed by a brucellosis reactor at the time such reactor is condemned, and that has not been altered to make it incapable of reproduction"), (2) cattle and bison in a herd that has been approved by APHIS for depopulation, and (3) brucellosis-exposed cattle and bison that were previously sold or traded from any herd that has, subsequent to the sale or trade, been found to be affected with brucellosis. In the case of the brucellosis-exposed cattle and bison, epidemiological information such as test results, herd history, and related evidence would be used to establish a probable date when the herd was first affected with brucellosis. Animals sold after that date would be considered to be exposed; those sold before that date would not.

Also under this rule, all owners of cattle and bison offered Federal indemnity, except owners of cattle and bison reactors and any sexually intact exposed female calves identified as a result of a complete herd test and destroyed other than as part of a whole-herd depopulation, may choose one of two methods, described below, for determining the indemnity amounts. The method chosen must be used for all animals to be destroyed. Owners that destroy cattle and bison reactors and sexually intact exposed female calves other than as part of a whole-herd depopulation are eligible to receive fixed rates for their animals: $250 for any registered cattle and nonregistered dairy cattle and $50 for any bison, nonregistered cattle other than dairy cattle, or sexually intact exposed female calves. Owners that destroy cattle and bison in herds approved for depopulation or brucellosis-exposed cattle and bison that meet the conditions described above may choose the appraisal method or fixed-rate method for determining the indemnity amounts. Under the appraisal method, each eligible animal will be appraised to determine its fair market value, and the indemnity shall be the appraised value minus the salvage value. Under the fixed-rate method, the indemnity will not exceed $250 per animal.

Owners have the option of having an appraisal done prior to choosing the method used. Appraisals will be conducted by an independent appraiser selected by the APHIS Administrator, and the cost of the appraisals will be borne by APHIS. In all cases, the amount of Federal indemnity will be determined in accordance with the regulations in 9 CFR part 51 that were in effect on the date that reactors were found or the date that depopulation or removal of individual exposed animals was approved. Prior to payment of

indemnity, proof of destruction [1] must be furnished to the Veterinarian in Charge.

In accordance with § 51.3 of the regulations, the Administrator shall authorize the maximum per-head amount for animals approved for indemnity under the brucellosis eradication program unless: (1) Sufficient funds are not available, (2) the State or area in which the animal is located is under Federal quarantine, (3) the State does not request payment of Federal indemnity, or (4) the State requests a rate lower than the maximum. The total compensation that APHIS will provide in fiscal year 1998 will be limited by available appropriated funding and will not exceed $3.41 million on a nationwide basis.

We are making these changes to the regulations at this time for many reasons, including accomplishing the regulatory reform goal of simplifying the regulations so that owners of brucellosis-affected animals can easily determine eligibility of their animals for indemnity and the maximum allowable indemnity rates. More importantly, program officials are striving to reach the goal of eradicating brucellosis from domestic cattle and bison herds by the end of 1998. As of March 1998, only 10 herds in the United States (9 cattle herds in Texas and 1 bison herd in South Dakota) remained under quarantine for brucellosis. We believe that depopulation of all affected herds is the most effective way to achieve eradication and prevent spread of the disease to unaffected herds. However, at the current indemnity rates specified in the regulations, some owners of affected herds are reluctant to depopulate their herds. Destruction of all affected animals is especially critical at this time as the program is in its last scheduled year, and severe funding cuts are expected next year. This rule provides an economic incentive for the timely removal of brucellosis-exposed animals from any herd, thus minimizing the risk of those animals spreading brucellosis to a new herd.

[1] The Veterinarian in Charge shall accept any of the following documents as proof of destruction: (a) A postmortem report; (b) a meat inspection certification of slaughter; (c) a written statement by a State representative, APHIS representative, or accredited veterinarian attesting to the destruction of the animal; (d) a written, sworn statement by the owner or caretaker of the animal attesting to the destruction of the animal; (e) a permit (VS Form 1–27) consigning the animal from a farm or livestock market directly to a recognized slaughtering establishment; or (f) in unique situations where the documents listed above are not available, other similarly reliable forms of proof of destruction.

We want to encourage owners to depopulate entire herds when program officials have determined that such action is appropriate. By offering owners of affected herds the opportunity to receive fair market value for their animals, we believe that more owners will choose to depopulate their herds, rather than maintain their herds under quarantine. We are excluding reactors and sexually intact exposed female calves not destroyed as part of a whole-herd depopulation from the new system of determining indemnity rates to encourage owners to depopulate affected herds rather than remove individual reactors and sexually intact exposed female calves for destruction and maintain the rest of the herd under quarantine. Under this rule, owners of reactors and sexually intact exposed female calves destroyed as part of a whole-herd depopulation may choose to receive the appraised value, minus the salvage value realized, for these animals as they could for any other animal in their herd. Owners who choose not to depopulate herds containing reactors or sexually intact exposed female calves, but instead remove and destroy those animals only, will receive the fixed rates described previously in this document: For reactors, $250 for any registered cattle and nonregistered dairy cattle and $50 for any bison, nonregistered cattle other than dairy cattle, and sexually intact exposed female calves.

We are also making provision in this rule to increase the amount of indemnity offered to owners for certain brucellosis-exposed cattle and bison. When an epidemiological investigation reveals that certain animals in a herd were obtained from a herd that was, subsequent to the sale or trade, determined to be affected with brucellosis, a complete herd test is performed of the herd into which the animals from the affected herd were introduced. If the complete herd test reveals negative test results for the entire herd, including the newly introduced animals, program officials generally want to remove those newly introduced animals from the herd anyway because they could be incubating the disease, but program officials might not recommend depopulation of the entire herd at that point. (Whole-herd depopulation could become advisable at a later date if subsequent herd tests reveal brucellosis infection or if so indicated by further epidemiological investigation.) Therefore, we want to be able to offer a financial incentive to the owner to destroy the animals introduced from the affected herd as soon as possible.

We are also adding to § 51.1 definitions for "appraisal" and "complete herd test." These terms are used in § 51.3(a) as revised by this rule, and defining these terms is important for clarity and accuracy in interpreting the regulations.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the spread of brucellosis. The brucellosis eradication program is in its final critical stage with program officials striving for completion by December 1998. Depopulation of all remaining affected herds is the most effective means of achieving eradication. Owners of affected animals must be offered sufficient financial incentive to destroy their affected animals. Under the indemnity rates in effect prior to this interim rule, some owners have been reluctant to depopulate their herds. Maintaining these herds under quarantine is expensive for the Federal Government, which must bear the cost of testing them periodically, and, more importantly, allows the infection to remain in the cattle and bison herds, and potentially to spread to other herds.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. 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**. It 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. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This emergency situation makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. If we determine that this rule would have a significant economic impact on a substantial number of small entities, then we will discuss the issues raised by section 604

of the Regulatory Flexibility Act in our Final Regulatory Flexibility Analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

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 in conflict with this rule; (2) has no retroactive effect; and

(3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new 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 51

Animal diseases, Cattle, Hogs, Indemnity payments, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 51 is amended as follows:

PART 51—ANIMALS DESTROYED BECAUSE OF BRUCELLOSIS

1. The authority citation for part 51 continues to read as follows:

Authority: 21 U.S.C. 111–113, 114, 114a, 114a–1, 120, 121, 125, and 134b; 7 CFR 2.22, 2.80, and 371.2(d).

2. Section 51.1 is amended by adding definitions, in alphabetical order, for *Appraisal* and *Complete herd test* to read as follows:

§ 51.1 Definitions.

* * * * *

Appraisal. An estimate of the fair market value of an animal to be destroyed because of brucellosis. The estimate shall be based upon the meat, dairy, or breeding value of the animal.

* * * * *

Complete herd test. An official test for brucellosis (as defined in 9 CFR 78.1) performed under APHIS supervision in a cattle or bison herd on all cattle or bison that are (1) 6 months of age or more and not official vaccinates, except steers and spayed heifers; or (2) Official calfhood vaccinates of any age that are parturient or postparturient; or (3) Official calfhood vaccinates of beef breeds or bison with the first pair of permanent incisors fully erupted (2 years of age or more); or (4) Official calfhood vaccinates of dairy breeds with partial eruption of the first pair of permanent incisors (20 months of age or more).

* * * * *

3. In § 51.3, paragraph (a) is revised to read as follows:

§ 51.3 Payment to owners for animals destroyed.

(a) *Cattle and bison.* The Administrator may authorize the payment of Federal indemnity by the U.S. Department of Agriculture to any owner whose cattle or bison are destroyed after having been approved for destruction by APHIS under the brucellosis eradication program.[3] In all cases, the amount of Federal indemnity will be determined in accordance with the regulations in this part that were in effect on the date that reactors were found or the date that whole-herd depopulation or destruction of individual animals was approved. Prior to payment of indemnity, proof of destruction[4] must be furnished to the Veterinarian in Charge.

(1) *Eligibility for indemnity.* Owners of the following types of animals destroyed because of brucellosis are eligible to receive Federal indemnity for their animals:

(i) Cattle and bison identified as reactors as a result of a complete herd test and any sexually intact exposed female calves;

(ii) Cattle and bison in a herd that has been approved for depopulation; and

(iii) Brucellosis-exposed cattle and brucellosis-exposed bison that were previously sold or traded from any herd that was, subsequent to the sale or trade, found to be affected with brucellosis. Epidemiological information such as test results, herd history, and related evidence will be used to establish a probable date when the herd was first affected with brucellosis. Animals sold after that date will be considered to be exposed; those sold before that date will not.

(2) *Maximum per-head indemnity amounts.* Owners of the types of animals described in § 51.3(a)(1) are eligible to receive Federal indemnity for their animals in the following amounts:

(i) *Brucellosis reactors and sexually intact exposed female calves.* Except for brucellosis reactors and sexually intact exposed female calves destroyed as part of a whole-herd depopulation, the indemnity for cattle and bison that are brucellosis reactors shall not exceed $250 for any registered cattle and nonregistered dairy cattle or $50 for any bison or nonregistered cattle other than dairy cattle, and the indemnity for sexually intact exposed female calves shall not exceed $50.

(ii) *Herd depopulations and individual exposed animals.* Owners of herds that have been approved for depopulation and owners of brucellosis-exposed cattle and brucellosis-exposed bison that meet the conditions of § 51.3 (a)(1)(iii) may choose either of the two methods described in paragraphs (a)(2)(ii)(A) and (a)(2)(ii)(B) of this section, involving fair market value of the animal to be destroyed or a fixed rate, for determining the maximum amounts of indemnity they may receive.[3] The method chosen must be used for all animals to be destroyed. Owners have the option of having an appraisal done prior to choosing the method used. Appraisals will be conducted by anindependent appraiser selected by the Administrator. The cost of the appraisals will be borne by APHIS.

(A) *Appraisal method.* Each eligible animal will be appraised to determine its fair market value. The indemnity shall be the appraised value, minus the salvage value.

(B) *Fixed-rate method.* The indemnity shall not exceed $250 per animal.

* * * * *

Done in Washington, DC, this 24th day of March 1998.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–8305 Filed 3–30–98; 8:45 am]

BILLING CODE 3410–34–P

[3] "The Administrator shall authorize payment of Federal indemnity by the U.S. Department of Agriculture at the maximum per-head rates in § 51.3: (a) As long as sufficient funds appropriated by Congress appear to be available for this purpose for the remainder of the fiscal year; (b) in States or areas not under Federal quarantine; (c) in States requesting payment of Federal indemnity; and (d) in States not requesting a lower rate.

[4] The Veterinarian in Charge shall accept any of the following documents as proof of destruction: (a) A postmortem report; (b) a meat inspection certification of slaughter; (c) a written statement by a State representative, APHIS representative, or accredited veterinarian attesting to the destruction of the animal; (d) a written, sworn statement by the owner or caretaker of the animal attesting to the destruction of the animal; (e) a permit (VS Form 1–27) consigning the animal from a farm or livestock market directly to a recognized slaughtering establishment; or (f) in unique situations where the documents listed above are not available, other similarly reliable forms of proof of destruction.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. 97–104–2]

Specifically Approved States Authorized To Receive Mares and Stallions Imported From Regions Where CEM Exists

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: On February 6, 1998, the Animal and Plant Health Inspection Service published a direct final rule. (See 63 FR 6063–6064, Docket No. 97–104–1.) The direct final rule notified the public of our intention to amend the animal importation regulations by adding Oklahoma to the lists of States approved to receive certain mares and stallions imported into the United States from regions affected with contagious equine metritis. We did not receive any written adverse comments or written notice of intent to submit adverse comments in response to the direct final rule.

EFFECTIVE DATE: The effective date of the direct final rule is confirmed as: April 7, 1998.

FOR FURTHER INFORMATION CONTACT: Dr. David Vogt, Senior Staff Veterinarian, Animals Program, National Center for Import and Export, VS, APHIS, 4700 River Road, Unit 39, Riverdale, MD 20737–1231, (301) 734–8423; or e-mail: dvogt@aphis.usda.gov.

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 24th day of March 1998.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–8306 Filed 3–30–98; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–228–AD; Amendment 39–10413; AD 98–06–34]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR–42 and ATR–72 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Aerospatiale Model ATR–42 and ATR–72 series airplanes, that requires revising the Airplane Flight Manual (AFM) to modify the limitation that prohibits positioning the power levers below the flight idle stop during flight, and to provide a statement of the consequences of positioning the power levers below the flight idle stop during flight. This amendment is prompted by incidents and accidents involving airplanes equipped with turboprop engines in which the ground propeller beta range was used improperly during flight. The actions specified by this AD are intended to prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

EFFECTIVE DATE: May 5, 1998.

ADDRESSES: Information pertaining to this amendment may be obtained from or examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2145; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Aerospatiale Model ATR–42 and ATR–72 series airplanes was published in the **Federal Register** on December 9, 1997 (62 FR 64787). That action proposed to require revision of the Limitations Section of the AFM to modify the limitation that prohibits the positioning of the power levers below the flight idle stop while the airplane is in flight, and to add a statement of the consequences of positioning the power levers below the flight idle stop while the airplane is in flight.

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

One commenter, the manufacturer, requests that the proposed rule not be issued specifically against Model ATR airplanes. The commenter states that ATR models already have a "warning" regarding failure of the electro-mechanical gate device. The manufacturer points out that the "warning" contains specific wording that was presented to the FAA during the public meeting held on June 11–12, 1996, in Seattle, Washington. The commenter also states that the proposal appears to indicate that ATR models are particularly affected by the identified unsafe condition. The commenter disagrees, and adds that the in-service experience of these models does not warrant an AD.

The FAA does not concur. The FAA finds that the AFM limitation required by this AD is necessary to prohibit positioning the power levers below the flight idle stop during flight, regardless of the protective features and warnings provided in the design of the affected airplanes. Additionally, although none of the accidents and incidents referenced in the preamble of the proposal involved Model ATR airplanes, the FAA has determined that AD action must be taken against all turbopropeller-powered airplanes (regardless of the design features of the airplane) that are not approved for operation in the beta range during flight. The FAA finds that revising the AFM to prohibit operation below the flight idle stop in flight is necessary in order to correct the identified unsafe condition. The appropriate vehicle for mandating such a requirement is an AD.

This same commenter requests that the wording of the AFM revision that was specified in the proposed rule be revised to reflect the wording of the current AFM revision. The commenter points out that the wording of the proposed AFM change and the wording of the current AFM revision are similar, and that the technical contents are equivalent.

The FAA concurs with the commenter that the wording specified in the proposal is similar to the wording of the current AFM change, and that the technical contents are equivalent. Therefore, the FAA has revised

paragraph (a) of the final rule to remove the proposed AFM wording and has inserted the current AFM change.

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

The FAA estimates that 144 Aerospatiale Model ATR–42 and ATR–72 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $8,640, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–06–34 Aerospatiale: Amendment 39–10413. Docket 97-NM–228-AD.

Applicability: All Model ATR–42 and ATR–72 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 loss of airplane controllability, or engine overspeed and consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statements. This action may be accomplished by inserting a copy of this AD into the AFM.

"Limitation under Flight Operation: ATR airplanes are protected against a positioning of power levers below the flight idle stop in flight by an IDLE GATE device. It is reminded that any attempt to override this protection is prohibited. Such positioning may lead to loss of airplane control or may result in an engine overspeed condition and consequent loss of engine power."

(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, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

(d) This amendment becomes effective on May 5, 1998.

Issued in Renton, Washington, on March 12, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–8347 Filed 3–30–98; 8:45 am]

BILLING CODE 4910–13–U

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–39538A; File No. S7–16–96 International Series—1111A]

RIN 3235–AG81

Amendments to Beneficial Ownership Reporting Requirements; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Correction to final rules.

SUMMARY: This document contains corrections to the final regulations which were published on January 16, 1998 [63 FR 2854] relating to the beneficial ownership reporting requirements.

EFFECTIVE DATE: March 31, 1998.

FOR FURTHER INFORMATION CONTACT: Dennis O. Garris, Chief, Office of Mergers and Acquisitions, Division of Corporation Finance, Securities and Exchange Commission at (202) 942–2920, 450 Fifth Street N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission adopted amendments on January 12, 1998, to its rules relating to the reporting of beneficial ownership in publicly-held companies. As published, the final regulations contain errors with respect to the implementation of the amendments to the existing rules and forms. In this release, the rules and forms containing such errors are being corrected.

Accordingly, the publication on January 16, 1998, of the final regulations

relating to the beneficial ownership reporting requirements which were the subject of FR Doc. 98–1084 is corrected as follows:

§ 240.13d–1 [Corrected]

1. On page 2866, first column, amend the first line in paragraph (d) after the words "Any person who" to add the words ", as of the end of any calendar year,".

§ 240.13d–101 [Corrected]

2. On page 2867, third column, second line, "240.13d–7(b)" is corrected to read "Rule 13d–7".

3. On page 2867, third column, amendment 6a is added preceding amendment 7 to read as follows:

6a. Amend § 240.13d–101 to revise the chart in Instruction (14) for Cover Page and in Item 7 revise the reference to "Rule 13d–1(f) (§ 240.13d–1(f))" to read "Rule 13d–1(k)".

§ 240.13d–101 Schedule 13D—Information to be included in statements filed pursuant to § 240.13d–1(a) and amendments thereto filed pursuant to § 240.13d–2(a).

* * * * *

Instructions for Cover Page

* * * * *

(14) *Type of Reporting Person* * * *

Category	Symbol
Broker Dealer	BD
Bank	BK
Insurance Company	IC
Investment Company	IV
Investment Adviser	IA
Employee Benefit Plan or Endowment Fund.	EP
Parent Holding Company/Control Person.	HC
Savings Association	SA
Church Plan	CP
Corporation	CO
Partnership	PN
Individual	IN
Other	OO

* * * * *

§ 240.13d–102 [Corrected]

4. On page 2867, third column, "[ ] Rule 13d–(c)" following the text that reads "Check the appropriate box to designate the rule pursuant to which this Schedule is filed;" is corrected to read "[ ] Rule 13d–1(c)".

5. On page 2868, second column, amendment 7a is added preceding amendment 8 to read as follows:

7a. Amend § 240.13d–102 by revising the chart in Instruction (12) for Cover Page and revise Item 7 to read as follows:

§ 240.13d–102 Schedule 13G—Information to be included in statements filed pursuant to § 240.13d–1 (b) and (c) and amendments thereto filed pursuant to § 240.13d–2(d).

* * * * *

Instructions for Cover Page

* * * * *

(12) *Type of Reporting Person* * * *

Category	Symbol
Broker Dealer	BD
Bank	BK
Insurance Company	IC
Investment Company	IV
Investment Adviser	IA
Employee Benefit Plan or Endowment Fund.	EP
Parent Holding Company/Control Person.	HC
Savings Association	SA
Church Plan	CP
Corporation	CO
Partnership	PN
Individual	IN
Other	OO

* * * * *

Item 7. Identification and Classification of the Subsidiary Which Acquired the Security Being Reported on by the Parent Holding Company or Control Person. If a parent holding company or control person has filed this schedule pursuant to Rule 13d–1(b)(1)(ii)(G), so indicate under Item 3(g) and attach an exhibit stating the identity and the Item 3 classification of the relevant subsidiary. If a parent holding company or control person has filed this schedule pursuant to Rule 13d–1(c) or Rule 13d–1(d), attach an exhibit stating the identification of the relevant subsidiary.

* * * * *

6. On page 2868, first column, 9th line, "Rule 13d–1(c)" is corrected to read "Rule 13d–1(d)".

7. On page 2868, first column, Item 3, the last sentence which reads "If this statement is filed pursuant to § 240.13d–1(c), check this box. [ ]" is removed.

8. On page 2868, second column, Item 8, the reference to "Item 3(h)" in the third line is corrected to read "Item 3(j)" and in the 7th line, "§ 240.13d–1(d)" is corrected to read "Rule 13d–1(c) or Rule 13d–1(d)".

10. On page 2868, second column, in the 4th line of the Note, "§ 240.13d–7(b)" is corrected to read "Rule 13d–7".

Dated: March 25, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–8315 Filed 3–30–98; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 7, 10, 145, 173, 174, 178, 181, 191

[T.D. 98–16]

RIN 1515–AB95

Drawback; Correction

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule; correction.

SUMMARY: Customs published in the **Federal Register** of March 5, 1998, a document revising the Customs Regulations regarding drawback. This document contains corrections to that document.

EFFECTIVE DATE: April 6, 1998.

FOR FURTHER INFORMATION CONTACT: Paul Hegland, Office of Regulations and Rulings, (202–927–1172).

SUPPLEMENTARY INFORMATION:

Background

The final regulations relating to drawback published as T.D. 98–16 in the **Federal Register** (63 FR 10970) on March 5, 1998, contain errors which may prove to be misleading and are in need of clarification. This document corrects those errors.

Correction of Publication

Accordingly, the publication on March 5, 1998, of the final regulations relating to drawback (T.D. 98–16) (rule document 98–5045) is corrected as follows:

1. On page 10971, under the second column, line 61, in the third from the last line of the second "Customs Response", after the words, "so complicated", and before the word, "area", the words, "an already complicated", are added.

2. On page 10974, under the second column, line 7, the word "part" appearing in the first sentence of the first "Customs Response" beginning thereunder is corrected to read "port".

3. On page 10977, under the first column, line 39, in the third sentence of the second paragraph of the second "Customs Response" thereunder, the word "an" is added before the words, "existing drawback "contract" ".

4. Also on page 10977, under the second column, line 44, in the "Customs Response" beginning thereunder, in the second paragraph, at the end of the third sentence, a period is added after the word "accordingly" and before the word "Section".

5. Additionally on page 10977, under the second column, line 64, in the

"Customs Response" beginning thereunder, in the fifth paragraph, first sentence, the section number "191.6(b)" is corrected to read "191.9(b)".

6. Again on page 10977, under the third column, on the last line thereof, after the term "1313(p)" and before the word "included", the word "be" is added.

7. On page 10979, under the second column, line 57, the phrase, "Accordingly to", starting the second sentence of the "Customs Response" beginning under this column, is corrected to read, "According to".

8. On page 10980, under the third column, line 59, in the third sentence of the second paragraph of the "Customs Response" beginning in that column, the phrase, "turn-over method" is corrected to read "turn-over period".

9. On page 10981, under the second column, line 12, the phrase, "receipts into and all withdrawals for", appearing in the second sentence of the "Customs Response" at the top of this column, is corrected to read, "receipts into inventory and all withdrawals therefrom for".

10. On page 10989, under the third column, line 21, the phrase, "consistent § 191.72(a)", appearing in the second paragraph of the initial "Customs Response" thereunder, is corrected to read, "consistent with § 191.72(a)".

11. On page 10991, under the third column, on the first line, the word, "to", is corrected to read, "in".

12. On page 10992, under the first column, line 11, the misspelling of the word, "provisions", is thus corrected.

13. On page 10996, under the third column, line 16, in the first "Customs Response" appearing under the heading "Appendix A", after the word "determined", the word "not" is added.

14. Also on page 10996, under the third column, line 55, regarding the third "Comment" appearing thereunder, the numbers "83–8" and the word "and", appearing on line 11 of this "Comment", are removed; and, on the following line, after the numbers "83–80", and before the semicolon, the following phrase is added: ", and 83–84".

15. On page 10997, under the first column, line 15, in the first full paragraph, a period is added after the phrase "or producers".

16. Also on page 10997, under the second column, line 7, after the word "changes" the words "were proposed" are added.

17. On page 10999, in the second column, under the heading "Paperwork Reduction Act", on line 7 of the first paragraph thereof, the phrase, "control number 1505–", is corrected to read "control number 1515–".

18. On page 11004, in the second column, on the first and third lines under the heading "Amendments to the Regulations", the number "178" is added in appropriate numerical order.

§ 191.2 [Corrected]

19. On page 11008, in the first column, in § 191.2(q)(2), the phrase, "paragraph (p)(1)" appearing therein is corrected to read, "paragraph (q)(1)".

20. Also on page 11008, under the first column, in § 191.2(t), line 4 thereof, the parenthesis appearing after the word "data" is removed.

§ 191.6 [Corrected]

21. On page 11009, under the second column, in § 191.6(c)(6), the reference to "§ 191.93" is corrected to read "§ 191.193".

§ 191.8 [Corrected]

22–24. Also on page 11010, under the third column, in § 191.8(e)(1), in the last sentence of this paragraph, the phrase, "appears in the published synopsis", is corrected to read, "shall appear in the published synopsis".

25. Additionally on page 11010, under the third column, in § 191.8(e)(2), the parenthetical "(Attention: Director, International Trade Compliance Division)" appearing at the end of the last sentence of this section is corrected to read, "(Attention: Director, Commercial Rulings Division)".

§ 191.11 [Corrected]

26. On page 11012, under the third column, in § 191.11(a), the reference to "§ 191.2(s)" appearing therein is corrected to read "§ 191.2(x)(1)".

27. On page 11013, under the first column, the last sentence of § 191.11(c) which reads, "For those users manufacturing under the request should be made by a separate letter.", is corrected to read, "For those users manufacturing under a general manufacturing drawback ruling (§ 191.7), the request should be made by a separate letter.".

§ 191.12 [Corrected]

28. Also on page 11013, under the first column, in the first sentence of § 191.12, the phrase, "a general manufacturing drawback ruling (§ 191.7)," is removed.

§ 191.14 [Corrected]

29. On page 11014, under the third column, in the last line of paragraph (c)(3)(ii)(B) of § 191.14, the figure "$381.00" is corrected to read "$391.00".

30. On page 11015, under the first column, in the last line of paragraph (c)(3)(iii)(D) of § 191.14, the figure "$331.00" is corrected to read "$341.00".

31. Also on page 11015, under the second column, in line 8 of § 191.14(c)(3)(iv)(C), the phrase, "inventory the lowest amount of", is corrected to read, "inventory with the lowest amount of".

32. Again on page 11015, under the second column, in the last line of paragraph (c)(3)(iv)(C) of § 191.14, the figure "$276.50" is corrected to read "$286.50".

§ 191.23 [Corrected]

33. On page 11017, under the first column, in § 191.23(a), line 7 thereof, the word "byproducts" in the second sentence is corrected to read "multiple products".

34. Also on page 11017, under the first column, in § 191.23(b), line 7, the word "byproducts" in the second sentence is corrected to read "multiple products".

35. Again on page 11017, under the first column, in § 191.23(c), line 10, the word "byproducts" in the second sentence is corrected to read "multiple products".

§ 191.31 [Corrected]

36. On page 11019, under the first column, in § 191.31(a), the phrase, "Section 1313(j)(1) of the Act", at the beginning of the sentence, is corrected to read, "Section 313(j)(1) of the Act".

§ 191.32 [Corrected]

37. Also on page 11019, under the first column, in § 191.32(a), on lines 8–9, the phrase "within 3 years after the importation" appearing in the first sentence thereof is corrected to read "before the close of the 3-year period beginning on the date of importation".

§ 191.42 [Corrected]

38. On page 11022, under the second column, in § 191.42(c), line 8 thereof, the phrase "or destroyer" appearing in the second sentence thereof is corrected to read "(for destruction, see § 191.44)".

§ 191.61 [Corrected]

39. On page 11024, under the second column, the heading of § 191.61(d)(1) entitled "Specific manufacturing drawback ruling." is corrected to read "Specific manufacturing drawback ruling; action by port director."; and the

designation for (d)(l)(i) and its heading "Action by port director" are removed.

40. Also on page 11024, under the second column, in § 191.61(d)(1), the word "therefore" where appearing therein is corrected to read "therefor".

§ 191.73 [Corrected]

41. On page 11025, under the first column, in § 191.73(b), the typographical error "AAAA" inserted before the footnote under the sample format for the Chronological Summary of Exports is removed.

§ 191.74 [Corrected]

42. Also on page 11025, under the second column, at the end of § 191.74, the parenthetical "(see § 191.10(e)" set forth is corrected to read "(see § 191.51(a))".

§ 191.81 [Corrected]

43. On page 11026, under the first column, in § 191.81(b)(1), the words "each file" appearing in the first sentence thereof are corrected to read "each files".

44. Also on page 11026, under the second column, in § 191.81(c)(2), the words "each file" appearing in the first sentence thereof are corrected to read "each files".

§ 191.91 [Corrected]

45. On page 11028, under the first column, the heading for § 191.91(f) entitled, "Action by drawback office controlling" is italicized.

§ 191.185 [Corrected]

46. On page 11037, under the first column, in § 191.185(d)(3), under line 8 of the "Transferor's Declaration", the typographical error following the phrase, "located at" is removed, and a blank line, "_____", is added in place thereof, prior to the parenthetical "(City and State)".

Appendix A [Corrected]

47. On page 11039, under the third column, in item "B." under "I.", in the first paragraph, following the term, "83–80,", the term, "83–84,", is added.

48. On page 11040, in the first column, under "J.2.", the last sentence of the parenthetical material is corrected by adding a period at the end thereof.

49. On page 11041, under the first column, in the first line, the phrase, "or producer for the account of the", is corrected to read, "or producer may manufacture or produce for the account of the".

50. Also on page 11041, under the first column, line 4, "T.D."s" is corrected to read "T.D.s".

51. On page 11042, under the first column, the heading for paragraph "H." entitled "Procedures And Records Maintained", is corrected to read "Procedures and Records Maintained".

52. Also on page 11042, under the third column, the second, third and fourth sentences appearing in Footnote "2" at the bottom of the column, are removed from this Footnote, and are added, as a separate paragraph, following the text of item "2." under "H.", in general ruling "VI.".

53. On page 11044, under the third column, for general ruling "VIII.", following the heading for paragraph "A." thereunder entitled "Same Kind and Quality (Parallel Columns)", for editorial clarity, two carriage returns are added thereafter, before the beginning of the parallel columns.

54. On page 11045, under the second column, in item "1." under "F.", the phrase "at the time of separation" appearing in the third sentence thereof is corrected to read "as the time of separation".

55. On page 11049, in "Exhibit C", under the heading for "Residual oils", in the "Bbls." column, the number "180.957" corresponding to the entry for "(14) Domestic Shipments" is corrected to read "180,957".

56. Also on page 11049, in "Exhibit C", under the heading for "Aviation gasoline", the numbers "278, 286" and "4.64041" corresponding to the entry for "(14) Domestic Shipments" are removed from the "Bbls." and "Drawback factor" columns, respectively, and are added under the "Bbls." and "Drawback factor" columns, respectively, corresponding to the entry for "(14) Domestic Shipments" under the heading for "Lubricating oils".

57. On page 11052, "Exhibit E–1" is revised to read as follows:

BILLING CODE 4820–02–P

BILLING CODE 4820-02-C

EXHIBIT E - 1

PRODUCIBILITY TEST FOR PRODUCTS ON WHICH RESIDUAL RIGHT TO DRAWBACK IS NOW CLAIMED AND PRODUCTS COVERED BY ABSTRACTS ON WHICH RAW MATERIALS COVERED WERE PREVIOUSLY DESIGNATED
ABC OIL CO., INC. - TULSA, OKLAHOMA REFINERY: PERIOD FROM JANUARY 1, 1995 TO JANUARY 31, 1995

Type and Class of Raw Material Designated - Crude, Class III

(21) Product	(22) Quantity in Barrels	(23) Industry Standard	(24) Quantity of Raw Material Of Type & Class Designated Needed to Produce Product		Covered by: 1. Period 2. Refinery	(19) Drawback Factor Per Barrel	(20) Crude allowed For Drawback
			Separate	Combined			
Aviation Gasoline	11,394	40%	28,485	29,125		1.00126	11,232
						1.01300	178
Residual Oils	125,618	83%	151,347	151,347	1. Jan. 1995	.45962	9,754
						.43642	45,561
Lubricating Oils	8,774	50%	17,548	17,932	2. Beaumont	4.52178	39,674
Petrochemicals, Other	(195)					1.00244	195
Petrochemicals, Other (Drawback Deliveries)	(1,015)						
Petrochemicals, Other (Total)	1,210	29%	4,172	4,503			
[Residual Rights]							
Aviation Gasoline	256	40%	640	29,125		1.01265	259
Lubricating Oils	192	50%	384	17,932	1. Jan. 1995	4.59006	881
Petrochmicals, Other	96	29%	331	4,503	2. Tulsa	1.12412	108
Distillate Oils	3,807	89%	4,278	4,278		.76624	2,917
	151,347					Subtotal:	4,165
						Total:	110,759

A - Crude allowed (column 20: 110,759; plus crude allowed for drawback deliveries: 1,042): 111,801 bbls.
B - Total quantity exported (including drawback deliveries)(column 22): 151,347 "
C - Largest quantity of raw material needed to produce an individual exported product (see col. 24): 151,347
D - The excess of raw material over the largest of line A, B, or C, required to produce concurrently on a practical operating basis, using the most efficient processing equipment existing within the domestic industry, the exported articles (including drawback deliveries) in the quantities exported (or delivered): NONE
E - Minimum quantity of raw material required to be designated (which is A, B, or C, whichever is largest, plus D, if applicable): 151,347 bbls.

Drawback Computation
4,165* bbls. @ 101/2 = $437.33
Less 1% 4.37
Amount of Drawback Claim - Net $432.96

* See subtotal, col.20, for ResidualRights

CERTIFICATE

I hereby certify that all the above drawback deliveries and products exported by the Tulsa, Oklahoma refinery of ABC Oil Co., Inc., during the period from January 1, 1995 to January 31, 1995, could have been produced concurrently on a practical operating basis together with all drawback deliveries and products exported covered by Exhibit E of the abstract for the period January 1, 1995 to January 31, 1995, filed by the Beaumont, Texas refinery of the company from 151,347 barrels of imported Class III crude against which drawback is claimed.

Signature

58. On page 11053, in "Exhibit E (COMBINATION)", the number "28,485" under column "(24)", corresponding to the entry for "Aviation Gasoline" under Column "(21)", is corrected to read "28,045".

59. On page 11056, under the first column, under "L.6.", the reference to "section 1313(b)" therein is corrected to read "section 1313".

60. On page 11057, under the third column, at the end of item "2." under "X.", the period is removed therefrom, and a semicolon followed by the word "and" is added in place thereof.

61. Also on page 11057, at the bottom of the third column, Footnote "1" is corrected by removing the semicolon appearing at the end thereof.

62. On page 11058, at the bottom of the third column, the second, third and fourth sentences, appearing under Footnote "4", are removed therefrom, and these sentences are added as a separate paragraph following the text appearing in item "3." of paragraph "I." in the third column.

63. On page 11059, under the third column, in item "6." under "L.", of general ruling "XII.", the reference to "section 1313(b)" therein is corrected to read "section 1313".

64. Also on page 11059, under the third column, the third, fourth and fifth sentences appearing as part of the text of the paragraph in item "I.3." of general ruling "XIII." are made into a new paragraph under the same item.

65. On page 11060, under the first column, in item "6." under "L.", the reference to "section 1313(b)" therein is corrected to read "section 1313".

Appendix B [Corrected]

66. On page 11063, in the second column, under the heading "INVENTORY PROCEDURES", the entry entitled "RECORDS OF USE OF DUTY–PAID, DUTY–FREE OR DOMESTIC MERCHANDISE OF THE REQUIRED SAME KIND AND QUALITY WITHIN YEARS AFTER THE RECEIPT OF THE DESIGNATED MERCHANDISE", is corrected to read, "RECORDS OF USE OF DUTY–PAID, DUTY–FREE OR DOMESTIC MERCHANDISE OF THE REQUIRED SAME KIND AND QUALITY WITHIN 3 YEARS AFTER THE RECEIPT OF THE DESIGNATED MERCHANDISE".

67. On page 11069, under the second column, line 39, the heading "Inventory Procedures" is capitalized to read "INVENTORY PROCEDURES".

68. On page 11070, under the third column, in the section entitled "PERSONS WHO WILL SIGN DRAWBACK DOCUMENTS", add, in the second sentence, after the words "to bind" and before the word "corporation", the word "the".

69. Also on page 11070, under the third column, in the section entitled "PERSONS WHO WILL SIGN DRAWBACK DOCUMENTS", in the last line, add a closing parenthesis after "rulings" and before the period.

70. On page 11071, under the first column, in the heading "PROCESS OF CONSTRUCTION AND EQUIPMENT", on line 7 thereunder, the words "or drawback" are removed.

71. Also on page 11071, under the first column, in the heading "PROCESS OF CONSTRUCTION AND EQUIPMENT", on line 8 thereunder, after the word "merchandise" and before the word "and", the words "or drawback products" are added.

72. Again on page 11071, under the third column, in the first full paragraph in parentheses thereunder, in line 2 thereof, the word "It", beginning the second sentence of this paragraph, is corrected to read "If".

73. On page 11072, under the second column, under the section entitled "AGREEMENTS", in item "7.", the term "section 1313(g)" appearing therein is corrected to read "section 1313".

Dated: March 25, 1998.

Harold M. Singer,

Chief, Regulations Branch.

[FR Doc. 98–8263 Filed 3–30–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

Hoffmann-La Roche, Inc.; Chlortetracycline; Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is approving two supplemental new animal drug applications (NADA's) filed by Hoffmann-La Roche, Inc. The supplemental NADA's provide for use of chlortetracycline (CTC) Type A medicated articles to make a Type C medicated feed and a calf milk replacer in compliance with the conclusions of the National Academy of Sciences/ National Research Council (NAS/NRC) Drug Efficacy Study Implementation (DESI) review of the effectiveness of the drugs and FDA's conclusions based on that review. Approval of these supplemental NADA's does not require amendment of animal drug regulations.

EFFECTIVE DATE: March 31, 1998.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1623.

SUPPLEMENTARY INFORMATION: Hoffmann-La Roche, Inc., Nutley, NJ 07110–1199, is sponsor of NADA 49–287 that provides for use of PfiChlor® 50, 70, and 100 (CTC) Type A medicated articles to make Type C medicated feeds for chickens, turkeys, sheep, calves, cattle, and swine; and NADA 100–901 that provides for use of PfiChlor® 100S (CTC) Type A medicated articles to make calf milk replacers. The firm filed supplemental applications to reflect concurrence with the conclusions of the NAS/NRC DESI review of the applications and FDA's conclusions based on that review.

CTC was the subject of a NAS/NRC DESI review published in the **Federal Register** of July 21, 1970 (35 FR 11646). The NAS/NRC review concluded, and FDA concurred, that the products were probably effective for growth promotion and feed efficiency and the treatment of animal diseases caused by pathogens sensitive to CTC. FDA reviewed the available data concerning effectiveness of the products and concluded that the data supported claims for control and treatment of certain bacterial diseases susceptible to CTC in chickens, turkeys, ducks, psittacine birds, cattle, sheep, and swine as well as increased rate of weight gain and improved feed efficiency in most of the same species. The sponsor provided revised labeling that complied with the conclusions of the NAS/NRC review.

The firm filed supplemental applications to reflect concurrence with the conclusions of the NAS/NRC DESI review of the applications and FDA's conclusions based on that review.

The supplemental NADA's are approved as of January 21, 1998. The basis of approval is discussed in the freedom of information summaries.

In the **Federal Register** of October 21, 1977 (42 FR 56264), the then Bureau of Veterinary Medicine issued a notice of opportunity for a hearing (NOOH) on a proposal to withdraw approval of certain NADA's listed in 21 CFR 558.15, for most subtherapeutic uses of tetracycline (CTC and oxytetracycline) in animal feed. The NOOH was issued in response to scientific research suggesting that subtherapeutic use of such drugs has contributed to the pool of antibiotic-resistant pathogenic microorganisms in food animals.

Furthermore, research indicated that the drug resistance could be transferred to pathogenic organisms in humans. The NOOH is still pending and approval of these supplements to finalize the DESI review process for CTC Type A medicated articles does not constitute a bar to subsequent action to withdraw approval on the grounds cited in the outstanding NOOH.

The NAS/NRC DESI evaluation concerns only the drug's effectiveness and safety to the treated animal. It does not take into account the safety for food use of food derived from drug-treated animals. Nothing herein will constitute a bar to further proceedings with respect to the safety of the drugs or its metabolites in food products derived from treated animals.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), summaries of safety and effectiveness data and information submitted to support approval of these applications may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

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

Because the animal drug regulations in 21 CFR 558.128(a)(1) reflect that Hoffmann-La Roche, Inc., is the sponsor of other NADA's providing for use of the same or similar CTC products, amendment of the animal drug regulations is not required.

Dated: March 17, 1998.

Andrew J. Beaulieau,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 98–8126 Filed 3–30–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 40

[TD 8685]

RIN 1545–AT25

Deposit of Excise Taxes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Technical amendment.

SUMMARY: This document contains technical amendments to final regulations (TD 8685), which were published in the **Federal Register** for November 12, 1996, at 61 FR 58004, relating to deposit of excise taxes.

EFFECTIVE DATE: March 31, 1998.

FOR FURTHER INFORMATION CONTACT: Dale Goode, (202) 622–6795 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this technical amendment provide guidance under section 6302 relating to deposit of excise taxes.

Need for Correction

This amendment serves to correct references found in § 40.6302(c)–3. Currently, a number of incorrect references appear in § 40.6302(c)–3(g) of the Code of Federal Regulations (26 CFR part 40). As published in the **Federal Register** on November 12, 1996 (61 FR 58004), paragraph (f) of § 40.6302(c)–3 was redesignated as paragraph (g), and the internal references were not changed to reflect this.

List of Subjects in 26 CFR Part 40

Excise taxes, Reporting and recordkeeping requirements.

Accordingly, 26 CFR part 40 is amended by making the following correcting amendments:

PART 40—EXCISE TAX PROCEDURAL REGULATIONS

Paragraph 1. The authority citation for part 40 continues to read in part as follows:

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

§ 40.6302(c)–3(g) [Amended]

Par. 2. Section 40.6302(c)–3 is amended by removing the reference "(f)" and adding "(g)" in its place in the following locations:

1. Paragraph (g)(1) introductory text.
2. Paragraphs (g)(2)(i) and (g)(2)(ii).
3. Paragraph (g)(3) introductory text.
4. Paragraph (g)(3), paragraph (b) of the *Example.*

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 98–8282 Filed 3–30–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 48

[TD 8748]

Gasoline and Diesel Fuel Excise Tax; Special Rules for Alaska; Definitions; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final regulations (TD 8748), which were published in the **Federal Register** on Friday, January 2, 1998 (63 FR 24). The regulations relate to gasoline and diesel fuel excise tax.

DATES: This correction is effective January 2, 1998.

FOR FURTHER INFORMATION CONTACT: Frank Boland (202) 622–3130, (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under section 6416.

Need for Correction

As published, final regulations (TD 8748) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8748), which are the subject of FR Doc. 97–33988, is corrected as follows:

PART 48—[CORRECTED]

1. On page 26, column 1, amendatory instruction "Par. 6a." is added to read as follows:

§ 48.6416(a)–3 [Amended]

Par. 6a. In § 48.6416(a)–3, paragraph (b)(3)(ii) is amended by removing the last sentence.

2. On page 26, column 1, amendatory instruction "Par. 6b." is added to read as follows:

§ 48.6416(b)(3)–2 [Amended]

Par. 6b. In § 48.6416(b)(3)–2, paragraph (d)(6) is amended by removing the language "and § 48.6416(b)(4)–1".

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 98–8320 Filed 3–30–98; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OR–69–7284a; FRL–5984–7]

Approval and Promulgation of Implementation Plans: Oregon

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: Environmental Protection Agency (EPA) approves a revision to the Oregon State Implementation Plan. This revision establishes a source specific Reasonable Available Control Technology (RACT) determination for Dura Industries, Inc. at 4466 NW Yeon, Portland, Oregon 97210. This action is taken under Part D of Title I of the Clean Air Act (Act).

DATES: This action is effective on June 1, 1998 unless adverse or critical comments are received by April 30, 1998. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Written comments should be addressed to: Montel Livingston, SIP Manager, Office of Air Quality (OAQ–107), EPA, 1200 Sixth Avenue, Seattle, Washington 98101.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. Copies of material submitted to EPA may be examined during normal business hours at the following locations: EPA, Region 10, Office of Air Quality, 1200 Sixth Avenue (OAQ–107), Seattle, Washington 98101, and Oregon Department of Environmental Quality (ODEQ) 811 SW Sixth Ave, Portland, Oregon 97204–1390.

FOR FURTHER INFORMATION CONTACT: Tracy Oliver, Office of Air Quality (OAQ–107), EPA, Seattle, Washington 98101, (206) 553–1388.

SUPPLEMENTARY INFORMATION:

I. Background

Section 172(a)(2) and (b)(3) of the Act, as amended in 1977, requires sources of volatile organic compounds (VOC) to install, at a minimum, RACT in order to reduce emissions of ozone precursors. EPA has defined RACT as the lowest emission limitation a source is capable of meeting with control technology that is reasonably available, considering technological and economic feasibility (44 FR 53762).

EPA develops Control Technology Guidelines (CTG) to advise state and local agencies of available air pollution control techniques for reducing emissions from various source categories. CTGs establish "presumptive norm" emission levels based on EPA's evaluation of the capabilities and problems associated with control technologies. EPA has recommended that states adopt RACT requirements consistent with these presumptive norm levels.

In Section 182(a)(2)(A), Congress statutorily adopted the requirement that ozone nonattainment areas improve their deficient RACT rules for ozone precursors. Areas designated nonattainment before the effective date of the 1990 amendments which retained that designation with a marginal or worse classification were subject to RACT "fix-up." States were mandated to correct their RACT requirements by May 15, 1991. The corrected requirements were to be in compliance with section 172(b), as it existed before the 1990 amendments and as interpreted in the pre-amendment guidance. Oregon was subject to this requirement.

On May 13, 1991, the State of Oregon submitted OAR 340–22–100 through OAR 340–22–220, General Emission Standards for Volatile Organic Compounds, as an amendment to the Oregon SIP. On September 29, 1993, EPA approved these revisions and incorporated the rules by reference into the Oregon SIP (58 FR 50848).

The Portland-Vancouver Air Quality Maintenance Area was designated as a non attainment area for ozone in 1978. On October 7, 1982, EPA approved the Portland-Vancouver area ozone attainment plan, including an extended attainment date of December 31, 1987 (47 FR 44262). On November 15, 1990, the area was redesignated to marginal non-attainment under section 181(a)(1) of the 1990 Act for failing to attain the standard. An attainment deadline of November 15, 1993 was established. Ambient air monitoring data from 1991 through 1997 showed no violations of the ozone standard. On May 19, 1997, EPA redesignated the Portland-Vancouver area to attainment for ozone and approved its maintenance plan.

Section 4.50.3.2.3.4 Industrial Emission Strategies of the approved maintenance plan includes RACT requirements for VOC sources. This includes implementing: (1) Oregon Administrative Rule (OAR) 340–022–0104 which requires VOC emission limits for new and existing sources located within the Portland-Vancouver area; and (2) OAR 340–022–0170 which defines the VOC emission limits for surface coating in manufacturing, consistent with EPA's 1976 CTGs for this source category.

On October 30, 1997, Oregon submitted an alternative RACT determination for Dura Industries, Inc., a high performance architectural coating operation in Portland, Oregon. The alternative RACT determination modifies Dura Industries' Air Contaminant Discharge Permit to allow 6.5 lbs/gal VOC instead of 3.5 lbs/gal VOC, the standard RACT for this source category. The higher VOC content is accompanied by additional requirements on the source to develop compliant coatings. This submission is subject to OAR 340–022–0104 and OAR 340–022–0170.

This **Federal Register** document approves the rule revision as an amendment to the Oregon SIP.

II. Summary of Action

EPA is approving the revision to the Oregon State Implementation Plan submitted on October 30, 1997, as source specific amendment for Dura Industries, Inc. EPA finds the alternative RACT determination meets all of the applicable requirements of the Act and the Oregon SIP.

EPA is not taking action on the entire Air Contaminant Discharge Permit for Dura Industries, Inc., but only the conditions necessary for implementation and enforcement of the RACT requirement in OAR 340–022–0104(4). Because the RACT requirements are contained in the approved SIP, the source specific RACT limits will remain in effect as a matter of state law, even if the Oregon permit expires.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will become effective without further notice unless the Agency receives relevant adverse comment on the parallel notice of

proposed rulemaking on or before April 30, 1998.

Should the Agency receive such comments, it will publish a document withdrawing this rule. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Any parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 1, 1998 and no further action will be taken on the proposed rule.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D, of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

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

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

D. Submission to Congress and the Comptroller General

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 1, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2), 42 U.S.C. 7607(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the Implementation Plan for the State of Oregon was approved by the Director of the Office of Federal Register on July 1, 1982.

Dated: March 6, 1998.

Chuck Findley,

Acting Regional Administrator, Region X.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

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

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

Subpart MM—Oregon

2. Section 52.1970 is amended by adding paragraph (c) (124) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(124) On October 30, 1997 the director of the Oregon Department of Environmental Quality (ODEQ) submitted a source specific Reasonable Available Control Technology (RACT) determination as a SIP revision for VOC emissions and standards.

(i) Incorporation by reference.

(A) Letter dated October 30, 1997 from the Director of ODEQ submitting a SIP revision for Dura Industries, Inc. , an architectural surface coating operation in Portland, Oregon—permit #26–3112 dated September 14, 1995.

[FR Doc. 98–8057 Filed 3–30–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO–001–0022 and CO–001–0023; FRL–5981–4]

Approval and Promulgation of Air Quality Implementation Plan; Colorado; PM10 and NO_x Mobile Source Emission Budget Plans for Denver, CO

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the State Implementation Plan (SIP) revisions submitted by the Governor of Colorado on July 18, 1995 and April 22, 1996. The PM10 and NO_x emissions budgets contained in these SIP revisions are used to assess the conformity of transportation plans, transportation improvement programs and, where appropriate, federally funded projects for the applicable periods required by EPA's conformity rules. EPA originally proposed approval of the two emissions

budget SIPs on October 3, 1996. Based upon comments received on that proposal, EPA published a second proposal on August 5, 1997, seeking additional input on certain issues. In reaching its final decision to approve the July 18, 1995 and April 22, 1996 PM10 and NO_X SIP submittals, EPA has considered the comments it received on both its October 3, 1996 and August 5, 1997 **Federal Register** documents.

EFFECTIVE DATE: This action is effective on April 30, 1998.

ADDRESSES: Copies of the State's original submittals, copies of comments received on both the October 3, 1996 and August 5, 1997 proposals and other information are available for inspection during normal business hours at the Air Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466. Copies of the State documents relevant to this action are available for public inspection at the Colorado Department of Public Health and Environment, Air Pollution Control Division, 4300 Cherry Creek Drive South, Denver, Colorado 80222.

FOR FURTHER INFORMATION CONTACT: Callie Videtich, EPA Region VIII,(303)312–6434.

SUPPLEMENTARY INFORMATION:

I. Background

On March 30, 1995, the Governor of Colorado submitted a SIP revision for Denver for PM10 that included attainment and maintenance demonstrations. In making that submittal, the Governor requested that EPA not act on the motor vehicle emissions budgets (also referred to as mobile source emissions budgets) for PM10 and NO_X contained in Chapter XI of the PM10 SIP element. Motor vehicle emissions budgets are used under EPA regulations for making transportation related conformity determinations as required by section 176(c) of the Clean Air Act (CAA or Act). EPA's transportation conformity rule provides that these budgets establish a cap on motor vehicle-related emissions which cannot be exceeded by the predicted transportation system emissions in the future unless the cap is amended by the State and approved by EPA as a SIP revision and attainment and maintenance of the standard can be demonstrated.

On July 18, 1995 and April 22, 1996, the Governor submitted SIP revisions for Denver that included additional motor vehicle emissions budgets for PM10 and NO_X. EPA proposed approval of both of these emissions budgets on October 3, 1996 (61 FR 51631) along with the Denver PM10 SIP. Following a 60-day public comment period, EPA finalized approval of the Denver PM10 SIP on April 17, 1997 (62 FR 18716). At that time, EPA did not take final action on the emissions budget submittals in order to more thoroughly consider comments received on the proposals during the public comment period. EPA subsequently decided to seek additional public comment regarding the budget submittals and, on August 5, 1997, published a second notice of proposed rulemaking to take comment on certain issues raised by commentors on the October 3, 1996 notice of proposed rulemaking. Specifically, EPA sought additional comment on the following issues: Whether Colorado met the notice and public hearing requirements of the Clean Air Act in adopting the PM10 emissions budget; whether Colorado adequately considered growth in non-mobile sources in setting the emissions budgets; and whether Colorado should have identified a separate NO_X budget in 1998 (the maintenance year) of 102.7 tons per day, to maintain consistency with the maintenance demonstration. For a more complete description of EPA's request for additional comments, please see EPA's August 5, 1997 notice of proposed rulemaking at 62 FR 42088.

II. Response to Public Comments

In this notice, EPA is taking final action and addressing comments relating to its October 3, 1996 and August 5, 1997 notices of proposed rulemaking. Generally, EPA has addressed comments on each notice separately. Where this is not the case, EPA has so indicated.

A. October 3, 1996 Proposal: The following numbered paragraphs contain summaries of the comments received on the October 3, 1996 notice of proposed rulemaking. Each comment summary is followed by EPA's response.

1. The PM10 budget that the Governor submitted on July 18, 1995 includes permanent budgets of 54 and 60 tons. However, the Colorado Air Quality Control Commission's (AQCC) rule provided that these budgets would expire in 1998. Since the legislature did not eliminate the 1998 expiration of these budgets, rulemaking by the AQCC would have been required to eliminate the 1998 expiration. The AQCC did not conduct such rulemaking, and therefore, the permanent 54 and 60 ton budgets that the Governor submitted are without authority and the notice and hearing requirements of the CAA were not met.

This commentor augmented his comments on this point in response to EPA's August 5, 1997 notice, as follows: The legislature did not even mention, and therefore did not change or delete, the sunset language contained in section C.4. of the AQCC's budget rule. Nor does S.B. 95–110 specify what the text of the rule shall be or repeal or limit the Commission's authority to revise the emission budgets. Because neither the legislature nor the AQCC legally amended section C.4. of the rule submitted to EPA, section C.4. remains a part of the rule, and EPA must approve all or none of the rule. Also, other entities at the State level lack authority to submit part of the AQCC's rule and omit other parts. Only the AQCC or the legislature, following proper notice and hearing procedures, had this authority.

EPA Response: Contrary to the commentor's assertion, EPA believes the Colorado legislature, through its passage of Colorado S.B. 95–110, did eliminate the 1998 expiration (or sunset) of the 54 and 60 ton budgets. In EPA's view, the legislature specifically eliminated the reversion to a 44 ton budget from the SIP revision and designated the 60 ton budget as the budget that would apply in the future for purposes of federal transportation conformity. For example, the language of S.B. 95–110 reads as follows:

> "The revisions to the Denver element of the PM10 State Implementation Plan adopted by the Commission on February 16, 1995, which contain a sixty tons-per-day PM10 mobile source emissions budget which expires January 1, 1998, and reverts to a forty-four tons-per-day budget, are amended to provide that such forty-four tons-per-day reversion shall not be a part of the state implementation plan * * * The sixty tons-per-day emissions budget shall, unless modified by the Commission through rule-making, apply for federal transportation conformity and is included in the State Implementation Plan only as required by the federal Act."

This language makes clear that the legislature intended that there would be no reversion to a budget of 44 tons per day. Given this, the commentor's reading appears to be inconsistent with the legislative intent because such reading would result in the expiration of the 54 and 60 ton budgets on January 1, 1998 and their replacement with the 44 ton budget.

In addition, the legislature was explicit that the 60 ton budget should apply for the purposes of federal transportation conformity. The commentor reads this directive out of the legislation by focusing (in his comments on both of EPA's notices) on the second clause of the statute, which states "and is included in the State Implementation Plan only as required by the federal Act." The commentor

interprets this to mean that the legislature left it to the AQCC to determine whether a budget was necessary to meet Clean Air Act requirements.

Concluding that no budget is required to meet nonattainment area SIP requirements, the commentor concludes that the legislature would not have wanted the budget in the SIP. However, EPA believes the better reading is that the legislature was indicating that the budget would be part of the SIP as necessary for it to be used for federal transportation conformity purposes, and that the legislature was not leaving it to the AQCC to decide whether the budget was required by the CAA. In this regard, it is noteworthy that the legislature used the present tense—the 60 ton budget "*is* included in the State Implementation Plan * * *" (emphasis added.) Under EPA's conformity rule, the budget may not be used unless it is part of a submitted SIP. In this sense, there is a mandate in EPA's rule that the budget be part of the SIP prior to use for conformity purposes, and it is reasonable to read Colorado S.B. 95–110 as mandating the use of the 60 ton budget. .

EPA does not believe the legislature had to specify new rule language in order to amend the SIP. The State legislature does not adopt rules, and thus, there was no need for the legislature to specify replacement rule language. It is also irrelevant that the legislature did not repeal or limit the AQCC's authority to revise the emission budgets. The legislature was indicating that the 60 ton budget would apply unless modified by the AQCC through rulemaking at some future date. The legislature was not providing that the 60 ton budget would only apply if endorsed by the AQCC through rulemaking.

Comments submitted by the Colorado Attorney General's Office support EPA's reading of the legislation. See February 13, 1997 letter signed by Frank Johnson. EPA believes it is reasonable to accord the interpretation of the Attorney General's Office some deference given that it is State legislation and not federal law that is at issue.

Although section 25–7–124(1) provides that the AQCC is the regulatory entity under Colorado law with authority to adopt SIP revisions, EPA believes the legislature retains the authority to adopt SIP revisions in a given instance. That is what the legislature did through the passage of S.B. 95–110.

2. Submission of the 54 and 60 ton budgets violates State law because State law prohibits submission to EPA of measures not required by the CAA. Specifically, C.R.S. sections 25–7–105(1)(a)(III) and 25–7–105.1(1) prohibit the submission of rules or requirements not required by the federal act. Motor vehicle emission budgets are not required by the CAA and therefore, the 54 and 60 ton budgets were not lawfully submitted to EPA.

EPA Response: As a preliminary matter, EPA is not convinced that it should or can take cognizance of the State's compliance or lack thereof with C.R.S. section 25–7–105.1(1). It is well-established in case law under the CAA that EPA must approve a SIP submission if it meets the minimum requirements of section 110 and other relevant sections of the CAA and does not otherwise conflict with the CAA. See, *e.g., Union Elec. Co.* v. *E.P.A.*, 96 S.Ct. 2518 (1976). Even if the State should not have submitted the 54 and 60 ton budgets to EPA under State law, nothing in C.R.S. section 25–7–105.1(1) suggests that the State will be unable to implement or enforce the budgets. Thus, there is no apparent conflict with the requirements of section 110(a)(2)(A) or (E) of the CAA. To the extent C.R.S. section 25–7–105.1(1) purports to restrict what constitutes part of the federally enforceable approved SIP, EPA believes the State legislature lacks the authority to amend the relevant sections of the CAA and the Administrative Procedures Act with respect to SIP approval. The burden is on the State to comply with C.R.S. section 25–7–105.1(1), and EPA should not be forced to assume that burden. See *Union Elec. Co.* v. *E.P.A.*, 96 S.Ct. 2518, 2528–2529 (1976). If the commentor believed the State violated C.R.S. section 25–7–105.1(1), EPA believes the commentor's recourse would have been to challenge the State's submission of the budgets in State court. It is not EPA's role to assure compliance with this State law.

Notwithstanding the foregoing, EPA believes the State legislature issued a specific directive in this case that the 60 ton budget would apply for purposes of conformity determinations. See EPA's response to comment II.A.1., above. Thus, even if the commentor is correct that these budgets were not otherwise required by the CAA and thus, normally could not have been properly submitted by the State pursuant to C.R.S. section 25–7–105.1(1), the legislature had the authority to disregard its general restriction on submitting SIPs not required by the CAA (as set forth in C.R.S. section 25–7–105.1(1)) and to adopt and require the use of the 60 ton budget. In EPA's view, the legislature's specific directive regarding the 60 ton budget overrides the more general proscription contained in C.R.S. section 25–7–105.1(1).

3. The motor vehicle emissions budget (MVEB) does not provide for attainment of the NAAQS. Specifically, the 60 ton budget will result in NAAQS violations at numerous receptor areas unless emissions are reduced in those receptor areas below the levels allowed by the 60 ton regional budget. The regional budget should reflect the values necessary to show attainment in areas where the 60 ton budget would result in NAAQS violations. Also, values necessary to show attainment for areas that would otherwise violate should be used to establish subregional budgets for those areas. The CAA does not allow the substitution of future dispersion modeling for the setting of appropriate emissions budgets.

EPA Response: Contrary to the commentor's assertion, the 60 ton budget already reflects the necessary emissions reductions to show attainment in all of the receptor grids. This is described in the SIP itself and the October 19, 1995 Kevin Briggs [1] memo that the commentor provided with his comments. According to the Kevin Briggs memo, the uncontrolled 2015 scenario would result in mobile source emissions of 68 tons per day with NAAQS violations in a number of grids. The State reduced emissions sufficiently in the violating grids to model attainment in those grids. After making these reductions, the State summed the emissions from all grids and arrived at a budget of 60 tons.

For purposes of responding to the comment, EPA will assume that the commentor meant that the State had not adopted control measures in the SIP that would achieve the 8-ton reduction (from 68 to 60 tons per day) in the violating grids in 2015. The Act clearly requires adopted, enforceable control measures as needed to support attainment and maintenance demonstrations required by Part D of the Act. However, as discussed in the preamble to the recently-adopted revisions to the conformity rule (62 FR 43787, August 15, 1997), EPA believes that it has the flexibility to approve budgets for years beyond the required attainment or maintenance SIP for transportation conformity purposes based on less rigorous demonstrations than are required for these SIPs. In particular, EPA believes it has the authority to approve budgets for years beyond the attainment or maintenance SIP based in

[1] Mr. Briggs is a modeler in the Technical Services Program, Air Pollution Control Division, Colorado Department of Public Health and Environment.

part on enforceable commitments in the SIP to adopt specific controls in the future, or on commitments in the SIP to adopt offsetting emission reductions in the future, as necessary to produce the required emissions reductions.

In this case, the MVEB SIP goes beyond a simple commitment to adopt any needed controls or reductions in the future, because the requirement for dispersion modeling carries with it a mandate for adoption of any future controls necessary to provide for attainment of the NAAQS. DRCOG must achieve the adoption of or obtain enforceable commitments for any control measures necessary to ensure that dispersion modeling for each conformity determination shows no violations of the NAAQS prior to making a conformity determination. This approach to the adoption of controls has two advantages: First, it is self-enforcing (if the dispersion modeling shows violations, DRCOG cannot adopt transportation plans and TIPs); second, it requires a reassessment of control strategies each time a conformity determination is carried out, rather than a one-time effort to adopt controls in advance which may later become obsolete due to changes in the location or magnitude of emissions (and thus, modeled violations). EPA believes that the SIP's requirement for dispersion modeling and future adoption of necessary controls satisfactorily complies with the policy options expressed at 62 FR 43787 for budgets for years beyond the attainment or maintenance demonstration, and is approving this requirement and the 60 ton budget for Denver. EPA would not approve the 60 ton budget for Denver without its companion modeling requirement and the associated requirement for adoption of controls prior to each conformity determination. It should also be noted that the State commits in the SIP to adopt any control measures relied on for future conformity determinations into the SIP if necessary to demonstrate continued maintenance of the standard. See EPA's response at II.A.4., below.

The commentor is correct that the State did not establish subregional budgets. However, EPA's regulations do not require that an area establish subregional budgets. The preamble to EPA's November 24, 1993 conformity rule states, "The SIP may specify emissions budgets for subareas of the region, provided that the SIP includes a demonstration that the subregional emissions budget, when combined with all other portions of the emissions inventory, will result in attainment and/or maintenance of the standard." 58 FR 62196 (emphasis added.) This language makes clear that the establishment of subregional budgets is optional.

Regarding the use of dispersion modeling, EPA agrees that the Act precludes the use of dispersion modeling as a substitute for an emissions budget test. However, EPA's conformity rule did not anticipate situations where a regional dispersion modeling analysis would be used in addition to an emissions budget test. EPA does not believe that such an application of dispersion modeling is precluded by either the Act or the conformity rule. As a practical matter, dispersion modeling in conjunction with an emissions test is at least as protective as establishing and using subregional budgets, because in dispersion modeling a certain target level of emissions has to be met in each grid in order for each grid to show attainment.[2] Even if subregional budgets were adopted, it is quite likely that they would not be developed for each grid. In such a case, it might be possible to show conformity using subregional budgets in cases when it would not be possible using dispersion modeling.

The requirement for dispersion modeling in addition to a budget test is certainly more protective of the NAAQS than the budget-only process envisioned by the conformity rule. The conformity rule only requires the identification of and compliance with a region-wide budget. It is conceivable that an area could show conformity to a region-wide budget and still have localized violations of the NAAQS because growth in emissions occurs in different areas than anticipated. In a dispersion modeling approach, these same localized violations of the NAAQS would preclude a conformity finding.

In summary, the SIP's requirement for a region wide budget in combination with dispersion modeling clearly meets the minimum requirements of the conformity rule, and is at least as protective of the NAAQS as subregional budgets would be.

[2] In this case, the SIP requires that the Denver Regional Council of Governments (DRCOG) support each conformity determination with a dispersion modeling analysis that shows that each grid in the modeling domain will be in attainment, considering the emissions expected from implementation of the transportation plan or Transportation Improvement Program (TIP). If the modeling analysis shows that emissions reductions are needed in any locations in order to provide for future maintenance of the NAAQS, it is incumbent upon DRCOG to identify and ensure implementation of any measures needed to provide those reductions. Thus, DRCOG must satisfy two tests to demonstrate conformity: Compliance with the 60 ton budget, and a dispersion modeling analysis showing no violations.

This commentor also included comments indicating that the PM10 SIP does not include necessary and/or enforceable control measures that will lead to attainment and maintenance of the NAAQS. In particular, the commentor indicated that VMT growth was higher than the SIP anticipated and that the SIP contained no measures to ensure VMT would remain at the SIP-anticipated levels. EPA responded to these comments when it approved the PM10 SIP and will not repeat the comments or responses here. See 62 FR 18716 (April 17, 1997). For purposes of this notice, EPA would add that it does not believe Congress intended, through section 176 of the CAA, to change the way in which States must conduct attainment or maintenance demonstrations. As noted in the April 1997 notice, EPA believes that it may allow a reasonable margin of error for VMT estimates in attainment and maintenance demonstrations, and EPA concludes that no different result should be required for purposes of establishing conformity-related motor vehicle emissions budgets. It should also be noted that any increased VMT will have to be taken into account in any future conformity determinations, and will ultimately make it harder to demonstrate conformity.

4. The submitted MVEB unlawfully attempts to transfer authority to adopt and implement control measures. The commentor objects to the 60 ton budget because the SIP gives DRCOG the responsibility for identifying any necessary controls to achieve emission reductions needed to demonstrate conformity. The commentor believes that this is a delegation of responsibility from the AQCC to DRCOG, in violation of the Act and State law. The commentor further states that any such controls are without legal authority and may not be treated as part of the SIP or be given emissions reduction credit for purposes of conformity.

EPA Response: EPA's conformity rule envisions situations where regulatory and non-regulatory control measures may be needed to provide emissions reductions for a conformity determination. Here, the AQCC is not delegating its authority to adopt control measures, only to identify them. If any measures identified as necessary by DRCOG require a State regulation in order to be implemented (for example, a revision to the I/M or oxygenated fuels program regulations), the AQCC would still need to adopt such regulation or regulation revision pursuant to applicable State law, or meet one of the other requirements in 40 CFR 93.122(a)(3), before DRCOG could take

credit for these emissions reductions in its conformity determination.

However, the conformity rule does not require all regulatory control measures needed for a conformity determination to be incorporated into the SIP, as the commentor asserts. Also, not all control measures for conformity purposes require a regulation in order to be implemented, such as changes in localized street sanding and sweeping practices. EPA is satisfied with DRCOG's current practice of obtaining commitments from local entities to implement non-regulatory control measures and incorporating these commitments into its conformity determinations, just as it obtains commitments from local entities to implement transportation improvement projects during the time frame of the plan and TIP.

It is also worth noting that the SIP, at page XI–9, states, "Any control measure relied on for a conformity determination shall be included in a revised attainment or maintenance SIP unless it is not necessary to demonstrate attainment or maintenance of the standard." EPA views this as a commitment on the part of the State to adopt any measures which are necessary to show continued attainment and maintenance of the standard.

5. The mobile source emissions budgets will ensure that future regional transportation plans and programs will continue to help the region attain and maintain the PM10 standard. Additionally, the budgets are entirely consistent with the conformity provisions of the Clean Air Act Amendments of 1990 and EPA guidance.

EPA Response: EPA agrees that the budgets are consistent with the CAA's conformity requirements.

6. Enforceable budgets that would have reduced emissions volumes in the region were agreed to in February 1995, but the intercession by the legislature reduced these to little more than a suggestion.

EPA Response: EPA agrees that the legislature changed the PM10 budgets. However, EPA believes the budgets are consistent with the requirements of the CAA and EPA's conformity rule, as described in more detail above.

B. The Colorado Attorney General's Office submitted comments in a letter dated February 13, 1997, signed by Frank Johnson, Assistant Attorney General, that respond to several of the comments described in Section II.A., above. The following numbered paragraphs contain summaries of the relevant comments from Mr. Johnson's February 13, 1997 letter. Each comment summary is followed by EPA's response.

1. The Colorado legislature amended the SIP to eliminate the reversion to a 44 ton PM10 budget and to specify a 60 ton PM10 budget. The language of C.R.S. section 25–7–105(1)(a)(III) itself and the legislative history of the statute indicate that the legislature intended a 60 ton PM10 budget to apply for purposes of federal conformity. Thus, no further rulemaking action by the AQCC was necessary.

EPA Response: EPA agrees with this interpretation of C.R.S. section 25–7–105(1)(a)(III) and believes the interpretation is entitled to deference.

2. The references to the 60 ton budget in C.R.S. section 25–7–105(1)(a)(III) include the smaller emissions budgets for the years before the 60 ton budget applies. The Colorado legislature used "sixty tons-per-day emissions budget" as a shorthand to describe the interim budgets that apply before 2006 and the 60 ton budget that applies in 2006 and after. The legislature eliminated the provision of the budgets that contained the expiration of the higher budgets and reversion to 44 tons; the legislature did not intend to change the structure of interim budgets leading to a 60 ton budget in 2006.

EPA Response: Although the statute could have been drafted more clearly, EPA believes the interpretation of the Attorney General's Office is reasonable and is entitled to deference. Therefore, EPA concludes that the statute should be interpreted consistent with the letter submitted by the Attorney General's Office.

3. No further rulemaking by the AQCC was necessary to eliminate the expiration of the 60 ton budget. A contrary reading would lead to the result that the 44 ton budget would apply starting in 1998 when the legislature clearly did not want this to happen. The legislature made clear that the 44 ton reversion would only apply for purposes of state law.

EPA Response: EPA agrees with this interpretation and believes it is entitled to deference.

4. No further public hearings by the AQCC were necessary following the Colorado legislature's amendment of the budgets. In addition, no notice and hearing were required before the legislature itself. The adoption of the SIP by the AQCC in February 1995 and the amendment of the SIP by the legislature in May 1995 were steps in the process of developing a single SIP revision. Nothing in EPA's rules requires additional hearings at subsequent steps in the state review process. In addition, the legislative process is open and public and the legislators are accountable to the electorate.

EPA Response: EPA responds to these comments in Section II.C., below.

5. State statutes do not prohibit the submission of the 60 ton budget for inclusion in the SIP. Other commentors' reading of C.R.S. section 25–7-105(1)(a)(III) is not consistent with legislative intent. When the Colorado legislature said the 60 ton budget "is included in the SIP only as required by the federal act", the legislature meant that the budget is included in the SIP only as required in order for such emissions budget to apply for the purposes of transportation conformity. Commentors' reading would negate the 60 ton budget and result in the application of the 44 ton budget, something the legislature clearly did not intend. The argument that C.R.S. section 25–7-105.1 prohibits the inclusion of the 60 ton budget in the SIP because it is not required by the CAA or EPA regulations also fails. The specific provisions of 25-7–105(1)(a)(III), that indicate the 60 ton budget will apply for federal transportation conformity, control over the more general provisions of 25–7–105.1.

EPA Response: See EPA's response to comment II.A.2 above. In addition, EPA believes the interpretation of the Attorney General's Office is entitled to deference on this question of State law.

C. August 5, 1997 Notice: Procedural Issues. Comments on the October 3, 1996 notice of proposed rulemaking raised concerns about the process the State followed in adopting the PM10 budget. EPA sought additional comment on the question whether the State met the CAA's notice and public hearing requirements in adopting the PM10 budget. The following numbered paragraphs contain summaries of the comments received on the August 5, 1997 notice of proposed rulemaking that are related to the notice and public hearing issue. EPA's response follows the last comment summary related to this issue.

1. Hearings held by the AQCC were adequate to satisfy the CAA's notice and hearing requirements. The hearings before the AQCC and the subsequent action by the General Assembly should be viewed as a single process that led to the adoption of the PM10 budgets SIP. There was no requirement to hold additional hearings before the General Assembly. The General Assembly was well aware there were parties opposed to the adoption of the 60 tons-per-day emission budget.

2. The legislative process is open and public and the legislators are

accountable to the electorate. The General Assembly provided an opportunity for public input through a public hearing before a committee of reference and public debate on the floor of each house. Environmental groups were actively involved in the debate. In addition, the public was on notice that the PM10 budgets SIP would be subject to review by the legislature as provided by section 25–7–133(1), C.R.S. Therefore, the legislative session itself complied with the notice and hearing requirements for adoption of the SIP.

3. There was no need for the AQCC to hold a public hearing to confirm actions taken by the General Assembly.

4. The adequacy of the legislative process with regard to satisfying the public hearing requirement of section 110 of the CAA and 40 CFR 51.102 is irrelevant. The legislature, when it passed S.B. 95–110, left discretion with the AQCC to determine the appropriate budget to submit to EPA. (EPA describes and responds to this comment on this issue in Sections II. A. and B., above, and will not respond further in this section.)

5. If EPA decides that the legislature mandated the PM10 budget as submitted, the legislature did not satisfy the requirements of 40 CFR 51.102 for notice and hearing. In addition, notice and hearing granted by the AQCC did not satisfy the requirement for notice and hearing before the legislature.

EPA Response: It has been particularly difficult for EPA to reach a decision on this issue. EPA takes very seriously the CAA's notice and public hearing requirements and believes that legitimate questions have been raised regarding the process the State followed in adopting the PM10 budget SIP. On balance, however, EPA agrees with the commentors who asserted that notice and public hearing before the AQCC in February 1995 satisfied the notice and hearing requirements of the CAA and EPA's regulations.[3] Although the General Assembly reached a different result than the AQCC, relevant issues regarding the appropriate size and applicability of the PM10 budgets were aired in the hearing before the AQCC, and the budgets the General Assembly ultimately adopted appear to be a logical outgrowth of the hearing before the AQCC. As noted by one of the commentors, following the AQCC's February 1995 hearing, the AQCC could have adopted the same budgets the General Assembly ultimately adopted. Therefore, EPA concludes that the budget established in the SIP was the result of adequate notice and hearing.

In finding that notice and public hearing were adequate in this case, EPA wants to make two points. First, EPA is finding that the process the State followed satisfied the minimum requirements for notice and public hearing for purposes of Clean Air Act requirements and EPA regulations; EPA is not making a finding that the State process was ideal or should necessarily serve as a model for future actions. Second, EPA wants to make it clear that legislative amendment of AQCC rulemaking may not always satisfy the CAA's notice and hearing requirements. EPA believes the legislative action must bear some logical relationship to the notice and public hearing previously concluded before the rulemaking agency, or the notice and public hearing requirement must be satisfied by the legislature itself or by subsequent administrative action.

As a prudential matter, EPA would recommend that the State take steps to optimize public participation so that this type of issue does not arise in the future. For example, although more than one commentor suggested the General Assembly was aware of opposition to the 60 ton budget, none of the commentors indicated whether the General Assembly or relevant committees thereof actually considered the testimony and evidence presented to the AQCC; EPA believes it would be prudent to insure that they do so in the future.

EPA does not agree with those commentors who assert that the legislative action standing alone met EPA's notice and public hearing requirements. EPA's regulations are quite specific in their requirements. Among other things, 30 days prior notice is required. See 40 CFR 51.102. No commentor has suggested that the legislature or one of its committees complied with this requirement. Also, EPA does not agree with the commentor who asserts that C.R.S. section 25–7–133(1) satisfied the CAA's notice requirements, in particular since prior to the General Assembly's adoption of the PM10 budget SIP, this statute only provided for the General Assembly to accept or reject a SIP revision adopted by the AQCC, rather than alter the budget SIP as was done in this case.

Because EPA concludes that the CAA's notice and hearing requirements were met in this case, EPA agrees with the commentors who asserted there was no need for the AQCC to hold an additional hearing after the General Assembly had acted. However, it is conceivable that further notice and hearing before the AQCC would have been one way for the State to satisfy EPA's notice and public hearing requirements if the February 1995 AQCC hearing had not been sufficient for this purpose. Another way would have been for the General Assembly itself to comply with EPA's notice and hearing requirements.

Regarding one commentor's assertion that notice and hearing requirements were met because environmental groups were actively involved in the debate regarding the PM10 budgets SIP within the General Assembly, EPA was unable to substantiate this claim through any materials submitted by commentors or through independent research. However, EPA's research revealed that several other parties, including the AQCC's hearing officer for this SIP, did provide testimony before the Legislative Council and/or a committee of reference.

D. August 5, 1997 Notice: Substantive Issues. EPA received comments on its October 3, 1996 notice of proposed rulemaking that raised concerns regarding the adequacy of the emissions budgets. Based on these comments, EPA concluded that it needed additional input from commentors in order to make an informed decision. Thus, in its August 5, 1997 notice, EPA sought additional comment regarding the following two issues: (1) Whether it was appropriate for the budget SIP to include a single NO_X budget from the 1995 attainment demonstration of 119.4 tons per day when the maintenance demonstration NO_X emissions inventory was 102.7 tons per day, and (2) whether potential growth in non-mobile sources was adequately considered in setting the emissions budgets for years beyond the PM10 SIP attainment and maintenance years. The numbered paragraphs below contain summaries of the comments received on these issues. For each issue, EPA's response follows the last comment summary for the particular issue. EPA has noted where the comment summary includes comments on the October 3, 1996 notice.

Issue 1: Whether it was appropriate for the budget SIP to include a single NO_X budget of 119.4 tons per day when the maintenance demonstration NO_X emissions inventory was 102.7 tons per day.

Comment Summaries

1. EPA's analysis of this issue in its August 5, 1997 notice was correct. The NO_X emissions budget of 119.4 tons per day is consistent with the available safety margin, and therefore need not conform to the inventory in the maintenance demonstration.

[3] These notice and public hearing requirements can be found in section 110(a)(2) of the CAA, 42 U.S.C. section 7410(a)(2), and 40 CFR 51.102.

2. The analysis of the 60 ton PM10 budget assumed NO_X emissions of 119.4 tons per day. This analysis showed that the area would continue to attain the standard with these emissions values. Thus, the maintenance year emissions of NO_X are irrelevant.

3. Under EPA's conformity rule, projections of emissions in an attainment SIP beyond the attainment year are not considered emissions budgets unless the SIP explicitly states such an intent. The SIP states no such intent.

4. EPA should consider the fact that the Denver area has not violated the PM10 standard in nearly five years and the highest recorded value in 1996 was well below the standard. Also, EPA's promulgation of a new standard for PM10 may soon render these budget and conformity issues moot.

5. Contrary to EPA's analysis in its August 5, 1997 notice, the NO_X mobile source emissions budget is based on motor vehicle emission estimates in the Denver PM10 SIP, and not a margin of safety. The AQCC did not adopt a margin of safety analysis in the SIP which is why the analysis was not submitted by the State as part of the SIP submission. The NO_X budget submitted by the State offers no basis for the rationale offered by EPA in its August 5, 1997 notice. The conformity rule provides that transportation agencies may not infer additions to budgets not explicitly intended by the SIP; the same rule must apply to EPA. The SIP must quantify the amount by which motor vehicle emissions could be higher while still allowing a demonstration of maintenance and must specifically indicate that the excess emissions are to be allocated to the MPO for transportation conformity purposes. The SIP did not meet either of these requirements. In fact, in the maintenance year there are no excess emissions to allocate. The RAQC staff's analysis, which EPA cites in its August 5, 1997 notice, does not consider emissions from all sources and does not require that emissions be distributed to all grid receptors. The maintenance demonstration approved by the AQCC and submitted as part of the PM10 SIP that EPA has approved shows that motor vehicle NO_X emissions must be no higher than 102.7 tons in order to demonstrate maintenance. The RAQC staff's analysis shows that more emissions could be added in portions of the Metro area not yet developed, but it provides no basis for concluding that more emissions can safely be added where vehicle travel is currently occurring. Since the SIP does not restrict emissions to the undeveloped portions of the Metro area, there is no basis to conclude there are excess emissions to be allocated and there is no basis to rely on the RAQC staff's analysis. Adding 17 additional tons of NO_X in the developed portions of the Metro area in the maintenance year would cause estimated concentrations to exceed the NAAQS. In addition, the RAQC staff's analysis was never officially adopted by anyone. We reiterate comments made on the October 3, 1996 proposal that EPA approve the 119.4 ton per day budget as the applicable budget only for analyses performed up to the attainment year, and that EPA clarify that the applicable budget after the attainment year is the NO_X estimate contained in the maintenance demonstration portion of the approved SIP.

This same commentor also indicated in comments on EPA's October 3, 1996 notice of proposed rulemaking that the use of a 119.4 tons per day NO_X emission budget for years after the attainment year would not be consistent with the obligation to set an emission budget consistent with the demonstration of maintenance. In those comments, the commentor cited to the preamble statement in EPA's November 24, 1993 conformity rule that, "[i]n all situations, the emissions budget in the SIP must be consistent with the attainment or maintenance demonstration * * *" Because the 119.4 ton budget is not consistent with the 102.7 ton inventory in the maintenance year, the commentor argued that the appropriate NO_X budget would be 119.4 tons per day NO_X up to the attainment year, but would be 102.7 tons per day NO_X beyond the attainment year. EPA Response: In its August 5, 1997 supplemental notice, EPA proposed approval of the PM10 and NO_X budgets for Denver based in part on the safety margin analysis conducted by the RAQC. This analysis sought to demonstrate that mobile source emissions in the Denver modeling region could be as high as 221 tons per day of PM10 before violations of the NAAQS would occur. After reviewing all of the comments and carefully considering the requirements of the conformity rule and the Act, EPA has determined that it can no longer endorse the RAQC's suggested approach for defining a safety margin.

The conformity rule, as amended on August 15, 1997, defines safety margin as the amount by which the total projected emissions from all sources of a given pollutant are less than the total emissions that would satisfy the applicable requirement for reasonable further progress, attainment or maintenance of the relevant air quality standard. For example, many maintenance plans include maintenance year emission inventories which are lower than the attainment year inventory. The difference between these two levels of emissions could be considered a margin of safety. Some attainment SIPs are submitted with modeled attainment values which are somewhat below the standard; the difference in emissions between the SIP level and the level that would just provide for attainment of the standard could be considered a safety margin.

However, the RAQC's analysis is based on maximizing emissions in all grids in the modeling domain, and as such is more of a "carrying capacity" analysis. It bears no relation to the attainment or maintenance year emission inventory; emissions in all portions of the modeling domain were increased to levels equivalent to downtown Denver, including remote rural regions, even though activity levels in the remote grids in the attainment or maintenance year were not high enough to create such emissions levels. The RAQC's approach to establishing a safety margin would appear to conflict with the requirements of section 176(c)(2)(A) of the CAA.

It would have been more appropriate to calculate a safety margin for Denver by determining the difference in emissions between the modeled 1995 attainment value (147.7 ug/m3) and the standard of 150 ug/m3, by proportionally increasing the 1995 inventory used in the modeling until the standard had been reached. A safety margin calculated in this way would likely only amount to a few tons per day. However, the RAQC did not calculate its safety margin this way, and EPA has decided it cannot rely on the RAQC's analysis for purposes of this action, nor is EPA generally endorsing this approach for the establishment of safety margins in other nonattainment or maintenance areas. Thus, EPA is not relying on the RAQC's safety margin analysis to justify approval of the 119.4 tons per day NO_X budget.

In addition, EPA finds unconvincing the argument that 1998 projections of NO_X emissions would not be a budget for conformity purposes unless the SIP states explicitly states such an intent. The conformity rule is clear that approved attainment and maintenance demonstrations and any required milestone demonstrations establish budgets which must be used for conformity until superseded by subsequent approved SIPs for those same years. In this case, the PM10 SIP's 1998 maintenance demonstration was

required by section 189(c) of the CAA; i.e., it was a required milestone. EPA notes that the State did establish a 1998 PM10 budget, and that 1998 PM10 budgets have been established for other PM10 nonattainment areas within the State of Colorado. Also, EPA does not agree with the approach of establishing a budget for one precursor of PM10 for any given year, but not all of them. Since the PM10 and NO_X inventories work in tandem as part of the attainment and maintenance demonstrations in Denver, it does not make technical sense to regulate one pollutant through conformity but not the other. The conformity rule is clear that these inventories are to be treated as budgets for purposes of conformity; a state may not evade this requirement by merely declaring an intent that a required attainment, maintenance or milestone inventory for a pollutant or pollutant precursor is not to be considered a budget. The conformity rule language cited by the commentors in asserting that the 1998 NO_X budget is not to serve as a budget refers to optional projections of emissions in SIPs that are not otherwise required by the Act or EPA SIP policy. In this case, both PM10 and NO_X motor vehicle emissions inventories were required as part of the maintenance/milestone demonstration in the PM10 SIP.

However, EPA notes that the NO_X budget of 119.4 tons per day from the 1995 attainment demonstration was used in the modeling analysis which the APCD used in adopting the 60 ton PM10 budget. EPA also notes that projected NO_X emissions from the transportation plan and TIP (not to exceed the adopted budget of 119.4 tons per day) are required to be used in the dispersion modeling conducted for each conformity determination. Therefore, since the budgets and their associated dispersion modeling requirement will provide for maintenance of the NAAQS, as discussed in section II. A. 3., above, EPA is also approving the 119.4 tons per day NO_X budget for all future years. EPA views the latest submission which relied on this analysis as setting the valid budget for this period for transportation conformity purposes, which is today approved into the SIP.

Finally, as noted by one commentor, EPA promulgated a revised PM10 NAAQS on July 18, 1997. (See 62 FR 38652.) Specifically, the form of the NAAQS was revised in a way that makes the standard less stringent overall. As a result of the promulgation of the new PM10 NAAQS, EPA may in the near future revoke the old PM10 NAAQS for Denver. However, EPA has not yet decided whether conformity requirements will continue to apply to areas for which the old PM10 NAAQS has been revoked and for which no new nonattainment designation has been made. Furthermore, the old PM10 NAAQS has not yet been revoked for Denver. Therefore, the budgets are not moot, and the mere possibility that the new NAAQS may render the budgets moot is not relevant to EPA's decision to approve the budgets. Also, the fact that the area has been attaining the PM10 NAAQS, while providing an extra measure of comfort regarding the attainment and maintenance/milestone demonstrations in the PM10 SIP, does not by itself provide an adequate technical basis for EPA to approve the budgets.

Issue 2: Whether potential growth in non-mobile sources was adequately considered in setting the emissions budgets for years beyond the PM10 SIP attainment and maintenance years.

Comment Summaries

1. As EPA noted in its August 5, 1997 notice, the conformity rule does not require consideration of growth in non-mobile sources each time a conformity determination is made. EPA's analysis in its August 5, 1997 notice is consistent with the application of conformity requirements in nonattainment areas throughout the country. Further, the conformity rule does not require the mobile source sector to offset projected growth in emissions from non-mobile sources.

2. No growth in non-mobile sources is expected over the next 20 years. Thus, growth in non-mobile sources is a non-issue. This commentor submitted data to support this assertion.

EPA Response: In addition to the comments received above, the preamble to EPA's August 15, 1997 amended conformity rule is relevant to this question and EPA has considered the preamble language in addressing this issue.

In conducting the modeling that led to the establishment of the 60 ton budget, APCD held all non-mobile sources (and mobile source NO_X) constant at 1995 levels. There was concern that the 60 ton budget would not provide for attainment if non-mobile source emissions were to increase in future years.

Normally, EPA would not approve a budget that had been established without considering growth in all source categories. The Act and EPA policy are clear that attainment and maintenance SIPs must consider growth in all sources in demonstrating attainment or maintenance of the NAAQS, and the conformity rule's budget test relies on the fact that SIP budgets do consider growth in all sources to ensure that transportation plans, programs and projects will not cause or contribute to violations of the NAAQS. The preamble to EPA's August 15, 1997 conformity rule establishes that growth in non-mobile sources must be considered in setting motor vehicle emission budgets for years beyond the attainment or maintenance demonstration (62 FR 43787–43788).[4]

However, in response to EPA's request for public comment, the RAQC submitted documentation indicating there will be no growth in non-mobile sources at any time in the near future. The RAQC has been working since 1995 on development of a long-range air quality plan known as the Blueprint for Clean Air for PM10 and two other pollutants. As part of this plan, long-term projections of emissions from all source categories have been developed by the RAQC and the State Air Pollution Control Division. The information submitted to the docket for this rulemaking by the RAQC demonstrates that non-mobile sources will remain below 1995 levels through at least the year 2020, and will be approximately 5 percent below 1995 levels in 2020.

Since it does not appear that there will be any growth in non-mobile sources in the Denver area over the time period for which the budgets were analyzed, EPA is approving the MVEB even though growth in these sources was not assessed for purposes of developing and adopting the MVEB.

In its August 5, 1997 supplemental notice, EPA proposed to approve the budgets in part based on a safety margin analysis prepared by the RAQC. In its analysis, EPA noted that the calculated safety margin of 221 tons per day of PM10 in 2015 was developed assuming 2015 levels of non-mobile source emissions; i.e., growth, or lack thereof, in non-mobile source emissions had been factored into the calculation of the so-called safety margin. As described above, EPA no longer believes the RAQC characterization of safety margin is consistent with the CAA or the conformity rules. Therefore, EPA is not relying on the RAQC safety margin analysis in approving the budgets.

[4] A number of commentors indicated that the conformity rule does not require consideration of growth in non-mobile sources for conformity determinations. This is accurate but should be distinguished from the initial setting of motor vehicle emission budgets in SIPs. The preamble to EPA's August 15, 1997 conformity rule is clear that growth in non-mobile sources must be considered in setting "out-year" budgets. 62 FR 43787–43788.

III. Final Action

EPA is approving the Denver PM10 and NO_X mobile source emissions budget SIP revisions submitted by the Governor of Colorado on July 18, 1995 and April 22, 1996 respectively as revisions to the Colorado SIP. The revisions were submitted in order that they could be used to assess the conformity of transportation plans, transportation improvement programs and, where appropriate, federally funded projects for applicable periods prescribed under conformity requirements within the Denver PM10 nonattainment area.

The current and future year mobile source emissions budgets that comprise part of these SIP revisions are as follows:

PM10: 54 tons per day, for analysis years 1998–2005
60 tons per day, for analysis years 2006 and beyond
NO_X: 119.4 tons per day, for analysis years 1998 and beyond

These budgets are applicable to the PM10 SIP modeling domain.

For these pollutants, these budgets supersede any prior budgets for the Denver PM10 nonattainment area for the same time frames. The metropolitan planning organization for the Denver PM10 nonattainment area will have to demonstrate conformity to these budgets within 18 months of EPA's approval of these budget SIPs, in accordance with 40 CFR 93.104(e)(3).

It should be noted that, in addition to the budgets themselves, the SIP revisions that EPA is approving today contain other provisions that must be followed in making transportation conformity determinations within the Denver PM10 nonattainment area. These provisions include, but are not necessarily limited to, descriptions of relevant inventory categories, definitions of applicability, and requirements related to dispersion modeling.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

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

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

D. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement 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 Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 1, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 26, 1998.

William P. Yellowtail,

Regional Administrator, Region VIII.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart G—Colorado

2. Section 52.320 is amended by adding paragraphs (c)(84) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(84) The Governor of Colorado submitted the Denver PM10 mobile source emissions budget State Implementation Plan (SIP) with a letter dated July 18, 1995. The Governor submitted the Denver NO_X mobile source emissions budget State Implementation Plan (SIP) with a letter dated April 22, 1996. The PM10 and NO_X mobile source emissions budgets and other provisions in these SIP

submittals are used to assess conformity of transportation plans, transportation improvement programs, and transportation projects.

(i) Incorporation by reference.

(A) Colorado Air Quality Control Commission, "Ambient Air Quality Standards" regulation 5CCR 1001–14, Section A.1. Budgets for the Denver Nonattainment Area (Modeling Domain) PM10, Sections A.2. and A.3., and Sections B and C, adopted on February 16, 1995, effective April 30, 1995, as amended by the Colorado General Assembly through enactment of Colorado Senate Bill 95–110, which Bill was enacted on May 5, 1995 and signed by the Governor of Colorado on May 31, 1995. (See paragraph (c)(84)(i)(B) of this section).

(B) Colo. Rev. Stat. section 25–7–105(1)(a)(III), enacted by the Colorado General Assembly on May 5, 1995 as part of Colorado Senate Bill 95–110 and signed by the Governor of Colorado on May 31, 1995.

(C) Colorado Air Quality Control Commission "Ambient Air Quality Standards" regulation 5CCR 1001–14, Section A.1. Budgets for the Denver Nonattainment Area (Modeling Domain) Nitrogen Oxides, as adopted June 15, 1995, effective August 30, 1995.

[FR Doc. 98–8214 Filed 3–30–98; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 059–0011; FRL–5988–9]

Approval and Promulgation of Implementation Plans; Arizona State Implementation Plan Revision, Maricopa County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing limited approval and limited disapproval of revisions to the Arizona State Implementation Plan (SIP) proposed in the **Federal Register** on February 9, 1998. This final action will incorporate these rules into the federally approved SIP. The intended effect of finalizing this action is to regulate emissions of particulate matter (PM) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rules control PM emissions from residential wood combustion. Thus, EPA is finalizing simultaneous limited approval and limited disapproval under CAA provisions regarding EPA action on SIP submittals and general rulemaking authority because these revisions, while strengthening the SIP, also do not fully meet the CAA provisions regarding plan submissions and requirements for nonattainment areas. As a result of this limited disapproval EPA will be required to impose highway funding or emission offset sanctions under the CAA unless the State submits and EPA approves corrections to the identified deficiencies within 18 months of the effective date of this disapproval. Moreover, EPA will be required to promulgate a Federal implementation plan (FIP) unless the deficiencies are corrected within 24 months of the effective date of this disapproval.

EFFECTIVE DATE: This action is effective on April 30, 1998.

ADDRESSES: Copies of the rules and EPA's evaluation report for the rules are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

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

Arizona Department of Environmental Quality, Air Quality Division, 3033 North Central Avenue, Phoenix, AZ 85012

Maricopa County Environmental Services Division, Air Quality Division, 1001 North Central Avenue, #201, Phoenix, AZ 85004

FOR FURTHER INFORMATION CONTACT: Patricia A. Bowlin, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1188.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being approved into the Arizona SIP are Maricopa County (Maricopa) Rule 318, Approval of Residential Woodburning Devices, and the Maricopa Residential Woodburning Restriction Ordinance (Woodburning Ordinance). These rules were submitted by the Arizona Department of Environmental Quality (ADEQ) to EPA on August 31, 1995.

II. Background

On February 9, 1998 in 63 FR 6505, EPA proposed granting limited approval and limited disapproval into the Arizona SIP of the following rules: Maricopa Rule 318 and the Woodburning Ordiance. Rule 318 and the Woodburning Ordinance were adopted by Maricopa Environmental Services Department on October 5, 1994. These rules were adopted as part of Maricopa's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for PM–10 and in response to CAA requirements. A detailed discussion of the background for the rules and the nonattainment area is provided in the proposed rule (PR) cited above.

EPA has evaluated the submitted rules for consistency with the requirements of the CAA and EPA regulations and EPA's interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the PR. EPA is finalizing the limited approval of these rules in order to strengthen the SIP. EPA is also finalizing the limited disapproval requiring the correction of the following rule deficiencies: inappropriate discretion by the Control Officer (Director's discretion) in the approval of woodburning devices and reference of non-EPA-approved woodburning device certification procedures. A detailed discussion of the rule provisions and evaluations has been provided in the PR and in the technical support document (TSD) available at EPA's Region IX office (TSD dated January 1998).

III. Response to Public Comments

A 30-day public comment period was provided in 63 FR 6505. EPA received comment letters on the PR from two parties: ADEQ and the Hearth Products Association (HPA). The comments have been evaluated by EPA and a summary of the comments and EPA's responses are set forth below.

Comment

ADEQ comments that the reference in Rule 318 to non-EPA-approved certification procedures for woodburning devices is necessary because EPA's wood heater standards found in 40 CFR Part 60 Subpart AAA do not apply to fireplaces and other woodburning technologies found in Maricopa County. ADEQ believes that EPA cannot disapprove the use of non-EPA procedures when EPA has neither developed federal certification procedures nor approved locally-developed certification procedures for clean woodburning technologies that are not addressed in Subpart AAA. ADEQ states that EPA needs to approve the certification methodology so that air pollution agencies can continue to address woodsmoke emissions from devices not subject to EPA certification.

Comment

HPA comments that EPA's wood heater certification standards in Subpart AAA do not address all woodburning devices and that the non-EPA-approved testing and certification protocols referenced in submitted Rule 318 are "technically and legally appropriate" for evaluating woodburning devices not addressed by Subpart AAA. HPA notes that EPA has approved Colorado's Regulation No. 4 which provides for the approval of woodburning devices that are not addressed by EPA's certification procedures. HPA states that certification protocols for woodburning devices that are not subject to Subpart AAA provide incentives for the development of clean woodburning technologies and are necessary to avoid denial of access to key markets.

Response

EPA acknowledges that its certification standards in Subpart AAA do not cover all woodburning technologies and that Maricopa's residential wood combustion control program addresses woodburning devices that are not covered by Subpart AAA. Certification standards for woodburning devices can be approved into SIPs if they are submitted for approval to EPA and are found by EPA to meet federal standards and criteria. For example, the pellet stove certification procedure in Colorado Regulation No. 4 adopted on June 24, 1993 was submitted to and approved by EPA. 40 CFR 52.320(c)(82)(i)(A). Rule 318, however, references a certification protocol that has never been submitted to EPA for review and approval. For this reason and the director's discretion deficiency discussed elsewhere in the PR, EPA cannot fully approve Maricopa Rule 318 and the associated Woodburning Ordinance.

IV. EPA Action

EPA is finalizing limited approval and limited disapproval of the above-referenced rules. The limited approval of these rules is being finalized under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is granting limited approval of these rules under sections 110(k)(3) and 301(a) of the CAA. This action approves the rules into the SIP as federally enforceable rules.

At the same time, EPA is finalizing limited disapproval of these rules because they contain deficiencies, and, as such, the rules do not fully meet the requirements of Part D of the Act. As stated in the PR, upon the effective date of this FR, the 18-month clock for sanctions and the 24-month FIP clock will begin. Sections 179(a) and 110(c). If the State does not submit the required corrections and EPA does not approve the submittal within 18 months of the FR, either the highway sanction or the offset sanction will be imposed at the 18-month mark. It should be noted that the rules covered by this FR have been adopted by the Maricopa and are currently in effect in Maricopa County. EPA's limited disapproval action will not prevent a Maricopa or EPA from enforcing these rules.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301, and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its action concerning SIPS on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

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

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

D. Submission to Congress and the General Accounting Office

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

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 1, 1998.

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Particulate matter.

Note: Incorporation by reference of the State Implementation Plan for the State of Arizona was approved by the Director of the Federal Register on July 1, 1982.

Dated: March 20, 1998.

Felicia Marcus,

Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart D—Arizona

2. Section 52.120 is amended by adding paragraph (c)(82)(i)(D) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(82) * * *

(i) * * *

(D) Rule 318 and Residential Woodburning Restriction Ordinance, adopted on October 5, 1994.

* * * * *

[FR Doc. 98–8414 Filed 3–30–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[CA 041–0067b; FRL–5983–9]

Approval and Promulgation of State Implementation Plans and Redesignation of California's Ten Federal Carbon Monoxide Planning Areas to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on maintenance plans and redesignation requests submitted by the California Air Resources Board (CARB) to redesignate ten of California's federal carbon monoxide planning areas from nonattainment to attainment for the National Ambient Air Quality Standards (NAAQS) for carbon monoxide (CO). They are: Bakersfield Metropolitan Area, Fresno Urbanized Area, Lake Tahoe South Shore Area, Sacramento Area, San Francisco-Oakland-San Jose Area, Chico Urbanized Area, Lake Tahoe North Shore Area, Modesto Urbanized Area, San Diego Area, and Stockton Urbanized Area. Under the Clean Air Act as amended in 1990 (CAA), designations can be revised if sufficient data is available to warrant such revisions. In this action, EPA is approving California's maintenance plans and redesignation requests because they meet the requirements set forth in the CAA. In addition, EPA is approving a related State Implementation Plan (SIP) submission by CARB, an Air Quality Attainment Plan for CO for Fresno.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed.

DATES: This rule is effective June 1, 1998 without further notice unless the Agency receives relevant adverse comments by April 30, 1998. If the effective date is delayed timely notice will be published in the **Federal Register.**

ADDRESSES: As indicated in the parallel proposed rule, comments should be addressed to the EPA contact below. The rulemaking docket for this notice, Docket No. 98-XX, may be inspected and copied at the following location during normal business hours. A reasonable fee may be charged for copying parts of the docket.

Environmental Protection Agency, Region 9, Air Division, Air Planning Office (AIR–2), 75 Hawthorne Street, San Francisco, CA 94105–3901.

Environmental Protection Agency, Air Docket (6102), 401 "M" Street SW., Washington, DC 20460.

Copies of the SIP materials are also available for inspection at the addresses listed below:

California Air Resources Board, 2020 L Street, Sacramento, CA 92123–1095.

San Joaquin Valley Unified APCD, 1999 Tuolumne St., Suite 200, Fresno, CA 93721.

Placer County, DeWitt Center, 11464 B Avenue, Auburn, CA 95603.

Sacramento Metropolitan APCD, 8411 Jackson Road, Sacramento, CA 95826.

Bay Area Air, Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

Butte County, 2525 Dominic Drive, Suite J, Chico, CA 95928–7184.

El Dorado County, 2850 Fairlane Ct., Bldg. C, Placerville, CA 95667–4100.

Yolo-Solano County, 1947 Galileo Ct., Suite 103, Davis, CA 95616–4882.

San Diego County, Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1095.

FOR FURTHER INFORMATION CONTACT: Larry A. Biland, Air Planning Office (AIR–2), Air Division, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA, 94105–3901. Telephone: (415) 744–1227.

SUPPLEMENTARY INFORMATION:

I. Background

A. Areas Requesting Redesignation

The ten areas requesting redesignation were determined to be nonattainment for CO in the November 6, 1991, **Federal Register** (Vol. 56, No. 215, pp. 56723–56725). CARB's emission control programs, including strict motor vehicle emission standards and the clean fuels program, have reduced CO emissions. The decrease in emissions has improved CO air quality so that they now attain the National Ambient Air Quality Standard (NAAQS) and are therefore eligible for redesignation to attainment for the national CO standard. The ten areas are:

Bakersfield Metropolitan Area
Chico Urbanized Area
Fresno Urbanized Area
Lake Tahoe No. Shore Area [1]
Lake Tahoe So. Shore Area [2]
Modesto Urbanized Area
Sacramento Area [3]
San Diego Area [4]
San Francisco-Oakland-San Jose Area [5]
Stockton Urbanized Area

Eight of the areas were classified as moderate nonattainment, while two areas (Lake Tahoe No. Shore Area and Bakersfield Metropolitan Area) were unclassified. Moderate areas are those with an eight-hour average CO design

[1] Placer County part of Lake Tahoe Air Basin.

[2] El Dorado County part of Lake Tahoe Air Basin.

[3] Urbanized parts of Sacramento, Placer, and Yolo Counties.

[4] Western part of County only.

[5] Urbanized parts of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma Counties.

value between 9.1 and 16.4 parts per million (ppm) or less. (The design value is the highest of the second high eight-hour concentrations observed at any site in the area over eight consecutive quarters and is the value on which the determination of attainment or nonattainment is based.) An "unclassified" nonattainment area is one with data showing no violations but, because it had been designated as nonattainment prior to the 1990 CAA Amendments, was continued as nonattainment by operation of law until redesignation requirements are completed.

II. Evaluation Criteria

Section 107(d)(3)(E) of the 1990 Clean Air Act Amendments provides five specific requirements that an area must meet in order to be redesignated from nonattainment to attainment.

1. The area must have attained the applicable NAAQS;
2. The area must have a fully approved SIP under section 110(k) of CAA;
3. The air quality improvement must be permanent and enforceable;
4. The area must have a fully approved maintenance plan pursuant to section 175A of the CAA;
5. The area must meet all applicable requirements under section 110 and Part D of the CAA.

III. Review of State Submittal

EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA six months after receipt of the submission. In this instance, a completeness determination was made by operation of law. The redesignation requests for Bakersfield Metropolitan Area, Fresno Urbanized Area, Lake Tahoe South Shore Area, Sacramento Area, San Francisco-Oakland-San Jose Area, Chico Urbanized Area, Lake Tahoe North Shore Area, Modesto Urbanized Area, San Diego Area, and Stockton Urbanized Area meet the five requirements of section 107(d)(3)(E), noted above. The following is a brief description of how the State has fulfilled each of these requirements.

1. Attainment of the CO NAAQS

The State and Local Air Monitoring Stations (SLAMS) form the network of monitoring stations that provide the data used to demonstrate attainment. This network is reviewed annually by the CARB and the U.S. EPA as part of the development of the State and Local Air Monitoring Network Plan, as required by Title 40, Code of Federal Regulations (CFR), Part 58. All CO data reviewed to confirm attainment were retrieved from the Aerometric Information Retrieval System (AIRS) maintained by U.S. EPA. These data were reviewed for completeness, especially for the winter months of November, December, and January, during which concentrations are highest. The data used to confirm attainment are the CO eight-hour design values. The design value is the highest of the second high eight-hour concentrations observed at any site in the area over eight consecutive quarters. Table 1 lists the design value for each nonattainment area. EPA has also reviewed the most recent years' data in AIRS as a further check that the air quality levels in these areas show no violations; these design values are provided in the final column of Table 1.

TABLE 1.—CARBON MONOXIDE DESIGN VALUES

Nonattainment area	Attainment period [6]	Design value (ppm)	1995—1996 Design value (ppm)
Bakersfield	[7] 1992–1994	6.1	5.6
Chico	[8] 1993–1995	5.4	5.3
Fresno	[9] 1993–1995	9.1	8.3
Lake Tahoe North Shore	1993–1994	3.8	[10] 3.2
Lake Tahoe South Shore	1993–1994	7.4	5.3
Modesto	1993–1994	6.6	5.6
Sacramento Area	1993–1995	9.1	7.1
San Diego	1993–1994	7.0	6.0
San Francisco-Oakland-San Jose	1993–1994	7.2	5.8
Stockton	1993–1994	7.5	6.7

[6] Except as otherwise noted, data are from calendar years 1993 and 1994.
[7] *Bakersfield:* The sites used for the attainment demonstration were closed during the third quarter of 1994. Therefore, the eight-hour design value was based on CO data from November 1992 through February 1993 and November 1993 through February 1994.
[8] *Chico:* The 1993–1994 period is missing two of the eight months that have potential for high CO values; therefore, the eight-hour design value was based on CO data from November 1993 through February 1994 and November 1994 through February 1995.
[9] *Fresno:* The site triggering the nonattainment designation, Fresno-Olive, was closed during 1990. Data supporting the attainment demonstration are from Fresno-Fisher, a site determined to be equivalent. CO data from the Fresno-Fisher site are for November 1993 through January of 1994 and December 1994 through February 1995.
[10] 1994–1995 data.

Air quality data show that the ten areas no longer violate the national eight-hour CO standard.

2. Fully Approved SIP Under Section 110(k) of the CAA

As set forth in the CAA, the applicable requirements for redesignation are found in sections 110, part D, and 211 (m)(1). The required SIP elements were submitted by CARB and are being approved below.

a. Attainment Demonstration for Fresno

The CAA requires an attainment demonstration for all CO nonattainment areas that have a design value greater than 12.7 ppm. The only nonattainment area of the ten included in this action that falls under this condition is the Fresno-Clovis urbanized area which had a design value of 13 ppm. The original CO attainment demonstration for the

Fresno Urbanized nonattainment area was submitted by California to EPA on December 28, 1992. Table 2 shows the Rollback Analysis for the Fresno Nonattainment Area. The demonstration uses a direct proportional rollback analysis which assumes a linear correlation between CO emissions and ambient concentrations of CO. The design value was chosen according to EPA's criteria which is the second highest recorded 8-hour concentration of CO during 1988 and 1989. The analysis used a design value of 13.0 ppm and a target of 9.0 ppm (the Federal standard). This analysis was done for the years 1988 through 1995 to compare target emissions levels and to allow for meteorological variations which may have impacted CO levels. Table 2 also lists the wintertime emissions estimates for 1988 through 1995 based on the 1987 base inventory. The analysis used the wintertime on-road mobile source inventory since there are no stationary CO sources near the monitoring sites. The design monitoring site is located in the urban core of the city (Shields and First) and there are no industrial CO sites that impact this location. The vehicle emission estimates, which are based on relatively new speed correction factors, assume the benefits of the CARB regulations prescribing the oxygenate content of gasoline. The estimates do not include the benefits of an Enhanced Inspection and Maintenance program for on-road motor vehicles or District proposed transportation control measures. Table 2 also includes the annual second high ambient CO concentrations for each year used in the rollback calculations and the resulting "emission target". The emission target is an estimate of the maximum amount of emissions that should provide for attainment.

TABLE 2.—ROLLBACK ANALYSIS

[(Data is from the 1992 SIP submittal) Fresno Carbon Monoxide Nonattainment Area [10]]

	1988	1989	1990	1991	1992	1993	1994	1995
On-road mobile emissions (t/d)	402	398	371	356	308	294	280	266
Second highest recorded value (ppm)	[11]13.0	[11]12.6	[12]8.8	[12]9.0	.....	.....	.....	.....
Emission Target (t/d){C=(A×9 ppm)÷B}	278	284	379	356	.....	.....	.....	.....

[10] Carbon monoxide wintertime emission estimates for motor vehicle emissions are calculated using factors (EMFAC7EPSCFCO) and the benefits of CARB's oxygenated fuel regulation.
[11] Monitoring site located at Olive Street.
[12] Monitoring site located at First Street.

The rollback analysis for Fresno projected that attainment would be achieved by 1995, based on a linear projection of reductions required to achieve attainment. The actual 1993–1995 design value for the entire nonattainment area was 9.1 ppm. EPA's review of the 1995–1996 air quality data entered into the AIRS data base indicates that the actual 1995–1996 design value for the Fresno, 1145 Fisher St. CO monitor was 8.3 ppm. This trend is consistent with evidence that the Fresno Area CO emissions continue to drop.

b. New Source Review (NSR) SIP Submittals

Consistent with the October 14, 1994 EPA guidance from Mary D. Nichols entitled "Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment," EPA is not requiring full approval of a Part D NSR program by California as a prerequisite to redesignation to attainment. Under this guidance, nonattainment areas may be redesignated to attainment notwithstanding the lack of a fully approved Part D NSR program so long as the program is not relied upon for maintenance. California has stated in their redesignation request that they have not relied on a NSR program for CO sources to maintain attainment.

c. Contingency Measures for VMT Exceedances

CAA Section 187(a)(2)(A) requires CO areas with a design value above 12.7 ppm to submit a forecast of vehicle miles traveled (VMT) through the attainment date, and to provide for annual updates. Fresno's "Federal 1992 Air Quality Attainment Plan for CO" includes the VMT projections through 1995 (Table 2) and a commitment to update the projections. The projections meet applicable EPA guidelines. CAA Section 187(a)(3) requires SIPs for CO areas with a design value above 12.7 ppm to contain contingency measures to be implemented if VMT projected levels are exceeded or the area fails to attain by its CAA deadline. Based on the measures included in the SIP, the Fresno area attained the CO NAAQS by its scheduled date and did not exceed its VMT projected levels through 1995. Therefore, EPA approves the SIP for Fresno with respect to the provisions of Sections 187(a)(2)(A) and 187(a)(3).

d. Improvement in Air Quality Due to Permanent and Enforceable Measures

Improvements in air quality must be shown not to have occurred as a result of temporary economic conditions or favorable meteorology. One approach to assessing whether economic conditions contributed to improved air quality is to review the VMT trends for each CO nonattainment area. Motor vehicle usage has been observed in the past to decrease with poor economic conditions. Because motor vehicles are the primary source of CO, any significant change in VMT should be reflected as changes in CO emissions. Table 3 shows VMT increased, on average, 14 percent, for the areas during the period in which CO air quality was improving. This supports a finding that CO emission reductions did not occur as a result of decreased VMT associated with an economic downturn.

TABLE 3.—VEHICLE MILES TRAVELED [13]

[Thousands]

Area	1990	1993	1995
Bakersfield Metropolitan Area (Kern Co.)	12606	13728	15196
Chico Urbanized Area (Butte Co.)	3988	4196	4394
Fresno Urbanized Area (Fresno Co.)	15150	16744	17897
Lake Tahoe No. Shore (Placer Co.)	383	434	451

TABLE 3.—VEHICLE MILES TRAVELED [13]—Continued

[Thousands]

Area	1990	1993	1995
Lake Tahoe So. Shore (El Dorado Co.)	811	897	923
Modesto Urbanized Area (Stanislaus Co.)	8478	9465	10121
Stockton Urbanized Area (San Joaquin Co)	11508	13084	14139
Placer Co (Sacramento Valley)	5700	6302	7040
Sacramento Co	22202	24811	26550
Yolo Co	3598	3990	4252
San Diego Area (San Diego Co.) [14]	61990	63272	64121
Alameda Co	25345	26601	27857
Contra Costa Co	15883	17146	17989
Marin Co	5201	5332	5420
Napa Co	1791	1965	2080
San Francisco Co	8347	8670	8886
San Mateo Co	12980	13483	13819
Santa Clara Co	28023	29229	30036
Solano Co	5880	6337	6643
Sonoma Co	4909	5265	5504

[13] CARB motor vehicle activity data (BURDEN7F); 1/19/94 run date.
[14] VMT estimates for San Diego based on data supplied by SANDAG in August 1994.

The improved air quality also must not have occurred solely because of favorable meteorology. Stable weather conditions characterized by cold temperatures, very low inversion layers, and very light to no winds contribute to higher CO levels. In contrast, unstable weather conditions characterized by medium to strong, gusty winds provide good mixing and dispersion which contribute to lower CO levels. An indicator that can be used to estimate unstable weather conditions during a season is the number of days with measurable precipitation (>0.01"). Therefore, one method for assessing favorable meteorology is to compare the historical average number of days with measurable precipitation in a CO season (November through February) with the number of days during the attainment period. Table 4 displays data comparing the historical (1961–1995) average number of days with measurable precipitation in a CO season with the number of days in the two CO seasons on which the attainment demonstration is based.

TABLE 4.—MEASURABLE PRECIPITATION (≥0.01") DURING CO SEASON [15]

Station	35-year average	1992–1993	1993–1994
	Number of days	Number of days	Number of days
Bakersfield	22	30	20
Chico [16]	38	46	34
Fresno	27	32	20
Lake Tahoe [17]	.....	46	32
Modesto [18]	31	45	29
Sacramento	35	47	32
San Francisco	37	46	32
San Diego	23	38	23
Stockton	30	40	28

[15] Precipitation data were obtained from the National Oceanic and Atmospheric Administration.
[16] Chico precipitation data for 1961 through 1990 based on data gathered at Redding; Chico precipitation data were used for 1991–1995.
[17] Historical precipitation data for Lake Tahoe were not available.
[18] Modesto precipitation data for 1961 through 1990 based on data gathered at Stockton; Modesto precipitation data were used for 1991–1995.

As shown in Table 4, the 1992–1993 CO season had more days of measurable precipitation than the 35-year average, while the 1993–1994 CO season had, except for San Diego, fewer days of precipitation than the historical average for all the sites. Although it appears that CO concentrations during the 1992–1993 season may have been influenced by favorable meteorology, the decline in CO design values continued during the 1993–1994 CO season, despite less favorable meteorology. The data support a finding that favorable meteorology did not account solely for the lower CO levels during the attainment period.

e. Fully Approved Maintenance Plan Under Section 175A

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year period. In the event of a CO NAAQS violation, the maintenance plan must contain contingency measures, with a schedule for implementation adequate to assure prompt correction of any air quality problems. In this notice EPA is approving the State of California's maintenance plans for the: Bakersfield Metropolitan Area, Fresno Urbanized Area, Lake Tahoe South Shore Area, Sacramento Area, San Francisco-Oakland-San Jose Area, Chico Urbanized Area, Lake Tahoe North

Shore Area, Modesto Urbanized Area, San Diego Area, and Stockton Urbanized Area because EPA finds that California's submittal meets the requirements of section 175A.

(i). Emission Inventory. Clean Air Act sections 172(c)(3) and 187(a)(1) require that CO plans include comprehensive, accurate, and current inventories of actual emissions from all sources. EPA's guidance for preparing emission inventories is discussed and referenced in the General Preamble (57 FR 134988, April 16, 1992). California originally submitted its inventory to EPA on November 13, 1992. The maintenance plan submittal provides more current inventories for each area. See Attachment 2, "Carbon Monoxide Winter Seasonal Emission Inventory (1990–2010). Motor vehicle emissions were determined using California's EMFAC7F, which EPA has accepted for purposes of the California SIP.

EPA is approving these updated CO emission inventories, rather than the initial submission, as meeting the CAA requirements for these areas. For further details on EPA's review of the inventories, the reader is referred to the Technical Support Document.

(ii). Oxygenated Gasoline. Motor vehicles are major contributors of CO emissions. An important measure toward reducing these emissions is the use of cleaner-burning oxygenated gasoline. Extra oxygen, contained within the oxygenate in the fuel, enhances fuel combustion and helps to offset fuel-rich operating conditions, particularly during vehicle starting, which are more prevalent in the winter. Section 211(m) of the CAA requires that CO nonattainment areas, with a design value of 9.5 ppm based on data for the 2-year period of 1988 and 1989, submit a SIP revision for an oxygenated fuel program for such area. The oxygenated fuel requirement must apply to all fuel refiners or marketers who sell or dispense gasoline in the Metropolitan Statistical Area (MSA) or Consolidated Statistical Area (CMSA) in which the nonattainment area is located. California submitted its motor vehicle fuels regulations on November 15, 1994. EPA approved the State's fuels regulations, including its requirements for oxygen content, on August 21, 1995 (60 FR 43379). Consistent with that action, EPA approves the SIP with respect to the requirements of sections 211(m) and 187(b)(3) for oxygen content of gasoline.

(iii). Vehicle Inspection and Maintenance (I/M). CAA Section 187(a)(4) requires basic vehicle I/M programs in CO nonattainment areas with design values equal to or less than 12.7 ppm; Section 187(a)(6) requires enhanced I/M programs for CO nonattainment areas with design values above 12.7 ppm. California submitted SIP revisions on June 30, 1995 and January 22, 1996 for both basic and enhanced I/M programs. On January 8, 1997, EPA approved the California I/M regulations for basic and enhanced I/M programs (62 FR 1150). Only Fresno is required to have Enhanced I/M for CO, since at the time of classification Fresno had a design value greater than 12.7 ppm (56 FR 56694, November 16, 1991). Fresno does not rely on emission reductions for CO from Enhanced I/M; however, the State's enhanced I/M Program has received interim approval to satisfy the enhanced I/M requirements of section 187(a)(6). I/M is not required in the Lake Tahoe Air Basin since it did not have an existing I/M program prior to enactment of the 1990 CAA Amendments (section 187(a)(4)).

(iv). Conformity. EPA interprets the conformity requirements as not being an applicable requirement for purposes of evaluating the redesignation request under section 1079d). The rationale for this is based on a combination of two factors. First, the requirement to submit SIP revisions to comply with the conformity provisions of the Act continues to apply to areas after redesignation to attainment. Therefore, the State remains obligated to adopt the transportation and general conformity rules even after redesignation and would risk sanctions for failure to do so. While redesignation of an area to attainment enables the area to avoid further compliance with most requirements of section 110 and Part D, since those requirements are linked to the nonattainment status of an area, the conformity requirements apply to both nonattainment and maintenance areas. Second, EPA's federal conformity rules require the performance of conformity analyses in the absence of State-adopted rules. Therefore, a delay in adopting State rules does not relieve an area from the obligation to implement conformity requirements. Because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under Federal rules if State rules are not yet adopted, EPA believes it is reasonable to view these requirements as not being applicable requirements for purposes of evaluating a redesignation request. Under this policy, EPA believes that the CO redesignation request for the: Bakersfield Metropolitan Area, Fresno Urbanized Area, Lake Tahoe South Shore Area, Sacramento Area, San Francisco-Oakland-San Jose Area, Chico Urbanized Area, Lake Tahoe North Shore Area, Modesto Urbanized Area, San Diego Area, and Stockton Urbanized Area may be approved notwithstanding the lack of approved State transportation and general conformity rules.

(v). Demonstration of Maintenance-Projected Inventories. Maintenance of the standard can be shown by comparing the emissions inventory for the period during which an area attained the standard to emission inventory projections for at least ten years beyond the date of approval by the EPA (see Table 6). The emissions inventory comparison, which includes the years 1990, 1993, 1995, 2000, 2005, and 2010, shows emissions will continue to decline for all ten redesignation areas.

TABLE 6.—CARBON MONOXIDE WINTER SEASONAL EMISSION INVENTORY TRENDS [19]

[Tons per day]

CO nonattainment area	1990	1993	1995	2000	2005	2010
Bakersfield [20]	423	356	348	329	304	286
Chico	229	189	183	167	155	153
Fresno	511	436	414	362	328	321
Lake Tahoe North Shore	32	28	26	22	19	18
Lake Tahoe South Shore	100	89	86	76	66	64
Modesto	311	282	270	239	216	212
Sacramento Area [21]	1214	1026	971	822	690	635
San Diego	1927	1492	1345	1062	904	832
San Francisco-Oakland-San Jose [22]	3731	3019	2786	2268	1896	1716

TABLE 6.—CARBON MONOXIDE WINTER SEASONAL EMISSION INVENTORY TRENDS [19]—Continued

[Tons per day]

CO nonattainment area	1990	1993	1995	2000	2005	2010
Stockton	463	400	380	334	297	285

[19] CARB 1993 base year emission inventory (10/3/95 run date—based on EMFAC7F). Except where noted, emissions data reflect county totals.
[20] Reflects corrected Kern County emission inventory (1/29/96 run date).
[21] Combined emission inventory for Sacramento, Placer, and Yolo Counties.
[22] Emission inventory for San Francisco Bay Area Air Basin.

(vi) Contingency Plan. Maintenance plans for attainment areas must include contingency provisions, or extra measures beyond those needed for attainment, to offset any unexpected increase in emissions and ensure that the standard is maintained (175(A)(d)). Typically, contingency measures are held in reserve and implemented only if an area violates the standard in the future. However, California claims its on-going motor vehicle program creates a unique situation and allows CARB to offer, as contingency, several regulations that will be implemented, regardless of monitored CO levels.

Table 7 shows fully adopted CARB regulations with multi-pollutant benefits which "come on line" from 1996 through 2003.

TABLE 7.—CONTINGENCY MEASURES

Date(s)	Implementation regulation
1996	Improved Basic Inspection and Maintenance Program (Bay Area, Chico, North and South Shore Lake Tahoe) [23]
1996	Enhanced Inspection and Maintenance Program (Bakersfield, Fresno, Modesto, Sacramento Area, San Diego, Stockton)
1996	On-Board Diagnostics II (Statewide).
1996	California Cleaner-Burning Gasoline (Statewide).
1997	Off-Highway Recreational Vehicles (Statewide).
1999	Lawn and Garden Equipment—Tier II (Statewide).
1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003 and later.	Low-Emission Vehicles and Clean Fuels—Post 1995 Standards (Statewide).

[23] Inspection required upon change of ownership only. There is no biannual vehicle inspection in these areas.

California maintains that these adopted regulations will generate new reductions in CO emissions, above and beyond those needed for attainment and provide sufficient reductions in future years to guarantee an ample margin of safety to ensure maintenance of the standard and to provide adequate additional reductions to cover the contingency requirements. EPA agrees with California's claims and approves its contingency plan.

(vii) Subsequent Maintenance Plan Revisions. In accordance with section 175A(b) of the CAA, the State has agreed to submit a revised maintenance SIP eight years after the area is redesignated to attainment. Such revised SIP will provide for maintenance for an additional ten years.

f. Meeting Applicable Requirements of Section 110 and Part D

In Section III.2. above, EPA sets forth the basis for its approval of California's SIP as meeting the applicable requirements of Section 110 and Part D of the CAA. EPA is approving this action without prior proposal because the Agency views this as noncontroversial and anticipates no adverse comments. However, if EPA receives relevant adverse comments by April 30, 1998, then EPA will publish a document that withdraws only those portions of the action on which EPA received the adverse comments, informing the public that those portions of the action did not take effect. EPA will then address those comments in a final action based upon this proposed rule. EPA will not institute a second comment period on the proposed rule. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 1, 1998 and no further action will be taken on the proposed rule.

Final Action

EPA is approving Fresno's attainment plan, a maintenance plan for California's federal carbon monoxide (CO) planning areas, and a request to redesignate these areas. They are: Bakersfield Metropolitan Area, Fresno Urbanized Area, Lake Tahoe South Shore Area, Sacramento Area, San Francisco-Oakland-San Jose Area, Chico Urbanized Area, Lake Tahoe North Shore Area, Modesto Urbanized Area, San Diego Area, and Stockton Urbanized Area. Under the 1990 amendments of the Clean Air Act (CAA) designations can be revised if sufficient data is available to warrant such revisions. In this action, EPA is approving California's request because it meets the maintenance plan and redesignation requirements set forth in the CAA. This action is being taken under sections 107 and 110 of the CAA. Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. If EPA receives relevant adverse comments by April 30, 1998, then EPA will publish a document that withdraws only those portions of the action on which EPA received the adverse comments, informing the public that those portions of the action are withdrawn. EPA will then address those comments in a final action based upon this proposed rule. EPA will not institute a second comment period on the proposed rule. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 1, 1998 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals and redesignation to attainment under sections 107, 110, and subchapter I, part D of the Clean Air Act do not create any new requirements. Therefore, because the Federal SIP approval and redesignation to attainment do not impose any new requirements, the Administrator certifies that the actions do not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

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

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

D. Submission to Congress and the General Accounting Office

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

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 1, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Transportation.

40 CFR Part 81

Air pollution control, National parks.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: March 4, 1998.

Felicia Marcus,

Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(252) and (253) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(252) Air Quality Management Plan for the following APCD was submitted on December 28, 1992, by the Governor's designee.

(i) Incorporation by reference. (A) San Joaquin Valley Unified Air Pollution Control District.

(*1*) Federal 1992 Air Quality Attainment Plan for Carbon Monoxide and Appendices adopted on November 18, 1992.

(253) Carbon Monoxide Redesignation Request and Maintenance Plan for ten federal planning areas submitted on July 3, 1996, by the Governor's designee.

(i) Incorporation by reference.

(A) California Air Resources Board. (*1*) Carbon Monoxide Redesignation Request and Maintenance Plan for the following areas: Bakersfield Metropolitan Area, Chico Urbanized Area, Fresno Urbanized Area, Lake Tahoe North Shore, Lake Tahoe South Shore, Modesto Urbanized Area, Sacramento Area, San Diego Area, San Francisco-Oakland-San Jose Area, and Stockton Urbanized Area adopted on April 26, 1996.

* * * * *

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

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

2. In § 81.305, the table for California—Carbon Monoxide is amended by revising the entries for "Bakersfield Area," "Chico Area," "Fresno Area," "Lake Tahoe North Shore Area," " Lake Tahoe South Shore Area," "Modesto Area," "Sacramento Area," "San Diego Area," "San Francisco-Oakland-San Jose Area," and "Stockton Area" to read as follows:

§ 81.305 California.

* * * * *

CALIFORNIA—CARBON MONOXIDE

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Bakersfield Area:				
Kern County (part)	April 30, 1998	Attainment.		
Bakersfield Metropolitan Area (Urbanized part)				
Chico Area:				
Butte County (part)	April 30, 1998	Attainment.		
Chico Urbanized Area (Census Bureau Urbanized part).				
Fresno Area:				
Fresno County (part)	April 30, 1998	Attainment.		
Fresno Urbanized Area				
Lake Tahoe North Shore Area:				
Placer County (part)	April 30, 1998	Attainment.		
• • •	•	•	•	•
Lake Tahoe South Shore Area:				
El Dorado County (part)	April 30, 1998	Attainment.		
Modesto Area:				
Stanislaus County (part)	April 30, 1998	Attainment.		
Modesto Urbanized Area (Census Bureau Urbanized Area).				
Sacramento Area:				
Census Bureau Urbanized Areas	April 30, 1998	Attainment.		
Placer County (part)				
Sacramento County (part)				
Yolo County (part)				
San Diego Area:				
San Diego County (part)	April 30, 1998	Attainment.		
San Francisco-Oakland-San Jose Area:				
Urbanized Areas	April 30, 1998	Attainment.		
Alameda County (part)				
Contra Costa County (part)				
Marin County (part)				
Napa County (part)				
San Francisco County				
San Mateo County (part)				
Santa Clara County (part)				
Solano County (part)				
Sonoma County (part)				
Stockton Area:				
San Joaquin County (part)	April 30, 1998	Attainment.		
Stockton Urbanized Area:				
• • •	•	•	•	•

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 98–8416 Filed 3–30–98; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–5988–5]

RIN 2060–AH47

National Emission Standards for Hazardous Air Pollutants Emissions: Group IV Polymers and Resins

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; extension of compliance.

SUMMARY: On September 12, 1996, the EPA published the Group IV Polymers and Resins NESHAP (61 FR 48208). This action temporarily extends the compliance date specified in 40 CFR 63.1311(c) for the provisions contained in 40 CFR 63.1329 for existing affected sources producing poly(ethylene terephthalate) (PET) using the continuous terephthalic acid (TPA) high viscosity multiple end finisher process because the EPA is in the process of responding to a request to reconsider relevant portions of the rule (Docket Item: A–92–45; VI–A–1). The EPA is providing this temporary extension to February 27, 2001 to complete reconsideration and any necessary revision to the rule. The EPA is providing this temporary extension pursuant to Clean Air Act section 301(a)(1).

DATES: The direct final rule will become effective May 20, 1998 without further notice unless the Agency receives relevant adverse comments on the parallel notice of proposed rulemaking by April 30, 1998. Should the Agency receive such comments, it will publish a document informing the public that this rule did not take effect. If relevant adverse comments are received on the proposal, they will be addressed in a subsequent final rule. For additional information concerning comments, see the parallel proposal notice found in the Proposed Rules Section of this **Federal Register.**

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–92–45 (see docket section below), room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C.

20460. The EPA requests that a separate copy also be sent to the contact person listed below. Comments and data may also be submitted electronically by following the instructions provided in the **SUPPLEMENTARY INFORMATION** section. No Confidential Business Information (CBI) should be submitted through electronic mail.

Docket

The official record for this rulemaking has been established under docket number A–92–45 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments and data, which does not include any information claimed as CBI, is available for inspection between 8 a.m. and 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address in the **ADDRESSES** section. Alternatively, a docket index, as well as individual items contained within the docket, may be obtained by calling (202) 260–7548 or (202) 260–7549. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosensteel, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5608.

SUPPLEMENTARY INFORMATION: *Electronic Filing.* Electronic comments and data can be sent directly to EPA at: a-and-r-docket@epamail.epa.gov. Electronic comments and data must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on diskette in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number A–92–45. Electronic comments may be filed online at many Federal Depository Libraries.

Electronic Availability

This document is available in docket number A–92–45 or by request from the EPA's Air and Radiation Docket and Information Center (see **ADDRESSES**), and is available for downloading from the Technology Transfer Network (TTN), the EPA's electronic bulletin board system. The TTN provides information and technology exchange in various areas of emissions control. The service is free, except for the cost of a telephone call. Dial (919) 541–5742 for up to a 14,000 baud per second modem. For further information, contact the TTN HELP line at (919) 541–5348, from 1:00 p.m. to 5:00 p.m., Monday through Friday, or access the TTN web site at: www.epa.gov/ttn/oarpg/rules.html.

Regulated entities. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Facilities that produce PET using the continuous TPA high viscosity multiple end finisher process.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities regulated by the NESHAP addressed in this direct final rule. If you have questions regarding the applicability of the NESHAP addressed in this direct final rule to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

The information presented in this preamble is organized as follows:

I. Background and Rationale

On September 12, 1996, the EPA published 40 CFR part 63, subpart JJJ—Group IV Polymers and Resins NESHAP (61 FR 48208). The final rule established a new subcategory for PET manufacture specified as the continuous TPA high viscosity multiple end finisher subcategory. The final rule also established standards for process contact cooling towers (PCCT) contained in 40 CFR 63.1329 for existing affected sources in the new subcategory. The final rule required existing affected sources in the continuous TPA high viscosity multiple end finisher subcategory to comply with 40 CFR 63.1329 beginning September 12, 1999 (*see* 40 CFR 63.1311(c)).

A petition has been submitted to the EPA requesting reconsideration of the technical basis for establishment of the continuous TPA high viscosity multiple end finisher subcategory (Docket Item: A–92–45; VI–A–1). The petition presents new information related to the production processes for the manufacture of PET that the petitioner claims calls into question the need and justification for a separate subcategory for the continuous TPA high viscosity multiple end finisher process. The information presented in the petition has led the EPA to accept the petitioner's request to reconsider the need for the continuous TPA high viscosity multiple end finisher subcategory. When compared to the other PET subcategories, there are two regulatory differences that pertain to affected sources in the continuous TPA high viscosity multiple end finisher subcategory; exemption from the equipment leaks provisions contained in 40 CFR 63.1331 and requirements to limit the concentration of ethylene glycol in PCCTs for existing affected sources under the provisions contained in 40 CFR 63.1329. Because affected sources in the continuous TPA high viscosity multiple end finisher subcategory are exempt from the equipment leaks provisions, no action is required by the EPA with regards to the equipment leaks provisions in response to the request to reconsider. However, as a result of the EPA's need to respond to the request to reconsider the need for the continuous TPA high viscosity multiple end finisher subcategory, existing affected sources in this subcategory cannot be certain of the final standards for PCCTs. If the EPA finds that the continuous TPA high viscosity multiple end finisher subcategory is not justified, existing affected sources in this subcategory will be subject to a PCCT performance standard that has yet to be determined. If the EPA finds that the continuous TPA high viscosity multiple end finisher subcategory is justified, existing affected sources in this subcategory will be subject to the current PCCT standard, but owners or operators will have lost considerable time in preparing for compliance.

At this time, representatives of one existing affected source in the continuous TPA high viscosity multiple end finisher subcategory have informed the EPA in writing (Docket Item: A–92–45; VI–D–8) that they are on the verge of committing to capital expenditures to purchase equipment necessary to comply with the current PCCT standard. Because of the uncertainty of the final standards for PCCTs and the impending need to commit to capital expenditures, representatives of this existing affected source have requested temporary relief from the PCCT standard. For these reasons, the EPA is providing a temporary extension of the compliance date specified in 40 CFR 63.1311(c) from September 12, 1999, until February 27, 2001, for the provisions contained in 40 CFR 63.1329 for existing affected sources producing PET using the continuous TPA high viscosity multiple end finisher process to allow the EPA to fully evaluate the petition for reconsideration and take any curative regulatory action necessary. The new compliance date is 3 years from the effective date of the rule. See 63 FR

9944 (February 27, 1998). Following completion of reconsideration, any subsequent curative rulemaking will also include consideration of the appropriate compliance date for any revised standard. This temporary extension applies only to existing affected sources producing PET using the continuous TPA high viscosity multiple end finisher process. It does not affect any other provisions of the rule or any other source categories or subcategories.

By this action, the EPA is providing, pursuant to Clean Air Act section 301(a)(1), a temporary extension of the compliance date specified in 40 CFR 63.1311(c) for the provisions contained in 40 CFR 63.1329, only as necessary to complete reconsideration and potential revision of the rule. The EPA intends to complete its reconsideration of the rule and, following the notice and comment procedures of Clean Air Act section 307(d), take appropriate action as expeditiously as practical. The EPA does not believe this temporary extension will, as a practical matter, impact the overall effectiveness of the rule.

Following the EPA's reconsideration of the rule, the EPA will establish a new compliance date for the provisions contained in 40 CFR 63.1329 that is most likely to be beyond the current compliance date of September 12, 1999. Such an extension beyond September 12, 1999 is likely to be necessary for the following reasons. As discussed earlier, if the EPA finds that the continuous TPA high viscosity multiple end finisher subcategory is not justified, existing affected sources in this subcategory will be subject to a PCCT performance standard that has yet to be determined. Development of any such standard will include evaluation of how much time will be needed for compliance. On the other hand, if the EPA finds that the continuous TPA high viscosity multiple end finisher subcategory is justified, existing affected sources in this subcategory will be subject to the current PCCT standard but will have lost considerable time in preparing for compliance by the September 12, 1999 compliance date. In such a case additional time beyond the September 12, 1999 compliance date may be required.

II. Authority for Temporary Extension of the Compliance Date and Reconsideration

The temporary extension of the compliance date specified in 40 CFR 63.1311(c) for the provisions contained in 40 CFR 63.1329 for existing affected sources producing PET using the continuous TPA high viscosity multiple end finisher process is being undertaken pursuant to Clean Air Act section 301(a)(1). Reconsideration is being undertaken pursuant to Clean Air Act section 307(d)(7)(B). Reconsideration is appropriate if the grounds for an objection arose after the period for public comment and if the objection is of central relevance to the outcome of the rule.

The grounds for reconsideration of this rule arose after publication of the final rule. Therefore, the EPA is providing a temporary extension of the compliance date specified in 40 CFR 63.1311(c) for the provisions contained in 40 CFR 63.1329 for existing affected sources producing PET using the continuous TPA high viscosity multiple end finisher process in order to allow time to reconsider the issues raised by the petitioner. This reconsideration was undertaken pursuant to Clean Air Act section 307(d)(7)(B).

III. Impacts

The extension of the compliance date for PCCTs at existing affected sources producing PET using the continuous TPA high viscosity multiple end finisher process will not affect the eventual annual estimated emissions reduction or the control cost for the rule.

IV. Administrative

A. Paperwork Reduction Act

For the Group IV Polymers and Resins NESHAP, the information collection requirements were submitted to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*. The OMB approved the information collection requirements and assigned OMB control number 2060–0351. 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 the EPA's regulations are listed in 40 CFR Part 9. The EPA has amended 40 CFR Part 9, Section 9.1, to indicate the information collection requirements contained in the Group IV Polymers and Resins NESHAP.

This action has no impact on the information collection burden estimates made previously. Therefore, the ICR has not been revised.

B. Executive Order 12866 Review

Under Executive Order 12866, the EPA must determine whether the regulatory action is "significant" and therefore, subject to OMB review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to lead to a rule that may:

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

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

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

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

The direct final rule will provide a temporary extension of the compliance date specified in 40 CFR 63.1311(c) for the provisions contained in 40 CFR 63.1329 for existing affected sources producing PET using the continuous TPA high viscosity multiple end finisher process. The direct final rule does not add any additional control requirements. Therefore, this direct final rule was classified "non-significant" under Executive Order 12866 and was not required to be reviewed by OMB.

C. Regulatory Flexibility

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant impact on a substantial number of small entities because the temporary compliance extension would not impose any economic burden on any regulated entities.

D. Unfunded Mandates

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

The EPA has determined that this direct final rule does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

E. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: March 23, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 63 of chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

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

Subpart JJJ—National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins

2. Section 63.1311 is amended by revising paragraph (c) introductory text to read as follows:

§ 63.1311 Compliance schedule and relationship to existing applicable rules.

* * * * *

(c) Existing affected sources shall be in compliance with this subpart (except for § 63.1331 for which compliance is covered by paragraph (d) of this section) no later than September 12, 1999, as provided in § 63.6(c), unless an extension has been granted as specified in paragraph (e) of this section, except that the compliance date for the provisions contained in 40 CFR 63.1329 is temporarily extended from September 12, 1999, to February 27, 2001, for existing affected sources whose primary product, as determined using the procedures specified in § 63.1310(f), is PET using a continuous terephthalic acid high viscosity multiple end finisher process.

* * * * *

[FR Doc. 98–8212 Filed 3–30–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 413

[HCFA–1808–CN]

RIN 0938–AG70

Medicare and Medicaid Programs; Salary Equivalency Guidelines for Physical Therapy, Respiratory Therapy, Speech Language Pathology, and Occupational Therapy Services; Revised Effective Date and Technical Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule; delay of effective date and correction.

SUMMARY: This document delays the effective date of the final rule on salary equivalency guidelines, published in the **Federal Register** (63 FR 5106) on January 30, 1998, from April 1, 1998 to April 10, 1998. In addition, we are making a technical correction in the preamble to the January 30, 1998 final rule.

EFFECTIVE DATES: The effective date of the final rule published at 63 FR 5106 is April 10, 1998. The technical correction is effective April 10, 1998.

FOR FURTHER INFORMATION CONTACT: Jackie Gordon, (410) 786–4517.

SUPPLEMENTARY INFORMATION: On January 30, 1998, we issued a final rule in the **Federal Register** (63 FR 5106) that set forth revisions to the salary equivalency guidelines for Medicare payment for the reasonable costs of physical therapy and respiratory therapy services furnished under arrangements by an outside contractor. This final rule also set forth new salary equivalency guidelines for Medicare payment for the reasonable costs of speech language pathology and occupational therapy services furnished under arrangements by an outside contractor. The guidelines do not apply to inpatient hospital services and hospice services. The guidelines will be used by Medicare fiscal intermediaries to determine the maximum allowable cost of those services. We announced that the effective date for this final rule would be April 1, 1998.

Revised Effective Date

This rule is a major rule as defined in Title 5, United States Code, section 804(2). Pursuant to 5 U.S.C. 801(a)(3), this rule may not take effect until 60 days after the report required by that section is submitted to Congress. The report for this rule was submitted to Congress on February 10, 1998. Therefore, the earliest date this rule can become effective is April 10, 1998.

Technical Correction

In the January 30, 1998 final rule (63 FR 5106) on page 5108, first column, beginning in the sixth line, the phrase "Medicare beneficiaries whose nursing home stays are not paid by Medicare" is corrected to read "Medicare SNF residents who are not in a covered Part A stay".

Authority: Secs. 1102, 1861(v)(1)(A), and 1871 of the Social Security Act (42 U.S.C 1302, 1395x(v)(1)(A), and 1395hh).

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 3, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: March 26, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98–8502 Filed 3–30–98; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket 92–77; FCC 98–9]

Billed Party Preference for InterLATA 0+ Calls; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule published in the **Federal**

Register of March 10, 1998, regarding the filing of revised informational tariffs by operator services providers.

DATES: Effective March 31, 1998.

FOR FURTHER INFORMATION CONTACT: Adrien Auger, Enforcement Division, Common Carrier Bureau, (202) 418–0960.

SUPPLEMENTARY INFORMATION: The FCC published a document in the **Federal Register** on March 10, 1998, FCC 98–9 (63 FR 11612) FR Doc. No. 98–6088. This document corrects § 64.709(e)(2) on page 11617, in the third column, to read as follows:

§ 64.709 [Corrected]

* * * * *

(e) * * *

(2) Revised tariffs shall be filled pursuant to the procedures specified in this section.

Dated: March 24, 1998.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–8184 Filed 3–30–98; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

48 CFR Parts 204, 212, and 252

[DFARS Case 97–D005]

Defense Federal Acquisition Regulation Supplement; Central Contractor Registration

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to require contractor registration in the DoD Central Contractor Registration database prior to award of any contract, basic agreement, basic ordering agreement, or blanket purchase agreement, unless the award results from a solicitation issued on or before May 31, 1998. This rule more efficiently implements the Debt Collection Improvement Act of 1996.

EFFECTIVE DATE: March 31, 1998.

FOR FURTHER INFORMATION CONTACT: Ms Sandra G. Haberlin, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131; telefax (703) 602–0350. Please cite DFARS Case 97–D005.

SUPPLEMENTARY INFORMATION:

A. Background

The President's Management Council's Electronic Processes Initiatives Committee recently issued a strategic plan for electronic Federal purchasing and payment. The plan identifies three options currently available to agencies for collecting and managing contractor information: (1) Through a central registry, in which contractors could centrally provide information for multiple contracts; (2) through financial intermediaries (networks), that could collect and maintain information on network members; and (3) on a contract-by-contract basis. At this time, DoD has elected to use a Central Contractor Registration (CCR) database to collect and manage contractor information—including taxpayer identification numbers (TINs) and electronic funds transfer (EFT) information required by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134). Recognizing that technology and the marketplace are dynamic, DoD will continue to assess its registration policy in light of changes in market conditions and advances in technology.

This final rule requires contractor registration in a DoD CCR database prior to award of a contract, basic agreement, basic ordering agreement, or blanket purchase agreement, unless the award results from a solicitation issued on or before May 31, 1998. The rule requires that contractors register on a one-time basis, and confirm on an annual basis that their CCR registration is accurate and complete. The objectives of this rule are (1) to more efficiently comply with Public Law 104–134 by using a central DoD repository to collect statutorily required TINs and EFT information; (2) to simplify and streamline procurement by presenting "one DoD face to industry," and, thereby, eliminate duplicate requirements and processes; and (3) to increase visibility of vendor sources for specific supplies and services.

A proposed rule was published in the **Federal Register** on September 15, 1997 (62 FR 48200). All comments received in response to the proposed rule were considered in the development of the final rule. The final rule differs from the proposed rule in that it (1) revises the date after which prospective contractors must be registered in the CCR database, from March 31, 1998, to May 31, 1998; (2) adds paragraph 204.7303(d) to require the contracting officer to transmit either the Commercial and Government Entity code or the Data Universal Numbering System number to the payment office; and (3) makes editorial changes for clarification.

B. Regulatory Flexibility Act

A Final Regulatory Flexibility Analysis (FRFA) has been performed. The analysis is summarized as follows:

This final rule requires contractors to register in the CCR database by providing certain business information, including TINs and EFT information required by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134). Subsequent to the initial registration, contractors will only be required to confirm on an annual basis that their CCR registration is accurate and complete. All small entities will be subject to the rule unless their contract or agreement falls within one of the five exceptions cited in DFARS 204.7302.

An issue raised by one respondent was that the rule will delay the award of contracts to small business vendors that are unaware of the CCR requirements. It is unlikely that a prospective awardee will be unaware of the registration requirement at the time of contract award since the clause requiring CCR registration will be included in solicitations issued after May 31, 1998. In addition, since the goal of DoD is to process each vendor's registration application within 48 hours after receipt, it is unlikely that the registration requirement of the rule will delay a significant number of contract awards.

The one significant alternative that was considered was to exclude small entities from the requirements of this rule. The requirements of Public Law 104–134 would still be accomplished by existing regulations. The conclusion was that this alternative, while fulfilling the objective of Public Law 104–134, does not minimize the economic impact on small entities since existing regulations require a contractor to submit, for every contract, the same information to various contracting or payment offices.

Since this final rule eliminates certain redundant requirements, and their resulting administrative burdens, this alternative of excluding small entities from the requirements of this rule was rejected.

A copy of the FRFA may be obtained from the Defense Acquisition Regulations Council, PDUSD (A&T) DP (DAR), 3062 Defense Pentagon, Washington, DC 20301–3062. Please cite DFARS Case 97–D005 in all correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) applies, because the

final rule contains information collection requirements. On November 20, 1997, the Office of Management and Budget (OMB) approved the collection requirements under OMB Control No. 0704–0400, which expires on November 30, 2000.

List of Subjects in 48 CFR Part 204, 212, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 204, 212, and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 204, 212, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 204—ADMINISTRATIVE MATTERS

2. Subpart 204.73 is added to read as follows:

Subpart 204.73—Central Contractor Registration

Sec.
204.7300 Scope.
204.7301 Definitions.
204.7302 Policy.
204.7303 Procedures.
204.7304 Contract clause.

Subpart 204.73—Central Contractor Registration

204.7300 Scope.

This subpart prescribes policies and procedures for requiring contractor registration in the DoD Central Contractor Registration (CCR) database to comply with the Debt Collection Improvement Act of 1996 (31 U.S.C. 3332; 31 U.S.C. 7701), and to increase visibility of vendor sources for specific supplies and services and their geographical locations.

204.7301 Definitions.

Central Contractor Registration (CCR) database, Data Universal Numbering System (DUNS) number, Data Universal Numbering System+4 (DUNS+4) number, and *Registered in the CCR database* are defined in the clause at 252.204–7004, Required Central Contractor Registration.

204.7302 Policy.

After May 31, 1998, prospective contractors must be registered in the CCR database, prior to award of a contract, basic agreement, basic ordering agreement, or blanket purchase agreement, unless the award results from a solicitation issued on or before May 31, 1998. This policy applies to all types of awards except the following:

(a) Purchases made with a Governmentwide commercial purchase card.

(b) Awards made to foreign vendors for work performed outside the United States.

(c) Classified contracts or purchases (see FAR 4.401).

(d) Contracts awarded by deployed contracting officers in the course of military operations, including, but not limited to, contingency operations as defined in 10 U.S.C. 101(a)(13), or contracts awarded by contracting officers in the conduct of emergency operations, such as responses to natural disasters or national or civil emergencies.

(e) Purchases to support unusual or compelling needs of the type described in FAR 6.302–2.

204.7303 Procedures.

(a)(1) Except as provided in 204.7302, the contracting officer shall require each offeror to provide a DUNS or, if applicable, a DUNS+4 number, with its verbal or written offer, regardless of the dollar amount of the offer.

(2) Prior to making an award of any contract, basic agreement, basic ordering agreement, or blanket purchase agreement after May 31, 1998, unless the award results from a solicitation issued on or before May 31, 1998, the contracting officer shall verify that the prospective awardee is registered in the CCR database (but see paragraph (b) of this section). The contracting officer may verify registration using the DUNS number or, if applicable, the DUNS+4 number, by calling toll free: 1–800–841–4431, commercial: 1–616–961–5757, or Defense Switched Network (DSN): 932–5757; via the Internet at http://ccr.edi,disa.mil/ccr/cgi-bin status.pi; or as otherwise provided by agency procedures.

(3) Verification of registration is not required for orders or calls placed under contracts, basic agreements, basic ordering agreements, or blanket purchase agreements.

(4) After May 31, 1998, as part of the annual review of basic agreements, basic ordering agreements, and blanket purchase agreements, contracting officers shall modify these agreements to incorporate the clause at 225.2204–7004, Required Central Contractor Registration.

(b) If the contracting officer determines that a prospective awardee is not registered in the CCR database, the contracting officer shall—

(1) If the needs of the requiring activity allow for a delay, proceed to award after the contractor is registered; or

(2) If the needs of the requiring activity do not allow for a delay, proceed to award to the next otherwise successful registered offeror, provided that written approval is obtained at one level above the contracting officer.

(c) Agencies shall protect against improper disclosure of contractor CCR information.

(d) The contracting officer, shall, on contractual documents transmitted to the payment office, provide either the Commercial and Government Entity code or the DUNS number in accordance with agency procedures.

204.7304 Contract clause.

Except as provided in 204.7302, use the clause at 252.204–7004, Required Central Contractor Registration, in—

(a) Solicitations issued after May 31, 1998;

(b) Contracts resulting from solicitations issued after May 31, 1998; and

(c) Basic agreements, basic ordering agreements, and blanket purchase agreements issued after May 31, 1998, unless they resulted from solicitations issued on or before May 31, 1998.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

3. Section 212.301 is amended by adding paragraph (f)(iv) to read as follows:

§ 212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f) * * *

(iv) Use the clause at 252.204–7004, Required Central Contractor Registration, as prescribed in 204.7304.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 252.204–7004 is added to read as follows:

252.204–7004 Required Central Contractor Registration.

As prescribed in 204.7304, use the following clause:

Required Central Contractor Registration (Mar. 1998)

(a) *Definitions.*

As used in this clause—

(1) *Central Contractor Registration (CCR database* means the primary DoD repository for contractor information required for the conduct of business with DoD.

(2) *Data Universal Numbering System (DUNS) number* means the 9-digit number assigned by Dun and Bradstreet Information Services to identify unique business entities.

(3) *Data Universal Numbering System +4 (DUNS+4) number* means the DUNS number assigned by Dun and Bradstreet plus a 4-digit suffix that may be assigned by a parent (controlling) business concern. This 4-digit suffix may be assigned at the discretion of the parent business concern for such purposes as identifying subunits or affiliates of the parent business concern.

(4) *Registered in the CCR database* means that all mandatory information, including the DUNS number or the DUNS+4 number, if applicable, and the corresponding Commercial and Government Entity (CAGE) code, is in the CCR database; the DUNS number and the CAGE code have been validated; and all edits have been successfully completed.

(b)(1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee must be registered in the CCR database prior to award, during performance, and through final payment of any contract resulting from this solicitation, except for awards to foreign vendors for work to be performed outside the United States.

(2) The offeror shall provide its DUNS or, if applicable, its DUNS+4 number with its offer, which will be used by the Contracting Officer to verify that the offeror is registered in the CCR database.

(3) Lack of registration in the CCR database will make an offeror ineligible for award.

(4) DoD has established a goal of registering an applicant in the CCR database within 48 hours after receipt of a complete and accurate application via the Internet. However, registration of an applicant submitting an application through a method other than the Internet may take up to 30 days. Therefore, offerors that are not registered should consider applying for registration immediately upon receipt of this solicitation.

(c) The Contractor is responsible for the accuracy and completeness of the data within the CCR, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to confirm on an annual basis that its information in the CCR database is accurate and complete.

(d) Offerors and contractors may obtain information on registration and annual confirmation requirements by calling 1–888–227–2423, or via the Internet at http://ccr.edi.disa.mil.

(End of clause)

[FR Doc. 98–8417 Filed 3–30–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Parts 833 and 852

RIN 2900–AI51

VA Acquisition Regulations: Department Protests

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) Acquisition Regulations (VAAR) to delete coverage that duplicates or conflicts with the Federal Acquisition Regulation; to delete internal agency guidance to contracting officers; to delete obsolete references to the General Services Administration Board of Contract Appeals; to incorporate changes made by Federal Acquisition Circular (FAC) 90–40, Item XIII and FAC 90–45, Item XII; to publish VA policy regarding the availability of staff of the VA Board of Contract Appeals to serve as third-party neutrals in alternative dispute resolution proceedings; and to update clauses and references. These changes implement VA policy and are required to ensure that the VAAR corresponds with the requirements of the Federal Acquisition Regulation and public law.

DATES: Effective Date: April 30, 1998.

FOR FURTHER INFORMATION CONTACT: Don Kaliher, Acquisition Policy Team (95A), Office of Acquisition and Materiel Management, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington DC 20420, (202) 273–8819.

SUPPLEMENTARY INFORMATION: On September 9, 1997, we published in the **Federal Register** (62 FR 47411) a proposal to amend the Department of Veterans Affairs Acquisition Regulations to make changes relating to Department protests. Comments were solicited concerning the proposal for 60 days, ending November 10, 1997. We did not receive any comments. The information presented in the proposed rule document still provides a basis for this final rule. Therefore, based on the rationale set forth in the proposed rule document, we are adopting the provisions of the proposed rule as a final rule with no changes, except for nonsubstantive changes to reflect the date of this final rule for each clause and to provide a new clause number for one of the clauses included in the rule.

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

List of Subjects

48 CFR Part 833

Administrative practices and procedure, Government procurement.

48 CFR Part 852

. Government procurement, Reporting and recordkeeping.

Approved: March 18, 1998.

Togo D. West, Jr.,

Acting Secretary.

For the reasons set forth in the preamble, 48 CFR parts 833 and 852 are amended as follows:

1. The authority citation for parts 833 and 852 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

PART 833—PROTESTS, DISPUTES, APPEALS

Subpart 833.1—Protests

§ 833.102 [Amended]

2. Section 833.102 introductory text is amended by removing "852.233–2" and adding, in its place, "FAR provision 52.233–2". It is further amended by removing "or the GSA Board of Contract Appeals (GSBCA)"; and paragraph (b) is amended by removing "(95B)" and adding, in its place, ", Acquisition Administration Team".

3. In § 833.103, paragraph (a)(1) is revised to read as follows:

§ 833.103 Protests to the Department.

(a) *Filing of protests.* (1) An interested party may protest to the contracting officer or, as an alternative, may request an independent review by filing a protest with the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Administration Team, or, for solicitations issued by the Office of Facilities Management, the Chief Facilities Management Officer, Office of Facilities Management. A protest filed with the Deputy Assistant Secretary for Acquisition and Materiel Management or the Chief Facilities Management Officer will not be considered if the interested party has a protest on the same or similar issues pending with the contracting officer.

* * * * *

4. In § 833.103, paragraph (a)(2)(ii) is amended by removing "Review Division" and adding, in its place, "Administration Team"; paragraphs (a)(3) and (a)(4) are removed; paragraph (a)(5) is redesignated as paragraph (a)(3); newly redesignated paragraph (a)(3)(vi) is removed; paragraphs (a)(3)(vii) through (a)(3)(ix) are redesignated as paragraphs (a)(3)(vi) through (a)(3)(viii), respectively.

5. In § 833.103, paragraph (c) is removed; paragraph (b) is redesignated as a new paragraph (c) and is revised

and a new paragraph (b) is added to read as follows:

§ 833.103 Protests to the Department.

* * * * *

(b) Where appropriate, alternative dispute resolution (ADR) procedures may be used to resolve protests at any stage in the protest process. The Department of Veterans Affairs Board of Contract Appeals (VABCA) is an independent and neutral entity within the Department of Veterans Affairs and is available to serve as the third-party neutral (Neutral) for bid protests. If ADR is used, the Department of Veterans Affairs will not furnish any documentation in an ADR proceeding beyond what is allowed by the Federal Acquisition Regulation.

(c) *Action upon receipt of protest.* For protests filed with the contracting officer, the head of the contracting activity (HCA) shall be the approving official for the determinations identified in FAR 33.103(f)(1) and (f)(3). If the HCA is also the contracting officer, the approving official shall be the Deputy Assistant Secretary for Acquisition and Materiel Management. For protests filed with the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Administration Team, or the Chief Facilities Management Officer, Office of Facilities Management, those individuals shall be the approving officials for the determinations identified in FAR 33.103(f)(1) and (f)(3).

* * * * *

6. In § 833.103, paragraph (d) is amended by removing "lodged" and adding, in its place, "filed"; by removing "he/she" each time it appears and adding, in its place, "the contracting officer"; by removing "Review Division" and adding, in its place, "Administration Team"; and by removing "officer will" and adding, in its place, "officer shall".

7. In § 833.103, paragraph (e) is revised and paragraph (f) is added to read as follows:

§ 833.103 Protests to the Department.

* * * * *

(e) *Protest after award.* When a written protest is filed with the contracting officer after contract award:

(1) If FAR 33.103(f)(3) requires suspension of contract performance, the contracting officer shall seek to obtain a mutual agreement with the contractor to suspend performance on a no-cost basis and, if successful, shall document the suspension with a supplemental agreement. If unsuccessful, the contracting officer shall issue a stop-work order in accordance with contract clause FAR 52.233–3, Protest After Award.

(2) If suspension of contract performance is not required by FAR 33.103(f)(3) and if the contracting officer determines that the award was proper, the contracting officer shall furnish the protester a written explanation of the basis for the award which is responsive to the allegations of the protest. The contracting officer shall advise the protester that the protester may appeal the determination to the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Administration Team, or the Chief Facilities Management Officer, Office of Facilities Management, in the case of a contract awarded by the Office of Facilities Management, or the Comptroller General, as specified in internal Department guidance.

(3) If suspension of contract performance is not required by FAR 33.103(f)(3) but the contracting officer determines that the award is questionable, the contracting officer may consult with the Office of the General Counsel (025) and shall advise the contractor of the protest and invite the contractor to submit comments and relevant information. The contracting officer shall submit the case promptly to the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Administration Team, or the Chief Facilities Management Officer, Office of Facilities Management, in the case of a contract awarded by the Office of Facilities Management, who may consult with the Office of the General Counsel (025) and who shall either advise the contracting officer of the appropriate action to take, or submit the case to the Comptroller General for a decision. The contracting officer shall provide interested parties with a copy of the final decision.

(f) *Agency appellate review of contracting officer's protest decision.* An interested party may request an independent review of a contracting officer's protest decision by filing an appeal with the Deputy Assistant Secretary for Acquisition and Materiel Management or, for solicitations issued by the Office of Facilities Management, with the Chief Facilities Management Officer, Office of Facilities Management. To be considered timely, the appeal must be received by the Deputy Assistant Secretary for Acquisition and Materiel Management or, for solicitations issued by the Office of Facilities Management, by the Chief Facilities Management Officer, Office of Facilities Management, within 10 calendar days of the date the interested party knew, or should have known, whichever is earlier, of the basis for the appeal. Appeals shall be addressed as provided in paragraphs (a)(2)(ii) or (iii) of this section. Appeals shall not extend GAO's timeliness requirements for appeals to GAO. By filing an appeal as provided herein, an interested party may waive its rights to further appeal to the Comptroller General at a later date. Agency responses to appeals submitted to the agency shall be reviewed and concurred in by the Office of the General Counsel (025).

§ 833.105 [Removed]

8. Section 833.105 is removed.

9. Section 833.106 is revised to read as follows:

§ 833.106 Solicitation provision.

(a) The contracting officer shall insert the provision at 852.233–70, Protest Content, in each solicitation where the total value of all contract awards under the solicitation is expected to exceed the simplified acquisition threshold.

(b) The contracting officer shall insert the provision at 852.233–71, Alternate Protest Procedure, in each solicitation where the total value of all contract awards under the solicitation is expected to exceed the simplified acquisition threshold.

Subpart 833–2—Disputes and Appeals

10. Section 833–214 is added to read as follows:

§ 833.214 Alternative dispute resolution (ADR).

(a) Contracting officers and contractors are encouraged to use alternative dispute resolution (ADR) procedures to resolve contract disputes before they become appealable disputes by using the Department of Veterans Affairs' ADR Program.

(b) Under the Department's ADR Program, the Department of Veterans Affairs Board of Contract Appeals (VABCA or Board) Chair, who is the Department's Dispute Resolution Specialist, will appoint a Board member or hearing examiner (at no cost to either party) to serve as a Neutral to aid in resolving matters before they become appealable disputes. The administrative judges and hearing examiners are trained Neutrals and are available to assist in ADR proceedings.

(c) Under the ADR Program, the parties are able to select the ADR process they believe will help resolve the matter. Everything discussed during the ADR meeting is confidential. In the event a Board member serves as a Neutral in a matter that is not resolved using ADR, that Board member shall keep all discussions confidential and

shall have no further input or contact with the parties or other Board members in subsequent Board activities (ref. the Administrative Dispute Resolution Act, 5 U.S.C. 571–583; and, Federal Acquisition Regulation, Subpart 33.2).

(d) The Department of Veterans Affairs and contractors are also encouraged to use ADR in disputes appealed to the VABCA.

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 852.2—Texts of Provisions and Clauses

11. Section 852.233–70 is revised to read as follows:

§ 852.233–70 Protest content.

As prescribed in 833.106 of this chapter, insert the following provision in each solicitation where the total value of all contract awards under the solicitation is expected to exceed the simplified acquisition threshold:

Protest Content (Jan 1998)

(a) Any protest filed by an interested party shall:

(1) Include the name, address, fax number, and telephone number of the protester;

(2) Identify the solicitation and/or contract number;

(3) Include an original signed by the protester or the protester's representative, and at least one copy;

(4) Set forth a detailed statement of the legal and factual grounds of the protest, including a description of resulting prejudice to the protester, and provide copies of relevant documents;

(5) Specifically request a ruling of the individual upon whom the protest is served;

(6) State the form of relief requested; and

(7) Provide all information establishing the timeliness of the protest.

(b) Failure to comply with the above may result in dismissal of the protest without further consideration.

(End of Provision)

12. Section 852.233–71 is added to read as follows:

§ 852.233–71 Alternate Protest Procedure.

As prescribed in 833.106 of this chapter, insert the following provision in each solicitation where the total value of all contract awards under the solicitation is expected to exceed the simplified acquisition threshold:

Alternate Protest Procedure (Jan 1998)

As an alternative to filing a protest with the contracting officer, an interested party may file a protest with the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Administration Team, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC, 20420, or, for solicitations issued by the Office of Facilities Management, the Chief Facilities Management Officer, Office of Facilities Management, 810 Vermont Avenue, NW, Washington, DC 20420. The protest will not be considered if the interested party has a protest on the same or similar issues pending with the contracting officer.

§ 852.236–73 [Removed]

13. Section 852.236–73 is removed.

[FR Doc. 98–8004 Filed 3–30–98; 8:45 am]
BILLING CODE 8320–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1842

Revisions to the NASA FAR Supplement on Contract Administration and Audit Services

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This is a final rule to amend the NASA FAR Supplement (NFS) to make minor editorial changes in Part 1842, Contract Administration. These changes result from revisions to FAR Part 42 in Federal Acquisition Circular 97–04, and include new section titles and numbering.

EFFECTIVE DATE: March 31, 1998.

FOR FURTHER INFORMATION CONTACT: James H. Dolvin, NASA, Office of Procurement, Contract Management Division (Code HK), (202) 358–1279.

SUPPLEMENTARY INFORMATION:

Background

Federal Acquisition Circular 97–04, published in the **Federal Register** on February 23, 1998, contained several changes in section titles and numbering which required changes in the NFS to maintain its consistency with the FAR. These changes include a new title for Part 1842, Contract Administration and Audit Services, and several changes in numbering and titles in Subpart 1842.1, Contract Audit Services, and Subpart 1842.2, Contract Administration Services.

Impact

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This final rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Part 1842

Government procurement.

Deidre Lee,

Associate Administrator for Procurement.

Accordingly, 48 CFR Part 1842 is amended as follows:

1. The authority citation for 48 CFR Part 1842 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1842—CONTRACT ADMINISTRATION

2–3. Part heading "Part 1842—Contract Administration" is revised to read "Part 1842—Contract Administration and Audit Services".

Subpart 1842.1 [Amended]

4. Subpart heading "Subpart 1842.1 Interagency Contract Administration and Audit Services" is revised to read "Subpart 1842.1 Contract Audit Services".

1842.101 [Amended]

5. In section 1842.101, the section heading "1842.101 Policy" is revised to read "1842.101 Contract audit responsibilities."

1842.102 [Amended]

6. In section 1842.102, the section heading "1842.102 Procedures" is revised to read "1842.102 Assignment of contract audit services."

Subpart 1842.2 [Amended]

7. Subpart heading "Subpart 1842.2 Assignment of Contract Administration" is revised to read "Subpart 1842.2 Contract Administration Services".

1842.203 [Amended]

8. Section 1842.203 is redesignated as section 1842.202–70.

1842.202–70 [Amended]

9. In the newly designated section 1842.202–70, paragraphs (a) (i) through (v) are redesignated as paragraphs (a) (1) through (5).

[FR Doc. 98–8248 Filed 3–30–98; 8:45 am]
BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1852

Revision to NASA FAR Supplement Clause—Submission of Vouchers for Payment

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This is a final rule revising the NASA FAR Supplement (NFS) clause 1852.216–87, "Submission of Vouchers for Payment" in order to administratively clarify the voucher submission procedures.

EFFECTIVE DATE: March 31, 1998.

FOR FURTHER INFORMATION CONTACT: Jack Horvath, NASA, Office of Procurement, Analysis Division (Code HC), (202) 358–0456.

SUPPLEMENTARY INFORMATION:

Background

On August 14, 1997, NASA revised NFS 1842.803 to authorize DCAA to permit direct submission of vouchers to NASA paying offices. At that time, the corresponding revision to NFS 1852.216–87, Submission of Vouchers for Payment, was overlooked. This final rule makes the appropriate administrative revisions to this clause to reflect the voucher procedure.

Impact

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This final rule does not impose any reporting or recordkeeping requirements subject to the Paper Reduction Act.

List of Subjects in 48 CFR Part 1852

Government procurement.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR Part 1852 is amended as follows:

1. The authority citation for 48 CFR Part 1852 continues to read as follows:

Authority: 42 U.S.C. 2743(c)(1).

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1852.216–87 [Amended]

2. Section 1852.216–87 is revised to read as follows:

1852.216–87 Submission of vouchers for payment.

As prescribed in 1816.307–70(e), insert the following clause:

Submission for Vouchers for Payment

March 1998

(a) The designated billing office for cost vouchers for purposes of the Prompt Payment clause of this contract is indicated below. Public vouchers for payment of costs shall include a reference to the number of this contract.

(b)(1) If the contractor is authorized to submit interim cost vouchers directly to the NASA paying office, the original voucher should be submitted to: [Insert the mailing address for submission of cost vouchers]

(2) For any period that the Defense Contract Audit Agency has authorized the Contractor to submit interim cost vouchers directly to the Government paying office, interim vouchers are not required to be sent to the Auditor, and are considered to be provisionally approved for payment, subject to final audit.

(3) Copies of vouchers should be submitted as directed by the Contracting Officer. (c) If the contractor is not authorized to submit interim cost vouchers directly to the paying office as described in paragraph (b), the contractor shall prepare and submit vouchers as follows:

(1) One original Standard Form (SF) 1034, SF 1035, or equivalent Contractor's attachment to: [Insert the appropriate NASA or DCAA mailing office address for submission of cost vouchers]

(2) Five copies of SF 1034, SF 1035A, or equivalent Contractor's attachment to the following offices by insertion in the memorandum block of their names and addresses:

(i) Copy 1 NASA Contracting Officer;

(ii) Copy 2 Auditor;

(iii) Copy 3 Contractor;

(iv) Copy 4 Contract administration office; and

(v) Copy 5 Project management office.

(3) The Contracting Officer may designate other recipients as required.

(d) Public vouchers for payment of fee shall be prepared similarly to the procedures in paragraphs (b) or (c) of this clause, whichever is applicable, and be forwarded to: [insert the mailing address for submission of fee vouchers] This is the designated billing office for fee vouchers for purposes of the Prompt Payment clause of this contract.

(e) In the event that amounts are withheld from payment in accordance with provisions of this contract, a separate voucher for the amount withheld will be required before payment for that amount may be made.

(End of clause)

[FR Doc. 98–8249 Filed 3–30–98; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket No. PS–121; Notice–4]

[RIN 2137–AD 05]

Pressure Testing Older Hazardous Liquid and Carbon Dioxide Pipelines

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Clarification of confirmation of direct final rule.

SUMMARY: A member of the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) has expressed concern that the compliance dates for pressure testing are being extended and that the notice confirming the direct final rule on extension did not accurately reflect actions of the committee reviewing the rule. This member requests clarification and the opportunity for public comment on the extension of the compliance deadlines. This document clarifies the actions of the THLPSSC and notes that compliance deadlines may be addressed within a related rulemaking on the risk-based alternative to pressure testing.

FOR FURTHER INFORMATION CONTACT: Mike Israni, (202) 366–4571, e-mail: mike.israni@rspa.dot.gov, regarding the subject matter of this document, or the Dockets Unit (202) 366–4046, for copies of this document or other information in the docket.

SUPPLEMENTARY INFORMATION:

A final rule issued in 1994 requires certain older hazardous liquid and carbon dioxide pipelines to be pressure tested. Compliance dates for pressure testing have been extended to allow development of a rule to provide an alternative to pressure testing based on an evaluation of the risks the lines pose to safety and the environment. On October 21, 1997, RSPA published a direct final rule [62 FR 54591] to extend for a second time compliance dates for the pressure testing.

The THLPSSC, the federal advisory committee established by statute to review pipeline safety standards, reviewed the direct final rule at a November 18, 1997 meeting in Houston, Texas. At the meeting, two members expressed concerns over delays in the rulemaking to establish a risk-based alternative to pressure testing. These two members voted not to approve the rule. The majority of the THLPSSC members approved the direct final rule as "technically feasible, reasonable, and practicable." Following the committee meeting, the THLPSSC sent a resolution to RSPA's Administrator urging for prompt adoption of a rule providing for a risk-based alternative to pressure testing. A notice of proposed rulemaking to provide a risk-based alternative was published in the **Federal Register** on February 5, 1998 [63 FR 5918] There were no subsequent comments objecting to the direct final rule, and believing that the issues raised in the THLPSSC meeting had been addressed by the publication of the risk-based alternative, RSPA confirmed the direct final rule on January 26, 1998 [63 FR 3653].

In a letter dated February 24, 1998, the member of the THLPSSC

representing the Environmental Defense Fund, who had cast one of the dissenting votes at the November meeting, expressed concern with the direct final rule extending the compliance dates for pressure testing and the process for its issuance. Extension of the compliance dates for pressure testing delays testing of older pipelines, whose integrity may be questionable and which may be prone to leaks and spills from outdated materials, design, and/or construction practices. The member points to previous extension of the compliance dates because of the development of the risk-based alternative and argues that further extension eliminates pressure on the Office of Pipeline Safety to complete the risk-based alternative rulemaking promptly. This member also contends that written comments objecting to the extension were not submitted because RSPA indicated during the THLPSSC meeting that the negative votes of the committee members would be considered adverse comments.[1]

The THLPSSC member encourages clarification of the advisory committee actions (which is done above) and republication of the extension of compliance dates for pressure testing for comment. RSPA does not believe that extension of compliance dates is inconsistent with prompt action on the risk-based alternative. RSPA believes that, without an extension of compliance dates, an operator may be required unnecessarily to plan for pressure testing lines which would likely qualify for alternative testing. The compliance dates for pressure testing established by the direct final rule are the same as those proposed for pipelines which will be required, under the risk-based alternative, to be pressure tested. Continuation of this consonance assures that pressure testing of higher risk lines will not be delayed by an operator's election of the risk-based alternative.

Given these identical dates for completing pressure testing, comments by THLPSSC members or others on the issues of timing of pressure testing may be submitted on the current proposed rule on the risk-based alternative. That comment period is open until April 6, 1998, and RSPA encourages anyone concerned with the timing of the pressure testing to comment on that proposal.

[1] The direct final rule process is designed to allow for immediate issuance of rules for which comment is not deemed necessary because of the lack of controversy. Thus the receipt of adverse comments requires the agency to republish the rule either as a proposal or as a revised direct final rule.

Issued in Washington, DC on March 20, 1998.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 98–7813 Filed 3–30–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 538

[Docket No. NHTSA–98–3433]

RIN 2127–AG63

Manufacturing Incentives for Alternative Fuel Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Denial of petition for reconsideration.

SUMMARY: This document denies a petition for reconsideration of the agency's decision to set a 200 mile minimum driving range for dual fueled passenger automobiles other than electric vehicles.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, S.W, Washington, DC 20590.

For non-legal issues: Ms. Henrietta L. Spinner, Consumer Programs Division, Office of Planning and Consumer Programs, National Highway Traffic Safety Administration, 400 Seventh Street SW, Washington, DC 20590, (202) 366–4802.

For legal issues: Otto Matheke, Office of the Chief Counsel, NCC–20, telephone (202) 366–5253, facsimile (202) 366–3820.

SUPPLEMENTARY INFORMATION:

I. Establishment of a Minimum Driving Range for Dual Fueled Passenger Automobiles

On April 2, 1996, NHTSA published a final rule in the **Federal Register** (61 FR 14507) establishing a minimum driving range for dual fueled passenger automobiles other than electric vehicles. The rule also established gallons equivalent measurements for gaseous fuels other than natural gas and eliminated provisions relating to the granting of alternative range requirements for alternative fueled passenger automobiles not powered by electricity.

The agency promulgated this rule in response to amendments in the Energy Policy Act of 1992 (EPACT) (Pub. L. 102–486) that expanded the number of alternative fuels in the corporate average fuel economy (CAFE) law, now recodified as Chapter 329 of title 49, U.S.C. As amended, section 32901(c) requires dual fueled passenger automobiles to meet specified criteria, including meeting a minimum driving range, in order to qualify for special treatment under sections 32905 and 32906 in the calculation of their fuel economy for purposes of the CAFE standards.

One change made by EPACT concerning driving ranges was that, under section 32901(c), the minimum driving range set by NHTSA for dual fueled passenger automobiles other than electric passenger automobiles could not be less than 200 miles. The EPACT amendments also provided that the agency may not, in response to petitions from manufacturers, set an alternative range for a particular model or models that is lower than 200 miles, except for electric passenger automobiles.

The EPACT amendments necessitated amending part 538. In the final rule, the agency established gallons equivalent measurements for the wider range of alternative fuels included in the EPACT amendments and deleted provisions relating to the establishment of alternative minimum driving ranges for non-electric alternative-fueled passenger automobiles. In regard to the minimum driving range, NHTSA concluded that both the text and the legislative history of these amendments indicated that the agency was required to set a minimum driving range of not less than 200 miles for all dual fueled passenger automobiles other than electric passenger automobiles.

II. Petition for Reconsideration of the Minimum Driving Range

On May 24, 1996, the agency received a petition from the National Biodiesel Board (NBB) requesting reconsideration of NHTSA's decision to set a minimum driving range of 200 miles for all dual fueled passenger automobiles other than electric vehicles.

NBB requested that the agency (1) clarify the status of biodiesel as an alternative fuel, (2) adopt a definition of dual fueled vehicles to include vehicles operating on a mixture of alternative fuel and gasoline or diesel fuel, and (3) find that a passenger vehicle operating on a mixture of alternative fuel and gasoline or diesel fuel has satisfied the minimum driving range requirement of 200 miles if the alternative fuel component of the mixture in the vehicle's fuel system would propel the

passenger automobile a distance of 200 miles.

The agency notes that the three points raised by NBB in its petition are outside of the scope of the rulemaking NBB asks the agency to reconsider. The April 2, 1996 final rule did not address the definition of alternative fuels, alternative fuel vehicle, or prescribe the manner in which an alternative fuel passenger automobile may meet the minimum driving range. Therefore, each of these issues may be more properly viewed as a request for interpretation rather than a request for reconsideration. The agency has, however, examined NBB's requests and will address them below.

III. Response To Petition for Reconsideration

The petitioner's first request essentially asked that the agency confirm that biodiesel is an alternative fuel. NBB contends that biodiesel is an alternative fuel, that its status as an alternative fuel was recognized by Congress when the EPACT amendments were adopted, and that NHTSA should amend Section 538.4(a) to include biodiesel and neat biodiesel as alternative fuels.

Part 538.4(a) reads as follows:

538.4 Definitions.

(a) Statutory terms. (1) The terms alternative fuel, alternative fueled automobile, and dual fueled automobile, are used as defined in 49 U.S.C. 32901(a).

NBB requests that 538.4(a) be amended to repeat the statutory definitions incorporated by reference and further seeks to have an explanatory parenthetical added to the definition of alternative fuel as set forth in section 32901(a)(1)(I), 49 U.S.C. 32901(a)(1)(I). This section defines alternative fuel as "fuels (except alcohol) derived from biological materials * * *" NBB requests that the parenthetical "(including neat biodiesel)" be inserted in this definition following the phrase "biological materials."

NHTSA regards such an amendment as unnecessary. The agency notes that neat biodiesel, which is a fuel entirely derived from biological materials, is already within the definition of an alternative fuel under section 32901(a)(1)(I). The agency also notes that elsewhere in NBB's petition, NBB contends that biodiesel blends such as B20, a mixture of 20% biodiesel and 80% petroleum derived diesel, should be accorded the status of an alternative fuel. Section 32901(a)(1)(K) grants the agency the authority to designate as alternative fuels "any other fuel * * * that is not substantially petroleum and that would yield substantial energy security and environmental benefits." Thus, the agency may, by regulation, establish that certain fuels are alternative fuels when such a determination is appropriate. However, B20 is substantially derived from petroleum. NHTSA concludes that to deem B20 as an alternative fuel would be in direct contravention of Chapter 329. Biodiesel that is derived entirely from organic material (neat biodiesel) is, under section 32901(a)(1)(I), clearly an alternative fuel and NHTSA believes that the existing definition and regulations leave no doubt on this point. Biodiesel blends which are substantially petroleum, such as B20, are not alternative fuels under section 32901(a)(1)(K) and the agency cannot deem them as such. As NBB's petition does not seek clarification regarding other biodiesel blends, NHTSA will not presently exercise its authority to establish the concentration at which these fuels are not substantially derived from petroleum.

The petitioner also requests that NHTSA issue regulations establishing that vehicles operating on a mixture of an alternative fuel and a petroleum based fuel are alternative fuel vehicles. In support of its request, NBB asserts that in regulations issued pursuant to the Alternative Fuel Transportation Program, the Department of Energy (DOE) has recognized that dual fueled vehicles operating on a mixture of alternative and petroleum fuels are dual fueled vehicles.

The agency notes that EPACT broadened the scope of the incentives contained in Chapter 329, encouraging the production of alternative fuel vehicles, as part of a national effort to reduce the dependence of the United States on petroleum based fuels. While other statutory schemes may recognize that vehicles operating on a mixture of alternative fuels and petroleum are alternative fuel vehicles, NHTSA concludes that such vehicles do not qualify as alternative fuel vehicles for the purposes of Chapter 329. Section 32901(a)(2) defines an alternative fuel vehicle as either a dedicated vehicle or a dual fueled vehicle. Dedicated vehicles are defined in section 32901(a)(7) as automobiles that operate only on an alternative fuel. Dual fueled vehicles are defined in section 32901(a)(8) as follows:

(8) *dual fueled automobile* means an automobile that—

(A) is capable of operating on alternative fuel and on gasoline or diesel fuel;

(B) provides equal or superior energy efficiency, as calculated for the applicable model year during fuel economy testing for the United States Government, when operating on alternative fuel as when operating on gasoline or diesel fuel;

(C) for model years 1993–1995 for an automobile capable of operating on a mixture of an alternative fuel and gasoline or diesel fuel and if the Administrator of the Environmental Protection Agency decides to extend the application of this subclause, for an additional period ending not later than the end of the last model year to which section 32905(b) and (d) of this title applies, provides equal or superior energy efficiency, as calculated for the applicable model year during fuel economy testing for the Government, when operating on a mixture of alternative fuel and gasoline or diesel fuel containing exactly 50 percent gasoline or diesel fuel as when operating on gasoline or diesel fuel; and

(D) for a passenger automobile, meets or exceeds the minimum driving range prescribed under subsection (c) of this section.

Examination of this section compels the conclusion that Congress intended that for the purposes of Chapter 329's incentive program that dual fueled vehicles are, with one limited exception, vehicles operating either on an alternative fuel or a petroleum fuel but not on a mixture of the two. Subsection (A) describes a vehicle that operates on a petroleum or alternative fuel but not a mixture of both. Subsection (B) limits dual fuel vehicles to those vehicles that offer equal or superior energy efficiency when operating on an alternative fuel, thereby indicating that the two modes of operation are exclusive. Subsection (C) indicates that vehicles operating on a mixture of alternative fuel and gasoline or diesel fuel may only be considered as dual fueled automobiles for the 1993–1995 model years (unless extended by the Administrator of the Environmental Protection Agency to the 2004 model year) when such vehicles offer equal or superior energy efficiency when operating on a 50/50 mix of alternative fuel and diesel fuel or gasoline. Therefore, the statutory text of section 32901(a)(8) indicates that Congress did not intend to make incentives available for dual fueled vehicles operating on a mix of fuels except under the limited circumstances enunciated in 32901(a)(8)(C). As the period set by Congress in which such vehicles could be considered as dual fueled vehicles has expired and the EPA has not extended this period by regulation, NHTSA concludes that under Chapter 329 a dual fueled vehicle is one that is capable of operating on either an alternative fuel or gasoline or diesel fuel but not a mixture of both simultaneously. This is not to say, however, that a vehicle using a fuel that is composed of gasoline or diesel fuel and an alternative fuel cannot be a dual

fueled vehicle; under section 32901(a)(1)(K) a mix of gasoline or diesel fuel and another substance may be an alternative fuel if it is not substantially petroleum and yields substantial environmental and energy benefits.

NBB's petition also requests that NHTSA determine that a vehicle operating on a mix of biodiesel and diesel fuel be deemed to have met the minimum driving range requirement of 200 miles if the biodiesel fuel portion of the mixture in the vehicle's fuel tank would propel the vehicle that distance. As noted above, the agency concludes that Congress did not intend that vehicles operating on a mixture of alternative and petroleum fuel be eligible as alternative fuel vehicles under Chapter 329's incentive program unless that mix is itself an alternative fuel. NBB contends that the energy content of the alternative fuel is the relevant criteria for determining range and further argues that there is no practical difference between a vehicle operating on a 30 percent biodiesel mix and one with two separate fuel systems where the biodiesel tank holds 30 percent of the total fuel capacity. In the latter case, NBB submits, the vehicle would clearly meet the range requirement if the biodiesel propelled it 200 miles. If, according to NBB, the vehicle that mixes the two fuels in one tank cannot be deemed to meet the range requirement, the purposes of the incentive program will be frustrated and lead to an unequitable result. However, NBB's argument fails in that a vehicle operating on a mixture of 30 percent biodiesel and 70 percent diesel is not using an alternative fuel. In the absence of data demonstrating otherwise, such a fuel is substantially petroleum and therefore not an alternative fuel under section 32901(a)(1). The passenger automobile operating with a dual fuel system would, however, qualify as a dual fueled passenger automobile if it could reach 200 miles on 100 percent biodiesel because such a fuel is an alternative fuel.

In response to the petition, the agency has reconsidered its decision to set a 200 mile minimum driving range for non-electric dual fueled passenger automobiles when operating on an alternative fuel. As explained below, the agency is, on reconsideration, reaffirming that decision.

The petition raises points that are beyond the scope of the final rule establishing the 200 mile minimum driving range. The agency has nonetheless examined the merits of the petitioner's requests and concludes that the relief requested would have been denied even if it had been within the scope of the final rule. NHTSA concludes that the existing text of part 538 and the statutory definitions incorporated therein by reference include neat biodiesel as an alternative fuel. The agency also concludes that vehicles operating simultaneously on a mixture of an alternative fuel and gasoline or diesel fuel are not dual fueled vehicles for the purposes of Chapter 329's incentive program unless that mixture qualifies as an alternative fuel under section 32901(a)(1)(K). Similarly, NHTSA also concludes that a dual fueled passenger automobile may not meet the range requirements simply by virtue of having a percentage of alternative fuel that may propel it 200 miles. The range requirement may only be met by passenger automobiles that may travel the required distance while being propelled by a fuel or a fuel mixture that is, by itself, an alternative fuel as defined by Congress or by NHTSA regulation. Accordingly, the agency is denying the petition.

Issued on: March 26, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–8364 Filed 3–30–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 980225048–8059–02; I.D. 030698A]

RIN 0648–AK58

Pacific Halibut Fisheries; Catch Sharing Plans; Correction

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

ACTION: Correction to final rule.

SUMMARY: This document contains a correction to the final rule pertaining to Pacific Halibut Fisheries published in the Federal Register on March 17, 1998.

DATES: This action becomes effective March 31, 1998.

FOR FURTHER INFORMATION CONTACT: Joe Scordino, 206–526–6143.

SUPPLEMENTARY INFORMATION:

Background

A final rule was published in the Federal Register on March 17, 1998, that published annual management measures for Pacific halibut fisheries and approval of catch sharing plans (63 FR 13000). That document contained two typographical errors.

Corrections

As published, an incorrect date was listed twice in the March 17, 1998, edition of the Federal Register. On page 13002, in the first column, under "Comment:," the season start date should read "May 21."

On page 13007, under instruction number 23 in the second column, under (4)(b)(i)(A) the fishing season start date should read "May 21." NMFS is correcting these errors and is making no substantive change to the document in this action.

Dated: March 25, 1998.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 98–8430 Filed 3–30–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 980318065–8065–01; I.D. 030698B]

RIN 0648–AK68

Atlantic Sea Scallop Fishery; Area Closures

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

ACTION: Interim final rule.

SUMMARY: NMFS amends the regulations implementing the Atlantic Sea Scallop Fishery Management Plan (FMP). This rule closes two areas to scallop fishing to protect concentrations of juvenile scallops, to reduce fishing mortality, and to increase yield per recruit (YPR). The intended effect of this action is to improve the condition of the resource.

DATES: Effective April 3, 1998 through September 27, 1998. Comments must be received on or before April 30, 1998.

ADDRESSES: Comments on the rule should be sent to Andrew A. Rosenberg, Ph.D., Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930–2298. ATTN: Paul Jones. Copies of the documents supporting this action may also be obtained from the Northeast Regional Office.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, 978–281–9273.

SUPPLEMENTARY INFORMATION:

Background

Atlantic sea scallops are overfished. The scallop advisory report issued from the 23rd Stock Assessment Workshop (SAW) in March 1997 stated that the current spawning stock biomass (SSB) is at a low level and catches are driven primarily by variations in the number of recruits entering the fishery. On Georges Bank, abundance and fishing mortality are at moderate levels, but this results from approximately half of the region currently being closed to fishing. Stock rebuilding is occurring in those closed areas, but elsewhere on Georges Bank fishing mortality is greater than the overfishing threshold. The report further states that scallops in the Mid-Atlantic region are at a low level of abundance, are being overexploited, and are declining. The large 1990 and 1991 year classes have been overfished and incoming recruitment is among the lowest on record. Based on high fishing mortality rates, low stock size, and lack of significant recruitment, the management advice is that fishing effort should be reduced immediately and significantly in the Mid-Atlantic region to preserve SSB and to improve YPR. Recent results of the 1997 survey confirm that trends in abundance and biomass in both the Mid-Atlantic and Georges Bank regions are decreasing.

The scallop regulations require the Scallop Plan Development Team (PDT) to assess the scallop resource to determine the adequacy of the total allowable days-at-sea (DAS) reduction schedule to achieve the target fishing mortality rate. The PDT completed its 1997 review of scallop management measures in May 1997 and concluded that larger reductions in DAS would be necessary to eliminate overfishing. It concluded that the DAS for full-time scallop vessels should be reduced from 142 to 108 DAS for the March 1, 1998, through February 28, 1999, fishing year.

Overfishing for Atlantic sea scallops is defined as the fishing mortality rate greater than the rate that would maintain a SSB, that is 5 percent of the level that occurs without fishing.

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that overfishing be examined on the basis of the ability of the stock to produce maximum sustainable yield on a continuing basis. This overfishing threshold is expected to be one-third of the current overfishing definition. Therefore, major action will be necessary to comply with the new Magnuson-Stevens Act requirements through the submission of an amendment to the FMP (Amendment 7) later this year. Action to slow the fishing mortality rate in the interim will ameliorate the measures necessary in Amendment 7.

In light of the management advice from the PDT, the SAW report, and of the requirements of the Magnuson-Stevens Act, the New England and Mid-Atlantic Fishery Management Councils requested interim action to close an area south of Hudson Canyon and a specific area off Virginia Beach to scallop fishing.

The intent of this action is to afford immediate protection to the resource by protecting high concentrations of juvenile scallops. Although permanent measures by the New England Fishery Management Council (Council) are being developed, it will likely take several months to complete and to implement these measures, if they are approved. Due to the relatively low stock condition in the Mid-Atlantic and the time needed for the Council to develop measures to address this problem, NMFS believes that this interim action is warranted. Interim actions are authorized by section 305(c) of the Magnuson-Stevens Act. Interim actions may remain in effect for 180 days and, subject to certain conditions, may be extended by publication in the **Federal Register** for one additional 180-day period. This interim action will remain in effect for 180 days and is subject to extension. The benefits of the interim action will be evident through a more balanced age structure of the scallop stock. Also, significant reductions in fishing mortality and increases in YPR are possible from the relatively small closures.

If closed areas in the Mid-Atlantic are not established as soon as possible, SSB will continue to decline, increasing the possibility of recruitment failure.

Analyses indicate that implementation of these measures may impose a short-term cost on some harvesters, but they will be able to harvest scallops from the remaining open areas. Fishers pursuing species other than scallops will not be excluded from the closed areas; therefore, there is no economic impact beyond that on the scallop industry. When these areas are reopened, average revenue per DAS should increase because of increased stock abundance and higher prices paid for larger meat counts. The benefits of implementing this action on both the stock, with respect to protecting high concentrations of juvenile scallops, and on the return to the industry, with respect to increased yields, far outweigh these temporary costs. Thus, the biological, economic, and social impacts of implementing these regulations are positive.

Classification

NMFS has determined that this rule is necessary to reduce overfishing of sea scallops and is consistent with the Magnuson-Stevens Act and with other applicable laws. The public is aware that the New England and Mid-Atlantic Fishery Management Councils have requested this action and had an opportunity to comment on it at Council meetings. However, at that time, the coordinates of the Hudson Canyon South area closure were not developed and, therefore, not available for public comment.

A delay in action to reduce overfishing increases the likelihood of a loss of long-term productivity of the sea scallop resource and increases the probable need for more severe restrictions in the future. Accordingly, pursuant to the authority set forth at 5 U.S.C. 553(b)(B), the Assistant Administrator finds that these reasons constitute good cause to waive the requirement to provide prior notice and the opportunity for public comment because such procedures would be contrary to the public interest. Similarly, the need to implement these measures in a timely manner to address overfishing of sea scallops constitutes good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness. However, to provide sufficient notification of the closed areas, particularly to vessels that may be at sea, NMFS makes this rule effective April 3, 1998 through September 27, 1998.

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

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 25, 1998.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

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

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

2. In § 648.14, paragraphs (a)(104) through (a)(109) are added and reserved, and paragraphs (a)(110) and (a)(111) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(104) through (109) [Reserved].

(110) Fish for, possess or retain sea scallops in or from the areas described in § 648.57.

(111) Transit or be in the areas described in § 648.57 with scallop gear that is not properly stowed as required in § 648.57.

* * * * *

3. Section 648.57 is added to subpart D to read as follows:

§ 648.57 Closed areas.

(a) *Hudson Canyon South Closed Area.* No vessel may fish for, possess, or retain sea scallops in or from the area known as the Hudson Canyon South Closed Area (copies of a chart depicting this area are available from the Regional Administrator upon request) unless all gear on board is properly stowed and not available for immediate use in accordance with the provisions of § 648.23(b) and § 648.81(e). Further, vessels not fishing in the scallop DAS program and fishing for species other than scallops or not in possession of scallops in this area must stow scallop dredge gear in accordance with the provisions of §§ 648.23(b) and 648.81(e). The Hudson Canyon South Closed Area is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
H1	39°30′ N.	73°10′ W.
H2	39°30′ N.	72°30′ W.
H3	38°30′ N.	73°30′ W.
H4	38°40′ N.	73°50′ W.

(b) *Virginia Beach Closed Area.* No vessel may fish for, possess, or retain sea scallops in or from the area known as the Virginia Beach Closed Area (copies of a chart depicting this area are available from the Regional Administrator upon request) unless all gear on board is properly stowed and not available for immediate use in accordance with the provisions of § 648.23(b) and § 648.81(e). Further, vessels not fishing in the scallop DAS program and fishing for species other than scallops or not in possession of scallops in this area must stow scallop dredge gear in accordance with the provisions of §§ 648.23(b) and 648.81(e). The Virginia Beach Closed Area is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
V1	37°00′ N.	74°55′ W.
V2	37°00′ N.	74°35′ W.
V3	36°25′ N.	74°45′ W.
V4	36°25′ N.	74°55′ W.

[FR Doc. 98–8287 Filed 3–25–98; 4:43 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 980318066–8066–01; I.D. 022698A]

RIN 0648–AK77

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 25

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

ACTION: Final rule and 1998 target total allowable catch (TAC) levels.

SUMMARY: NMFS issues this final rule to implement measures contained in Framework 25 to the Northeast Multispecies Fishery Management Plan (FMP). The primary purpose of this action is to significantly reduce fishing effort on Gulf of Maine (GOM) cod through a combination of direct and indirect measures. Direct measures include area closures and trip limits, and indirect measures include an incentive to shift effort from the GOM to Georges Bank with an increased haddock trip limit. This final rule implements management measures that include: 1-month sequential closures for each of four GOM inshore areas starting in Massachusetts Bay and extending to Penobscot Bay and for an offshore area comprising Cashes Ledge; a year-round closure encompassing parts of Stellwagen Bank, Jeffreys Ledge, and Wildcat Knoll; a reduction in the GOM cod landing limit from 1,000 lb/day (453.6 kg/day) to 700 lb/day (317.5 kg/day); an extension of the current 1,000 lb/day (453.6 kg/day) haddock landing limit, with a 10,000 lb (4,536 kg/day) landing cap per trip, for the period May 1 through August 31, and an increase to 3,000 lb/day (1,360.8 kg/day), with a 30,000 lb (13,608 kg/day) cap per trip, beginning September 1; a requirement to use a raised footrope trawl in Small Mesh Area 1 and Small Mesh Area 2; and a 1-year postponement of the Vessel Tracking System (VTS) for multispecies vessels. The intent of this action is to implement measures to achieve the rebuilding goals of Amendment 7 to the FMP for the 1998 multispecies fishing year.

DATES: This final rule and the target total allowable catch levels are effective May 1, 1998.

ADDRESSES: Copies of Amendment 7 to the FMP (Amendment 7), its regulatory impact review (RIR), and the final regulatory flexibility analysis contained with the RIR, its final supplemental environmental impact statement, and Framework Adjustment 25 documents are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1097.

Comments regarding the collection-of-information requirements contained in this final rule should be sent to Andrew A. Rosenberg, Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Susan A. Murphy, Fishery Policy Analyst, 978–281–9252.

SUPPLEMENTARY INFORMATION: Amendment 7, which became effective on July 1, 1996, established a procedure for setting annual TACs for the five primary stocks of cod, haddock, and yellowtail flounder (Georges Bank cod, haddock, and yellowtail flounder, Southern New England yellowtail flounder, and GOM cod), and an aggregate TAC for the combined stocks of the remaining regulated multispecies. Adjustment of target TACs, which are calculated based on the biological reference points of F_{max} for GOM cod and $F_{0.1}$ for the remaining stocks of cod, haddock, and yellowtail flounder, is necessary to attain a fishing mortality rate that would allow cod, haddock, and yellowtail stocks to rebuild over time, and maintain current potential yield for the seven remaining multispecies. Adjustment of annual target TACs provides a measure by which to evaluate the effectiveness of the management program and to make determinations on the need for annual adjustments to this program.

Under Amendment 7, the Multispecies Monitoring Committee (MSMC) was established to review the

best available scientific information, adjust target TACs, and recommend management options to achieve the plan objectives. In response to the MSMC's advice for the 1997 fishing year, the New England Fishery Management Council (Council) developed, and NMFS implemented, Framework Adjustment 20 (62 FR 15381, April 1, 1997, and 62 FR 49144, September 19, 1997), which established a GOM cod landing restriction limiting vessels fishing under a multispecies days-at-sea (DAS) north of 42°00' N. lat. to 1,000 lb (453.6 kg) of cod per day, or any part of a day, for each of the first 4 days of a trip, and up to 1,500 lb (680.4 kg) of cod per day, or any part of a day, in excess of 4 days.

In its report delivered at the December 9–11, 1997, Council meeting, the MSMC found that stock status has generally improved for the primary groundfish species, but that the condition of GOM cod remains poor. The report concluded that, at 0.78, the fishing mortality rate continues to be well above the overfishing definition (0.37) and the Amendment 7 mortality target of F_{MAX} (0.29). Further, recruitment is at record low levels and spawning stock biomass is declining. The MSMC estimated that, after consideration of the fishing mortality reductions to be gained from the DAS reductions previously implemented under Amendment 7 for fishing year 1998, an additional 48 percent fishing mortality reduction is necessary to achieve the target F_{MAX} for GOM cod.

Based on projected 1998 stock sizes and Amendment 7's fishing mortality targets, the target TACs for the 1998 fishing year were set by the MSMC and adopted by the Council as follows:

Based on projected 1998 stock sizes and Amendment 7's fishing mortality targets, the target TACs for the 1998 fishing year were set by the MSMC as follows:

Species/area	1998 Target TACs (metric tons)	1997 Target TACs (metric tons)
Georges Bank cod	4,700	3,646
Georges Bank haddock	4,797	1,608
Georges Bank yellowtail flounder	2,145	776
Gulf of Maine cod	1,783	2,605
Southern New England yellowtail flounder	814	824
Aggregate for remaining regulated species	25,500	25,500

In addition to setting the target TACs, the MSMC report provided the Council with eight specific management options and several general options and recommendations to keep the target TACs from being exceeded. These options were based on DAS reductions, trip limits, and area closures in various combinations.

At its December 1997 meeting, the Council rejected options based on reducing DAS because they would directly and unnecessarily affect multispecies vessels fishing in areas outside of the GOM. In developing its options, the Council charged its Multispecies Oversight Committee to consider spawning area closure options that incorporate sequential GOM inshore closures, and GOM cod landing limit reductions. Because GOM cod is concentrated in near-shore waters, the Council recognized that measures directed at reducing effort on this stock would have a large impact on small inshore vessels, which account for most of the GOM cod landings. A sequential rolling closure, the Council reasoned, would affect vessels from various ports at different times and, thus, help mitigate inshore closure impacts on small vessels by allowing fishing to occur during the non-closure periods.

Therefore, to address further reductions needed for GOM cod, this framework replaces the current multispecies Massachusetts Bay and Mid-coast Area Closures with a 1-month closure for each of four inshore areas, starting in Massachusetts Bay and extending to Penobscot Bay, Maine, and a 1-month offshore closure in an area known as Cashes Ledge. Additionally, the framework closes, year-round, an area in the western GOM comprising part of Stellwagen Bank, Jeffreys Ledge, and Wildcat Knoll. Exemptions to these new closed areas remain the same as those for the previous Massachusetts Bay and Mid-coast Closure Areas. Also, a vessel may transit through these closure areas provided its gear is stowed properly according to the regulations.

The third and final provision under this action to address needed reductions for GOM cod is a reduction in the current GOM cod landing limit from 1,000 lb/day (453.6 kg/day) to 700 lb/day (317.5 kg/day). A safeguard included in this last measure allows the Administrator, Northeast Region, NMFS (Regional Administrator), to reduce the landing limit to as low as 400 lb/day (181.4 kg/day) when 50 percent of the target TAC is reached through publication of a notification in the **Federal Register**. All GOM cod measures included in this framework will sunset after 3 years.

The GOM cod option selected by the Council and implemented by this rule imposes a short closure period for inshore grounds and provides an opportunity for small vessels to target other species, while achieving the conservation goals of the plan. A no-displacement analysis completed by the Northeast Fisheries Science Center shows that the closure and trip limit would meet the mortality reduction goal. It should be noted, however, that these results are considered optimistic because the analysis assumes that all catch from the closed areas is conserved and no effort is displaced. Nevertheless, the Council rationalized, and NMFS concurs, that the effect of combining the area closures, trip limit (which could be reduced to 400 lbs (181.4 kg)), and current DAS controls, will be sufficient to achieve the fishing mortality reduction goal, while balancing the needs of the industry.

To address the 1998 target TAC increase for Georges Bank haddock, this rule relaxes the current haddock management measures by establishing a 1,000 lb/day (453.6 kg/day) haddock landing limit, up to a maximum of 10,000 lb/trip (4,536 kg/trip), for the period May 1 through August 31, 1998, and by increasing the landing limit to 3,000 lb/day (1,360.8 kg/day), up to a maximum of 30,000 lb/trip (13,608 kg/trip), beginning September 1. Similar to cod, this provision includes a trigger mechanism that authorizes the Regional Administrator to reduce the landing limit to either 1,000 lb/trip (453.6 kg/trip) or 1,000 lb/day (453.6 kg/day), up to a maximum of 10,000 lb (4,536 kg) per trip, when 75 percent of the Georges Bank haddock target TAC is caught,

through publication of a notification in the Federal Register.

This rule also requires the use of a raised footrope trawl to ensure that the net remains off of the ocean bottom when towed by trawl vessels fishing in the Small Mesh Area 1 and Small Mesh Area 2 exemption areas. The raised footrope design has been successfully used in experimental fisheries conducted by the Massachusetts Division of Marine Fisheries (MADMF) to reduce the incidental catch of several bottom-dwelling species, including regulated flatfish species, while engaged in the whiting fishery.

Finally, this rule postpones, for the 1998 fishing year only, the mandatory use of VTS by multispecies vessels with an individual DAS allocation. NMFS has completed field testing of the VTS and had informed the Council that the system could be operational by the start of the 1998 fishing year. Under current regulations, a multispecies vessel that possesses an individual DAS permit category (Individual DAS or Combination permit) would be required to install and maintain a VTS unit aboard the vessel to track DAS once the system is operational. The Council has requested an additional year for implementation to address comments and issues raised by members of the public.

Because parts of Small Mesh Area 2 and Stellwagen Bank/Jeffreys Ledge Juvenile Protection Area lie within the year-round Western GOM Area Closure, this rule adjusts the coordinates of these two areas to reflect this change.

Abbreviated Rulemaking

NMFS is making these revisions to the regulations under the framework abbreviated rulemaking procedure codified at 50 CFR part 648, subpart F. This procedure requires the Council, when making specifically allowed adjustments to the FMP, to develop and analyze the actions over the span of at least two Council meetings. The Council must provide the public with advance notice of both the proposals and the analysis, and an opportunity to comment on them prior to and at a second Council meeting. Upon review of the analysis and public comment, the Council may recommend to the Regional Administrator that the measures be published as a final rule if certain conditions are met. NMFS may publish the measures as a final rule, or as a proposed rule if additional public comment is needed.

The public was provided the opportunity to express comments on the management of GOM cod at numerous meetings beginning in December, 1996 when the MSMC informed the Council of the severely overfished status of GOM cod. Following development of Framework 20, the Council, through its Multispecies Oversight Committee and Area Closure Subcommittee, continued development of area closure alternatives for the GOM at public meetings held on several occasions during 1997. At the July Council meeting, the Northeast Fisheries Science Center presented results of its 24th Stock Assessment Workshop (SAW), updating the status of cod, haddock, and yellowtail flounder stocks, and advised the Council that fishing mortality on GOM cod be reduced to levels approaching zero.

On December 3, 1997, the MSMC released its annual report. On December 5, the Area Closure Subcommittee and Multispecies Plan Development Team held a public meeting in Saugus, MA to develop an area closure alternative that would meet the 1998 fishing year goals based on information contained in the MSMC report. The first framework meeting was the December 9–11, 1997, Council meeting. The Multispecies Oversight Committee (Groundfish Committee) met on December 15 to finalize options to be included in the framework document. On January 7, 1998, the Groundfish Advisory Panel met to draft comments on the options for consideration by the Council. The final meeting at which public comments were heard was the January 14–15, 1998, Council meeting. Documents summarizing the Council's proposed action, and the analysis of biological and economic impacts of this and alternative actions, were available for public review one week prior to the final meeting, as is required under the framework adjustment process. Written comments were accepted up to, and during, that meeting.

Comments and Responses

Comment 1: Approximately 100 letters and e-mails, as well as several phone calls, were received from members of conservation organizations urging the Council to develop measures necessary to continue achieving the Amendment 7 rebuilding plan goals.

Response: Framework 25 measures, implemented under this rule, are designed to achieve the fishing mortality rate goals for GOM cod in fishing year 1998, and to continue measures which have already achieved those goals for other critical stocks in order to rebuild stock biomass. The framework adjustment process allows the Council to monitor the progress of the plan and make adjustments as necessary to continually meet the plan goals.

Comment 2: Senators Edward Kennedy (MA), John Kerry (MA), Bob Smith (NH), and Judd Gregg (NH), Congressmen John Sununu (NH) and John Tierney (MA), and NH Governor Jeanne Shaheen submitted written comments urging the Council to consider all options, including those presented by industry groups, and to select the one that fairly distributes the impacts of the conservation plan on all groups.

Response: A fishing industry group, the Gulf of Maine Fishermen's Alliance, submitted a proposal (the Alliance proposal) too late, pursuant to statutory deadlines, for consideration by the Council as an option for Framework 25. However, the Alliance proposal will be considered by the Council in a subsequent framework action. See response to comment 4.

The Council did select the framework document option that could be shown to meet the conservation goals of the plan and that distribute the impacts across vessel categories and geographical areas as equitably as possible. As noted previously, however, analyses of this option are considered optimistic in terms of meeting the conservation goal. Despite this, it is believed that the effect of this action in combination with current measures will adequately meet the fishing mortality reductions specified for GOM cod.

The Council recognizes that since GOM cod is concentrated in inshore waters, measures designed to protect that stock will directly impact inshore fleets and their associated communities. All of the options available to the Council would distribute impacts similarly because of the nature and the distribution of the GOM cod resource. The rolling 1-month feature that pertains to most of the closed area is designed to mitigate these impacts.

Comment 3: Several members of the public stated that they felt the Council failed to give adequate public notice for the framework meetings.

Response: The public had been informed of the dire need to address GOM cod on numerous occasions over the past year, e.g, the December 1996 Council meeting when the 1996 MSMC Report was delivered, the July 1997 Council meeting when the results of the 24th SAW were presented, and in December 1997 when the MSMC released its 1997 report. In addition, the Groundfish Committee and its Area Closure Subcommittee have discussed measures to address GOM cod at several public meetings during that time. The public has also known about the annual review and adjustment process since it was instituted by Amendment 7 to the

FMP in 1996. The December 9–11, 1997, Council meeting agenda containing an announcement of the MSMC report and initial framework meeting was mailed to approximately 1,650 interested parties on November 19, 1997, filed for public inspection by the Office of the Federal Register on November 24, 1998, and published in the **Federal Register** on November 28, 1997 (62 FR 63309). Also, adequate public notice was given for the December 15, 1997, Multispecies Committee meeting, and for the final Council meeting on this action, held January 14–15, 1998.

Comment 4: Approximately 90 individuals signed a petition opposing the option adopted by the Council in Framework 25. They contended that an alternative which would have added some offshore grounds to the rolling closure but which would have not closed any areas year round, and saying that Option 3 would do a better job of protecting the resource and the industry. Approximately 80 individuals signed a petition supporting a new alternative, the Alliance proposal, which was not available in time for full consideration by the Council for Framework 25. Numerous individuals also provided oral comment supporting this alternative at the Council's January 14–15, 1998, meeting. Massachusetts State Senator Bruce Tarr and State Representative Tony Verga both urged the Council to consider the proposal.

Response: Because of statutory deadlines, the Alliance proposal was submitted too late to be considered fully by the Council for Framework 25, but is currently being considered for a possible follow-up Framework action. At the time Framework 25 was submitted, the proposal was in the process of being revised by the Alliance members because it could not be shown to meet the biological goal. The Council has, however, given this proposal a high priority for consideration, and will take appropriate action at the earliest opportunity.

Comment 5: Approximately 15 fishers from Maine signed three letters to the Council supporting the rolling closures without exceptions for gears that were purported to not catch cod.

Response: With the exception of certain gear types discussed below, the Council adopted a rolling closure option which did not allow exceptions for gears, such as flounder or monkfish gillnets, that are purportedly able to be fished in a manner that has minimal impact on cod. The Council rejected these proposed gear exceptions due to enforcement difficulty resulting from allowing such fishing in an area closed to other very similar gears. However, vessels fishing in closed areas with gear deemed not capable of catching regulated species, such as lobster pots, are exempted and these vessels are prohibited from possessing regulated species. NMFS concurs in the Council's findings.

Comment 6: Several industry members stated that closing inshore grounds for extended periods would cause small boat fishers to seek alternative fishing grounds beyond the safe range of their vessels.

Response: Framework 25 closes inshore areas for 1-month periods during the spring and summer months. The year-round closure is a narrow strip several miles offshore. Thus, the immediate inshore grounds remain open for 11 months of the year. The Council considered safety and purposefully selected an option that minimizes the closure of inshore grounds and provides opportunity to fish inshore. The safe operation of a vessel is the Captain's responsibility. NMFS concurs in the Council's conclusion.

Comment 7: Several individuals commented in opposition to a proposal to postpone the mandatory VTS only on vessels fishing in the GOM.

Response: NMFS concurs with the Council's decision to reject this proposal in favor of a 1-year postponement extended to all Individual DAS vessels, not just those fishing in the GOM. See discussion of the VTS postponement earlier in this document.

Classification

The Assistant Administrator for Fisheries, NOAA finds there is good cause to waive prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B). Public meetings held by the Council to discuss the management measures implemented by this rule provided adequate prior notice and an opportunity for public comment to be heard and considered; therefore, further notice and opportunity to comment before this rule is effective is unnecessary.

Because prior notice and an opportunity for public comment are not required to be provided for this rule by 5 U.S.C. 533, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable. As such, none has been prepared. The primary intent for this action is to achieve the conservation goals established by Amendment 7 to the FMP while mitigating its economic impacts. The increased haddock trip limit for 1998 provides economic opportunity, while the postponement of mandatory VTS for one year reduces short-term costs to vessels, thereby mitigating impacts of the FMP without compromising its conservation objectives.

This rule restates information collection requirements subject to the Paperwork Reduction Act (PRA) that have been approved by the Office of Management and Budget (OMB) under control number 0648–0202. Call-in requirements are estimated to take 2 minutes per call, and the transiting notification is estimated to take 3 minutes per notification. Send comments regarding any of these burden estimates or any other aspect of the collection of information, including suggestions for reducing the burden, to NMFS and to OMB (see **ADDRESSES**).

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

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

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 25, 1998.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

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

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

2. In § 648.10, paragraphs (d) and (f)(3)(i) are revised to read as follows:

§ 648.10 DAS notification requirements.

* * * * *

(d) *Temporary authorization for use of the call-in system.* The Regional Administrator may authorize or require, on a temporary basis, the use of the call-in system of notification specified in paragraph (c) of this section. If use of the call-in system is authorized or required, the Regional Administrator shall notify affected permit holders through a letter, notification in the **Federal Register**, or other appropriate means. From May 1, 1998, through April 30, 1999, multispecies vessels issued an Individual DAS or Combination Vessel (regarding the

multispecies fishery) permit are temporarily authorized to use the call-in system of notification specified in paragraph (c) of this section.

* * * * *

(f) * * *

(3) * * *

(i) A vessel subject to the cod landing limit restriction specified in § 648.86(b)(1)(i), that has not exceeded the allowable limit of cod based on the duration of the trip, must enter port and call-out of the DAS program no later than 14 DAS after starting a multispecies DAS trip.

* * * * *

3. In § 648.14, paragraphs (a)(101), (c)(7), (c)(10), (c)(24) and (c)(25) are revised, paragraphs (a)(105) through (109) are added and reserved, and paragraph (a)(110) is added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(101) Enter, fail to remove gear from, or be in the areas described in § 648.81(f)(1) through (i)(1) and in § 648.81(n)(1) during the time period specified, except as provided in § 648.81(d), (f)(2), (g)(2), (h)(2), (i)(2) and (n)(2).

* * * * *

(105) [Reserved].

(106) [Reserved].

(107) [Reserved].

(108) [Reserved].

(109) [Reserved].

(110) Fish for, harvest, possess, or land in or from the EEZ, any of the exempted species specified in § 648.80(a)(8)(i), unless such species were fished for or harvested by a vessel meeting the requirements specified in § 648.80(a)(8)(iv).

* * * * *

(c) * * *

(7) Possess or land per trip more than the possession or landing limits specified under § 648.86(a), (b), and under § 648.82(b)(3), if the vessel has been issued a limited access multispecies permit.

* * * * *

(10) Enter, fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from, or be in the areas, and for the times, described in § 648.87(a) and (b), except as provided in § 648.81(d), and (f)(2), and in § 648.87(a)(1)(ii).

* * * * *

(24) Fail to enter port and report the hail weight of cod within 14 DAS after starting a multispecies DAS trip, as specified in § 648.10(f)(3), if the vessel exceeds the allowable limit of cod specified in § 648.86(b)(1)(i) and (b)(3)(i), unless the vessel is fishing under the cod exemption specified in § 648.86(b)(2).

(25) Fail to remain in port for the appropriate time specified in § 648.86(b)(1)(ii)(A), except for transiting purposes, provided the vessel complies with § 648.86(b)(4).

* * * * *

4. In § 648.80, paragraphs (a)(5)(i) and (a)(8) are revised to read as follows:

§ 648.80 Regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(a) * * *

(5) * * *

(i) The SB/JL Juvenile Protection Area (copies of a chart depicting the area are available from the Regional Administrator upon request (see Table 1 to § 600.502)) is defined by straight lines connecting the following points in the order stated:

STELLWAGEN BANK JUVENILE PROTECTION AREA

Point	N. lat.	W. long.
SB1	42°34.0′	70°23.5′
SB2	42°28.8′	70°39.0′
SB3	42°18.6′	70°22.5′
SB4	42°05.5′	70°23.3′
SB5	42°11.0′	70°04.0′
SB6	42°15.0′	70°07.4′
SB7	42°15.0′	70°15.0′
SB8	42°24.0′	70°15.0′
SB1	42°34.0′	70°23.5′

JEFFREYS LEDGE JUVENILE PROTECTION AREA

Point	N. lat.	W. long.
JL1	42°52.0′	70°21.0′
JL2	42°41.5′	70°32.5′
JL3	42°34.0′	70°26.2′
JL4	42°43.1′	70°15.0′
JL5	42°54.3′	70°15.0′
JL1	42°52.0′	70°21.0′

* * * * *

(8) *Small Mesh Area 1/Small Mesh Area 2.* (i) Vessels subject to the minimum mesh size restrictions specified in paragraph (a)(2) of this section may fish with or possess nets with a mesh size smaller than the minimum size, provided the vessel complies with the requirements of paragraph (a)(8)(iv) of this section, from July 15 through November 15 when fishing in Small Mesh Area 1 and from January 1 through June 30 when fishing in Small Mesh Area 2, except as specified in paragraph (a)(8)(ii) and (a)(8)(iii) of this section. A vessel may not fish for, possess on board, or land any species of fish other than: Butterfish, dogfish, herring, mackerel, ocean pout, scup, squid, silver hake, and red hake, except for the following allowable incidental species (bycatch as the term is used elsewhere in this part), with the restrictions noted: Longhorn sculpin; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less. These areas are defined by straight lines connecting the following points in the order stated (copies of a chart depicting these areas are available from the Regional Administrator upon request (see Table 1 to § 600.502)):

SMALL MESH AREA 1

Point	N. lat.	W. long.
SM1	43°03′	70°27′
SM2	42°57′	70°22′
SM3	42°47′	70°32′
SM4	42°45′	70°29′
SM5	42°43′	70°32′
SM6	42°44′	70°39′
SM7	42°49′	70°43′
SM8	42°50′	70°41′
SM9	42°53′	70°43′
SM10	42°55′	70°40′
SM11	42°59′	70°32′
SM1	43°03′	70°27′

SMALL MESH AREA 2

Point	N. lat.	W. long.
SM13	43°05.6′	69°55.0′
SM14	43°10.1′	69°43.3′
SM15	42°49.5′	69°40.0′
SM16	42°41.5′	69°40.0′
SM17	42°36.6′	69°55.0′
SM13	43°05.6′	69°55.0′

(ii) The portion of Small Mesh Area 2 that is north of 43°00.0′ N. lat. shall be closed to all fishing during the period May 1 through May 31 to coincide with Inshore Closure Area I specified in § 648.81(g)(1)(iii). Therefore, during the May 1 through May 31 time period, Small Mesh Area 2 is defined by straight lines connecting the following points in the order stated:

SMALL MESH AREA 2

[May 1–May 31]

Point	N. lat.	W. long.
SM18	43°00.0′	69°41.6′
SM15	42°49.5′	69°40′
SM16	42°41.5′	69°40′
SM17	42°36.6′	69°55′
SM19	43°00.0′	69°55′
SM18	43°00.0′	69°41.6′

(iii) The portion of Small Mesh Area 2 that is south of 43°00.0′ N. lat. shall be closed to all fishing during the period April 1 through April 30 to coincide with the Inshore Closure Area II specified in § 648.81(g)(1)(ii). Therefore, during the April 1 through April 30 time period, Small Mesh Area 2 is defined by straight lines connecting the following points in the order stated:

SMALL MESH AREA 2

[April 1–April 30]

Point	N. lat.	W. long.
SM18	43°00.0′	69°41.6′
SM14	43°10.1′	69°43.3′
SM13	43°05.6′	69°55′
SM19	43°00.0′	69°55′
SM18	43°00.0′	69°41.6′

(iv) *Raised footrope trawl.* Vessels fishing with trawl gear must configure it in such a way that, when towed, the gear is not in contact with the ocean bottom. Vessels are presumed to be fishing in such a manner if their trawl gear is designed as specified in paragraphs (a)(8)(iv) (A) through (D) of this section and is towed so that it does not come into contact with the ocean bottom:

(A) Eight inch (20.3 cm) diameter floats must be attached to the entire length of the headrope with a maximum spacing of 4 feet (12.2 cm) between floats;

(B) The ground gear must all be bare wire not larger than ½-inch (1.2 cm) for the top leg, not larger than ⅝-inch (1.6 cm) for the bottom leg, and not larger than ¾-inch (1.9 cm) for the ground cables. The top and bottom legs must be equal in length with no extensions. The total length of ground cables and legs must not be greater than 40 fathoms from the doors to wingends;

(C) The footrope must be longer than the headrope but not more than 20 feet (6.1 m) longer than the length of the headrope; and

(D) The sweep must be rigged so it is behind and below the footrope, and the footrope is off the bottom. This is accomplished by having the sweep longer than the footrope and having long dropper chains attaching the sweep to the footrope at regular intervals. The forward end of the sweep and footrope must be connected to the bottom leg at the same point, and in conjunction with the headrope floatation; this keeps the footrope off the bottom. The sweep and its rigging must be made entirely of 5/16 inch (0.8 cm) diameter bare chain. No wrapping or cookies are allowed on the chain. The total length of the sweep must be at least 7 feet (2.1 m) longer than the total length of the footrope, or 3.5 feet (1.1 m) longer on each side. Drop chains must connect the footrope to the sweep chain and the length of each drop chain must be at least 42 inches (106.7 cm). One drop chain must be hung from the center of the footrope to the center of the sweep and one drop chain must be hung from each corner (the quarter or, the junction of the bottom wing to the belly at the footrope). The attachment points of each drop chain on the sweep and the footrope must be the same distance from the center drop chain attachments. Drop chains must be hung at 8-foot (2.4 m) intervals from the corners towards the wing ends. The distance of the drop chain that is nearest the wing end to the end of the footrope may differ from net to net. However, the sweep must be at least 3.5 feet (1.1 m) longer than the footrope between the drop chain closest to the wing ends and the end of the sweep that attaches to the wing end.

* * * * *

5. In § 648.81, paragraphs (d), (g), (h) and (i) are revised, and paragraph (n) is added to read as follows:

§ 648.81 Closed areas.

* * * * *

(d) *Transiting.* Vessels may transit Closed Area I, the Nantucket Lightship Closed Area, the NE Closure Area, the GOM Inshore Closure Areas, the Cashes Ledge Closure Area, and the Western GOM Closure Area, as defined in paragraphs (a)(1), (c)(1), (f)(1), (g)(1), (h)(1), and (i)(1), respectively, of this section, provided that their gear is stowed in accordance with the provisions of paragraph (e) of this section.

* * * * *

(g) *GOM Inshore Closure Areas.* (1) From May 1, 1998, through April 30, 2001, no fishing vessel or person on a fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in, the GOM Inshore Closure Areas I through IV, as described in paragraphs (g)(1)(i) through (iv) of this section, for the times specified in those paragraphs, except as specified in paragraphs (d) and (g)(2) of this section (a chart depicting these areas is available from the Regional Administrator upon request (see Table 1 to § 600.502)).

(i) *Inshore Closure Area I.* From March 1 through March 31, the restrictions specified in paragraph (g)(1) of this section apply to Inshore Closure Area I apply to Inshore Closure Area III, which is the area bounded by straight lines connecting the following points in the order stated:

INSHORE CLOSURE AREA I

[March 1–March 31]

Point	N. lat.	W. long.
GM1	42°00′	(1)
GM2	42°00′	(2)
GM3	42°00′	(3)
GM4	42°00′	70°00′
GM5	42°30′	70°00′
GM6	42°30′	(1)

[1] Massachusetts shoreline.
[2] Cape Cod shoreline on Cape Cod Bay.
[3] Cape Cod shoreline on the Atlantic Ocean.

(ii) *Inshore Closure Area II.* From April 1 through April 30, the restrictions specified in paragraph (g)(1) of this section apply to Inshore Closure Area II, which is the area bounded by straight lines connecting the following points in the order stated:

INSHORE CLOSURE AREA II

[April 1–April 30]

Point	N. lat.	W. long.
GM6	42°30′	(1)
GM7	42°30′	69°30′
GM8	43°00′	69°30′
GM9	43°00′	(2)

[1] Massachusetts shoreline.
[2] New Hampshire shoreline.

(iii) *Inshore Closure Area III.* From May 1 through May 31, the restrictions specified in paragraph (g)(1) of this section apply to Inshore Closure Area III, which is the area bounded by straight lines connecting the following points in the order stated:

INSHORE CLOSURE AREA III

[May 1–May 31]

Point	N. lat.	W. long.
GM9	43°00′	(1)
GM8	43°00′	69°30′
GM10	43°30′	69°30′
GM11	43°30′	(2)

[1] New Hampshire shoreline.
[2] Maine shoreline.

(iv) *Inshore Closure Area IV.* From June 1 through June 30, the restrictions specified in paragraph (g)(1) of this section apply to Inshore Closure Area IV (copies of a chart depicting this area are available from the Regional Administrator upon request (see Table 1 to § 600.502)), which is the area bounded by straight lines connecting the following points in the order stated:

INSHORE CLOSURE AREA IV

[June 1–June 30]

Point	N. lat.	W. long.
GM11	43°30′	(1)
GM12	43°30′	69°00′
GM13	(1)	69°00′

[1] Maine shoreline.

(2) Paragraph (g)(1) of this section does not apply to persons on fishing vessels or fishing vessels that meet the criteria in paragraph (f)(2)(i), (ii), or (iii) of this section.

(h) *Cashes Ledge Closure Area.* (1) From May 1, 1998, through April 30, 2001, during the period June 1 through June 30, no fishing vessel or person on a fishing vessel may enter, fish, or be in, and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in, the area known as the Cashes Ledge Closure Area (a chart depicting this area is available from the Regional Administrator upon request (see Table 1 to § 600.502)), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (d) and (h)(2) of this section:

CASHES LEDGE CLOSURE AREA

[June 1–June 30]

Point	N. lat.	W. long.
GM14	42°30′	69°00′
GM15	42°30′	68°30′
GM16	43°00′	68°30′
GM17	43°00′	69°00′
GM14	42°30′	69°00′

(2) Paragraph (h)(1) of this section does not apply to persons on fishing vessels or fishing vessels that meet the criteria in paragraph (f)(2)(ii), or (iii) of this section.

(i) *Western GOM Area Closure.* (1) From May 1, 1998, through April 30, 2001, no fishing vessel or person on a fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in, the area known as the Western GOM Area Closure (a chart depicting this area is available from the Regional Administrator upon request (see Table 1 to § 600.502)), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (d) and (i)(2) of this section:

WESTERN GOM AREA CLOSURE

Point	N. lat.	W. long.
WGM1	42°15′	70°15′
WGM2	42°15′	69°55′
WGM3	43°15′	69°55′
WGM4	43°15′	70°15′
WGM1	42°15′	70°15′

(2) Paragraph (i)(1) of this section does not apply to persons on fishing vessels or fishing vessels that meet the criteria in paragraph (f)(2)(ii), or (iii) of this section.

* * * * *

(n) *Area closures beginning May 1, 2001.* (1) No fishing vessel or person on a fishing vessel may enter, fish, or be in, and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in, the area known as the Mid-coast Closure Area, as described in § 648.87(a)(1), during the period May 10 through May 30, or in the area known as the Massachusetts Bay Closure Area, as described in § 648.87(a)(3), during the period March 1 through March 30, (copies of a chart depicting these areas is available from the Regional Administrator upon request (see Table 1 to § 600.502)), except as specified in paragraphs (d) and (n)(2) of this section.

(2) Paragraph (n)(1) of this section does not apply to persons on fishing vessels or fishing vessels that meet the criteria in paragraph (f)(2)(i), (ii), or (iii) of this section.

6. In § 648.86, paragraphs (a)(1)(i), (a)(1)(ii), (b) introductory text, (b)(1) introductory text, (b)(1)(i), (b)(1)(ii), and (b)(3) are revised, and paragraphs (a)(1)(iii) and (b)(4) are added to read as follows:

§ 648.86 Possession restrictions.

(a) * * *

(1) * * *

(i) Except as provided in paragraphs (a)(1)(ii) and (iii) of this section, a vessel that is fishing under a NE multispecies DAS may land or possess on board up to 1,000 lb (453.6 kg) of haddock provided it has at least one standard tote on board. Haddock on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) During the period May 1, 1998, through August 31, 1998, a vessel may land up to 1,000 lb (453.6 kg) of haddock per DAS fished, or any part of a DAS fished, up to 10,000 lb (4,536.0 kg) per trip. Haddock on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(iii) Beginning September 1, 1998, through April 30, 1999, unless otherwise specified in this paragraph, a vessel may land up to 3,000 lb (1,360.8 kg) of haddock per DAS fished, or any part of a DAS fished, up to 30,000 lb (13,608 kg) per trip. When the Regional Administrator projects that 7.9 million lb (3,598 mt) will be harvested, NMFS will publish a notification in the **Federal Register** that on a specific date the limit will be reduced to either the 1,000 lb (453.6 kg) per trip possession limit restriction specified in paragraph (a)(1)(i) of this section, or the 1,000 lb (453.6 kg) per DAS fished, 10,000 lb (4,536.0 kg) maximum, landing limit restriction specified in paragraph (a)(1)(ii) of this section, depending on the risk of exceeding the target TAC. Haddock on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

* * * * *

(b) *Cod*—(1) *Landing limit from May 1, 1998, through April 30, 2001.* (i) Except as provided in paragraph (b)(1)(ii) and (b)(2) of this section, and subject to the cod landing limit call-in provision specified at § 648.10(f)(3)(i), a vessel fishing under a NE multispecies DAS may land up to 700 lb (317.5 kg) of cod per DAS, or any part of a DAS, unless otherwise specified in this paragraph. Vessels calling-out of the multispecies DAS program under § 648.10(c)(3) that have utilized part of a DAS (less than 24 hours) may land up to an additional 700 lb (317.5 kg) of cod for that part of a DAS; however, such vessels may not end any subsequent trip with cod on board within the 24-hour period following the beginning of the part of the DAS utilized (e.g., a vessel that has called-in to the multispecies DAS program at 3 p.m. on a Monday and ends its trip the next day (Tuesday) at 4 p.m. (accruing a total of 25 hours) may legally land up to 1,400 lb (635.0 kg) of cod on such a trip, but the vessel may not end any subsequent trip with cod on board until after 3 p.m. on the following day (Wednesday)). When the Regional Administrator projects that 892 mt will be harvested, NMFS will publish a notification in the **Federal Register** that on a specific date the limit will be reduced to a specified amount between 400 lb (181.4 kg) and 700 lb (317.5 kg) per DAS depending on the risk of exceeding the target TAC. Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) A vessel subject to the cod landing limit restrictions described in

paragraphs (b)(1)(i) and (b)(1)(3) of this section, and subject to the cod landing limit call-in provision specified at § 648.10(f)(3)(ii), may come into port with and offload cod in excess of the landing limit as determined by the number of DAS elapsed since the vessel called into the DAS program, provided that:

* * * * *

(3) *Landing limit beginning May 1, 2001.* (i) Except as provided in paragraphs (b)(1)(ii) and (b)(2) of this section, and subject to the cod landing limit call-in provision specified at § 648.10(f)(3)(i), a vessel fishing under a NE multispecies DAS may land up to 1,000 lb (453.6 kg) of cod per DAS, or any part of a DAS, for each of the first 4 DAS of a trip, and may land up to 1,500 lb (680.4 kg) of cod per DAS for each DAS, or any part of a DAS, in excess of 4 consecutive DAS. Vessels calling-out of the multispecies DAS program under § 648.10(c)(3) that have utilized part of a DAS (less than 24 hours) may land up to an additional 1,000 lb (453.6 kg), or 1,500 lb (680.4 kg) if applicable, of cod for that part of a DAS; however, such vessels may not end any subsequent trip with cod on board within the 24-hour period following the beginning of the part of the DAS utilized (e.g., a vessel that has called-in to the multispecies DAS program at 3 p.m. on a Monday and ends its trip the next day (Tuesday) at 4 p.m. (accruing a total of 25 hours) may legally land up to 2,000 lb (907.2 kg) of cod on such a trip, but the vessel may not end any subsequent trip with cod on board until after 3 p.m. on the following day (Wednesday)). Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) [Reserved].

(4) *Transiting.* A vessel that has exceeded the cod landing limit as specified in paragraphs (b)(1) and (b)(3) of this section and is, therefore, subject to remain in port for the period of time described in paragraph (b)(1)(ii)(A) of this section, may transit to another port during this time, provided that the vessel operator notifies the Regional Administrator (see Table 1 to § 600.502) either at the time the vessel reports its hailed weight of cod or at a later time prior to transiting, and provides the following information: Vessel name and permit number, destination port, time of departure, and estimated time of arrival. A vessel transiting under this provision must stow its gear in accordance with one of the methods specified in § 648.81(e), and may not have any fish on board the vessel.

* * * * *

7. In § 648.87, paragraph (a) introductory text, and paragraphs (a)(1)(i) and (a)(1)(ii) are revised, and paragraph (a)(3) is added to read as follows:

§ 648.87 Gillnet requirements to reduce or prevent marine mammal takes.

(a) *Areas closed to gillnet gear capable of catching multispecies to reduce harbor porpoise takes.* Section 648.81(f) sets forth a closed area restriction to reduce the take of harbor porpoise consistent with the harbor porpoise mortality reduction goals. Further, all persons owning or operating vessels in the EEZ portion of the areas and times specified in paragraphs (a)(1), (2) and (3) of this section must remove all of their sink gillnet gear and other gillnet gear capable of catching multispecies, with the exception of single pelagic gillnets (as described in § 648.81(f)(2)(ii)), and may not use, set, haul back, fish with, or possess on board, unless stowed in accordance with the requirements of § 648.81(e)(4), sink gillnet gear or other gillnet gear capable of catching multispecies, with the exception of single pelagic gillnet gear (as described in § 648.81(f)(2)(ii)) in the EEZ portion of the areas and for the times specified in paragraphs (a)(1), (2) and (3) of this section. Also, all persons owning or operating vessels issued a limited access multispecies permit must remove all of their sink gillnet gear and other gillnet gear capable of catching multispecies, with the exception of single pelagic gillnets (as described in § 648.81(f)(2)(ii)), from the areas and for the times specified in paragraphs (a)(1), (2) and (3) of this section, and, may not use, set, haul back, fish with, or possess on board, unless stowed in accordance with the requirements of § 648.81(e)(4), sink gillnets or other gillnet gear capable of catching multispecies, with the exception of single pelagic gillnets (as described in § 648.81(f)(2)(ii)) in the areas and for the times specified in paragraphs (a)(1), (2) and (3) of this section.

(1) * * *

(i) From March 25 through April 25, May 10 through May 30, and from September 15 through December 31 of each fishing year, the restrictions and requirements specified in paragraph (a) of this section apply to the Mid-coast Closure Area (copies of a chart depicting this area are available from the Regional Administrator upon request), except as provided in paragraph (a)(1)(ii) of this section, which is the area bounded by straight lines connecting the following points in the order stated.

MID-COAST CLOSURE AREA

Point	N. lat.	W. long.
MC1	42°30′	(1)′
MC2	42°30′	70°15′
MC3	42°40′	70°15′
MC4	42°40′	70°00′
MC5	43°00′	70°00′
MC6	43°00′	69°30′
MC7	43°15′	69°30′
MC8	43°15′	69°00′
MC9	(2)	69°00′

[1] Massachusetts shoreline.
[2] Maine shoreline.

(ii) Vessels subject to the restrictions and regulations specified in paragraph (a) of this section may fish in the Mid-coast Closure Area, as defined under paragraph (a)(1)(i) of this section, from November 1 through December 31 of each fishing year, provided that an acoustic deterrent device ("pinger") is attached at the end of each string of nets and at the bridle of every net within a string of nets, and is maintained as operational and functioning. Each pinger, when immersed in water, must broadcast a 10kHz +/− 2kHz sound at 132 dB +/− 4dB re 1 micropascal at 1 m. This sound must last 300 milliseconds and repeat every 4 seconds.

* * * * *

(3) *Massachusetts Bay Closure Area.* From March 1 through March 30, the restrictions and requirements specified in paragraph (a) of this section apply to the Massachusetts Bay Closure Area (copies of a chart depicting this area are available from the Regional Administrator upon request (see Table 1 to § 600.502)), which is the area bounded by straight lines connecting the following points in the order stated.

MASSACHUSETTS BAY CLOSURE AREA

Point	N. lat.	W. long.
MB1	42°30′	(1)
MB2	42°30′	70°30′
MB3	42°12′	70°30′
MB4	42°12′	70°00′
MB5	(2)	70°00′
MB6	42°00′	(2)
MB7	42°00′	(1)

[1] Massachusetts shoreline.
[2] Cape Cod shoreline.

* * * * *

[FR Doc. 98–8288 Filed 3–30–98; 8:45 am]
BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971231319–8070–02; I.D. 112697A]

RIN 0648–AK09

Fisheries of the Exclusive Economic Zone Off Alaska; Maximum Retainable Bycatch Percentages

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

ACTION: Final rule.

SUMMARY: NMFS implements a regulatory amendment to establish separate maximum retainable bycatch (MRB) percentages for shortraker rockfish and rougheye rockfish (SR/RE) in the Aleutian Islands Subarea (AI) groundfish fisheries. This action is necessary to slow the harvest rate of SR/RE, which will reduce the potential for overfishing. This action is intended to further the objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP).

DATES: Effective April 30, 1998.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review prepared for this action may be obtained from the Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or by calling the Alaska Region, NMFS, at 907–586–7228.

FOR FURTHER INFORMATION CONTACT: Alan Kinsolving, 907–586–7228.

SUPPLEMENTARY INFORMATION: Fishing for groundfish by U.S. vessels in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) is managed by NMFS according to the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

Regulations at 50 CFR 679.20(e) establish MRB percentages for groundfish species or species groups that are closed to directed fishing. The MRB amount is calculated as a percentage of the species closed to directed fishing (bycatch species) relative to the amount of other species retained onboard the vessel that are open for directed fishing. Amounts of a bycatch species onboard a vessel that are below or equal to the specified MRB percentage for that species may be retained. Amounts that are in excess of the MRB percentage must be discarded. Such discards that are required by the regulations are known as regulatory discards.

MRB percentages serve as a management tool to slow the harvest rates of bycatch species by limiting the amount that can be retained on board a vessel. By not placing the bycatch species on "prohibited" status, thereby prohibiting all retention, MRBs also serve to minimize regulatory discard of bycatch species when they are taken incidental to other directed fisheries. MRB percentages reflect a balance between the need to reduce the harvest rate of bycatch species and the desire to minimize regulatory discard of the bycatch species. Although MRB percentages limit the incentive to target on a bycatch species, fishermen can "top off" their retained catch with these species up to the MRB amount by deliberately targeting the bycatch species.

Currently, MRBs are established for aggregate rockfish species that are closed to directed fishing. As part of the aggregate rockfish MRB, the combined amounts of SR/RE and other rockfish closed to directed fishing must not exceed the following percentages of other species that are open to directed fishing: (a) 15 percent relative to deepwater species (other rockfish species, sablefish, Greenland turbot, and flathead sole), (b) 5 percent relative to shallow water species (Atka mackerel, pollock, yellowfin sole, rock sole, "other flatfish", squid, and other species) and (c) 0 percent relative to arrowtooth flounder.

SR/RE are highly valued, but amounts available to the commercial fisheries are limited by a relatively small total allowable catch (TAC) amount that is fully needed to support bycatch needs in other groundfish fisheries. As a result, the directed fishery for SR/RE typically is closed at the beginning of the fishing year. Nonetheless, bycatch amounts of SR/RE can exceed TAC and approach the specified overfishing level. When the overfishing level of SR/RE is reached, NMFS must close all other fisheries in which SR/RE is taken as bycatch.

In response to this problem, the Council recommended that NMFS establish separate MRB percentages for SR/RE lower than the current MRB percentages for SR/RE. A proposed rule to implement this regulatory amendment was published in the **Federal Register** on January 16, 1998 (63 FR 2654) with comments invited through February 17, 1998. No letters of comment were received.

This action separates SR/RE from the aggregated rockfish bycatch species group and establishes MRB percentages for SR/RE in the AI at 7 percent relative to deepwater complex species and to 2 percent relative to shallow water complex species. The MRB percentage relative to arrowtooth flounder remains at 0 percent.

Classification

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the measures this rule would implement would not have a significant economic impact on a substantial number of small entities. The basis for this certification was published in the proposed rule, (63 FR 2654, January 16, 1998). No comments were received regarding this certification. Thus, a regulatory flexibility analysis was not prepared.

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

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: March 25, 1998.

Gary Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.* and 3631 *et seq.*

2. In part 679, Table 11 is revised to read as follows:

TABLE 11.—BERING SEA AND ALEUTIAN ISLANDS MANAGEMENT AREA RETAINABLE PERCENTAGES

	Pollock	Pacific cod	Atka mackerel	Arrowtooth	Yellowfin sole	Other flatfish	Rock sole	Flathead sole	Greenland turbot	Sablefish	Shortraker rougheye (AI)	Aggregated rockfish	Squid	Aggregate forage fish	Other species
Basis Species [1]															
Pollock	na [4]	20	20	35	20	20	20	20	1	1	2	5	20	2	20
Pacific cod	20	na [4]	20	35	20	20	20	20	1	1	2	5	20	2	20
Atka mackerel	20	20	na [4]	35	20	20	20	20	1	1	2	5	20	2	20
Arrowtooth	0	0	0	na [4]	0	0	0	0	0	0	0	0	0	2	0
Yellowfin sole	20	20	20	35	na [4]	35	35	35	1	1	2	5	20	2	20
Other flatfish	20	20	20	35	35	na [4]	35	35	1	1	2	5	20	2	20
Rock sole	20	20	20	35	35	35	na [4]	35	1	1	2	5	20	2	20
Flathead sole	20	20	20	35	35	35	35	na [4]	35	15	7	15	20	2	20
Greenland turbot	20	20	20	35	20	20	20	20	na [4]	15	7	15	20	2	20
Sablefish	20	20	20	35	20	20	20	20	35	na [4]	7	15	20	2	20
Other rockfish	20	20	20	35	20	20	20	20	35	15	7	15	20	2	20
Other red rockfish-BS	20	20	20	35	20	20	20	20	35	15	na [4]	15	20	2	20
Pacific ocean perch	20	20	20	35	20	20	20	20	35	15	7	15	20	2	20
Sharpchin/Northern-AI	20	20	20	35	20	20	20	20	35	15	7	15	20	2	20
Shortraker/Rougheye-AI	20	20	20	35	20	20	20	20	35	15	na [4]	15	20	2	20
Squid	20	20	20	35	20	20	20	20	1	1	2	5	na [4]	2	20
Other species	20	20	20	35	20	20	20	20	1	1	2	5	20	2	na [4]
Aggregated amount non-groundfish species	20	20	20	35	20	20	20	20	1	1	2	5	20	2	20

[1] For definition of species, see Table 1 of the Bering Sea and Aleutian Islands groundfish specifications.
[2] Aggregated rockfish of the genera *Sebastes* and *Sebastolobus* except in the Aleutian Islands Subarea where shortraker and rougheye rockfish is a separate category.
[3] Forage fish are defined at §679.2.
[4] na = not applicable.

[FR Doc. 98–8427 Filed 3–30–98; 8:45 am]
BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 63, No. 61
Tuesday, March 31, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1205

[CN–98–002]

1998 Proposed Amendment to Cotton Board Rules and Regulations Adjusting Supplemental Assessment on Imports

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) is proposing to amend the Cotton Board Rules and Regulations by lowering the value assigned to imported cotton for the purpose of calculating supplemental assessments collected for use by the Cotton Research and Promotion Program. This adjustment is required by this regulation on an annual basis to ensure that the assessments collected on imported cotton and the cotton content of imported products remain similar to those paid on domestically produced cotton.

DATES: Comments must be received on or before April 30, 1998.

ADDRESSES: Comments may be mailed to USDA, AMS Cotton Program, STOP 0224, 1400 Independence Ave. S.W., Washington D.C., 20250–0224. All comments received will be available for public inspection at this address during the hours 8:00 a.m. to 4:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Norma McDill, (202) 720–2145.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This proposed rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Cotton Research and Promotion Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 12 of the Act, any person subject to an order may file with the Secretary a petition stating that the order, any provision of the plan, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the District Court of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling, provided a complaint is filed within 20 days from the date of the entry of the ruling.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) AMS has considered the economic impact of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small businesses.

There are an estimated 16,000 importers who are presently subject to rules and regulations issued pursuant to the Cotton Research and Promotion Order. This proposed rule would affect importers of cotton and cotton-containing products. The majority of these importers are small businesses under the criteria established by the Small Business Administration. This proposed rule would lower the assessments paid by the importers under the Cotton Research and Promotion Order. Even though the assessment would be lowered, the decrease is small and will not significantly affect small businesses.

The current assessment on imported cotton is $0.012412 per kilogram of imported cotton. The proposed assessment is $0.011850, a decrease of $0.000562 or a 4.5 percent decrease from the current assessment. From January through December 1997 approximately $20 million was collected at the $0.012412 per kilogram rate. Should the volume of cotton products imported into the U.S. remain at the same level in 1998, one could expect the decreased assessment to generate $19.1 million or a 4.5 percent decrease from 1997.

Paperwork Reduction

In compliance with Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) the information collection requirements contained in the regulation to be amended have been previously approved by OMB and were assigned control number 0581–0093.

Background

The Cotton Research and Promotion Act Amendments of 1990 enacted by Congress under Subtitle G of Title XIX of the Food, Agriculture, Conservation and Trade Act of 1990 on November 28, 1990, contained two provisions that authorized changes in the funding procedures for the Cotton Research and Promotion Program.

These provisions are: (1) The assessment of imported cotton and cotton products; and (2) termination of the right of cotton producers to demand a refund of assessments.

An amended Cotton Research and Promotion Order was approved by producers and importers voting in a referendum held July 17–26, 1991 and the amended Order was published in the **Federal Register** on September 25, 1997, (62 FR 50244). Proposed rules implementing the amended Order were published in the **Federal Register** on December 17, 1991, (56 FR 65450). Implementing rules were published on July 1 and 2, 1992, (57 FR 29181) and (57 FR 29431), respectively.

This proposed rule would decrease the value assigned to imported cotton in the Cotton Board Rules and Regulations (7 CFR 1205.510 (b)(2)). This value is used to calculate supplemental assessments on imported cotton and the cotton content of imported products. Supplemental assessments are the second part of a two-part assessment. The first part of the assessment is levied

on the weight of cotton produced or imported at a rate of $1 per bale of cotton which is equivalent to 500 pounds or $1 per 226.8 kilograms of cotton.

Supplemental assessments are levied at a rate of five-tenths of one percent of the value of domestically produced cotton, imported cotton, and the cotton content of imported products. The agency has adopted the practice of assigning the calendar year average price received by U.S. farmers for Upland cotton to represent the value of imported cotton. This is done so that the assessment on domestically produced cotton and the assessment on imported cotton and the cotton content of imported products remain similar. The source for the average price statistic is "Agricultural Prices", a publication of the National Agricultural Statistics Service (NASS) of the Department of Agriculture. Use of the average price figure in the calculation of supplemental assessments on imported cotton and the cotton content of imported products yields an assessment that approximates assessments paid on domestically produced cotton in the prior calendar year.

The current value of imported cotton as published in the **Federal Register** (62 FR 46412) on September 2, 1997, for the purpose of calculating supplemental assessments on imported cotton is $1.6005 per kilogram. This number was calculated using the annual average price received by farmers for Upland cotton during the calendar year 1996 which was $0.726 per pound and multiplying by the conversion factor 2.2046. Using the Average Price Received by U.S. farmers for Upland cotton for the calendar year 1997, which is $0.675 per pound, the new value of imported cotton is $1.4881 per kilogram. The amended value is $0.1124 per kilogram less than the previous value.

An example of the complete assessment formula and how the various figures are obtained is as follows:

One bale is equal to 500 pounds.

One kilogram equals 2.2046 pounds.

One pound equals 0.453597 kilograms.

One Dollar Per Bale Assessment Converted to Kilograms

A 500 pound bale equals 226.8 kg. (500×.453597).

$1 per bale assessment equals $0.002000 per pound (1÷500) or $0.004409 per kg. (1÷226.8)

Supplemental Assessment of 5/10 of One Percent of the Value of the Cotton Converted to Kilograms

The 1997 calendar year average price received by producers for Upland cotton is $0.675 per pound or $1.4881 per kg. (0.675×2.2046)=1.4881.

Five tenths of one percent of the average price in kg. equals $0.007441 per kg. (1.4881×.005).

Total Assessment

The total assessment per kilogram of raw cotton is obtained by adding the $1 per bale equivalent assessment of $0.004409 per kg. and the supplemental assessment $0.007441 per kg. which equals $0.011850 per kg.

The current assessment on imported cotton is $0.012412 per kilogram of imported cotton. The proposed assessment is $0.011850, a decrease of $0.000562 per kilogram. This decrease reflects the decrease in the Average Price of Upland Cotton Received by U.S. Farmers during the period January through December 1997.

Since the value of cotton is the basis of the supplemental assessment calculation and the figures shown in the right hand column of the Import Assessment Table 1205.510 (b)(3) are a result of such a calculation, the figures in this table have been revised. These figures indicate the total assessment per kilogram due for each Harmonized Tariff Schedule (HTS) number subject to assessment.

Eight HTS numbers subject to assessment pursuant to this regulation and found in the assessment table have been changed. In order to maintain consistency between the HTS and the assessment table, the changes to these eight numbers have been incorporated into the assessment table. The last two digits of these numbers were changed to provide for statistical reporting purposes and involve no physical change to the products they represent. Therefore, the assessment rate is not affected by the change. The assessment rate for each of the eight numbers has been applied to each of the new replacement numbers in the assessment table. The following table represents the changes:

Old No.	New No.	Conversion factor	Assessment cents/kg.
5208523040	5208523045	1.1455	1.3574
5208524040	5208524045	1.1455	1.3574
5208524060	5208524065	1.1455	1.3574
5208592020	5208592025	1.1455	1.3574
5208592090	5208592095	1.1455	1.3574
5209516030	5209516035	1.1455	1.3574
5209590020	5209590025	1.1455	1.3574
5211590020	5211590025	0.6873	0.8145

A thirty day period is provided to comment on the changes to the Cotton Board Rules and Regulations proposed herein. This period is deemed appropriate because this proposal would lower the value assigned to imported cotton for the purpose of calculating supplemental assessments collected and would lower the assessments paid by importers under the Cotton Research and Promotion Order. Accordingly, the change proposed in this rule, if adopted, should be implemented as soon as possible.

List of Subjects in 7 CFR Part 1205

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 1205 is proposed to be amended as follows:

PART 1205—COTTON RESEARCH AND PROMOTION

1. The authority citation for part 1205 continues to read as follows:

Authority: 7 U.S.C. 2101–2118.

2. In § 1205.510, paragraphs (b)(2) and the table in paragraph (b)(3)(ii) are revised to read as follows:

§ 1205.510 Levy of assessments.

* * * * *

(b) * * *

(2) The 12-month average of monthly average prices received by U.S. farmers will be calculated annually. Such average will be used as the value of imported cotton for the purpose of levying the supplemental assessment on

imported cotton and will be expressed in kilograms. The value of imported cotton for the purpose of levying this supplemental assessment is $1.4881 per kilogram.

(3) * * *

(ii) * * *

IMPORT ASSESSMENT TABLE

[Raw Cotton Fiber]

HTS No.	Conventional Factors	Cents/kg.
5201000500	0	1.185
5201001200	0	1.185
5201001400	0	1.185
5201001800	0	1.185
5201002200	0	1.185
5201002400	0	1.185
5201002800	0	1.185
5201003400	0	1.185
5201003800	0	1.185
5204110000	1.1111	1.3167
5204200000	1.1111	1.3167
5205111000	1.1111	1.3167
5205112000	1.1111	1.3167
5205121000	1.1111	1.3167
5205122000	1.1111	1.3167
5205131000	1.1111	1.3167
5205132000	1.1111	1.3167
5205141000	1.1111	1.3167
5205210020	1.1111	1.3167
5205210090	1.1111	1.3167
5205220020	1.1111	1.3167
5205220090	1.1111	1.3167
5205230020	1.1111	1.3167
5205230090	1.1111	1.3167
5205240020	1.1111	1.3167
5205240090	1.1111	1.3167
5205310000	1.1111	1.3167
5205320000	1.1111	1.3167
5205330000	1.1111	1.3167
5205340000	1.1111	1.3167
5205410020	1.1111	1.3167
5205410090	1.1111	1.3167
5205420020	1.1111	1.3167
5205420090	1.1111	1.3167
5205440020	1.1111	1.3167
5205440090	1.1111	1.3167
5206120000	0.5556	0.6584
5206130000	0.5556	0.6584
5206140000	0.5556	0.6584
5206220000	0.5556	0.6584
5206230000	0.5556	0.6584
5206240000	0.5556	0.6584
5206310000	0.5556	0.6584
5207100000	1.1111	1.3167
5207900000	0.5556	0.6584
5208112020	1.1455	1.3574
5208112040	1.1455	1.3574
5208112090	1.1455	1.3574
5208114020	1.1455	1.3574
5208114060	1.1455	1.3574
5208114090	1.1455	1.3574
5208118090	1.1455	1.3574
5208124020	1.1455	1.3574
5208124040	1.1455	1.3574
5208124090	1.1455	1.3574
5208126020	1.1455	1.3574
5208126040	1.1455	1.3574
5208126060	1.1455	1.3574
5208126090	1.1455	1.3574
5208128020	1.1455	1.3574

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conventional Factors	Cents/kg.
5208128090	1.1455	1.3574
5208130000	1.1455	1.3574
5208192020	1.1455	1.3574
5208192090	1.1455	1.3574
5208194020	1.1455	1.3574
5208194090	1.1455	1.3574
5208196020	1.1455	1.3574
5208196090	1.1455	1.3574
5208224040	1.1455	1.3574
5208224090	1.1455	1.3574
5208226020	1.1455	1.3574
5208226060	1.1455	1.3574
5208228020	1.1455	1.3574
5208230000	1.1455	1.3574
5208292020	1.1455	1.3574
5208292090	1.1455	1.3574
5208294090	1.1455	1.3574
5208296090	1.1455	1.3574
5208298020	1.1455	1.3574
5208312000	1.1455	1.3574
5208321000	1.1455	1.3574
5208323020	1.1455	1.3574
5208323040	1.1455	1.3574
5208323090	1.1455	1.3574
5208324020	1.1455	1.3574
5208324040	1.1455	1.3574
5208325020	1.1455	1.3574
5208330000	1.1455	1.3574
5208392020	1.1455	1.3574
5208392090	1.1455	1.3574
5208394090	1.1455	1.3574
5208396090	1.1455	1.3574
5208398020	1.1455	1.3574
5208412000	1.1455	1.3574
5208416000	1.1455	1.3574
5208418000	1.1455	1.3574
5208421000	1.1455	1.3574
5208423000	1.1455	1.3574
5208424000	1.1455	1.3574
5208425000	1.1455	1.3574
5208430000	1.1455	1.3574
5208492000	1.1455	1.3574
5208494020	1.1455	1.3574
5208494090	1.1455	1.3574
5208496010	1.1455	1.3574
5208496090	1.1455	1.3574
5208498090	1.1455	1.3574
5208512000	1.1455	1.3574
5208516060	1.1455	1.3574
5208518090	1.1455	1.3574
5208523020	1.1455	1.3574
5208523045	1.1455	1.3574
5208523090	1.1455	1.3574
5208524020	1.1455	1.3574
5208524045	1.1455	1.3574
5208524065	1.1455	1.3574
5208525020	1.1455	1.3574
5208530000	1.1455	1.3574
5208592025	1.1455	1.3574
5208592095	1.1455	1.3574
5208594090	1.1455	1.3574
5208596090	1.1455	1.3574
5209110020	1.1455	1.3574
5209110035	1.1455	1.3574
5209110090	1.1455	1.3574
5209120020	1.1455	1.3574
5209120040	1.1455	1.3574
5209190020	1.1455	1.3574

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conventional Factors	Cents/kg.
5209190040	1.1455	1.3574
5209190060	1.1455	1.3574
5209190090	1.1455	1.3574
5209210090	1.1455	1.3574
5209220020	1.1455	1.3574
5209220040	1.1455	1.3574
5209290040	1.1455	1.3574
5209290090	1.1455	1.3574
5209313000	1.1455	1.3574
5209316020	1.1455	1.3574
5209316035	1.1455	1.3574
5209316050	1.1455	1.3574
5209316090	1.1455	1.3574
5209320020	1.1455	1.3574
5209320040	1.1455	1.3574
5209390020	1.1455	1.3574
5209390040	1.1455	1.3574
5209390060	1.1455	1.3574
5209390080	1.1455	1.3574
5209390090	1.1455	1.3574
5209413000	1.1455	1.3574
5209416020	1.1455	1.3574
5209416040	1.1455	1.3574
5209420020	1.0309	1.2216
5209420040	1.0309	1.2216
5209430030	1.1455	1.3574
5209430050	1.1455	1.3574
5209490020	1.1455	1.3574
5209490090	1.1455	1.3574
5209516035	1.1455	1.3574
5209516050	1.1455	1.3574
5209520020	1.1455	1.3574
5209590025	1.1455	1.3574
5209590040	1.1455	1.3574
5209590090	1.1455	1.3574
5210114020	0.6873	0.8145
5210114040	0.6873	0.8145
5210116020	0.6873	0.8145
5210116040	0.6873	0.8145
5210116060	0.6873	0.8145
5210118020	0.6873	0.8145
5210120000	0.6873	0.8145
5210192090	0.6873	0.8145
5210214040	0.6873	0.8145
5210216020	0.6873	0.8145
5210216060	0.6873	0.8145
5210218020	0.6873	0.8145
5210314020	0.6873	0.8145
5210314040	0.6873	0.8145
5210316020	0.6873	0.8145
5210318020	0.6873	0.8145
5210414000	0.6873	0.8145
5210416000	0.6873	0.8145
5210418000	0.6873	0.8145
5210498090	0.6873	0.8145
5210514040	0.6873	0.8145
5210516020	0.6873	0.8145
5210516040	0.6873	0.8145
5210516060	0.6873	0.8145
5211110090	0.6873	0.8145
5211120020	0.6873	0.8145
5211190020	0.6873	0.8145
5211190060	0.6873	0.8145
5211210025	0.4165	0.4936
5211210035	0.4165	0.4936
5211210050	0.6873	0.8145
5211290090	0.6873	0.8145
5211320020	0.6873	0.8145

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conventional Factors	Cents/kg.
5211390040	0.6873	0.8145
5211390060	0.6873	0.8145
5211490020	0.6873	0.8145
5211490090	0.6873	0.8145
5211590025	0.6873	0.8145
5212146090	0.9164	1.0859
5212156020	0.9164	1.0859
5212216090	0.9164	1.0859
5509530030	0.5556	0.6584
5509530060	0.5556	0.6584
5513110020	0.4009	0.4751
5513110040	0.4009	0.4751
5513110060	0.4009	0.4751
5513110090	0.4009	0.4751
5513120000	0.4009	0.4751
5513130020	0.4009	0.4751
5513210020	0.4009	0.4751
5513310000	0.4009	0.4751
5514120020	0.4009	0.4751
5516420060	0.4009	0.4751
5516910060	0.4009	0.4751
5516930090	0.4009	0.4751
5601210010	1.1455	1.3574
5601210090	1.1455	1.3574
5601300000	1.1455	1.3574
5602109090	0.5727	0.6786
5602290000	1.1455	1.3574
5602906000	0.526	0.6233
5604900000	0.5556	0.6584
5607902000	0.8889	1.0533
5608901000	1.1111	1.3167
5608902300	1.1111	1.3167
5609001000	1.1111	1.3167
5609004000	0.5556	0.6584
5701104000	0.0556	0.0659
5701109000	0.1111	0.1317
5701901010	1.0444	1.2376
5702109020	1.1	1.3035
5702312000	0.0778	0.0922
5702411000	0.0722	0.0856
5702412000	0.0778	0.0922
5702421000	0.0778	0.0922
5702913000	0.0889	0.1053
5702991010	1.1111	1.3167
5702991090	1.1111	1.3167
5703900000	0.4489	0.5319
5801210000	1.1455	1.3574
5801230000	1.1455	1.3574
5801250010	1.1455	1.3574
5801250020	1.1455	1.3574
5801260020	1.1455	1.3574
5802190000	1.1455	1.3574
5802300030	0.5727	0.6786
5804291000	1.1455	1.3574
5806200010	0.3534	0.4188
5806200090	0.3534	0.4188
5806310000	1.1455	1.3574
5806400000	0.4296	0.5091
5808107000	0.5727	0.6786
5808900010	0.5727	0.6786
5811002000	1.1455	1.3574
6001106000	1.1455	1.3574
6001210000	0.8591	1.018
6001220000	0.2864	0.3394
6001910010	0.8591	1.018
6001910020	0.8591	1.018
6001920020	0.2864	0.3394
6001920030	0.2864	0.3394

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conventional Factors	Cents/kg.
6001920040	0.2864	0.3394
6002203000	0.8681	1.0287
6002206000	0.2894	0.3429
6002420000	0.8681	1.0287
6002430010	0.2894	0.3429
6002430080	0.2894	0.3429
6002921000	1.1574	1.3715
6002930040	0.1157	0.1371
6002930080	0.1157	0.1371
6101200010	1.0094	1.1961
6101200020	1.0094	1.1961
6102200010	1.0094	1.1961
6102200020	1.0094	1.1961
6103421020	0.8806	1.0435
6103421040	0.8806	1.0435
6103421050	0.8806	1.0435
6103421070	0.8806	1.0435
6103431520	0.2516	0.2981
6103431540	0.2516	0.2981
6103431550	0.2516	0.2981
6103431570	0.2516	0.2981
6104220040	0.9002	1.0667
6104220060	0.9002	1.0667
6104320000	0.9207	1.091
6104420010	0.9002	1.0667
6104420020	0.9002	1.0667
6104520010	0.9312	1.1035
6104520020	0.9312	1.1035
6104622006	0.8806	1.0435
6104622011	0.8806	1.0435
6104622016	0.8806	1.0435
6104622021	0.8806	1.0435
6104622026	0.8806	1.0435
6104622028	0.8806	1.0435
6104622030	0.8806	1.0435
6104622060	0.8806	1.0435
6104632006	0.3774	0.4472
6104632011	0.3774	0.4472
6104632026	0.3774	0.4472
6104632028	0.3774	0.4472
6104632030	0.3774	0.4472
6104632060	0.3774	0.4472
6104692030	0.3858	0.4572
6105100010	0.985	1.1672
6105100020	0.985	1.1672
6105100030	0.985	1.1672
6105202010	0.3078	0.3647
6105202030	0.3078	0.3647
6106100010	0.985	1.1672
6106100020	0.985	1.1672
6106100030	0.985	1.1672
6106202010	0.3078	0.3647
6106202030	0.3078	0.3647
6107110010	1.1322	1.3417
6107110020	1.1322	1.3417
6107120010	0.5032	0.5963
6107210010	0.8806	1.0435
6107220015	0.3774	0.4472
6107220025	0.3774	0.4472
6107910040	1.2581	1.4908
6108210010	1.2445	1.4747
6108210020	1.2445	1.4747
6108310010	1.1201	1.3273
6108310020	1.1201	1.3273
6108320010	0.2489	0.2949
6108320015	0.2489	0.2949
6108320025	0.2489	0.2949
6108910005	1.2445	1.4747

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conventional Factors	Cents/kg.
6108910015	1.2445	1.4747
6108910025	1.2445	1.4747
6108910030	1.2445	1.4747
6108920030	0.2489	0.2949
6109100005	0.9956	1.1798
6109100007	0.9956	1.1798
6109100009	0.9956	1.1798
6109100012	0.9956	1.1798
6109100014	0.9956	1.1798
6109100018	0.9956	1.1798
6109100023	0.9956	1.1798
6109100027	0.9956	1.1798
6109100037	0.9956	1.1798
6109100040	0.9956	1.1798
6109100045	0.9956	1.1798
6109100060	0.9956	1.1798
6109100065	0.9956	1.1798
6109100070	0.9956	1.1798
6109901007	0.3111	0.3687
6109901009	0.3111	0.3687
6109901049	0.3111	0.3687
6109901050	0.3111	0.3687
6109901060	0.3111	0.3687
6109901065	0.3111	0.3687
6109901090	0.3111	0.3687
6110202005	1.1837	1.4027
6110202010	1.1837	1.4027
6110202015	1.1837	1.4027
6110202020	1.1837	1.4027
6110202025	1.1837	1.4027
6110202030	1.1837	1.4027
6110202035	1.1837	1.4027
6110202040	1.1574	1.3715
6110202045	1.1574	1.3715
6110202065	1.1574	1.3715
6110202075	1.1574	1.3715
6110909022	0.263	0.3117
6110909024	0.263	0.3117
6110909030	0.3946	0.4676
6110909040	0.263	0.3117
6110909042	0.263	0.3117
6111201000	1.2581	1.4908
6111202000	1.2581	1.4908
6111203000	1.0064	1.1926
6111205000	1.0064	1.1926
6111206010	1.0064	1.1926
6111206020	1.0064	1.1926
6111206030	1.0064	1.1926
6111206040	1.0064	1.1926
6111305020	0.2516	0.2981
6111305040	0.2516	0.2981
6112110050	0.7548	0.8944
6112120010	0.2516	0.2981
6112120030	0.2516	0.2981
6112120040	0.2516	0.2981
6112120050	0.2516	0.2981
6112120060	0.2516	0.2981
6112390010	1.1322	1.3417
6112490010	0.9435	1.118
6114200005	0.9002	1.0667
6114200010	0.9002	1.0667
6114200015	0.9002	1.0667
6114200020	1.286	1.5239
6114200040	0.9002	1.0667
6114200046	0.9002	1.0667
6114200052	0.9002	1.0667
6114200060	0.9002	1.0667
6114301010	0.2572	0.3048

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conventional Factors	Cents/kg.
6114301020	0.2572	0.3048
6114303030	0.2572	0.3048
6115198010	1.0417	1.2344
6115929000	1.0417	1.2344
6115936020	0.2315	0.2743
6116101300	0.3655	0.4331
6116101720	0.8528	1.0106
6116926420	1.0965	1.2994
6116926430	1.2183	1.4437
6116926440	1.0965	1.2994
6116928800	1.0965	1.2994
6117809510	0.9747	1.155
6117809540	0.3655	0.4331
6201121000	0.948	1.1234
6201122010	0.8953	1.0609
6201122050	0.6847	0.8114
6201122060	0.6847	0.8114
6201134030	0.2633	0.312
6201921000	0.9267	1.0981
6201921500	1.1583	1.3726
6201922010	1.0296	1.2201
6201922021	1.2871	1.5252
6201922031	1.2871	1.5252
6201922041	1.2871	1.5252
6201922051	1.0296	1.2201
6201922061	1.0296	1.2201
6201931000	0.3089	0.366
6201933511	0.2574	0.305
6201933521	0.2574	0.305
6201999060	0.2574	0.305
6202121000	0.9372	1.1106
6202122010	1.1064	1.3111
6202122025	1.3017	1.5425
6202122050	0.8461	1.0026
6202122060	0.8461	1.0026
6202134005	0.2664	0.3157
6202134020	0.333	0.3946
6202921000	1.0413	1.2339
6202921500	1.0413	1.2339
6202922026	1.3017	1.5425
6202922061	1.0413	1.2339
6202922071	1.0413	1.2339
6202931000	0.3124	0.3702
6202935011	0.2603	0.3085
6202935021	0.2603	0.3085
6203122010	0.1302	0.1543
6203221000	1.3017	1.5425
6203322010	1.2366	1.4654
6203322040	1.2366	1.4654
6203332010	0.1302	0.1543
6203392010	1.1715	1.3882
6203399060	0.2603	0.3085
6203422010	0.9961	1.1804
6203422025	0.9961	1.1804
6203422050	0.9961	1.1804
6203422090	0.9961	1.1804
6203424005	1.2451	1.4754
6203424010	1.2451	1.4754
6203424015	0.9961	1.1804
6203424020	1.2451	1.4754
6203424025	1.2451	1.4754
6203424030	1.2451	1.4754
6203424035	1.2451	1.4754
6203424040	0.9961	1.1804
6203424045	0.9961	1.1804
6203424050	0.9238	1.0947
6203424055	0.9238	1.0947
6203424060	0.9238	1.0947

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conventional Factors	Cents/kg.
6203431500	0.1245	0.1475
6203434010	0.1232	0.146
6203434020	0.1232	0.146
6203434030	0.1232	0.146
6203434040	0.1232	0.146
6203498045	0.249	0.2951
6204132010	0.1302	0.1543
6204192000	0.1302	0.1543
6204198090	0.2603	0.3085
6204221000	1.3017	1.5425
6204223030	1.0413	1.2339
6204223040	1.0413	1.2339
6204223050	1.0413	1.2339
6204223060	1.0413	1.2339
6204223065	1.0413	1.2339
6204292040	0.3254	0.3856
6204322010	1.2366	1.4654
6204322030	1.0413	1.2339
6204322040	1.0413	1.2339
6204423010	1.2728	1.5083
6204423030	0.9546	1.1312
6204423040	0.9546	1.1312
6204423050	0.9546	1.1312
6204423060	0.9546	1.1312
6204522010	1.2654	1.4995
6204522030	1.2654	1.4995
6204522040	1.2654	1.4995
6204522070	1.0656	1.2627
6204522080	1.0656	1.2627
6204533010	0.2664	0.3157
6204594060	0.2664	0.3157
6204622010	0.9961	1.1804
6204622025	0.9961	1.1804
6204622050	0.9961	1.1804
6204624005	1.2451	1.4754
6204624010	1.2451	1.4754
6204624020	0.9961	1.1804
6204624025	1.2451	1.4754
6204624030	1.2451	1.4754
6204624035	1.2451	1.4754
6204624040	1.2451	1.4754
6204624045	0.9961	1.1804
6204624050	0.9961	1.1804
6204624055	0.9854	1.1677
6204624060	0.9854	1.1677
6204624065	0.9854	1.1677
6204633510	0.2546	0.3017
6204633530	0.2546	0.3017
6204633532	0.2437	0.2888
6204633540	0.2437	0.2888
6204692510	0.249	0.2951
6204692540	0.2437	0.2888
6204699044	0.249	0.2951
6204699046	0.249	0.2951
6204699050	0.249	0.2951
6205202015	0.9961	1.1804
6205202020	0.9961	1.1804
6205202025	0.9961	1.1804
6205202030	0.9961	1.1804
6205202035	1.1206	1.3279
6205202046	0.9961	1.1804
6205202050	0.9961	1.1804
6205202060	0.9961	1.1804
6205202065	0.9961	1.1804
6205202070	0.9961	1.1804
6205202075	0.9961	1.1804
6205302010	0.3113	0.3689
6205302030	0.3113	0.3689

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conventional Factors	Cents/kg.
6205302040	0.3113	0.3689
6205302050	0.3113	0.3689
6205302070	0.3113	0.3689
6205302080	0.3113	0.3689
6206100040	0.1245	0.1475
6206303010	0.9961	1.1804
6206303020	0.9961	1.1804
6206303030	0.9961	1.1804
6206303040	0.9961	1.1804
6206303050	0.9961	1.1804
6206303060	0.9961	1.1804
6206403010	0.3113	0.3689
6206403030	0.3113	0.3689
6206900040	0.249	0.2951
6207110000	1.0852	1.286
6207199010	0.3617	0.4286
6207210010	1.1085	1.3136
6207210030	1.1085	1.3136
6207220000	0.3695	0.4379
6207911000	1.1455	1.3574
6207913010	1.1455	1.3574
6207913020	1.1455	1.3574
6208210010	1.0583	1.2541
6208210020	1.0583	1.2541
6208220000	0.1245	0.1475
6208911010	1.1455	1.3574
6208911020	1.1455	1.3574
6208913010	1.1455	1.3574
6209201000	1.1577	1.3719
6209203000	0.9749	1.1553
6209205030	0.9749	1.1553
6209205035	0.9749	1.1553
6209205040	1.2186	1.444
6209205045	0.9749	1.1553
6209205050	0.9749	1.1553
6209303020	0.2463	0.2919
6209303040	0.2463	0.2919
6210109010	0.2291	0.2715
6210403000	0.0391	0.0463
6210405020	0.4556	0.5399
6211111010	0.1273	0.1509
6211111020	0.1273	0.1509
6211118010	1.1455	1.3574
6211118020	1.1455	1.3574
6211320007	0.8461	1.0026
6211320010	1.0413	1.2339
6211320015	1.0413	1.2339
6211320030	0.9763	1.1569
6211320060	0.9763	1.1569
6211320070	0.9763	1.1569
6211330010	0.3254	0.3856
6211330030	0.3905	0.4627
6211330035	0.3905	0.4627
6211330040	0.3905	0.4627
6211420010	1.0413	1.2339
6211420020	1.0413	1.2339
6211420025	1.1715	1.3882
6211420060	1.0413	1.2339
6211420070	1.1715	1.3882
6211430010	0.2603	0.3085
6211430030	0.2603	0.3085
6211430040	0.2603	0.3085
6211430050	0.2603	0.3085
6211430060	0.2603	0.3085
6211430066	0.2603	0.3085
6212105020	0.2412	0.2858
6212109010	0.9646	1.1431
6212109020	0.2412	0.2858

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conventional Factors	Cents/kg.
6212200020	0.3014	0.3572
6212900030	0.1929	0.2286
6213201000	1.1809	1.3994
6213202000	1.0628	1.2594
6213901000	0.4724	0.5598
6214900010	0.9043	1.0716
6216000800	0.2351	0.2786
6216001720	0.6752	0.8001
6216003800	1.2058	1.4289
6216004100	1.2058	1.4289
6217109510	1.0182	1.2066
6217109530	0.2546	0.3017
6301300010	0.8766	1.0388
6301300020	0.8766	1.0388
6302100010	1.1689	1.3851
6302215010	0.8182	0.9696
6302215020	0.8182	0.9696
6302217010	1.1689	1.3851
6302217020	1.1689	1.3851
6302217050	1.1689	1.3851
6302219010	0.8182	0.9696
6302219020	0.8182	0.9696
6302219050	0.8182	0.9696
6302222010	0.4091	0.4848
6302222020	0.4091	0.4848
6302313010	0.8182	0.9696
6302313050	1.1689	1.3851
6302315050	0.8182	0.9696
6302317010	1.1689	1.3851
6302317020	1.1689	1.3851
6302317040	1.1689	1.3851
6302317050	1.1689	1.3851
6302319010	0.8182	0.9696
6302319040	0.8182	0.9696
6302319050	0.8182	0.9696
6302322020	0.4091	0.4848
6302322040	0.4091	0.4848
6302402010	0.9935	1.1773
6302511000	0.5844	0.6925
6302512000	0.8766	1.0388
6302513000	0.5844	0.6925
6302514000	0.8182	0.9696
6302600010	1.1689	1.3851
6302600020	1.052	1.2466
6302600030	1.052	1.2466
6302910005	1.052	1.2466
6302910015	1.1689	1.3851
6302910025	1.052	1.2466
6302910035	1.052	1.2466
6302910045	1.052	1.2466
6302910050	1.052	1.2466
6302910060	1.052	1.2466
6303110000	0.9448	1.1196
6303910000	0.6429	0.7618
6304111000	1.0629	1.2595
6304190500	1.052	1.2466
6304191000	1.1689	1.3851
6304191500	0.4091	0.4848
6304192000	0.4091	0.4848
6304910020	0.9351	1.1081
6304920000	0.9351	1.1081
6505901540	1.181	1.3995
6505902060	0.9935	1.1773
6505902545	0.5844	0.6925

* * * * *

Dated: March 24, 1998.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

[FR Doc. 98–8178 Filed 3–30–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF DEFENSE

DEPARTMENT OF TRANSPORTATION

Coast Guard

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AI68

Reservists Education: Monthly Verification of Enrollment and Other Reports

AGENCIES: Department of Defense, Department of Transportation (Coast Guard), and Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the educational assistance and educational benefit regulations of the Department of Veterans Affairs (VA). It proposes to expand the current requirement that some reservists receiving educational assistance under the Montgomery GI Bill—Selected Reserve (MGIB–SR) verify their pursuit of a program of education monthly to include those reservists who are pursuing a standard college degree. At the same time the document proposes reducing the number of reports VA receives from educational institutions. It appears that this would be a cost-effective way to reduce overpayments.

DATES: Comments must be received on or before June 1, 1998.

ADDRESSES: Mail or hand deliver written comments to Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900–AI68." All written comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

Comments on the collection of information contained in this proposal should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies mailed or hand delivered to the Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900-AI68." All written comments to VA will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr., Education Advisor, Education Service, Veterans Benefits Administration (202) 273–7187.

SUPPLEMENTARY INFORMATION: VA is required by statute (38 U.S.C. 3680(g)) to withhold payments of educational assistance until VA receives proof of an individual's pursuit of a program of education. The statute goes on to state that VA may accept the individual's monthly certification of enrollment in and satisfactory pursuit of a program of education as satisfactory proof. Currently, regulations governing the MGIB–SR require such a monthly certification from a reservist pursuing a course not leading to a standard college degree, but this is not required from a reservist who is pursuing a standard college degree.

VA analyzes its information collection burdens periodically to see if they are cost-effective. In 1997 an analysis was done of the monthly certification process. The analysis included an examination of the verification process in other VA education programs such as the Montgomery GI Bill—Active Duty (MGIB) where students pursuing a standard college degree are required to verify their continued pursuit monthly.

The analysis found that if monthly verifications were eliminated entirely, the current establishment of debt in the education programs VA administers would increase from $5.6 million to $14 million annually. While the cost of processing verifications would be eliminated, the cost of collecting debts would increase. Conversely, the analysis projected that if monthly verifications were required in all the education programs VA administers, the establishment of debt in those programs would decrease from $5.6 million to $2.4 million annually, while the costs of processing those verifications would increase by $0.3 million annually. Accordingly, it would appear that overpayments of educational assistance

under MGIB–SR could be effectively reduced by expanding the monthly verification process to include reservists enrolled in courses leading to a standard college degree. This proposed rule would require reservists pursuing a standard college degree to verify pursuit of a program of education each month.

Current regulations provide that if a reservist reduces his or her rate of training, and has mitigating circumstances for such a reduction, the effective date for the corresponding reduction in the monthly rate of the reservist's educational assistance will be the end of the month in which the reduction in the rate of training took place. However, VA is required by statute to make the reduction in the monthly rate of educational assistance on the effective date of the reduction in the rate of training, if the reduction is pursuant to a report received from the reservist as part of his or her monthly verification of training. Thus, it appears that adopting a monthly verification requirement would require a change in the regulation governing the effective dates of reductions in educational assistance. Such a change is included in this proposal.

Current regulations provide that when a reservist interrupts or terminates training or when he or she changes the number of hours of credit or attendance, the educational institution must report this fact to VA. The purpose of this report is to help determine the reservist's training time. VA considers a reservist to be a half-time, three-quarter-time, full-time, etc., student on the basis of the number of his or her credit hours or clock hours of attendance. Payments, in turn, are based on the training time. For example, a full-time student receives twice the monthly educational assistance that a half-time student does. VA needs to know changes in the number of the reservist's hours of credit or attendance so that his or her payments may accurately reflect the training time.

However, occasionally a reservist will enroll in more hours than the minimum needed to be considered a full-time student. The reservist may withdraw from a course or add a course and still be considered a full-time student. It appears that in those instances VA does not need a report of the change in hours, because payment to the student will not be affected. Accordingly, it is proposed that in these instances the educational institution need not report the changes provided the reservist is enrolled in a standard term.

Similarly, VA is proposing that a reservist who is a full-time student and who changes his or her enrollment but remains a full-time student need not report the change on the monthly verification of pursuit.

Paperwork Reduction Act of 1995

The Office of Management and Budget (OMB) has determined that the proposed 38 CFR 21.7654 and 21.7656(a) and the proposed 38 CFR 21.7656(b) would constitute collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Accordingly, under section 3507(d) of the Act VA has submitted a copy of this rulemaking action to OMB for its review.

Title: Monthly Verification of Pursuit of Training under the Montgomery GI Bill—Selected Reserve.

Summary of collection of information: The collection of information in the proposed revisions to §§ 21.7654 and 21.7656(a) in this rulemaking proceeding implements a statutory provision that permits, but does not require, VA to require reports showing a reservist's satisfactory pursuit of a program of education before releasing a payment of educational assistance. The statute specifically allows a monthly certification received from the reservist to satisfy this requirement.

Description of need for information and proposed use of information: The information required in §§ 21.7654 and 21.7656(a) is needed to help VA determine whether educational assistance should continue to be paid to a reservist and to verify the correct monthly rate of educational assistance payable to a reservist. The monthly rate is based on the reservist's training time which in turn is based on the number of credit hours in which the reservist is enrolled.

Description of likely respondents: The respondents will be reservists eligible to receive educational assistance under the Montgomery GI Bill—Selected Reserve.

Estimated number of respondents: 82,400.

Estimated frequency of responses: Monthly while the reservist continues to pursue a program of education.

Estimated total annual reporting and recordkeeping burden: 48,067 hours of reporting burden. VA estimates that there would be no recordkeeping burden.

Estimated average burden per respondent: .58 hour.

Title: Report of Change in Enrollment for Reservists Training under the Montgomery GI Bill—Selected Reserve.

Summary of collection of information: The collection of information in the proposed revisions to § 21.7656(b) in this rulemaking proceeding implements a statutory provision that requires an educational institution to report without delay changes, including interruptions and terminations, in a reservist's enrollment. This proposed rule would reduce the information collection burden currently placed on educational institutions by eliminating some reports that the current regulation requires.

Description of need for information and proposed use of information: The information required in § 21.7656(b) is needed to help VA determine the monthly rate of educational assistance payable to a reservist. The monthly rate is based on the student's training time which in turn is based on the number of credit hours in which the reservist is enrolled.

Description of likely respondents. Educational institutions make this report.

Estimated number of respondents: 7,481.

Estimated frequency of responses: Occasionally, when a reservist changes her or his pursuit of a program of education, unless the reservist was a full-time student both before and after the change.

Estimated total annual reporting and recordkeeping burden: 13,570 hours of reporting burden. VA does not believe that there will be additional recordkeeping burden.

Estimated average burden per respondent: 1.81 hours.

The Department considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collection(s) of information are necessary for the proposed performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Minimizing 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.

OMB is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register.** Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

The Secretary of Defense, the Commandant of the Coast Guard, and the Secretary of Veterans Affairs hereby certify that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed rule may affect some educational institutions that are small entities. However, educational institutions are paid a reporting fee for making required reports to VA. Furthermore, VA does not believe that a burden of less than two hours annually would result in a significant economic impact. Pursuant to 5 U.S.C. 605(b), this proposed rule, therefore, is exempt from both the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

There is no Catalog of Federal Domestic Assistance number for the program affected by this proposed rule.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Health programs, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 17, 1998.

Togo D. West, Jr.,

Acting Secretary.

Approved: August 13, 1997.

Al H. Bemis,

Deputy Assistant Secretary of Defense for Reserve Affairs (Manpower and Personnel).

Approved: November 4, 1997.

G.F. Woolever,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Human Resources.

For the reasons set out above, 38 CFR part 21, subpart L, is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart L—Educational Assistance for Members of the Selected Reserve

1. The authority citation for part 21, subpart L, continues to read as follows:

Authority: 10 U.S.C. ch. 1606; 38 U.S.C. 501(a), ch. 36, unless otherwise noted.

2. In § 21.7635, paragraph (c)(1) is revised to read as follows:

§ 21.7635 Discontinuance dates.

* * * * *

(c) * * *

(1) If the reduction in the rate of training occurs other than on the first date of the term, VA will reduce the reservist's educational assistance effective on the date the reduction occurred when:

* * * * *

3. In § 21.7654, paragraph (b) is redesignated as paragraph (c); paragraph (a) is revised; and introductory text and a new paragraph (b) are added to read as follows:

§ 21.7654 Pursuit and absences.

Except as provided in this section, a reservist must submit a verification to VA each month of his or her enrollment during the period for which the reservist is to be paid. This verification shall be in a form prescribed by the Secretary.

(a) *Exceptions to the monthly verification requirement.* A reservist does not have to submit a monthly verification as described in the introductory text of this section when the reservist—

(1) Is enrolled in a correspondence course; or

(2) Has received an advance payment for the training completed during a month.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3680(a), 3680(g))

(b) *Items to be reported on all monthly verifications.* (1) The monthly verification for all reservists will include a report on the following items when applicable:

(i) Continued enrollment in and actual pursuit of the course;

(ii) The date of interruption or termination of training;

(iii) Except as provided in § 21.7656(a), changes in the number of credit hours or in the number of clock hours of attendance;

(iv) Nonpunitive grades; and

(v) Any other changes or modifications in the course as certified at enrollment.

(2) The verification of enrollment must:

(i) Contain the information required for release of payment;

(ii) If required or permitted by the Secretary to be submitted on paper, be signed by the reservist on or after the final date of the reporting period, or if permitted by the Secretary to be submitted by telephone in a manner designated by the Secretary, be submitted in the form and manner prescribed by the Secretary on or after the final date of the reporting period; and

(iii) If submitted on paper, clearly show the date on which it was signed.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3680(g))

* * * * *

4. In § 21.7656, the introductory text is removed, paragraphs (a), (a)(1), (a)(2), (a)(3), and (b) are redesignated as paragraphs (b), (b)(3), (b)(4), (b)(5), and (c), respectively; the section heading, newly redesignated paragraphs (b), (b)(3) and the authority citation at the end of paragraph (b) are revised; and new paragraphs (a), (b)(1), and (b)(2) are added, to read as follows:

§ 21.7656 Other required reports.

(a) *Reports from reservists.* (1) A reservist enrolled full time in a program of education for a standard term, quarter, or semester must report without delay to VA:

(i) A change in his or her credit hours or clock hours of attendance if that change would result in less than full-time enrollment;

(ii) Any change in his or her pursuit that would result in less than full-time enrollment; and

(iii) Any interruption or termination of his or her attendance.

(2) A reservist not described in paragraph (a)(1) of this section must report without delay to VA:

(i) Any change in his or her credit hours or clock hours of attendance;

(ii) Any change in his or her pursuit; and

(iii) Any interruption or termination of his or her attendance.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3684)

(b) *Interruptions, terminations, or changes in hours of credit or attendance.* (1) Except as provided in paragraph (b)(2) of this section, an educational institution must report without delay to VA each time a reservist:

(i) Interrupts or terminates his or her training for any reason; or

(ii) Changes his or her credit hours or clock hours of attendance.

(2) An educational institution does not need to report a change in a reservist's hours of credit or attendance when:

(i) The reservist is enrolled full time in a program of education for a standard term, quarter, or semester before the change; and

(ii) The reservist continues to be enrolled full time after the change.

(3) If the change in status or change in number of credit hours or clock hours of attendance occurs on a day other than one indicated by paragraph (b)(4) or (b)(5) of this section, the educational

institution will initiate a report of the change in time for VA to receive it within 30 days of the date on which the change occurs.

* * * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3684)

* * * * *

[FR Doc. 98–8332 Filed 3–30–98; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OR–69–7284b; FRL–5984–8]

Approval and Promulgation of State Implementation Plans: Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve a revision to the Oregon State Implementation Plan. This revision establishes and requires a source specific reasonable available control technology (RACT) volatile organic compound (VOC) emission standard for DURA Industries, at 4466 NW Yeon, Portland, Oregon 97210. This action is authorized under Part D of the Clean Air Act (Act).

In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action.

DATES: Comments on this proposed rule must be received in writing by April 30, 1998.

ADDRESSES: Written comments should be addressed to Montel Livingston, Environmental Protection Specialist (OAQ–107), Office of Air Quality, at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 10, Office of Air Quality, 1200 6th Avenue, Seattle, WA 98101 and Oregon Department of Environmental Quality (ODEQ) 811 SW Sixth Ave, Portland, Oregon 97204–1390.

FOR FURTHER INFORMATION CONTACT: Tracy Oliver, Office of Air Quality (OAQ–107), EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553–1388.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

Dated: March 6, 1998.

Chuck Findley,

Acting Regional Administrator, Region 10.

[FR Doc. 98–8058 Filed 3–30–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[CA 041–0067a; FRL–5984–1]

Proposed Approval and Promulgation of State Implementation Plans and Redesignation of California's Ten Federal Carbon Monoxide Planning Areas to Attainment Urbanized Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve maintenance plans and redesignation requests submitted by the California Air Resources Board (CARB) to redesignate ten of California's federal carbon monoxide planning areas from nonattainment to attainment for the National Ambient Air Quality Standards (NAAQS) for carbon monoxide (CO). They are: Bakersfield Metropolitan Area, Fresno Urbanized Area, Lake Tahoe South Shore Area, Sacramento Area, San Francisco-Oakland-San Jose Area, Chico Urbanized Area, Lake Tahoe North Shore Area, Modesto Urbanized Area, San Diego Area, and Stockton Urbanized Area. Under the Clean Air Act as amended in 1990 (CAA), designations can be revised if sufficient data is available to warrant such revisions. In this action, EPA is proposing California's maintenance plans and redesignation requests because they meet the requirements set forth in the CAA. In addition, EPA is proposing a related State Implementation Plan (SIP) submission by CARB, an Air Quality Attainment Plan for CO for Fresno.

In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this proposed rule. However, if EPA receives relevant adverse comments, then EPA will publish a document that withdraws only those portions of the action on which EPA received the adverse comments, informing the public that those portions of the action are withdrawn. EPA will then address those comments in a final action based upon this proposed rule. EPA will not institute a second comment period on the proposed rule. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by April 30, 1998.

ADDRESSES: Written comments on this action should be addressed to: Larry A. Biland, Air Planning Office (AIR–2), Air Division, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, California, 94105–3901. Telephone: (415) 744–1227.

Copies of the SIP materials and EPA's technical support document are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Environmental Protection Agency, Region 9, Air Division, Air Planning Office (AIR–2), 75 Hawthorne Street, San Francisco, CA 94105–3901

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

California Air Resources Board, 2020 L Street, Sacramento, California 92123–1095

Kern County APCD, 2700 M Street, Suite #290, Bakersfield, CA 93301

San Joaquin Valley Unified APCD, 1999 Tuolumne Street, Suite 200, Fresno, CA 93721

Placer County, DeWitt Center 11464 B Avenue, Auburn, CA 95603

Sacramento Metropolitan APCD, 8411 Jackson Road, Sacramento, CA 95826

Bay Area Air, Quality Management District, 939 Ellis Street, San Francisco, CA 94109

Butte County, 2525 Dominic Drive, Suite J, Chico, CA 95928–7184

El Dorado County 2850, Fairlane Ct., Bldg. C, Placerville, CA 95667–4100
Yolo—Solano County, 1947 Galileo Ct., Suite 103, Davis, CA 95616–4882
San Diego County, Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1095

FOR FURTHER INFORMATION CONTACT: Larry A. Biland, Air Planning Office (AIR–2), Air Division, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, California, 94105–3901, Telephone: (415) 744–1227.

SUPPLEMENTARY INFORMATION: This document concerns Approval and Promulgation of State Implementation Plans submitted to EPA on December 28, 1992; Designation of Areas for Air Quality Planning Purposes; Redesignation of California's Ten Federal Carbon Monoxide Planning Areas to Attainment and Approval of the Area's Maintenance Plan and Emission Inventory; Bakersfield Metropolitan Area, Fresno Urbanized Area, Lake Tahoe South Shore Area, Sacramento Area, San Francisco-Oakland-San Jose Area, Chico Urbanized Area, Lake Tahoe North Shore Area, Modesto Urbanized Area, San Diego Area, and Stockton Urbanized Area submitted to EPA on July 3, 1996 by the California Air Resources Board. For further information, please see the information provided in the Direct Final action that is located in the Rules Section of this **Federal Register.**

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

Dated: March 4, 1998.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 98–8415 Filed 3–30–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–5988–4]

RIN 2060–AH47

National Emission Standards for Hazardous Air Pollutants Emissions: Group IV Polymers and Resins

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of compliance.

SUMMARY: This action proposes a temporary extension of the compliance date specified in 40 CFR 63.1311(c) for the provisions contained in 40 CFR 63.1329 for existing affected sources producing poly(ethylene terephthalate) (PET) using the continuous terephthalic acid (TPA) high viscosity multiple end finisher process because the EPA is in the process of responding to a request to reconsider relevant portions of the rule (Docket Item: A–92–45; VI–A–1). The EPA is proposing this temporary extension to February 27, 2001 to complete reconsideration and any necessary revision to the rule. The EPA is proposing this temporary extension pursuant to Clean Air Act section 301(a)(1).

Because these amendments would merely extend the compliance date for the process contact cooling tower (PCCT) provisions contained in 40 CFR 63.1329 for existing affected sources producing PET using the continuous TPA high viscosity multiple end finisher process, the EPA does not anticipate receiving relevant adverse comments. Consequently, the proposed revisions to the promulgated rule providing the temporary extension of the compliance date are also being issued as a direct final rule in the Final Rules Section of this **Federal Register.**

If no relevant adverse comments are received on this proposal by the due date for comments (see DATES section below), no further action will be taken with respect to this proposal, and the direct final rule will become final on the date provided in that action.

DATES: *Comments.* Comments must be received on or before April 30, 1998, unless a hearing is requested by April 13, 1998. If a hearing is requested, written comments must be received by May 15, 1998.

Public Hearing

Anyone requesting a public hearing must contact the EPA no later than April 13, 1998. If a hearing is held, it will take place on April 15, 1998, beginning at 10:00 a.m.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–92–45 (see docket section below), room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. The EPA requests that a separate copy also be sent to the contact person listed below. Comments and data may also be submitted electronically by following the instructions provided in the **SUPPLEMENTARY INFORMATION** section. No Confidential Business Information (CBI) should be submitted through electronic mail.

Public Hearing

If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Marguerite Thweatt, U.S. Environmental Protection Agency, MD–13, Research Triangle Park, N.C. 27711, telephone (919) 541–5673.

Docket

The official record for this rulemaking has been established under docket number A–92–45 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments and data, which does not include any information claimed as CBI, is available for inspection between 8 a.m. and 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address in the **ADDRESSES** section. Alternatively, a docket index, as well as individual items contained within the docket, may be obtained by calling (202) 260–7548 or (202) 260–7549. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosensteel, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5608.

SUPPLEMENTARY INFORMATION: *Electronic Filing.* Electronic comments and data can be sent directly to EPA at: a-and-r-docket@epamail.epa.gov. Electronic comments and data must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on diskette in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number A–92–45. Electronic comments may be filed online at many Federal Depository Libraries.

Electronic Availability

This document is available in docket number A–92–45 or by request from the EPA's Air and Radiation Docket and Information Center (see **ADDRESSES**), and is available for downloading from the Technology Transfer Network (TTN), the EPA's electronic bulletin board system. The TTN provides information and technology exchange in various areas of emissions control. The service is free, except for the cost of a telephone call. Dial (919) 541–5742 for up to a

14,000 baud per second modem. For further information, contact the TTN HELP line at (919) 541–5348, from 1:00 p.m. to 5:00 p.m., Monday through Friday, or access the TTN web site at: www.epa.gov/ttn/oarpg/rules.html.

Regulated Entities

Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Facilities that produce PET using the continuous TPA high viscosity multiple end finisher process.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities regulated by the NESHAP addressed in this notice. If you have questions regarding the applicability of the NESHAP addressed in this notice to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

If no relevant adverse comments are timely received, no further activity is contemplated in relation to this proposed rule, and the direct final rule in the final rules section of this **Federal Register** will automatically go into effect on the date specified in that rule. If relevant adverse comments are timely received, the direct final rule will be withdrawn and all public comment received will be addressed in a subsequent final rule. Because the EPA will not institute a second comment period on this proposed rule, any parties interested in commenting should do so during this comment period.

For further supplemental information and the rule provisions, see the information provided in the direct final rule in the final rules section of this **Federal Register**.

Administrative

A. Paperwork Reduction Act

For the Group IV Polymers and Resins NESHAP, the information collection requirements were submitted to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*. The OMB approved the information collection requirements and assigned OMB control number 2060–0351. 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 the EPA's regulations are listed in 40 CFR Part 9. The EPA has amended 40 CFR Part 9, Section 9.1, to indicate the information collection requirements contained in the Group IV Polymers and Resins NESHAP.

This action has no impact on the information collection burden estimates made previously. Therefore, the ICR has not been revised.

B. Executive Order 12866 Review

Under Executive Order 12866, the EPA must determine whether the regulatory action is "significant" and therefore, subject to OMB review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to lead to a rule that may:

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

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

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

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

The proposed rule will provide a temporary extension of the compliance date specified in 40 CFR 63.1311(c) for the provisions contained in 40 CFR 63.1329 for existing affected sources producing PET using the continuous TPA high viscosity multiple end finisher process. The proposed rule does not add any additional control requirements. Therefore, this proposed rule was classified "non-significant" under Executive Order 12866 and was not required to be reviewed by OMB.

C. Regulatory Flexibility

The Regulatory Flexibility Act generally requires an Agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small government jurisdictions. This proposal would not have a significant impact on a substantial number of small entities because the proposed temporary compliance extension would not impose any economic burden on any regulated entities. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates

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

The EPA has determined that this proposed rule does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: March 23, 1998.

Carol M. Browner,

Administrator.

[FR Doc. 98–8213 Filed 3–30–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5985–4]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent to Delete the Southern Shipbuilding Corporation Superfund Site from the National Priorities List and Request for Comments.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 announces its intent to delete the Southern Shipbuilding Corporation Superfund Site (the "Site") from the National

Priorities List (NPL) and requests public comment on this proposed action. All public comments regarding this proposed action which are submitted within 30 days of the date of publication of this document, to the address indicated below, will be considered by EPA. The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is codified at Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300. EPA in consultation with the State of Louisiana, through the Louisiana Department of Environmental Quality (LDEQ), has determined that no further response is appropriate, and that, consequently, the Site should be deleted from the NPL.

DATES: The EPA will consider comments submitted regarding its proposal to delete the Site from the NPL by April 30, 1998.

ADDRESSES: Comments may be mailed to: Mr. Mark Hansen, Remedial Project Manager (6SF–LT), U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas TX 75202–2733, (214) 665–7548.

Information repositories.

Comprehensive information on the Site has been compiled in a public deletion docket which may be reviewed and copied during normal business hours at the following Southern Shipbuilding Corporation Superfund Site information repositories:

U.S. EPA Region 6 Library (12th Floor), 1445 Ross Avenue, Dallas TX 75202–2733, 1–800–533–3508.

St. Tammany Parish Public Library, Slidell Branch, 555 Robert Blvd., Slidell, Louisiana 70450, (504) 643–4120.

FOR FURTHER INFORMATION CONTACT: Mr. Mark A. Hansen, Remedial Project Manager (6SF–LT), U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas TX 75202–2733, (214) 665–7548.

or:

Mr. Duane Wilson, Louisiana Department of Environmental Quality, 7290 Bluebonnet Road, Baton Rouge, LA 70809, (504) 765–0487.

SUPPLEMENTARY INFORMATION:

Table of Contents:

I. Introduction

This document was prepared by EPA Region 6 as Notice of Intent to Delete (NOID) the Southern Shipbuilding Corporation Superfund Site, Slidell, St. Tammany Parish, Louisiana (EPA Site Spill No. 066Z; CERCLIS No. LAD008149015), from the National Priorities List (NPL). The NPL is the list, compiled by EPA pursuant to CERCLA Section 105, of uncontrolled hazardous substance release sites in the United States that are priorities for long-term remedial evaluation and response. As described in 40 CFR 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions in the unlikely event that conditions at the site warrant such action.

The EPA will consider comments concerning this NOID which are submitted within thirty days of the date of this NOID. EPA has also published a notice of the availability of this NOID in the New Orleans Times-Picayune (St. Tammany Edition), and the Slidell Sentry News.

Section II of this NOID explains the NCP criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Southern Shipbuilding Corporation Superfund Site and explains that the Site meets the NCP deletion criteria.

II. NPL Deletion Criteria

The NCP, at 40 CFR 300.425(e), provides that Sites may be deleted from the NPL if no further response is appropriate. In making a determination to delete a site from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria has been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed [1] response under CERCLA has been implemented, and no further action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

If, at the site of a release, EPA selects a remedial action that results in any hazardous substances, pollutants, or contaminants remaining at the site, CERCLA Subsection 121(c), 42 U.S.C. 121(c), requires that EPA review such remedial action no less often than each 5 years to ensure that human health and the environment are being protected by the remedial action. Since hazardous substances will remain at the Site,[2] EPA shall conduct such reviews. In response to community concern regarding potential future residential development of the Site, EPA committed to perform annual inspections of the Site for the next 5 years. EPA will begin annual inspections in the Summer of 1998 and conduct its final annual inspection in 2002. Annual inspections will be coordinated with the Louisiana Department of Environmental Quality and include at a minimum: a Site tour for an inspection of EPA's remedies and contact with City of Slidell officials to discuss current or planned property use and zoning. If new information becomes available which indicates a need for further action, EPA may initiate further remedial actions. Whenever there is a significant release from a site deleted from the NPL, the site may be restored to the NPL without application of the Hazard Ranking System.[3]

III. Deletion Procedures

EPA followed these procedures regarding the proposed deletion:

(1) EPA Region 6 made a determination that no further response action is necessary and that the Site may be deleted from the NPL;

(2) EPA has consulted with the appropriate environmental agency, the Louisiana Department of Environmental Quality (LDEQ), and LDEQ concurs with EPA's deletion decision;

(3) EPA has published, in a major local newspaper of general circulation at or near the Site, a notice of availability of the NOID, which includes an announcement of a 30-day public comment period regarding the NOID, and EPA distributed the NOID to appropriate State, local and Federal officials, and to other interested parties; and

(4) EPA placed copies of information supporting the proposed deletion (i.e., the public deletion docket) in the Site information repositories (the locations of these repositories are identified above).

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. As

[1] The *Fund* referred to here is the Hazardous Substance Superfund established by section 9507 of the Internal Revenue Code of 1986.

[2] Treated soil, ash, and marginally contaminated soils remain on the Site under a clay cap which covers approximately nine acres of the Site. EPA considers the cap to be protective; nonetheless, since hazardous substances will remain on the Site, EPA is required to conduct the CERCLA-required five-year reviews.

[3] The Hazardous Ranking System is the method used by EPA to evaluate the relative potential of hazardous substance releases to cause health or safety problems, or ecological or environmental damage.

mentioned in Section II of this Notice, 40 CFR 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility of the site for future response actions.

EPA Region 6 will accept and evaluate public comments on this NOID before making a final decision to delete. If necessary, EPA will prepare a Responsiveness Summary to address any significant public comments received.

IV. Basis for Intended Site Deletion

A. Site Location and Description

The Southern Shipbuilding Corporation (Southern Shipbuilding or SSC) site is situated on approximately 54 acres of land located in Township 9S, Range 14E, Section 44 (30°16'21" north latitude and 89°48'03") as shown in Appendix A. The site is located at 999 Canulette Road in St. Tammany Parish, Slidell, Louisiana and is immediately downstream of the Louisiana Highway 433 bridge. Approximately 1.5 miles upstream of the SSC site is the Bayou Bonfouca Superfund NPL site, which is an abandoned creosote treatment plant that is actively being remediated under the Federal Superfund Program.

As shown in Appendix A, the northern boundary of the SSC property consists of Bayou Bonfouca while the southern portion is defined by Canulette Road. Residential areas surround the site to the west, south, and on portions of the northern shore of Bayou Bonfouca. Directly opposite the active portions of the site on the northern side of Bayou Bonfouca is an active marine service company. The eastern portion of the site is heavily wooded and is bounded by State Highway 433. Approximately half of the western portion of the 54 acre SSC property has been cleared for the plant operations which included operation of two sludge pits that were the primary focus of EPA response actions at the Site. The term *sludge* as used in this document refers to the black, oily material in the pits, whether it is liquid or solid, floating or sinking. These pits were used for the disposal of material pumped from vessels from an undetermined time until 1972 and were the primary source of hazardous substance contamination seeping into Bayou Bonfouca. The oily waste pits were designated by EPA as Operable Unit One (OU1) and the remainder of the site was designated as Operable Unit Two (OU2).

In addition to the pits, the site consisted of a wide range of potential environmental and worker threats, many of which have been addressed as EPA removal actions. Solid waste and hazardous substances were disposed of on the ground surface and in dilapidated buildings located on the Site. Abandoned piles of scrap metal, drums, paint cans, cranes, other heavy equipment, and discarded solid waste were scattered throughout the facility and in the wooded areas immediately adjacent to the operations plant. A paint shed on-site was estimated to have contained over 2,000 cans of paints, solvents and containers that were leaking or in various stages of decay. The majority of these removal actions were completed by the end of June 1996, in conjunction with the investigation and cleanup of contamination on the OU2 property.

Extensive sampling and analysis for a broad range of hazardous substances was completed and compiled in the Remedial Investigation Report, Feasibility Study, and Removal Support Reports 1 and 2. Based on the results of these investigations, EPA determined that several areas within OU2 presented a higher than allowable risk to potential future workers or residents on the Site. As a result, EPA conducted extensive removal actions that addressed contaminated areas and reduced site human health and environmental risks.

Unlike OU1, which contained primarily organic wastes such as polynuclear aromatic hydrocarbons (PAHs), OU2 contaminants included heavy metals such as lead and arsenic, and organics such as polychlorinated biphenyls (PCBs), and PAHs.

Since incineration of OU1 wastes was nearing completion and since the release or threatened release of hazardous substances from the Site constituted an imminent and substantial endangerment to public health and the environment, EPA conducted an expedited removal of the organic compound-contaminated soil areas from OU2 and blended those contaminated soils with the oily wastes from OU1. Blending of the OU1 and OU2 wastes aided in the handling of OU1 wastes by helping to stabilize the liquid oily wastes from the South Impoundment. Approximately 1,072 cubic yards of oily waste from OU2 were blended with OU1 wastes and transported to the Bayou Bonfouca incinerator.

In addition to the incineration of this waste material, EPA disposed of approximately 4,704 cubic yards of soil and debris that were contaminated with metals. Since metals can not be treated by incineration, EPA transported these wastes off-site for disposal. Analysis of the heavy metal-contaminated soils and debris indicated that it contained metals levels below the regulatory threshold for treatment as a hazardous waste. Therefore, because this material was classified as a non-hazardous waste regulated under Subtitle D of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 *et seq.*, it was disposed of at the Woodside Landfill in Walker, Louisiana.

The Site also included large quantities of non-hazardous waste and debris. As part of a continuing cooperative effort with EPA, Signal Capital, the secured creditor of the bankrupt Southern Shipbuilding Corporation, has conducted extensive recycling and salvage efforts that have involved removal of most of the Site's salvageable and unsalvageable materials that are not contaminated with hazardous substances.

In addition to the chemicals of concern identified in the RI and FS, asbestos containing materials were detected in several debris piles and small pieces were discovered to be randomly scattered across the surface of OU2. EPA used visual identification and laboratory samples to remove potentially asbestos containing materials from surface soils and debris piles. In several areas, EPA excavated the debris pile to 4" below grade or to the extent of contamination, placed a protective geotextile warning barrier to the limits of excavation, backfilled excavated areas with a minimum of one foot of low permeability clay, revegetated the excavated area to prevent erosion, and transported the asbestos containing debris to an approved asbestos landfill for disposal. The Record of Decision for OU2 and the Administrative Record provide additional information on this response.

B. Site History

The facility was used for the manufacturing and repairing of shipping vessels including the gas freeing (cleaning) of cargo hulls for change of cargo for a period of over 75 years. Chemical compounds such as benzo(a)pyrene (BaP) and other polynuclear aromatic hydrocarbons (PAHs) have been identified at the site that constitute hazardous substances as defined at Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601(14), and further defined at 40 CFR 302.4.

The SSC site began operations in 1919 under the direction of Canulette Shipbuilding. In 1954, Canulette Shipbuilding sold the business to J & S Shipbuilding. Records of site operations for the period of ownership by each of these two companies are unavailable. In 1957, the Southern Shipbuilding

Corporation (SSC) purchased the property from J & S Shipbuilding. SSC ran the facility from 1957 until 1993, during which time it performed gas freeing, ship construction, docking and repairing operations. In 1993, SSC and its operator filed for Chapter 11 bankruptcy protection under the U.S. Bankruptcy Code and ceased all operations. Also in 1993, SSC's secured creditor, Signal Capital Corporation, secured the facility.

EPA has utilized available aerial photographs to interpret site conditions over the operational history of the facility. Those aerial photographs have provided evidence that the facility was well established by the 1940s and have indicated that the two surface impoundments were not constructed until after March 1939. An April 1954 photo shows a railroad running from the north along the Bayou Bonfouca and ending at the bayou in the area between the north and south impoundments, although the use of this railway is undocumented. That 1954 aerial also shows a small island less than 0.25 acres located in the center of Bayou Bonfouca near the graving dock and a maintenance slip along the upstream portion of the Bayou. The island appears to have been constructed with dredge spoils.

The 1954 photo also indicates that there were no residences on the southern portion of Bayou Bonfouca near the SSC facility and that residences were only sparsely located near the opposite bank. A November 1967 aerial photograph revealed extensive dredging of coves along the southern portion of Bayou Bonfouca and the establishment of residences along both shores of the bayou in the vicinity of the site. In addition, the small island within the middle of the bayou and the breakwater for the maintenance slip no longer appear in the 1967 photo. That photo also indicates that the size of the north and south impoundments remained approximately the same over the 13 year period.

Subsequent photographs taken during the 1970s, 1980s, and 1990s indicate growth in residential communities bordering the facility but do not identify any major alterations to the impoundments or the rest of the SSC site. It is also important to note that a review of these historical photos does not show the presence of any impoundments other than the north and south impoundments and associated systems such as the weir system.

C. Characterization of Risk

Due to extensive remedial and removal actions by EPA and LDEQ, the monitoring results of operation and maintenance (O & M) activities to date, and the public health consultation by the Agency for Toxic Substances and Disease Registry (ATSDR), EPA verifies the implemented Site remedy is protective of human health and the environment.

D. Community Involvement

Extensive community relations and community involvement have occurred at the SSC site. Public participation activities have been satisfied as required in CERCLA Subsection 113(k), 42 U.S.C. 9613(k), and in CERCLA Section 117, 42 U.S.C. 9617. Documents in the deletion docket on which EPA relied for recommendation of the Site deletion from the NPL have been made available to the public in the two information repositories, the location of which is identified above.

E. Proposed Action

In consultation with LDEQ, EPA has concluded that all appropriate response actions required at the Site (neither the CERCLA-required five-year reviews, nor operation and maintenance of the constructed remedy is considered further response action for these purposes), that all appropriate Fund-financed response actions under CERCLA have been implemented, and that no further response action is appropriate. Moreover, EPA, in consultation with LDEQ, has determined that Site investigations show that the Site now poses no significant threat to public health or the environment; consequently, EPA proposes to delete the Site from the NPL.

Dated: March 16, 1998.

Lynda F. Carrroll,

Acting Regional Administrator, U.S. EPA Region 6.

BILLING CODE 6560–50–P

Appendix A—Southern Shipbuilding Corporation Site Map

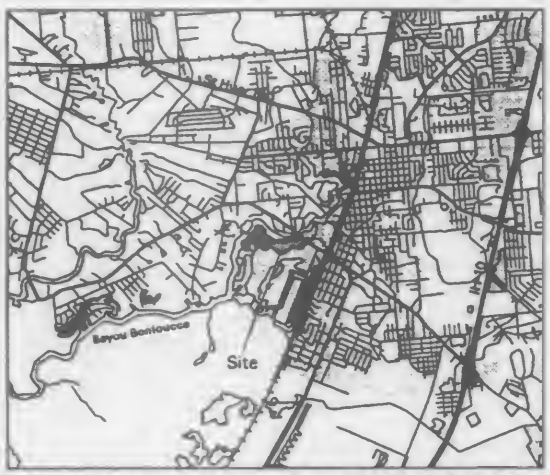
Southern Shipbuilding Corp.

St. Tammany Parish

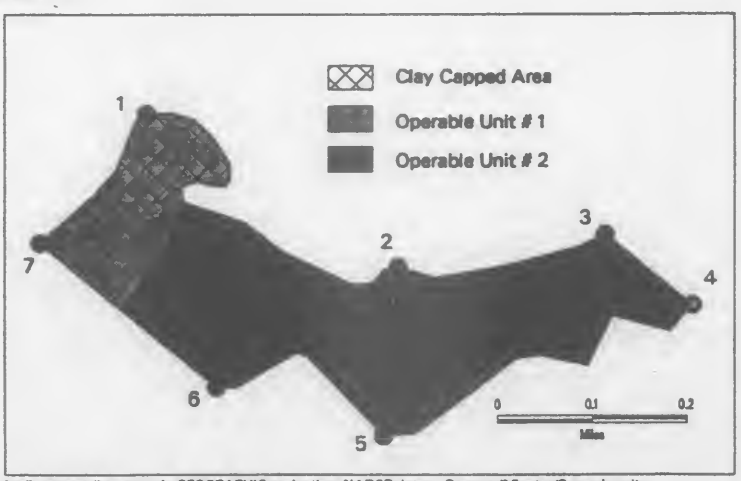
Slidell, Louisiana

Site Boundary Coordinates (Lat/Long)

1.	N	30°	16′	24.46″	W	89°	48′	04.04″
2.	N	30°	16′	15.01″	W	89°	47′	49.28″
3.	N	30°	16′	15.80″	W	89°	47′	38.18″
4.	N	30°	16′	11.65″	W	89°	47′	30.87″
5.	N	30°	16′	08.03″	W	89°	47′	51.06″
6.	N	30°	16′	08.38″	W	89°	48′	01.11″
7.	N	30°	16′	17.92″	W	89°	48′	11.43″



The 55 acre site is located in the southwestern part of the Slidell, St. Tammany Parish, LA. Section 9, Township 9s, Range 14e. This map shows a 30 square miles surrounding the Southern Shipbuilding Corp. Site. The red shaded area is the city limits of Slidell. The green shaded area is the Southern Shipbuilding Superfund boundary.



CDSI
Computer Data Systems, Inc.

Lat/Long coordinates are in GEOGRAPHIC projection, NAD27 datum, Degrees/Minutes/Seconds units.
Site boundaries were digitized from a site map by E&E, R.I. Operable Unit #2.

[FR Doc. 98–7768 Filed 3–30–98; 8:45 am]
BILLING CODE 6560–50–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 303

RIN 0970–AB72

Child Support Enforcement Program; Grants to States for Access and Visitation Programs: Monitoring, Evaluation, and Reporting

AGENCY: Office of Child Support Enforcement (OCSE), Administration for Children and Families, HHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This proposed rule implements provisions contained in section 391 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and establishes the requirements for State monitoring, reporting and evaluation of Grants to States for Access and Visitation Programs. Access and visitation programs support and facilitate noncustodial parents' access to and visitation of their children by means of activities including mediation (both voluntary and mandatory), counseling, education, development of parenting plans, visitation enforcement (including monitoring, supervision and neutral drop-off and pickup) and development of guidelines for visitation and alternative custody arrangements.

DATES: Consideration will be given to written comments received by June 1, 1998.

ADDRESSES: Comments should be submitted in writing to the Office of Child Support Enforcement, Department of Health and Human Services, 370 L'Enfant Promenade, SW, Washington, DC 20447. Attention: Director of Automation and Special Projects Division. You also may submit comments by sending electronic mail (e-mail) to "darnaudo@acf.dhhs.gov", or by telefaxing them to (202) 401–5539. This is not a toll-free number. Comments will be available for public inspection Monday through Friday, 8:30 a.m. to 5:00 p.m. on the 4th floor of the Department's office at the above address.

FOR FURTHER INFORMATION CONTACT: David Arnaudo, OCSE, Division of Automation and Special Projects, (202) 401–5364.

Statutory Authority

The proposed regulations are published under the authority of section 469B of the Social Security Act (the Act), as amended by section 391 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193) and Section 1102 of the Social Security Act. Section 469B(e)(3) requires that each State to which a grant is made shall monitor, evaluate, and report on such programs in accordance with regulations prescribed by the Secretary.

Background

Child support enforcement and access and visitation programs are linked in several important ways. Studies conducted by the U.S. Census Bureau and others have found that: (1) Non-custodial parents with joint custody and visitation rights pay child support at a much higher rate than those without such rights, (2) parental visitation is highly associated with child support compliance, (3) child support payment erodes over time as non-custodial parental involvement lapses, (4) one reason cited for non-payment of child support for those with incomes is that the custodial parent does not permit the non-custodial parent to see the child(ren), (5) lack of non-custodial parent control of child raising and the divorce process is a primary reason for non-payment of child support where such parents are employed, (6) non-custodial parents who pay child support feel empowered to seek post-divorce or post-split involvement with their children, (7) unwed nonresident fathers who established paternity have legally standing to seek visitation and custody, (8) nonresident mothers and fathers have asked that visitation and custody be established and enforced like child support is established and enforced, (9) involvement by nonresident parents is desirable for the well being of the child. Finally, paternity establishment and divorce proceedings are often the gateway to establishing both child support and access and visitation rights. The first Federal legislation to connect access and visitation rights on a formal basis with child support was contained in the Child Support Enforcement Amendments of 1984 (Pub. L. 98–378) at Section 23. This act set forth that it was the sense of Congress that—

"State and local governments must focus on the vital issues of child support, child custody, visitation rights, and other related domestic issues that are properly within the jurisdiction of such governments * * *"

Later the Family Support Act of 1988 (Pub. L. 100–485) authorized up to $4 million each year for fiscal years 1990 and 1991 for State demonstration projects to develop, improve, or expand activities designed to increase child access provisions of court orders. The legislation required an evaluation of these projects and a Report to Congress on the findings. On October 10, 1996, the Department of Health and Human Services transmitted to Congress the report entitled, "Evaluation of the Child Access Demonstration Projects". The report indicated that requiring both parents to attend mediation sessions and developing parenting plans was successful for cases without extensive long term problems.

In September, 1996, the U.S. Commission on Child and Family Welfare submitted a report to the President and Congress which strongly endorsed additional emphases at all government levels, especially State and local levels, to ensure that each child from a divorced or unwed family have a parenting plan which encourages and enables both parents to stay emotionally involved with the child(ren).

Finally, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) added a new provision at section 391 to award funds annually to States to establish and administer programs to support and facilitate noncustodial parents' (fathers or mothers) access to, and visitation of, their children through activities including mediation (both voluntary and mandatory), counseling, education, development of parenting plans, visitation enforcement (including monitoring, supervision, neutral drop-off and pickup), development of guidelines for visitation and alternative custody arrangements. Under the new provision, States may administer programs directly or through contracts or grants with courts, local public agencies, or nonprofit private entities; States are not required to operate such programs on a statewide basis.

Under this provision, the amount of the grant to be made to the State shall be the lesser of 90 percent of State expenditures during the fiscal year for activities just described or the allotment to the State for the fiscal year. The allotment would be determined as follows: an amount which bears the same ratio to $10,000,000 for grants as the number of children in the State living with only 1 biological parent bears to the total number of such children in all States. Such allotments are to be adjusted so that no State is allotted less than $50,000 for fiscal years 1997 and 1998 or $100,000 for any succeeding fiscal year. These funds may not be used to supplant expenditures by the State for authorized activities; but, States shall use the grant to supplement such expenditures at the level equal to the level of such expenditures for fiscal year 1995.

There are a number of child access programs operating in the country. Most of these programs offer assistance to both non-custodial fathers and mothers and are gender neutral. The National Center for State Courts estimates that there are currently about 205 programs offering court-based or court-annexed services for divorce disputes. A roster compiled by the Fathers for Equal Rights Inc. of Des Moines, Iowa, identifies 282 parent's rights organizations throughout the United States. These groups offer one-on-one counseling and peer group motivation as well as other relevant advice to assist non-custodial parents to stay involved with their children. Similar programs are operating in cities across the country motivating and counseling parents on a one-to-one basis to stay involved or become involved with their children.

The Parents Fair Share Demonstrations, funded in part by the Administration for Children and Families (ACF), in Kent County, Michigan; Montgomery County, Ohio; Mercer County, New Jersey; Shelby County, Tennessee; Hampden County, Massachusetts; DuVal County, Florida; and Los Angeles County, California, are motivating and enabling fathers to become involved with their children largely through peer group sessions and employment and other social assistance. Other responsible fatherhood demonstration projects, which also address access, visitation and fatherhood involvement issues, have recently been funded by the Office of Child Support Enforcement in California, New Hampshire, Maryland, Colorado, Massachusetts, Wisconsin, Oregon, Missouri, and Washington.

States are at different positions with respect to access and visitation programs. Some States have well developed programs at least for divorced or separated parents; States such as Michigan, California, Massachusetts, Connecticut, Colorado, and Missouri have State programs. Some States have only local programs. Other States are just beginning to talk to practitioners and advocates regarding programs they may want to pursue.

In September 1997, the Office of Child Support Enforcement awarded 54 States and independent jurisdictions access and visitation Grants covering all the activities mentioned in the Act.

Regulatory Philosophy

Historically in the Child Support Enforcement Program, the Federal government specified in detailed regulations how things must be done by States. The Federal Office of Child Support Enforcement (OCSE) has entered an era which necessitates a new philosophy with respect to Federal mandates through regulation. The President is committed to reducing the burden on States and streamlining regulations. OCSE's new watchwords are partnership, results, flexibility, and accountability.

PRWORA provides significant flexibility in terms of access and visitation. The Act allows States, local and non-profit entities, courts, or local public agencies to administer the program, and only requires regulations for the specific functions of monitoring, evaluation and reporting.

Given the funding limitations, we attempted to strike a balance between provision of access and visitation services and the need to gather data to enable States to evaluate and report on their programs. We particularly invite public comment on what the relationship should be between the monitoring, evaluation, and reporting requirements in this regulation.

In developing these rules we elicited input from the National Governors' Association, the American Public Welfare Association, the National Conference of State Legislatures, and the National Association of Counties. We also held a nationwide teleconference with father's and children's rights groups, groups of local public agencies representing minority responsible fatherhood programs, and groups representing concern for women's issues.

A meeting was held with the States' access and visitation contacts or their staff at which 36 States were represented. At this one-day meeting, discussions were held on the need to require a minimum set (or core) of data which would be uniformly collected. All meeting participants were called upon to suggest data elements and approaches, and many suggestions were received.

Description of Regulatory Provisions

Paragraph 303.109(a) would require States to monitor all access and visitation programs to ensure that services funded under these programs are: (1) Authorized under section 469B(a) of the Act and (2) efficiently and effectively provided while complying with reporting and evaluation requirements, as set forth in paragraphs 303.109(b) and 303.109(c).

Paragraph 303.109(b) would allow State programs funded by section 469B of the act to be evaluated using data gathered to measure the effectiveness of program operations. States would also be required to assist in the evaluation of programs deemed significant or promising by the Department, as directed by program memorandum.

Paragraph 303.109(c) would require that States provide a detailed description of each funded program by including such information as: service providers and administrators, service area, population served, program goals, application or referral process, referral agencies, nature of the program, activities provided, and length and features of a 'completed' program. We also would require, with regard to programs which provide services: the number of applicants or referrals for each program, the number of program participants in the aggregate and by eligible activity, and the total number of graduates in the aggregate and by eligible activities (*e.g.*, mediation, education etc.). This information is proposed in order to assess: (1) The demand for the program and effectiveness of outreach and ability of the program to meet demand, (2) the service population served and scope and size of the program, and (3) whether such recipients are completing standard program requirements.

Paragraph 303.109(c)(3) would require States to report information specified in paragraphs 303.109(c)(1) and (c)(2) annually, collected at a date and in a form as the Secretary may prescribe in program instructions from time to time.

Regulatory Procedures

Paperwork Reduction Act

The proposed section 303.109 contains an information collection requirement. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 (d)), the Administration for Children and Families has submitted a copy of this section to the Office of Management and Budget (OMB) for its review.

- *Title:* Grants to States for Access and Visitation Programs—Program Description and Participation Data.
- This program description and participation data are being collected so that we may report activities funded to the Congress in the Child Support Annual Report and so that the Federal Government and States can assess program progress. Information to be collected includes: Program descriptions, number of applicants/referrals, number of total participants, number of participants and graduates by the aggregate and by activity.
- *Likely respondents include:* States and independent jurisdictions reporting data from their own projects or data from grantees/contractees—non-profit entities, local public agencies and/or courts.

• *Number of likely respondents:* 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam will respond. An average of 3 sub-jurisdictions will be anticipated to respond as components of State/jurisdiction efforts.

• *Proposed frequency of response:* annually.

• *Average Burden Per Response:* 24 hours.

• *Estimate of the total annual reporting and record keeping burden:* (54 States and jurisdictions + 3 sub-jurisdictions or 216 responding units) x (1 response per year) x (24 hours average burden per response) = 5,184 hours.

The Administration for Children and Families will consider comments by the public on this proposed collection of information in—

• Evaluating whether the proposed data collection is necessary for proper performance of the functions of ACF, including whether the information will have practical utility.

• Evaluating the accuracy of the ACF's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

• Enhancing the quality, usefulness, and clarity of the information to be collected; and

• Minimizing the burden of the collection of information of those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after the publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations. Written comments to OMB for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington D.C. 20503, Attn: Ms. Wendy Taylor.

Executive Order 12866

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that the rule is consistent with these priorities and principles. The proposed rule implements statutory provisions that require States that receive grants for child access and visitation programs to monitor, evaluate, and report on such programs in accordance with regulations prescribed by the Secretary.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

The Department has determined that this proposed rule would not impose a mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of more than $100 million in any one year. The Department has determined that this proposed rule is not a significant regulatory action with in the meaning of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this proposed regulation would not result in a significant impact on a substantial number of small entities. The primary impact of the proposed rule would be on State governments which are not considered small entities under this Act.

List of Subjects in 45 CFR Part 303

Child support, Grant programs—social programs, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Programs No. 93.597, Grants to States for Access and Visitation)

Dated: March 13, 1998.

Olivia A. Golden,

Assistant Secretary for Children and Families.

For reasons stated in the preamble, we propose to amend 45 CFR part 303 as follows:

PART 303—STANDARDS FOR PROGRAM OPERATIONS

1. The authority citation of part 303 continues to read as follows:

Authority: 42 U.S.C. 651 thorough 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k)

2. A new § 303.109 is added to read as follows:

§ 303.109 Procedures for State monitoring, evaluation and reporting on programs funded by Grants to States for Access and Visitation Programs.

(a) *Monitoring.* The State must monitor all programs funded under Grants to States for Access and Visitation Programs to ensure that the programs are providing services authorized in section 469B(a) of the Act, are being conducted in an effective and efficient manner, and are complying with Federal evaluation and reporting requirements.

(b) *Evaluation.* The State:

(1) May evaluate all programs funded under Grants to States for Access and Visitation Programs;

(2) Must assist in the evaluation of significant or promising projects as determined by the Secretary.

(c) *Reporting.* The State must:

(1) Report a detailed description of each program funded by providing the following information, as appropriate: service providers and administrators, service area (rural/urban), population served (race/marital status), program goals, application or referral process (including referral sources), voluntary or mandatory nature of the programs, types of activities, and length and features of a complete program;

(2) Report data including: The number of applicants/referrals for each program, the number of total program participants families and individuals, and the number of program participants and program graduates (families and individuals) by authorized activities (mediation—voluntary and mandatory, counseling, education, development of parenting plans, visitation enforcement—including monitoring, supervision and neutral drop-off and pickup, and development of guidelines for visitation and alternative custody arrangement);

(3) Report the information as required in paragraphs (c)(1) and (c)(2) of this section annually, at such time and in such form as the Secretary may require from time to time.

[FR Doc. 98–8426 Filed 3–30–98; 8:45 am]

BILLING CODE 4184–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[MM Docket No. 98–35; FCC: 98–37]

Broadcast Services; Radio Stations, Television Stations

AGENCY: Federal Communications Commission.

ACTION: Review of rules; notice of inquiry.

SUMMARY: Pursuant to the requirements of Section 202(h) of the Telecommunications Act of 1996, the Commission issues this Notice of Inquiry soliciting comment on whether any or all of its broadcast ownership rules are no longer in the public interest as the result of competition.

DATES: Comments are due by May 22, 1998, and reply comments are due by June 22, 1998.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Roger Holberg, Mass Media Bureau, Policy and Rules Division (202)418–2134 or Dan Bring, Mass Media Bureau, Policy and Rules Division (202)418–2170.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Inquiry in MM Docket No. 98–35, FCC 98–37, adopted March 12, 1998, and released March 13, 1998. The complete text of this Notice of Inquiry is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and may also be purchased from the Commission's copy contractor, International Transcription Service, (202)857–3800, 1231 20th Street, N.W., Washington, D.C. 20036. The Notice of Inquiry is also available on the Internet at the Commission's web site: http://www.fcc.gov.

Synopsis of Notice of Inquiry

I. Introduction

1. This Notice of Inquiry is the first step in our biennial ownership review of the broadcast ownership and other rules as required by section 202(h) of the Telecommunications Act of 1996 ("Telecom Act").[1] That section provides:

> The Commission shall review its rules adopted pursuant to this section and all of its ownership rules biennially as part of its regulatory reform review under section 11 of the Communications Act of 1934 and shall determine whether any of such rules are necessary in the public interest as the result of competition. The Commission shall repeal or modify any regulation it determines to be no longer in the public interest.

Section 11 of the Communications Act of 1934, as amended,[2] similarly provides that under the statutorily required review, the Commission "shall determine whether any such regulation is no longer necessary in the public interest as a result of meaningful economic competition" and requires that the Commission "shall repeal or modify any regulation it determines to be no longer necessary in the public interest."

2. Once this phase is completed, we will review the comments and issue a report. In the event we conclude there is good reason to believe that any of the rules within the scope of the review, or portions thereof, should be repealed or modified, we will issue the appropriate Notice(s) of Proposed Rule Making.

II. Framework for Review

3. For more than a half century, the Commission's regulation of broadcast service has been guided by the goals of promoting competition and diversity.[3] Competition is an important part of the Commission's public interest mandate because it promotes consumer welfare and the efficient use of resources.[4] Diversity, particularly diversity of viewpoints, is the other important part of the Commission's public interest mandate. The Commission's viewpoint diversity objective promotes a goal the Supreme Court has stated underlies the First Amendment. As the Court has said, the First Amendment "rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public* * *."[5] Promoting diversity in the number of separately owned outlets has contributed to our goal of viewpoint diversity by assuring that the programming and views available to the public are disseminated by a wide variety of speakers. Moreover, our diversity concerns are separate from our goal of promoting competition. Indeed, the Supreme Court has recently stated that "[f]ederal policy* * *has long favored preserving a multiplicity of broadcast outlets regardless of whether the conduct that threatens it is motivated by anticompetitive animus or rises to the level of an antitrust violation."[6]

4. We also note that the definition of economic markets (i.e., product and geographic markets) is an important step in the assessment of current levels of competition that section 202(h) and section 11 require in order to determine whether such competition has eliminated the need for our broadcast rules. The Commission has previously identified three economic markets in which broadcasters operate: the market for delivered video programming; the advertising market; and the program production market. In addition, we tentatively considered that cable television directly competes with broadcast television stations in each of these markets, and that broadcast radio and newspapers compete with television in the local advertising market. While we also sought comment on whether other suppliers of video programming (*e.g.*, Multichannel Multipoint Distribution Service (MMDS), Direct Broadcast Satellite (DBS), etc.) compete with broadcast television stations, we stated that it may not be appropriate to include them because their current market penetration is so low that they are not relevant substitutes to a majority of Americans.[7] Commenters are invited to address the correctness of these tentative considerations, as well as their applicability to the instant proceedings. After exploring the issue of which media compete with broadcasting in each of the economic markets, the competitive analysis then focuses upon whether and to what extent market power exists and is being exercised, and what effect our ownership rules have on the existence and exercise of market power in each of these markets.

5. Our diversity analysis focuses upon the ability of broadcast and non-broadcast media to advance the three types of diversity (i.e., viewpoint, outlet and source) our broadcast ownership rules have attempted to foster. Viewpoint diversity refers to helping to ensure that the material presented by the media reflect a wide range of diverse and antagonistic opinions and interpretations. Outlet diversity refers to a variety of delivery services (*e.g.*, broadcast stations, newspapers, cable and DBS) that select and present programming directly to the public. Source diversity refers to promoting a variety of program or information

[1] Telecommunications Act of 1996, Pub. L. 104–104, 110 Stat. 56 (1996). Also required by that section is the biennial review of rules adopted pursuant to sections 202(a)–(f) of the Telecommunications Act. These include rules pertaining to cable as well as broadcast cross-ownership.

[2] 47 U.S.C. 161.

[3] For a short history of the Commission's broadcast ownership regulations, *see Further Notice of Proposed Rule Making* in MM Docket Nos. 91–221 and 87–8, 10 FCC Rcd 3524, 3526–29 (1995)(hereinafter "TV Ownership Further Notice").

[4] *Revision of Radio Rules and Policies*, 7 FCC Rcd 2755 (1992), *recon. granted in part*, 7 FCC Rcd 6387 (1992), *further recon.*, 9 FCC Rcd 7183 (1994).

[5] *Associated Press* v. *United States*, 326 U.S. 1, 20 (1945); *accord Federal Communications Commission* v. *National Citizens Committee for Broadcasting*, 436 U.S. 775 (1978).

[6] *Turner Broadcasting System, Inc.* v. *FCC*, 117 S.Ct. 1174 (1997)(citations omitted).

[7] *TV Ownership Further Notice*, *supra* at 3538.

producers and owners.[8] In the *TV Ownership Further Notice* we sought comment on whether nonbroadcast outlets contributed to our diversity goals. We tentatively considered that cable television, as well as broadcast television, provides diversity in this market given that cable has the capability for local origination of programming.

6. We propose to apply this framework to evaluate whether our rules continue to be in the public interest as required by the Telecom Act. We seek comment on this proposal. In performing our section 202(h) review, we will consider the effect of meaningful competition that has developed and the extent to which this competition has been furthered by our rules. We also seek comment on the relevance to the framework of the Commission's assessment of the state of competition in the multi-channel video programming delivery services (MVPDs) market contained in the Cable Competition Report,[9] which was released subsequent to our *TV Ownership Further Notice*. Furthermore, we seek comment on how the Commission's assessment of the competitive effects of the Bell Atlantic/NYNEX merger bears on our analysis here.[10] We also seek data, studies and any other information relevant to our consideration of these competition and diversity issues.

III. Rules To Be Reviewed

7. In this Notice of Inquiry we describe each of the rules that are within the scope of our biennial broadcast ownership review. We seek comment on any other rules commenters believe should be included in this review. The rules are grouped into three categories. The first group are those broadcast ownership rules that are currently being examined in pending Commission proceedings. The second group are those broadcast ownership rules that have recently been changed to implement provisions of the Telecom Act of 1996.[11] Finally, the third group are the remaining broadcast ownership rules.

Rules Currently Subject to Outstanding Proceedings

8. Several of the Commission's broadcast ownership rules are currently the subject of open proceedings. They are as follows:

- The television "duopoly" rule, which states that a party may not own, operate or control two or more broadcast television stations with overlapping "Grade B" signal contours.[12]
- The "one-to-a-market" rule, which generally prohibits the common ownership of a television and a radio station in the same market.[13] In 1989, the Commission amended the rule to specify that it would "look favorably" on requests for waiver of the restriction in the Top 25 television markets if, after the merger, at least 30 independently owned broadcast voices remained, or if the merger involved a "failed station." Case-by-case review of waiver requests is also provided for in instances where the presumptive waiver criteria are not present. Section 202(d) of the Telecom Act directed the Commission to extend its presumptive waiver policy to the Top 50 television markets if it finds that doing so would be in the public interest.[14]
- the daily newspaper/radio cross-ownership rule [15] which generally prohibits the common ownership of a daily newspaper and a radio station in the same community. The outstanding proceeding examines whether the Commission should modify the existing waiver policy for this rule.[16]

9. We believe that our ongoing review of these rules in the outstanding proceedings satisfies the requirements of section 202(h) of the Telecom Act.[17] We anticipate taking action in those proceedings during 1998 independently of the instant review. We consequently seek no additional comment on these rules in this Notice of Inquiry. Nor do we seek comment on our attribution standards. Our attribution rules define what the Commission will consider a cognizable interest for purposes of its ownership rules. They do not of themselves establish limits on ownership or restrict cross-ownership combinations. Furthermore, they are currently under consideration in MM Docket Nos. 94–150, 92–51, and 87–154.[18]

Rules Recently Changed by Section 202 of the Telecom Act

10. The Commission modified/eliminated several of its ownership rules in accordance with section 202 of the Telecom Act. Section 202(h) of the Act directs the Commission, without limitation, to review its broadcast ownership rules as part of the biennial ownership review. Parties are invited to provide data or other information which would indicate whether some, or all, of the remaining rules are no longer in the public interest. In this proceeding we will review the impact of the remaining rules on competition and diversity and discuss our analysis in the report we issue.

11. In the course of this review, we will examine the effect these rule changes have had, thus far, on the structure and trends in media markets and their impact on our competition and diversity goals. We propose to make this assessment by developing a record examining the changes in the structure of the industry (horizontal concentration and vertical integration) and financial performance in media markets, as well as changes in diversity. Examining the structure of an industry provides information about the industry's conduct and performance. For example, horizontal concentration can give firms sufficient market power to raise rates above competitive levels or otherwise engage in anti-competitive activity, although it can also result in new efficiencies that accrue to the

[8] See *TV Ownership Further Notice*, *supra* at 3547–51.

[9] Fourth Annual Report, in the Matter of Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, CS Docket 97–141 (adopted December 31, 1997) ("Video Competition Report").

[10] See *Memorandum Opinion and Order* In the Application of NYNEX Corporation, 12 FCC Rcd 19985 (1997).

[11] We will not be reviewing herein the elimination of national radio ownership limits (*Order*, 11 FCC Rcd 12368 (1996)) or cable/network cross-ownership restrictions (*Order* in CS Docket No. 96–56, 11 FCC Rcd 15115 (1996)) because neither is a "rule adopted pursuant to" section 202(h) or an existing broadcast ownership rule. Additionally, although these subjects are referred to in section 202(f)(2) of the Telecom Act, the Commission has not revised any rules pertaining to ensuring cable carriage, channel positioning, or nondiscriminatory treatment of broadcast stations by cable systems. Accordingly, these subjects, will not be expressly and separately addressed except as set forth.

[12] 47 CFR 73.3555(b). This rule is currently under consideration in MM Docket Nos. 91–221 and 87–8. *See Notice of Proposed Rule Making* in MM Docket No. 91–221, 7 FCC Rcd 4111(1992); *TV Ownership Further Notice*, *supra*; *Second Further Notice of Proposed Rule Making* in MM Docket Nos. 91–221 and 87–8, 11 FCC Rcd 21655 (1996).

[13] 47 CFR 73.3555(c). This rule is also currently under review in MM Docket Nos. 91–221 and 87–8.

[14] See note 12, *supra*.

[15] 47 CFR 73.3555(d). The rule applies to all newspaper/broadcast cross-ownership situations. Only the waiver policy with respect to newspaper/radio combinations is currently under review in another proceeding.

[16] See Notice of Inquiry in MM Docket No. 96–197, 11 FCC Rcd 13003 (1996).

[17] In the Conference Report accompanying the Telecom Act, it is stated that the, "conferees are aware that the Commission already has several broadcast deregulation proceedings underway. It is the intention of the conferees that the Commission continue with these proceedings and conclude them in a timely manner." H.R. Rep. 104–458, at 164.

[18] See *Notice of Proposed Rule Making* in MM Docket Nos. 94–150 *et al.*, 10 FCC Rcd 3606 (1995); *Further Notice of Proposed Rule Making* in MM Docket Nos. 94–150 *et al.*, 11 FCC Rcd 19895 (1996).

benefit of consumers. Examining changes in ownership will provide information on the effects on diversity.

12. Parties are invited to provide us with relevant information, but our review will also be informed by publicly available information, *e.g.*, BIA and Compustat. Toward this end, we include data and a preliminary assessment of some of these effects. We invite parties to comment on the information we present as well as to provide additional data that will shed light on the effects of these rule changes in the media market.

13. *National Television Ownership Rule.* Section 202(c)(1) of the Telecom Act directed the Commission to modify its rules to eliminate the numerical limit on the number of broadcast television stations a person or entity could own nationwide and to increase the audience reach cap on such ownership from 25 percent to 35 percent of television households. The Commission amended section 73.3555(e) of its Rules to reflect this change.[19]

14. It is clear that there has been some consolidation of television stations since the Telecom Act. However, most of the top 25 television group owners remain significantly below the 35 percent reach cap, with only Fox's and CBS's television stations reaching more than 30 percent of U.S. households. The industry continues to be unconcentrated at the national level, with our estimate of the Herfindahl-Hirschman Index (HHI) still below 1000, increasing from 264 in 1996 to 308 in 1997.[20]

15. We seek comment on the effect of this rule on competition and diversity and whether this rule is no longer necessary in the public interest as the result of competition. What effect has it had on competition in the national advertising market or the program production market at the national level? How does the rule affect existing television networks or the formation of new networks? We also seek information on the extent of economies of scale realized as a result of the consolidation permitted by the Telecom Act.

16. *Local Radio Ownership Rules.* Section 202(b) of the Telecom Act directed the Commission to relax its radio multiple ownership rules to allow common ownership of up to eight radio stations on the local level, depending on the number of stations in the market. The Commission has revised its Rules to reflect this mandate.[21]

17. We will include in the record of this proceeding an FCC staff report which reviews the response of the radio industry to the revised rules from March, 1996 to November, 1997. We invite comment on the information set forth in this staff report. As the report documents, the number of commercial radio stations has increased 2.5 percent from 10,222 to 10,475. At the same time, there has been a tremendous increase in the number of station transactions since the passage of the Telecom Act resulting in an increase in industry concentration. At the national level, the number of owners of commercial radio stations has declined by 11.7 percent from 5,105 to 4,507. This decline is primarily due to mergers between existing owners. The result of these mergers has been to change the ranking and composition of the top radio station owners.

18. At the local level, there has been a downward trend in the number of radio station owners in Arbitron radio Metro markets. The average number of radio station owners across all radio Metro markets declined from 12 to 11, a loss of about one owner per market. The top 10 radio Metro markets experienced an average loss of 3 owners per market, from about 30 owners to about 27 owners per market. The smallest radio Metro markets (markets 101–265) experienced an average loss of about one owner per market, from about 9 owners to 8 owners. Further, the top owners in each Metro market generally account for an increasing share of total radio advertising revenues in these markets. For example, the top four radio owners in each Metro market, on average, account for about 90 percent of their Metro market's total revenues, compared to about 80 percent in March, 1996. The staff report also indicates that the average number of distinct radio formats across all radio Metro markets is 10, remaining unchanged from March, 1996, to March, 1997.

19. At the industry level, the staff report indicates that publicly traded companies whose primary business is radio broadcasting are experiencing robust financial performance. Operating margins have increased slightly, while their profit margins have varied. This is largely a result of their increased debt loads. Advertising revenues have been sufficient, to date, to generate positive cash flow on an industry-wide basis. This health is reflected in stock returns better than those of the typical S&P 500 company. The market's valuation of radio companies suggests that the market is foreseeing future earnings growth in this industry. The observed consolidation of the radio industry appears to have had positive financial consequences for these radio companies.

20. We invite parties to comment on the effect of the local radio ownership limits on competition in radio. What has been the effect on competition in the program delivery market? What has been the effect on competition in the local advertising market? In this regard, the *TV Ownership Further Notice* noted that television (broadcast and cable) and newspapers provided some level of competition to radio in the local advertising market.[22] Is there greater efficiency at the local level due to consolidation? We ask commenters to provide data documenting any economic efficiencies and specific cost savings.

21. We also seek comment on the impact on diversity in radio. Are the current ownership limits set forth in our rules no longer necessary in the public interest? For example, has coverage of news and public affairs been enhanced as a result? We also note that there has been a drop in the number of minority-owned radio broadcast stations, as reported in the annual report released by National Telecommunications and Information Administration.[23] It has been argued that the change in the radio ownership rules has been detrimental to the enhancement of ownership by

[19] *Order*, 11 FCC Rcd 12374 (1996).

[20] The HHI is a standard measure of economic concentration. The Department of Justice uses the HHI as part of its evaluation of market competition. They generally consider a market to be unconcentrated if the HHI is below 1000. HHIs are calculated by summing the square of each television owner's percentage of total television station revenues. The data for our estimate of the HHI comes from the BIA database which estimates station, owner, and market revenues. The revenue estimate combines national and local advertising revenue for each station, owner, and market. The 1997 HHI uses 1997 ownership data, combined with 1996 revenues, and the 1996 HHI uses 1996 ownership data, combined with 1995 revenues.

[21] Section 202(a) of the Telecom Act directed the Commission to eliminate its national radio ownership restrictions. The Commission amended its rules so that there are now no limits on the number of radio stations that may be owned nationally. *Order*, 11 FCC Rcd 12368 (1996).

[22] The program production market is national in scope and is, thus, unaffected by changes in the local radio rule. We further note that in reviewing radio station mergers under the antitrust laws, the Department of Justice has taken the position that radio stations form a distinct local advertising market and that newspapers, cable, and broadcast television stations are not effective substitutes to radio stations in this market. See Address of Joel I. Klein, Assistant Attorney General, Antitrust Division of the Department of Justice, "DOJ Analysis of Radio Mergers" (Feb. 19, 1997) (available at http://www.usdoj.gov/atr/speeches/jik97219.htm).

[23] Minority Commercial Broadcast Ownership in the U.S., a report of the Minority Telecommunications Development Program, National Telecommunications and Information Administration (August 1997). In this report, the number of minority-owned commercial radio stations declined from 312 in 1995 to 284 in 1996/97. There are no statistics available concerning female ownership of broadcast facilities.

minorities and women in the provision of radio service. The Commission has a statutory obligation under section 309(j) of the Act as well as an historic commitment to encouraging minority participation in the telecommunications industry.[24] We seek comment on the relationship between these ownership limits and the opportunity for minority broadcast station ownership. We also seek comment on any similar effects on female ownership of broadcast facilities. We invite commenters to address judicial considerations in this regard.

22. We invite comment on whether, given the issues raised above, we should modify the local radio ownership rules in any respect. Specifically, we seek comment on whether the way in which we count stations for purposes of applying our local radio ownership rule should remain the same or be modified in order to more realistically account for the number of stations in a market. We ask parties to be specific in any such proposals they advocate.

23. *Dual Network Rule.* Section 202(e) of the Telecom Act directed the Commission to revise its "dual network" rule.[25] Under the prior dual network rule, the Commission generally prohibited a party from affiliating with a network organization that maintained more than one network of television broadcast stations. The Telecom Act directed the Commission to revise the rule to permit a television broadcast station to affiliate with a person or entity that maintains two or more networks of television broadcast stations unless such networks are composed of: 1) two or more persons or entities that were "networks" on the date the Telecom Act was enacted; [26] or 2) any such network and an English-language program distribution service that on the date of the Telecom Act's enactment provided 4 or more hours of programming per week on a national basis pursuant to network affiliation arrangements with local television broadcast stations in markets reaching more than 75 percent of television households.[27] The Commission amended its dual network rule to reflect this directive.[28] We believe, at this time, that no broadcast television network has begun to deliver a dual stream of video programming. We seek comment on whether the current dual network rule is no longer in the public interest.

The Remaining Rules

24. *The UHF Television Discount.* The national television ownership rule states that an entity may own any number of television stations (subject to the restrictions of the local ownership rule) so long as the combined audience reach of the stations does not exceed 35 percent, as measured by the number of television households in their respective ADIs. Under our rules, UHF television stations are attributed with 50 percent of the television households in their ADI market.[29] The Commission has stated that it would review the UHF discount in the biennial ownership review.[30]

25. The Commission adopted the UHF discount in 1985 due to concerns that UHF station signals generally cannot reach as large an audience as VHF station signals.[31] Since that time we have observed in other contexts that this UHF signal disparity has been ameliorated over the years.[32] This is due in part to improved television receiver designs, as well as the fact that many households receive broadcast channels via cable rather than by over-the-air transmission. When the UHF discount was adopted in 1985, cable passed approximately 60 percent of all television households [33] and had approximately 32 million subscribers.[34] Today, the pass rate has risen to 97.1 percent with approximately 64.2 million subscribers.[35] Moreover, the Supreme Court has recently upheld the constitutionality of the "must-carry" rules which require cable systems to carry local television broadcast stations.[36] Parties have nonetheless urged us to continue the UHF discount policy given the significant number of television households that do not subscribe to cable.[37]

26. We request comment in this proceeding on whether the UHF discount should be retained, modified, or eliminated. In this regard, commenters may wish to address whether the discount, at its current level, remains appropriate in light of the decreasing disparity between VHF and UHF television due to improvements in transmission and reception technology, cable carriage of UHF television stations under our must-carry rules, and increasing cable penetration. Is there any evidence that the current UHF discount provides a competitive advantage to networks that own UHF stations? While the audience reach of many group owners are unaffected, the reach of several group owners, including Fox and Paxson, would exceed the national reach cap were it not for the discount. Should we decide that the discount be retained in some form for analog television, does it make sense to retain such a discount at all once we have transitioned to digital television transmission? At that time, we expect broadcast television stations will be operating on "core" channels, most of which are currently allotted to UHF television.[38] Finally, if the discount were reduced or eliminated, in what manner should group owners that exceed the new limits be grandfathered?

27. *Daily Newspaper/Broadcast Cross-ownership Rule.* The daily newspaper/broadcast cross-ownership rule prohibits the common ownership of a broadcast station and a daily newspaper in the same locale.[39] The Commission adopted the rule in 1975.[40] Like all of

[24] For a brief historic overview, see generally Notice of Proposed Rule Making in MM Docket Nos. 94–149 and 91–140, 10 FCC Rcd 2788 (1995).

[25] 47 CFR 73.658(g).

[26] A "network" is defined with reference to 47 CFR 73.3613(a)(1) for this purpose.

[27] The Conference Report stated that the Commission was being directed to revise its dual network rule "to permit a television station to affiliate with a person or entity that maintains two or more networks unless such dual or multiple networks are composed of (1) two or more of the four existing networks (ABC, CBS, NBC, FOX) or, (2) any of the four existing networks and one of the two emerging networks (WBTN, UPN)." S. Rep. No. 230, 104th Cong., 2d Sess. at 163.

[28] *Order*, 11 FCC Rcd 12374 (1996).

[29] 47 CFR 73.3555(e)(2)(i).

[30] *Notice of Proposed Rule Making* in MM Docket Nos. 96–222, 91–221 and 87–8, 11 FCC Rcd 19949, 19956 (1996).

[31] *See Memorandum Opinion and Order* in Gen. Docket No. 83–1009, 100 FCC 2d 74, 92–94 (1985).

[32] See *Report and Order* in MM Docket No. 94–123, 11 FCC Rcd 546, 583–86 (1995) (repealing the prime time access rule); *Report and Order* in MM Docket No. 87–68, 3 FCC Rcd 638 (1988), *clarified* 4 FCC Rcd 2276 (1989) (eliminating the policy under which applications to initiate or improve VHF service were considered contrary to the public interest if they threatened adverse economic impact on existing or potential UHF stations).

[33] Estimate based on data in Television Factbook (Cable and Services volume, 1986 ed.), pp. A39 and A44.

[34] See 1997 Television and Cable Factbook at F–1.

[35] *Fourth Annual Report, supra* at para. 14–15.

[36] *Turner Broadcasting Systems., Inc.* v. *FCC*, 117 S. Ct. 1174 (1997).

[37] See *Notice of Proposed Rule Making* in MM Docket No. 96–222, 11 FCC Rcd 19952–54 (1996) (summarizing comments on issue of whether UHF discount policy should be retained).

[38] See *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order* in MM Docket No. 87–268, FCC 98–24 (released February 23, 1998).

[39] The rule provides that: No license for an AM, FM or TV broadcast station shall be granted to any party (including all parties under common control) if such party directly or indirectly owns, operates or controls a daily newspaper and the grant of such license will result in: (1) The predicted or measured 2 mV/m contour of an AM station, computed in accordance with § 73.183 or § 73.186, encompassing the entire community in which such newspaper is published; or (2) The predicted 1 mV/m contour for an FM station, computed in accordance with § 73.313, encompassing the entire community in which such newspaper is published; or (3) The Grade A contour of a TV station, computed in accordance with § 73.684, encompassing the entire community in which such newspaper is published. 47 CFR 73.3555(d).

[40] *Multiple Ownership of Standard, FM, and Television Broadcast Stations, Second Report and*

Continued

our multiple ownership rules, the newspaper/broadcast cross-ownership rule rests on the twin goals of promoting diversity and economic competition.[41] The Commission determined that, as a general rule, granting a broadcast license to an entity in the same community as that in which the entity also publishes a newspaper would harm diversity.[42] Although the Commission, in adopting the rule, noted its expectation that there could be meritorious waiver requests, it set forth very stringent waiver criteria.[43] As a result, only two cases, both involving television/newspaper combinations, have been found to warrant permanent waiver of the rule.[44]

28. In 1996, the Commission opened an inquiry to consider amending the waiver policy with respect to newspaper/radio combinations.[45] Since the scope of this biennial ownership review encompasses the issues raised in the outstanding *NOI*, we will place the comments we have already received into the record of this review and take them into account in our review of the broader rule.

29. Additionally, we note that a Petition for Rulemaking seeking elimination of the rule in its entirety was filed by the Newspaper Association of America ("NAA") on April 28, 1997.[46] We will place this filing in the record of this proceeding and invite comment on the merits of the petition.

30. Generally, the NAA Petition argues that in adopting the rule there never was a record of evidence that cross-owned stations engaged in anti-competitive practices. NAA further argues that, whatever the FCC's original reasons for the rule were, "[i]n the abundantly diverse and highly competitive mass media marketplace of the late 1990s, maintenance of these selective cross-ownership restrictions is unnecessary, discriminatory, and unjustifiable."[47] NAA points to relaxation in other Commission ownership rules[48] and argues that the newspaper/broadcast cross-ownership rule unfairly singles out newspaper publishers, denying them the ability to realize efficiencies and synergies while leaving their competitors free to do so.[49] NAA also argues that relaxation of the newspaper/broadcast cross-ownership rule will help preserve newspapers and broadcast stations as viable media outlets and enhance diversity. Finally, NAA asserts that the rule is inconsistent with the First Amendment and that courts today would require a far stronger showing than was made in 1975 to support such a direct limitation on the free speech rights of a particular class of citizens."[50]

31. A number of parties, however, have argued for the continuation of the rule. Supporters of the rule commenting in the Notice of Inquiry on our newspaper/radio waiver policy contend that daily newspapers often dominate the local advertising market and to give a party with such dominance a broadcast outlet would allow it to exercise market power with respect to the local advertising market.[51] Supporters also contend that newspaper/broadcast combinations would give a single entity too much of a voice with respect to forming opinion on public issues. The new media pointed to by opponents of the rule, they state, do not add significant local viewpoints, are not locally based, and do not provide news or information on local issues.[52] Although supporters of the rule agree that cable television and the Internet have the potential to facilitate debate on local issues, they dispute that they yet serve that purpose to any significant degree and argue that these media are costly and do not reach large segments of the community.[53]

32. We invite comment on these competing positions with respect to the newspaper cross-ownership restriction. We specifically ask commenters to address whether the rule should be retained, modified or eliminated.

33. *Competitive Effects on the Market for Delivered Programming.* Since newspapers do not operate in the market for delivered video or audio programming, allowing cross-ownership between television and newspapers in a local market would not appear to harm competition in the market for delivered video or video programming. We invite comment on this view.

34. *Competitive Effects on the Market for Advertising.* In the *TV Ownership Further Notice* we tentatively considered that the local advertising market includes video advertising (broadcast and cable), radio advertising and newspaper advertising.[54] Total local advertising revenue for radio, television, newspaper, and cable was $68 billion in 1996. Local radio accounted for $12 billion (17.2 percent of the total), television accounted for $21 billion (30.3 percent), newspapers accounted for $34 billion (49.7 percent), and cable accounted for $2 billion (2.9 percent).[55] Permitting the owner of a broadcast TV or radio station to own a newspaper, or vice versa, could give the company the market power to raise local radio, television, and/or newspaper advertising rates, depending on the market share of the combined entity. We invite comment and evidence on this issue, and on the levels of local advertising share that might give rise to competitive concern. Commenters may also wish to comment on NAA's views concerning competition in the advertising market. While newspaper local advertising revenue may be as large as combined television and radio local advertising revenues, NAA argues that it includes newspaper classified advertisements, a market in which broadcast stations do not compete with newspapers.

35. *Competitive Effects on the Program Production Market.* Newspapers, being a print medium, are not a participant in the video and audio program production markets. Thus, relaxing this rule would not appear to

Order, 50 FCC 2d 1046 (1975) ("*Second Report and Order*"), *recon.*, 53 FCC 2d 589 (1975) ("*Recon. Order*"), *aff'd sub nom. Federal Communications Commission v. National Citizens Committee for Broadcasting, supra*. The provisions of 47 CFR 73.3555 do not apply to noncommercial educational FM and TV stations. See 47 CFR 73.3555(f).

[41] *Second Report and Order, supra* at 1074.

[42] *Id.* at 1075.

[43] The criteria are: 1) inability to sell the station; 2) the only possibility of the station's sale would be at an artificially reduced price; 3) separate ownership and operation of the newspaper and the broadcast station could not be supported in the locality; and 4) the purposes of the rule would be disserved by its application or application of the rule would be unduly harsh.

[44] *Field Communications Corp.*, 65 FCC 2d 959 (1977); *Fox Television Stations Inc.*, 8 FCC Rcd 5341, 5349 (1993); *aff'd sub nom. Metropolitan Council of NAACP Branches v. FCC*, 46 F.3d 1154 (D.C. Cir. 1995). In both cases, the combination had previously been owned by the same or substantially the same parties.

[45] See Notice of Inquiry in MM Docket No. 96–197, *supra*.

[46] See Newspaper Association of America, Petition for Rulemaking in the matter of amendment of section 73.3555 of the Commission's Rules to eliminate restrictions on newspaper/broadcast station cross-ownership (April 28, 1997) ("NAA Petition").

[47] *Id.* at 16.

[48] *Id.* at 40.

[49] *Id.* at 38 *et seq.*

[50] NAA Petition at 46.

[51] See Comments of David E. Hoxeng d/b/a ADX Communications in MM Docket No. 96–197 at 2. Hoxeng provides as an example San Antonio, TX, where, he states, the cost-per-thousand to newspaper advertisers skyrocketed following the buyout and closure of one San Antonio daily by the other. *Id.* at 2–3. See also Comments of Tennessee Association of Broadcasters filed in MM Docket No. 96–197 at 5.

[52] See Joint Comments of Black Citizens for a Fair Media et al. filed in MM Docket No. 96–197 at 18–19.

[53] *Id.*

[54] Allowing such joint ownership should have no effect on competition in the national advertising market because of differences in the geographic dimensions of this market.

[55] "Estimated Annual U.S. Advertising Expenditures 1990—1996," Prepared for Advertising Age by Robert J. Coen, McCann-Erickson.

harm competition in these supply markets. We invite comment on this view.

36. *Other Economic Effects.* Broadcaster and newspaper interests have long made the argument that the quality of news and public affairs programming to the public, a core concern of the Commission, could be enhanced if broadcasters could share in the expertise of a newspaper's operations. We seek comment on this issue. Could the same beneficial results be achieved through non-attributable joint ventures? Studies documenting and comparing the news and public affairs programming of existing newspaper/broadcast combinations with the news and public affairs programming of broadcast facilities that are not owned by a newspaper in the same geographic market would be particularly informative.

37. Similar claims have been made with respect to efficiencies realized as a result of the combination's advertising sales force. While any realized reduction in expenses could make the joint enterprise more economically viable than the separate operations were before the combination took place, we are most interested in whether such efficiencies would produce benefits for broadcast audiences and advertisers. We seek comment on this view.

38. *Effects on Diversity.* The newspaper/broadcast cross-ownership rule is intended to promote media diversity on the local level. The maintenance of such diversity has been a central Commission objective since its establishment. However, there have been changes since the rule was adopted. For example, the Commission now allows some cross-ownership between television and radio stations in the same local market and Congress has directed us to relax our local radio ownership limitations. In addition, there has been an increase in the number of radio and TV stations and local newspapers. We must examine the rule in this context, but with a full recognition of the importance of diversity in local markets. Clearly, combined operations reduce the number of separately owned outlets. We seek comment on the impact of this reduction on the public interest. We also seek comment on whether and to what extent, newspapers and broadcast stations under common ownership express contrasting points of view or cover each other in a critical manner.

39. In this regard, we point out that television, newspapers, and radio continue to be America's major source of news.[56] The Roper survey found that more than two-thirds of Americans usually get their news from television, and 37 percent from newspapers.[57] The survey indicated that Americans also rely on radio as a news source, but to a lesser extent than television and newspapers. We consequently wish to proceed cautiously in this area and seek comment on how the public's reliance on these media for news would be affected if we were to relax this rule.

40. The combination of a large daily newspaper and a large broadcast station could have a significant impact on diversity. We seek comment on whether the impact on diversity depends on the relative size of the newspaper and broadcast facility involved in a potential merger. Commenters should also address NAA's argument that various pay video delivery services and other informational media, together with an increase in broadcast stations and weekly newspapers, sufficient to assure diversity in the absence of the rule? Or, as argued by opponents of relaxation of the rule, are such other informational media too limited in availability or use, or do such media provide insufficient information on issues of local concern to offset the loss of diversity on the local level that would accompany elimination or relaxation of the newspaper/broadcast cross-ownership rule? We also seek comment on how diversity is served in suburban markets where the appropriate outlets to be examined may include metropolitan television and radio stations and community or suburban newspapers rather than newspapers in the major city.

41. *Cable/Television Cross-ownership Rule.* Section 76.501(a) of the Commission's Rules effectively prohibits common ownership of a broadcast television station and cable system in the same local community.[58] The Telecom Act eliminated a similar statutory prohibition.[59]

42. The rule was adopted in 1970 in order to further the Commission's policy of promoting diversity in local mass communications media.[60] In adopting the rule, the Commission made clear that it was avoiding any ban on joint ownership of a television broadcast station and cable system not located in the same area. "It is not our desire to keep television broadcasters out of the CATV industry, but to avoid over-concentrations of media control . . . we should have no objection to exchange of CATV systems among broadcasters which would maintain their involvement in the CATV industry while eliminating local cross-ownerships."[61]

43. This is the first time since adopting the cable/television cross-ownership rule that the Commission has reviewed the rule. Indeed, since 1984, the rule was required by statute.[62] When the Telecom Act eliminated the statutory provision, the Conference Report clarified that repeal of the prohibition should not prejudge the outcome of any review by the Commission of its rules regarding cable/broadcast cross-ownership.[63] The Telecom Act also eliminated our rule prohibiting broadcast television networks from owning or controlling cable systems.[64] While broadcast television networks are now statutorily permitted to buy cable systems, they are still generally precluded from doing so on any significant basis by the cable/broadcast cross-ownership rule, because the networks are also broadcast television licensees. We seek comment on whether this rule should be retained, modified or eliminated.

44. *Effects on the Market for Delivered Programming.* Television stations compete in the market for delivered video programming with cable system operators, wireless cable operators and possibly with DBS operators serving their "local" market. We note that in its *Fourth Annual Report* on the status of competition in the market for the delivery of multichannel video programming, the Commission stated that "local markets for the delivery of

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[56] America's Watching: Public Attitudes Toward Television 1997, Roper Starch Worldwide Inc.

[57] Respondents were permitted to name more than one news source.

[58] The rule prohibits a cable operator from carrying any broadcast television station if it directly or indirectly owns, operates, controls, or has an interest in a television broadcast station whose predicted Grade B signal contour overlaps any part of the area within which its cable system is serving subscribers.

[59] *See* Subsection 202(i) of the Telecom Act.

[60] Amendment of Part 74, Subpart K, of the Commission's Rules and Regulations Relative to Community Antenna Television Systems; and Inquiry Into the Development of Communications Technology and Services to Formulate Regulatory Policy and Rulemaking and/or Legislative Proposals, *Second Report and Order*, in Docket No. 18397, 23 F.C.C. 2d 816, 820 (1970).

[61] *Id.* at 821.

[62] The Cable Communications Policy Act of 1984 added section 613 of the Communications Act of 1934, as amended (47 U.S.C. 533). Section 613(a)(1) of the Act provided that "It shall be unlawful for any person to be a cable operator if such person, directly or through 1 or more affiliates, owns or controls, the licensee of a television broadcast station and the predicted grade B contour of such station covers any portion of the community served by such operator's cable system." That provision was eliminated by section 202(i) of the Telecom Act.

[63] House Rep. No. 458, 104th Cong., 2d Sess. at 164.

[64] See Subsection 202(f) of the Telecom Act.

video programming generally remain highly concentrated and continue to be characterized by some barriers to entry and expansion by potential competitors to incumbent cable systems."[65] While the ability of the broadcast spectrum to compete as a transmission medium with cable is effectively limited by the amount of broadcast spectrum and channels that are assigned to television markets, the *Report* notes that DTV has the potential to allow the broadcasters to become more effective competitors with cable companies in the multichannel video programming distribution market.[66]

45. We seek comment on the relevance of our conclusions in the *Fourth Annual Report* on our consideration of competitors to broadcast television. We seek comment on whether these changed market circumstances render our rule unnecessary. Also, we seek comment on the possible effects that repeal or relaxation of the cable/television cross-ownership rule may have on the market for delivered programming in particular. Would common ownership of a cable system and a television station increase or diminish the program choices, or the preferred programs, available to audiences? Would repeal or relaxation raise competition concerns in this market? Could relaxation of the rule result in public interest benefits? Could the same beneficial results be achieved through non-attributable joint ventures? Should a distinction be made in judging the effect of this rule on local versus national programming?

46. *Effects on the Market for Advertising.* Allowing joint ownership of a television station and a cable system in a local market might give the joint owner the economic power to raise its advertising rates within the local service area if, by virtue of the combination, the local market became concentrated.[67] Evidence on whether significant market power in the local advertising market already exists is mixed. As we stated earlier, total local advertising for these media was $68.5 billion in 1996. Local cable advertising revenues were small ($2.0 billion, 2.9 percent of total local advertising) when compared to local commercial broadcast television station advertising revenues ($20.7 billion, 30.3 percent of total local advertising), but they are increasing in size and importance.[68] Radio local advertising revenues accounted for $11.7 billion (17.2 percent of total local advertising) and newspaper accounted for $34 billion (49.7 percent of total local advertising). Prior studies have found mixed evidence regarding the impact of cable on broadcast TV station advertising revenues.[69] Thus, at this time, it is not clear whether cable system operators offer effective competition to broadcast station operators in providing local advertising.[70]

47. When considering advertising substitutes, we recognize that while many firms use a mix of video, audio, print, and other media to advertise their products and services, some firms may rely on video advertising almost exclusively and are, therefore, most affected by any market power that might be created by a modification to this rule. We have previously noted that it is not clear how substitutable radio and newspaper local advertising is for broadcast television local advertising.[71] We seek information and data about the appropriate scope of the product and geographic advertising market within which television stations and cable systems compete. Statistical evidence supporting fact-based analysis on the substitutability of these media in the local advertising market will especially be welcome.

48. *Effects on the Program Production Markets.* We specifically seek comment on whether the cable/broadcast television rule is no longer necessary in light of the current state of the program production market. The program market could be affected if Commission modification or elimination of the cable/television cross-ownership rule permitted a cable/television combination to exercise market power in the purchase of video programming for delivery in the local market. We seek comment on whether cable/broadcast television combinations could exercise monopsony power—i.e., the ability of the cable/television combination to artificially restrict the price paid for programming. We solicit evidence on the potential market power in the program production market if we were to eliminate or relax the cable/television cross-ownership rule. Specifically, we seek comment on whether other broadcast stations and alternative providers of delivered video programming (e.g., MMDS and DBS) may mitigate a cable/television combination's potential for monopsony power by providing program producers with additional local outlets for their product. We ask commenters to address whether our analysis of this issue is affected by whether the programming in question is network-provided programming, syndicated programming sold on a national basis, or programming produced for particular local markets. We also seek comment on the potential for a cable/television combination to deny alternative providers of delivered video programming access to the programming of the television station involved in the cable/television combination. On a related matter, we seek comment on whether our channel positioning and must-carry rules provide sufficient protection to ensure that if a cable company owns a local television station, the cable company could not discriminate in favor of its owned television station.

49. *Other Economic Effects.* Allowing cable/television cross-ownership within a local market may permit an entity to realize economies of scale, reducing the costs of operations. Joint ownership may permit cost-sharing in administrative and overhead expenses, sharing of personnel, joint advertising sales, and the pooling of resources for local program production (such as news and public affairs programming). The cost savings from these economies could then be used to provide better programming to the public, better coverage of local issues and possibly lower the cost of advertising and/or increase the quality of service available to advertisers. We seek evidence from commenters of the existence and magnitude of such economies and whether they can be reached through alternatives to common ownership, e.g., joint ventures. In addition, we ask commenters to describe how likely such economies are to be passed on to audiences and advertisers.

50. *Effects on Diversity.* Our concern with diversity is most acute with respect to local ownership issues. Both television and competing video outlets are viewed at the local level. We ask

[65] *Fourth Annual Report, supra* at para. 11. Section 628(g) of the Communications Act of 1934, as amended, requires the Commission to report annually to Congress on the status of competition in the market for the delivery of video programming. Congress imposed this annual reporting requirement as one means of obtaining information on the competitive status of markets for the delivery of multichannel video programming delivery that would aid both Congress and the Commission in determining when there was competition sufficient to reduce or eliminate many of the regulatory restraints imposed on the cable industry.

[66] *Fourth Annual Report, supra* at para. 95.

[67] Allowing such joint ownership should have no effect on competition in the national advertising market because of differences in the geographic dimensions of this market.

[68] "Estimated Annual U.S. Advertising expenditures 1990–1996," Prepared for Advertising Age by Robert J. Coen, McCann-Erickson. See also Bernstein Research, Network Television Primer, February 1998 at 6 (showing advertising growth rates for cable networks and television).

[69] TV Ownership Further Notice, supra at 3571.

[70] Id.

[71] Id.

commenters to address the impact on diversity if we were to modify or eliminate the cable/television cross-ownership rule. Would any and all cable/television combinations lead to greater harm to diversity than other ownership combinations that Congress or the Commission permit? Since cable and broadcast television may be the closest substitutes in the video marketplace, should the Commission be especially vigilant in promoting diversity in the context of this rule?

51. *Experimental Broadcast Stations.* Subpart A of part 74 of the Commission's Rules [72] provides for the licensing of experimental broadcast stations. These are stations "licensed for experimental or developmental transmissions of radio telephony, television, facsimile, or other types of telecommunication services intended for reception and use by the general public." [73] A multiple ownership rule pertaining to experimental broadcast stations prohibits any person (or persons under common control) from controlling directly or indirectly two or more experimental broadcast stations unless it can be shown that the research program requires the licensing of two or more separate stations.[74]

52. Because this is an ownership rule pertaining to a type of broadcast station, we believe that section 202(h) of the Telecom Act requires the Commission to review the rule as part of its biennial broadcast ownership review. However, experimental broadcast stations generally are prohibited from providing regular program service.[75] Accordingly, it does not appear that they significantly participate in competitive or diversity markets. Nevertheless, we seek comment on whether this rule remains in the public interest.

IV. Waivers

53. As we begin this first biennial review of our broadcast ownership rules, we believe it is important to review and restate our approach to granting conditional waivers of broadcast ownership rules which are under active consideration by the Commission in a rulemaking or inquiry proceeding. Generally, we have not granted conditional waivers of a broadcast ownership rule simply on the grounds that the rule was the subject of an ongoing rulemaking or inquiry proceeding, believing that such a blanket approach would make our enforcement processes unworkable and would subject our regulatees to undesirable levels of uncertainty. Perhaps more importantly, such an approach would necessarily assume that compliance with the subject rule during the pendency of its review was not in the public interest, an assumption which would ordinarily lack a substantial record basis at the notice of inquiry or notice of proposed rulemaking stage of a proceeding. Nonetheless, there are limited areas of our broadcast ownership waiver practice where we have consciously departed from this general approach.

54. For example, in certain cases in recent years the Commission has granted interim waivers or extensions where a pending proceeding is examining the rule in question, the Commission concludes that the application before it falls within the scope of the proposals in the proceeding, and a grant of an interim waiver would be consistent with the Commission's goals of competition and diversity. This is most likely to occur where protracted rulemaking proceedings are involved and where a substantial record exists on which to base a preliminary inclination to relax or eliminate a rule. An example of this situation involves the TV duopoly rule geographic market standard currently under review in our local ownership rulemaking.[76]

55. In contrast to those situations, in our first biennial review of our broadcast ownership rules, we do not believe it appropriate to provide for conditional waiver of any of the ownership rules under review in this proceeding solely because of the pendency of this review. Here, for example, we do not have a protracted proceeding or substantial record on any of these rules that leads us to initial conclusions about any specific proposals to modify or eliminate any of the rules at issue here. In addition, we do not have substantial waiver experience suggesting an appropriate course of action regarding the rules under review herein. We retain, of course, both the right and the obligation to review any request for waiver of our rules based upon the specific facts in a particular case. What is important is whether the public interest would be served by a grant of the waiver.[77]

56. We are aware that in at least one case a conditional waiver of the radio-newspaper cross-ownership rule has been granted based upon the pendency of a proceeding.[78] To the extent that this decision suggests that the pendency of a proceeding by itself would be sufficient basis for a waiver, it is superseded, although as a matter of equity we do not alter its governance of the situation to which it was addressed.[79]

V. Conclusion

57. By this *Notice*, we solicit comments on these and any other issues pertinent to our review of our broadcast ownership and other rules. Commenters should frame their discussion and analysis in a manner consistent with our framework for addressing our historic competition and diversity concerns. We ask commenters to provide data and evidence to support their positions so as to facilitate objective analysis of the issues raised.

Administrative Matters

58. Pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before May 22, 1998, and reply comments on or before June 22, 1998. To file formally in this proceeding, you must file an original plus six copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus eleven copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. 20554. Copies may be obtained through the Commission's contract copier, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, DC 20036. ITS can also be reached at (202)857–3800 or by facsimile at (202)857–3805.

59. Subject to the provisions of 47 CFR 1.1203 concerning "Sunshine

[72] 47 CFR 74.101—74.184.

[73] 47 CFR 74.101.

[74] 47 CFR 74.134.

[75] 47 CFR 74.182.

[76] See Second Further Notice in MM Docket No. 91–221 & 87–7, 11 FCC Rcd 21655, 21681 (1996) (Commission states that granting waivers satisfying the proposed standard would not adversely affect its competition and diversity goals in the interim).

[77] See WAIT Radio v. FCC, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

[78] Letter to Joel Rosenbloom from Chief, Mass Media Bureau concerning ABC/Capital Cities-Disney Company merger, dated October 24, 1996, p. 2.

[79] We note that the staff, on March 6, 1998, granted an extension of the Tribune Company's temporary waiver to commonly own a television station and newspaper in the Miami, Florida market. Stockholders of Renaissance Communications Corporation, DA 98–456 (MMB March 6, 1998). That action was based on special circumstances and does not, in our view, stand in contradiction to the conditional waiver standard we articulate here.

Period" prohibitions, this proceeding is exempt from *ex parte* restraints and disclosure requirements pursuant to 47 CFR 1.1204(b)(1).

60. Accordingly, *it is ordered* that pursuant to the authority contained in sections 4, 11, 303, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 161, 303, and 403, and 202(h) of the Telecommunications Act of 1996, this Notice of Inquiry is adopted.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–8276 Filed 3–30–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 397

[FHWA Docket No. MC–96–10; FHWA–97–2334]

Recommendations on Uniform Forms and Procedures for the Transportation of Hazardous Materials

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Supplemental notice of report availability; request for comments.

SUMMARY: The FHWA is requesting public comment on the final report and recommendations of the Alliance for Uniform HazMat Transportation Procedures (the Alliance) concerning the implementation of a portion of the former Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA). The statute requires the Secretary of Transportation (the Secretary) to establish a working group of State and local government officials to establish uniform forms and procedures for the registration of persons that transport hazardous materials by motor vehicle. The working group is required to make recommendations to the Secretary on whether to limit the filing of State registration and permit forms and the collection of filing fees to the State in which the person resides or has its principal place of business. The Alliance is the working group created to fulfill the requirements of the statute, and accordingly, published its final report with recommendations on March 15, 1996.

On July 9, 1996, the FHWA published a notice indicating that the Alliance's report was available and requesting public comments on the report (61 FR 36016). After reviewing the comments received in response to the notice of availability, the FHWA has determined that it should seek additional public comment before the agency makes a decision on whether to implement the recommendations of the Alliance.

DATES: Written comments must be received on or before June 29, 1998.

ADDRESSES: Submit written, signed comments to Docket No. FHWA–97–2334, the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address from 10 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Motor Carrier Research and Standards, (202) 366–4009; Mr. James D. McCauley, Office of Motor Carrier Safety and Technology, (202) 366–9579; or Mr. Raymond W. Cuprill, Office of Chief Counsel, (202) 366–0834, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): http://dms.dot.gov. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Federal Register Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Federal Register's home page at: http://www.nara.gov/nara/fedreg and the Government Printing Office's database at: http://www.access.gpo.gov/su_docs.

Availability of The Alliance's Report

Electronic Access

The Alliance report has been posted on the Internet. The entire report may be viewed on the Internet, depending on the software being used, and/or downloaded. The report is in WordPerfect 6.1 format while the forms contained in Appendix F of the report are in Graphics Interchange Format (GIF)—a standard format for digitized images. Users will need a graphics viewer to see the GIF file.

There are several ways to access the report on the Internet. The most direct method is as follows: http://www.fhwa.dot.gov/omc/alliance.html.

Alternatively, the report may be accessed through the FHWA's Office of Motor Carriers (OMC) home page located at http://www.fhwa.dot.gov/omc/omchome.html. This site contains general information on the OMC and its programs as well as links to online Federal Motor Carrier Safety Regulations and regulatory guidance, and Federal Hazardous Materials Regulations. When accessing the Alliance report from the OMC home page select the following hyperlinks:

1. Special Program Areas.
2. Final Report: Uniform Program Pilot Project.

Whichever approach is used, users may scroll through the table of contents and access the desired section of the report by clicking on the appropriate heading.

Ordering Copies of the Alliance Report

Copies of the report ("Final Report: Uniform Program Pilot Project," March 15, 1996) may be ordered from the National Governors' Association (NGA) Publications Center at (301) 498–3738. The NGA Publications Center will charge a shipping and handling fee for all orders.

Background

Section 5119 of title 49, United States Code, requires the Secretary to establish a working group of State and local government officials to develop recommendations on uniform forms and procedures that the States can use to register and permit persons that transport, or cause the transportation of, hazardous materials by motor vehicle. The working group is also required to make recommendations as to whether the filing of registration and permit forms, and the collection of related fees, should be limited to the State in which a person resides or has its principal place of business. In developing its recommendations, the group is required to consult with persons who are subject to these registration and permit requirements. The recommendations of the working group are to be included in a final report to the Secretary.[1] Finally, section 5119 requires the issuance of regulations implementing those

[1] The report is to be also submitted to the Committee on Commerce, Science, and Transportation of the U.S. Senate, and the Committee on Public Works and Transportation of the U.S. House of Representatives.

recommendations with which the Secretary agrees.

Section 5119 was originally enacted as section 22 of the Hazardous Materials Transportation Uniform Safety Act of 1990 (Pub. L. 101–615, 104 Stat. 3244; November 16, 1990). The HMTUSA amended the Hazardous Materials Transportation Act of 1974 (HMTA), Pub. L. 93–633, 88 Stat. 2156, which granted regulatory and enforcement authority to the Secretary to provide adequate protection against the risks to life and property inherent in the transportation of hazardous materials in commerce. The HMTA was designed to replace a patchwork of State and Federal laws and regulations concerning hazardous materials transportation with a framework of uniform, national regulations. The HMTA and HMTUSA were repealed by Public Law 103–272 (108 Stat. 745, 1379; July 5, 1994) with the statutory provisions applicable to the transportation of hazardous materials recodified at 49 U.S.C. 5101 *et seq.*

Implementation of Section 5119

Creation of the Alliance for Uniform HazMat Transportation Procedures

In 1991, the NGA and the National Conference of State Legislatures (NCSL) were awarded a contract to coordinate the staffing and operations of the working group. The NGA and NCSL presented recommendations to the Secretary for the establishment of a panel to carry out the tasks of the working group. The panel was approved by the Secretary and held its first meeting in January 1992, at which time it selected the title "the Alliance for Uniform HazMat Transportation Procedures" or "the Alliance."

The Alliance authorized the formation of four subgroups to address specific areas of State hazardous materials transportation regulation. Industry representatives were invited to participate in the subgroups. The subgroups were:

1. Shipper and Carrier Registration Subgroup;
2. Shipper and Carrier Permitting and Licensing Subgroup;
3. Operational Issues Subgroup; and,
4. Audit and Enforcement Subgroup.

Each subgroup was asked to examine current State practices, identify the extent to which State practices are uniform, identify barriers to uniformity, and make recommendations for criteria on which a uniform State program would be based.

Pilot Study

In May of 1992, the Alliance proceeded with the design and implementation of a two-year pilot project. The project was based upon the following assumptions/ recommendations:

1. Base-state system for registration and collection of fees;
2. Reciprocity between states that require permits;
3. Additional information for hazardous waste transporters;
4. Individual state enforcement authority;
5. Participation by localities; and
6. Establishment of a governing board to manage the pilot project.

The FHWA funded a two-year demonstration program for four States. During the first year, each State would develop the internal administrative procedures and organization to conduct a test of the Alliance's recommended program. During the second year, the States would implement the program for motor carriers involved in the transportation of hazardous materials.

In November of 1992, the Alliance contacted State hazardous materials transportation program administrators to solicit participation in the pilot study. The States of Minnesota, Nevada, Ohio, and West Virginia were chosen based upon the following criteria established by the Alliance:

1. The Governor and State legislature were committed to taking the necessary legislative and administrative actions to conduct the State's hazardous materials transportation programs under the principles and operating procedures of the Alliance's recommendations;
2. The regulated community within the State was committed to supporting participation in the program;
3. The State had experience in the registration and permitting of hazardous materials, and/or in the transportation of radioactive materials;
4. The group of States chosen reflected "geographic diversity;"
5. At least one pilot State had a "major locality" with a hazardous materials transportation registration or permitting program.

Between July 1, 1993, and June 30, 1994, the States completed the legislative and administrative work necessary to participate in the pilot study. On July 1, 1994, the pilot States began registering and permitting motor carriers in accordance with the Alliance's recommendations. Each participating State was given the opportunity to select one of the following three options for implementing the Alliance's Uniform Program:

1. The State could apply the requirements of the Uniform Program to all motor carriers (interstate and intrastate); or
2. The State could apply the requirements only to domiciled, interstate motor carriers that operate in two or more of the pilot States; or,
3. The State could select an even smaller sample of interstate motor carriers. Minnesota, Ohio, and West Virginia used option one while Nevada selected option two for the first round of registration and permitting with the intent of expanding the program to all motor carriers during the second program year.

The Alliance's Conclusions

On March 15, 1996, the Alliance submitted its final report and recommendations to the FHWA. The Alliance concluded that the pilot study met the uniformity mandate of 49 U.S.C. 5119. The report states that all of the pilot States support the program and believe that other States should join the program to increase the benefits provided by this uniform program and to spread the administrative load presented by multi-state carriers. The report also states that industry participants support making the program uniform in all States, although the industry believes that a shorter application form and a simplified formula for calculating fees should be used. The Alliance's report is available for review in the docket and may be viewed and downloaded from the Internet.

Discussion of Comments

The FHWA received 20 comments in response to the July 9, 1996, notice. The commenters were: The Advocates for Highway and Auto Safety (the Advocates); the Alliance for Uniform HazMat Transportation Procedures (the Alliance); the Association of Waste Hazardous Materials Transporters (the AWHMT); Blair America, Inc.; the Coalition for the Advancement of Uniform Hazardous Materials Registration and Permit Forms and Procedures (the Coalition); the Commercial Vehicle Safety Alliance (the CVSA); Du Pont-Sentinel Transportation Company (Du Pont-Sentinel); Idaho Department of Law Enforcement, State Police Division (the Idaho State Police); Institute of Makers of Explosives (the IME); Iowa Department of Transportation (the Iowa DOT); Michigan Department of Environmental Quality (the Michigan DEQ); Michigan Department of State Police (the Michigan State Police); National Customs Brokers and Forwarders Association of America, Inc. (the NCBFAA); National Fire Protection

Association (the NFPA); National Tank Truck Carriers, Inc., (the NTTC); New Jersey Department of Law and Public Safety, Office of the Attorney General (the New Jersey Attorney General); Northeast Waste Management Officials' Association (the NEWMOA); Ohio Public Utilities Commission (the Ohio PUC); Roadway Express, Inc. (Roadway); and, the Wisconsin Department of Transportation (the Wisconsin DOT).

Comments in Support of Implementing the Alliance's Recommendations

The FHWA received 12 comments in support of the Alliance's recommendations. The commenters were: The Alliance, the AWHMT, the Coalition, the CVSA, Du Pont-Sentinel, the Michigan State Police, the NCBFAA, the NFPA, the NTTC, the Ohio PUC, Roadway, and the Wisconsin DOT.

The Alliance discussed its work to develop the Uniform Program and objected to the manner in which the FHWA presented the information contained in the July 9, 1996, notice. The Alliance stated:

Overall, we are extremely disappointed that the notice misrepresents both the purpose of 49 USC 5119 (formerly referred to as Section 22 of the Hazardous Materials Transportation Uniform Safety Act of 1990) and the process by which the Alliance arrived at its recommendations. We are also concerned that the Federal Highway Administration has exceeded its rulemaking authority under 49 USC 5119 under which "the Secretary shall issue regulations implementing those recommendations contained in the report transmitted to the Secretary (c) with which the Secretary agrees," to question the validity of a state hazardous materials program. The Act does not preempt state hazardous materials programs. It relates only to uniformity.

Furthermore, by omitting the words "to the State in which the person resides or has its principle place of business," from the paraphrasing of Section (a)(2), it suggests that the Secretary can somehow limit State fees. The Act specifically states that the Secretary CANNOT limit fees as long as such fees are used to enhance the safe transportation of hazardous materials by motor carriers. The language used by the FHWA in the opening summary suggests that the agency believes it has the authority to determine the value of a state hazardous materials registration program. We strongly object to this representation of 49 USC 5119.

When the Alliance working group was created in January, 1991, thirty-nine states conducted some form of registration and/or permitting program for motor carrier transportation of hazardous materials. At its initial meeting, the Alliance stated that its task was not to reinvent the state programs, but to reconcile the differences among these existing programs. Furthermore, the act required the working group to examine the feasibility of a base state system.

The recommendations contained in the final report submitted by the Alliance accomplish both of these objectives. The findings and recommendations represent two years of hearings and deliberations as well as two years of field testing. Over this four year period the Alliance working group and the Governing Board conducted 24 open meetings in which they heard and considered both state and industry concerns. We recognize that no state or industry association got everything that it wanted out of the Alliance deliberations. That was to be expected. To their credit, many states and many industry representatives supported compromises on very controversial issues that moved the process forward. The Alliance has heard and deliberated on every suggestion brought to its attention. Although the working group and Governing Board rejected some suggestions, it does not mean that they did not listen to them.

The Coalition (a group consisting of the American Trucking Associations, the Association of Waste Hazardous Materials Transporters, National Tank Truck Carriers, National Private Truck Council, Hazardous Materials Advisory Council, Ohio Trucking Association, Minnesota Trucking Association, Nevada Motor Transport Association, and West Virginia Motor Truck Association) indicated transportation of hazardous materials is "highly" regulated due to the dangers associated with these commodities. The Coalition also indicated that the overall safety record for transportation of hazardous materials is "excellent" and incidents are kept to a minimum by strict regulatory requirements enforced by Federal and State personnel. The Coalition stated:

[M]any states and localities believe that hazardous materials transportation must be even more tightly controlled and have implemented registration and permitting programs within their jurisdictions. In recent years, approximately 49 separate programs with 49 different application requirements have arisen.

The Coalition is concerned that these state and local programs will continue to multiply at an escalating pace. With approximately 33,000 jurisdictions in the United States, it is possible that there could be literally thousands of separate permitting and registration programs in the future with attendant fees. This is especially true when one considers the current misperception that transporters of hazardous materials are prone to accidental releases.

The Coalition also indicated it believes Congress, through 49 U.S.C. 5119, has charged the Secretary with the responsibility to halt the proliferation of non-uniform requirements. The Coalition stated:

Congress recognized that the states have a legitimate role in registering and permitting motor carriers who transport hazardous materials. One way to strike a balance between eliminating the proliferation of non-uniform requirements and allowing states and localities an appropriate registration and permitting role is through the development of a federally specified and state-run registration and permitting program. To that end, Congress has charged the Secretary of Transportation with investigating that possibility (49 U.S.C. 5119). It was intended that such a uniform and reciprocal program would apply only to those states that wish to register or permit motor carriers. In any such program, states would be required to make use of the latest technologies and systems in order to determine motor carrier fitness for operating as a hazardous materials transporter. That is the essence of the recommendations of the Alliance as set forth in its "Final Report." The Final Report, which describes the Uniform Program pilot project, was submitted to the Secretary by the Alliance Interim Governing Board on March 15, 1996.

The Coalition is very familiar with the contents of the Final Report and supports its general conclusions and approach, even though we do not concur with every technical detail. The Coalition recommends that FHWA move forward with rulemaking on the Alliance recommendations immediately. The Final Report is an accurate account of the pilot project that tested the recommendations of the Alliance in the states of Minnesota, Nevada, Ohio, and West Virginia. The pilot proved that the system can work, if properly structured and administered. Indeed, a number of states are interested in becoming members of the Alliance, especially since the Uniform Program provides them a "safe harbor" from preemption of their registration and permitting laws.

The Coalition argued that the slow pace of the FHWA's decisionmaking process and lack of funding has created confusion and frustration for the States. The Coalition stated:

[S]tates are unwilling to abandon current programs in return for the existing Uniform Program because of uncertainty about FHWA's commitment to follow through on the congressional directive to implement a state-based uniform hazmat permitting and registration program. The uncertainty is heightened by the slow pace FHWA has set for this rulemaking and the lack of continuing FHWA financial support for those states that are continuing to carry on the Uniform Program. In fact, one of the states presently in the four state alliance is on the verge of implementing a new non-uniform program because of the absence of federal guidelines. Consequently, many states have been left in limbo because of the lack of Federal direction, leading them to either maintain the status quo or proceed on their own with non-uniform programs.

Therefore, the Coalition strongly recommends that FHWA make the rulemaking process for uniform procedures for hazardous materials transportation a top priority. Failure to do so will only result in continued confusion and frustration. Industry and government representatives

worked diligently to devise the Uniform Program and to test its recommendations. While there are still many compromises in the final recommendations, the Coalition endorses the concepts of the Uniform Program.

The AWHMT stated:

Members and staff of the Association have been involved in the development of the Uniform Program since the issue of state authority for qualifying carriers of hazardous materials was debated in Congress prior to the enactment of the 1990 amendments to the Hazardous Materials Transportation Act (HMTA) which authorize this rulemaking. At that time, we recognized that any credible program of credentialing carriers would have to rely on the participation of states because the federal government lacks the manpower to perform this task. However, the duplication and redundancy of unfettered state administration of such programs created intolerable burdens for interstate carriers.

The determination of states to remain major players in the registration and permitting of motor carriers transporting hazardous materials has not abated since the enactment of the 1990 amendments. In fact, the number of permitting and registration programs has grown. Currently, all but 11 states administer some type of hazardous materials registration and/or permitting program.

The AWHMT expressed concern about what it termed "the lack of federal financial support to carry the Uniform Program forward to national implementation." The AWHMT indicated that the FHWA has not continued financial support to the pilot States or other States that would like to participate in the Uniform Program. The AWHMT stated:

Four states are carrying the burden of this program for the nation. It is unclear how long the pilot states are able and willing to support the Uniform Program before other states agree to share the load. Other states are, as outlined in the Coalition comment, waiting for DOT's final rule. Every day implementation of this rule is delayed past the November 17th trigger, we believe FHWA should financially assist its pilot program "state partners." If no support is forthcoming, FHWA owes it to these state partners to finalize, as expeditiously as possible, the Uniform Program.

The CVSA stated:

Congress recognized the role the states play to assure the safe transportation of hazardous materials. States concerned about the quality of such carriers have been unable to effectively ensure compliance of non-domiciled carriers operating in their jurisdictions. The Uniform Program provides a mechanism to reciprocally recognize the reviews performed by other states on non-domiciled carriers. The ability to prequalify hazmat carriers in a reciprocal fashion is necessary to facilitate the "seamless" flow of commerce across state lines that FHWA envisions through other initiatives it is pursuing such as CVISN (Commercial Vehicle Information System Network). States will also realize more efficient use of resources as the burden of regulating the nation's interstate carriers is distributed among the states.

CVSA believes it is critical to move forward with the Uniform Program in an expeditious fashion. States are willing to participate in the Uniform Program. However, Congress empowered the Secretary to issue regulations implementing only those recommendations of the Alliance with which the Secretary agrees. Thus, the possibility that FHWA will not finalize the Uniform Program as recommended in full by the Alliance has a chilling effect on additional state participation.

Three State agencies submitted comments in support of the Alliance's recommendations. One of the State agencies, the Ohio PUC, participated in the negotiations of the original Alliance working group and as a pilot State during the two-year pilot program. The Ohio PUC stated:

The Commission has registered and permitted over three thousand hazardous materials carriers, including over three hundred hazardous waste transporters under the Uniform Program. Based upon its experience during the working group negotiations and as a pilot state, the Commission believes that the Uniform Program represents a consensus between the States and the regulated industry.

The Ohio PUC recommended that the FHWA carefully examine the issue of continued financial support for the Alliance until implementation of the Uniform Program is completed. The Ohio PUC stated:

(T)he Commission's support for reciprocity is conditioned upon adequate financial support from the FHWA for the national repository and the Alliance Interim Governing Board until the Uniform Program is fully implemented. In the Final Report, the Alliance provides a detailed summary of the costs of maintaining the infrastructure necessary for reciprocity. *Final Report: Uniform Program Pilot Project*, March 15, 1996, at 53–54. The experience during the pilot process demonstrates that there is an infrastructure necessary for reciprocity among the States. It is unrealistic to expect that the four states now in the Uniform Program can bear the costs of maintaining the infrastructure necessary for reciprocity without assistance from the FHWA until the Uniform Program is fully implemented.

The Michigan State Police believe implementation of the Uniform Program would improve compliance with hazardous materials regulations and improve safety. The Michigan State Police believe the Alliance's program can be implemented without adversely impacting the State's need to place administrative controls on hazardous materials carriers.

Two motor carriers provided comments in support of the Uniform Program. DuPont-Sentinel stated:

Our organization supports the Alliance recommended Uniform Permitting system. We feel it is a reasonable balance between the effort required of carriers to generate data and the information needed by the states to perform an adequate background check and determine carrier safety history. Critics will argue that the information requirements of the proposed program are somewhat more complex than many existing state permits. While this is true to a certain extent, the additional requirements also mean those states will have more detailed information than they presently use to continue making sound decisions about carrier safety performance and permit qualifications.

We have found the informational burdens imposed by the recommended uniform system are not overly intrusive to us or to our interstate hazardous material/waste carrier industry. When the more complex, but uniform, requirements are weighed against the current disjointed myriad of various state requirements for different information, our company alone will be able to save approximately $8,000 per year in administrative cost under the uniform program. We feel that other carriers handling hazardous materials and wastes in multiple states will see the same effect. Thus any additional complexity of data supplied by the carrier is more than outweighed by the benefit of only having to have the same set of uniform data for each state.

DuPont-Sentinel also indicated that it believes reciprocity between State permitting and registration programs will greatly enhance each State's ability to assess motor carriers' compliance with the hazardous materials regulations. DuPont-Sentinel stated:

Our opinion is that reciprocity would mean all the involved states would each be responsible for determining the safety fitness of a fraction of the present number of carriers, with the same level of state revenues to fund these assessments. Thus the states would have the time and funding to perform a much more intensive investigation of the fewer carriers which are based in their state for permitting purposes. By almost any logic, this should result in a much higher level of highway safety because the carriers which are qualified by the state to handle hazardous materials will be more thoroughly investigated than they are today. Thus only those carriers which can clearly demonstrate to the base state a proven history of safe performance and compliance with existing standards will be allowed to transport hazardous materials.

Roadway stated:

We agree that transporters of hazardous materials should be held to high standards and do not dispute the right of regulators to monitor safe transportation. However, a regulatory scheme that allows more than 30,000 jurisdictions to develop individual programs in a hit-or-miss scheme is detrimental overall to safety.

FHWA Response to Commenters Supporting the Implementation of the Alliance's Recommendations

The FHWA understands the commenters concerns about the need to establish uniformity and reciprocity between the States' permitting and registration programs. However, the agency does not believe that the information provided to date from the States and hazardous materials, substances, and wastes transporters is sufficient to support issuing a notice of proposed rulemaking (NPRM) to adopt the Alliance's recommendations. Prior to issuing an NPRM the agency must assess the costs and benefits (safety and economic) of implementing the Alliance's recommendations. A major factor in assessing the costs is the extent to which the States would be required to modify their existing programs and the development of the information-system infrastructure needed for the States to share information on motor carriers' safety performance. Because of the lack of comments from the State agencies administering permitting and registration programs, the FHWA cannot determine the costs of implementing the Alliance's program.

With regard to benefits, neither the Alliance's final report nor the comments received in response to the July 9, 1996, notice provided information to enable the FHWA to estimate the benefits of implementing the Alliance's Uniform Program. Although several commenters believe the overall costs to motor carriers will be reduced, the agency does not believe it is possible to make such an assertion without determining all of the costs associated with implementing the Uniform Program and identifying the sources of revenues or funding to meet those costs. In the absence of Federal funding, the most likely source would be the registration and permit fees paid by motor carriers. The State agencies did not indicate whether their fees would be adjusted to cover the costs of implementing the Uniform Program. Therefore, it is inappropriate to assume that the costs for the industry would decrease.

Although the Alliance indicated in its comments that 24 "open meetings" were held and the concerns of the States and industry were considered, the comments received to date suggest the Alliance's proposed uniform program does not effectively reconcile the differences among existing State programs. The FHWA notes that only three State agencies submitted comments in support of implementing all of the Alliance's recommendations. Two States and the NEWMOA supported the adoption of the Alliance's uniform program for hazardous materials and substances transporters, but opposed applying the program to the permitting of hazardous waste transporters. Two other States opposed implementing any of the elements of the Alliance's Uniform Program. The comments from the States opposed to some, or all of, the Alliance's recommendations are an indication that certain aspects of the Uniform Program are not, as currently presented, acceptable to those States for incorporation into their permitting and registration programs. A detailed discussion of the comments from States opposed to some, or all of, the Alliance's recommendations is provided in the next section of this notice. This is particularly important because of the preemptive effect that the Alliance's recommendations, if implemented by the FHWA, would have on the jurisdictions that have not adopted the Uniform Program.

Section 5119(c) of title 49 of the United States Code requires that a regulation prescribed under this subsection must take effect one year after it is prescribed. The Secretary may extend the one-year period for an additional year for good cause. After a regulation is effective, a State may establish, maintain, or enforce a requirement related to the same subject matter only if the requirement is the same as the regulation. Therefore, if the FHWA implemented the Alliance's recommendations, each State with a permitting and/or registration program that differs from the Alliance's Uniform Program would be required to either modify its program to conform completely to the Alliance's program, or cease its permitting and/or registration program. The FHWA believes there are significant costs associated with having each of the States modify its respective program and it would be inappropriate to initiate a rulemaking action at this time without determining the total economic burden on the States. Section 5119 does not provide Federal funding for the States to make the transition from their current registration and permitting programs to the Uniform Program, and it is not evident to the FHWA that the States are prepared to absorb all the costs associated with implementing the Uniform Program.

The FHWA believes that prior to initiating a rulemaking to implement the Alliance's recommendations, the agency must be assured that the States are prepared to fund all costs associated with entering into the Uniform Program, and have the means to sustain the Uniform Program without support from the FHWA. Federal funding was provided to the four pilot States to participate in the study, but currently no funding has been designated to support the continuation of the Uniform Program in the pilot States or the enrollment of the remaining 46 States and the District of Columbia.

In addition to the costs for each of the States to adopt the Uniform Program, there are costs associated with establishing an information-system infrastructure for nationwide implementation of the Uniform Program and funding the operations of the Governing Board. The Alliance estimates the annual administrative costs (e.g., the Governing Board, maintaining the repository, etc.) of a fully-implemented Uniform Program covering all of the States and the District of Columbia would be approximately $400,000. This amount does not include the annual costs for each of the States to participate in the Uniform Program. Since Congress did not authorize Federal funds for the implementation of the Uniform Program, the administrative costs for the Uniform Program would have to be financed through fees paid by the motor carriers subject to the permitting and registration requirements. Therefore, the registration and permitting fees charged by the States may need to be increased in order to cover both the costs for the States to operate under the new base-State procedures, and the costs for administering a nationwide network.

The FHWA notes several commenters indicated there is a need for continued Federal funding for the pilot States and the Interim Governing Board. The expectation that the FHWA would continue funding for the pilot States proves that the Uniform Program, as tested by the Alliance, is not self-sufficient. Although commenters argue the pilot States are being forced to absorb the costs for maintaining the Uniform Program until it is fully implemented, the FHWA does not believe participation in the Pilot Project should have resulted in an undue financial burden on the participating States. With the exception of West Virginia, each of the participating States had a registration and/or permitting program in effect prior to volunteering to join the Pilot Program. The FHWA did not provide funding for these non-reciprocal programs. Federal funding was provided to assist in making the transition from the old registration and permitting system to the Uniform Program, and in the case of West Virginia, to establish a registration and permitting system under the Pilot Program. Therefore, the pilot States

were responsible for charging the necessary registration and permitting fees to cover the costs associated with their programs, and their respective shares of the administrative costs associated with the four-State information-system infrastructure and the Interim Governing Board.

The FHWA believes the administrative costs for the infrastructure and the Interim Governing Board should be proportional to the number of States and motor carriers covered by the Uniform Program. The Uniform Program only has four States participating at the present time and the costs for administering the current program should not pose a problem for the participating States. The FHWA disagrees with the commenters' inference that there is fixed cost for the nationwide information-system infrastructure and Governing Board for which the pilot States must bear the full burden until other States adopt the Uniform Program. If more States join the Uniform Program, it is reasonable to expect that each State will bear the financial burden for its involvement and its share of the infrastructure. The commenters have not provided details on why the costs for the pilot States' current activities exceed the financial resources available from the fees charged to the hazardous materials, wastes, and substances transporters.

The FHWA must emphasize the fees charged by the pilot States were not limited by the FHWA. Section 5119 does not give the agency authority to limit the registration and permitting fees collected by States from motor carriers. However, 49 U.S.C. 5125(g) requires that if a State, political subdivision of a State, or Indian tribe imposes a fee related to hazardous material transportation, the fee must be "fair" and used for a purpose related to hazardous material transportation, including enforcement and planning, developing, and maintaining a capability for emergency response. Each State has the responsibility of determining the fees it believes are necessary to support its hazardous materials safety programs. The States also have the responsibility for taking into consideration the percentage of those fees that must be distributed to other States in the Uniform Program. Presumably, the State that has the burden of processing a motor carrier's application and performing the investigation of the carrier would take the greatest share of the fees paid by the carrier. The percentage of the fees distributed to other States would be based upon an appropriate assessment of those States' roles in ensuring the safe operation of the carrier. For whatever reason, the fee collection and distribution system used in the Pilot Project did not achieve self-sufficiency.

The FHWA agrees with the Coalition's statement that there is a need to halt what it terms "the proliferation of non-uniform requirements." However, the agency does not believe the States' uncertainty about the outcome of the FHWA's review of the Alliance's recommendations is an obstacle to achieving uniformity or reciprocity. The States have independently developed permitting and registration programs with no apparent movement toward the use of uniform forms and procedures. The States have also been reluctant to implement reciprocity provisions in their permitting and registration programs. The Congress recognized the States' reluctance to establish uniformity and reciprocity and charged the Secretary with the responsibility to establish a working group to study the issue and, upon completion of the working group's final report, implement the recommendations with which the Secretary agrees.

The FHWA reviewed the final report and recommendations of the Alliance and, after considering the complexity of the issues covered in the report and the potential economic impact on the States, issued a notice requesting public comments on the report. The agency concluded that it would have been inappropriate to assume the Uniform Program was acceptable to most of the States, and that the States were prepared to absorb all the costs of implementing the Uniform Program.

In response to comments about one of the four pilot States discontinuing its participation in the Uniform Program, the agency strongly encourages each of the pilot States to maintain the current reciprocal arrangements. The FHWA also encourages other States to examine the potential for achieving reciprocity in permitting and registration programs. If the common goal is to ensure the safe transportation of hazardous materials, there should be a common approach to accomplishing the goal. The States are not prohibited from having reciprocal agreements and there is no readily apparent reason for the States' refusal to cooperate with neighboring jurisdictions to establish reciprocity. Irrespective of whether there is a Federal mandate, the States should establish reciprocal agreements whenever possible.

Comments in Opposition to Implementing All of the Alliance's Recommendations

Eight commenters opposed implementation of some, or all of, the Alliance's Uniform Program. The Advocates, Blair America, Inc., the IME, the Idaho State Police, and the Iowa DOT opposed implementing the Alliance's recommended program. The Michigan DEQ, New Jersey Attorney General, and the NEWMOA support implementing the Alliance's recommendations for hazardous materials transportation, but oppose mandating reciprocity of permitting requirements for hazardous waste transporters.

The NEWMOA [2] stated:

Generally, our state hazardous waste programs approve of the uniform permit forms that the Alliance and its support staff have developed. However, we continue to have serious reservations about the effects that base-state permitting/permit reciprocity and related issues will have on our state's ability to effectively regulate hazardous wastes. These reservations persist despite a number of major improvements to the model program that were made by the Alliance and its staff to address our, and other states", concerns. We believe that, to a considerable degree, these concerns are rooted in differences between relevant statutory goals that may be difficult to reconcile without additional public airing of the environmental regulatory issues that we raise. Finally, we would like to briefly address DOT's policy concerning preemption of state hazardous waste regulatory requirements. While this policy is not addressed by the Alliance's report it has, in our view, a bearing on your agency's decisions regarding the Alliance's recommendations and their implementation.

The NEWMOA indicated that each of its member States has a rigorous permitting program for hazardous waste transporters and facilities where wastes are stored and transferred. Each of the States requires extensive disclosure of ownership, criminal history, and history of compliance with environmental and safety laws and regulations as a condition for receiving and maintaining a permit. The NEWMOA stated:

These state programs were created to fill a major gap in the "cradle to grave" regulatory concept for hazardous wastes that was envisioned by congress and is encouraged in RCRA (Resource Conservation and Recovery Act). Our accumulated experience has taught our states that any activities involving wastes require a higher degree of regulatory scrutiny than activities involving commercial commodities which have value. An unfortunate part of this experience is the

[2] The NEWMOA is a non-partisan, nonprofit interstate association that was established by the Governors of the New England States as an official interstate, regional organization, in accordance with section 1005 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 *et seq.* The membership consists of State environmental agency directors of the hazardous waste, solid waste, waste site cleanup, and pollution prevention programs in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont.

legacy of soil and groundwater contamination present in each of our states. This contamination, in part, is the result of hazardous wastes discharged prior to current environmental standards being implemented at either the state or federal level. Section 22 of HMTUSA does not mention or address this critical element of our state hazardous waste programs. Thus, it is not surprising that the Alliance and its staff have had difficulty addressing our concerns. While we believe that the Alliance's Model Program should improve the overall regulation of hazardous materials transportation, we fear that it would, as presently proposed, erode adequate cradle to grave control of hazardous waste over time.

The concept of reciprocity appears reasonable enough when applied to the relatively straightforward permit issues involved in transportation safety. However, permit reciprocity becomes more complicated when applied to less quantifiable issues, such as business integrity, that are important considerations when regulating hazardous wastes. The degree of investigation required in such permit reviews is often a matter of judgement, based on experience and knowledge of a transporter's operations, making the overview of such activities by a peer review group difficult to administer and enforce, and unrealistically demanding of resources. Consequently, NEWMOA's directors do not feel confident that the peer review mechanism would ensure consistently adequate permit reviews.

The Michigan DEQ stated:

The program needs to develop flexibility to handle non-Hazardous Materials (HazMat) regulated wastes. Many states have developed programs which take into account historical problems which go beyond the scope of HazMat regulated materials such as hazardous waste managed under the Resource Conservation and Recovery Act. Hazardous waste is a specific subset of the HazMat regulated under the program and has a completely different set of problems associated with it, primarily because it has no inherent value (i.e. it is not a product, but a waste that is normally being transported for disposal). States, therefore, set up specific licensing/permitting programs for dealing with this material that go beyond safety aspects of the carriers and other HazMat concerns to assure that the waste is effectively transported and disposed. The proposed Alliance recommendations for a Uniform program do not take into account the concerns that states have to deal with concerning transportation of hazardous or other wastes. Each state should be allowed to develop licensing/permitting programs that reflect the state's particular needs and historical problems.

State agencies in Idaho and Iowa opposed all aspects of the Alliance's Uniform Program. The Idaho State Police stated:

The Uniform HazMat Transportation Procedures as recommended in the Alliance's final report would negatively impact Idaho's efforts and thus negatively impact transportation safety in our state. The new system would preempt the state fee with no guarantee of replacement funding. The Idaho State Legislature is unlikely to adopt the procedures.

The Alliance's Uniform HazMat Transportation Procedures are more complex and stringent than mandated by Section 22 of HMTUSA. The model creates another regulatory agency at a time when government agencies and regulations are being minimized. The new agency would also have some authority without being a governmental agency or answerable to elected officials.

Due to the complexity of the procedures, administrative costs would increase when the purpose of the mandate is to reduce costs to government and carriers. The state fee collecting agency, now under constraint to consolidate and simplify procedures, will not be supportive of the additional administrative burden. Considerable training and carrier assistance would be required to implement the new system. Carrier fees would also be used to support the Board and national staff functions, a new cost. In the final report, concern was expressed regarding lower revenues to the states. The response was a suggestion to increase the registration fees which nullifies the economic advantage being described in the report.

The Advocates expressed concern that the Alliance's final report did not include an assessment of potential health and safety benefits for implementing the Uniform Program. The Advocates stated:

Our primary concern with the report centers on the findings and recommendations of Section V: Enhancement of Health and Safety. In this section, the report's authors cite a continuing urgency on the part of FHWA officials for a demonstration that the mechanisms of the four state pilot programs actually increase public benefits by improving the consequent health and safety of hazmat transport. The agency wanted assurances that the fundamental concepts of the pilot programs such as base state registration and reciprocity generate verifiable reductions in hazmat incidents. The report, p. 38.

The report responds to this urgent plea for demonstrable health and safety benefits by indicating that safety benefits consist of an overall increased awareness of the need for carriers to augment the quality of their internal oversight processes which can produce better operations through improved compliance with the various requirements of hazmat transport. *Id.*

Advocates agrees that a pilot program cannot by itself produce an uncontested increase in safe hazmat operations, given the small number of states and the lengths of pilot program participation. We seriously doubt that sufficient statistical power could be produced from the small sample sizes in four pilot states' hazmat operations over just a few years.

Nevertheless, we ultimately agree with the FHWA's insistence on "bottom line" health and safety benefits that must be generated from the program if it is to serve as (a) model for federal regulatory action nationwide. There must be a clear and convincing demonstration that the proposed system of registration and reciprocity not only produces improved internal oversight and review by hazmat carriers, and arguably improved compliance with hazmat regulations, but also significant and sustained decreases in hazmat incidents and their severity.

The Advocates also commented about findings in the report that show "widespread, chronic violation of threshold requirements and responsibilities of hazmat carriers, such as insufficient limits on hazmat transportation insurance, partial or non-existent registration and/or permit securement, and unresolved civil forfeiture payments for violations." The Advocates stated:

It is clear that some of the hazmat carriers detected through the pilot program present a danger to public health and safety, and to environmental protection, and, in some cases, an imminent threat to public health and safety. Even casual extrapolation of these findings beyond the four pilot states is a cause of grave concern to national safety organizations such as Advocates and should be a strong motivating factor in the FHWA's resolve to require stringent reforms through the hazmat transportation regulations to verifiably advance public health and safety.

Blair America, Inc., one of the motor carriers that participated in the Alliance's pilot study, opposed implementing the Alliance's Uniform Program. Blair America stated:

Of the four states in the Alliance, we transport HazMat through only two of them (OH and WV), yet we were forced to pay larger fees to the two other states through which we never transport HazMat loads. Of the $275.00 we pay to the Ohio P.U.C. for HazMat registration, $155.00—more than 56% of the total—is distributed to MN and NV, states through which we do not transport hazardous materials. To us, this is just throwing money away because it does us no good, but is a windfall to the states which do nothing to earn it.

FHWA Response to Commenters Opposed to Implementing the Alliance's Recommendations

The FHWA believes the States' concern that the Uniform Program does not provide adequate procedures for ensuring oversight of hazardous wastes transporters can be resolved through further negotiations between the Alliance and the State agencies responsible for regulating the transportation of hazardous wastes. The commenters indicated it is necessary to require extensive disclosure of company ownership, criminal history of company management, and history of compliance with environmental and safety laws and regulations as a condition for receiving and maintaining a permit. The FHWA

understands the States' desire to know as much as possible about hazardous waste transporters, but cannot pinpoint specific reasons why the States cannot achieve reciprocity.

Part III of the model application developed by the Alliance includes questions for transporters of hazardous waste. The form requests the full name, date of birth, driver's license number and all aliases used for individuals who hold, or have held in the last three years, certain management positions. The application form also requests information on parent companies, affiliates and subsidiaries, major contractors and clients. In addition, the form has a legal proceedings section for information on past criminal activities. The commenters did not provide explanations of why the information requested in the Alliance's model application would not, if accurately documented, be satisfactory in identifying high-risk motor carrier operations that should be denied a permit.

The FHWA notes that achieving uniformity and reciprocity requires compromise on the part of all of the States. The agency is concerned that the States have not displayed a willingness to compromise on the specific information requested from motor carriers or the procedures used to verify information provided on registration and permitting forms. The agency strongly recommends that each State make a clear distinction between concerns about the fee collection and distribution process and concerns about the information requested on the registration/permitting form(s) when deciding whether to support or oppose the Alliance's Uniform Program. This will enable the Alliance to more effectively respond to the States' concerns.

With regard to commenters reference to the RCRA, the agency has carefully reviewed the statutory requirements codified at 42 U.S.C. 6901 *et seq.* and does not believe the States' responsibilities under the RCRA preclude implementation of the Uniform Program. The RCRA requires that the Environmental Protection Agency, after consultation with State authorities, promulgate guidelines to assist States in the development of State hazardous waste programs. The State programs could cover the generation, transportation, treatment, storage, or disposal of hazardous waste. Therefore, the States' current permitting and registration activities under the RCRA go far beyond the scope of the Alliance's Uniform Program. However, the FHWA notes the RCRA does not prohibit uniformity or reciprocity among State hazardous waste programs. The assertion that programs developed under the RCRA would be adversely affected by the adoption of the Alliance's recommendations are not supported by the information the commenters provided.

The FHWA agrees with the Advocates that the Alliance's final report does not indicate there will be significant and sustained decreases in hazardous materials incidents. Although Section 5119 does not stipulate that the uniform forms and procedures developed by the working group achieve a certain level of effectiveness at preventing hazardous materials incidents, the FHWA believes the implementation of the Uniform Program should, at a minimum, provide quantitative safety benefits. The Uniform Program, if implemented, would require some States to be more thorough in assessing motor carriers' safety fitness prior to registering and permitting those carriers. At the same time, other States may be forced to rely on less information to assess a carrier's safety fitness. The final report does not provide information on the effectiveness of the current State programs at improving safety, nor does it provide an estimate of how the effectiveness of the individual States' programs may change as a result of adopting the Uniform Program. The report implies that all registration and permitting programs are cost effective tools to improve safety and that the implementation of the Uniform Program will offer improvements over the status quo.

The FHWA acknowledges that a rigorous permitting and registration system can be used to identify motor carriers that may not have sufficient safety management controls to properly handle the transportation of hazardous materials. It is in the best interest of the motoring public that unsafe motor carriers be restricted from transporting hazardous materials, wastes, and substances. However, the final report does not indicate whether each of the current State registration and permitting programs are accomplishing the goal of keeping unsafe carriers from transporting these commodities, or that the implementation of the Uniform Program will accomplish this objective.

Irrespective of the FHWA's views on the merits of the commenters arguments against implementing the Alliance's recommendations, the agency must reiterate that it is inappropriate to initiate rulemaking until it has sufficient information to quantify the costs and the benefits of implementing the Uniform Program. Section 5119 does not exempt the agency from statutes and Executive Orders governing the rulemaking process in general, and the specific statutes concerning preemption of State laws and regulations.

For example, Executive Order 12866 requires Federal agencies to promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as, failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people. In deciding whether and how to regulate, agencies must assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies are directed to select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48) requires agencies to do a qualitative and quantitative assessment of the costs and benefits of the proposed rulemakings that would require expenditures by State, local, and tribal governments. The assessment must include an analysis of the extent to which such costs to State, local, and tribal governments may be paid with Federal financial assistance and the extent to which there are available Federal resources to carry out the mandate. Agencies are also required to provide reasonable estimates of future compliance costs and any disproportionate budgetary effects upon a particular region of the country or particular State, local, or tribal government, or particular segment of the private sector.

The FHWA must emphasize that the analyses required by the Executive Orders and statutes must be performed before a proposed rulemaking can be issued. The information provided by the commenters and other information currently available to the agency is not sufficient for conducting the types of analyses required by the Executive Orders and statutes.

Other Issues Discussed by Commenters

Several of the commenters discussed the relationship between the Alliance's Uniform Program and the Federal and

State initiatives listed in the July 9, 1996, notice and repeated in the appendix to this notice.

Specific Issues

The Michigan State Police believes the Research and Special Programs Administration's (RSPA) registration program should be eliminated if the Uniform Program is implemented. The Michigan State Police argues there is no need to have a dual registration system by both the State and Federal governments. The Michigan State Police indicated the Alliance's Uniform Program will accomplish the same objectives as the RSPA's program.

On the subject of the FHWA's safety permit rulemaking (discussed in the appendix to this notice), the Michigan State Police stated:

> The (Michigan State Police) views the FHWA's proposed Safety Permit Program in the same light as the RSPA [Registration] Program. Permits and registration do little, if anything, to improve safety. Just because a vehicle or a company is operated safety today does not mean it will operate safely tomorrow.
>
> Permit programs do, however, identify the industry to the enforcement agency and give a "snapshot" of how they operate. If used appropriately, they do represent a legitimate revenue collection for training and enforcement funding.
>
> Due to the nature of the national and international trucking industry, including sheer size and ever-changing players, the Federal Government is not in a position to adequately implement and maintain an effective permit program. Any permit system would be infinitely better handled at the state level, as the personnel are much closer to the individuals in the industry. The Alliance Program will allow USDOT access of the information in the system.
>
> The (Michigan State Police) does not support the development of another national-level database, considering the problems with MCMIS (the FHWA's Motor Carrier Management Information System).

The Michigan State Police also offered comments on the potential relationship between the Alliance's Uniform Program and the FHWA's Commercial Vehicle Information System (CVIS) Feasibility Study and motor carrier identification numbers (USDOT numbers). The Michigan State Police agree with the initial SafeStat assessment of fitness and believes that coordinating the SafeStat scores with the Alliance permit is simply an issue of software compatibility. By contrast, the Michigan State Police believe there are problems with the current motor carrier identification numbering system. The Michigan State Police stated:

> The numbering system used by USDOT to identify motor carriers is in definite need of repair. There are far too many mismatches in the system, which creates numerous difficulties in the MCMIS (Motor Carrier Management Information System) and Safetynet systems. As computerized data is becoming increasingly more important, the (Michigan State Police believe) the USDOT numbering system should be reworked to address concerns related by the States and industry. As FHWA is also developing shipper information for hazardous materials violations, a unique identifier must also be developed for them. Logic would dictate that these programs be adaptable to each other to provide consistent, accurate information.

The Iowa DOT believes the Alliance's Uniform Program competes with the RSPA's registration program. The State argues that one registration program is enough. The Iowa DOT stated:

> The USDOT's Hazardous Materials Registration Program should be changed. It should encompass all hazardous materials offered for transportation or transported, which would require the transport vehicle to be marked or placarded. Second, this program should be administered by each state with the USDOT providing guidance. It seems unusual that shippers and carriers send their registration money to Washington, D.C., have RSPA take a processing fee and then return money to the states.

The Iowa DOT also discussed the FHWA's CVIS program. The Iowa DOT stated:

> The Commercial Vehicle Information System (CVIS) feasibility study currently underway should be encouraged to include hazardous material carriers in the SafeStat Identification Algorithm (either by incorporating it into an existing safety evaluation area or creating a separate safety evaluation area relating to HM). This would allow CVIS to identify "at risk" hazardous material carriers.

The Ohio PUC also discussed the CVIS program. The Ohio PUC stated: Although the Commission is supportive of the concept behind the CVIS program as a base-state, reciprocal program, the CVIS program has no specific hazardous materials component and is only in the pilot stage. The purpose of the Uniform Program is to ensure that carriers are qualified to transport hazardous materials. This includes compliance with provisions such as hazmat training and insurance where the carrier must certify compliance prior to transportation; the CVIS program is retrospective in nature, reviewing safety performance only. Moreover, the practicality and effectiveness of revoking vehicle registrations privileges is uncertain at best. In the future, after completion of the CVIS pilot program, there may be a decision by the States to coordinate more closely activities under CVIS and the Uniform Program, such as compliance reviews; however, since the Uniform Program has successfully completed its pilot process, there is no need to further delay implementation of the Uniform Program in order to wait for the completion and review of the CVIS pilot.

The Ohio PUC provided general comments on all of the Federal and State initiatives the FHWA listed in the July 9, 1996, notice. The Ohio PUC stated:

> With respect to the relationship of the Uniform Program with all four programs described in the Request for Comments, the FHWA is not taking advantage of the key lesson learned in studying intelligent vehicle transportation systems. In the CVISN (Commercial Vehicle Information System Network) project, the FHWA recognized that, rather than condensing all databases currently gathered by States into a single, massive database, efficiencies will be achieved through a system of computer pointers and triggers which would create a network of smaller databases. The programs described in the Request for Comments are examples of other databases which should be able to share information with the Uniform Program repository; individual states could then coordinate activities, such as compliance reviews or audits, across these programs in order to create efficiencies, when the states deems appropriate in allocating resources for transportation regulatory activities. It is neither necessary nor desirable to consolidate all of these programs into a single program, administered on the Federal level, with a single massive database.

The Wisconsin DOT stated:

> Although there is some merit in the Alliance's recommendations that uniform program permits supplant federal registration and permits, and that Congress consider eliminating the federal registration program, we believe that these recommendations are premature. Significant differences exist between the two programs. For instance, the federal program covers offerors and carriers using water, air, rail or highway modes to transport certain special categories of hazardous materials. The uniform program covers motor carriers who transport all placarded hazardous materials, as well as bulk-packaged hazardous substances and marine pollutants, and hazardous wastes requiring a uniform manifest. The federal program exempts government agencies, while under the uniform program, they may be subject to registration. These and other discrepancies need to be addressed before considering coordination of the two programs or the elimination of the federal program.

The Coalition presented its recommendation on how the FHWA could satisfy the statutory requirements of 49 U.S.C. 5109 concerning Federal motor carrier safety permits for certain hazardous materials transporters, and 49 U.S.C. 5119 concerning uniform forms and procedures for registration and permitting of hazardous materials transporters. The Coalition stated:

> Congress charged the Secretary of Transportation with developing a permitting program for transporters of certain hazardous materials (49 U.S.C. 5109). However, under the Alliance program those same transporters will already be subject to permitting requirements. Therefore, any Federal permit or registration should focus on and apply

only to motor carriers that operate in those states that do not wish to become a member of the Uniform Program. The Coalition suggests the following:

(1) If the motor carrier operates only in Federal Program states, the motor carrier would be bound by the Federal permit requirements and would not be permitted to operate in Uniform Program States without first obtaining the proper credentials.

(2) If a motor carrier operates only in Uniform Program states or, both Uniform Program and Federal Program states, the Uniform Program registration and permit would be all the motor carrier needs to operate in all jurisdictions.

The Coalition indicated that it believes this type of system would provide for a higher level of regulatory compliance by motor carriers and at the same time would lessen the total regulatory burden on hazardous materials transporters.

FHWA Response to Commenters

The FHWA believes the commenters have identified significant reasons why the Federal and State initiatives and programs described in the July 9, 1996, notice are not, as currently operated, acceptable to the States as tools to help monitor hazardous materials, waste, and substances shippers and transporters. Each of the initiatives was started for a variety of reasons which do not appear to coincide with the reasons the States have developed their registration and permitting programs. As such, the programs do not, in the opinion of the State agencies, provide enough detailed information on all hazardous materials transporters.

For example, the current Federal Hazardous Materials Transportation Registration and Fee Assessment Program covers entities who offer or transport (in commerce) any of the following materials:

1. Any highway route-controlled quantity of a Class 7 (radioactive) material;

2. More than 25 kilograms (55 pounds) of a Division 1.1, 1.2, 1.3 (explosive) material in a motor vehicle, rail car, or freight container;

3. More than one liter (1.06 quarts) per package of a material extremely toxic by inhalation (a material poisonous by inhalation that meets the criteria for "hazard zone A");

4. A hazardous material in a bulk packaging having a capacity equal to or greater than 13,248 liters (3,500 gallons) for liquids or gases or more than 13.24 cubic meters (468 cubic feet) for solids; or

5. A shipment, in other than a bulk packaging, of 2,268 kilograms (5,000 pounds) gross weight or more of a class of hazardous materials for which placarding of a vehicle, rail car, or freight container is required for that class.

The Federal program was established in response to 49 U.S.C. 5108(a)(1) and covers a subset of all hazardous materials shipments. Section 5108(a)(2) gives the Secretary the authority to expand the registration program to cover persons transporting or causing to be transported hazardous materials not included in the list above.

With regards to the comments on the FHWA's SafeStat program, the FHWA notes that SafeStat is a performance-based approach to rank motor carriers for on-site compliance reviews (CRs). The program is intended to more effectively focus the FHWA and State resources on motor carriers who have demonstrated poor safety performance through roadside inspections, prior enforcement actions and, most importantly, accidents. SafeStat uses four broad Safety Evaluation Areas (SEAs): The Accident SEA, the Driver SEA, the Vehicle SEA, and the Safety Management SEA. For each SEA, values are determined for all carriers that have sufficient safety data related to that SEA. If sufficient safety data is not available, a value is not calculated. No assumptions are made based upon a lack of data. Each carrier's SEA value approximates the motor carrier's percentile rank, relative to all other motor carriers having sufficient data to be assessed within that same SEA. By using the percentile rank for each SEA, SafeStat avoids using arbitrary predetermined levels of scoring and provides an easily understood value for each SEA. The SEA values range between 0 and 100. The higher a carrier's SEA value, the worse its safety status. Therefore, an Accident SEA score of 80 indicates that approximately 80 percent of the motor carrier population had a better level of safety performance than the subject carrier with respect to accidents and 20 percent had worse. Similarly, a Vehicle SEA score of 75 indicates that approximately 75 percent of the motor carrier population had a better level of safety performance than the subject motor carrier with respect to their maintenance practices and the operating condition of their vehicles.

SafeStat allows the relative weight for each SEA to be adjusted for purposes of calculating an overall score. Since accident history is the most important measure of safety, SafeStat places double emphasis upon the Accident SEA in calculating an overall SafeStat score. Motor carriers that are identified as being within the worst 25 percent of the ranked population within an individual SEA are deemed an unacceptable performer for that SEA.

The FHWA acknowledges SafeStat does not include an SEA for hazardous materials. The agency understands the concerns that States and the general public have about hazardous materials. The SafeStat program, as currently structured, provides a performance-based approach for prioritizing motor carriers for on-site compliance reviews. The prioritization algorithm does not make a distinction for commodities transported. The mere fact that a motor carrier transports hazardous materials does not mean the carrier should be a higher priority than a carrier that transports nonhazardous materials but performs poorly in the SEAs. The FHWA believes the SafeStat program can be used as part of a hazardous materials permitting framework. Hazardous materials carriers that perform poorly in the current SEAs would be considered ineligible for a permit and carriers for which there is insufficient data would be granted the permit based upon information obtained from company officials and, if necessary, an on-site compliance review.

The FHWA notes that none of the commenters provided information on current State activities to monitor the safety performance of the carriers who are required to register or obtain permits. The States commenting to this docket have emphasized the importance of identifying the hazardous materials shippers and transporters, but have not indicated whether the information is being used to prioritize enforcement actions or compliance reviews.

The FHWA disagrees with the Michigan State Police's statement that registration and permitting programs do not improve safety. The FHWA believes that a carefully structured registration and/or permitting program that focuses on the risks associated with the specific commodities transported, and linked to enforcement activities initiated in response to poor safety performance could have safety benefits. To date, the States have not submitted comments to the FHWA indicating that their programs are based upon any form of risk assessment or linked to specific enforcement activities aimed at hazardous materials carriers with poor overall safety records.

With regard to the Michigan State Police's comments about MCMIS, the FHWA intends to issue a notice of proposed rulemaking to require motor carriers to periodically update the information submitted to the agency on the Motor Carrier Identification Report (Form MCS–150). Section 385.21 of the

Federal Motor Carrier Safety Regulations requires motor carriers conducting operations in interstate commerce to file a Form MCS–150 to the agency within 90 days after beginning operations. Currently, carriers are not required to update the information submitted. The FHWA is aware of problems with the current system and believes the forthcoming rulemaking will provide the States and the motor carrier industry with an opportunity to work with the agency to improve the accuracy of the information in the MCMIS.

The FHWA believes the comments about the capabilities of the States versus those of the Federal government are a strong indication of the need for uniformity and reciprocity. The FHWA agrees with the Ohio PUC that efficiencies can be achieved through a network of databases using a system of computer pointers and triggers. However, the States have apparently refused to embrace this concept. The FHWA must reiterate that there is no prohibition on uniformity and reciprocity. The States need only agree to work together to make uniformity and reciprocity a reality. The Alliance has provided its recommendations on uniform forms and procedures and the States have not shown a willingness to adopt the Alliance's recommendations. Therefore, it is not a question of the FHWA taking advantage of lessons learned from previous Federal-State initiatives, but a question of why the States have not elected to work together for the common goal of ensuring an efficient and effective program to improve the safety of hazardous materials transportation.

The FHWA must emphasize that the Congress directed the Secretary to establish the Federal registration program implemented by the RSPA, and the Federal permitting program proposed by the FHWA on June 17, 1993 (58 FR 33418). These programs are congressional mandates and should not be considered as a form of competition between the Federal and State governments. The States have an important role in highway safety and a right to go beyond the scope of Federal programs if, based upon data, it is clear there are safety issues that need to be resolved. To date, none of the commenters have identified specific safety issues, nor have they provided a clear explanation as to why the States cannot achieve a consensus on the forms and procedures used for the registration and permitting of hazardous materials transporters.

In response to the Coalition's recommendation for implementation of the Federal permitting requirement, the FHWA believes the approach may have merit if most of the States adopt the Alliance's Uniform Program. The FHWA believes this approach could help to minimize the paperwork burden on the motor carrier industry and the FHWA, while providing an effective means to monitor the safety performance of the hazardous materials carriers that would be covered by the proposed Federal permitting requirements. The agency will consider the Coalition's comments along with those of persons commenting in response to the June 17, 1993, NPRM.

Request for Additional Comments

Questions for State Agencies

Generally, the establishment of a permitting requirement means motor carriers that fail to meet the minimum requirements for obtaining the permit would not be allowed to transport certain classes of hazardous materials, substances or wastes. Establishing a permitting requirement also means that motor carriers which are granted a permit, would lose their privileges to transport certain classes of hazardous materials if the terms and conditions of the permit are violated. If there are quantifiable safety benefits to a permitting program, they would come in the form of preventing hazardous materials incidents caused by unqualified motor carriers transporting the materials for which a permit would be required. Given these assumptions, the FHWA requests that State agencies responsible for the permitting of hazardous materials transporters answer the following questions:

1. What types of hazardous materials, wastes, or substances may only be transported in or through your State by motor carriers that have a permit?

2. Why did your State initiate its permitting program and in what year did the program take effect? For example, was there a specific hazardous materials incident(s) that prompted the development of the program?

3. How many motor carriers applied for permits in each of the last 5 calendar/fiscal years (please indicate the period covered in your State's fiscal year)? Of the motor carriers that applied for permits during each of the last 5 calendar/fiscal years, how many were denied a permit and what were the typical reasons for denial of the permit?

4. During each of the last 5 calendar/fiscal years, how many carriers had their permits revoked or suspended and what were the typical reasons for the revocation or suspension? How many of the motor carriers had their privileges to transport hazardous materials, substances, and wastes reinstated?

5. Are motor carriers required to renew the permit? If yes, what is the procedure for renewing the permit and how often is the carrier required to renew the permit?

6. Looking specifically at the number of highway transportation-related hazardous materials incidents (involving a hazardous material, substance, or waste for which the transporter is required to obtain a permit), how many incidents, fatalities, and injuries occurred in each of the last 5 calendar/fiscal years? Also, what was the dollar amount of property damage and environmental restoration associated with the incidents in each of the last 5 calendar/fiscal years.

The following questions are intended to gather information concerning the costs associated with establishing and operating the various State permitting programs and the States' estimates of the economic and information collection burden on motor carriers subject to the States' permitting requirements:

7. How much money was needed to establish your State's permitting program? Please include all costs associated with hiring and training staff, setting up a computer system, etc.

8. How much money did your State spend in each of the last 5 calendar/fiscal years to maintain its permitting program?

9. How much money was collected during each of the last 5 calendar/fiscal years in the form of application and processing fees that motor carriers were required to pay in order to receive a permit?

10. What was the application fee and, if applicable, the processing fee that was charged for each of the last 5 calendar/fiscal years?

11. How much time does your State estimate that the average motor carrier spends completing an application for the State's permit?

12. How much time does your State estimate that the average motor carrier spends renewing the State permit?

13. What types of records or other documents related to the permit or registration requirements are motor carriers required to maintain?

The next series of questions concern reciprocity between State programs. The FHWA is requesting information from States about potential institutional barriers to establishing Federal requirements for uniform forms and procedures for hazardous materials, substances, and wastes transportation.

14. Does your State's permitting or registration program include a

reciprocity agreement with any other State's permitting or registration program? Please identify the State(s).

15. If your State does not have a reciprocity agreement with another State(s), what specific requirements does your State impose on motor carriers that the other States do not cover?

16. If the FHWA implemented a Uniform Program, using a base-State approach that required your State to accept permits issued by other States and to modify your State's forms and procedures, how much money in fees would your State lose? How much money would your State have to spend to modify its current permitting and/or registration system?

Motor Carrier Questions

The next series of questions are intended to gather information from motor carriers about the economic and administrative burden associated with complying with State permitting and registration requirements.

17. How many different State permitting and/or registration programs was your company subject to during each of the last 5 calendar years?

18. What was the total for all State permit application and/or registration fees and, if applicable, processing fees that your company paid for each of the last 5 calendar years?

19. What was the total for all State permit renewal fees that your company paid during each of the last 5 calendar years?

20. On average, how much time does your company spend completing an application for a State permit or completing a State registration form?

21. On average, how much time does your company estimate that it spends renewing each State permit?

22. Are there any instances in which your company was granted a permit to transport specific commodities in a State(s), but denied a permit to operate in another State? Please identify the commodities and the States involved.

Comments Concerning Other Relevant Issues

In addition to the questions listed, commenters are encouraged to discuss other issues that they believe are relevant to the discussion of uniform forms and procedures for hazardous materials, substances, and wastes. The FHWA requests that commenters examine current Federal and State initiatives concerning permitting and registration of motor carriers.

Current Federal And State Initiatives Concerning Registration and Permitting of Motor Carriers and Shippers

There are several major activities underway which could be used as part of the hazardous materials transportation registration and permitting processes. These activities include: (1) The FHWA's motor carrier safety permits and inspection rulemaking; (2) the Research and Special Program Administration's (RSPA) Hazardous Materials Registration and Fee Assessment Program; (3) the Performance Registration Information System Management (PRISM) program (formerly referred to as the Commercial Vehicle Information System or CVIS); and (4) the elimination of the Interstate Commerce Commission (ICC) and the transfer of the ICC's registration (operating authority) and insurance programs to the FHWA. These initiatives, as well as the FHWA's motor carrier registration requirement—the motor carrier identification report (Form MCS-150) required by 49 CFR 385.21 and used by the FHWA to assign USDOT numbers—and the registration and insurance filings of for-hire motor carriers required by many States (Single State Registration System) provide a means for identifying transporters of hazardous materials and, for some of the programs, making certain that the carriers have appropriate levels of financial responsibility. However, each of these programs are commonly administered independently by separate agencies within a State.

These initiatives may have a significant bearing on the public comments offered in response to this notice and on the ultimate direction of any resulting rulemaking actions affecting Federal and State registration and permitting of transporters and shippers of hazardous materials. Each of the initiatives is discussed in the appendix to this notice. The FHWA requests that commenters consider the Alliance's report and recommendations, and the specific types of information that carriers and shippers would be required to provide if the Alliance's recommendations were adopted by the FHWA. Commenters are encouraged to provide suggestions on whether the Alliance's recommended program should be implemented and whether the programs described in the appendix to this notice could be used to support the implementation of any portion of the Alliance's program.

Administrative Notice

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practical. In addition to late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the closing date. Interested persons should continue to examine the docket for new material.

Authority: 49 U.S.C. 5119; 49 CFR 1.48.

Issued on: March 20, 1998.

Gloria J. Jeff,

Deputy Administrator, Federal Highway Administration.

Appendix—Current Federal and State Initiatives Concerning Registration and Permitting of Motor Carriers and Shippers

I. FHWA Rulemaking on Motor Carrier Safety Permits and the Inspection of Vehicles Transporting Highway-Route-Controlled Quantities of Radioactive Materials [49 U.S.C. 5109(a) and 5105(e)]

Section 5109(a), *Motor Carrier Safety Permits*, (originally enacted as one of the provisions of section 8 of the HMTUSA) provides that a motor carrier shall only transport, or cause the transportation of, hazardous materials in commerce if the carrier holds a safety permit issued by the Secretary and keeps a copy of the permit, or other proof of its existence, in the vehicle. The Secretary is required to prescribe by regulation the hazardous materials and amounts to which the permit requirement applies. However, the list of hazardous materials must include, at a minimum, and in amounts established by the Secretary, the following:

(1) Division 1.1, 1.2, and 1.3 (class A or B explosives);

(2) liquefied natural gas;

(3) hazardous material the Secretary designates as extremely toxic by inhalation; and

(4) a highway-route-controlled quantity of radioactive material, as defined by the Secretary.

Section 5105(e), *Inspections of Motor Vehicles Transporting Certain Material*, (originally enacted as section 15 of the HMTUSA) directs the Secretary to issue regulations requiring that each motor vehicle transporting a highway-route-controlled quantity of Class 7 (radioactive) material in commerce be inspected and certified as complying with the Federal hazardous materials and motor carrier safety laws and regulations. The Secretary may require the inspections to be conducted by Federal inspectors or in accordance with appropriate State procedures. The Secretary may allow self-certification by motor carriers using employees that meet minimum qualifications set by the Secretary.

On June 17, 1993, the FHWA published a notice of proposed rulemaking (NPRM) to implement the requirements of 49 U.S.C. 5109 and 5105 (58 FR 33418). The FHWA proposed to amend part 397 of the Federal Motor Carrier Safety Regulations (FMCSRs) by adding a new subpart B, Motor Carrier Safety Permits. The notice proposed to initially limit the safety permit program to the transportation of the four classes of hazardous materials set forth in the statute, with phase-in periods for Division 1.1, 1.2, and 1.3 materials (Class A and B explosives)[3] and limiting the materials considered extremely toxic by inhalation to those that meet the criteria of Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A (see 49 CFR 173.115 and 173.132) and are transported in quantities of more than 1 liter (1.06 quarts). The proposed permit procedures made extensive use of existing FHWA programs, forms and procedures, and as a result, the agency proposed not to assess permit fees. To obtain a permit, a motor carrier would be required to submit a revised MCS–150 (Motor Carrier Identification Report) to the Regional Director, Office of Motor Carriers, for the region in which the motor carrier has its principal place of business. Determinations on safety permit applications would be based upon a safety fitness finding made pursuant to 49 CFR part 385. A "satisfactory" safety rating would be a prerequisite to the granting of a safety permit. A less than "satisfactory" safety rating would result in a denial of the permit application. The FHWA would have the discretion to issue a temporary safety permit (120 days) to an unrated motor carrier pending a safety fitness determination. Safety permits would be valid for three years and would be renewable. Reviews of the FHWA's determinations on permit issuance would be handled pursuant to the existing procedures applicable to safety rating reviews (49 CFR 385.15 and 385.17). The current safety rating notification letter would be modified to serve as the safety permit. The letter would bear a safety permit number, which would be the motor carrier's identification or census number assigned by the FHWA when the motor carrier submits the MCS–150 required by § 385.21. Motor carriers would be required to display this permit number on the shipping papers and on the commercial motor vehicles used.

With regard to the inspection requirements of 49 U.S.C. 5105, the FHWA proposed that motor carriers transporting highway-route-controlled quantities of Class 7 (radioactive) materials be required to inspect each commercial motor vehicle used before each trip and that a written certification by a qualified inspector be maintained. It was proposed that these vehicles be inspected through the use of the general inspection requirements contained in 49 CFR part 396, "Inspection, Repair, and Maintenance," and the more detailed inspection standards found in appendix G to 49 CFR subchapter B, "Minimum Periodic Inspection Standards." The inspector qualification requirements for the periodic inspection (specified in 49 CFR 396.19) would be used to ensure that inspectors are qualified to perform the vehicle inspections.

The FHWA carefully reviewed the various registration and permitting requirements of the Federal law and decided not to proceed with further rulemaking action to implement the requirements of 49 U.S.C. 5109 and 5105 until it had considered the final report and recommendations of the Alliance for implementing section 5119. This was considered the most effective way to satisfy all of these related statutory requirements, as the Alliance's recommendations would have a significant bearing on the implementation of the Federal safety permit and inspection requirements.

II. Federal Hazardous Materials Registration and Fee Assessment Program and the Hazardous Materials Emergency Preparedness Grant Program

Section 5108(a)(1) (originally enacted as one of the provisions of section 8 of the HMTUSA) requires that each person transporting or causing to be transported in commerce the following hazardous materials must file a "registration statement" with the Secretary:

(1) Highway-route-controlled quantities of Class 7 (radioactive) materials;

(2) More than 25 kilograms of Division 1.1, 1.2, and 1.3 (explosives) materials;

(3) More than 1 liter in each package of a hazardous material which has been designated by the Secretary as extremely toxic by inhalation;

(4) Hazardous material in a bulk package, container, or tank as defined by the Secretary if the package, container, or tank has a capacity of 13,249 or more liters (3,500 or more gallons) or has a volume greater than 13.25 cubic meters (468 cubic feet);

(5) A shipment of at least 2,268 kg (5,000 pounds) (except in a bulk packaging) of a class of hazardous material requiring a placard.

In addition, section 5108(a)(2) provides the Secretary with discretionary authority to require any of the following persons to file a registration statement:

(1) A person transporting or causing to be transported hazardous materials in commerce and not covered by section 5108(a)(1);

(2) A person manufacturing, fabricating, marking, maintaining, reconditioning, repairing, or testing a package or container the person represents, marks or certifies, or sells for use in transporting in commerce hazardous material the Secretary designates.

Paragraph (g) of section 5108 authorizes the Secretary to establish, impose, and collect a fee for the processing of the registration statement, as well as an annual fee.

Implementation of these requirements was delegated by the Secretary to the RSPA. Federal registration of hazardous materials offerors and transporters began in 1992 (57 FR 30620, July 9, 1992). Federal registration is required of persons engaged in certain activities that involve the offering or transporting of hazardous materials in interstate, intrastate, or foreign commerce by highway, rail, air, or water. Less than half of the current registrants have identified themselves as highway carriers. The Federal registration program has no preemptive effect upon State and local hazardous materials registration programs.

The annual fee (currently $300) is used to fund grants to State and Indian tribal governments for hazardous materials planning and training purposes. The funds are allocated through the RSPA's Federal Hazardous Materials Emergency Preparedness (HMEP) Grant Program with the first grants awarded to qualifying State and Indian tribal governments in 1993. By law, 75 percent of the Federal grant monies awarded to the States is further distributed to local emergency response and planning agencies. The FY 1995 funds helped to provide: (1) Training for 121,000 emergency response personnel; (2) approximately 500 commodity flow studies and hazard analyses; (3) 4,500 emergency response plans updated or written for the first time; (4) assistance to 2,150 local emergency planning committees; and (5) 770 emergency exercises.

In cooperation with the Alliance's pilot program, the concept of "one-stop shopping" for Federal and State registration of motor carriers was tested by the Public Utilities Commission of Ohio (PUCO) and the RSPA. Motor carriers required to register with the State of Ohio were provided with the option of also submitting the Federal registration statement and fee to the PUCO for transmittal to the RSPA. For the 1994–95 registration year (from July 1, 1994 to June 30, 1995), approximately 200 persons registered in the Federal program through the PUCO. During the 1995–96 registration year, the number of persons choosing this option decreased sharply to 76 persons. Only 16 of the participants in the 1994–95 registration year elected to use this process for the 1995–96 registration year. The test was completed at the end of the 1995–96 registration year and the results are being evaluated.

III. Performance Registration Information System Management (PRISM)

Performance Registration Information System Management is based upon the Commercial Vehicle Information System (CVIS) feasibility study mandated by 49 U.S.C. 31106—section 31106 was originally enacted by section 4003 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102–240, 105 Stat. 1914, 2144; December 8, 1991). Specifically, PRISM ties commercial motor vehicle registration privileges to a motor carrier's safety performance. For the first time, chronically unsafe motor carriers risk losing their vehicle registration privileges if they prove unable or unwilling to improve their operational safety levels after a designated period. The project is a cooperative effort involving the FHWA and five pilot States: Iowa (the lead State), Oregon, Colorado, Minnesota, and Indiana.

Motor carriers are identified for inclusion in the PRISM improvement process

[3] The proposed phase-in period was to be implemented as follows:

Effective date	Covered quantities of class A and/or B explosives
Nov. 16, 1993	454 kilograms (1,000 pounds) or more.
Nov. 16, 1994	227 kilograms (500 pounds) or more.
Nov. 16, 1995	25 kilograms (55 pounds) or more

(MCSIP—Motor Carrier Safety Improvement Process) through the application of a carrier identification and prioritization algorithm referred to as the Safestat Identification Algorithm (Safestat). Safestat identifies "At Risk" motor carriers by producing a safety score for every interstate motor carrier. Motor carriers are ranked on a worst-first basis. Motor carriers with the lowest scores are considered to be "At Risk" and are scheduled for a compliance review (on-site visit), while motor carriers with less severe safety scores receive "warning letters." Once a motor carrier has been identified for entry into the MCSIP, its safety performance is monitored using a second algorithm called the Safestat Monitoring Algorithm. The MCSIP process has been designed to provide numerous opportunities for motor carriers to improve their safety performance. Failure to improve safety performance, however, will result in progressively more severe penalties leading eventually to suspension or revocation of vehicle registration privileges.

The PRISM could be used to identify hazardous materials (HM) carriers that are "At Risk" by modifying the Safestat Identification Algorithm to include additional information about HM motor carriers. In fact, it has been suggested that a separate safety evaluation area relating to HM be included in the SafeStat Identification Algorithm. Under this proposal, HM carriers that have been identified for entry into the MCSIP process and continue to score poorly may have their HM permits denied or suspended.

IV. Interstate Commerce Commission's (ICC) Carrier Registration and Insurance Requirements

On December 29, 1995, the President signed the ICC Termination Act of 1995 (ICCTA) (Pub. L. 104–88, 109 Stat. 803), which eliminates the ICC and transfers certain motor carrier regulatory functions from the ICC to the FHWA. The principal functions transferred were the licensing and registration activities, insurance tracking, Mexican motor carrier oversight, and responsibilities for brokers, freight forwarders, and household goods carriers. All past operating authority licenses and financial responsibility filings remain valid, and all new applications and financial responsibility filings are processed by the FHWA. The ICCTA provides that registration generally remains in effect for up to five years unless it is suspended, amended, or revoked. Reasons for suspension or revocation may include unsafe operations, lack of the required financial responsibility coverage, or failure to comply with regulatory requirements.

The FHWA's motor carrier programs are intended to ensure that motor carriers are properly identified, have adequate levels of financial responsibility, and operate in a safe manner. Under the present programs, for-hire motor carriers are registered and must show proof of financial responsibility and familiarity with the FHWA's safety regulations. The financial responsibility coverage of for-hire motor carriers is continuously monitored. Policy pre-expiration notices obtained from the insurance companies, as well as internal audits, are used to determine compliance. Prior to an insurance policy lapsing, the carrier is contacted. An enforcement action, including litigation, can be used to stop the carrier from operating without financial responsibility. A motor carrier's operating authority can be revoked if financial responsibility is not obtained. A similar procedure applies to motor carriers that have been authorized to self-insure their operations.

The Single State Registration System (SSRS) program was created to succeed the "bingo card" program administered by the ICC. The SSRS program is a base-State system whereby a motor carrier registers its interstate operating authority with, and provides proof of financial responsibility coverage to one State (a base-State) instead of multiple States. The base-State then distributes the collected fees to other participating States in which the motor carrier's vehicles operate. State participation in the System was limited to those States participating in the bingo card program prior to January 1991. Fee amounts were limited to those imposed prior to November 1991, not to exceed $10 per vehicle.

Under the ICCTA, the SSRS will continue to operate. However, the Department of Transportation (the Department) is required to consolidate the current USDOT identification number system, the SSRS, the former ICC registration system (including financial responsibility registration) into a single, on-line Federal system. The new system will contain information on, and identification of, all foreign and domestic motor carriers, brokers, and freight forwarders (as well as others required to register with the Department) as well as information on safety fitness and compliance with the required levels of financial responsibility coverage. The Secretary may establish fees to fully operate the system, including any personnel to support the overall registration and financial responsibility filing system.

On August 26, 1996, the FHWA published an advance notice of proposed rulemaking (ANPRM) requesting comments on the development of the motor carrier replacement information and registration system (61 FR 43816). The agency is preparing a notice of proposed rulemaking for issuance in 1998.

[FR Doc. 98–8367 Filed 3–30–98; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 031898B]

Magnuson-Stevens Act Provisions; Essential Fish Habitat (EFH); Preparation Schedule for EFH Provisions of Fishery Management Plans

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

ACTION: Notice of availability.

SUMMARY: NMFS announces the availability of the schedules and updates for amending fishery management plans (FMPs) to incorporate EFH provisions, in compliance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Magnuson-Stevens Act requires the Secretary of Commerce to set forth a schedule to amend FMPs to identify EFH and to review and update EFH based on new scientific evidence or other relevant information. The Secretary's EFH amendment schedule requires all FMP amendments to be submitted to the Secretary by October 11, 1998. This document announces the availability of the fishery management councils' (Councils) schedules for preparing EFH provisions including the identification, description, conservation, and enhancement of EFH. The FMP amendments will contain the schedule to revise and update the EFH provisions.

ADDRESSES: Requests for copies of these schedules and updates should be made to the Director, Office of Habitat Conservation; Attention: EFH Schedule, NMFS; 1315 East-West Highway, Silver Spring, MD 20910-3282. These schedules and additional information and updates of the schedules will also be available from the Councils or regional NMFS offices (see **SUPPLEMENTARY INFORMATION**) and will be posted on the NMFS Office of Habitat Conservation Internet website at: http://kingfish.ssp.nmfs.gov/rschreib/habitat.html.

FOR FURTHER INFORMATION CONTACT: Lee Crockett, 301/713-2325.

SUPPLEMENTARY INFORMATION: The creation of these schedules is required by section 305(b)(1)(A) of the Magnuson-Stevens Act (16 U.S.C. 1855(b)(1)(A)). Section 303(a) of the

Magnuson-Stevens Act (16 U.S.C. 1853(a)) lists the required provisions of FMPs, including EFH provisions that describe and identify EFH, minimize, to the extent practicable, adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat. NMFS issued interim final regulations (62 FR 66531, December 19, 1997) to assist the Councils in meeting these requirements. Information on the required EFH provisions is included in those regulations. The Councils' schedules for amending FMPs with EFH provisions will inform the public of opportunities for involvement, input, and comment during the preparation of EFH provisions. These schedules are subject to change and will be updated as appropriate.

The statutory deadline for FMP amendments to include EFH provisions, as established by the Sustainable Fisheries Act, is October 11, 1998, and all FMP amendments must be submitted to the Secretary for approval by that date. Within 5 days of submittal, the Secretary will publish a notice of availability for each amendment with a 60-day comment period. Within 30 days of the closure of the comment period, the Secretary will approve or disapprove the amendment. If the amendment contains regulations, the Secretary will also publish the draft regulations as a proposed rule with a 45-day comment period. The Secretary is required to publish a final rule within 30 days of the closure of the comment period.

For further information and copies of the schedule contact the following offices:

NMFS Regional Offices

Northeast Regional Office, Attention: Habitat Conservation Division, One Blackburn Drive, Gloucester, MA 01930–2298; 978/281-9102.

Southeast Regional Office, Attention: Habitat Conservation Division, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; 813/570-5317.

Southwest Regional Office, Attention: Habitat Conservation Division, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; 562/980-4041.

Northwest Regional Office, Attention: Habitat Conservation Division, 525 NE. Oregon St., Suite 500, Portland, OR 97232–2737; 503/230-5421.

Alaska Regional Office, Attention: Habitat Conservation Division, 709 West 9th Street, Federal Bldg., Room 461, P.O. Box 21668, Juneau, AK 99802-1668; 907/586-7235.

Regional Fishery Management Council Offices

New England Fishery Management Council; Suntaug Office Park, 5 Broadway (Rte. 1); Saugus, MA 01906; Phone:(781)231–0422; FAX: (781)565–8937.

Mid-Atlantic Fishery Management Council; Federal Bldg., Rm. 2115; 300 S. New St.; Dover, DE 19901; Phone: (302)674–2331; FAX: (302)674–5399.

South Atlantic Fishery Management Council; Southpark Building, Ste. 306; 1 Southpark Circle; Charleston, SC 29407; Phone: (803)571–4366; FAX: (803)769–4520.

Gulf of Mexico Fishery Management Council; Lincoln Center, Ste. 331; 5401 W. Kennedy Blvd.; Tampa, FL 33609; Phone: (813)228–2815; FAX: (813)225–7015.

Caribbean Fishery Management Council; 268 Ave. Munoz Rivera, Ste. 1108; San Juan, PR 00918; Phone: (787)766–5926; FAX: (787)766–6239.

Pacific Fishery Management Council; 2130 SW. 5th Ave., Ste. 224; Portland, OR 97201; Phone: (503)326–6352; FAX: (503)326–6831.

North Pacific Fishery Management Council; 605 W. 4th Ave., Rm. 306; Anchorage, AK 99501; Phone:(907)271–2809; FAX: (907)271–2817.

Western Pacific Fishery Management Council; 1164 Bishop St., Rm. 1405; Honolulu, HI 96813; Phone:(808)522–8220; FAX: (808)522–8226.

Highly Migratory Species Division, NMFS; 1315 East-West Highway; SSMC#3, 14th Floor, F/SF; Silver Spring, MD 20910; Phone:(301)713–2347; FAX: (301)713–1917.

Dated: March 24, 1998.

James P. Burgess,

Director, Office of Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 98–8289 Filed 3–30–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 032398B]

RIN 0648–AJ51

Fisheries of the Exclusive Economic Zone Off Alaska; Scallop Fishery off Alaska; Amendment 3

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

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 3 to the Fishery Management Plan for the Scallop Fishery off Alaska for Secretarial review. Amendment 3 would delegate to the State of Alaska (State) the authority to manage all aspects of the scallop fishery, except limited access, and would repeal all Federal regulations governing the scallop fishery off Alaska, except for the scallop vessel moratorium program. This action is necessary to eliminate duplicate regulations and management programs for the scallop fishery at the State and Federal levels. Comments from the public are requested.

DATES: Comments on Amendment 3 must be submitted on or before June 1, 1998.

ADDRESSES: Comments on Amendment 3 should be submitted to Sue Salveson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th. Street, Juneau, AK. Copies of Amendment 3 and the Environmental Assessment/Regulatory Impact Review prepared for the amendment are available from NMFS at the above address, or by calling the Alaska Region, NMFS, at 907–586–7228.

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907-586-7228 or kent.lind@noaa.gov.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each Regional Fishery Management Council submit any fishery management plan (FMP) or plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or amendment, immediately publish a document announcing that the FMP or amendment is available for public review and comment. NMFS will consider the public comments received during the comment period in determining whether to approve the FMP or amendment. Public comments on the proposed rule must be received by the end of the comment period on the FMP/amendment to be considered in the approval/disapproval decision on the FMP/amendment.

NMFS will consider the public comments received during the comment

period in determining whether to approve Amendment 3. A proposed rule to implement Amendment 3 is scheduled to be published within 15 days of this document.

Dated: March 25, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–8431 Filed 3–30–98; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 63, No. 61
Tuesday, March 31, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Alaska Red Cedar: Export Procedures

AGENCY: Forest Service, USDA.
ACTION: Notice of availability.

SUMMARY: Section 347 of the Department of the Interior and Related Agencies Appropriations Act of 1998 provides a formula under which western red cedar logs that are determined to be surplus to the needs of Alaska manufacturers shall be made available at domestic rates to domestic processors in the contiguous 48 states before the logs may be exported to a foreign country. The Act also stipulates that all Alaska yellow cedar logs may be sold at export rates. To implement the Act, new procedures will be included as part of a Region 10 supplement to the Forest Service Timber Sale Contract Administration Manual. Procedures regarding export of utility grade and chip sawlogs in will be updated as part of the supplement. The Forest Service hereby gives notice that a draft supplement is now available for public review and comment.

DATES: Comments must be received on or before April 30, 1998.

ADDRESSES: Single copies of the draft procedures may be obtained by writing Phil Janik, Regional Forester (2430), Alaska Region, Forest Service, USDA, P.O. Box 21628, Juneau, Alaska 99802–1628. Send written comments on the draft procedures to the same address.

FOR FURTHER INFORMATION CONTACT: Greg Griffith or Bill Wilson, Forest Management Staff, Forest Service, USDA, P.O. Box 21628, Juneau, Alaska 99802–1628, (907) 586–7915/7875.

SUPPLEMENTARY INFORMATION: The Act establishes a process under which western red cedar, surplus to the needs of domestic processors in Alaska, shall be made available at domestic rates to domestic processors in the contiguous 48 states before it may be exported and sold at export rates. The Act also stipulates that all Alaska yellow cedar may be sold at export rates at the election of the timber sale holder.

Specifically, the Act provides that if the total volume from all timber sales sold on the Tongass National Forest is equivalent to the annual average portion of the decadal allowable sale quantity in the Tongass Land Management Plan and if each of these sales meets 60 percent of normal profit and risk at time of sale advertisement, all of the surplus western red cedar will be made available to domestic processors in the contiguous 48 states. If less than the annual average portion of the decadal allowable sale quantity is sold in fiscal year 1998, therefore, meeting the 60 percent of the normal profit and risk standard, then the volume of the surplus western red cedar available to domestic processors in the contiguous 48 states will be limited to the ratio determined by dividing the actual total volume sold in fiscal year 1998 by the annual average allowable sale quantity. The amount of western red cedar determined to be the difference between the amount of western red cedar determined by the Regional Forester to be surplus to Alaskan processors' needs and the calculated western red cedar volume determined to be available to domestic processors in the contiguous 48 States may be exported to a foreign country. All western red cedar not sold to domestic processors in Alaska or the contiguous 48 States may be exported and sold at export rates.

To implement this Act, the Forest Service has developed draft export procedures for fiscal year 1998 sales of western red cedar that would be included in a regional supplemental to the Timber Sale Contract Administration Manual. The procedures will provide estimates for the volumes of western red cedar needed for processing in Alaska, available for domestic processing in the contiguous 48 States, and available for export to foreign markets. The draft procedures also include instructions for the calculation of sales, such as how western red cedar already sold in fiscal year 1998 will be taken into account, and how the fair market value of western red cedar in the three market destinations will be determined; and how western red cedar will be treated in 6-Month and 12-Month Timber Sale Announcements. The draft supplement will also update export procedures for utility grade and chip sawlogs in Alaska, laying out key definitions, appraisal guidelines, and documentation requirements. Procedures will be used by Forest Service employees in Alaska for processing proposed sale of western red cedar.

Copies of the draft procedures have been submitted to the following groups for review and comment: The governors of Alaska, Washington, and Oregon, conservation organizations, forest industry groups, prospective timber sale bidders, and other organizations interested in the draft Alaska export policy on national forest lands in southeast Alaska. The public is also invited to comment on the proposal.

Dated: March 26, 1998.

Phil Janik,

Alaska Regional Forester.

[FR Doc. 98–8506 Filed 3–30–98; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Washington Cascades Provincial Advisory Committee

AGENCY: Forest Service, USDA.
ACTION: Notice of upcoming meeting.

SUMMARY: The Eastern Washington Cascades Provincial Advisory Committee will meet on March 19 and 20, 1998. The meeting on March 19 will be held at the Chelan Fire Station, 232 E. Wapato Street, Chelan, Washington. The meeting will begin at 9:00 a.m. and end at 3:00 p.m. This meeting will focus on Late Successional Reserves, information sharing, and new developments in implementing the Northwest Forest Plan. The meeting on March 20 will be held at the Wenatchee National Forest Headquarters office, 215 Melody Lane, Wenatchee, Washington. This meeting will begin at 9:00 a.m. and end at 3:30 p.m. The focus of discussion will be management of noxious weeds. All Eastern Washington Cascades Province Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Paul Hart, Designated Federal

Official, USDA, Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801, 509–662–4335.

Dated: February 20, 1998.

Sonny J. O'Neal,

Forest Supervisor, Wenatchee National Forest.

[FR Doc. 98–8395 Filed 3–30–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Yakima Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of upcoming meeting.

SUMMARY: The Yakima Provincial Advisory Committee will meet on March 25, 1998, at the Cle Elum Ranger District office, 803 W. 2nd. Street, Cle Elum, Washington. The meeting will begin at 9:00 a.m. and end at 3:00 p.m. The meeting will focus on information sharing and Snoqualmie Pass Adaptive Management Area subcommittee selections. All Yakima Province Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington, 98801, 509–662–4335.

Dated: February 20, 1998.

Sonny J. O'Neal,

Forest Supervisor, Wenatchee National Forest.

[FR Doc. 98–8396 Filed 3–30–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request an Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Statistics Service's (NASS) intention to request an extension of a currently approved information collection, Livestock Surveys, that expires September 30, 1998.

DATES: Comments on this notice must be received by June 4, 1998 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4117, South Building, Washington, D.C. 20250–2000, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Livestock Surveys.

OMB Number: 0535–0005.

Expiration Date of Approval: September 30, 1998.

Type of Request: To extend a currently approved information collection.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue state and national estimates of crop and livestock production. The Livestock survey program collects information on livestock numbers and livestock slaughter. Livestock numbers provide data needed to establish livestock counts at the county level while slaughter totals are used to estimate U.S. red meat production. The Livestock program has approval from OMB for a 3-year period. NASS intends to request that the survey be approved for another 3 years.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 11 minutes per response.

Respondents: Farmers and Meat Inspectors.

Estimated Number of Respondents: 117,000.

Estimated Total Annual Burden on Respondents: 21,450 hours.

Copies of this information collection and related instructions can be obtained without charge from Larry Gambrell, the Agency OMB Clearance Officer, at (202) 720–5778.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Larry Gambrell, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Ave. SW, Room 4162, South Building, Washington, D.C. 20250–2000.

All responses to this notice will be summarized and included in the request for OMB approval.

All comments will also become a matter of public record.

Signed at Washington, D.C., March 19, 1998.

Rich Allen,

Associate Administrator, National Agricultural Statistics Service.

[FR Doc. 98–8393 Filed 3–30–98; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request an Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Statistics Service's (NASS) intention to request an extension of a currently approved information collection, the Mink Survey, that expires September 30, 1998.

DATES: Comments on this notice must be received by June 4, 1998 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4117 South Building, Washington, D.C. 20250–2000, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Mink Survey.

OMB Number: 0535–0212.

Expiration Date of Approval: September 30, 1998.

Type of Request: To extend a currently approved information collection.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue state and national estimates of crop and livestock production. The Mink Survey collects data on the number of mink pelts produced, the number of females bred, and the number of mink farms. Mink estimates are used by the federal government to calculate total value of sales and total cash receipts. Data are used by state governments to administer fur farm programs and health regulations. Universities use the data in research projects. The Mink Survey has approval from OMB for a 3-year period. NASS intends to request that the survey be approved for another 3 years.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 10 minutes per response.

Respondents: Farmers.

Estimated Number of Respondents: 425.

Estimated Total Annual Burden on Respondents: 71 hours.

Copies of this information collection and related instructions can be obtained without charge from Larry Gambrell, the Agency OMB Clearance Officer, at (202) 720–5778.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to:

Larry Gambrell, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Ave. SW, Room 4162 South Building, Washington, D.C. 20250–2000. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, D.C., March 19, 1998.

Rich Allen,

Associate Administrator, National Agricultural Statistics Service.

[FR Doc. 98–8394 Filed 3–30–98; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Current Population Survey—June 1998 Fertility and Birth Expectations Supplement.

Form Number(s): The automated survey instrument has no form number.

Agency Approval Number: 0607–0610.

Type of Request: Reinstatement, with change, of a previously approved collection.

Burden: 795 hours.

Number of Respondents: 30,000.

Avg. Hours Per Response: 95 seconds (about one and one half minutes).

Needs and Uses: The Current Population Survey (CPS) is a survey conducted in approximately 48,000 households monthly throughout the United States. Data on demographic and labor force characteristics are collected from a sample of households which represent the U.S. population. The Bureau of the Census uses the data to compile monthly averages of household size and composition, age, education, ethnicity, marital status and various other characteristics at the U.S. level. The Bureau of Labor Statistics also uses the data in its monthly calculations of employment and unemployment.

The basic monthly questionnaire is periodically supplemented with additional questions which address specific needs. The Census Bureau is requesting clearance for the collection of data concerning the Fertility and Birth Expectations Supplement to be conducted in conjunction with the June 1998 CPS. The Census Bureau sponsors the supplement questions, which were previously collected in June 1992, and have been asked periodically since 1971. A supplement on Marital History and Fertility was collected in June 1995.

This survey provides information used mainly by government and private analysts to project future population growth, to analyze child spacing, and to aid policy makers in their decisions affected by changes in family size and composition. Past studies have discovered noticeable changes in the patterns of fertility rates, family structures, premarital births, and the timing of the first birth. Potential needs for government assistance such as aid to families with dependent children, child care, and maternal health care for single parent households can be estimated using CPS characteristics matched with fertility data. The birth expectations data also assist researchers and analysts who explore issues such as postponement of childbirth because of education or employment responsibilities.

Affected Public: Individuals or households.

Frquency: Annually.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182.

OMB Desk Officer: Nancy Kirkendall, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent on or before April 30, 1998, to Nancy Kirkendall, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: March 25, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–8440 Filed 3–30–98; 8:45 am]

BILLING CODE 3510–07–M

DEPARTMENT OF COMMERCE

Bureau of the Census

Generic Clearance for Questionnaire Pretesting Research

ACTION: Proposed collection; comment request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 1, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Department Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instruction should be directed to Theresa J. DeMaio, U. S. Bureau of the Census, Room 3127, FOB 4, Washington, DC 20233–9150, (301) 457–4894.

SUPPLEMENTARY INFORMATION:

I. Abstract

This research program is used by the Census Bureau and survey sponsors to improve questionnaires and procedures, reduce respondent burden, and ultimately increase the quality of data collected in the Census Bureau censuses and surveys. The clearance is used to conduct pretesting of decennial, demographic, and economic census and survey questionnaires prior to fielding them. Pretesting activities are generally small-scale and involve one of the following methods for identifying measurement problems with the questionnaire or survey procedure: cognitive interviews (that is, intensive, one-on-one interviews in which the respondent is typically asked to think aloud as he or she answers survey questions), focus groups (that is, group sessions guided by a moderator that are focused on a particular issue), respondent debriefing (that is, standardized debriefing questionnaires administered to respondents who have participated in a field test), behavior coding of respondent/interviewer interaction (that is, systematic coding of of the question/answer exchange process to identify situations that reflect problems with the questionnaire), and split sample experiments (that is, testing alternative versions of questionnaires).

This clearance has been in existence since 1991, and many valuable pretesting activities have been conducted. For example, cognitive interviews and respondent debriefing questionnaires have been vital components of the development and pretesting of the Survey of Program Dynamics; a split sample experiment was used to evaluate proposed questionnaire revisions for the Survey of Minority Owned Business Enterprises; focus groups have been used to gather important information as input to the Census Bureau's plans for enumerating American Indians and migrant workers in Census 2000; respondent debriefings have provided valuable data for understanding how respondents understand the concept of residence and interpret the residence rules for the decennial census; behavior coding provided useful information in revising the questionnaire for the Current Population Survey Food Security Supplement.

The clearance operates in the following manner: A block of hours is reserved at the beginning of each year, and the particular activities that will be conducted under the clearance are not specified in advance. The Census Bureau provides information to OMB about the specific pretesting activities on a flow basis throughout the year. OMB is notified of each pretesting activity in a letter that gives specific details about the activity, rather than by means of individual clearance packages. At the end of each year, a report is submitted to OMB that summarizes the number of hours used as well as the nature and results of the activities completed under the clearance.

Some modifications of the clearance from previous years are planned. The number of hours is expanded from 4,500 per year to 10,000 per year to allow for larger-scale questionnaire experiments with increased analytical power. In addition, incentives as a survey procedure may also be the subject of research under the clearance.

II. Method of Collection

Mail, telephone, face-to-face; paper-and-pencil, CATI, CAPI

III. Data

OMB Number: 0607–0725.
Form Number: Various.
Type of Review: Regular.
Affected Public: Individuals or households, farms, business or other for-profit.
Estimated Number of Respondents: 10,000.
Estimated Time Per Response: 1 hour.
Estimated Total Annual Burden Hours: 10,000.
Estimated Total Annual Cost: There is no cost to respondents, except for their time to complete the questionnaire.
Respondent's Obligation: Voluntary.
Legal Authority: Title 13 USC, Sections 131, 141, 142, 161, 181, 182, 193, and 301.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 25, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–8438 Filed 3–30–98; 8:45 am]

BILLING CODE 3510–07–P

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 02/16/98–03/25/98

Firm name	Address	Date petition accepted	Product
River Ltd.	115 Anawan Street, Fall Rive, MA 02721.	02/17/98	Women's Slacks and Shorts.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 02/16/98–03/25/98—Continued

Firm name	Address	Date petition accepted	Product
Bittersweet Creations	Highway 7, Climax Springs, MO 65324.	02/20/98	Pine Cabinets, Drawers, Benches and Shelves.
Thiel Tool and Engineering Co., Inc.	4622 Bulwer Avenue, St. Louis, MO 63147.	03/06/98	Stamped Steel Engine Cradle Brackets.
J.D. Engineering & Associates, Inc.	905 Dell Avenue, Campbell, CA 95008.	03/06/98	Medical Electro-Surgical Instruments and Parts of Semiconductor Manufacturing Equipment.
Corwell-Carr Co., Inc	626 Main Street, Monroe, CT 06468.	03/06/98	Marine Doors, Frames and Related Hardware.
Perfection Hy-Test Company	100 Perfection Way, Timmonsville, SC 29161.	03/12/98	Automobile Clutch Sets and Parts, Starters and Water Pumps.
International Crystal Manufacturing Co., Inc.	10 North Lee, Oklahoma City, OK 73102.	03/12/98	Quartz Crystals for Two-Way Radio Equipment.
Coeur d'Alene Fiber Fuels, Inc	3550 West Seltice Way, Coeur d'Alene, ID 83814.	03/12/98	Wood Pellets and Cat Litter.
MRC Technology, Inc	P.O. Box 1287, South Bend, IN 46624.	03/12/98	Battery Chargers, Motor Starters, Toll Road Controls, and Pump Controllers.
Hart Tackle Company, Inc	300 West Main, Stratford, OK 74872.	03/16/98	Fishing Lures and Tackles.
A.J. Murphy Company, Inc	P.O. Box 2669, Syracuse, NY 13220.	03/16/98	Cold Formed Metal Fasteners for Light and Heavy Industrial Applications.
R.N.B. Enterprises, Inc	17816 North 25th Avenue, Phoenix, AZ 85023.	03/25/98	Printed Circuit Boards.
Almega/Tru-Flex, Inc	3917 State Road 106, Bremen, IN 46506.	03/25/98	Power Supply Cords and Electrical Wiring.
Natural Selections, Inc	435 South Norris Avenue, Tucson, AZ 85719.	03/25/98	Wooden Furniture.

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, D.C. 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: March 24, 1998

Anthony J. Meyer,

Coordinator, Trade Adjustment and Technical Assistance.

[FR Doc. 98–8341 Filed 3–30–98; 8:45 am]

BILLING CODE 3510–24–M

DEPARTMENT OF COMMERCE

International Trade Administration

Application for Trade Finance Match-Maker Program

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 1, 1998.

ADDRESSES: Direct all written comments to Linda Englemeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th & Constitution Avenue, NW, Washington DC 20230. Phone number: (202) 482–3272.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instruction should be directed to: John Shuman, Office of Finance, (202) 482–3277.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Office of Finance assists U.S. firms in identifying trade finance opportunities and promotes the competitiveness of U.S. financial services in international trade. The Office of Finance interacts with private financial institutions in insurance, banking, leasing, factoring, barter, and counter trade; U.S. financing agencies, such as the Export-Import Bank and the Overseas Private Investment Corporation; and multilateral development banks, such as the World Bank, Asian Development Bank, and others. To facilitate contact between exporters and financial institutions, the Office of Finance is developing an interactive INTERNET trade finance match-making program to link exporters seeking trade finance with banks and other financial institutions. The information collected from financial institutions regarding the trade finance products and services they offer will be compiled into a database. An exporter will be able to electronically submit a one page form identifying the potential export transaction and type of financing requested. This information will be electronically matched with the financial institution(s) that meet the requirements of the exporter. After a match has been made, a message will be electronically sent to both the exporter and the financial institution containing information about the match, and

contact information for either party to initiate communication. This program is designed to implement the Department of Commerce's goal of improving access to trade financing for small business exporters.

II. Method of Collection

Electronic submission to the International Trade Administration, Office of Finance.

III. Data

OMB Number: None.
Form Number: N/A.
Type of Review: Regular Submission.
Affected Public: Business or other for profit.
Estimated Number of Respondents: 1,710.
Estimated Time per Response: Exporters: 10 minutes. Financial institution: 30 minutes.
Estimated Total Annual Burden Hours: 335 hours.
Estimated Total Cost: $5,000.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 26, 1998

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–8439 Filed 3–30–98; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. 971202287–8077–02]

Special American Business Internship Training Program (SABIT)

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: This Notice supplements the **Federal Register** Notice of January 23, 1998 (63 FR 3540–3543) announcing the availability of funds for the Special American Business Internship Training Program (SABIT), for training business executives (also referred to as "interns") from the Russian Federation. All information in the previous announcement remains current, except for the changes to the closing date and the amount of financial assistance available for the program, as explained herein.

DATES: This Notice extends the closing date of the referenced **Federal Register** Notice for four months to 5 p.m. July 31, 1998 and announces the availability of additional funds. All awards are expected to be made prior to January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Liesel Duhon, Director, Special American Business Internship Training Program, International Trade Administration, U.S. Department of Commerce, phone—(202) 482–0073, facsimile—(202) 482–2443. These are not toll free numbers.

SUPPLEMENTARY INFORMATION: In the SABIT funding notice of January 23, 1998, FR Doc. 98–1618, on page 63 FR 3540, third column, in the Funding Availability paragraph, remove the second and third sentences regarding funding and insert the following sentence in its place, "The maximum amount of financial assistance available for the program is $675,000.00." This amount includes the $175,000 which was previously announced. On page 63 FR 3541, first column, remove the sixth and seventh full sentences starting on the 21st line and insert the following three sentences in their place, "ITA reserves the right to allow an award to exceed this amount in cases of unusually high costs, such as airfare from remote regions of Russia, with adequate justification in the application and with prior approval of the Department of Commerce. However, maximum costs shall not exceed $6,000.00 per intern. The total payment cannot exceed the award amount."

Liesel Duhon,

Director, Special American Business Internship Training Program.

[FR Doc. 98–8304 Filed 3–30–98; 8:45 am]

BILLING CODE 3510–HE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

TITLE: National Marine Sanctuary Permits.

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 1, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Helen Golde, Permit Coordinator, National Marine Sanctuary Program, NOAA, 1305 East-West Highway, #11536, Silver Spring, MD 20910 (301–713–3145 x152). E-mail hgolde@ocean.nos.nooa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

Persons wishing to conduct otherwise prohibited activities in a National Marine Sanctuary must apply for and receive a permit. Persons issued permits must file reports on the activity conducted. Information is required to ensure that the proposed activity is consistent with the objectives of the sanctuary, and the reports are needed to ensure compliance with permit conditions and to increase knowledge regarding the sanctuary's resources.

II. Method of Collection

The requirement for permits is contained in various parts of Chapter 15 of the Code of Federal Regulations. Persons wanting a permit are sent guidelines for the application process. No forms are currently used. It is anticipated that a form will eventually be made available on the World-Wide-Web for electronic application submissions.

III. Data

OMB Number: 0648–0141.
Form Number: None.

Type of Review: Regular Submission.

Affected Public: Individuals, businesses, not-for-profit organizations, the Federal government, and state, local, and tribal governments.

Estimated Number of Respondents: 431.

Estimated Time Per Response: 2 hours.

Estimated Total Annual Burden Hours: 456.

Estimated Total Annual Cost to Public: $0 (no capital expenditures are required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 25, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–8322 Filed 3–30–98; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032398A]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public meetings of the Mackerel Advisory Panel (AP) and Scientific and Statistical Committee (SSC).

DATES: The AP meeting is scheduled to begin at 9:00 a.m. on Monday, April 20, 1998, and adjourn at 4:00 p.m. The SSC meeting is scheduled to begin at 8:30 a.m. on Tuesday, April 21, 1998, and adjourn at 3:30 p.m.

ADDRESSES: The meetings will be held at the Wyndham Riverfront Hotel, 701 Convention Center Boulevard, New Orleans, LA 70130; telephone: 504–524–8200.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The SSC will review the 1998 stock assessments for both king and Spanish Mackerel, the Mackerel Stock Assessment Panel report, and the report of the Socioeconomic Panel that includes economic and social information related to the range of acceptable biological catch and bag limits for mackerels in the Gulf of Mexico and South Atlantic. Based on this review, the SSC may recommend to the Council levels for total allowable catch, bag limits, size limits, commercial quotas, and other measures for these species for the 1998–99 fishing season. The Mackerel AP will review the same information and formulate their recommendations based on their perspectives as users of these resources.

Copies of the agenda can be obtained by calling 813–228–2815. Although other issues not contained in this agenda may come before this AP/SSC for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by April 13, 1998.

Dated: March 23, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–8290 Filed 3–30–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032498B]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 2-day public meeting on April 15 and 16, 1998, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Wednesday, April 15, 1998, at 9 a.m. and on Thursday, April 16, 1998, at 8:00 a.m.

ADDRESSES: The meeting will be held at the Sheraton Inn Plymouth, 180 Water Street, Plymouth, MA 02360; telephone(508) 747-4900. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906-1097; telephone: (781) 231-0422.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (781) 231-042 2.

SUPPLEMENTARY INFORMATION:

Wednesday, April 15, 1998

Following introductions by the Council Chairman, the Groundfish Committee will report on and seek Council approval of measures to be discussed at public hearings and in the Draft Supplemental Environmental Impact Statement (DSEIS) for Amendment 9 to the Northeast Multispecies Fishery Management Plan (FMP). Measures to be voted on for purposes of preparing the public hearing document are associated with new overfishing definitions and the specification of optimum yield consistent with the revised National Standards in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), rebuilding winter flounder stocks and conserving Atlantic halibut. Mesh size changes to reduce the bycatch of juvenile flounders, a prohibition on streetsweeper trawl gear, and alternative management strategies for Gulf of Maine cod proposed by the Gulf of Maine Fishermen's Alliance will also be included.

The Aquaculture and Scallop Committees will report during the afternoon session. The Scallop Committee will seek Council approval of measures to be included in a public hearing document and DSEIS for Amendment 7 to the Atlantic Sea Scallop Fishery Management Plan. Measures to be voted on will end overfishing and establish a major sea scallop rebuilding program. They include days-at-sea (DAS) reductions, scallop area management (including closures), and DAS leasing. The Aquaculture Committee will recommend objectives and language for inclusion in all fishery management plans that would provide for approval of aquaculture projects in the EEZ through a framework adjustment process. The Council will also consider initial action on a framework adjustment to the Scallop Fishery Management Plan that would extend the closure of the Westport Scallop Project (renamed the Seastead Site) for 3 years.

Following adjournment of the meeting at 5 p.m., the Council will convene a monkfish public hearing. Proposed monkfish management measures will be discussed for the purpose of seeking additional public comment before the Council approves the final measures to be included in the Monkfish FMP on Thursday, April 16.

Thursday, April 16, 1998

The morning session will begin with a request from the Council's Monkfish Committee to approve final recommendations on management measures for the Monkfish FMP. The Herring Committee will review and ask for approval of measures for purposes of preparing a public hearing document and DSEIS for the Atlantic Herring Fishery Management Plan. Measures to be voted on include controlled access, spawning area closures, vessel/dealer/operator permit requirements, area management, target total allowable catches (TACs) and TACs that trigger a management action, vessel size limits, a prohibition on fishing for the purpose of meal production, limits on fishing time and restrictions on fishing for roe. The Habitat Committee will seek approval of Essential Fish Habitat designations for monkfish, haddock, and yellowtail flounder for purposes of preparing a public hearing document. They also will provide an update on progress to develop alternatives for other Council-managed species. The Whiting Committee will ask for approval of management measures for purposes of preparing a public hearing document for a whiting amendment and DSEIS to the Northeast Multispecies FMP. Measures slated for consideration include a moratorium on commercial permits, whiting trip limits, mesh size restrictions, 3-inch mesh areas, modifications to regulations for the Cultivator Shoal whiting fishery and a limit on the amount of whiting that can be caught with mesh less than the minimum mesh size. Discussion of any other business will take place before the close of the meeting.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: March 26, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–8428 Filed 3–30–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032398E]

North Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will meet in Anchorage, AK.

DATES: The meetings will be held during the week of April 20, 1998. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: All meetings will be held at the Anchorage Hilton Hotel, 500 W. 3rd Avenue, Anchorage, AK. All meetings are open to the public with the exception of Council executive sessions, which may be held during the noon hour during the meeting week, if necessary, to discuss personnel, international issues, or litigation.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council staff, telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The Scientific and Statistical Committee (SSC) will meet beginning at 8:00 a.m. on Monday, April 20, continuing through at least Wednesday, April 22, and possibly into Thursday morning, April 23.

The Advisory Panel (AP) will begin meeting at 8:00 a.m. on Monday, April 20, and continue through Friday, April 24.

The Council's regular plenary session will begin at 8:00 a.m. on Wednesday, April 22, and continue through Monday, April 27, 1998.

Other workgroup or committee meetings may be held during the week. Notices of these meetings will be posted at the hotel.

The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

1. Reports from NMFS and Alaska Department of Fish and Game on the current status of the fisheries off Alaska, and enforcement reports from the U.S. Coast Guard and NMFS Enforcement.

2. Initial review of analysis for the allocation of pollock between inshore and offshore fisheries and direction to staff before releasing for public review and comment.

3. Initial review of an amendment to the fishery management plans to incorporate essential fish habitat information as required by the Magnuson-Stevens Fishery Conservation and Management Act; release to public comment and review.

4. Initial review of an analysis for an amendment to close a 4–mile by 4–mile area off Sitka (Cape Edgecombe Pinnacles) to protect habitat important for juvenile rockfish and lingcod.

5. Initial review of an amendment to extend the existing vessel moratorium; direction to staff before releasing to public review and comment.

6. Initial review of an amendment to roll over the current pollock community development (CDQ) program in the Bering Sea/Aleutian Islands (BSAI), and a status report on the implementation of the multispecies CDQ program.

7. Council review and comment on NMFS implementation plan for the Fishing Vessel Registration and Fisheries Information Management System.

8. Discussion of Council initiative for social and economic data collection,

including reports from NMFS, the SSC, Socioeconomic Committee, and direction to staff for a proposed plan amendment for data collection.

9. A report on the progress of the Halibut Guideline Harvest Level Committee.

10. Under the Halibut and Sablefish Individual Fishing Quota (IFQ) Program, the Council will consider several amendments to release for public review, receive a report on the "transfer to heirs" amendment and provide further guidance to NMFS, receive a status report on the IFQ fee and loan program, a proposal for a weighmaster program, and discuss a request from Gulf of Alaska communities for allocation of halibut.

11. Groundfish amendments scheduled for action are as follows:

a. Final action on a regulatory amendment to streamline the annual setting of total allowable catch for the groundfish fisheries.

b. Initial review of revisions to the BSAI chinook prohibited species catch.

c. Initial review of an amendment to ban bottom trawling in the BSAI pollock fishery.

d. Initial review of the amendments for revised overfishing definitions for the groundfish, salmon, scallop, and BSAI crab fisheries.

e. Initial review of an amendment to separate Atka mackerel by season and subarea.

12. Other groundfish issues scheduled for discussion, and possible direction to staff, are:

a. Western/Central Gulf of Alaska management: Committee report and further tasking.

b. NMFS report on pollock density specifications; Council recommendation to NMFS.

c. Implementation issues update for the Improved Retention/Improved Utilization program; Committee report.

d. Status report on the draft groundfish Supplemental Environmental Impact Statement.

Although other issues not contained in this agenda may come before these groups for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during the meeting. Action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: March 25, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–8429 Filed 3–30–98; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in the People's Republic of China

March 25, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: April 1, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, 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 or call (202) 927–5850. 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 current limits for certain categories are being reduced for carryforward used.

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 62 FR 66057, published on December 17, 1997). Also see 62 FR 67827, published on December 30, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 25, 1998.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 22, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998.

Effective on April 1, 1998, you are directed to reduce the limits for the following categories, as provided for under the terms of the current bilateral agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted twelve-month limit [1]
Sublevels in Group I	
200	695,664 kilograms.
338/339	2,322,334 dozen of which not more than 1,710,282 dozen shall be in Categories 338–S/339–S [2].
434	12,870 dozen.
634	616,473 dozen.
647	1,509,065 dozen.
651	752,440 dozen of which not more than 134,891 dozen shall be in Category 651–B [3].
670–L [4]	15,574,738 kilograms.
Group IV	
832, 834, 838, 839, 843, 850–852, 858 and 859, as a group.	11,368,204 square meters equivalent.
Level not in a group	
870	32,770,353 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

[2] Category 338–S: all HTS numbers except 6109.10.0012, 6109.10.0014, 6109.10.0018 and 6109.10.0023; Category 339–S: all HTS numbers except 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

[3] Category 651–B: only HTS numbers 6107.22.0015 and 6108.32.0015.

[4] Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9025 and 6307.90.9907.

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,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–8433 Filed 3–30–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Coverage of Import Limits and Visa and Certification Requirements for Certain Part-Categories Produced or Manufactured in Various Countries

March 25, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending coverage for import limits and visa and certification requirements.

EFFECTIVE DATE: April 1, 1998.

FOR FURTHER INFORMATION CONTACT: Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

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.

To facilitate implementation of the Uruguay Round Agreement on Textiles and Clothing, and textile agreements and export visa arrangements based upon the Harmonized Tariff Schedule (HTS), certain HTS classification numbers are being changed for products in part-Categories 369–L and 670–L which are entered into the United States for consumption or withdrawn from warehouse for consumption on and after April 1, 1998, regardless of the date of export.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to amend all import controls and all visa and certification arrangements for countries with part-Categories 369–L and 670–L.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 25, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, all monitoring and import control directives issued to you by the Chairman, Committee for the Implementation of Textile Agreements, which include cotton and man-made fiber textile products in part-Categories 369–L and 670–L, produced or manufactured in various countries and imported into the United States on and after April 1, 1998, regardless of the date of export.

Also, this directive amends, but does not cancel, all directives establishing visa and certification requirements for part-Categories 369–L and 670–L for which visa arrangements are in place with the Government of the United States.

Effective on April 1, 1998, you are directed to make the changes shown below in the aforementioned directives for products entered in the United States for consumption or withdrawn from warehouse for consumption on and after April 1, 1998 for part-Categories 369–L and 670–L, regardless of the date of export:

Category	HTS change
369–L	Add 6307.90.9905—Cooler bags with an outer surface of textile materials, of cotton.
.....	Replace 4202.92.3015 with 4202.92.3016—definition remains unchanged.
670–L	Add 6307.90.9907—Cooler bags with an outer surface of textile materials, of man-made fibers.
.....	Replace 4209.92.3030 with 4209.92.3031—definition remains unchanged.

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,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.98–8373 Filed 3–30–98; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

[OMB Control.Number 0704–0248]

Information Collection Requirements; Defense Federal Acquisition Regulation Supplement, Appendix F, Material Inspection and Receiving Report

AGENCY: Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension 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 DoD, including whether the information will have practical utility; (b) the accuracy of the 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 the use of automated collection techniques or other forms of information technology. This information collection requirement is currently approved by the Office of Management and Budget (OMB) for use through August 31, 1998, under OMB Control Number 0704–0248. DoD proposes that OMB extend its approval for use through August 31, 2001.

DATES: Consideration will be given to all comments received by June 1, 1998.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to: Defense Acquisition Regulations Council, Attn: Mr. R.G. Layser, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. E-mail comments submitted over the Internet should be addressed to: dfars@acq.osd.mil. Please cite OMB Control Number 0704–0248 in all correspondence related to this issue. E-mail comments should cite OMB Control Number 0704–0248 in the subject line.

FOR FURTHER INFORMATION CONTACT: Rick Layser, (703) 602–0131. A copy of the information collection requirement is available electronically via the Internet at: http://www.dtic.mil/dfars/. Paper copies of the information collection requirement may be obtained from Mr. R.G. Layser, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.

SUPPLEMENTARY INFORMATION:

Title, Associated Forms, and Associated OMB Control Number: Defense Federal Acquisition Regulation Supplement (DFARS), Appendix F, Material Inspection and Receiving Report; DD Form 250; DD Form 250C; DD Form 250–1; OMB Control Number 0704–0248.

Needs and Uses: The collection of this information is necessary to process inspection and receipt of materials and payments to contractors under Government contracts.

Affected Public: Businesses or other for-profit organizations; and not-for-profit institutions.

Annual Burden Hours: 988,000.

Number of Respondents: 7,800,000.

Responses per Respondent: 1.

Annual Responses: 7,800,000.

Average Burden Hours/Minutes Per Response: 8 minutes.

Frequency: On occasion.

Summary of Information Collection

The information collection includes the requirements of DFARS Appendix F, Material Inspection and Receiving Report; the related clause at DFARS 252.246–7000, Material Inspection and Receiving Report; and the DD Form 250; DD Form 250C; and DD Form 250–1. The clause at DFARS 252.246–7000 is used in contracts that require separate and distinct deliverable. The clause requires the contractor to prepare and furnish to the Government a material inspection and receiving report (DD Form 250) in a manner and to the extent required by DFARs Appendix F. The report is required for material inspection and acceptance, shipping, and payment.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 98–8418 Filed 3–30–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

[OMB Control Number 0704–0252]

Information Collection Requirements; Use of Government Sources by Contractors

AGENCY: Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension 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 DoD, including whether the information will have practical utility; (b) the accuracy of the 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 the use of automated collection techniques or other forms of information technology. This information collection requirement is currently approved by the Office of the Management and Budget (OMB) for use through August 31, 1998, under OMB Control Number 0704–0252. DoD proposes that OMB extend its approval for use through September 30, 2001.

DATES: Consideration will be given to all comments received by June 1, 1998.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to: Defense Acquisition Regulations Council, Attn: Mr. R. G. Layser, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, D.C. 20301–3062. Telefax number (703) 602–0350. E-mail comments submitted over the Internet should be addressed to: dfars@acq.osd.mil. Please cite OMB Control Number 0704–0252 in all correspondence related to this issue. E-mail comments should cite OMB Control Number 0704–0252 in the subject line.

FOR FURTHER INFORMATION CONTACT: Rick Layser, (703) 602–0131. A copy of the information collection requirement is available electronically via the Internet at: http://www.dtic.mil/dfars/. Paper copies of the information collection requirement may be obtained from Mr. R. G. Layser, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, D.C. 20301–3062.

SUPPLEMENTARY INFORMATION:

Title, Associated Forms, and Associated OMB Control Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 251, Use of Government Sources by Contractors, and related clauses in Part 252; OMB Control Number 0704–0252.

Needs and Uses: The collection of this information is necessary to facilitate the use of Government supply sources by contractors. Contractors must provide certain documentation to the Government to verify their authorization to purchase from Government supply sources, or to use Interagency Fleet Management System Vehicles and related services.

Affected Public: Businesses or other for-profit organizations; and not-for-profit institutions.

Annual Burden Hours: 5,250.

Number of Respondents: 3,500.

Responses Per Respondent: 3.

Annual Responses: 10,500.

Average Burden Hours per Response: .5.

Frequency: On occasion.

Summary of Information Collection

The information collection includes the requirements of DFARS 252.251–7000, Ordering from Government Supply Sources, which requires a contractor to provide a copy of an authorization when planing an order under a Federal Supply Schedule or a Personal Property Rehabilitation Price Schedule; and DFARS 252.251–7001, Use of Interagency Fleet Management System Vehicles and Related Services, which requires a contractor to submit a request for use of Government vehicles, when the contractor is authorized to use such vehicles, and specifies the information to be included in the contractor's request.

Michele P. Peterson,

Executive Editor, Defense Acquisitions Regulations Council.

[FR Doc. 98–8419 Filed 3–30–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education

ACTION: Proposed collection; comment request

SUMMARY: The Deputy Chief Information Officer, 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 June 1, 1998.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

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 Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this 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 at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

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: March 25, 1998.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title: Report of Children and Youth with Disabilities Subject to Unilateral Changes in Placement, Change in Placement Based on a Hearing Officer Determination, or Long-Term Suspension/Expulsion.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 58.

Burden Hours: 149,350.

Abstract: This package provides instructions and a form for States to report the number of children and youth and the number of acts involving students served under the Individuals with Disabilities Education Act involving a unilateral change in placement, change in placement based on a hearing officer determination, or long-term suspension/expulsion. The form satisfies reporting requirements and is used by the Office of Special Education Programs to monitor state education agencies and for Congressional reporting.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.

Title: Personnel (In Full-Time Equivalency of Assignment) Employed to Provide Special Education and Related Services for Children and Youth with Disabilities.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 58.

Burden Hours: 7,685.

Abstract: This package provides instructions and a form necessary for States to report the number of personnel employed and contracted in the provision of special education and related services. Data are obtained from state and local education agencies, and are used to assess the implementation of the Individuals with Disabilities Education Act and for monitoring, planning and reporting to Congress.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.

Title: Report of Infants and Toddlers Receiving Early Intervention Services and of Program Settings Where Services are Provided in Accordance with Part C, and Report on Infants and Toddlers Exiting Part C.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 57.

Burden Hours: 5,472.

Abstract: This package provides instructions and forms necessary for States to report, by race and ethnicity, the number of infants and toddlers with disabilities who: (a) are served under the Individuals with Disabilities Education Act (IDEA), Part C; (b) are served in different program settings; and (c) exit Part C because of program completion and for other reasons. Data are obtained from state and local service agencies and are used to assess and monitor the implementation of IDEA and for Congressional reporting.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.

Title: Report of Early Intervention Services on Individualized Family Service Plan Provided to Infants, Toddlers and Their Families in Accordance with Part C and Report of Number and Type of Personnel Employed and Contracted to Provide Early Intervention Services.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 57.

Burden Hours: 5,187.

Abstract: This package provides instructions and forms necessary for States to report, by race and ethnicity, the number of infants and toddlers with disabilities and their families receiving different types of Part C services, and the number of personnel employed and contracted to provide services for infants and toddlers with disabilities and their families. Data are obtained from state and local service agencies and are used to assess and monitor the implementation of the Individuals with Disabilities Education Act (IDEA) and for Congressional reporting.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.

Title: Report of Children and Youth with Disabilities Exiting Special Education During the 1998–98 School Year.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 58.

Burden Hours: 53,244.

Abstract: This package provides instructions and a form necessary for States to report the number of students aged 14 and older served under Part B, Individuals with Disabilities Education Act, exiting special education. The form satisfies reporting requirements and is used by Office of Special Education Programs to monitor state education agencies and for Congressional reporting.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.

Title: Report of Children and Youth with Disabilities Receiving Special Education under Part B of Individuals with Disabilities Education Act (IDEA), As Amended.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 58.

Burden Hours: 30,624.

Abstract: This package provides instructions and a form necessary for States to report the number of children with disabilities served under IDEA–B receiving special education and related

services. It serves as the basis for distributing federal assistance, monitoring, implementing, and Congressional reporting.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.
Title: Part B, Individuals with Disabilities Education Act (IDEA) Implementation of Free Appropriate Public Education Requirements 1998–99 School Year.
Frequency: Annually.
Affected Public: State, local or Tribal Gov't, SEAs or LEAs.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 58.
Burden Hours: 257,752.
Abstract: This package provides instructions and a form necessary for States to report the settings in which children with disabilities served under IDEA–B receive special education and related services. The form satisfies reporting requirements and is used by the Office of Special Education Programs to monitor state education agencies and for Congressional reporting.

Office of Vocational and Adult Education

Type of Review: Extension.
Title: Progress Measures.
Frequency: Annually.
Affected Public: Not-for-profit institutions.
Reporting and Recordkeeping Burden:
Responses: 1,157.
Burden Hours: 11,000.
Abstract: The National School-to-Work Office collects information from funded local partnerships to gather evidence on state and local progress in implementing school-to-work. Data elements include student, school, and employer involvement in school-to-work; graduation and postsecondary transition rates for students; and funds leveraged by partnerships to sustain their school-to-work systems. Information is used to provide an annual school-to-work report to Congress, as well as to build state's capacity to collect and analyze information for their own system improvement purposes.

[FR Doc. 98–8331 Filed 3–30–98; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation Policy; Proposed Subsequent arrangement

AGENCY: Department of Energy.

ACTION: Subsequent arrangement.

SUMMARY: Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy Between the Government of the United States of America and the European Atomic Energy Community (EURATOM).

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following: RTD/RS(EU)–1 for the retransfer of 510 kilograms of zircaloy-4 cladding tubes from Germany to the Elektrostal Nuclear Fuel Fabrication Facility in Moscow, Russia for fabrication of fuel assemblies. The fuel assemblies will be returned to Siemens AG in Germany for distribution to Western European nuclear power stations.

The initial test phase was approved in January of 1995. At that time, the Russian Government provided assurances not only for the test phase but also the follow-on fabrication phase, as proposed in this subsequent arrangement, that these materials will not be used for any military purpose or nuclear explosive device and that the materials will not be retransferred to the jurisdiction of any other nation or group of nations except to Germany without prior consent of the United States.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: March 24, 1998.

For the Department of Energy.

Adam Scheinman,

Acting Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 98–8376 Filed 3–30–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–178]

Application to Export Electric Energy; Citizens Power Sales

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Citizens Power Sales (CP Sales), a power marketer, has submitted an application to export electric energy to Mexico pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before April 30, 1998.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On March 19, 1998, CP Sales applied to the Office of Fossil Energy (FE) of the Department of Energy (DOE) for authorization to export electric energy to Mexico, as a power marketer, pursuant to section 202(e) of the FPA. Specifically, CP Sales has proposed to transmit to Mexico electric energy purchased from electric utilities and other suppliers within the U.S.

CP Sales would arrange for the exported energy to be transmitted to Mexico over the international transmission facilities owned by Comision Federal de Electricidad, the national electric utility of Mexico, Central Power & Light Company, El Paso Electric Company, and San Diego Gas & Electric Company. The construction of each of these transmission facilities, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order (EO) 10485, as amended by EO 12038.

Procedural Matters

Any persons desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of such petitions, comments and protests should be filed with the DOE on or before the date listed above. Additional copies are to be filed directly with Joseph C. Bell, Jolanta Sterbenz, Hogan & Hartson L.L.P., 555 Thirteen Street, N.W., Washington, D.C. 20004–1109 and William Roberts, Vice

President of Utility Contracting, Citizens Power Sales, 160 Federal Street, Boston, Massachusetts 02110.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC on March 24, 1998.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal and Power Im/Ex, Office of Coal and Power Systems, Office of Fossil Energy.

[FR Doc. 98–8374 Filed 3–30–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Bonneville Power Administration South Oregon Coast Reinforcement Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of intent to prepare an environmental impact statement (EIS).

SUMMARY: Bonneville Power Administration proposes to build a 500-kilovolt (kV) transmission line and new substation to reinforce electrical service to the southern coast of the state of Oregon. Nucor Steel, a division of Nucor Corporation, may build a new steel mill in the Coos Bay/North Bend, Oregon, area. This plant would require a peak load of 150 megawatts (MW) and an instantaneous peak of 225 MW. The existing transmission system to the area does not have the capacity to serve this potential load and other anticipated load growth on the south coast of Oregon. This project will look at providing a transmission path to serve this load. The power supplier for this load is subject to state utility regulations.

The State of Oregon has agreed to provide BPA funding to investigate solutions to reinforce the transmission system to the South Oregon Coast area and to support industrial development. If Nucor Steel decides not to build the steel mill, BPA will stop pre-proposal activities and inform the public and agencies that the environmental process has been suspended.

Potential Federal cooperating agencies include the U.S. Department of Interior, U.S. Bureau of Land Management; the U.S. Department of Agriculture, U.S. Forest Service; and the U.S. Army Corps of Engineers. In accordance with National Environmental Policy Act requirements, BPA and the cooperating agencies will prepare an EIS to inform decisionmakers about potential environmental effects of the proposal. The environmental analysis will cover the proposed transmission line, a new BPA substation, and related actions including: construction of the Nucor Steel plant; a 230-kV transmission line that would connect the new BPA substation to PacifiCorp's Isthmus Substation south of Coos Bay; and two new 230-kV transmission lines connecting the new BPA substation to a new substation at the plant site.

DATES: Interested and affected members of the public such as landowners, special interest groups, tribes, state and local governments, utilities, and community groups are invited to help BPA and the cooperating agencies identify alternatives, environmental resources, and issues to be addressed in the draft EIS. Information to explain the proposal, the environmental process, and how to participate will be sent to interested or potentially affected members of the public at the beginning of the scoping period. Three BPA-sponsored scoping meetings will be held: Tuesday, April 14, at the Creswell Community Center, 99 South First, Creswell, Oregon; Wednesday, April 15, at the Masonic Lodge Hall, 247 First Street, in Elkton, Oregon; and Thursday, April 16, at the North Bend Community Center, 2222 Broadway, North Bend, Oregon. Meetings will be held from 4–8 p.m. Meetings will have an open-house format, with project material available for public review. BPA, the cooperating agencies, the State of Oregon, Nucor Steel, and PacifiCorp staff will answer questions. BPA will accept verbal and written comments. The time and place of scoping meetings will be announced in information being sent to interested members of the public and local newspapers. Written comments before, during, or after scoping meetings should be sent to the Communications Office at the address below. The close of the comment period will be announced in the pre-meeting information and at the public meetings.

BPA, in conjunction with the cooperating agencies, plans to file and distribute a draft EIS for public review in August 1998. BPA, the cooperating agencies, and the State of Oregon will hold public meetings in local communities to give the public an opportunity to review and comment on the draft EIS.

ADDRESSES: BPA invites participation, comments, and suggestions on the proposed scope of the draft EIS. Send comment letters, requests to be placed on the project mail list, and requests for more information to the Communications Office, Bonneville Power Administration—ACS, P.O. Box 12999, Portland, Oregon, 97212, or call 503–230–3478, toll-free 1–800–622–4519, or fax 503–230–3984. Comments may also be sent to the BPA Internet address: comment@bpa.gov. Documents can be requested by calling toll-free 1–800–622–4520.

FOR FURTHER INFORMATION CONTACT: Laurens Driessen, Project Manager, Bonneville Power Administration—TNF–3, P.O. Box 3621, Portland, Oregon, 97208–3621. E-mail requests or questions should be sent to lcdriessen@bpa.gov, or call toll-free 1–800–662–6963. You may also contact Ken Barnhart, Environmental Project Manager, Bonneville Power Administration—EC, P.O. Box 3621, Portland, Oregon, 97208–3621. E-mail requests or questions should be sent to kabarnhart@bpa.gov, or call toll-free 1–800–662–6963.

SUPPLEMENTARY INFORMATION: The southern Oregon coast (from south of Newport, Oregon, to the California-Oregon border and west of Eugene and Roseburg, Oregon) is served from a 115-kV and a 230-kV transmission line out of Lane Substation (near Eugene, Oregon), a 230-kV transmission line from Santiam Substation (south of Salem, Oregon), and a 230-kV transmission line from Dixonville (near Roseburg, Oregon). The critical operating period for the Oregon coast is winter. Normal winter load forecasts for the southern Oregon coast in the year 2000 show about 720 MW of flow to the coast on these transmission lines to support the area's winter load. With all lines in service, the existing transmission system can support about 835 MW of flow on these lines. If the Dixonville 230-kV transmission line is lost for any reason, the system capacity is about 765 MW. Assuming 1.5 percent annual load growth for this area (without the added load of the steel mill), a transmission project may be required in the year 2004 to support the southern Oregon coast for the loss of the Dixonville-Reston 230-kV transmission line. According to existing BPA planning criteria, all load must be served for the loss of a single

transmission line or transformer for all load conditions to maintain reliable service.

The proposed Nucor Steel mill would require an instantaneous peak load of 225 MW for its arc furnace. The expected annual load growth with the new mill is about 3 percent. The existing transmission system cannot serve the new plant and the expected load growth. Furthermore, the existing system is not capable of suppressing voltage changes induced by the arc furnace.

Alternatives Proposed for Consideration

BPA has been studying ways to reinforce the transmission system. Several options for adding new 230-kV transmission lines and series compensation were studied. These options cannot provide the system reliability requirements needed, and the costs for adding three 230-kV transmission lines and series compensation are comparable to a new 500-kV transmission line. A new 500-kV line is needed to eliminate flickers induced by the arc furnace.

Potential routes for a 500-kV transmission line have been developed in cooperation with PacifiCorp and Federal, state and local agencies. Three routes that parallel existing transmission lines are being studied. The first route would follow an existing BPA transmission line that begins at BPA's Alvey Substation near Goshen, Oregon, west to near Florence, Oregon, then would follow an existing BPA transmission line south through Reedsport to a proposed new substation site in the hills above Glasgow, Oregon. The second route would follow an existing BPA transmission line from BPA's Alvey Substation south to near Roseburg, Oregon, then west next to an existing BPA transmission line through Fairview, and then north to the proposed substation site. A third route would begin at PacifiCorp's Dixonville Substation and follow PacifiCorp's transmission line west to BPA's Reston Substation, then west following BPA's transmission line through Fairview, then north to the proposed substation site.

Two additional routes would parallel existing lines for part of the route, but would then require new right-of-way. The first route would follow an existing BPA transmission line from BPA's Alvey Substation southwest to near Drain, Oregon. From near Drain, new right-of-way would head southwest, cross the Umpqua River, then turn west and travel to the proposed substation site above Glasgow, Oregon. The second route also starts at BPA's Alvey Substation and again follows the existing BPA transmission line to just south of Creswell, Oregon, then turns southwest on new right-of-way. This corridor heads west to near Elkton, crosses the Umpqua River, and ends at the same substation site.

The routes cross land in Lane, Douglas, and Coos counties, Oregon. A new 500-kV transmission line would be about 120 kilometers (75 miles) long and would require approximately 46 meters (150 feet) of new right-of-way width. A new substation would need to be constructed and would require about 2 hectares (5 acres). At this time, BPA believes the routes using some new right-of-way may be the preferred routes to study. BPA is also considering taking no action.

BPA is mandated by the Northwest Power Act to recover its costs. Each alternative will be evaluated to determine if the revenues generated cover the costs of the alternative, and if the alternative is consistent with sound business principles.

Identification of Environmental Issues

Potential issues presently identified for this proposal include: (1) Effects on fish, wildlife, and vegetation, including threatened and endangered species; (2) effects of economic development and socioeconomic effects of building a line and substation; (3) effects of construction and placement of electrical facilities in floodplains and wetlands; (4) concern over visual effects, noise, and other interference produced by electrical facilities in rural and populated areas; (5) impacts on range, forest, and agricultural resources due to construction and placement of electrical facilities; (6) concern over human exposure to electric and magnetic fields created by electrical facilities; (7) impacts to cultural resources; (8) impacts to recreational resources; (9) conflicting land use; (10) impact to property values; and (11) potential impacts to soils (erosion) and water quality. Additional issues identified through the scoping process may also be examined in the draft EIS.

Issued in Portland, Oregon, on March 23, 1998.

Steven G. Hickok,

Acting Administrator and Chief Executive Officer.

[FR Doc. 98–8375 Filed 3–30–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–292–000]

Florida Gas Transmission Company; Notice of Request Under Blanket Authorization

March 25, 1998.

Take notice that on March 20, 1998, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP98–292–000, a request pursuant to Sections 157.205 and 157.216(b) for authorization to abandon approximately .9 of a mile of the 12-inch Ft. Lauderdale Lateral under FGT's blanket certificate issued in Docket No. CP82–553–000 pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

FGT states that it is required to remove or abandon the 12-inch Ft. Lauderdale Lateral due to the state road department's plan to widen Griffin Road into Ft. Lauderdale where the 12-inch Ft. Lauderdale Lateral is in the road right-of-way. It is further stated that FGT has determined that the 12-inch lateral is no longer needed to serve Florida Power & Light Company (FPL) since the construction of the new metering facilities currently being served through the 24-inch lateral and metering facilities constructed on the north side of the FPL power plant.

FGT proposes to abandon and remove four short sections totaling 45 feet, of the 12-inch Ft. Lauderdale pipeline, and filling the remaining portions with water or nitrogen. FGT states that the proposed abandonment would not result in the abandonment of any existing service to FGT's customers, nor would it disadvantage FGT's existing customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for

authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–8323 Filed 3–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–366–009]

Florida Gas Transmission Company, Notice of Report of Refunds

March 25, 1998.

Take notice that on March 20, 1998, Florida Gas Transmission Company (FGT) tendered for filing with a supplemental refund report reflecting amounts refunded to its transportation customers on February 20, 1998.

FGT states that on December 15, 1997 FGT refunded amounts to its customers in compliance with Article XI of the rate case settlement in Docket No. RP96–366–005. Subsequently it came to FGT's attention that FGT inadvertently failed to calculate refunds related to: (1) The transportation component of the cash-out price applicable to net delivery point overage imbalances pursuant to the cash-out mechanism of Section 14 of the General Terms and Conditions (GTC) of FGT's Tariff, and (2) reservation charge credits resulting from a one-time shortening of the gas day of April 5, 1997 due to FGT's implementation of Gas Industry Standards Board (GISB) Standard 1.3.1. On January 27, 1998 FGT filed a letter with the Commission stating that FGT would make additional refunds related to both of the above, inclusive of interest, and would file a supplemental refund report within 30 days of the date additional refunds were made.

FGT states that the supplemental refunds, totaling $285,656 inclusive of interest, were mailed to customers on February 20, 1998. FGT is filing the attached supplemental refund report as stated in the January 27 letter.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before April 1, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–8324 Filed 3–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–74–000]

George Grenyo; Notice of Petition for Adjustment

March 25, 1998.

Take notice that on March 16, 1998, George Grenyo (Grenyo) filed a petition for adjustment, pursuant to section 502(c) of the Natural Gas Policy Act of 1978 [15 U.S.C. 3142(c) (1982)], requesting to be relieved of his obligation to pay Panhandle Eastern Pipe Line Company (Panhandle) the Kansas ad valorem tax refunds for the royalty interests attributable to Grenyo's working interest in the Ormiston Lease, otherwise required by the Commission's September 10, 1997 order in Docket No. RP97–369–000 *et al.*,[1] on remand from the D.C. Circuit Court of Appeals.[2] Grenyo's petition indicates that he has already paid Panhandle $126.25, and that this sum includes unspecified amounts attributable to royalty interests in the Ormiston Lease. Grenyo's petition is on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the Federal Register of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

[1] See 80 FERC ¶ 61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

[2] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997) (Public Service).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–8330 Filed 3–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2004–073 and 11607–000]

Holyoke Water Power Company, City of Holyoke, Ashburnham Municipal Light Plant, and Massachusetts Municipal Wholesale Electric Company; Notice Granting Extension of Time to File Better Adapted Statements for the Holyoke Project

March 26, 1998.

On October 9, 1997, the Commission issued its Notice Establishing Subsequent Licensing Procedural Schedule and a Deadline for Submission of Final Amendments in the above-captioned proceedings. Among other things, the Notice's schedule established a March 31, 1998 deadline for the competing applicants to file a detailed and complete statement of how its plans are as well, or better, adapted than the plans of each of the other license applications to develop, conserve, and utilize in the public interest, the water resources of the region, per Section 4.36(d)(2)(iii) of the Commission's regulations.

On March 24, 1998, the Holyoke Water Power Company (NWP) filed a motion requesting an extension of time to file its "better adapted" statement for the Holyoke Project. As described below, HWP requested an extension of the March 31 deadline, for a period not to exceed 90 days, or until June 30, 1998. In its motion, HWP cites the deficiencies in the competing applicant's application (herein referred to as the City of Holyoke), as the reason for extending the deadline to file the "better adapted" statements. Most notably, HWP references the City of Holyoke's proposal to install additional capacity at the project.

HWP contends that the City of Holyoke's proposal to install additional capacity is an integral part of the City of Holyoke's application. In light of this, HWP argues that until the aforementioned deficiencies are corrected, it will be unclear as to what the City of Holyoke is proposing in its application with respect to the installation of additional capacity. Moreover, HWP argues that such an emission on the part of the City of

Holyoke makes it difficult for HWP to compare its proposed project with the City of Holyoke's proposed project, for purposes of the "better adapted" statements.

Based on the foregoing argument, HWP believes that it is premature to require HWP and the City of Holyoke to file their "better adapted" statements prior to correction of the deficiencies in the applications, and acceptance of the applications for filing. HWP does not believe that granting the requested extension of time will unduly delay the proceedings in this docket.

Good cause has been shown, and the deadline for HWP and the City of Holyoke to file their "better adapted" statements is extended to June 30, 1998.[1] As noted in the Commission's October 27, 1997, Notice Granting Extension of Time to File Comments and Requests for Additional Studies, any further requests for extension of deadlines that effect the schedule of these proceedings will be given careful scrutiny.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–8371 Filed 3–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–108–001]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 25, 1998.

Take notice that on March 23, 1998, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets to be effective April 1, 1998:

Third Revised Sheet No. 197
Third Revised Sheet No. 198
Third Revised Sheet No. 200
Original Sheet No. 200A

MRT states that the purpose of this filing is to comply with the Commission's letter order in this docket issued March 12, 1998.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not served to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–8327 Filed 3–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2645–029]

Niagara Mohawk Power Corporation; Notice Denying Late Intervention, and Dismissing Requests to Supplement Record and for Further Consideration

March 26, 1998.

By order issued April 2, 1996, the Commission approved a settlement agreement and issued a new license to Niagara Mohawk Power Corporation (Niagara Mohawk) for the continued operation of the Beaver River in Lewis and Herkimer Counties, New York.[1] On January 16, 1998, the Commission issued an order granting in part and denying in part certain requests for rehearing of the April 2, 1996 order.[2]

On February 17, 1998, the Town of Croghan, New York, filed an untimely motion to intervene and to supplement the record, and a request for consideration under Section 10(h) of the Federal Power Act,[3] of Niagara Mohawk's fitness to hold the new license, in view of Niagara Mohawk's plan, filed December 1, 1997, with the New York Public Service Commission, for divesting its "non-nuclear generation assets."

In acting on a late motion to intervene, the Commission may consider whether the movant has shown good cause for the failure to file the motion within the time prescribed, and whether the movant's intervention will disrupt the proceeding.[4] The deadline for filing intervention in this proceeding was April 12, 1993.[5] Moreover, Croghan states in its motion (at p. 2) that Niagara Mohawk has been publicly stating since October 1995 that it would sell its non-nuclear generating facilities. Therefore, Croghan has not shown sufficient reason for the lateness of its filing. Moreover, in light of the issuance of the new license and approval of the related settlement agreement, granting Croghan's request for intervention would unduly disrupt the proceeding. Accordingly, Croghan's motion for late intervention is denied, and consequently its additional requests for relief are dismissed. If, as Croghan suggests, the state divestiture proceeding results in Niagara Mohawk requesting approval to transfer its license for Project No. 2645, Croghan will have the opportunity to intervene and present its arguments in that proceeding.

This notice constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this notice, pursuant to 18 CFR 385.713.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–8370 Filed 3–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–291–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

March 26, 1998.

Take notice that on March 20, 1998, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP98–291–000 a request pursuant to Sections 157.205, 157.212 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212 and 157.216) for authorization to upgrade two existing delivery points located in Green and Rock Counties, Wisconsin, to accommodate additional natural gas deliveries to Wisconsin Gas Company (WGC), under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

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[1] Because, in the absence of this extension, the competing applicant's would be required to file their "better adapted" statements by March 31, 1998, this notice is being issued in advance of the usual 15-day response time that would otherwise apply to a motion for extension of time.

[1] 76 FERC ¶61,152.

[2] 82 FERC ¶61,029.

[3] 16 U.S.C. 803(h).

[4] 18 CFR 385.214(d).

[5] 58 FR 13477 (March 11, 1993).

Northern states that throughput service will be provided to WGC pursuant to currently effective throughput service agreement(s). It is asserted that the proposed incremental volumes to be delivered for WGC are 45 MMBtu on a peak day and 4,599 MMBtu on an annual basis at the Albany #1 delivery point and 390 MMBtu on a peak day and 39,858 MMBtu on an annual basis at the Evansville #1 delivery point.

Northern states that deliveries to the upgraded delivery points will be the result of a realignment of currently contracted volumes. Northern estimates a cost of $75,000 to upgrade the Albany #1 delivery point and $142,000 to upgrade the Evansville #1 delivery point. Northern states that the facilities described herein will be financed in accordance with the General Terms and Conditions of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–8369 Filed 3–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–69–000]

Pickrell Drilling Company, Inc.; Notice of Petition for Adjustment

March 25, 1998.

Take notice that on March 10, 1998, Pickrell Drilling Company, Inc. (Pickrell) filed in Docket No. SA98–69–000 a petition for adjustment pursuant to Section 502(c) of the Natural Gas Policy Act 15 U.S.C. 3412(c) and Rules 1101–1117 of the Commission's Rules of Practice and procedure (18 CFR 385.1101–385.1117) requesting that it be released of any refund liability of the Kansas *ad valorem* tax pertaining to the Statement of Refunds Due, all are more fully set forth in the petition which is on file with the Commission and open to public inspection.

Pickrell states that it was simply the operator of the wells for which two tax payments were made and that Pickrell owned no working interest in the leases or wells. Pickrell states that the working interest owners that received tax reimbursements have refunded their proportionate shares of the amount set out in the Statement of Refunds Due, and are requesting that they be relieved of any refund liability for the interest. Pickrell also states that some of the working interest owners are deceased and their estates have been closed, one is elderly and in poor financial condition, and two owners are not locatable. Pickrell believes that it is a hardship on the other owners and inequitable to require them to refund the interest where there is no chance of recouping anything further from production, and that any amounts attributable to these interest owners should be waived.

Any person desiring to be heard or to make any protest with reference to said petition should, on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–8328 Filed 3–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–66–000]

R.J. Patrick Operating Company; Notice of Petition for Adjustment

March 25, 1998.

Take notice that on March 10, 1998, R.J. Patrick Operating Company (Patrick), P.O. Box 1157, 326 North Lincoln, Liberal, Kansas 67905–1157, filed in Docket No. SA98–66–000 a petition for adjustment pursuant to Section 502(c) of the Natural Gas Policy Act (NGPA) 15 U.S.C. 3412(c) and Rules 1101–1117 of the Commission's Rules of Practice and Procedure (18 CFR 385.1101–385.1117) requesting to be relieved of all refund requests or obligations to Panhandle Eastern Pipe Line Company (Panhandle), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

It is said that the wells were sold to the Federal Government with a reservation of mineral rights for a term of 50 years expiring on November 1, 1987. It is said further that because of the reversion, neither Patrick nor any of the other investors would ever be able to recover or recoup any refund of the *ad valorem* taxes.

Patrick states that to pay the refunds would constitute a considerable burden and as such requests to be relieved of all refund obligations based on the special hardship privileges.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–8329 Filed 3–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–25–000]

West Texas Gas, Inc.; Notice of Informal Settlement Conference

March 25, 1998.

Take notice than an informal settlement conference will be convened in this proceeding on Thursday, April 2, 1998. The conference will begin at 10:00 a.m. at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. The purpose of the conference is to explore the possibility of settlement of this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations, 18 CFR 385.214.

For additional information, contact Russell B. Mamone at (202) 208–0744 or Anja M. Clark at (202) 208–2034.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–8326 Filed 3–30–98; 8:45am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP97–258–006 and RP97–454–002]

Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

March 25, 1998.

Take notice that on March 20, 1998, Williams Gas Pipelines Central, Inc., formerly Williams Natural Gas Company (Williams), tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with the proposed effective date of May 1, 1998:

First Revised Sheet Nos. 1 and 2
Original Sheet No. 5C
First Revised Sheet Nos. 105, 106, 114, 120, 121, 126, 131, 136, 141, and 144
Original Sheet Nos. 145–148
First Revised Sheet Nos. 210, 211, 229, 232, 260, 456A–456E, and 465–472

Williams states that on December 30, 1997, it filed with the Commission an offer of Settlement in Docket Nos. RP98–258–005 and RP97–454–001. By order issued March 2, 1998, the Commission approved the Settlement to be effective May 1, 1998 with certain modifications. Williams states that the instant filing is being made to file actual tariff sheets to implement the settlement with the modifications, clarifications, and conditions as required by the order.

Williams states that a copy of its filing was served on all participants listed on the service lists maintained by the Commission in the dockets referenced above and on all of Williams' jurisdictional customers and interested state commission.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–8325 Filed 3–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC98–31–000, et al.]

Union Electric Company d/b/a AmerenuUE, et al.; Electric Rate and Corporate Regulation Filings

March 24, 1998.

Take notice that the following filings have been made with the Commission:

1. Union Electric Company d/b/a AmerenUE

[Docket No. EC98–31–000]

Take notice that on March 16, 1998, Union Electric Company d/b/a AmerenUE (AmerenUE), filed an application pursuant to Section 203 of the Federal Power Act and the Federal Energy Regulatory Commission's Regulations seeking authorization and approval of the sale of certain portions of its electric transmission facilities and related equipment to the City of Rolla, Missouri.

AmerenUE is a combination electric and gas public utility subject to the jurisdiction of the Commission. AmerenUE provides electric service within parts of the states of Missouri and Illinois and is subject to the jurisdictions of the utility regulatory commissions in both states. AmerenUE is a subsidiary of Ameren Corporation, a registered public utility holding company under the Public Utility Holding Company Act of 1935, as amended, (PUCHA).

Comment date: April 22, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Montaup Electric Company

[Docket Nos. ER97–2800–001, ER97–3127–001, and ER97–2338–001]

Take notice that on January 20, 1998, Montaup Electric Company tendered for filing its compliance filing in the above-referenced dockets.

Comment date: April 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Kamps Propane, Inc.

[Docket No. ER98–1148–000]

Take notice that on March 17, 1998, Kamps Propane, Inc., tendered for filing an amendment in the above-referenced docket.

Comment date: April 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, Southwestern Electric Power Company

[Docket No. ER98–1234–000]

Take notice that on March 19, 1998, Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, and Southwestern Electric Power Company (collectively, the CSW Operating Companies) gave notice of the withdrawal of their filing in the above captioned proceeding. The CSW Operating Companies state that the Commission's December 10 order issued in Docket No. OA97–24–000 and the submission of a revised open access transmission tariff on February 17, 1998 in response to that order, renders the submission on their filing in this proceeding unnecessary.

The CSW Operating Companies state that a copy of their Notice of Withdrawal of Filing was served on all parties to this proceeding.

Comment date: April 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. California Independent System Operator Corporation

[Docket No. ER98–1934–000]

Take notice that on March 9, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a Notice of Withdrawal of the proposed Scheduling Coordinator Agreement between ISO and the Department of Water and Power of the City of Los Angeles filed in the above-referenced docket.

Comment date: April 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. California Independent System Operator Corporation

[Docket No. ER98–2113–000]

Take notice that on March 6, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for ISO Metered Entities between ISO and Salt River Project Agricultural Improvement and Power District.

Comment date: April 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Arizona Public Service Company

[Docket No. ER98–2240–000]

Take notice that on March 19, 1998, Arizona Public Service Company (APS), tendered for filing Umbrella Service Agreements to provide Firm and Non-Firm Point-to-Point Transmission Service to The Washington Water Power Company under APS' Open Access Transmission Tariff.

A copy of this filing has been served on The Washington Water Power Company and the Arizona Corporation Commission.

Comment date: April 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Illinois Power Company

[Docket No. ER98–2241–000]

Take notice that on March 19, 1998, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a notification indicating its consent to the assignment by Heartland Energy Service, Inc. (Heartland), of its rights and obligations under the Interchange Agreement and Power Sales Agreement between Illinois Power and Heartland to Cargill-IEC, LLC (Cargill).

Illinois Power has requested an effective date of November 1, 1997.

Copies of the filing were served upon Heartland as well as the Illinois Commerce Commission.

Comment date: April 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Virginia Electric and Power Company

[Docket No. ER98–2242–000]

Take notice that on March 19, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service with PG&E Energy Trading—Power, L.P. (PGET) under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide firm point-to-point service to the Transmission Customers under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon PG&E Energy Trading—Power, L.P. (PGET), the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: April 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Virginia Electric and Power Company

[Docket No. ER98–2243–000]

Take notice that on March 19, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service with PG&E Energy Trading—Power, L.P. (PGET), under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide non-firm point-to-point service to the Transmission Customers under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon PG&E Energy Trading—Power, L.P. (PGET), the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: April 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. UtiliCorp United Inc.

[Docket No. ER98–2244–000]

Take notice that on March 19, 1998, UtiliCorp United Inc. (UtiliCorp), filed service agreements with Avista Energy Inc., for service under its Non-Firm Point-to-Point open access service tariff for its operating divisions, Missouri Public Service and WestPlains Energy-Kansas.

Comment date: April 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. UtiliCorp United Inc.

[Docket No. ER98–2245–000]

Take notice that on March 19, 1998, UtiliCorp United Inc. (UtiliCorp), filed a service agreement with Municipal Energy Agency of Nebraska for service under its Non-Firm Point-to-Point open access service tariff for its operating division, WestPlains Energy-Colorado.

Comment date: April 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Illinois Power Company

[Docket No. ER98–2246–000]

Take notice that on February 19, 1998, Illinois Power Compay (Illinois Power), tendered for filing a revised Index of Customers.

Consistent with the requirements of paragraph N of the Commission's July 31, 1997, order in Allegheny Power System, Inc. *et al.*, Docket Nos. OA96–18 *et al.*, 80 FERC ¶61,143 (1997), the Index of Customers identifies the status of the service agreement for each indexed customer.

Comment date: April 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Northern Indiana Public Service Company

[Docket No. ER98–2247–000]

Take notice that on March 19, 1998, Northern Indiana Public Service Company tendered for filing an executed Sales Service Agreement and an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and EnerZ Corporation (EnerZ).

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to EnerZ pursuant to the Open-Access Transmission Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission. Under that Sales Service Agreement, Northern Indiana Public Service Company will provide general purpose energy and negotiated capacity to EnerZ pursuant to the Wholesale Sales Tariff filed by Northern Indiana Public Service Company in Docket No. ER95–1222–000 as amended by the Commission's order in Docket No. ER97–458–000 and allowed to become effective by the Commission. Northern Indiana Public

Service Company has requested that the Service Agreements be allowed to become effective as of March 31, 1998.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: April 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Northern Indiana Public Service Company

[Docket No. ER98–2248–000]

Take notice that on March 19, 1998, Northern Indiana Public Service Company tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and Strategic Energy Ltd., (Strategic).

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to Strategic pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission. Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of March 31, 1998.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: April 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Niagara Mohawk Power Corp.

[Docket No. ER98–2249–000]

Take notice that on March 19, 1998, Niagara Mohawk Power Corporation (Niagara Mohawk), filed Service Agreements for transmission and wholesale requirements services in conjunction with an electric retail access pilot program that was established by the New York Public Service Commission effective November 1, 1997. The Service Agreements for transmission services are under Niagara Mohawk's FERC Electric Tariff, Original Volume No. 3; as modified by an Order of the commission in this proceeding dated November 7, 1997. Niagara Mohawk's customer is Eastern Power Distribution, Inc., (Eastern Power). The Service Agreements for wholesale requirements services are under Niagara Mohawk's FERC Electric Tariff, Original Volume No. 4; as modified by an Order of the Commission in this proceeding dated November 7, 1997. Niagara Mohawk's customer is Eastern Power Distribution, Inc., (Eastern Power).

Comment date: April 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Entergy Services, Inc.

[Docket No. ER98–2250–000]

Take notice that on March 19, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Amoco Energy Trading Corporation.

Comment date: May 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Entergy Services, Inc.

[Docket No. ER98–2251–000]

Take notice that on March 19, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Market Rate Sales Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Southern Illinois Power Cooperative for the sale of power under Entergy Services' Rate Schedule SP.

Comment date: April 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Entergy Services, Inc.

[Docket No. ER98–2252–000]

Take notice that on March 19, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Market Rate Sales Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Southern Illinois Power Cooperative for the sale of power under Entergy Services' Rate Schedule SP.

Comment date: April 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. FirstEnergy Trading and Power Marketing, Inc.

[Docket No. ER98–2253–000]

Take notice that on March 19, 1998, FirstEnergy Trading and Power Marketing Inc., (FirstEnergy Trading), filed a Notice of Succession to Rate Schedules of Market Responsive Energy Inc. FirstEnergy Trading has requested waiver of the notice provisions of the Commission's Regulations and any other applicable requirements in order to permit the name change to be made effective as of April 1, 1998.

Comment date: April 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Green Mountain Power Corp.

[Docket No. ER98–2254–000]

Take notice that on March 19, 1998, Green Mountain Power Corporation (GMP), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service dated January 31, 1998, under which GMP may provide transmission service to Cinergy Capital & Trading, Inc. GMP has prosed to make the service agreement effective as of March 19, 1998.

Comment date: April 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Entergy Services, Inc.

[Docket No. ER98–2255–000]

Take notice that on March 19, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies and Amoco Energy Trading Corporation.

Comment date: April 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. California Independent System Operator Corporation

[Docket No. ER98–2263–000]

Take notice that on March 20, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a Scheduling Coordinator Agreement between the ISO and Williams Energy Services Company for acceptance by the Commission.

The ISO states that this filing has been served on all parties listed on the official service list in Docket Nos. EC96-19–003 and ER96–1663–003, including

the California Public Utilities Commission.

Comment date: April 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. California Independent System Operator Corporation

[Docket No. ER98–2264–000]

Take notice that on March 20, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for Scheduling Coordinators between the ISO and Williams Energy Services Company for acceptance by the Commission.

The ISO states that this filing has been served on all parties listed on the official service list in Docket Nos. EC96-19–003 and ER96–1663–003, including the California Public Service Commission.

Comment date: April 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Atlantic City Electric Company, Delmarva Power & Light Company, Green Mountain Power Corp.

[Docket Nos. OA97–97–001, OA97–467–001 OA97–181–001]

Take notice that the companies listed in the above-captioned dockets submitted revised standards of conduct [1] under Order Nos. 889 *et seq.*[2] The revised standards were submitted in response to the Commission's January 15, 1998, order on Standards Of Conduct.[3]

Atlantic City Electric Company (Atlantic), and Delmarva Power & Light Company consolidate its consideration of theirrevised standards. This request is based on the merger of the two companies.[4]

Comment date: April 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

[1] The revised standards were submitted between February 13 and February 17, 1998.

[2] Open Access Same-Time Information System (Formerly Real-Time Information Network) and Standards of Conduct, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs., Regulation Preambles January 1991–June 1996 ¶ 31,035 (April 24, 1996); Order No. 889–A, *order on rehearing*, 62 FR 12484 (March 14, 1997), III FERC Stats. & Regs. ¶ 31,049 (March 4, 1997); Order No. 889–B, *rehearing denied*, 62 FR 64715 (December 9, 1997), 81 FERC ¶ 61,253 (November 25, 1997).

[3] Atlantic City Electric Company, *et al.*, 82 FERC ¶ 61,028 (1998). The Commission granted Atlantic and Delmarva extensions of time to file their revised standards by notices dated January 27, 1998. The Commission granted Green Mountain an extension of time to file its revised standards by notice dated February 9, 1998.

[4] Atlantic City Electric Company and Delmarva Power & Light Company, Docket No. EC97–7–000, 80 FERC ¶ 61,126 (1997).

Standard Paragraph

E. Any person desiring to be heard or to protest said 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 18 CFR 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.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–8372 Filed 3–30–98; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5984–4]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Information Requirements for Importation of Nonconforming Marine Engines

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: Information Requirements for Importation of Nonconforming Marine Engines, OMB Control Number 2060–0320, expiration date: 5/31/98. The ICR describes the nature of the information collection and expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 30, 1998.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR, call 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/icr.htm, and refer to EPA ICR No. 1723.02.

SUPPLEMENTARY INFORMATION:

Title: Information Requirements for Importation of Nonconforming Marine Engines, OMB #2060–0320, expiring 5/31/98. This is a request for extension of a currently approved collection.

Abstract: Individuals and businesses importing marine engines, including outboard engines and personal watercraft, request approval for engine importations. The collection of this information is mandatory in order to ensure compliance of nonconforming engines with Federal emissions requirements. Joint EPA and Customs regulations at 40 CFR 91.701 *et seq.* and 19 CFR 12.74 promulgated under the authority of Clean Air Act Sections 203 and 208 give authority for the collection of information. This authority was extended to nonroad engines under section 213(d). The information is used by program personnel to ensure that all Federal emission requirements concerning imported nonconforming engines are met. Any information submitted to the Agency for which a claim of confidentiality is made is safeguarded according to policies set forth in Title 40, Chapter 1, part 2, subpart B—Confidentiality of Business Information (see CFR 2), and the public is not permitted access to information containing personal or organizational identifiers. 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 1/6/98 (63 FR 559); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.5 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: Individuals and businesses importing marine engines.

Estimated Number of Respondents: 1,000.

Frequency of Response: 3 responses / year.

Estimated Total Annual Hour Burden: 1,550.

Estimated Total Annualized Costs Burden: $77,500.

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. 1723.02 and OMB Control No. 2060–0320 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, PPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460
and
Office of Information and Regulatory Affairs,
Office of Management and Budget,
Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503

Dated: March 26, 1998.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 98–8421 Filed 3–30–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–140269; FRL–5781–3]

Computer Based Systems, Incorporated and Labat Anderson, Incorporated; Access to Confidential Business Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Computer Based Systems, Incorporated (CBSI), of Fairfax, VA and CBSI's subcontractor, Labat Anderson, Incorporated (LAI), of McLean, VA for access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI). CBSI and LAI will assist the Office of Pollution Prevention and Toxics in managing and operating the TSCA Confidential and Nonconfidential Business Information Centers.

DATES: Access to TSCA CBI occurred on March 26, 1998.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under contract number 68–W–98–045 contractor CBSI, 2750 Prosperity Drive, Suite 300, Fairfax, VA and CBSI's subcontractor, LAI, 8000 Westpark Drive, Suite 400, McLean, VA 22102, will assist OPPT in managing and operating the TSCA Confidential and Nonconfidential Business Information Centers. In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–W–98–045, CBSI and LAI will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. Contractor and subcontractor personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters.

CBSI and LAI will be authorized access to TSCA CBI at EPA Headquarters only, under the terms and provisions of the EPA TSCA CBI Security Manual.

Clearance for access to TSCA CBI under this contract may continue until January 31, 2003.

CBSI and LAI personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection.

Dated: March 25, 1998.

Allan S. Abramson,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–8422 Filed 3–30–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–140267; FRL–5780–5]

Access to Confidential Business Information by Lockheed Martin Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Lockheed Martin Technical Services, Incorporated, of Cherry Hill, New Jersey, access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than April 10, 1998.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under contract number 68–W9–8002, contractor Lockheed Martin of 2339 Route 70 West, Cherry Hill, NJ, will assist the Office of Pollution Prevention and Toxics (OPPT) in computer operations and maintenance of TSCA CBI Computer Systems and Communications Network, linking CBI sites.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–W9–8002, Lockheed Martin will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract (computer operations and maintenance of TSCA CBI Computer Systems and Communications Network, linking CBI sites). Lockheed Martin personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide Lockheed Martin access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters only.

Lockheed Martin will be authorized access to TSCA CBI at EPA Headquarters only, under the EPA

TSCA Confidential Business Information Security Manual.

Clearance for access to TSCA CBI under this contract may continue until December 31, 2002. Lockheed Martin personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: March 24, 1998.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–8423 Filed 3–30–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5989–2]

Clean Air Act Advisory Committee; Mobile Sources Technical Review Subcommittee Notification of Public Advisory Subcommittee Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notification is hereby given that the Mobile Sources Technical Review Subcommittee of the Clean Air Act Advisory Committee will meet on April 15, 1 998 from 9:30 am to 3:30 p.m. (Eastern Standard Time) at the Washington Plaza Hotel, 10 Thomas Circle, NW (located at Massachusetts Ave. and 14th St.) Washington, DC 20005, Ph: 202/842–1300. This is an open meeting and seating will be on a first-come basis. During this meeting, the subcommittee will hear progress reports from its workgroups and be briefed on and discuss other current issues in the mobile source program including: National Academy of Sciences/National Research Council study to evaluate the MOBILE model, "green" program from the Partnership For a New Generation of Vehicles, climate change and mobile sources, the Clean Air Act Advisory Committee, Tier II and sulfur in gasoline automotive industry, the national low-emissions vehicle program, and the mobile emissions transient test (METT) and the inspection and maintenance (I/M) programs.

Members of the public requesting technical information should contact:

Mr. Philip A. Lorang, Designated Federal Officer, U.S. EPA—NVFEL, 2565 Plymouth Road, Ann Arbor, MI 48105, Ph: 734/668–4374, Fax: 734/741–7821, email: lorang.phil@epa.gov or

Mr. John T.White, Alternate Designated Federal Officer, U.S. EPA—NVFEL, 2565 Plymouth Road, Ann Arbor, MI 48105, Ph: 734/668–4353, Fax: 734/741–7821, email: white.johnt@epa.gov

Further information can also be obtained by visiting the FACA website for the Mobile Sources Technical Review Subcommittee and its workgroups at: http://transaq.ce.gatech.edu/epatac/index.htm.

Members requesting administrative information should contact: Ms. Jennifer Criss, FACA Management Officer, U.S. EPA, 2565 Plymouth Road, Ann Arbor, MI 48105, FACA Help Line: 734/668–4518, Fax: 734/741–7821, email: criss.jennifer@epa.gov.

Written comments of any length (with at least 20 copies provided) should be sent to the subcommittee no later than April 3, 1998.

The Mobile Sources Technical Review Subcommittee expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

Margo T. Oge,

Director, Office of Mobile Sources.

[FR Doc. 98–8413 Filed 3–30–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5989–3]

Announcement of Stakeholders Meeting on Arsenic in Drinking Water

AGENCY: Environmental Protection Agency.

ACTION: Notice of stakeholders meeting.

SUMMARY: The Environmental Protection Agency (EPA) will be holding a one-day public meeting on May 5, 1998 in Monterey, California. The purpose of this meeting is to present information on EPA's plans for activities to develop a proposed National Primary Drinking Water Regulation (NPDWR) for arsenic under the Safe Drinking Water Act (SDWA) as amended, and solicit public input on major technical and implementation issues, and on preferred approaches for continued public involvement. This meeting will be similar in content to the arsenic stakeholders meeting EPA held in Washington, DC on September 11–12, 1997 and San Antonio, TX on February 25, 1998. At the upcoming meeting, EPA is again seeking input from State and Tribal drinking water programs, the regulated community (water systems), public health organizations, academia, environmental and public interest groups, engineering firms, and other stakeholders on a number of issues related to developing the NPDWR for arsenic. EPA encourages the full participation of stakeholders throughout this process.

DATES: The stakeholders meeting on arsenic in drinking water will be held on Tuesday, May 5, 1998, from 9:00 a.m. to 5:30 p.m. PDT.

ADDRESSES: The meeting will be held in Fulton 1, 2, and 3, which is located at the Conference Center in Monterey, California. To register for the meeting, please contact the Safe Drinking Water Hotline at 1–800–426–4791 or 703–285–1093 between 9:00 a.m. and 5:30 p.m. EDT. Those registered for the meeting by Friday, April 24, 1998, will receive an agenda, logistics sheet, and discussion papers prior to the meeting. Members of the public who cannot attend the meeting in person may participate via conference call and should register with the Safe Drinking Water Hotline by Friday, April 24, 1998, in order to receive copies of the overheads in advance. Please provide your name, organization, title, mailing address, telephone number, facsimile number, e-mail address and telephone number for EPA to connect the caller via conference call (if applicable) for the "Arsenic meeting."

FOR FURTHER INFORMATION CONTACT: For general information on meeting logistics, please contact the Safe Drinking Water Hotline at 1–800–426–4791. For information on the activities related to developing the NPDWR for arsenic, contact the Safe Drinking Water Hotline at 1–800–426–4791, or visit the EPA Office of Ground Water and Drinking Water's drinking water standards webpage at http://www.epa.gov/OGWDW/standards.html, which contains electronic copies of the discussion papers from the previous stakeholders meeting. Registrants must make their own room reservations for the Doubletree Hotel by Saturday, April 18, by calling 1–800–222–8733 or 408–649–4511 and mention "EPA Arsenic Meeting" to guarantee the special room rate of $132. The hotel is connected to the Convention Center.

SUPPLEMENTARY INFORMATION:

A. Background

Arsenic (As) is a naturally occurring element found in the human body and is present in food, water, and air. Arsenic in drinking water occurs in ground water and surface water and is

associated with certain natural geologic conditions, as well as with contamination from human activities. Arsenic ingestion is linked to skin cancer and arsenic inhalation to lung cancer. In addition, arsenic ingestion seems to be associated with vascular effects, gastrointestional irritation, and cancers of the kidney, bladder, liver, lung, and other organs. Water primarily contains inorganic arsenic species (As^{V+} and As^{III+}), which tend to be more toxic than organic forms.

In 1976 EPA issued a National Interim Primary Drinking Water Regulation for arsenic at 50 parts per billion (ppb; ug/L). Under the 1986 amendments to SDWA, Congress directed EPA to publish Maximum Contaminant Level Goals (MCLGs) and promulgate National Primary Drinking Water Regulations (NPDWRs) for 83 contaminants, including arsenic. When EPA failed to meet the statutory deadline for promulgating an arsenic regulation, a citizens' group filed suit to compel EPA to do so. EPA entered into a consent decree to issue the regulation. EPA held internal workgroup meetings throughout 1994, addressing risk assessment, treatment, analytical methods, arsenic occurrence, exposure, costs, implementation issues, and regulatory options before deciding in early 1995 to defer the regulation in order to better characterize health effects.

On August 6, 1996, Congress amended the SDWA, adding section 1412(b)(12)(A) which requires, in part, that EPA propose an NPDWR for arsenic by January 1, 2000 and issue a final regulation by January 1, 2001. The current maximum contaminant level (MCL) of 50 ug/L remains in effect until the effective date of the revised rule.

The 1996 amendments to the SDWA also directed EPA to develop by February 1997, a comprehensive arsenic research plan to assess health risks associated with exposure to low levels of arsenic. In December 1996, EPA announced the availability of the draft arsenic research plan, and the public had an opportunity to comment on the paper at a scientific peer review meeting in January 1997. EPA reported to Congress in late January that the plan was publicly available and would be revised after consideration of the final report of the scientific peer review group, which was subsequently published May 8, 1997. EPA's Office of Research and Development (ORD) submitted the final arsenic research plan to Congress in February 1998, and the final plan will be available on the ORD webpage in April. In conducting the studies in the arsenic research plan, EPA will consult with the National Academy of Sciences, other Federal agencies, and other interested public and private parties.

B. Request for Stakeholder Involvement

EPA intends for the proposed NPDWR for arsenic to incorporate the best available science, risk assessment, treatment technologies, occurrence data, cost/benefit analyses, and stakeholder input on technical and implementation issues.

The stakeholders meeting will cover a broad range of issues including: (1) Regulatory process, including risk management decisions; (2) arsenic risk assessment (exposure, health assessment, national occurrence); (3) key technical assessments (treatment technologies, treatment residuals, cost, analytical methods, co-occurrence of contaminants); (4) small system concerns; and (5) future stakeholder involvement. Background materials on arsenic in drinking water issues will be sent in advance of the meeting to those who register with the Safe Drinking Water Hotline by Friday, April 24, 1998.

EPA has announced this public meeting to hear the views of stakeholders on EPA's plans for activities to develop an NPDWR for arsenic. The public is invited to provide comments on the issues listed above and other issues related to the arsenic in drinking water regulation during the May 5, 1998 meeting and during future opportunities for stakeholder participation.

Dated: March 26, 1998.

Elizabeth Fellows,

Acting Director, Office of Ground Water and Drinking Water, Environmental Protection Agency.

[FR Doc. 98–8420 Filed 3–30–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5989–1]

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or Superfund, Section 311 (b)(9)(A), CERCLA Section 311(b)(3); Announcement of Competition for EPA's Brownfields Job Training and Development Demonstration Pilots

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency will begin accepting applications for Brownfields Job Training and Development Demonstration Pilots through May 29, 1998. The application period will close May 29, 1998 and the Agency intends to competitively select ten Pilots by July 8, 1998.

DATES: This action is effective as of March 31, 1998. All proposals must be received by the May 29, 1998.

ADDRESSES: Interested applicants must submit both a response to the Brownfields Job Training and Development Demonstration Pilot Guidelines and a grant application package. Application packages can be obtained from the EPA Grants Administration Division by calling (202) 564–5305. Interested applicants MUST complete an application. Job training guidelines can be obtained via the Internet: http://www.epa.gov/brownfields/, or by calling the Superfund Hotline at 1–800–424–9346 (TDD for the hearing impaired at 1–800–553–7672).

FOR FURTHER INFORMATION CONTACT: EPA's Office of Solid Waste and Emergency Response, Myra Blakely, Outreach and Special Projects Staff, (202) 260–4527.

SUPPLEMENTARY INFORMATION: The Brownfields Job Training and Development Demonstration Pilots will each be funded up to $200,000 over two-years. These funds are to be used to bring together community groups, job training organizations, employers, investors, lenders, developers, and other affected parties to address the issue of providing training for residents in communities impacted by brownfields. The goals of the pilots are to facilitate cleanup of brownfields sites contaminated with hazardous substances and prepare the trainees for future employment in the environmental field.

EPA expects to select approximately 10 Brownfields Environmental Job Training and Development pilots by the end of July 1998. Pilot applicants must be located within or near one of the 121 pre-1998 brownfields assessment pilot communities. Colleges, universities, non-profit training centers, community-based job training organizations, states, cities, towns, counties, U.S. Territories, and Federally recognized Indian Tribes are eligible to apply for funds. EPA welcomes and encourages applications from coalitions of such entities, but a single eligible entity must be identified as the legal recipient. Entities with experience in providing environmental job training and placement programs are invited to apply. The deadline for applications is May 29, 1998.

EPA's Brownfields Initiative is an organized commitment to help

communities revitalize abandoned contaminated properties, and to thereby eliminate potential health risks and restore economic vitality to areas where these properties exist. EPA defines brownfields as abandoned, idled or under-used industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination.

Submission to Congress and the General Accounting Office

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

Dated: March 25, 1998.

Linda Garczynski,

Director, Outreach and Special Projects Staff, Office of Solid Waste and Emergency Response.

[FR Doc. 98–8250 Filed 3–30–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–44647; FRL–5780–2]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of test data on alkyl glycidyl ether (CAS No. 120547–52–6). These data were submitted pursuant to an enforceable testing consent agreement/order issued by EPA under section 4 of the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under 40 CFR 790.60, all TSCA section 4 enforceable consent agreements/orders must contain a statement that results of testing conducted pursuant to testing enforceable consent agreements/orders will be announced to the public in accordance with procedures specified in section 4(d) of TSCA.

I. Test Data Submissions

Test data for alkyl glycidyl ether were submitted by the Society of the Plastics Industry, Inc. (SPI) Epoxy Resin Systems AGE Task Force. The following companies comprise the Task Force: Air Products and Chemicals Inc.; Callaway Chemical Company; Ciba-Geigy Corporation; CVC Specialty Chemicals; and Shell Chemical Company. The submission includes a final report entitled "Alkyl Glycidyl Ether: 13-Week Neurotoxicity Study in Fischer 344 Rats." This report was submitted pursuant to a TSCA section 4 enforceable testing consent agreement/order at 40 CFR 799.5000 and was received by EPA on February 13, 1998. This chemical is used as an epoxy resin additive and as a modifier for other epoxides in flooring and adhesives.

EPA has initiated its review and evaluation process for this data submission. At this time, the Agency is unable to provide any determination as to the completeness of the submission.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS–44647). This record includes a copy of the study reported in this notice. The record is available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Nonconfidential Information Center (also known as the TSCA Public Docket Office), Rm. B-607 Northeast Mall, 401 M St., SW., Washington, DC 20460. Requests for documents should be sent in writing to: Environmental Protection Agency, TSCA Nonconfidential Information Center (7407), 401 M St., SW., Washington, DC 20460 or fax: (202) 260–5069 or e-mail: oppt.ncic@epamail.epa.gov.

Authority: 15 U.S.C. 2603.

List of Subjects

Environmental protection, Test data.

Dated: March 20, 1998.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–8424 Filed 3–30–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5985–3]

The General NPDES Permit for Seafood Processors Operating in Kodiak, AK (General NPDES Permit No. AK–G52–8000)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final general NPDES permit.

SUMMARY: The Director, Office of Water, EPA Region 10, is issuing General National Pollutant Discharge Elimination System (NPDES) permit no. AK–G52–8000 for owners and operators of shore-based seafood processing facilities and a by-product recovery facility in Kodiak, Alaska, pursuant to the provisions of the Clean Water Act, 33 U.S.C. 1251 *et. seq.* The final general NPDES permit authorizes discharges from facilities discharging through outfalls to St. Paul Harbor and Near Island Channel. The existing ten shore-based facilities and a by-product recovery facility are engaged in the processing of fresh, frozen, canned seafood, surimi, and fish meal/powder. Discharges authorized by the proposed permit include processing wastes, process disinfectants, sanitary wastewater and other wastewaters, including domestic wastewater, cooling water, boiler water, freshwater pressure relief water, refrigeration condensate, water used to transfer seafood to a facility, and live tank water. One facility discharges treated domestic and sanitary wastewater to St. Paul Harbor. The final permit authorizes discharges to waters of the United States in and contiguous to the State of Alaska.

The processing facilities are required to collect and route all seafood processing wastes and wastewater to a treatment system consisting of 1 mm screens or equivalent technology. All seafood solid wastes are collected and transported to the by-product recovery facility or are recovered through an in-house fish powder plant.

The final general permit for seafood processors in Kodiak, Alaska, will not authorize discharges of petroleum hydrocarbons, toxic pollutants, or other pollutants not specified in the permit.

The final general permit contains the same effluent guidelines limitations as the previous individual permits. Separate monitoring of the surimi and fish meal/powder waste streams are new additions to the general permit.

Notice of the draft Kodiak permit was published on December 18, 1997, in the **Federal Register** [62 FR 66367] and the Kodiak Mirror.

The final permit is printed below and establishes effluent limitations, standards, prohibitions, monitoring requirements, and other conditions on discharges from seafood processors and fish meal/powder processors in Kodiak, Alaska.

Changes made in response to public comments are addressed in full in a document entitled "Response to Public Comments on the Proposed Issuance of the Kodiak Seafood Processors General NPDES Permit." This document is being sent to all commenters, current permittees, and applicants and is available to other parties upon request from the address below.

ADDRESSES: Unless otherwise noted in the permit, correspondence regarding this permit should be sent to The Environmental Protection Agency, Region 10, NPDES Compliance Unit (OW–133), 1200 Sixth Avenue, Seattle, Washington, 98101.

FOR FURTHER INFORMATION CONTACT: Florence Carroll, of EPA Region 10, at the address listed above or telephone (206) 553–1760. Copies of the final Kodiak General NPDES Permit are available upon request from the Region 10 Public Environmental Resource Center at the following telephone numbers: 1–800–424–4EPA (4372) for Idaho, Oregon, and Washington; 1–206–553–1200 for Alaska and for all other states.

SUPPLEMENTARY INFORMATION: EPA issues this Kodiak seafood processors general NPDES permit pursuant to its authority under sections 301(b), 304, 306, 307, 401, 403, and 501 of the Clean Water Act. The fact sheet for the draft permit, the response to comments document, the 401 certification issued by the State of Alaska, and the coastal zone management plan consistency determination issued by the State of Alaska set forth the principal facts and the significant factual, legal, and policy questions considered in the development of the terms and conditions of the final permit presented below.

The State of Alaska, Department of Environmental Conservation (ADEC), has issued a Certificate of Reasonable Assurance that the subject discharges comply with the Alaska State Water Quality Standards.

The State of Alaska, Office of Management and Budget, Division of Governmental Coordination, has certified that the Kodiak seafood processors general NPDES permit is consistent with the approved Alaska Coastal Management Program.

Changes have been made from the draft permit to final permit in response to public comments received on the draft permit and the final coastal management plan consistency determination from the State of Alaska.

The following identifies several specific areas of change, among others which have been included in the final permit: (1) Requirements for fish powder in the draft permit were less stringent than is usually required of fish meal production so EPA determined that the production of fish powder and the production of fish meal are essentially the same and has applied the effluent limitation guidelines for fish meal to the two facilities operating fish meal/powder plants, thereby allowing Kodiak Fishmeal Company to be covered by the Kodiak general permit; (2) a new provision allows individual processors to transport solid fish wastes (ground to 0.5 inch particles before discharge) to the ocean dumping site upon notice and approval of ADEC and EPA when the by-product facility cannot take additional wastes; and (3) a map showing the location of the ocean dumping site.

Appeal of Permit: Within 120 days following this service of notice of EPA's final permit decision under 40 CFR 124.15, any interested person may appeal the permit in the Federal Court of Appeals in accordance with section 509(b)(1) of the Clean Water Act. Persons affected by a general permit may not challenge the conditions of the permit as a right of further EPA proceedings. Instead, they may either challenge the permit in court or apply for an individual NPDES permit and then request a formal hearing on the issuance or denial of an individual permit.

Dated: March 16, 1998.

Philip G. Milliam,

Director, Office of Water.

Authorization to Discharge Under the National Pollutant Discharge Elimination System for Seafood Processors Operating Shorebased Facilities in Kodiak, Alaska

[General NPDES Permit No. AK–G52–8000]

In compliance with the provisions of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, (hereafter, CWA or the Act), the owners and operators of seafood processing facilities and a by-product recovery facility in Kodiak, Alaska, are authorized to discharge seafood processing wastes and the concomitant wastes set out in this Permit to waters of the United States, named St. Paul Harbor and Near Island Channel, Alaska, in accordance with effluent limitations, monitoring requirements and other conditions set forth herein. The discharge of wastes not specifically set out in this Permit is not authorized under this Permit.

Upon the effective date of this Permit, it is the controlling document for regulation of seafood processing wastes and other designated wastewaters discharged to St. Paul Harbor and Near Island Channel, Alaska. A copy of this Generaly Permit must be kept at the seafood processing facility where the discharge occurs.

This Permit shall become effective 30 days after issuance.

This Permit and the authorization to discharge shall expire at midnight five years from the effective date of the permit.

Signed this 16th day of March, 1998.

Philip G. Millam,

Director, Office of Water, Region 10, U.S. Environmental Protection Agency.

Table of Contents

1 Authorized Facilities

1.1 Existing Facilities

The facilities listed below are authorized to discharge to the designated receiving water under this general Permit and are assigned the following NPDES number:

AK–G52–8110—Alaska Fresh Seafoods, Near Island Channel
AK–G52–8434—Alaska Pacific Seafoods, St. Paul Harbor
AK–G52–8486—Cook Inlet Processing, St. Paul Harbor
AK–G52–8426—East Point Seafoods, Near Island Channel
AK–G52–8353—International Seafoods-Shelikof, St. Paul Harbor
AK–G52–8266—International Seafoods-Marine, Near Island Channel
AK–G52–8234—Kodiak Fish Meal Company, St. Paul Harbor
AK–G52–8493—Ocean Beauty-King Crab, St. Paul Harbor
AK–G52–8361—Tyson Enterprise Seafoods-Alcod, Near Island Channel
AK–G52–8833—Tyson Enterprise Seafoods-Star, Near Island Channel
AK–G52–8825—Western Alaska Fisheries, St. Paul Harbor

1.2 New Facilities

In order to be authorized to discharge any of the pollutants set out in 2.0 of this general NPDES Permit, a seafood processing facility in Kodiak, Alaska, must apply for coverage under this Permit. Any new applicants (other than those listed above) wishing authorization to discharge under this Permit shall submit EPA Form 3510–1 General Information, EPA Form 3510.2C NPDES, and the State of Alaska Coastal Project Questionnaire and Certification Statement.

In compliance with the Paperwork Reduction Act, 44 U.S.C. 1501 *et seq.*, the Office of Management and Budget has approved the collection of information in an NPDES application (OMB No. 2040–0086).

A qualified applicant will be authorized to discharge under this Permit upon its certified receipt from EPA of written notification of inclusion and the assignment of an NPDES permit number.

2 Authorized Discharges

This Permit authorizes the discharge of the following pollutants subject to the limitations and conditions set forth herein.

2.1 Seafood Processing Wastewaters

Seafood processing wastewaters include screened process wastewater from conventional or mechanized butchering of seafood, from the production of surimi and/or fish paste that is washed repeatedly in water then pressed to remove residual water, and from the processing of seafood wastes into fish meal/powder.

2.2 Process Disinfectants

Disinfectants and detergents may be added to wash down water and scrubber water to facilitate the removal of wastes and to maintain sanitary standards during processing. The discharge of residual amounts of process disinfectants used to sanitize seafood processing areas is permitted.

2.3 Domestic and Sanitary Wastewaters

Cook Inlet Processing is the only facility authorized to discharge treated domestic and sanitary wastewater to St. Paul Harbor. Domestic and sanitary wastewaters from all other facilities shall be discharged to the Kodiak municipal wastewater treatment facility.

2.4 Non-Process Wastewaters

Non-process wastewaters include non-contact cooling water, boiler water, freshwater pressure relief water, refrigeration condensate, water used to transfer seafood to the facility, live tank water, and other non-process water (except wastewater from floor drains). These wastewaters may be discharged without treatment to the receiving water through conveyances, provided that the discharges are in compliance with Alaska State Water Quality Standards. Persistent foam or scum generated by the discharge of non-process wastewaters, e.g., water used to transfer seafood, shall be a violation of the Alaska State Water Quality Standards and conditions of this Permit.

2.5 Unauthorized Discharges

Discharge of wastes and pollutants not specifically set out above are not authorized under this Permit.

3 Effluent Conditions and Monitoring Requirements

3.1 Butchering Waste Stream

During the effective term of this Permit, the permittee is authorized to discharge process wastewater from the butchering of seafood to St. Paul Harbor or Near Island Channel. Treatment of the butchering waste stream prior to discharge shall be accomplished through the use of fine mesh screening (1 mm) or equivalent technology. Seafood wastes shall not be pulverized, chopped, ground or otherwise altered prior to screening and discharge through the facility's outfall.

3.1.1 Limitation on pH

The effluent pH shall not be less than 6.5 standard units nor greater than 8.5 standard units.

3.1.2 Mechanized Limitations

If 50% or more of the weight of the solid wastes are generated from the use of one or more automated or mechanized method, then select the mechanized limitations for reporting. (*See* 11.1 and 11.2 for the method of calculating multi-processing limits.)

3.1.3 Specific Limitations

Discharges from the conventional or mechanized butchering of seafood shall be limited as specified below (limitations are based upon the raw products processed on the day samples are collected):

Type of seafood	Conventional/hand-butchered lbs/1000 lbs				Mechanized lbs/1000 lbs			
	Total suspended solids		Oil and grease		Total suspended solids		Oil and grease	
	Daily max	Monthly aver	Daily max	Monthly aver	Daily max	Monthly aver	Daily max	Monthly aver
Bottom Fish	3.1	1.9	4.3	0.56	22	12	9.9	3.9
Salmon	2.6	1.6	0.31	0.19	44	26	29	11
Herring Frozen Whole	2.6	1.6	0.31	0.19				
Shrimp	320	210	51	17				
Scallops	6.6	1.4	7.7	0.24				
Crab, whole/sections	12	3.9	1.3	0.42				

Daily discharges shall be calculated as follows:

lbs pollutant/1000 lbs raw product = (Flow, mgd) × (pollutant, mg/L) × (8.34) ÷ Total lbs processed during the sampling day

Bottom Fish includes Flounder (e.g., Arrowtooth), Rockfish/Red Snapper, Pacific Cod, Halibut, Pollock, Black Cod/Sablefish, Grey Cod, Flatfish/Sole,Whitefish

Salmon includes Pink, Chum, Sockeye, Coho, Silver and others

Crab includes King, Tanner (Opilio and Bairdi), Dungeness

Other incidental seafood, such as sea cucumbers, snails, skates, sea urchins etc.

3.1.4 Monitoring Requirements

Effluent monitoring shall be conducted as follows:

BUTCHERING WASTE STREAM MONITORING

Parameter	Frequency	Sample type
Flow (MGD)	Daily	24-Hour Record.*
Total Suspended Solids (TSS; lbs/1000 lbs, mg/L)	Weekly	Composite/Grab.**
Oil and Grease*** (O&G; lbs/1000 lbs, mg/L)	Weekly	Grab.
Settleable Solids (ml/L)	Weekly	Composite/Grab.**
pH (standard units)	Weekly	Grab.
Production (raw; lbs)	Weekly	Calculated.
Number of Processing Days	Monthly	Measured.
Water Surface and Shoreline	Daily	Visual Inspection.

*Flow may be estimated if there is no dedicated flow meter measuring the flow for the butchering waste stream. The DMR sample type should be filled in to reflect that the flow is estimated.

**Grab samples may be taken during intermittent processing.

***Analyze using the Collins/Tenny test procedure or any other EPA approved method.

3.1.5 Other Monitoring Requirements

Samples shall be taken from the effluent stream after screening and prior to its discharge to the receiving water.

Daily flow used shall be recorded or estimated on the same day effluent samples are taken. The flow measurement shall only include the amount of water used for the butchering process. Flow may be estimated; an explanation of how the flow is estimated shall accompany the first monthly report.

Sampling shall be representative of the waste stream flow. When processing is for short or intermittent periods, samples are to be taken midway during processing, provided the processing period is more than 6 hours.

Monitoring results for the conventional or mechanized butchering wastewater shall be reported on the monthly Discharge Monitoring Reports (DMRs) as both pollutant concentrations (mg/L) and loading values (lbs pollutant parameter per 1000 lbs raw product).

The water surface and shoreline shall be visually inspected daily for floating solids, garbage, grease, foam, and visible oil sheen. Positive results from the water surface or shoreline inspections shall be reported in accordance with "Other Noncompliance" [7.1.3], except in circumstances of persistent conditions.

3.2 Surimi Processing Waste Stream

During the effective term of this Permit, the permittee is authorized to discharge wastewater from processing of fish into surimi.

3.2.1 Effluent Limitations

Surimi wastewater shall be discharged to St. Paul Harbor or Near Island Channel provided that the waste stream is screened to 1 mm or equivalent technology.

3.2.2 Monitoring Requirements

The surimi waste stream shall be sampled prior to screening and commingling with the final effluent discharge waste stream. The surimi waste stream total concentration of TSS and O&G shall be determined by laboratory analysis and subtracted from the final effluent discharge (after screening) waste stream total concentration of TSS and O&G.

Monitoring shall be conducted as follows:

SURIMI WASTE STREAM MONITORING

Parameter	Frequency	Sample Type
Flow (MGD)	Daily	24-hour Record.*
Total Suspended Solids (TSS; mg/L)	Weekly	Composite/Grab.**
Biochemical Oxygen Demand—5 day (BOD_5; mg/L)	Weekly	Composite/Grab.**
Oil and Grease*** (O&G; mg/L)	Weekly	Grab.
Production (lbs of fish into surimi)	Weekly	Calculated.
Number of Processing Days	Monthly	Measured.

*Flow may be estimated if there is no dedicated flow meter measuring the flow for surimi processing. The DMR sample type should be filled in to reflect that the flow is estimated.
**Grab samples may be taken during intermittent processing.
***Analyze using the Collins/Tenny test procedure or any other EPA approved method.

3.2.3 Other Monitoring Requirements

Daily flow of the surimi waste stream shall be recorded or estimated on the same day effluent samples are taken. The flow measurement shall only include the amount of water used for the surimi processing.

Sampling is to be representative of the waste stream flow. When processing is for short periods or intermittent periods, samples are to be taken midway during processing, provided the processing period is more than 6 hours. Monitoring results for surimi processing wastewater shall be reported on the appropriate monthly Discharge Monitoring Reports (DMRs) as pollutant concentrations (mg/L).

3.3 Fish Meal/Powder Waste Stream

During the effective term of this Permit, the permittee is authorized to discharge effluent from the processing of fish wastes into fish meal/powder, including effluents from scrubber, evaporator condensate, separator, cooker, decanter, and dryer.

3.3.1 Effluent Limitations

Wastewater from the processing of fish wastes into fish meal/powder shall be discharged to St. Paul Harbor after screening to one (1) mm or equivalent technology.

3.3.2 Limitations on pH

The instream measurement of pH shall not be less than 6.0 standard units nor greater then 9.0 standard units.

3.3.3 Specific Limitations

Discharges from the processing of fish wastes into fish meal/powder shall be limited as specified below (limitations are based upon the raw product processed on the day samples are collected):

FISH MEAL/POWDER WASTE STREAM LIMITATIONS

Pollutant parameter (units)	Monthly Average*	Daily Maximum*
Biochemical Oxygen Demand—5 day (BOD_5; lbs/1000 lbs, mg/L)	3.8	6.7
Total Suspended Solids (TSS; lbs/1000 lbs, mg/L	1.5	3.7
Oil and Grease (O&G; lbs/1000 lbs, mg/L)	0.76	1.4

*Daily of pounds of pollutants per 1,000 lbs of seafood wastes input will be calculated as follows:
lbs pollutant/1000 lbs raw product = *(Flow, mgd) x (pollutant, mg/L) x (8.34)*—total lbs processed during the sampling day.

3.3.4 Other Limitations

Temperature shall not exceed the Alaska Water Quality Standards.

Color shall not exceed the Alaska Water Quality Standards.

The effluent shall not cause a foam, film, sheen, emulsion, sludge or solid residue on the surface or floor of the receiving water or on the adjoining shorelines.

3.3.5 Monitoring Requirements

The fish meal/powder processing waste stream shall be sampled prior to screening and commingling with the final effluent discharge waste stream. The fish meal/powder processing waste stream total concentration of TSS and O&G shall be determined by laboratory analysis and subtracted from the final effluent discharge (after screening) waste stream total concentration of TSS and O&G. Monitoring shall be conducted as follows:

FISH MEAL/POWDER WASTE STREAM MONITORING

Parameter (units)	Frequency	Sample Type
Flow (mgd)	Daily	24-hour Record*
Biochemical Oxygen Demand—5 day (BOD_5; lbs/ 1000 lbs, mg/L)	Weekly	Composite/Grab**
Total Suspended Solids (TSS; lbs/1000 lbs, mg/L)	Weekly	Composite/Grab**
Oil and Grease*** (O&G; lbs/1000 lbs, mg/L)	Weekly	Grab
pH (standards units)	Monthly	Grab
Temperature (degree F.)	Weekly	Grab
Settleable Solids (ml/L)	Weekly	Composite/Grab**
Number of Processing Days	Monthly	Measured

FISH MEAL/POWDER WASTE STREAM MONITORING—Continued

Parameter (units)	Frequency	Sample Type
Color (color units)	Monthly	Grab

* Flow may be estimated if there is no dedicated meter measuring the flow for fish meal/powder processing. The DMR sample type should be filled in to reflect that the flow is estimated.
**Grab samples may be taken during intermittent processing.
***Analyze using the Collins/Tenny test procedure or any other EPA approved method.

3.3.6 Other Monitoring Requirements

Daily flow of the fish meal/powder processing waste stream shall be recorded or estimated on the same day effluent samples are taken. The flow measurement will only include the amount of water used for the fish meal/powder processing.

Sampling is to be representative of the waste stream flow. When processing is for short periods or intermittent periods, samples are to be taken midway during processing, provided the processing period is more than 6 hours.

Monitoring results for fish meal/powder processing wastewater shall be reported on the appropriate monthly Discharge Monitoring Reports (DMRs) in accordance with the parameter pollutant units noted in the monitoring table at 3.3.3 and 3.3.5 above.

3.3.7 Stickwater Recycling and Monitoring

The discharge of stickwater will be allowed as long as the permittee prevents or minimizes the generation and discharge of stickwater from its facility. Stickwater shall be reduced at the source or recycled in an environmentally safe manner whenever feasible.

The permittee will monitor stickwater recycling and discharge as follows:

Percentage of stickwater recycled per day on a monthly average.

Total gallons of stickwater recycled monthly.

Total gallons of stickwater discharged monthly.

Using grab samples, monitor BOD_5, TSS, and O&G concentrations (mg/L) weekly when fish meal/powder is being produced; when processing is for short periods or intermittent periods, samples are to be taken midway during processing, provided the processing period is more than 6 hours.

3.3.8 Best Management Practices

Through implementation of a BMP Plan a permittee will prevent or minimize the generation and discharge of wastes and pollutants from the facility to the waters of the United States. Pollution shall be prevented or reduced at the source or recycled in an environmentally safe manner whenever feasible. Disposal of wastes into the environment shall be conducted in such a way as to have a minimal environmental impact.

3.4 Domestic and Sanitary Waste Stream

All domestic and sanitary wastes shall be routed through a sanitary waste treatment system and treated prior to discharge to meet the secondary treatment limitations for BOD_5 and TSS of 60 mg/L daily maximum, 45 mg/L weekly average, and 30 mg/L monthly average. Monthly monitoring records are to be kept at the facility and made available for ADEC or EPA inspectors, upon request.

3.5 Waste Disposal Practices

Disposal of all solid seafood processing wastes shall be to a by-product recovery facility. The by-product recovery facility is allowed to dispose of solid seafood processing wastes at the ocean dumping site (See Attachment 11.3 for the location of the ocean dum ping site) when the amount of fish wastes exceeds the by-product facility capacity or other circumstances when the by-product recovery facility is unable to take the solids wastes. The solid seafood processing wastes to be disposed of in the ocean dumping site shall be ground to 0.5 inch particle size prior to discharge.

3.5.1 Permittees' Use of the Ocean Dumping Site

Individual permittee will be allowed to transport solid seafood wastes to the ocean jumping site upon notification and approval of EPA and ADEC. The solid seafood processing wastes to be disposed of in the ocean dumping site shall be ground to 0.5 inch particle size prior to discharge. Logs of any ocean dumping shall be submitted with the monthly DMR (See. 3.5.3 below).

3.5.2 Unsuitable Species for By-Product Recovery

If a species of fish or shellfish is classified as unsuitable for processing at a by-product recovery facility, the permittee may submit a written request to EPA and ADEC to dispose of the seafood waste in the ocean dumping site. The written request must include the reason a species would be considered unsuitable for by-product recovery. If EPA and ADEC approve the permittee's request and classifies a species as unsuitable for processing at a by-product recovery facility, that classification shall remain in effect for the term of this Permit.

3.5.3 Ocean Dumping Log

Any use of the ocean dumping site must be documented in a log with the date, an estimate of the quantity of seafood wastes dumped, the name and address of the company barging the seafood wastes to the dumping zone, and the latitude and longitude of area where the seafood wastes are being disposed of in the dumping site. Notation shall also be made of any marine mammals in the dumping area. Any such dumping must occur while the vessel is underway.

3.6 Discharge Requirements

The permittee shall discharge its process wastewaters through outfalls in the general configuration described in the permittee's NPDES application.

There shall be no discharge if the outfall line is severed, fails, leaks, or is displaced from designed specifications or location.

3.7 Environmental Effects

There shall be no discharge of floating solids, visible foam, or oily wastes which product a sheen on the surface of the receiving water.

There shall be no accumulation of seafood processing wastes on the shoreline.

There shall be no accumulation of wastes on the seafloor of the receiving water.

3.8 Alaska State Water Quality Standards

All discharges shall be in compliance with Alaska State Water Quality Standards.

3.9 Reopening of Permit

If these Permit requirements are insufficient to achieve Alaska State Water Quality Standards, EPA, in consultation with ADEC, may reopen and modify the Permit in accordance with 40 CFR 122.44(d)(1)(C)(4) and 40

CFR 122.62 to include more stringent effluent limitations and/or additional monitoring requirements.

4 Waste Minimization and Monitoring Requirements

4.1 Best Management Practices Plan

4.1.1 Applicability

During the term of this Permit all permittees shall operate in accordance with a Best Management Practices (BMP) Plan.

4.1.2 Purpose

Through implementation of a BMP Plan a permittee shall prevent or minimize the generation and discharge of wastes and pollutants from the facility to the waters of the United States. Pollution shall be prevented or reduced at the source or recycled in an environmentally safe manner whenever feasible. Disposal of wastes into the environment shall be conducted in such a way as to have a minimal environmental impact.

4.1.3 Objectives

A permittee shall develop its BMP Plan consistent with the following objectives:

The number and quantity of wastes and pollutants shall be minimized by a permittee to the extent feasible by managing each effluent waste stream in the most appropriate manner; Standard Operating Procedures (SOPs) shall ensure proper operation and maintenance of the facility; Evaluations for the control of wastes and pollutants shall include the following: Examination of each facility component or system for its waste minimization opportunities and its potential for causing a release of significant amounts of pollutants to receiving waters due to the failure or improper operation of equipment; Examination of all normal operations, including raw material and product storage areas, in-plant conveyance of product, processing and product handling areas, loading or unloading operations, spillage or leaks from the processing floor and dock, and sludge and waste disposal; Examination of all facility equipment for potential failure and any resulting overflow of wastes and pollutants to receiving waters, including storm water; provision shall be made for emergency measures to be taken in such an event; and Examination of emergency release provision, e.g., ammonia or chlorine discharge.

4.1.4 Requirements

The BMP Plan shall be documented in narrative form, shall include any necessary plot plans, drawings or maps, and shall be developed in accordance with good engineering practices. The BMP Plan shall be organized and written with the following structure:

Name and location of the facility; Statement of BMP policy; Materials accounting of the inputs, processes and outputs of the facility; Risk identification and assessment of pollutant discharges; Specific management practices and standard operating procedures to achieve the above objectives, including, but not limited to, the modification of equipment, facilities, technology, processes and procedures, and the improvement in management, inventory control, materials handling or general operational phases of the facility; Good housekeeping; Preventative maintenance; Inspections and records; and Employee training.

4.1.5 BMP Review

The BMP Plan shall include the following provisions concerning its review: Be reviewed by the facility manager and appropriate staff; and Include a statement that the above review has been completed and that the BMP Plan fulfills the requirements set forth in this Permit. The statement shall be certified by the dated signature of the facility manager.

4.1.6 Implementation

A permittee shall develop and implement a BMP Plan within six months from the date of issuance of this Permit.

4.1.7 Documentation

No later than six months from the date of issuance of this Permit, a permittee shall submit to EPA and ADEC written certification (*See* 9.5.4) signed by a principal office or a duly appointed representative of the permittee, that a BMP plant has been completed and implemented. A permittee shall maintain a copy of its BMP plan at its facility and shall make the plan available to EPA or ADEC upon request.

4.1.8 BMP Plan Modification

A permittee shall amend the BMP Plan whenever there is a change in the facility or in the operation of the facility which materially increases the generation of pollutants and their release or potential release to the receiving waters. A permittee shall also amend the Plan, as appropriate, when facility operations covered by the BMP Plan change. Any such changes to the BMP Plan shall be consistent with the objectives and specific requirements listed above. All changes in the BMP Plan shall be reviewed by the facility manager.

4.1.9 Modification for Ineffectiveness

At any time, if a BMP Plan proves to be ineffective in achieving the general objective of preventing and minimizing the generation of pollutants and their release and potential release to the receiving waters and/or the specific requirements above, this Permit and/or the BMP Plan shall be subject to modification to incorporate revised BMP requirements.

4.2 Seafloor Monitoring

4.2 1 Applicability

All permittees covered under this Permit shall conduct a seafloor monitoring program to determine compliance with Alaska Water Quality Standards for settleable residues in marine waters. Alaska Administrative Code Part 18—70.020 states that "(Settleable residues) shall not * * * cause a sludge, solids, or emulsion to be deposited * * * on the bottom."

4.2.2 Objective

The seafloor monitoring program shall determine the areal extent (in square feet) of any continuous deposit of sludge, solids, or emulsion from seafood processing wastes on the seafloor bottom of St. Paul Harbor or Near Island Channel.

4.2.3 Schedule

Each permittees covered under this Permit shall conduct the seafloor monitoring program by September 30, 2000, and submit the report to EPA and ADEC no later than December 31, 2000.

4.2.4 Method

The seafloor survey shall include the following elements: Location (including distance from shore and company orientation), depth and condition of the outfall line (including presence, size and location of any breaks or cracks; Water depth at the end of the outfall pipe; Inspection of the area at the end of the outfall pipe and documentation of the type, depth, areal extent, estimated volume, and size of particles of any waste accumulation; Description of the methodology used by the surveyor including transects and location devices; Types of substrate and habitat in and adjacent to the outfall area; Dates, time, tidal movements, weather conditions, name and signature of surveyor, name of company, and NPDES permit number(s); and Video and/or other photographic documentation.

4.2.5 Signatory Requirement

Each permittee shall ensure that the seafloor monitoring report is signed by a principal officer or a duly appointed representative of the permittee. EPA recommends that the permittee require any of its contractors or agents responsible for this monitoring to certify the truth, accuracy, and completeness of the data reported in accordance with the "Signatory Requirements" [9.5] of this Permit.

5 Quality Assurance Requirements

Each permittee covered under this Permit shall ensure the development and written specification of quality assurance provisions in effluent monitoring plans.

5.1 Purpose and Objectives

The purpose of quality assurance and control requirements is to assure the integrity and quality of the data collected in the monitoring required by this Permit and to assist in planning for the collection and analysis of effluent samples and in explaining data anomalies when they occur.

5.2 Requirements

5.2.1 Reference Documents

Throughout all sample collection and analysis activities, each permittee shall use the EPA recommended quality assurance, quality control, and chain-of-custody procedures described in EPA QA/R–5 "Requirements for Quality Assurance Project Plans" and EPA QA/G–5 "Guidance on Quality Assurance Project Plans." The following reference may be helpful in preparing the Quality Assurance Plan for this permit: "The Volunteer Monitors Guide to Quality Assurance Project Plans" (EPA 841–B–96–003, September 1996). [These documents may be found on the Internet at http://www.epa.gov/r10earth/offices/oea/qaindex.htm]

5.2.2 QA/QC Plan

The QA/QC plan shall include sampling techniques, the number of samples, type of sample containers, preservation of samples, holding times, type and number of quality assurance field samples, analytical methods, analytical detection and quantitation limits (or method detection level) for each target compound, precision and accuracy requirements, sample preparation requirements, sample shipping methods, and laboratory data delivery requirements.

Name(s), address(es), and telephone number(s) of the laboratories, used by or proposed to be used by the permittee, shall be specified in the Plan.

5.2.3 Retention of Laboratory Records

All laboratory bench sheets used in the analyses shall be maintain for inspection by EPA or ADEC for a period of at least five years (*See* "Retention of Records" [6.2]).

5.2.4 Laboratory Director Certification

Each permittee shall require the laboratory director of each laboratory providing measurement results in support of this Permit to sign and submit to EPA the following statement on a monthly basis with the DMR: *I certify that this data is in compliance with requirements under 40 CFR 136 and other analytical requirements specified in this NPDES Permit, AK–G52–8000.*

Signature _____

Date _____

5.2.5 EPA Support of Quality Assurance and Control

Each permittee may obtain copies of all references cited in this part of the Permit from the following address: Quality Assurance and Data Unit, Office of Environmental Assessment, U.S. EPA, Region 10 OEA–095, 1200 Sixth Avenue, Seattle, Washington 98101

5.2.6 Documentation

A permittee shall submit to EPA and ADEC written certification (See 9.5.4), signed by a principal office or a duly appointed representative of the permittee, of the development and implementation of the QA/QC plan not later than 12 months from the date of issuance of this Permit. A permittee shall maintain a copy of its QA/QC plan at its facility and shall make the plan available to EPA or ADEC upon request.

6 General Monitoring and Records Requirements

6.1 General Monitoring

6.1.1 Monitoring Procedures

Monitoring shall be conducted according to test procedures approved under 40 CFR 136 or EPA approved methods, unless other test procedures have been specified in the Permit. The Collins-Tenney test method is allowed for testing of Oil and Grease. EPA Method 1664 for Oil Grease has been approved as an alternative test procedure for Region 10.

6.1.2 Representative Effluent Sampling

Samples taken in compliance with the effluent monitoring requirements of the Permit shall be collected from the effluent stream prior to discharge into the receiving waters. Samples and measurements shall be representative of the volume and nature of the monitored discharge.

6.1.3 Additional Monitoring by the Permittee

If any pollutant is monitored more frequently than the Permit requires, using test procedures approved under 40 CFR 136 or EPA approved methods or as specified in the Permit, the results of this monitoring shall be reported with the data submitted in the report of effluent monitoring.

6.1.4 Submittal of Reports

Monitoring results shall be summarized each month on a Discharge Monitoring Report (DMR). The reports shall be submitted monthly and are to be postmarked by the 10th day of the following month. Legible copies of these, and all other reports, shall be signed and certified in accordance with the requirements of "Signatory Requirements" [9.5] and "Certification" [9.5.4] and submitted to EPA and ADEC at the following addresses:

Original to: U.S. EPA, Region 10, NPDES Compliance Unit OW–133, 1200 Sixth Avenue, Seattle, Washington 98101.

Copy to: Alaska Department of Environmental Conservation, Water Permits 555 Cordova Street, Anchorage, Alaska 99501.

In compliance with the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, the Office of Management and Budget has approved the collection of information in a Discharge Monitoring Report (OMB No. 2040–0004).

6.2 Records Requirements

6.2.1 Records Contents

All effluent monitoring records shall bear the hand-written signature of the person who prepared them. In addition, all records of monitoring information shall include: the date, exact place, and time of sampling or measurements; the names of the individual(s) who performed the sampling or measurements; the date(s) analyses were performed; the names of the individual(s) who performed the analyses; the analytical techniques or methods used; and the results of such analyses.

6.2.2 Retention of Records

Each permittee shall retain copies of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this Permit, and records of all data used to complete the application for this Permit, for a period of at least five years from

the date of the sample, measurement, report or application. This period may be extended by request of the Director or ADEC at any time.

6.2.3 On-site Availability of Records and Reports

Copies of this NPDES Permit, monitoring reports, and other technical documents required under the Permit shall be maintained on-site during the duration of activity at the permitted location.

7 Reporting Requirements

7.1 Noncompliance Reporting

7.1.1 Twenty-Four Hour Notice of Noncompliance

The following occurrences of noncompliance shall be reported by telephone to EPA (206–553–1846) and ADEC (907–269–7500) within 24 hours from the time the permittee becomes aware of the circumstances:

Any noncompliance which may endanger health or the environment; Any violation of a maximum daily discharge limitation for any of the pollutants listed in the Permit (See "Effluent Limitations" [3.1.2]); Any unanticipated bypass which exceeds any effluent limitations in the Permit (See "Bypass of Treatment Facilities" [8.6]); Any upset which exceeds any effluent limitation in the Permit (See "Upset Conditions" [8.7]); or Instances of persistent floating solids, visible foam, or oily wastes and shoreline accumulations (See "Environmental Effects [3.1.3 and 3.1.4]).

7.1.2 Written Notice of Noncompliance

A written notice of the preceding occurrences of noncompliance shall also be provided to EPA and ADEC (See "Submittal of Reports" [6.1.4]) within five days of the time that a permittee becomes aware of the circumstances which lead to the noncompliance.

7.1.3 Other Noncompliance

Instances of noncompliance not required to be reported within 24 hours (such as monthly average exceedances) shall be reported at the time that the next discharge monitoring report is submitted. The written submittal shall contain: A description of the noncompliance and its cause; The period of noncompliance, including exact dates and times; The estimated time noncompliance is expected to continue if it has not been corrected; and Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

7.2 Planned Changes

A permittee shall give 60 days advance notice to EPA and ADEC as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

The alteration of, or addition to, the facility could result in noncompliance with the explicit effluent limitation of the Permit; The alteration of, or addition to, the facility could significantly change the nature or increase the quantity of pollutants discharged which are not limited explicitly in the Permit; or The alteration of, or addition to, the facility may meet one of the criteria for determining whether the facility is a new source as determined in 40 CFR 122.29(b).

7.3 Notice of New Introduction of Pollutants

The permittee shall provide 60 days advance notice to EPA and ADEC of: Any new introduction of pollutants into the treatment works from an indirect discharger which would be subject to Sections 301 or 306 of the Act if it were directly discharging those pollutants; and Any substantial change in the volume or character of pollutants being introduced into the treatment works by a source introducing pollutants into the treatment works at the time of issuance of the Permit.

7.4 Anticipated Noncompliance

The permittee shall also give advance notice to EPA and ADEC of any planned changes in the permitted facility or activity which may result in noncompliance with Permit requirements.

8 General Compliance Responsibilities

8.1 Duty To comply

Each permittee shall comply with all conditions of this Permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

8.2 Penalties for Violations of Permit Conditions

8.2.1 Civil and administrative penalties

Sections 309(d) and 309(g) of the Act provide that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be subject to a civil penalty not to exceed $27,500 per day for each violation or an administrative penalty not to exceed $11,000 per violation.

8.2.2 Criminal Penalties

Negligent Violations. The Act provides that any person who negligently violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or by both.

Knowing Violations. The Act provides that any person who knowingly violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the act shall be punished by a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or by both.

Knowing Endangerment. The Act provides that any person who knowingly violates a permit condition implementing Sections 301, 302, 303, 306, 307, 308, 318, or 405 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000 or imprisonment of not more than 15 years, or both. A person which is an organization shall be subject to a fine of not more than $1,000,000.

False Statements. The Act provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this Act, shall be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or by both. Except as provided in permit conditions in "Bypass of Treatment Facilities" [8.6] "Upset Conditions" [8.7], nothing in this Permit shall be construed to relieve a permittee of the civil or criminal penalties for noncompliance.

8.3 Need To Halt or Reduce Activity Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this Permit.

8.4 Duty To Mitigate

A permittee shall take all reasonable steps to minimize or prevent any

discharge in violation of this Permit that has a reasonable likelihood of adversely affecting human health or the environment.

8.5 Proper Operation and Maintenance

A permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by a permittee to achieve compliance with the conditions of this Permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when the operation is necessary to achieve compliance with the conditions of this Permit.

8.6 Bypass of Treatment Facilities

8.6.1 Bypass Not Exceeding Limitations

Bypass of wastewater treatment is prohibited if such bypass will produce a discharge which exceeds the effluent limitations of the Permit. EPA or ADEC may take enforcement action against a permittee for a bypass, unless: The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment shall have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and A permittee submitted notices as follows:

Notice of an anticipated bypass. If a permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least 10 days before the date of the bypass.

*Notice of an unanticipated bypass.*A permittee shall submit notice of an unanticipated bypass as required under "Noncompliance Reporting" [7.1].

8.6.2 Bypass Approval

EPA and ADEC may approve an anticipated bypass, after considering its adverse effects, if EPA and ADEC determine that it will meet the three conditions listed above in 8.6.1 of this Permit.

8.7 Upset Conditions

8.7.1 Effect of an Upset

An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if a permittee meets the requirements of 8.7.2. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

8.7.2 Conditions Necessary for a Demonstration of Upset

A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that: An upset occurred and that a permittee can identify the cause(s) of the upset; The permitted facility was at the time being properly operated; The permittee submitted notice of the upset as required under "Reporting of Noncompliance" [7.1]; and The permittee complied with any remedial measures as required under "Duty to Mitigate" [8.4].

8.7.3 Burden of Proof

In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

8.8 Toxic Pollutants

Each permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions.

9 General Provisions

9.1 Permit Actions

This Permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by a permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

9.2 Duty To Reapply

If a permittee intends to continue an activity regulated by this Permit after the expiration date of this Permit, a permittee must apply for and obtain a new permit.

9.3 Duty To Provide Information

A permittee shall furnish to EPA and ADEC, within the time specified in the request, any information that EPA or ADEC may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this Permit, or to determine compliance with this Permit. A permittee shall also furnish to EPA or ADEC, upon request, copies of records required to be kept by this Permit.

9.4 Other Information

When a permittee becomes aware that it failed to submit any relevant facts in a permit application, or that it submitted incorrect information in a permit application or any report to EPA or ADEC, it shall promptly submit the omitted facts or corrected information.

9.5 Signatory Requirements

All applications, reports. or information submitted to EPA and ADEC shall be signed and certified.

9.5.1 Permit Applications

All permit applications shall be signed as follows: For a corporation: by a responsible corporate officer; For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official.

9.5.2 Required Reports and Information

All reports required by this Permit and other information requested by EPA or ADEC shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if: The authorization is made in writing by a person described above and submitted to EPA and ADEC, and the authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)

9.5.3 Changes to Authorization

If an authorization under "Signatory Requirements" [9.5] is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of this section must be submitted to EPA and ADEC prior to or

together with any reports, information, or applications to be signed by an authorized representative.

9.5.4 Certification

Any person signing a document required by this Permit shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

9.6 Availability of Reports

Except for data determined to be confidential under 40 CFR 2, all reports prepared in accordance with this Permit shall be available for public inspection at the offices of EPA and ADEC. A permittee may claim certain types of information as business confidential. When the information is submitted in response to a permit requirement, the permittee will need to identify which documents or portions of documents are company confidential (*See* 40 CFR 2.203(b)). As required by the Act, permit applications, permits, and effluent data shall not be considered confidential.

9.7 Inspection and Entry

A permittee shall allow EPA, ADEC, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon the presentation of credentials and other documents as may be required by law, to: Enter upon a permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this Permit; Have access to and copy, at reasonable times, any records that must be kept under the conditions of this Permit; Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Permit; and Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

9.8 Oil and Hazardous Substance Liability

Nothing in this Permit shall be construed to preclude the institution of any legal action or relieve a permittee from any responsibilities, liabilities, or penalties to which a permittee is or may be subject under Section 311 of the Act.

9.9 Property Rights

The issuance of this Permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations.

9.10 Severability

The provisions of this Permit are severable. If any provision of this Permit, or the application of any provision of this Permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this Permit, shall not be affected thereby.

9.11 Transfers

This Permit may be automatically transferred to a new permittee if: The current permittee notifies EPA at least 30 days in advance of the proposed transfer date; The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and EPA does not notify the existing permittee and the proposed new permittee of his or her intent to modify, or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in the preceding paragraph.

9.12 State Laws

Nothing in this Permit shall be construed to preclude the institution of any legal action or relieve a permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation under authority preserved by Section 510 of the Act.

10 Definitions and Acronyms

ADEC means Alaska Department of Environmental Conservation.

BMP means best management practices.

Bottom Fish includes Flounder (e.g., arrowtooth), Rockfish/Red Snapper, Pacific and Grey Cod, Halibut, Pollock, Black Cod/Sablefish, Flatfish/Sole, Whitefish.

Bypass means the intentional diversion of waste streams from any portion of a treatment facility (*See* 8.6).

CFR means the Code of Federal Regulations.

Cooling water means once-through non-contact cooling water.

CWA means the Clean Water Act.

Crab includes King, Tanner (Opilio and Bairdi), and Dungeness.

Daily discharge means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the "daily discharge" is calculated as the average measurement of the pollutant over the day.

Discharge of a pollutant means any addition of any "pollutant" or combination of pollutants to "waters of the United States" from any "point source."

Domestic wastes means materials discharged from showers, sinks, safety showers, eye-wash stations, hand-wash stations, fish-cleaning stations, galleys, and laundries.

EPA means the United States Environmental Protection Agency.

Maximum means the highest measured discharge or pollutant in a waste stream during the time period of interest.

mg/L means milligrams per liter.

Monthly average means the average of *daily discharges* over a monitoring month, calculated as the sum of all *daily discharges* measured during a monitoring month divided by the number of *daily discharges* measured during that month. One sample taken in a monitoring month is not considered a monthly average.

NOI means a "Notice of Intent," that is, an application for authorization to discharge under a general NPDES permit.

Ocean Dumping Site means a area in Chiniak Bay beginning at approximately 150°22′W to approximately 150°11′W along the 50 fathom line, north of Humpback Rock to the base line from east end of Long Island to Cape Chiniak. Solid seafood wastes are allowed to be dumped within this area provided the dumping vessel is underway and the seafood wastes are ground to a 0.5 inch particle size prior to discharge.

Persistent means that floating solids, visible foam, or oily wastes (including a sheen) on the surface of the receiving water above the outfall terminus and/or

immediately adjacent to a permittee's dock and shoreline are visible longer than one tidal cycle.

Pollutant means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.

Salmon includes Pink, Chum, Sockeye, Coho, Silver, and others.

Sanitary wastes means human body waste discharged from toilets and urinals.

Seafood means the raw material, including freshwater and saltwater fish and shellfish, to be processed, in the form in which it is received at the processing plant.

Seafood process waste means the waste fluids, organs, flesh, bones, woody fiber and chitinous shells produced in the conversion of aquatic animals and plants from a raw form to a marketable form.

Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

Sewage means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes.

Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance due to inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation (*See* 8.7).

U.S.C. means United States Code.

Water depth means the depth of the water between the surface and the seafloor as measured at mean lower low water (0.0).

[FR Doc. 98–7642 Filed 3–30–98; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Sub-Saharan Africa Advisory Committee of the Export-Import Bank of the United States (Export-Import Bank)

SUMMARY: The Sub-Saharan Africa Advisory Committee was established by Pub. L. 105–121, November 26, 1997, to advise the Board of Directors on the development and implementation of policies and programs designed to support the expansion of the Bank's financial commitment in Sub-Saharan Africa under the loan, guarantee and insurance programs of the Bank. Further, the committee shall make recommendations on how the Bank can facilitate greater support by U.S. commercial banks for trade with Sub-Saharan Africa.

TIME AND PLACE: Friday, April 3, 1998, at 2:00 a.m. to 4:00 p.m. The meeting will be held at the Export-Import Bank in room 1143, 811 Vermont Avenue, NW, Washington, D.C. 20571.

AGENDA: The meeting will include a discussion of the upcoming trip to Africa by the Chairman of Ex-Im Bank. The discussion will focus on the best way to achieve the stated objectives of the trip: assuring of U.S. and African communities that Ex-Im Bank is open and active in these market; developing new business; Establishing new relations with government and business leaders; and enabling the Chairman to receive a first-hand perspective of the business and financing opportunities in these three Southern African markets.

PUBLIC PARTICIPATION: The meeting will be open to public participation, and the last 10 minutes will be aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Megan Becher, Room 1284, 811 Vermont Ave., NW Washington DC 20571, (202) 565–3507, no later than March 27, 1998. If any person wishes auxiliary aids (such as sign language interpreter) or other special accommodations, please contact, prior to March 27, 1998, Megan Becher Room 1284, Vermont Avenue, NW Washington, DC 20571, Voice: (202) 565–3955 or TDD (202) 565–3377.

FURTHER INFORMATION CONTACT: For further information, contact Megan Becher, Room 1284, 811 Vermont Ave., NW, Washington, DC 20571, (202) 565–3507.

Kenneth Hansen,

General Counsel.

[FR Doc. 98–8359 Filed 3–30–98; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission

March 25, 1998.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments by June 1, 1998.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commissions, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0640.

Title: Construction of SMR Stations Request for Additional Information.

Form No.: FCC 800I.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals, Businesses or other for-profit.

Number of Respondents: 300.

Estimated Time Per Response: 2 hours and 30 minutes.

Total Annual Burden: 750 hours.

Total Annual Cost: $0.

Frequency of Response: On occasion reporting requirement.

Needs and Uses: This data collection (letter format) is used as a method of verifying if licensee has placed station into operation and for notifying the Commission of actual number of mobile units placed in operation after license grant. When a licensee provides conflicting information regarding the construction or operational status of radio facilities authorized to it, the Commission requires clarification/validation/explanation to substantiate the facilities' status so that it may enforce its regulatory responsibilities. Such responsibilities include the allocation and assignment of radio frequency spectrum and determining the viability of the underlying radio license authorizations which provide for use of that spectrum.

The data requested in this collection is being revised to include requesting purchase order/invoices for the base station, transmitter(s) and antenna; Work order/invoices demonstrating completion of station construction; Name, address and phone number of individual(s) performing the station construction; model and serial numbers of mobiles in operation; and a list of users and phone numbers on this system at the time of construction.

The Commission's requirement that systems be permanently constructed and placed in operation is contained in 47 CFR, Rule Section 90.155, 90.313, 90.631, 90.633, 90.651, 90.725 and 90.737.

OMB Approval Number: 3060–0767.

Title: Auction Forms and License Transfer Disclosures—Supplement for the 2nd R&O, Order on Reconsideration, and 5th NPRM in CC Docket No. 92–297.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit; State, Local or Tribal Government.

Number of Respondents: 44,000 respondents and 180, 000 responses.

Estimated Time Per Response: 30 minutes—4 hours per response.

Total Annual Burden: 773,000 hours.

Total Annual Costs: $47,452,000.

Frequency of Response: On occasion reporting requirement.

Needs and Uses: The auction rules, among other things, require small business applicants to submit ownership information and gross revenues calculations, and all applicants to submit terms of joint bidding agreements (if any). Furthermore, in a case a licensee defaults or loses its license, the Commission retains the discretion to reauction such licenses. If licenses are reauctioned, the new license winner would be required at the close of the reauction, to comply with the same disclosure requirements. Finally, licensees who transfer licenses within three years will be required to maintain certain information to ensure compliance with Commission rules.

Specifically: (1) Small business license winners (and their successors in interest as licensees) will be required to maintain a file over the license term containing ownership and gross revenues information, necessary to determine their business eligibility as a small business and (2) licensees who transfer licenses within three years are required to maintain a file of all documents and contracts pertaining to the transfer. Applicants that do not obtain the license(s) for which they applied shall maintain such files until the grant of such license(s) is final, or one year from the date of the filing of their short-form, application (FCC Form 175), whichever is earlier.

The Commission also adopted rules to determine the amount of unjust enrichment payments to be assessed upon assignment, transfer, partitioning and disaggregation of licenses. This rule, applicable to all current and future licensees, is based upon the unjust enrichment rule currently applicable to broadband PCS licensees. Additionally, the Commission amended its general anti-collusion rules, permitting the holder of a non-controlling attributable interest in an applicant to obtain an ownership interest in or enter into a consortium arrangement with another applicant for a license in the same geographic area provided that the original applicant has withdrawn from the auction, is no longer placing bids, and has no further eligibility. To meet the requirements of the exception, the attributable interest holder will be required to certify to the Commission that it did not communicate with the new applicant prior to the date the original applicant withdrew from the auction, and that it will not convey bidding information, or otherwise serve as a nexus between the previous and the new applicant.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 98–8368 Filed 3–30–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting

Open Commission Meeting Thursday, April 2, 1998

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, April 2, 1998, which is scheduled to commence at 9:30 a.m. in Room 856, at 1919 M Street, NW., Washington, DC.

Item No., Bureau, Subject

1—Wireless Telecommunications—Title: Implementation of Section 255 of the Telecommunications Act of 1996; Access to Telecommunications Services, Telecommunications Equipment, and Customer Premises Equipment by Persons with Disabilities (WT Docket No. 96–198). Summary: The Commission will consider proposed rules and policies concerning improved access to telecommunications services and equipment by persons with disabilities.

2—Office of General Counsel and Office of Public Affairs—Title: Electronic Filing of Documents in Rulemaking Proceedings (GC Docket No. 97–113). SUMMARY: The Commission will consider action that would allow the public to file electronically some pleadings, comments and ex parte filings in informal rulemaking proceedings.

3—Common Carrier—TITLE: Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance (RM–9101). Summary: The Commission will consider action concerning performance measurements and reporting requirements with respect to operations support systems, interconnection, and operator services and directory assistance.

4—Mass Media—Title: 1998 Biennial Regulatory Review -- Streamlining of Mass Media Applications, Rules, and Processes. Summary: The Commission will consider a number of proposals intended to streamline the processing of Mass Media Bureau applications, rules, and processes.

5—Office of Engineering and Technology—Title: Amendment of Parts 2, 15, 18 and Other Parts of the Commission's Rules to Simplify and Streamline the Equipment Authorization Process for Radio Frequency Equipment (ET Docket No. 97–94). Summary: The Commission will consider action to 1) simplify existing equipment author- ization processes; 2) deregulate the equipment authorization requirements for certain types of equipment; and 3) provide for electronic filing of applications for equipment authorization.

The following items will be discussed only if specifically requested by the Commissioners.

6—Office of Engineering and Technology—Title: 1998 Biennial Regulatory Review -- Amendment of Part 18 of the Commission's Rules to Update Regulations for RF Lighting Devices. Summary: The Commission will consider reviewing existing regulations for RF lighting devices.

7—Mass Media—Title: Applications of WCCB-TV, Inc., for Renewal of Licenses for Stations WPET(AM)/WKSI-FM, Greensboro, North Carolina. Summary: The Commission will consider (1) a Response to Notice of Apparent Liability filed by WCCB-TV, Inc., licensee of WPET(AM)/WKSI-FM, Greensboro, North Carolina, and (2) a Petition for Reconsideration filed by the Rainbow-PUSH Coalition, regarding a Memorandum Opinion and Order and Notice of Apparent Liability which granted the license renewal applications of WPET(AM)/WKSI-FM subject to reporting conditions and a Notice of Apparent Liability for a $12,000 forfeiture for violations of the Broadcast Equal Employment Opportunity Rule.

8—Mass Media—Title: Applications of Sea-Comm, Inc., for Renewal of Licenses for Stations WSFM(FM) and WKXB-FM Southport and Burgaw, North Carolina. Summary: The Commission will determine (1) whether Sea-Comm, Inc., violated the Commission's Equal Employment Opportunity Rule in connection with the operation of Stations WSFM(FM) and WKXB(FM); (2) whether it violated Section 73.1015 of the Rules by willfully omitting material facts; and (3) whether, in light of the foregoing, the renewal applications should be granted.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Public Affairs, telephone number (202) 418-0500; TTY (202) 418–2555.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800; fax (202) 857–3805 and 857–3184; or TTY (202) 293–8810. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its—inc@ix.netcom.com. Their Internet address is http://www.itsi.com.

This meeting can be viewed over George Mason University's Capitol Connection. For information on this service call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at <http://www.fcc.gov/realaudio/>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770; and from Conference Call USA (available only outside the Washington, D.C. metropolitan area), telephone 1–800–962–0044. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–0100; fax number (703) 834–0111.

Dated March 26, 1998.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–8499 Filed 3–27–98; 10:16; am]

BILLING CODE 6712–01–F

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act if 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection title "Transfer Agent Registration and Amendment Form."

DATES: Comment must be submitted on or before June 1, 1998.

ADDRESSES: Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst (Regulatory Analysis), (202) 898–7453, Office of the Executive Secretary, Room 4022, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429. All comments should refer to "Transfer Agent Registration and Amendment Form. " Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. (FAX number: (202) 898–3838; Internet address: Comments@fdic.gov).

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Tamara R. Manly, at the address identified above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collection of information:

Title: Transfer Agent Registration and Amendment Form.

OMB Number: 3064–0026.

Form Number: TA–1.

Frequency of Response: As needed.

Affected Public: Any depository institution that seeks to perform transfer agent functions.

Estimated Number of Respondents: 28.

Estimated Time per Response: 1.25 hours (initial registration), .17 hours (amendment).

Estimated Total Annual Burden: 14 hours.

General Description of Collection: Section 17A(c)(1) of the Securities Exchange Act of 1934 (15 USC 78q) requires a bank to register with the appropriate Federal bank regulator prior to performing any transfer agent function. Under FDIC regulation 12 CFR 341, an insured nonmember bank uses form TA–1 to register with the FDIC.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility: (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and

clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Dated at Washington, D.C. this 25th day of March, 1998.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 98–8355 Filed 3–30–98; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1195–DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida, (FEMA–1195–DR), dated January 6, 1998, and related determinations.

EFFECTIVE DATE: March 20, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Florida, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 6, 1998:

Escambia, Franklin, and Lake Counties for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–8405 Filed 3–30–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1195–DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida, (FEMA–1195–DR), dated January 6, 1998, and related determinations.

EFFECTIVE DATE: March 23, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 6, 1998:

Gadsden, Glades, and Okeechobee Counties for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–8406 Filed 3–30–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1209–DR]

Georgia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia (FEMA–1209–DR), dated March 11, 1998, and related determinations.

EFFECTIVE DATE: March 21, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia is hereby amended to include Public Assistance in the following areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 11, 1998:

Hall and White Counties for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–8399 Filed 3–30–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1209–DR]

Georgia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia, (FEMA–1209–DR), dated March 11, 1998, and related determinations.

EFFECTIVE DATE: March 20, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia, is hereby amended to include Public Assistance in the following areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 11, 1998:

Monroe County for Public Assistance (already designated for Individual Assistance).

Evans, Lamar, and Tattnall Counties for Public Assistance and Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–8400 Filed 3–30–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1209–DR]

Georgia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia, (FEMA–1209–DR), dated March 11, 1998, and related determinations.

EFFECTIVE DATE: March 24, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia, is hereby amended to include Public Assistance in the following areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 11, 1998:

Brantley, Carroll, and Grady Counties for Individual Assistance (already designated for Public Assistance).

Bibb County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program).

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–8401 Filed 3–30–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1209–DR]

Georgia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia (FEMA–1209–DR), dated March 11, 1998, and related determinations.

EFFECTIVE DATE: March 23, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia is hereby amended to include Public Assistance in the following areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 11, 1998:

Brantley, Carroll, and Grady Counties for Public Assistance.

Seminole and Ware Counties for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–8402 Filed 3–30–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1209–DR]

Georgia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia, (FEMA–1209–DR), dated March 11, 1998, and related determinations.

EFFECTIVE DATE: March 20, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 11, 1998:

Dawson, Habersham, Hall, Rabun, and White Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–8403 Filed 3–30–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1207–DR]

Kentucky; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Kentucky, (FEMA–1207–DR), dated March 3, 1998, and related determinations.

EFFECTIVE DATE: March 23, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Kentucky, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 3, 1998:

The counties of Boyle, Carter, Clark, Clay, Clinton, Elliott, Fleming, Garrard, Greenup, Johnson, Knox, Lawrence, Lee, Madison, Magoffin, Menifee, Montgomery, Morgan, Owsley, Pulaski, Rowan, Russell, Whitley and Wolfe for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–8404 Filed 3–30–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Inter-Ocean Cargo Group, Inc., 11682 S/W/ 142 Court, Miami, FL 33186, Officers: Ciro Mendez, President, Miguel Angel Martel, Vice President.

H.G. Forwarding 13126 S. Broadway, Los Angeles, CA 90061, Imelda Galindo Post, Sole Proprietor.

J.D. Brokers, & Forwarding Company, 15520 S.W. 169th Lane, Miami, FL 33187, Officer: Joel De La Paz, President.

Fast Star Forwarding, Inc., 10875 N.W. 33rd Street, Miami, FL 33172, Officer: Jorge Victorian, President.

Natural World Products Inc., 11301 Gilpin Ave., Suite 18, Wilmington, DE 19806, Officer: Anabel Panayotti, President.

Foreign Freight Systems Corp., 7904 N.W. 66 Street, Miami, FL 33166, Officers: Juan W. Mieses, President, Sara Gonzales, Vice President.

Dated: March 25, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–8292 Filed 3–30–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

[Docket No. 98–05]

China National Foreign Trade Transportation Corp. dba Sinotrans; Order To Show Cause

This proceeding is instituted pursuant to section 8, 11 and 13 of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. sections 1707, 1710 and 1712, and the Commission's regulations governing the the filing of tariffs and service contracts, 46 C.F.R. Part 514.

China National Foreign Trade Transportation Corp. is a tariffed vessel-operating common carrier doing business as SINOTRANS. SINOTRANS maintains offices at the Jiuling Building, No. 21 Xi San Huan Beilu, Beijing, People's Republic of China. According to records filed in the Commission's Automated Tariff Filing and Information System ("ATFI") Liu Fu Lin is President of SINOTRANS.

As relevant herein, SINOTRANS maintains in ATFI an Essential Terms Publication No. 3, FMC No. 000747–003. Pursuant to the Commission's regulations governing the filing and publication by ocean common carriers of the essential terms of service contracts, SINOTRANS has filed with the Commission the terms of service contract No. 96–11 between SINOTRANS and Sino-Am Marine Co. Inc., a tariffed and bonded non-vessel-operating common carrier based in New York City.

By letter dated November 7, 1997, the Commission's Bureau of Enforcement requested, pursuant to 46 C.F.R. 514.7(m), that the Commission be furnished with service contract records relating to SINOTRANS service contract No. 96–11. Under provisions of § 514.7(m)(3), such records must be furnished within thirty (30) days from the date of the request.

By supplemental letter dated February 6, 1998, the Bureau of Enforcement advised SINOTRANS' custodian of records, Norton Lilly International Inc. ("Norton Lilly"), that the above records had not been provided. The Bureau of Enforcement again requested that all subject service contract records be furnished by SINOTRANS on or before February 20. By fax dated February 12, 1998, the Pricing Manager of Norton Lilly advised that all requested records would be provided by February 20. According to the Bureau of Enforcement, no responsive records have been furnished by SINOTRANS to date.

The Commission's regulations governing tariffs and service contracts, 46 C.F.R. Part 514, provide unambiguously that every common carrier shall submit requested service contract records within thirty (30) days from the date of the request. 46 C.F.R. 514.7(m)(3). In turn, section 13(a) of the 1984 Act, 46 U.S.C. app. section 1712(a), provides that whoever violates a provision of the 1984 Act, a regulation issued thereunder, or an order of the Commission is liable to the United States for a civil penalty. Each day of a continuing violation constitutes a separate offense.

Now therefore, it is ordered That, pursuant to section 11 of the Shipping Act of 1984, China National Foreign Trade Transportation Corp., doing business as SINOTRANS, show cause why it should not be found to have violated the Commission's regulations at 46 CFR 514.7(m)(3), by failing to furnish requested service contract records with respect to service contract No. 96–11 within thirty (30) days of a written request therefor;

It is further ordered That, China National Foreign Trade Transportation Corp., doing business as SINOTRANS, show cause why civil penalties should be not be assessed for each day in which SINOTRANS has failed to comply with the requirements of 46 CFR 514.7(m)(3), such penalties to being accruing on and after February 21, 1998;

It is further ordered That this proceeding is limited to the submission of facts and memoranda of law;

It is further ordered That any person having an interest and desiring to intervene in this proceeding shall file a petition for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and

Procedure, 46 CFR 502.72. Such petition shall be accompanied by the petitioner's memorandum of law and affidavits of fact, if any, and shall be filed no later than the day fixed below;

It is further ordered That China National Foreign Trade Transportation Corp., doing business as SINOTRANS, is named a Respondent in this proceeding. Affidavits of fact and memoranda of law shall be filed by Respondent and any intervenors in support of Respondent no later than April 27, 1998;

It is further ordered That the Commission's Bureau of Enforcement be made a party to this proceeding;

It is further ordered That reply affidavits and memoranda of law shall be filed by the Bureau of Enforcement and any intervenors in opposition to Respondent no later than May 12, 1998;

It is further ordered That rebuttal memoranda of law shall be filed by Respondent and any intervenors in support of Respondent no later than May 27, 1998;

It is further ordered That:

(a) Should any party believe that an evidentiary hearing is required, that party must submit a request for such hearing together with a statement setting forth in detail the facts to be proved, the relevance of those facts to the issues in this proceeding, a description of the evidence which would be adduced, and why such evidence cannot be submitted by affidavit;

(b) Should any party believe that an oral argument is required, that party must submit a request specifying the reasons therefor and why argument by memorandum is inadequate to present the party's case; and

(c) Any request for evidentiary hearing or oral argument shall be filed no later than May 27, 1998;

It is further ordered That notice of this Order to Show Cause be published in the **Federal Register**, and that a copy thereof be served upon Respondent;

It is further ordered That all documents submitted by any party of record in this proceeding shall be filed in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 CFR 502.118, as well as being mailed directly to all parties of record;

Finally, it is ordered That pursuant to the terms of Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61, the final decision of the Commission in this proceeding shall be issued by November 30, 1998.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98–8353 Filed 3–30–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 14, 1998.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Charles R. Hall, Perry, Oklahoma; to acquire voting shares of Perry Bancshares, Inc., Perry, Oklahoma, and thereby indirectly acquire voting shares of Exchange Bank and Trust Company, Perry, Oklahoma.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Learner Survivor Trust II, UAT, and Learner Marital Deduction Trust II, UAT, both of Walnut Creek, California; to each retain voting shares of Learner Financial Corporation, Walnut Creek, California and thereby indirectly retain voting shares of Scott Valley Bank, Yreka, California.

In addition, LFC Investors, L.P., and Learner Family 1998 Trust, both of Walnut Creek, California, and Albert H. Newton, Jr., Yreka, California, Trustee of the Learner Family 1998 Trust; also have applied to acquire 100 percent of the voting shares of Learner Financial Corporation, Walnut Creek, California and thereby indirectly acquire voting shares of Scott Valley Bank, Yreka, California.

Board of Governors of the Federal Reserve System, March 25, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–8281 Filed 3-30-98; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 24, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Employee Stock Ownership Trust of People's Bank and Trust Company of Pickett County, Byrdstown, Tennessee; to acquire 40 percent of the voting shares of Upper Cumberland Bancshares, Inc., Byrdstown, Tennessee, and thereby indirectly acquire Peoples Bank and Trust Company of Pickett County, Byrdstown, Tennessee.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Hall Properties, LP, Perry, Oklahoma; to become a bank holding

company by acquiring 40 percent of the voting shares of Perry Bancshares, Inc., Perry, Oklahoma, and thereby indirectly acquire Exchange Bank & Trust Company, Perry, Oklahoma.

Board of Governors of the Federal Reserve System, March 25, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–8280 Filed 3-30-98; 8:45 am]

BILLING CODE 6210-01-F

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board

AGENCY: General Accounting Office.

ACTION: Notice of April meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that the Federal Accounting Standards Advisory Board will hold a two-day meeting on Thursday, April 16, and Friday, April 17, 1998 from 9:00 A.M. to 4:00 P.M. in Room 7C13 of the General Accounting Office building 441 G St., N.W., Washington, D.C.

The purpose of the meeting is to discuss the following issues: (1) Management Discussion and Analysis, (2) Natural Resources, (3) Credit Reform proposed amendments, and (4) Internal use Software.

Any interested person may attend the meeting as an observer. Board discussions and reviews reopen to the public.

FOR FURTHER INFORMATION CONTACT: Wendy Comes, Executive Director, 441 G St., N.W., Room 3B18, Washington, D.C. 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: March 24, 1998.

Wendy M. Comes,

Executive Director.

[FR Doc. 98–8437 Filed 3–30–98; 8:45 am]

BILLING CODE 1610–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Minority Health; Notice of a Cooperative Agreement With Albert Einstein Medical Center

AGENCY: Office of the Secretary, HHS.

ACTION: Notice of a cooperative agreement with Albert Einstein Medical Center.

The Office of Minority Health (OMH), Office of Public Health and Science, announces that it will extend the established cooperative agreement with Albert Einstein Medical Center in Philadelphia, Pennsylvania, to continue the Cancer Awareness and Prevention Program in North Philadelphia.

The purpose of this cooperative agreements to reduce the cancer incidence,morbidity and mortality of the minority populations living in the North Philadelphia area. The objective of this cooperative agreement is to continue, through a coalition effort, the development of more eff3ctive minority-focused cancer prevention, early detection, and education and treatment programs. The OMH will provide technical assistance and oversight, as necessary, for the implementation, conduct, and assessment of the project activities. On an as-needed basis, OMH will assist in arranging consultation form other Government agencies and non-government agencies.

Authority

This cooperative agreement is authorized under Section 1707(d)(1) of the Public Health Service Act.

Background

During the past three years, the North Philadelphia Cancer Awareness and Prevention Program has been operated by the Albert Einstein Medical Center via a cooperative Agreement with OMH. It has successfully provided comprehensive cancer education, outreach and screening programs targeted at minority populations in the underserved urban areas of North Philadelphia. The fiscal year 1998 Conference Report Language included funds for the North Philadelphia Cancer Awareness and Prevention Program.

Albert Einstein Medical Center is uniquely qualified to continue to accomplish the objectives of this cooperative agreement because it has the following combination of factors:

- The infrastructure and expertise, as demonstrated through past activities, to work with the at-risk, targeted minority populations of North Philadelphia;
- The ability to provide continuity;
- The ability, as demonstrated through past activities, to carry out a program designed to reduce the cancer incidence, morbidity, and mortality of targeted minority populations living in North Philadelphia;
- An economically disadvantaged service area composed of at-risk, minority populations who experience high rates of cancer incidence and mortality;
- Previous experience enlisting neighborhood partners to provide sites for conducting educational seminars and screening programs, and disseminating health-related materials; and
- An established cancer center capable of addressing a variety of issues relevant to this project (i.e., early detection, prevention, diagnoses, treatment, continuity of care, and follow up).

Based on the above considerations, assistance will be provided only to Albert Einstein Medical Center. No other applications are being solicited under this announcement. This cooperative agreement will be awarded for a 3-year period. It is anticipated that funds in the amount of $250,000 (direct and indirect costs) will be available per each 12-month budget period within the 3-year project period. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Where to Obtain Additional Information: if you are interested in obtaining information regarding the project, contact Ms. Cynthia Amis, Office of Minority Health, 5515 Security Lane, Suite 1000, Rockville, Maryland 20852 or telephone (301) 594–0769.

OMB Catalog of Federal Domestic Assistance: The OMB Catalog of Federal Domestic Assistance number for this cooperative agreement is 93.004.

Dated: March 12, 1998.

Clay E. Simpson, Jr.,

Deputy Assistant Secretary for Minority Health.

[FR Doc. 98–8298 Filed 3–30–98; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of Meeting of the Advisory Committee on Blood Safety and Availability

AGENCY: Office of the Secretary, HHS.

ACTION: Notice of meeting.

The Advisory Committee on Blood Safety and Availability will meet on April 27, 1998, from 8:00 am to 5:00 pm and on April 28, 1998 from 8:00 am to 3:00 pm. The meeting will take place in the Kaleidoscope Room of the Georgetown Holiday Inn, 2101 Wisconsin Ave. N.W., Washington, D.C. 20007. The meeting will be entirely open to the public.

The Committee will consider blood product shortages. On April 27, 1998 the committee will review information presented to it by representatives of consumers, industry and government agencies. At the conclusion of these presentations, the public will be invited to comment. Following these presentations, the Committee will consider what, if any, recommendations to make to the Department on this matter.

Prospective speakers should notify the Executive Secretary of their desire to address the Committee and should plan for no more than 5 minutes of comments.

FOR FURTHER INFORMATION CONTACT:

Stephen D. Nightingale, M.D., Executive Secretary, Advisory Committee on Blood Safety and Availability, Office of Public Health and Safety, Department of Health and Human Services, 200 Independence Avenue S.W., Washington, D.C. 20201. Phone (202) 690–5560 FAX (202) 690–6584 e-mail SNIGHTIN@osophs.dhhs.gov.

Dated: March 18, 1998.

Stephen D. Nightingale,

Executive Secretary, Advisory Committee on Blood Safety and Availability.

[FR Doc. 98–8295 Filed 3–30–98; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day–10–98]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Projects

1. National Hospital Ambulatory Medical Care Survey—(0920–0278)—Extension—The National Hospital Ambulatory Medical Care Survey (NHAMCS) has been conducted annually since 1992 by the Division of Health Care Statistics, National Center for Health Statistics, CDC. The NHAMCS is the principal source of data on the approximately 158 million visits to hospital emergency and outpatient departments and is the only source of nationally representative estimates on the demographic characteristics of outpatients, diagnoses, diagnostic services, medication therapy, and the patterns of use of care in hospitals which differ in size, location, and ownership. Additionally, the NHAMCS is the only source of national estimates on non-fatal causes of injury in the emergency department.

These data complement the data on visits to non-Federal physicians in office-based practices collected through the NHAMCS (0920–0234), together providing data on approximately 90 percent of the ambulatory care provided in the U.S. Data collected through the NHAMCS are essential for the planning of health services, for improving medical education, determining health care work force needs and assessing the health status of the population. Users of NHAMCS data include, but are not limited to, congressional offices, Federal agencies such as NIH, various private associations such as the American Heart Association, as well as universities and state health departments. Total annual burden hours are 7,062.

Form name	No. of respondents	No. of responses/ respondent	Avg. burden/ response (in hrs.)	Total burden (in hrs.)
Hospital-Induction (NHAMCS–101):				
Noneligible	50	1	0.25	13
Eligible	440	1	1	440
Ambulatory Unit Induction (ED) (NHAMCS–101/U)	425	1	1	425
Ambulatory Unit Induction (OPD) (NHAMCS–101/U)	275	4	1	1100
ED Patient Record form	425	50	0.06666	1,417
OPD Patient Record form	275	200	0.066666	3,667

2. National Ambulatory Medical Care Survey—(0920–0234)—Extension—The National Ambulatory Medical Care Survey (NAMCS) was conducted annually from 1973 to 1981, again in 1985, and resumed as an annual survey in 1989. It is directed by the Division of Health Care Statistics, National Center for Health Statistics, CDC. The purpose of NAMCS is to meet the needs and demands for statistical information about the provision of ambulatory medical care services in the United States. Ambulatory services are rendered in a wide variety of settings, including physicians' offices and hospital outpatient and emergency departments. The NAMCS target population consists of all office visits within the United States made by ambulatory patients to non-Federal office-based physicians (excluding those in the specialties of anesthesiology, radiology, and pathology) who are engaged in direct patient care. The complement portion of data collection consists of the remaining physicians in the AMA and AOA files; that is, physicians who AMA and AOA classify as being federally employed, or in the three specialties excluded from the traditional NAMCS, or as not spending the majority of their professional time in office-based practice. Since more than 80 percent of all direct ambulatory medical care visits occur in physicians' offices, the NAMCS provides data on the majority of ambulatory medical care services. To complement these data, in 1992 NCHS initiated the National Hospital Ambulatory Medical Care Survey (NHAMCS, OMB No. 0920–0278) to provide data concerning patient visits to hospital outpatient and emergency departments. The NAMCS, together with the NHAMCS constitute the ambulatory component of the National Health Care Survey (NHCS), and will provide coverage of more than 90 percent of ambulatory medical care.

The NAMCS provides a range of baseline data on the characteristics of the users and providers of ambulatory medical care. Data collected include the patients' demographic characteristics and medical problems, and the physicians' diagnostic services, therapeutic prescriptions and disposition decisions. These data, together with trend data, may be used to monitor the effects of change in the health care system, provide new insights into ambulatory medical care,

and stimulate further research on the use, organization, and delivery of ambulatory care.

Users of NAMCS data include congressional and other Federal government agencies (e.g. NIMH, NIAAA, NCI, HRSA), State and local governments, medical schools, schools of public health, colleges and universities, private businesses, nonprofit foundations and corporations, professional associations, as well as individual practitioners, researchers, administrators and health planners. Users vary from the inclusion of a few selected statistics in a large research effort, to an in-depth analysis of the entire NAMCS data set covering several years. Total annual burden hours are 3,350.

Form name	No. of respondents	No. of responses/ respondent	Avg. burden/ response (in hrs.)	Total burden (in hrs.)
NAMCS:				
Induction	2,500	1	0.25	625
Patient Record	2,500	30	0.0333	2,500
COMPLEMENT:				
Induction	500	1	0.25	125
Patient Record	100	30	0.0333	100

Charles Gollmar,

Acting Associate Director for Policy, Planning, and Evaluation Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–8343 Filed 3–30–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Safety and Occupational Health Study Section (SOHSS) Second Task Group Session.

Time and Date: 1 p.m.–3 p.m., April 15, 1998.

Place: NIOSH Grants Office, Prete Building, Room B229, 040 University Avenue, Morgantown, West Virginia, 26505, telephone 304/285–6047.

Status: Open: 1 p.m.–1:15 p.m., April 15, 1998; Closed: 1:15 p.m.–3 p.m., April 15, 1998.

Purpose: The SOHSS Task Group Second Session will review, discuss, and evaluate grant application(s) in response to the Institute's standard grants review and funding cycles pertaining to research issues in occupational safety and health and allied areas and announcement number 807 entitled, "Mining Occupational Safety and Health Research Grants."

It is the intent of NIOSH to support broad-based research endeavors to keep within the Institute's program goals which will lead to improved understanding and appreciation for the magnitude of the aggregate health burden associated with occupational injuries and illnesses, as well as, to support more focused research projects that will lead to improvements in the delivery of occupational safety and health services and the prevention of work-related injury and illness. It is anticipated that research funded will promote the program goals.

Matters To Be Discussed: Agenda items include welcome and introductions of the SOHSS Task Group instructions, and review of applications. Beginning at 1:15 p.m., through 3 p.m., April 15, the Task Group will meet to consider safety and occupational health related grant applications. This portion of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Pervis C. Major, Ph.D., Scientific Review Administrator, Office of Extramural Coordination and Special Projects, Office of the Director, NIOSH, 1095 Willowdale Road, Morgantown, West Virginia 26505, telephone 304/285–5979.

Dated: March 25, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–8345 Filed 8–30–98; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Council for the Elimination of Tuberculosis: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following council meeting.

Name: Advisory Council for the Elimination of Tuberculosis (ACET).

Times and Dates: 8:30 a.m.-5 p.m., April 14, 1998; 8:30 a.m.-12 p.m., April 15, 1998.

Place: Corporate Square Office Park, Corporate Square Boulevard, Building 11, Room 1413, Atlanta, Georgia 30329.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: This council advises and makes recommendations to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the elimination of tuberculosis. Specifically, the council makes recommendations regarding policies, strategies, objectives, and priorities; addresses the development and application of new technologies; and reviews the extent to which progress has been made toward eliminating tuberculosis.

Matters to be Discussed: Agenda items include development of new vaccines for TB; discussions on the 1997 TB surveillance report; TB treatment and preventive therapy; prevention activities around global TB; and developing long term priorities for TB elimination. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Beth Wolfe, National Center for HIV, STD, and TB Prevention, 1600 Clifton Road, NE, M/S E–07, Atlanta, Georgia 30333, telephone 404/639–8008.

Dated: March 25, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–8346 Filed 3–30–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request Proposed Projects

Title: Native Employment Works (NEW) Program Plan Guidance and Report Requirements.

OMB No.: 0970–0174.

Description: The purpose of this document is to determine whether a NEW program plan is complete and will fulfill its intended purpose, goals and objectives to provide work activities. The plan will provide an outline of how the Tribe's program will be administered and operated and instructions for reporting program characteristics. It is also used to provide the public with information about the NEW program.

Respondents: Tribal Govt.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Program Plan	78	1	40	3,120
Report	78	1	16	1,248

Estimated Total Annual Burden Hours: 4,368.

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for children and Families, Office of Information Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: March 25, 1998

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 98–8297 Filed 3–30–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Community-Based Family Resource and Support Grants.

OMB No.: 0970–0155.

Description: Application information is required when a State wishes to receive a Community-Based Family Resource and Support (CBFRS) grant award. This Program Instruction contains information collection requirements that are found in Public Law 104–235 at sections 202(1)(A); 202(b); 203(b)(1)(B); 205; submitted pursuant to receiving a grant award. The information submitted will be used by the agency to ensure compliance with the statute, complete the calculation of the grant award entitlement, provide training and technical assistance to the grantee, and evaluate State efforts in the prevention of child abuse and neglect.

Respondents: State, Local or Tribal Govt.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Application	57	1	40	2,280
Annual Report	57	1	24	1,368

Estimated Total Annual Burden Hours: 3,648.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork

Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: March 25, 1998.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 98–8296 Filed 3–30–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: ACF–196 Temporary Assistance for Needy Families Financial Reporting Form.

OMB No.: 0970–0165.

Description: The form provides specific data regarding claims and provides a mechanism for States to request grant awards and certify the availability of State matching funds. Failure to collect this data would seriously compromise ACF's ability to monitor expenditures. This information is also used to estimate outlays and may be used to prepare ACF budget submissions to Congress. The following citations should be noted in regards to this collection: 405(c)(1); 409(a)(7); and 4–09(a)(1).

Respondents: State Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–196	54	4	8	1,728

Estimated Total Annual Burden Hours: 1,728.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: March 25, 1998.

Robert Sargis,

Acting Reports Clearance Officer.

[FR Doc. 98–8299 Filed 3–30–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95C–0211]

Wesley Jessen Corp.; Withdrawal of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a color additive petition (CAP 5C0246) proposing that the color additive regulations be amended to provide for the safe use of 2-[[2,5-diethoxy-4-[(4-methylphenyl)thio]phenyl]azo]-1,3,5-benzenetriol to tint soft (hydrophilic) contact lenses.

FOR FURTHER INFORMATION CONTACT: John R. Bryce, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3023.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of August 18, 1995 (60 FR 43157), FDA announced that a color additive petition (CAP 5C0246) had been filed by Pilkington Barnes Hind. The petition proposed to amend the color additive regulations in § 73.3115 2-[[2,5-Diethoxy-4-[(4-methylphenyl)thio]phenyl]azo]-1,3,5-benzenetriol (21 CFR 73.3115) to provide for the safe use of the color additive to tint soft (hydrophilic) contact lenses. Since the publication of the filing notice, Pilkington Barnes Hind has been acquired by Wesley Jessen Corp., 333 East Howard Ave., Des Plaines, IL 60018–5903. Wesley Jessen Corp. has now withdrawn the petition without prejudice to a future filing (21 CFR 71.6(c)(2)).

Dated: March 9, 1998.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–8303 Filed 3–30–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98F–0183]

Ciba Specialty Chemicals Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba Specialty Chemicals Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 2-hydroxy-1-[4-(2-hydroxyethoxy)phenyl]-2-methyl-1-propanone as a photoinitiator for adhesives and pressure-sensitive adhesives intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 8B4589) has been filed by Ciba Specialty Chemicals Corp., 540 White Plains Rd., Tarrytown, NY

10591–9005. The petition proposes to amend the food additive regulations to provide for the safe use of 2-hydroxy-1-[4-(2-hydroxyethoxy)phenyl]-2-methyl-1-propanone as a photoinitiator for adhesives complying with § 175.105 *Adhesives* (21 CFR 175.105) and pressure-sensitive adhesives complying with § 175.125 *Pressure-sensitive adhesives* (21 CFR 175.125) intended for use in contact with food.

The agency has determined under 21 CFR 25.32(i) that this action is of the 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.

Dated: March 13, 1998.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–8302 Filed 3–30–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0172]

Amended Procedures for Advisory Panel Meetings; Draft Guidance; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled "Amended Procedures for Advisory Panel Meetings." The purpose of the guidance document is to establish standard operating procedures to be followed by the Center for Devices and Radiological Health (CDRH), the Center for Biologics Evaluation and Research (CBER), FDA personnel, and interested persons outside FDA in carrying out the Federal Food, Drug, and Cosmetic Act (the act), as amended through the Food and Drug Administration Modernization Act of 1997 (FDAMA).

DATES: Written comments concerning the draft guidance must be received by June 29, 1998. After the close of the comment period, written comments may be submitted at any time to the contact person listed below.

ADDRESSES: Written comments concerning the draft guidance that are submitted within the 90 days comment period must be addressed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Comments should be identified with the docket number found in brackets in heading of this document. Submit written requests for singles copies of the draft guidance to the Division of Small Manufacturers Assistance (DSMA), Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Nancy J. Pluhowski, Center for Devices and Radiological Health (HFZ–400), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2022.

SUPPLEMENTARY INFORMATION:

I. Background

The guidance document entitled "Amended Procedures for Advisory Panel Meetings" was developed to establish standard operating procedures to be followed by the CDRH, CBER, FDA personnel, and interested persons outside FDA in carrying out section 513(b)(6) of the act (21 U.S.C. 360c(b)(6)) as amended by section 208 of FDAMA. Beginning on February 19, 1998, section 513(b)(6)(A) of the act requires that FDA provide to any person whose device is subject to a classification panel review be given the same access to data and information submitted to a classification panel except data and information that are not available for public disclosure under the Freedom of Information Act (5 U.S.C. 552). FDAMA further amended the act to require any person whose device is under review by a classification panel to have the opportunity to submit information based on the data or information provided in the application to the panel for its review. It also provides the same opportunity as the Secretary of Health and Human Services to participate in panel meetings. Section 513(b)(6)(B) of the act requires that adequate time be provided for initial presentations and for response to any differing views by persons whose devices are specifically the subject of a classification panel, and that free and open participation by all interested persons be encouraged.

II. Significance of Guidance

The guidance document represents the agency's current thinking on the amended procedures for advisory panel meetings. 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 statute, regulations, or both.

The guidance document entitled "Amended Procedures for Advisory Panel Meetings" is a Level 1 guidance document under FDA's Good Guidance Practices Policy. Public comment prior to implementation of the guidance document is not required because the guidance is needed to implement new statutory requirements enacted by FDAMA.

III. Comments

Interested persons may, on or before June 29, 1998, submit to the Dockets Management Branch (address above) written comments regarding this guidance document. 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 document and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. After June 29, 1998, written comments may be submitted at any time to the contact person listed above.

IV. Electronic Access

In order to receive the draft guidance entitled "Amended Procedures for Advisory Panel Meetings" via your fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number 413, followed by the pound sign (#). Then follow the remaining voice prompt to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so using the World Wide Web (WWW). CDRH maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Web. Updated on a regular basis, the CDRH home page includes the guidance document entitled "Amended Procedures for Advisory Panel Meetings," device safety alerts, **Federal Register** reprints, information on premarket submissions

(including lists of approved applications and manufacturers addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. The guidance document entitled "Amended Procedures for Advisory Panel Meetings" will be available at http://www.fda.gov/cdrh.

A text-only version of the CDRH Web site is also available from a computer or VT–100 compatible terminal by dialing 800–222–0185 (terminal settings are 8/1/N). Once the modem answers, press Enter several times and then select menu choice 1: FDA BULLETIN BOARD SERVICE. From there follow instructions for logging in, and at the BBS TOPICS PAGE, arrow down to the FDA home page (do not select the first CDRH entry). Then select Medical Devices and Radiological Health. From there select CENTER FOR DEVICES AND RADIOLOGICAL HEALTH for general information, or arrow down for specific topics.

Dated: March 25, 1998.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 98–8301 Filed 3–30–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0173]

PMA/510(k) Expedited Review Guidance for Industry and Center for Devices and Radiological Health Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled "PMA/510(k) Expedited Review Guidance for Industry and the Center for Devices and Radiological Health (CDRH) Staff." FDA believes it is in the interest of the public health to review premarket approval applications (PMA's) and premarket notifications (510(k)'s) for certain medical devices in an expedited manner. The expedited review will generally be considered when a device offers a potential for clinically meaningful benefit as compared to the existing alternatives (preventive, diagnostic, or therapeutic) or when the new medical device promises to provide a revolutionary advance (not incremental advantage) over currently available alternative modalities.

DATES: Submit written comments concerning this guidance by June 29, 1998. After the close of the comment period, written comments may be submitted at any time to one of the contact persons listed in this document.

ADDRESSES: Written comments concerning this guidance that are submitted within the 90-day comment period must be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Comments should be identified with the docket number found in brackets in the heading of this document. Submit written requests for single copies of the guidance on a 3.5" diskette to the Division of Small Manufacturers Assistance (DSMA), Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT:

On expedited review for PMA's: Kathy M. Poneleit, Center for Devices and Radiological Health (HFZ–402), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2186.

For expedited review for 510(k)'s: Heather S. Rosecrans, Center for Devices and Radiological Health (HFZ–402), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1190.

SUPPLEMENTARY INFORMATION:

I. Background

The criteria and procedures under which expedited review would apply to PMA's and Premarket Notifications (510(k)'s) for medical devices were previously identified in General Program Memorandum #G94–2, "PMA/510(k) Expedited Review." In order to reflect the criteria in section 515(d)(5) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e(d)(5)), as modified by section 202 of the Food and Drug Administration Modernization Act of 1997 (FDAMA) entitled "Special Review for Certain Devices," the criteria section of the guidance has been modified. These modifications include rearranging the first three criteria and revising the fourth to track the new statutory language more closely. All other sections of the guidance remain the same. This document rescinds and replaces General Program Memorandum #G94–2, "PMA/510(k) Expedited Review."

These procedures are based upon the Management Action Plan initiative paper entitled "PMA/510(k) Expedited Review Process." This guidance embodies the procedures flowing from that issue paper and implements the principles in that document as the policy of the Office of Device Evaluation (ODE). This Blue Book Memorandum will be used by ODE reviewers in applying procedures for the review of incoming PMA's and 510(k)'s.

FDA believes it is in the interest of the public health to review PMA's and 510(k)'s for certain medical devices in an expedited manner. Expedited review will generally be considered when a device offers a potential for clinically meaningful benefit as compared to the existing alternatives (preventative, diagnostic, or therapeutic) or when the new medical device promises to provide a revolutionary advance (not incremental advantage) over currently available alternative modalities.

Granting of expedited review status means that the marketing application would receive priority review before other pending PMA's and 510(k)'s, i.e., the application will be placed at the beginning of the appropriate review queue. If multiple applications for the same type of medical device offering comparable advantage over existing approved alternatives have been granted expedited review, the applications will be reviewed with priority according to their respective submission due dates. Once one of the applications is approved, those of the same type still pending will generally lose their expedited review status with regard to review resources but will retain their place in the review queue.

II. Significance of Guidance

This guidance document represents the agency's current thinking on the procedures to be followed for expedited review of PMA's and (510(k)'s). 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 statute, regulations, or both.

This guidance document entitled "PMA/510(k) Expedited Review Guidance for Industry and CDRH Staff" is a Level 1 guidance under FDA's Good

Guidance Practice Policy. Public comment prior to implementation of the guidance document is not required because the guidance is needed to implement new statutory requirements enacted by FDAMA.

III. Electronic Access

In order to receive the guidance entitled "PMA/510(k) Expedited Review Guidance for Industry and CDRH Staff" via your fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number 108, followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the World Wide Web (WWW). CDRH maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Web. Updated on a regular basis, the CDRH home page includes the "PMA/510(k) Expedited Review Guidance," device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. The "PMA/510(k) Expedited Review Guidance" will be available at http://www.fda.gov/cdrh.

A text-only version of the CDRH Web site is also available from a computer or VT–100 compatible terminal by dialing 800–222–0185 (terminal settings are 8/1/N). Once the modem answers, press Enter several times and then select menu choice 1: FDA BULLENTIN BOARD SERVICE. From there follow instructions for logging in, and at the BBS TOPICS PAGE, arrow down to the FDA home page (do not select the first CDRH entry). Then select Medical Devices and Radiological Health. From there select CENTER FOR DEVICES AND RADIOLOGICAL HEALTH for general information, or arrow down for specific topics.

IV. Comments

Interested persons may, on or before June 29, 1998, submit to the Dockets Management Branch (address above) written comments regarding this guidance document. Two copies of any comments are 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 document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. After June 29, 1998, written comments may be submitted at any time to one of the contact persons in this document.

Dated: March 25, 1998.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 98–8300 Filed 3–30–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[PRT–676811]

Notice of Regional Director's Permit Amendment

U.S. Fish and Wildlife Service Endangered Species Permit PRT –676811, issued to the Regional Director—Region 2 is amended by two technical amendments: (1) to extend the expiration date from April 15, 1998, through June 15, 1998, and (2) to conduct scientific research and recovery activities to include "take" for species currently listed in Region 2.

SUMMARY: The expiration date of this permit is being extended to allow for appropriate public comment for the renewal of this permit. The permit is currently being processed for renewal to continue to conduct specific activities with endangered species. This notice is provided pursuant to section 10(a) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

FOR FURTHER INFORMATION CONTACT: U.S. Fish and Wildlife Service, Ecological Services, Division of Endangered Species/Permits, P.O. Box 1306, Albuquerque, New Mexico 87103 at (505) 248–6649.

Dated: March 25, 1998.

Renne Lohoefener,

Assistant Regional Director, Ecological Services, Region 2, Albuquerque, New Mexico.

[FR Doc. 98–8342 Filed 3–30–98; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(AK–910–0777–51)

Iditarod Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Iditarod Advisory Council Meeting.

SUMMARY: The Iditarod Advisory Council will conduct an open meeting Wednesday, May 6, 1998, and Thursday, May 7, 1998, from 9 a.m. until 4 p.m. each day. The purpose of the meeting is to discuss the formation of a non-profit organization to assist in the management of the Iditarod National Historic Trail. The meeting will be held at the Seward Museum, 336 Third Avenue, Seward, Alaska.

Public comments pertaining to management of the Iditarod National Historic Trail will be taken from 1—2 p.m. Wednesday, January 6. Written comments may be submitted at the meeting or mailed to the address below prior to the meeting.

ADDRESSES: Inquiries about the meeting should be sent to External Affairs, Bureau of Land Management, 222 W. 7th Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Teresa McPherson, (907) 271–5555.

Dated: March 23, 1998.

Nick Douglas,

Anchorage District Manager.

[FR Doc. 98–8357 Filed 3–30–98; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–910–0777–74]

Alaska Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Alaska Resource Advisory Council Meeting.

SUMMARY: The Alaska Resource Advisory Council will conduct an open meeting Thursday, May 7, 1998, from 9 a.m. until 4:30 p.m. and Friday, May 8, 1998, from 8:30 a.m. until 3 p.m. The council will review BLM land management issues and take public comment on those issues. The meeting will be held at the Alaska Resources Library and Information

Service (ARLIS) building located at 3150 "C" Street, Suite 100, Anchorage, Alaska.

Public comment will be taken from 1–2 p.m. Thursday, May 7. Written comments may be submitted at the meeting or mailed to the address below prior to the meeting.

ADDRESSES: Inquiries about the meeting should be sent to External Affairs, Bureau of Land Management, 222 W. 7th Avenue, #13, Anchorage, AK 99513–7599.

FOR FURTHER INFORMATION CONTACT: Teresa McPherson, (907) 271–5555.

Dated: March 24, 1998.

Tom Allen,

State Director.

[FR Doc. 98–8358 Filed 3–30–98; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–010–1220–01]

Temporary Designation of Areas Open to Motor Vehicles Within the Keyesville Special Management Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Designation of trails open for use by off-highway vehicles and areas closed to the operation of motor vehicles within the Keyesville Special Management Area of the Bakersfield Field Office, CA.

SUMMARY: Off-highway vehicles operating on public land within the Keyesville Special Management Area may utilize designated trails. Other vehicles may access public land using existing roads. All other public lands in Keyesville are closed to motorized vehicles.

SUPPLEMENTARY INFORMATION: Effective May 1, and pursuant to 43 CFR 8341.2(a) and 43 CFR 8360, all motorized vehicles must remain on designated trails, publicly maintained roads or established easement on public land within the Keyesville Special Management Area. Except as noted below, camping sites and other locations on public land within the Keyesville Special Management Area may be accessed by using existing roads. Such travel is limited to use as necessary for access.

Notwithstanding the above, dune buggies, all-terrain vehicles (ATVs), all motorcycles designed or equipped for off-highway travel and any vehicle registered under Section 38010 of the California Motor Vehicle Code, may not be operated off designated trails on public land within the Keyesville Special Management Area. Designated trails are the Dutch Flat Train, designated segments of the Keyesville Classic Trails, Hogeye Ridge Trail, Snake Pit Trail and Kern Canyon Trail.

Nothing herein will restrict or in any way prevent legitimate access to private property within the Keyesville Special Management Area or restrict the use of equipment for any purpose approved either by the Authorized Officer or authorized through an approved plan of operations or unpatented mining claims. This closure does not apply to roads or highways maintained by the State of California or Kern County. Employees of any governmental jurisdiction are exempt from this regulation when employed in the furtherance of their duties.

This closure includes all public lands in T. 26 S., R. 33 E. Section 30 W½, Sec. 31 W½; T.26 S., R.32 E. Sec 25, Sec. 35, Sec 36; and T. 27 S., R. 32 E. Sec 1 and Sec 2, Mount Diablo Base and Meridian.

Any vehicle operated on public land within the Keyesville Special Management Area that is found in violation of any law or regulations relating to the use or operation of off-highway vehicles as defined in 43 CFR 8340.0–5 may be impounded pending an assessment of resource damage or court proceedings.

Trails designated for the use by off-highway vehicles within the Keyeville Special Management Area will be designated by "open" trail signs. A map showing the location of such trails will be made available at the Bakersfiled Field Office.

This order is intended to curtail considerable existing adverse effects upon soil, vegetation and wildlife habitat within the Keyesville Special Management Area. It is in conformance with the May 1997 Caliente Resource Management Plan.

The order will expire upon completion of a special recreation plan applicable to the Keyesville Special Management Area.

Penalties for violation of this order are contained in 43 CFR 8340.0–7. Such punishment may be a fine of not more than $1,000 or imprisonment for not longer than 12 months, or both.

Dated: March 25, 1998.

Ron Fellows,

Field Office Manager.

[FR Doc. 98–8344 Filed 3–30–98; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Prospective Grant of Exclusive Patent Licenses—Filing Receipt Number: S.N. 08/933, 175—Sept. 18, 1997

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(I). The Bureau of Reclamation (Reclamation) is contemplating the granting of a limited exclusive license in the United States to practice the invention embodied in an invention titled "A Water Treatment Chemical Metering and Control System". The exclusive license is to be granted to Turner Designs Inc., having a place of business in Salt Lake City, Utah. The patent rights in this invention have been assigned to the Untied States of America.

The prospective limited exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. While the primary purpose of this notice is to announce Reclamation's intent to grant an exclusive license to practice the invention listed above if it issues as a patent, it also serves to publish the availability of this invention for licensing in accordance with law. The prospective license may be granted unless Reclamation receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S. C. 209 and 37 CFR 404.7.

DATES: Written evidence and arguments against granting the prospective license must be received by June 29, 1998.

ADDRESSES: Inquiries, comments, and other materials relating to the contemplated license may be submitted to Donald E. Ralston, Bureau of Reclamation, Research and Technology Transfer, MS–7621, 1849 C Street, N.W., Washington, D.C. 20240.

A copy of the above-identified patent may be purchased from the National Technical Information Service (NTIS) Sales Desk by telephoning 1–800–553–NTIS, or by writing NTIS at 5285 Port Royal Road, Springfield VA 22161.

FOR FURTHER INFORMATION CONTACT: Donal E. Ralston by telephone at (202) 208–5671.

SUPPLEMENTARY INFORMATION: The invention is capable of automatically controlling the injection of any chemical into any flow stream regardless of the characteristics of the stream or the ability to detect the injected chemical.

The system was originally developed to control the concentration of pesticides used for weed control in canals with fluctuating flow rates. Generally, aquatic pesticides are most effective if injected at constant concentrations over a period of several days. With many of these pesticides, it is not possible to measure concentrations in real time, and in canals it is not possible to measure the flow rate accurately without expensive construction. This novel technology addresses these problems.

Properly filed competing applications received by Reclamation in response to this notice will be considered as objections to the grant of the contemplated license.

Dated: March 12, 1998.

Donald E. Ralston,

Liaison, Research and Technology Transfer.

[FR Doc. 98–8311 Filed 3–30–98; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF JUSTICE

Office of Police Corps and Law Enforcement Education; Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice information collection under review; New Collection; Police Corps Interim Final Regulation.

The Department of Justice, Office of Community Oriented Policing Services, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by April 4, 1998. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information Regulation Affairs, Attention: Mr. Dennis Marwich, (202) 395–3122, Department of Justice Desk Officer, Washington, DC 20530.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Charlotte Grzebien, (202) 514–3750, Assistant General Counsel, Office of Oriented Policy Services, 1100 Vermont Avenue, N.W., Washington, D.C. 20530, or via facsimile at (202) 616–2914.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the 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.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to Brenda Dyer, U.S. Department of Justice, Deputy Clearance Officer (phone number and address listed below). If you have any additional comments, suggestions, or need a copy of the proposed information collection, instrument, or additional information, please contact Brenda Dyer, Department Deputy Clearance Officer, Department of Justice, Justice Management Division, 1001 G Street N.W., Suite 850, Washington, D.C. 20530.

Overview of this information:

(1) Type of Information Collection: New collection.

(2) Title of the Form/Collection: Police Corps Interim Final Regulation.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form: COPS 17/01. Office of Police Corps and Law Enforcement Education, Office of Community Oriented Policy Services, U.S. Department of Justice.

(4) Affected public who will be as ore required to respond, as well as a brief abstract: Primary: State, Local, or Tribal governments. Other: None. The Police Corps Interim Final Regulation sets forth guidance to interested States and Territories and individual participants on the requirements for participation in the Police Corps, a scholarship program for students willing to provide 4 years of service in return for funding. The Regulation specifics required information on each participant.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: Police Corps Interim Final Regulation: Approximately 8 respondents, at 10 hours per response (including record-keeping). Total annual burden hours requested 160.

(6) An estimate of the total public burden (in hours) associated with the collection: Approximately 160 annual burden hours.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Office, United States Department of Justice, Information Management and Security Staff Justice Management Division, Suite 850, Washington Center, 1001 G Street N.W., Washington, DC 20530.

Dated: March 25, 1998.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 98–8339 Filed 3–30–98; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Office of Police Corps and Law Enforcement Education; Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; Reinstatement, with change, of a previously approved collection for which approval has expired.

Police Corps Service Agreement

The Department of Justice, Office of Community Oriented Policing Services, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by April 4, 1998. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information Regulation Affairs, Attention: Dennis Marwich, (202) 395–3122, Department of Justice Desk Officer, Washington, D.C. 20530.

During the first 60 days of this same review period, a regular review of this

information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Charlotte Grzebien, (202) 514–3750, Assistant General Counsel, Office of Oriented Policing Services, 1100 Vermont Avenue, N.W., Washington, D.C. 20530, or via facsimile at (202) 616–2914.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the 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.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to Brenda Dyer, U.S. Department of Justice, Deputy Clearance Officer (phone number and address listed below). If you have any additional comments, suggestions, or need a copy of the proposed information collection, instrument, or additional information, please contact Brenda Dyer, Department Deputy Clearance Officer, Department of Justice, Justice Management Division, 1001 G Street N.W., Suite 850, Washington, D.C. 20530.

Overview of this information:

(1) type of Information Collection: Reinstatement, with change, of a previously approved collection for which approval has expire.

(2) Title of the Form/Collection: Police Corps Service Agreement.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form COPS 17/02. Office of Community Oriented Policing Services, U.S. Department of Justice.

(4) Affected public who will be required to respond, as well as a brief abstract: Primary: Individuals or households. Other: None. the Police Corps Service Agreement is the written contract between the Office of Police Corps and Law Enforcement Education and selected Police Corps participants, setting forth the participants' agreement to provide 4 years of law enforcement service in exchange for scholarship or reimbursement funds for educational purposes.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: Police Corps Interim Final Regulation: Approximately 144 respondents, at 24 hours per response (including record-keeping). Total annual burden hours requested 24.

(6) An estimate of the total public burden (in hours) associated with the collection: Approximately 24 annual burden hours.

In addition information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Office, United States Department of Justice, Information Management and Security Staff Justice Management Division, Suite 850, Washington Center, 1001 G Street N.W., Washington, DC 20530.

Dated: March 25, 1998.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 98–8340 Filed 3–30–98; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Rivers and Harbors Act of 1899

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *PT Marine, Inc. d/b/a Ryder's Cove Board Yard*, Civil No. 98–10368–PBS (D. Mass.), was lodged with the United States District Court for the District of Massachusetts on March 2, 1998. The proposed decree concerns alleged violations of section 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. 403, resulting from the unlawful construction and maintenance of 73 moorings in Ryder's Cove, Chatham, Massachusetts. A total of 53 of the unauthorized moorings were installed and operated since 1994 and the remaining 20 moorings were added in 1996.

The proposed consent decree would require PT Marine, Inc. to pay $8,200 to the United States as disgorgement of all economic gain realized from the rental of the unlawful moorings and would permanently enjoin PT Marine, Inc. from committing future violations of the Rivers and Harbors Act of 1899. The decree would also would require PT Marine, Inc. to apply for a Corps permit to retain the existing structures and to abide by the Corps' permitting decision, to include removal of the structures if such permit is denied.

The U.S. Department of Justice will receive written comments relating to the proposed consent decree for a period of thirty (30) days from the date of publication of this notice. Comments should be addressed to Julie S. Schrager, Assistant United States Attorney, District of Massachusetts, 1003 J.W. McCormack Post Office and Courthouse, Boston MA 02109, and should refer to *United States* v. *PT Marine, Inc. d/b/a Ryder's Cove Boat Yard*, Civil No. 98–10368–PBS (D. Mass.)

The proposed consent decree may be examined at the Clerk's Office, United States District Court for the District of Massachusetts, 1003 J.W. McCormack Post Office and Courthouse, Boston, Massachusetts 02109.

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environmental and Natural Resources Division, United States Department of Justice.

[FR Doc. 98–8397 Filed 3–30–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to Resource Conservation and Recovery Act (RCRA)

In accordance with the policy of the United States Department of Justice, as provided in 28 CFR 50.7, notice is hereby given that on March 17, 1998, a proposed Consent Decree in *United States* v. *Rail Services, Inc.*, Civil Action No. 3:98CV–194–H, was lodged with the United States District Court for the Western District of Kentucky. The proposed Decree resolves the claims of the Plaintiffs, the United States and the Natural Resources Protection Cabinet of the Commonwealth of Kentucky, contained in the Complaint, which seeks civil penalties and corrective action for Defendants' violations of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 *et seq.*, and its implementing regulations, at its rail car servicing facility near Calvert City, Kentucky.

The proposed Consent Decree requires Rail Services to undertake various remedial measures and corrective action at its applicable federal

and state hazardous waste laws and regulations.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, D.C., 20044, and should refer to *United States* v. *Rail Services, Inc.*, D.J. Ref. 90–7–1–728B.

The proposed Consent Decree may be examined at any of the following offices: (1) the Office of the United States Attorney for the Western District of Kentucky, 510 West Broadway, Louisville, Kentucky; (2) the U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, S.W., Atlanta, Georgia; and (3) the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005 (telephone (202) 624–0892).

A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. Please refer to the referenced case. There is a photocopying charge of $0.25 per page. The total cost for a copy of the proposed Decree and its attachments is $18.00. All checks should be made payable to "Consent Decree Library."

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 98–8338 Filed 3–30–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Rochester Gas & Electric Corp.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the *United States District Court for the Western District of New York in United States* v. *Rochester Gas & Electric Corporation*, 97–CV–6294T. The proposed Final Judgment is subject to approval by the Court after the expiration of the statutory 60-day public comment period and compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h).

On June 24, 1997, the United States filed a civil antitrust complaint under Section 4 of the Sherman Act, as amended, 15 U.S.C. 4, alleging that defendant Rochester Gas and Electric ("RG&E") entered into a contract with the University of Rochester ("University" or "UR"), in which RG&E promised UR a number of benefits, including electricity at reduced rates, in exchange for the University's promise not to compete against RG&E in the sale of electricity to consumers. The complaint alleges that this agreement violated Section 1 of the Sherman Act, 15 U.S.C. 1, and seeks a judgment by the Court declaring the defendant's agreement to be an unlawful restraint of trade. The complaint also seeks an order by the Court to enjoin the defendant from other activities in the future having a similar purpose or effect.

The United States and defendant have stipulated that the proposed consent judgment may be entered after compliance with the APPA, unless the United States withdraws its consent. The Court's entry of the proposed final judgment will terminate this civil action against RG&E, except that the Court will retain jurisdiction over the matter for possible further proceedings to construe, modify or enforce the judgment, or to punish violations of any of its provisions.

The proposed consent judgment contains three principal forms of relief. First, RG&E is enjoined from enforcing an anticompetitive agreement with the University. Second, RG&E is enjoined from entering into future agreements with the University or any other competitor or potential competitor that could have similar anticompetitive effects. Third, the proposed final judgment places affirmative obligations on RG&E to pursue an antitrust compliance program directed toward avoiding a repetition of its anticompetitive behavior.

Public comment is invited within sixty days of the publication of this notice. Such comments, and responses thereto, will be published in the Federal Register and filed with the Court. Written comments should be directed to Roger W. Fones, Chief, Transportation, Energy and Agriculture Section, Antitrust Division, 325 Seventh Street, NW., Suite 500, Washington, DC 20530 (telephone: (202) 307–6351). Copies of the Complaint, Stipulation, proposed Final Judgment and Competitive Impact Statement are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 Seventh Street, NW., Washington, DC 20430 (telephone: (202) 514–2481) and at the office of the Clerk of the United States District Court Western District of New York 272 U.S. Courthouse, 100 State Street, Rockester, New York 14614–1368.

Copies of any of these materials may be obtained upon request and payment of a copying fee.

Rebecca P. Dick,

Director of Civil Non-Merger Enforcement, Antitrust Division.

Stipulation

It is stipulated by and between the undersigned partics, by their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the Western District of New York.

2. The parties consent that a Consent Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16(b)–(h)), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Consent Judgment by serving notice thereof on defendant and by filing that notice with the Court.

3. Plaintiff is instructed to file and publish its competitive impact statement pursuant to 15 U.S.C. 16(b) within 30 days of the filing of this stipulation.

4. The parties shall abide by and comply with the provisions of the proposed Consent Judgment pending entry of the Consent Judgment, and from the date of the filing of this Stipulation, shall comply with all the terms and provisions of the Consent Judgment as though they were in full force and effect as an order of the Court.

5. In the event plaintiff withdraws its consent, or if the proposed Consent Judgment is not entered pursuant to this Stipulation, this Stipulation and the Consent Judgment shall be of no effect whatever and shall be without prejudice to any party in this or any other proceeding.

Dated: February 20, 1998

For Plaintiff Untied States of America
Joel I. Klein,
Acting Assistant Attorney General.
A. Douglas Melamed,
Deputy Assistant Attorney General.
Rebecca P. Dick,
Deputy Director of Operations.
Roger W. Fones,
Transportation, Energy & Agriculture Section.
Lade Alice Eaton, Nina Hale, Rebekah J. French, Janet R. Urban,
Attorneys, Department of Justice, Antitrust Division—Suite 500, 325 Seventh Street, N.W., Washington, D.C. 20004, (202) 307–6351.
Donna Kooperstein,
Assistant Chief, Transportation, Energy, & Agriculture Section.
For Defendant Rochester Gas and Electric Corporation
David M. Schraver,
NIXON, Hargrave, Devans & Doylellp, Clinton Square, P.O. Box 1051, Rochester, New York 14603, (716) 263–1341.

Order

It is *so ordered*, this 20th day of February, 1998.

Michael A. Telesca,

United States District Judge.

Consent Judgment

Plaintiff, United States of America, filed it Complaint on June 24, 1997. Plaintiff and defendant, by their respective attorneys, have consent to the entry of this Consent Judgment without trial or find adjudication of any issue of fact or law. This Consent Judgment shall not be evidence against or an admission by any party with respect to any issue of fact of law. Defendant has denied any wrongdoing or violation of law. Therefore, before the taking of any testimony and without trial or find adjudication of any issue of fact of law herein, and upon consent of the parties, it is hereby

Ordered, Adjudged, and Decreed, as follows:

I. Jurisdiction

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto.

II. Background

Plaintiff's claims in this action are based primarily upon allege conduct related to a provision contained in the Individual Service Agreement between The University of Rochester and Rochester Gas and Electric Corporation, dated March 31, 1994, which provision reads:

6.3 *Study of Alternatives:* The University may, during the term of this Agreement, study alternatives to the acquisition of energy from RG&E as the University deems appropriate; provided, however, that the University shall not solicit or join with other customer of RG&E to participate in any plan designed to provide them with electric power and/or thermal energy from any source other than RG&E.

III. Definitions

As used herein, the term.

(A) "Agreement" means any contract, arrangement, or understanding, formal or informal, oral or written, between two or more persons;

(B) "Defendant" or "RG&E" means Rochester Gas and Electric Corporation, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, and partnerships, and all directors, officers, employees, agents and representatives of the foregoing; the terms "subsidiary" and "affiliate" refer to any person in which the defendant holds (50 percent or more) ownership or control;

(C) "Document" means all "writings and recordings" as that phrase is defined in Rule 1001(1) of the Federal Rules of Evidence;

(D) "Including" means including but not limited to;

(E) "Joint venture" means a unified or integrated method of doing business in which the parties share substantially in the profits, losses and risks of the interprise;

(F) "Person" means any natural person, corporation, firm, company, sole proprietorship, partnership, association, institution, governmental unit, or other legal entity;

(G) "Retail marketing agreement" means any agreement pursuant to which RG&E acts as a retailer of electricity at an unregulated price or of other related products of services on behalf of a national or regional providers of such electricity, products or services, so long as the agreement does not result in the provider or RG&E being the only provider or retailer of electricity at an unregulated price or such other products or services in Monroe Country;

(H) "The University" means the University of Rochester in Rochester, NY.

(I) "Unregulated price" means a price of the sale of electricity other than (1) a price which is the result of a regulatory proceeding, order or acceptance of tariff filings, setting or approving specific uniform rates applicable to a class of classes of customers; or (2) a price set by negotiation between a supplier and a customer at a minimum floor price dictated by statute, regulation or order.

IV. Applicability

This Consent Judgment applies to the defendant and to each of its successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of the Consent Judgment by personal service or otherwise.

V. Injunction

RG&E, by this Consent Judgment, shall be enjoined from:

(A) enforcing any clause in any contract with The University of Rochester containing the language quoted in Section II, above, or from including any provision containing that language, without the reference to the University, in an any other flexible rate contract (entered into pursuant to RG&E's Service Classification No. 10 or any replacement to Service Classification No. 10) for its retail electric services;

(B) enforcing or attempting to enforce Paragraph 10 of the Memorandum of Understanding, dated October 27, 1993, between RG&E and the University;

(C) entering into or enforcing a covenant or agreement not to compete in the retail sale of electricity with any competitor or potential competitor in the retail sale of electricity; provided, however, that such an agreement not to compete that is reasonably ancillary to the following types of agreements shall not be interpreted as a violation of this Consent Judgment:

(1) employment contracts;
(2) personal service contracts;
(3) agreements regarding the sale or purchase of a business;
(4) joint ventures or partnerships;
(5) retail marketing agreements;
(6) consulting agreements; and
(7) portfolio management contracts.

VI. Exception

Nothing in this Consent Judgment shall prohibit RG&E from engaging in any conduct which is exempt from or immune under the antitrust laws.

VII. Term

(A) This Consent Judgment shall expire ten years from the date of initial filing, unless earlier terminated pursuant to this Section.

(B) This Consent Judgment shall terminate upon demonstration by RG&E that less than 50% of the non-residential retail sales of electricity made at unregulated prices in Monroe County, New York, were made by RG&E. The percentage threshold in this Paragraph must be: (1) Satisfied in terms of kilowatt-hours of electricity sold; and (2) measured as an average over a consecutive six month period.

(C) The procedure for making the determination described in Paragraph B, above is as follows:

(1) Defendant RG&E shall notify the United States in writing when it

believes the threshold stated in Paragraph B has been satisfied over the requisite period, and shall submit to the United States all supporting data and information.

(2) The United States shall object to the defendant in writing within 60 days of receiving the notice and supporting data and information if the United States condluces that RG&E has not demonstrated that the condition has been satisfied.

(3) If the United States does not object within 60 days, this Consent Judgment shall terminate without further act of either party or of this Court.

(4) If the United States does object, the termination will not become effective except by order of this Court.

VIII. Compliance Program

(A) The defendant is ordered to maintain an antitrust compliance program which shall include designating, within 30 days of entry of this Consent Judgment, an Antitrust Compliance Officer with responsibility for implementing the antitrust compliance program and achieving compliance with this Consent Judgment. The Antitrust Compliance Officer shall, on a continuing basis, supervise the review of the current and proposed activities of the defendant to ensure that they comply with this Consent Judgment.

(B) The Antitrust Compliance Officer shall:

(1) Distribute, within 60 days of the entry of this Consent Judgment, a copy of this Consent Judgment to all officers and employees with responsibility for making electric power and planning acquisition of electric power and generating capacity;

(2) Distribute in a timely manner a copy of this Consent Judgment to any officer or employee who succeeds to a position described in Section VIII(B)(1);

(3) Brief annually in writing or orally those persons designated in Section VIII(B)(1) on the meaning and requirements of this Consent Judgment and the antitrust laws and advise them that the defendant's legal advisers are available to confer with them regarding compliance with the Consent Judgment and the antitrust laws;

(4) Obtain from each officer or employee designated in Section VIII(B)(1) a written certification that he or she: (a) has read, understands, and agrees to abide by the terms of this Consent Judgment; and (b) has been advised and understands that his or her failure to comply with this Consent Judgment may constitute contempt of court; and

(5) Maintain a record of recipients to whom the Consent Judgment has been distributed and from whom the certification in Section VIII(B)(4) has been obtained.

(C) At any time, if the defendant's Antitrust Compliance Officer learns of any past or future violations of Section V of this Consent Judgment, the defendant shall, within 45 days after such knowledge is obtained or sooner if feasible, take appropriate action to terminate or modify the activity so as to comply with this Consent Judgment.

IX. Certification

Within 75 days after the entry of this Consent Judgment, the defendant shall certify to the plaintiff whether it has designated an Antitrust Compliance Officer and has distributed the Consent Judgment in accordance with Section VIII above.

X. Plaintiff Access

(A) To determine or secure compliance with this Consent Judgment and for no other purpose, duly authorized representatives of the plaintiff shall, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant in accordance with Section XI(C) below, be permitted, subject to any legally recognized privilege:

(1) Reasonable access during the defendant's normal business hours to inspect and copy all non-privileged documents in the possession or under the control of the defendant, who may have counsel present, relating to actions enjoined under Section V, termination under Section VII, and the compliance program under Section VIII of this Consent Judgment; and

(2) Subject to the reasonable convenience of the defendant and without restraint or interference from it, to interview officers, employees or agents of the defendant, who may have counsel present, regarding such matters.

(B) Upon the written request of the Assistant Attorney General in charge of the Antitrust Division made to the defendant's principal office, the defendant shall submit such written reports, under oath if requested, relating to any matters described in Section X(A)(1) as may be reasonably requested, subject to any legally recognized privilege.

(C) No information or documents obtained by the means provided in Section X shall be divulged by the plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Consent Judgment, or as otherwise required by law.

(D) If at the time information or documents are furnished by the defendant to the plaintiff, the defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure (relating to trade secret or other confidential research, development or commercial information), and the defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days' notice shall be given by the plaintiff to the defendant prior to disclosing such material in any legal proceeding (other than a grand jury proceeding).

XI. Further Elements of the Consent Judgment

(A) Whenever notice must be provided to a party pursuant to the terms of this Consent Judgment, such notice shall be made by first class mail, return receipt requested, addressed to the following:

To RG&F; Michael T. Tomanino, Esq., Senior Vice President and General Counsel, Rochester Gas and Electric Corporation, 89 East Avenue, Rochester, New York 14649.

To the United States: Joel I. Klein, Assistant Attorney General, Antitrust Division, United States Department of Justice, 10th Street and Pennsylvania Avenue, N.W., Washington, D.C., Washington, D.C. 20530.

or to such other person whom the parties may designate from time to time.

(B) Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Consent Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Consent Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

(C) Entry of this Consent Judgment is in the public interest.

Dated: _____, 1998.

Hon. Michael A. Telesca,
United States District Judge.

Competitive Impact Statement

Pursuant to Section 2 of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b), the United States files this Competitive Impact Statement

relating to the proposed consent judgment in *United States* v. *Rochester Gas and Electric Corporation*, submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceedings

On June 24, 1997, the United States filed a civil antitrust complaint under Section 4 of the Sherman Act, as amended, 15 U.S.C. 4, alleging that defendant Rochester Gas and Electric ("RG&E") entered into a contract with the University of Rochester ("University" or "UR"), in which RG&E promised UR a number of benefits, including electricity at reduced rates, in exchange for the University's promise not to compete against RG&E in the sale of electricity to consumers. The complaint alleges that this agreement violated Section 1 of the Sherman Act, 15 U.S.C. 1, and seeks a judgment by the Court declaring the defendant's agreement to be an unlawful restraint of trade. The complaint also seeks an order by the Court to enjoin the defendant from other activities in the future having a similar purpose or effect.

The United States and defendant have stipulated that the proposed consent judgment may be entered after compliance with the APPA, unless the United States withdraws its consent. The Court's entry of the proposed judgment will terminate this civil action against RG&E, except that the Court will retain jurisdiction over the matter for possible further proceedings to construe, modify or enforce the judgment, or to punish violations of any of its provisions.

II. Description of the Practices Giving Rise to the Alleged violations of the Antitrust Laws

By the early 1990's regulated electricity rates in New York state had become so high that industrial customers were beginning to look for alternatives to high-priced power, either by relocating to other states or by generating their own electricity.[1] In 1993, the New York Public Service Commission ("PSC") adopted new regulations that permitted utilities to negotiate individual prices with certain customers ("flexible rate contracts") rather than charge a uniform tariff. The PSC intended to afford utilities the flexibility to compete with their largest customers' other supply options.

In the meantime, the University of Rochester, a major customer of RG&E, learned that by building a modern, efficient plant to replace the decades-old steam plant used to heat and cool its buildings, it could produce the steam it needed and also produce—or cogenerate—electricity as a byproduct at a negligible cost. The University formed a study group to analyze and evaluate the cogeneration option, and concluded that a 23 Megawatt (MW) plant would be the optimal size for the University's steam and electricity needs. Such a plant would generate up to one-third more electricity that the University needed, but under New York law, the University could sell the excess electricity to other retail customers in competion with RG&E. PSL section 2(13). In addition, such a plant would be cost effective even if the University continued to buy its electric power form RG&E and sold all the power produced by the congeneration plant to others. Thus, the University was a potential competitor from RG&E in the retail electricity market. On July 20, 1993, the University's Board of Trustees authorized construction of a 23 MW plant and allocated $1.3 million to begin the project.

The cogeneration project came to a halt in October 1993, when RG&E induced the University to enter into a Memorandum of Understanding ("MOU"). In part, the MOU resembles an ordinary—and legal— requirements contract between buyer and seller: RG&E agreed to supply the University with electricity at discounted rates, and the University agreed to purchase of all of its power needs from RG&E for seven years.

But the MOU did not stop there—RG&E obtained the University's commitment not to compete for RG&E customers. The bar on competition is unrelated to the electric requirements contract and prohibits the University for seven years for even studying any "alternative sources of electric power and gas supply" unless the "studies and the activities associated with them shall be confined to the service of the University's own needs." This provision was intended to and did prevent the University from meeting its steam requirements—which were wholly separate from its demand for electricity—in a manner that would bring it into competition with RG&E.

RG&E and the University formalized the agreement set forth in the MOU by entering a flexible rate contract (the "Individual Service Agreement" or "ISA") about six months later. Like the MOU, the ISA includes provisions that are not necessary for the respective commitments by the University and RG&E to buy and sell electricity for the University's needs but rather simply prevent UR from competing with RG&E.

- The University may not solicit RG&E customers or seek to supply them with electricity;
- The University may not join in any plan intended to supply electricity to RG&E customers;
- The University may not participate in any plan to provide any RG&E customers with thermal energy; and
- The University may not work with a developer to provide steam to UR and sell electricity to RG&E customers.[2]

As a result of the agreement not to compete, the University abandoned its plans to build the cogeneration plant and enter the retail electric market, depriving RG&E's customers of a competitive alternative. By in effect "paying" the University—a potential competitor—not to build the new cogeneration plant, RG&E was free to demand higher prices from the customers the University's plant otherwise could have served.

III. Explanation of the Proposed Consent Judgment

The United States and the defendants have stipulated that a consent judgment, in the form filed with the Court, may be entered by the Court at any time after compliance with the APPA, 15 U.S.C. 16(b)–(h). The proposed judgment provides that the entry of the judgment does not constitute any evidence against or an admission by any party with respect to any issue of fact or law. Under the provisions of Section 2(e) of the APPA, entry of the proposed judgment is conditioned upon the Court finding that its entry will be in the public interest.

The proposed judgment contains three principal forms of relief. First, RG&E is enjoined from enforcing its anticompetitive agreement with the University. Second, RG&E is enjoined from entering into future agreements with the University or any other competitor or potential competitor that could have similar anticompetive effects. Third, the proposed judgment places affirmative obligations on RG&E to pursue an antitrust compliance program directed toward avoiding a repetition of its anticompetitive behavior.

[1] Re Competitive Opportunities Available to Customers of Electric and Gas Service, 93–M–0229, Order Instituting Proceeding (March 19, 1993) ("March 19 Order").

[2] These restrictions are set forth in Section 6.3 of the ISA, which reads as follows:

"*Study of Alternatives:* The University may, during the term of this Agreement, study alternatives to the acquisition of energy from RG&E as the University deems appropriate; provided, however, that the University shall not solicit or join with other customers of RG&E to participate in any plan designed to provide them with electric power and/or thermal energy from any source other than RG&E."

A. Prohibited Conduct

Section V(A) of the proposed judgment prohibits RG&E from enforcing the non-compete language in the ISA and enjoins RG&E from including that language in any flexible rate contract with any other customer. Section V(B) prevents RG&E from enforcing Paragraph 10 of its Memorandum of Understanding with the University, which confines the University's study of alternative energy sources to the service of the University's own needs. Section V(C) broadly enjoins RG&E from entering into or enforcing any agreement not to compete in the retail sale of electricity with any competitor or potential competitor, except where the agreement not to compete is reasonably necessary to achieve the legitimate purposes of certain, specified, common contractual arrangements.

B. Defendant's Affirmative Obligations

Section VIII requires that within thirty (30) days of entry of the judgment, the defendant adopt an affirmative compliance program directed toward ensuring that its employees comply with the antitrust laws. The program must include the designation of an Antitrust Compliance Officer responsible for compliance with the judgment and reporting any violations of its terms. Section VIII further requires that each defendant furnish a copy of the judgment, within sixty (60) days of the date of its entry, to all officers and employees with responsibility for marketing electric power and planning acquisition of electric power and generating capacity. Section IX requires RG&E to certify within seventy-five (75) days that it has distributed those copies and designated an Antitrust Compliance Officer. Copies of the judgment also must be distributed to anyone who succeeds to a position described above.

Furthermore, Section VIII requires RG&E to brief all officers and employees with responsibility for marketing electric power and planning acquisition of electric power and generating capacity as to the defendant's policy regarding compliance with the Sherman Act and with the judgment, including the advice that his or her violation of the judgment could constitute contempt of court.

Under Section X of the proposed judgment, the Justice Department will have access, upon reasonable notice, to each defendant's records and personnel in order to determine compliance with the judgment.

C. Scope of the Proposed Consent Judgment

(1) Persons Bound

The proposed judgment expressly provides in Section IV that its provisions apply to RG&E, to each of its successors and assigns, and to all other persons in active concert or participation with any of them who receive actual notice of the terms of the judgment.

(2) Duration

Section VII provides that the judgment will expire on the tenth anniversary of its entry. The judgment may be terminated earlier in the event of a substantial restructuring of the retail electricity industry in RG&E's service area. The decree terminates if RG&E demonstrates that there has been substantial entry by others into retail sales of electricity made at unregulated prices in Monroe County, New York. Section VII establishes the procedure for making this determination.

(3) Exception

The exception set forth in Section VI of the proposed judgment states that the judgment does not alter RG&E's right to engage in conduct that is exempt from or immune under the antitrust laws. The conduct alleged in the compliant, however, is not immune from the antitrust laws,[3] and the proposed judgment prohibits similar anticompetitive conduct by RG&E in the future.

D. Effect of the Proposed Judgment on Competition

The prohibitions in Section V are designed to ensure that the defendant will compete for retail electric customers and will not limit competition by agreement with competitors or potential competitors who may be able to serve RG&E customers. The eliminating of the prohibited language has had an immediate procompetitive effect. The University has issued a request for proposals to build a cogeneration plant.

The general prohibition of Section V (C) ensures that RG&E will not make future agreements in the future with UR or any other firm to pre-empt new competition before it can even occur. Because future competition will likely come from new market entrants who do not currently compete, the proposed consent judgment explicitly enjoins agreements with potential competitors, some of whom like the University may be current customers of RG&E.

Section V(C)'s prohibition on RG&E entering into any agreement not to compete contains some enumerated exceptions. The exceptions include, for example, employment contracts and contracts to sell a business, which often include agreements not to compete for a limited time period that are ancillary to a lawful purpose. Agreements not to compete in the specific types of contracts specified in Section V(C) are not prohibited by the proposed judgment, but remain subject to the antitrust laws.

RG&E continues to be a virtual monopolist for retail sales of electricity in its service area and a broad prohibition on non-compete clauses with potential competitors is particularly important so long as RG&E maintains its current market dominance. If, however, the retail electric market in RG&E's service territory became subject to effective competition, the prohibition of Section V(C) would no longer be necessary to protect consumers of electricity. In a competitive market, an arrangement between RG&E and one of its numerous competitors would not be likely to restrict output or raise price. Moreover, without market power, RG&E will have less incentive or ability to enter into anticompetitive agreements. For these reasons, Section VI provides that the judgment will terminate once RG&E has less than 50% of the retail sales subject to competitive pricing in its present service area (Monroe County). It is RG&E's burden to establish that this threshold of effective retail electric competition has been satisfied. If the threshold is met, it will mean that barriers to entry into this formerly regulated monopoly market have been removed, and that actual entry has occurred on a significant scale. Unless this substantial restructuring of the industry occurs, the judgment remains in effect.

IV. Remedies Available to Potential Private Plaintiffs

After entry of the proposed judgment, any potential plaintiff who might have been damaged by the alleged violation will retain the same right to sue for monetary damages and any other legal and equitable remedies which that person may have had if the proposed judgment had not been entered. The proposed judgment may not be used, however, as *prima facie* evidence in litigation, pursuant to Section 5(a) of the Clayton Act, as amended, 15 U.S.C. 16(a).

[3] *See United States* v. *Rochester Gas & Elec. Corp.*, No. 97–CV–6294T (W.D.N.Y. Feb. 17, 1998) (order denying defendant's summary judgment motion seeking state action immunity).

V. Procedures Available for Modification of the Proposed Judgment

The proposed judgment is subject to a stipulation between the government and the defendant which provides that the government may withdraw its consent to the proposed judgment any time before the Court has found that entry of the judgment is in the public interest. By it's terms, the proposed judgment provides for the Court's retention of jurisdiction of this action in order to permit any of the parties to apply to the Court for such orders as may be necessary or appropriate for the modification of the judgment, including the demonstration of retail market conditions outlined in Section VI of the decree.

As provided by the APPA (15 U.S.C. 16), any person wishing to comment upon the proposed judgment may, for a sixty-day (60) period subsequent to the publishing of this document in the Federal Register, submit written comments to the United States Department of Justice, Antitrust Division, Attention: Roger W. Fones, 325 Seventh Street, N.W., Washington, D.C. 20530. Such comments and the government's response to them will be filed with the Court and published in the Federal Register. The government will evaluate all such comments to determine whether there is any reason for withdrawal of its content to the proposed judgment.

VI. Alternative to the Proposed Judgment

The alternative to the proposed judgment considered by the Antitrust Division was a full trial of the issues on the merits and on relief. The Division considered the substantive language of the proposed judgment to be of sufficient scope and effectiveness to make litigation on the issues unnecessary, as the judgment provides all of the relief sought against the violations alleged in the compliant.

VII. Determinative Materials and Documents

No materials or documents were considered determination by the United States in formulating the proposed judgment. Therefore, none are being filed pursuant to the APPA, 15 U.S.C. 16(b).

Department of Justice Antitrust Division

By: _____

Jade Alice Eaton,

Transportation, Energy, and Agriculture Section, 325 Seventh Street, N.W., Suite 500, Washington, D.C. 20530, (202) 307–6316.

[FR Doc. 98–8398 Filed 3–30–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Network Management Forum

Notice is hereby given that, on November 19, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Network Management Forum ("the Forum") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to its membership. 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, the identities of the new members to the venture are as follows: DMR TRECOM, Milford, CT; and Technology & Process Consulting, Inc., Birmingham, AL are Corporate Members. Bouygues Telecom, Velizy, Cedex, France; Call Technologies, Inc., Reston, VA; CELOGIC, Trappes Cedex, France; Clear Communications Corporation, Lincolnshire, IL; CommTech Corporation, Westerville, OH; ILOG, Inc., Mountain View, CA; Infinet Software, Inc., Boulder, CO; ITTI, Ltd., Poznan, Poland; Minacom International, Inc., Montreal, Quebec, Canada; NCR Corporation, Iselin, NJ; O.TEL.O Communications, Koln, Germany; Positron Fiber Systems, Montreal, Quebec, Canada; RTS Limited, Hemel Hempstead, Hertfordshire, England; Scopus Technology, Inc., Emeryville, CA: Spazio ZeroUno S.p.A., Vimodrone, Italy; Sprint PCS, Lenexa, KS; S.W.I.F.T., La Hulpe, Belgium; Sybase, Inc., Dallas, TX; Tellium, Inc., Edison, NJ; Unique Data Ltd. (UDI), Rishon, Letzion; Israel; Vision In Business, London, England; and Worldbridge Broadband Services, Inc., Nashville, TN are Associate Members. Cohen Communications Group, New York, NY; CRIEPI, Tokyo, Japan; DNA Enterprise, Inc., Richardson, TX; GRC International, Inc., Vienna, VA; and National Communications System, Arlington, VA are Affiliate Members.

No other changes have been made since the last notification filed with the Department in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Forum intends to file additional written notifications disclosing all changes in membership.

On October 21, 1988, the Forum 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 8, 1988 (53 FR 49615).

The last notification was filed with the Department on August 8, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 10, 1997 (62 FR 60531).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–8337 Filed 3–30–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1910–98; AG Order No. 2146–98]

RIN 1115–AE26

Termination of Designation of Liberia Under Temporary Protected Status Program After Final 6-Month Extension

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice terminates the Attorney General's designation of Liberia under the Temporary Protected Status (TPS) program provided for in section 244 of the Immigration and Nationality Act, as amended (Act). Eligible aliens who are national of Liberia (and eligible aliens who have no nationality and last habitually resided in Liberia) may re-register for TPS and extension of employment authorization for a final 6-month period.

EFFECTIVE DATES: Termination of the Temporary Protected Status designation for Liberia is effective September 28, 1998, and the TPS designation for Liberia is extended for a final 6-month period, from March 29, 1998, to September 28, 1998. The main re-registration procedures become effective on March 31, 1998, and will remain in effect until April 29, 1998.

FOR FURTHER INFORMATION CONTACT: Ronald Chirlin, Adjudications Officer, Immigration and Naturalization Service, Room 3214, 425 I Street, NW., Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION: Under section 244 of the Act, 8 U.S.C. 1254, the Attorney General is authorized to grant TPS to eligible aliens who are nationals of a foreign state designated by

the Attorney General (or who have no nationality and last habitually resided in that state). The Attorney General may designate a state upon finding that the state is experiencing ongoing armed conflict, environmental disaster, or other extraordinary and temporary conditions that prevent nationals or residents of the country from returning to it in safety.

On March 27, 1991, the Attorney General designated Liberia for Temporary Protected Status for a period of 12 months, 56 FR 12746. the Attorney General subsequently extended the designation of Liberia under the TPS program of six additional 12-month periods, with the last extension valid until March 28, 1998, 62 FR 16608. While extending the designation of Liberia under the TPS program, the Attorney General also concurrently redesignated Liberia under the TPS program. This concurrent extension and redesignation, which was published on April 7, 1997, made TPS available to eligible Liberian TPS applicants who have "continuously resided in the United States" since June 1, 1996, and who had been "continuously present in the United states" since April 7, 1997.

Section 244(b)(3)(A) of the Act requires the Attorney General to review, at least 60 days before the end of the initial period of designation or any extended period of designation, the conditions in a foreign state designated under section 244(b)(1) of the Act. The section also requires the Attorney General to determine whether the conditions for such a designation continue to be met, and to terminate the state's designation when the Attorney General determines that the foreign state no longer continues to meet those conditions.

This notice terminates the designation of Liberia under the TPS program. There may be other avenues of immigration relief, such as asylum, withholding of removal, and cancellation of removal, available to Liberians in the United States who believe that their particular circumstances make return to Liberia unsafe. Those Liberians who have not applied for asylum, withholding of removal, or cancellation of removal, or who are not eligible to apply for permanent residence under any of the established employment or family-based categories, must depart the United States to avoid accruing any periods of unlawful presence that would later subject them to the 3- or 10-year bars to admission under section 212(a)(9)(B)(i) of the Act.

In accordance with section 244(B)(3)(B) and (C) of the Act, this termination will be effective on September 28, 1998, following the final 6-month extension granted by this notice. This notice also describes the procedures with which eligible aliens who are nationals of Liberia (or who have no nationality and who last habitually resided in Liberia) must comply in order to re-register for TPS during this final 6-month period.

In addition to timely re-registrations and late re-registrations authorized by this notice's extension of Liberia's TPS designation, late initial registrations are possible for some Liberians under 8 CFR 244.2(f)(2), formerly 8 CFR 240.2(f)(2). Such late initial registrants must have been "continuously physically present" in the United States since June 1, 1996, must have had a valid immigrant or non-immigrant status during the original registration period, and must register no later than 30 days from the expiration of such status.

The Immigration and Naturalization Service requires all TPS registrants to submit Form I–765, Application for Employment Authorization, for data-gathering purposes. Therefore, a Form I–765 must always be submitted with the Application for Temporary Protected Status, Form I–821, as part of either a re-registration or late initial registration, even if employment authorization is not requested. The appropriate filing fee must accompany Form I–765 unless a properly documented fee waiver request, pursuant to 8 CFR 244.20, is submitted to the Immigration and Naturalization Service or unless the applicant does not request employment authorization.

Notice of Termination of Designation of Liberia Under the TPS Program

By the authority vested in me as Attorney General under section 244 of the Act, as amended (8 U.S.C. 1254), and pursuant to section 244(b)(3) of the Act, I have had consultations with the appropriate agencies of the U.S. Government concerning (a) the conditions in Liberia; and (b) whether permitting nationals of Liberia (and aliens having no nationality who last habitually resided in Liberia) to remain temporarily in the United States is contrary to the national interest of the United States.

As a result of these consultations, I have determined that Liberia no longer continues to meet the conditions for designation of TPS under section 244(b)(1) of the Act. This determination has been based on the understanding that the Department of State will review security conditions in Liberia prior to the September 28, 1998, expiration date of the TPS designation for Liberia. The Department of State could, therefore, provide additional information regarding the possible redesignation for Liberia.

According to information supplied to me by the Department of State, I understand that overall security conditions in Liberia have improved during the past year. Elections were held and the new Liberian Government's policy is to welcome back Liberian refugees. Improved stability and security throughout most of Liberia has led the U.S. Government to support the repatriation of Liberian refugees in neighboring countries.

In view of the Department of State's recommendation for termination, I have determined that TPS is no longer appropriate for Liberia in general. Accordingly, it is ordered as follows:

(1) The TPS designation of Liberia under section 244(b)(3) of the Act is extended for a final 6-month period starting March 29, 1998, and terminating September 28, 1998.

(2) I estimate that there are approximately 8,000 nationals of Liberia (and aliens having no nationality who last habitually resided in Liberia) who have been granted Temporary Protected Status and are eligible for the final 6-month period of re-registration.

(3) In order to maintain current registration for TPS, a national of Liberia (or an alien having no nationality who last habitually resided in Liberia) who received a grant of TPS based upon the initial March 27, 1991, designation, or based upon the April 7, 1997, redesignation, must comply with the re-registration requirements contained in 8 CFR 244.17, formerly 8 CFR 240.17, which are described in pertinent part in paragraphs (4) and (5) of this notice.

(4) A national of Liberia (or an alien having no nationality who last habitually resided in Liberia) who has been granted TPS and wishes to maintain that status must re-register by filing a new Form I–821, Application For Temporary Protected Status, together with a Form I–865, Application for Employment Authorization, within the 30-day period beginning on March 31, 1998, and ending April 30, 1998, in order to be eligible for TPS during the period from March 29, 1998 to September 28, 1998. Late re-registration applications will be allowed pursuant to 8 CFR 244.17(c), formerly 8 CFR 240.17(c).

(5) There is no fee for Form I–821 filed as part of the re-registration application. A Form I–765 must be filed at the same time. If the alien requests employment authorization for the 6-month extension period, the fee prescribed in 8 CFR 103.7(b)(1),

currently seventy dollars ($70), must accompany the Form I–765. An alien who does not request employment authorization must nonetheless file Form I–765, together with Form I–821, but in such cases no fee will be charged.

(6) Information concerning the TPS program for nationals of Liberia (and aliens having no nationality who last habitually resided in Liberia) will be available at local Immigration and Naturalization Service offices upon publication of this notice.

Dated: March 25, 1998.

Janet Reno,

Attorney General.

[FR Doc. 98–8336 Filed 3–30–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

March 26, 1998.

The Department of Labor (DOL) has submitted the following public information collection 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, Departmental Clearance Officer, Todd R. Owen ((202) 219–5096 ext. 143) or by E-Mail to Owen-Todd@dol.gov. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 1 p.m. and 4 p.m. Eastern time, Monday–Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB 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), on or before April 30, 1998.

The OMB is particularly interested in comments which:

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

Agency: Bureau of Labor Statistics.

Title: International Price Program—U.S. Export Price Indexes.

OMB Number: 1220–0025 (Revision).

Affected Public: Business or other for-profit.

Form No.	Frequency	Number of respondents	Average time per respondent (hours)
2894B	Annually	1,613	.75
3008	Annually	1,613	.25
3007D	Monthly/Quarterly	3,235	.53

Total Burden Hours: 22,039.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The International Price Program Indexes, a primary economic indicator, are used as measures of movement in international prices, indicators of inflationary trends in the economy, and sources of information used to determine U.S. monetary, fiscal, trade, and commercial policies. They are also used to deflate the Gross Domestic Product.

Agency: Bureau of Labor Statistics.

Title: International Price Program—U.S. Import Price Indexes.

OMB Number: 1220–0026 (Revision).

Affected Public: Businesses and other for-profit.

Form No.	Frequency	Number of respondents	Average time per respondent (hours)
3007B	Annually	1,725	1
3008	Annually	1,725	.334
3007D	Monthly/Quarterly	3,235	.56

Total Burden Hours: 23,884.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The International Price Program Indexes, a primary economic indicator, are used as measures of movement in international prices, indicators of inflationary trends in the economy, and sources of information used to determine U.S. monetary, fiscal, trade, and commercial policies. They are also used to deflate the Gross Domestic Product.

Agency: Employment and Training Administration.

Title: NAFTA Customer Survey Data Request.

OMB Number: 1205–0337 (extension).

Freqency: Three survey submitted.

Affected Public: Businesses and other for-profit.

Total Respondents: 350.

Estimated Time Per Respondent: 2 hours.

Total Burden Hours: 2,100.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: Information is required for the Secretary of Labor to make determinations of eligibility for petitioning workers to apply for transitional adjustment assistance in accordance with Subchapter D of the North American Trade Agreement Implementation Act amending the Trade Act of 1974.

Todd R. Owen,

Departmental Clearance Officer.

[FR Doc. 98–8389 Filed 3–30–98; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans' Employment and Training

Job Training Partnership Act, Title IV, Part C, Program Year 1998

AGENCY: Office of the Assistant Secretary for Veterans' Employment and Training.

ACTION: Notice of availability of funds and solicitation for grant application for Job Training Partnership Act, Title IV, Part C, Program Year 1998 (SGA 98–04).

SUMMARY: This notice set forth the procedures for obtaining a solicitation package for the operation of employment and training programs under the Title IV, Part C, of the Job Training Partnership Act (JTPA IVC). The solicitation and all relevant documents, forms, certifications, and assurances is available for download at the Veterans' Employment and Training Service (VETS) Internet Home page *http://www.dol.gov/dol/vets/*. Furthermore, the solicitation is available on diskette from the Director for Veterans' Employment and Training (DVET). USDOL, assigned in your State.

DATES: An application package and instructions for completion will be made available on April 1, 1998. The closing date for receipt of a completed application in response to this SGA will be no later than May 1, 1998.

ADDRESSES: Application shall be mailed to: Lisa Harvey, U.S. Department of Labor, Procurement Service Center, Room N5416, 200 Constitution Ave. NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Lisa Harvey, U.S. Department of Labor, Procurement Service Center.

SUPPLEMENTARY INFORMATION: A introduction letter will be mailed to all State Governors to be forwarded to the State entity as determined by the Governor. The State as defined by Section 4 of JPA is the eligible applicant for grants to be funded under this SGA. An application for funds under this Solicitation will be accepted only if signed by the Governor of each State or his or her designee. A Governor's designee refers to the administrative head of the agency designated by the Governor to carry out the JTPA IV–C program in the State. Only one application will be accepted from each State. A transmittal letter must contain a statement that the designee is authorized to act on behalf of the Governor and administer the JTPA IV–C program.

Signed at Washington, DC, this 25th day of March 1998.

Lawrence J. Kuss,

Grant Officer, U.S. Department of Labor, Procurement Services Center.

[FR Doc. 98–8390 Filed 3–30–98; 8:45 am]

BILLING CODE 4510–79–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,391]

Asher Company, Including Workers of Lewis & Thomas Saltz, Clothiers, Incorporated, Fitchburg, MA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 29, 1997, applicable to all workers of Asher Company located in Fitchburg, Massachusetts. The notice will be published soon in the **Federal Register.**

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information provided by the State shows that some workers separated from employment at Asher Company had their wages reported under a separate unemployment insurance (UI) tax account at Lewis & Thomas Saltz Clothiers, Incorporated. Workers from Lewis & Thomas Saltz Clothiers, Incorporated produced men's trousers at the Fitchburg, Massachusetts location of Asher Company.

Based on these findings, the Department is amending the certification to include workers from Lewis & Thomas Saltz Clothiers, Incorporated, Fitchburg, Massachusetts who were engaged in the production of men's trousers at Asher Company, Fitchburg, Massachusetts.

The intent of the Department's certification is to include all workers of Asher Company adversely affected by imports.

The amended notice applicable to TA–W–33,391 is hereby issued as follows:

All workers of Asher Company, Fitchburg, Massachusetts and workers of Lewis & Thomas Saltz Clothiers, Incorporated, Fitchburg, Massachusetts engaged in employment related to the production of men's trousers for Asher Company, Fitchburg, Massachusetts who became totally or partially separated from employment on or after March 12, 1996, through April 29, 1999 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 20th day of March 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–8383 Filed 3–30–98; 8:45 am]

BILLING CODE 4510–13–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34, 264]

Charles Navasky & Co., Inc. Philipsburg, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on February 23, 1998 in response to a petition field on behalf of workers at Charles Navasky & Co., Inc., Philipsburg, Pennsylvania.

This case is being terminated because the petitioning group of workers are subject to an ongoing investigation for which a determination has not yet been issued. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed in Washington, D.C. this 16th day of March, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–8381 Filed 3–30–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34, 244 and TA–W–34–244A]

Glenbrook Nickel Company; Riddle and Coos Bay, OR; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department Labor issued a Certification of Eligibility to Apply for Trade Adjustment Assistance on February 25, 1998, applicable to all workers of Glenbrook Nickel Company, located in Riddle, Oregon. The notice will be published soon in the **Federal Register.**

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information received from the company shows that worker separations will occur at the Coos Bay, Oregon facility of Glenbrook Nickel Company when it closes at the end of March, 1998. The workers are engaged in the production of ferronickel.

The intent of the Department's certification is to include all workers of Glenbrook Nickel Company who were adversely affected by increased imports of ferronickel.

Accordingly, the Department is amending the certification to cover the workers of Glenbrook Nickel Company, Coos Bay, Oregon.

The amended notice applicable to TA–W–34,244, is hereby issued as follows:

All workers of Glenbrook Nickel Company, Riddle, Oregon (TA–W–34,244), and Coos Bay, Oregon (TA–W–34, 244 A) who became totally or partially separated from employment on or after January 30, 1997 through February 25, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 20th day of March, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment.

[FR Doc. 98–8387 Filed 3–30–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,098 and TA–W–34,098A]

Goldtex, Incorporated; Goldsboro, NC and New York, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 9, 1998, applicable to all workers of Goldtex, Incorporated located in Goldsboro, North Carolina. The notice was published in the **Federal Register** on March 16, 1998 (63 FR 12830).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. New information received by the company shows that worker separations have occurred at the New York, New York location of Goldtex, Incorporated. The New York, New York location is the sales office and designing for Goldtex's production facility in Goldsboro, North Carolina. The workers are engaged in the production of dyed, printed and furnished fabrics.

The intent of the Department's certification is to include all workers of Goldtex, Incorporated who were adversely affected by increased imports of finished fabrics. Accordingly, the Department is amending the certification to cover the workers of Goldtex, Incorporated, New York, New York.

The amended notice applicable to TA–W–34,098 is hereby issued as follows:

All workers of Goldtex, Incorporated, Goldsboro, North Carolina (TA–W–34,098), and New York, New York (TA–W–34,098A) engaged in the production of dyed, printed and finished fabrics who became totally or partially separated from employment on or after December 5, 1996 through February 9, 2000 are eligible to apply for adjustment assistance under Section2 23 of the Trade Act of 1974.

Signed at Washington D.C. this 20th day of March, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–8384 Filed 3–30–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,991, TA–W–33,991A]

Jetricks Corporation Selmer, Tennessee; Hickory Flatt Manufacturing Savannah, Tennessee, Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 16, 1998 applicable to all workers of Jetricks Corporation, located in Selmer, Tennessee. The notice was published in the **Federal Register** on February 18, 1998 (63 FR 8211).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of boys' tops and bottoms. New information provided by the company shows that worker separation occurred at Hickory Flatt Manufacturing, Savannah, Tennessee when it closed in November, 1997. The workers at Hickory Flatt Manufacturing sewed boys' tops and bottoms for Jetricks Corporation, Selmer, Tennessee which closed December 31, 1997.

The intent of the Department's certification is to include all workers of Jetricks Corporation who were adversely affected by increased imports of boy's tops and bottoms.

Accordingly, the Department is amending the certification to cover the workers of Hickory Flatt Manufacturing, Savannah, Tennessee.

The amended notice applicable to TA–W–33,991 is hereby issued as follows:

All workers of Jetricks Corporation, Selmer, Tennessee (TA–W–33,991) and Hickory Flatt Manufacturing, Savannah, Tennessee (TA–W–33,991A) who became totally or partially separated from employment on or after October 21, 1996 through January 16, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington D.C. this 20th day of March, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–8386 Filed 3–30–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,670]

Kimberly-Clark Corporation, Winslow Plant Winslow, ME; Including Leased Workers of Northeast Laboratories, Winslow, ME; Including Workers of Guards-Mark, Boston, MA and Valmet Audiomation, Westbrook, ME; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 27, 1997, applicable to all workers of Kimberly-Clark Corporation, Winslow Plant located in Winslow, Maine. The notice was published in the **Federal Register** on September 30, 1997 (62 FR 51152).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers produce bath tissue. New information provided by the State shows that some workers separated from employment at Kimberly-Clark Corporation, Winslow Plant, Winslow, Maine had their wages reported under two separate unemployment insurance (UI) tax accounts, at Guards-Mark, Boston, Massachusetts and Valmet Audiomation, Westbrook, Maine. Workers from Guards-Mark provided security detail for the Winslow, Maine facility. Workers from Valmet Audiomation provided computer support services to the Winslow Maine facility of Kimberly-Clark Corporation. Worker separations occurred at Guards-Mark and Valmet Audiomation as a result of worker separations at Kimberly-Clark Corporation.

Accordingly, the Department is amending the certification to reflect this matter.

The intent of the Department's certification is to include all workers of Kimberly-Clark Corporation adversely affected by imports.

The amended notice applicable to TA–W–33,670 is hereby issued as follows:

All workers of the Winslow Plant of Kimberly-Clark Corporation, located in Winslow, Maine, and leased workers of Northeast Laboratories, Winslow, Maine engaged in employment related to environmental testing for the production of bath tissue produced by the Winslow Plant of Kimberly-Clark Corporation located in Winslow, Maine and all workers of Guards-Mark, Boston, Massachusetts that provided security detail for the Winslow Plant of Kimberly-Clark Corporation, Winslow, Maine and all workers of Valmet Audiomation, Westbrook, Maine that provided computer support services for the production of bath tissue produced by the Winslow Plant of Kimberly-Clark Corporation, Winslow, Maine who became totally or partially separated from employment on or after June 23, 1996 through August 27, 1999 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 20th day of March, 1998.

Grant D. Beal,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–8385 Filed 3–30–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,100]

L.A. Manufacturing, Incorporated, Livingston, Tennessee; Notice of Revised Determination on Reopening

On January 20, 1998, the Department issued a Negative Determination Regarding Eligibility to apply for worker adjustment assistance, applicable to workers and former workers of L.A. Manufacturing, Incorporated, located in Livingston, Tennessee. The notice was published in the **Federal Register** on February 18, 1998 (63 FR 8210).

By letter of February 11, 1998, the company requested administrative reconsideration regarding the Department's denial of trade adjustment assistance for workers of the subject firm. Based on new information provided by L.A. Manufacturing officials, the Department reopened the petition investigation.

The initial investigation resulted in a negative determination based on the finding that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met for workers at the subject firm. The workers produce ladies' and men's denim jeans.

Sales and employment at L.A. Manufacturing declined from 1995 to 1996.

On reopening, a review of United States imports of men's trousers, slacks, jeans and pants, reveals that imports increased absolutely and relative to domestic shipments from 1995 to 1996 and in the twelve months through September 1997 compared to the twelve months through September 1996. The ratio of imports to domestic shipments (I./S.) was more than 100 percent in the twelve months ending September 1997.

United States imports of women's and girls' slacks and shorts increased absolutely and relative to domestic shipments from 1995 to 1996; the I./S. ratio was more than 100 percent. Imports continued to increase in the twelve months through September 1997 compared to the same time period a year earlier; the I./S. ration is not available but is estimated to be more than 100 percent.

Conclusion

After careful consideration of the new facts obtained on reopening, it is concluded that increased imports of articles like or directly competitive with jeans produced by the subject firm contributed importantly to the decline in sales and to the total or partial separation of workers of the subject firm. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of L.A. Manufacturing, Incorporated, Livingston, Tennessee, who became totally or partially separated from employment on or after December 5, 1996, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC this 20th day of March 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–8382 Filed 12–23–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–01801]

Kimberly-Clark Corporation, Winslow Plant, Winslow, ME; Including Leased Workers of Northeast Laboratories, Winslow, ME; Including Workers of Guards-Mark, Boston, MA and Valmet Audiomation, Westbrook, ME; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on August 27, 1997, applicable to all workers of the Winslow Plant of Kimberly-Clark Corporation, located in Winslow, Maine.

The notice was published in the Federal Register on September 30, 1997 (62 FR 32376).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers produce bath tissue. New information provided by the State shows that some workers separated from employment at Kimberly-Clark Corporation, Winslow Plant, Winslow, Maine had their wages reported under two separate unemployment insurance (UI) tax accounts, at Guards-Mark, Boston, Massachusetts and Valmet Audiomation, Westbrook, Maine. Workers from Guards-Mark provided security detail for the Winslow, Maine facility. Workers from Valmet Audiomation provided computer support services to the Winslow Maine facility of Kimberly-Clark Corporation. Worker separations occurred at Guards-Mark and Valmet Audiomation as a result of worker separations at Kimberly-Clark Corporation.

Accordingly, the Department is amending the certification to reflect this matter.

The intent of the Department's certification is to include all workers of Kimberly-Clark Corporation adversely affected by imports from Mexico.

The amended notice applicable to NAFTA–01801 is hereby issued as follows:

All workers of the Winslow Plant of Kimberly-Clark Corporation, located in Winslow, Maine, and leased workers of Northeast Laboratories, Winslow, Maine, engaged in employment related to environmental testing for the production of bath tissue produced by the Winslow Plant of Kimberly-Clark Corporation located in Winslow, Maine and all workers of Guards-Mark, Boston, Massachusetts that provided security detail for the Winslow Plant of Kimberly-Clark Corporation, Winslow, Maine and all workers of Valmet Audiomation, Westbrook, Maine that provided computer support services for the production of bath tissue produced by the Winslow, Maine plant of Kimberly-Clark Corporation, Winslow, Maine who became totally or partially separated from employment on or after July 7, 1996 through August 27, 1999 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC, this 20th day of March, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–8388 Filed 3–30–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. L–09583, et al.]

Proposed Exemptions; U S West, Inc.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, on or before May 15, 1998. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of proposed exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

U S WEST, Inc. Located in Englewood, Colorado

[Application No. L–09583]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

Section I—Transactions Involving Contributions In-Kind

If the exemption is granted, effective March 31, 1994, the restrictions of sections 406(a)(1)(E), 407(a)(2), 406(b)(1), and 406(b)(2) of the Act shall not apply to voluntary contributions in-kind by U S WEST, Inc. and/or its affiliates (U S WEST) of certain shares of publicly traded common stock of U S WEST (the Stock) and/or any replacement publicly traded shares of such Stock to certain trusts (the Trusts or Trust) for the purpose of pre-funding post-retirement welfare benefits under one or more employee welfare benefit plans (the Plan or Plans) maintained by U S WEST, provided that:

(a) the Plan provisions explicitly authorize U.S WEST to pre-fund benefits through in-kind contributions of Stock, and all contributions of Stock have been and will be made in conformity with such Plan provisions;

(b) neither the Plans nor the Trusts have paid nor will pay, whether in cash or in other property or in a diminution

of any funding obligation of U S WEST, any consideration for Stock contributed in-kind by U S WEST;

(c) U S WEST has no obligation to pre-fund welfare benefits provided to participants under any of the Plans, either pursuant to the plan documents, the terms of any collective bargaining agreement, or the provisions of the Act;

(d) none of the Plans have ceded, nor will cede, any right to receive cash contributions from U S WEST;

(e) none of the Plans or Trusts have paid, nor will pay, any commissions in connection with the contribution in-kind of Stock by U S WEST; and

(f) each of the conditions, as set forth below in Section III, have been satisfied and at all times will be satisfied.

Section II—Transactions Involving Purchases of Stock in Connection With Rebalancing of a Trust's Holding of Stock

If the exemption is granted, the restrictions of sections 406(a)(1)(E), 407(a)(2), 406(b)(1), and 406(b)(2) of the Act shall not apply to purchases of classes of Stock by any of the Trusts with all or part of (but no more than) the cash proceeds from prior sales of such Stock; provided that:

(a) all such purchases of Stock will occur in connection with rebalancing of a Trust's holding of Stock as part of the active management of such Stock by an independent, qualified fiduciary (the I/F);

(b) all sales and subsequent purchases of Stock in connection with rebalancing of a Trust's holding of Stock will occur in "blind" transactions with unrelated third parties on the open market at the fair market value of such Stock on the date of such transactions, or where appropriate to minimize any adverse market impact on the value of the Stock remaining in such Trust, in private transactions with persons who are not "parties in interest," as defined in section 3(14) of the Act, at the fair market value of such Stock on the date of such transactions; and

(c) each of the conditions, as set forth in Section III, below, at all times will be satisfied.

Section III—Conditions

The exemption is conditioned upon the adherence by U S WEST to the material facts and representations described in this notice of proposed exemption (the Notice) and upon satisfaction of the following requirements:

(a) all Stock contributed in-kind by U S WEST to any of the Trusts or acquired by such Trusts, as a result of the recapitalization of U S WEST constituted qualifying employer securities (QES), as defined in section 407(d)(5) of the Act; and all Stock contributed in-kind in the future, any replacement publicly traded shares of such Stock, or any Stock acquired as a result of purchases in connection with rebalancing of a Trust's holding of Stock will constitute QES;

(b) stock contributed in-kind by U S WEST or acquired, as a result of the recapitalization of U S WEST have been held in Trusts, which are qualified under section 501(c)(9) of the Code, and which are established for the purpose of funding life, sickness, accident, and other welfare benefits for the participants and beneficiaries of the Plans, and all stock contributed in-kind in the future, any replacement publicly traded shares of such Stock, or any Stock acquired as a result of purchases in connection with rebalancing will be held in such Trusts;

(c) all Stock contributed in-kind by U S WEST to any Trust or acquired by any Trust as a result of the recapitalization of U S WEST has been held in a separate account (the Account or Accounts) under such Trust, and all Stock contributed in-kind in the future, any replacement publicly traded shares of such Stock, or any Stock acquired as a result of purchases in connection with rebalancing of the holding of Stock by a Trust will be held in an Account under such Trust. Such Accounts under a Trust have been and will be managed by an I/F, who is an independent, qualified investment manager, or any successor independent, qualified investment manager, and who has represented and will represent the interests of the Plans which are funded by such Trusts for all purposes with respect to the Stock for the duration of the Trust's holding of any of such Stock;

(d) the I/F of the Accounts in the Trusts which fund any welfare plan benefits, has accepted Stock from U S WEST through in-kind contributions and recapitalization of U S WEST, and will accept Stock through future in-kind contributions, through any replacement publicly traded shares of such Stock, or through purchases of Stock in connection with rebalancing of a Trust's holding of Stock, only after such I/F determines at the time of the transactions that such transactions are feasible, in the interest of, and protective of participants and beneficiaries of the Plans funded by such Trusts;

(e) the I/F has had sole responsibility and, at all times will have sole responsibility for the ongoing management of the Accounts under the Trusts which hold the Stock and has taken and will take whatever action is necessary to protect the rights of the Plans funded by such Trusts, including but not limited to all decisions regarding the acceptance of contributions in-kind by U S WEST, the sale or retention of such Stock, the exercise of voting rights of such Stock, any purchases of such Stock in connection with rebalancing of a Trust's holding of Stock, and any other acquisition or dispositions of such Stock;

(f) any contributions in-kind of Stock made by U S WEST to any Trust, any acquisitions of Stock in connection with the recapitalization of U S WEST, did not cause immediately after each such transaction, and in the future any contributions in-kind of Stock, any replacement publicly traded shares of such Stock, or any Stock purchases in connection with rebalancing of a Trust's holding of Stock will not cause immediately after each such transaction the aggregate fair market value of such Stock, plus the fair market value of all qualifying employer real property (QERP), as defined by section 407(d)(4) of the Act, and the fair market value of all other QES held by such Trust to exceed 25 percent (25%) of the fair market value of the assets of such Trust as determined on the date of each such transaction;

(g) the percentage limitations, as set forth above in paragraph (f) of this Section III, have been and will be applied without regard to amounts of securities issued by U S WEST that may be held by an unrelated common or collective trust fund maintained by an independent manager in which any of the Plans through the Trusts may have invested or may invest, provided that the fair market value of the securities issued by U S WEST and held in such unrelated common or collective trust fund does not exceed 5 percent (5%) of the fair market value of each such common or collective trust fund; and provided further that the conditions of Prohibited Transaction Class Exemption 91–38 (PTCE 91–38)[1] are satisfied, including the requirement that the interests of the Plans in such unrelated common or collective trust fund does not exceed 10 percent (10%) of the total of all assets in such common or collective trust fund;

(h) nothing in the conditions, as set forth above in paragraph (f) of this Section III, shall preclude, the holding by any Trust of Stock, any other QES

[1] The Notice of Proposed Exemption for exemption application number D–8414 was published at 56 FR 4856 on February 6, 1991. PTCE 91–38 was granted at 56 FR 31966 on July 12, 1991.

and QERP, in amounts in excess of 25 percent (25%) of the assets of such Trust, if the aggregate fair market value of such Stock, other QES and QERP exceeds 25 percent (25%) of the value of the assets of such Trust solely by reason of:

(1) a greater rate of appreciation to the value of such Stock, other QES and QERP relative to the rate of appreciation to the value of the assets in such Trust, other than the Stock, other QES and QERP; or

(2) a greater decline in the value of the other assets of the Trust relative to that of such Stock, other QES and QERP;

(i) none of the assets of any of the Trusts have reverted, nor at any time will any of the assets of such Trusts revert to the use or benefit of U S WEST.

Summary of Facts and Representations

1. U S WEST is a diversified, global telecommunications company with offices located in Englewood Colorado. As of December 31, 1995, it is represented that U S WEST had assets of approximately $25.2 billion, and annual revenues of nearly $10.7 billion. The domestic and international business activities of U S WEST are focused primarily in communications, data solutions, marketing services, and financial services. In this regard, a subsidiary of U S WEST provides communications and data services to more than twenty-five million residential and business customers in fourteen (14) western and mid-western states. Other subsidiaries are engaged in marketing activities, directory publishing, direct-mail listings, cellular mobile communications, paging, cable television, and financial services.

2. It is represented that the proposed exemption would affect a number of employee benefit plans sponsored by U S WEST providing current and post-retirement welfare benefits, including life insurance and health insurance, to employees and retirees of U S WEST.[2] It is represented that the manner in which welfare benefits are provided to U S WEST's current and former employees is subject to periodic restructuring. Thus, the particular Plans affected by this exemption may be amended or terminated from time to time and new Plans may be added. Although U S WEST has reserved the right to amend, modify, or terminate any of the Plans, U S WEST has represented that it intends to provide benefits to employees and retirees under the Plans indefinitely.

It is represented that U S WEST serves as the plan administrator for each of the Plans. In this regard, the Board of Directors of U S WEST has delegated the administrative responsibilities of U S WEST to the U S WEST Employees' Benefit Committee, which has authority to establish and administer the Plans.

None of the Plans or applicable collective bargaining agreements require U S WEST to pre-fund the benefits provided by the Plans, nor does the Act require that the Plans be funded. However, effective on January 1, 1994, amendments to the Plans authorized U S WEST to pre-fund benefits with contributions, including contributions of QES, to one or more trusts that may be established by U S WEST for the benefit of the Plans. In this regard, U S WEST established the following Trusts to pre-fund a portion of the welfare benefits under the Plans: (1) the U S WEST Benefit Assurance Trust (the Assurance Trust); (2) U S WEST Management Benefit Assurance Trust (the Management Trust); and (3) U S WEST Life Insurance and Welfare Trust (the Life Insurance Trust).

It is represented that these three Trusts are voluntary employees' beneficiary associations which are tax-qualified under section 501(c)(9) of the Code. The trust agreement for each of these Trusts provides that such Trust will be administered by U S WEST. U S WEST also has sole responsibility for the investment or reinvestment of the assets of the Trusts, and authority to appoint one or more investment managers to manage any part of the assets of each of the Trusts. The Board of Directors of U S WEST has appointed a Trust Investment Committee to exercise general oversight of the Trusts.

It is represented that no assets of any of the Trusts may be used except for the exclusive purpose of providing life, sickness, accident, and other covered benefits to U S WEST employees, retirees, and their dependents and beneficiaries and for reasonable expenses. It is represented that the trust agreements for all of these Trusts specifically prohibit U S WEST from obtaining any reversion of the assets of the Trusts.

As of December 31, 1992, the Assurance Trust has funded post-retirement medical and dental benefits for approximately 62,300 employees and retirees of U S WEST covered by collective bargaining agreements under various Plans providing medical and dental benefits to employees and retirees of U S WEST. As of the same date, the Management Trust has funded post-retirement medical and dental benefits to approximately 37,700 employees and retirees of U S WEST not covered by collective bargaining agreements under various medical and dental benefits plans for all employees and retirees of U S WEST. As of November 15, 1993, the Life Insurance Trust has funded life insurance benefits for approximately 100,000 current and former employees of U S WEST. It was further represented that the total number of participants covered by these three Trusts, as of December 12, 1996, had not changed materially since the application for exemption was filed.

As of November 30, 1996, the Assurance Trust and the Management Trust, respectively, held assets with a fair market value of approximately $1.4 billion and $200 million. As of November 30, 1996, the Life Insurance Trust held total assets with a fair market value of approximately $529 million. It is represented that none of the assets of any of these Trusts are invested in any leases or loans to U S WEST. However, a small percentage of the assets of each of these Trusts is invested either directly or through certain index funds in securities of U S WEST which are represented to constitute QES. U S WEST maintains that the acquisition and holding of such securities by these Trusts is permitted by section 407(a) of the Act and the statutory exemption provided under section 408(e) of the Act.[3]

3. It is represented that the competitive environment in the telecommunications industry has reduced the cash available to U S WEST for discretionary expenditures. Accordingly, U S WEST does not anticipate at any time in the foreseeable

[2] As of November 15, 1993, the list of the Plans sponsored by U S West included: (a) U S WEST Group Life Insurance Plan; (b) U S WEST Retiree Health Care Medical Plan 1; (c) U S WEST Disability Benefit Plan; (d) U S WEST Retiree Health Care Medical Plan 2; (e) U S WEST Retiree Health Care Medical Plan 3; (f) U S WEST Retiree Health Care Medical Plan; (g) U S WEST Retiree Health Care Dental Plan 1; (h) U S WEST Retiree Health Care Dental Plan 2; (i) U S WEST Retiree Health Care Dental Plan 3; (j) U S WEST Retiree Health Care Dental Plan 4; (k) U S WEST Retiree Health Care Dental Plan 5; (l) U S WEST Business Travel Accident Plan No. 532; (m) U S WEST Business Travel Accident Plan No. 533; (n) U S WEST Health Care Plan; (o) U S WEST Enterprises, Inc, Sickness and Accident Disability Benefit Plan for Non-Salaried Employees. It is represented that the health plans sponsored by U S WEST were merged in December 1993, into a single plan, the U S WEST Health Care Plan, Plan Number 537 (the Health Plan).

[3] The Department expresses no opinion as to whether the securities of U S WEST held by these three Trusts are qualifying employer securities, as defined by section 407(d)(5) of the Act, whether the acquisition or holding of such securities was permitted by 407(a), or whether acquisition or holding was covered by the statutory exemption provided by section 408(e) of the Act. Further, the Department, herein, is offering no relief for transactions other than those proposed.

future pre-funding welfare benefits by making substantial cash contributions to its Plans. Instead, U S WEST has made in the past and proposes in the future to make in-kind contributions to the Trusts of shares of stock issued by U S WEST. U S WEST believes that such in-kind contributions offer a practical means of pre-funding the welfare benefits under the Plans.

4. It is represented that on March 31, 1994, U S WEST contributed in-kind approximately 4.6 million shares of the Stock to the Assurance Trust that funds part of the benefits provided under the Health Plan. It is represented that, as of the date of the contribution, such shares have been held in an Account under the Assurance Trust. It is represented that at the time of the in-kind contribution the Stock was valued on a per share basis at $39.875 and that the aggregate fair market value for such shares totaled $183,425,000. It is further represented that immediately after such in-kind contribution the aggregate fair market value of such shares constituted 23.71% of the assets of the Health Plan.[4]

Subsequently, on or before March 31, 1995, U S WEST made a second contribution in-kind (the Second Contribution) to the Assurance Trust of approximately 1.5 million shares of the Stock. It is represented that at the time of the Second Contribution the Stock was valued on a per share basis at $40.50 and that the aggregate fair market value of the shares contributed totaled $60,750,000. It is further represented that both contributions in-kind by U S WEST totaled 6.1 million shares with an aggregate value of $244,175,000. It is represented that these shares also have been in an Account under the Assurance Trust. It is further represented that, immediately following the Second Contribution in-kind, no more than 22.8 percent (22.8%) of the aggregate fair market value of the assets of the Assurance Trust were invested in employer securities of any kind. It is further represented that other than the two in-kind contributions to the Assurance Trust described above, U S WEST has made no additional contributions of Stock or other non-cash assets to the Assurance Trust or to any other trust. As of November 30, 1996, it is represented that the Stock comprised approximately 19.5 percent (19.5%) of the total assets of the Assurance Trust. It is further represented that, as of March 9, 1998, the Assurance Trust no longer holds any of the Stock contributed by U S WEST.

The Stock, at the time of each in-kind contribution and at all times thereafter, has been widely held and publicly traded on the New York Stock Exchange (NYSE) and on other major exchanges throughout the world. It is further represented that such Stock, at the time of each in-kind contribution and at all times thereafter, has been an "employer security," as defined by section 407(d)(1) of the Act,[5] which has satisfied each of the requirements for a "qualifying employer security," as defined by section 407(d)(5) of the Act,[6] and also has satisfied the requirements of section 407(f)(1) of the Act.[7] It is represented that approximately 89 percent (89%) of such Stock has been and is held by persons who are independent of U S WEST.

5. Subsequent to the in-kind contributions made by U S WEST in March of 1994 and 1995, U S WEST shareholders voted on October 31, 1995, in favor of a proposal to create two classes of U S WEST securities. Accordingly, effective November 1, 1995, each share of Stock that had been contributed to the Assurance Trust was replaced with two shares which are targeted to specific areas of U S WEST's business (the Targeted Shares). The Targeted Shares are designated: (1) "C" shares (NYSE symbol USW); and (2) "M" shares (NYSE symbol UMG). Specifically, the "C" shares represent an interest in U S WEST Communications Group and reflect the business of U S WEST, primarily in its present 14-state region, involving integrated communications, entertainment, information, and transaction services. The "M" shares represent an interest in U S WEST Media Group and reflect U S WEST businesses involving cable, wireless, directory, interactive, and international services. The "M" shares are not expected to pay dividends, but are anticipated to be growth securities that will be attractive to investors seeking capital appreciation.

6. As described above, U S WEST on two occasions in the past has made voluntary contributions in-kind of Stock to the Assurance Trust the value of which did not exceed 25 percent (25%) of the assets of the Assurance Trust at the time of such contributions. Subsequently, pursuant to the recapitalization of U S WEST, the Assurance Trust acquired "C" shares and the "M" shares in exchange for Stock previously contributed in-kind by U S WEST. Further, subject to the conditions set forth in this exemption, U S WEST anticipates in the future making additional in-kind contributions to any of the Trusts of Stock which will be held in Accounts under such Trusts.

With regard to any past and future in-kind contribution of Stock by U S WEST to the Trusts, it is represented that the I/F has and will be responsible for actively managing of any such Stock. In this regard, it is anticipated that from time to time a Trust may wish to rebalance its holding of Stock. Such "rebalancing," would entail a Trust selling all or a portion of the "C" shares and/or the "M" shares in its portfolio to unrelated third parties in "blind" transactions on the open market at the fair market value of such Stock on the date of such sale. In the alternative, where appropriate to minimize any adverse market impact on the value of the Stock remaining in a Trust, such Trust may sell such Stock in private transactions with persons who are not "parties in interest" at the fair market value of such Stock on the date of such transactions. Thereafter, an I/F with all or part of (but no more than) the cash proceeds from such prior sales of Stock, may purchase "C" shares and/or "M" shares at fair market value in subsequent "blind" transactions on the open market or in subsequent private transactions with persons who are not "parties in interest" at the fair market value of such Stock on the date of such transactions.

In the opinion of U S WEST each of the two prior in-kind contribution of Stock to the Assurance Trust may have resulted or any future contribution in-kind of Stock to any of the Trusts may result in an acquisition of QES where

[4] The applicant has represented that the assets of the Assurance Trust have been reported as assets of the Health Plan and that such assets have been held solely for the purpose of pre-funding post-retirement health benefits under the Health Plan. For this reason, the representation that the fair market value of the Stock contributed in-kind by U S WEST did not comprise more than 25 percent (25%) of the assets of the Health Plan immediately following each contribution is essentially correct. However, in light of the fact that the assets of the Assurance Trust could be used to fund benefits for any welfare plan established by U S WEST under a collective bargaining agreement, the Department has determined for the purpose of this exemption to apply the 25 percent limitation on the trust level, rather than to a particular welfare plan.

[5] Pursuant to section 407(d)(1) of the Act, an employer security means a security issued by an employer of employees covered by the plan, or by an affiliate of such employer.

[6] Section 407(d)(5) of the Act provides that the term qualifying employer security means an employer security which is stock or a marketable obligation (as defined in subsection (e)). After December 17, 1987, in the case of a plan other than an eligible individual account plan, stock shall be considered a qualifying employer security only if such stock satisfies the requirements of subsection 407(f)(1).

[7] Pursuant to section 407(f)(1) of the Act, stock satisfies such requirements if, immediately following the acquisition of such stock—(A) no more than 25 percent of the aggregate amount of stock of the same class issued and outstanding at the time of acquisition is held by the plan, and (B) at least 50 percent of the aggregate amount referred to in subparagraph (A) is held by persons independent of the issuer.

immediately after such acquisition, the aggregate fair market value of the Stock, any other QES or QERP held by such Trust, exceeds 10 percent (10%) of the fair market value of the assets of such Trust. In order for U S WEST and the I/F to engage in contributions in-kind of Stock to the extent that such transactions have caused or will cause an acquisition of QES in the form of Stock the value of which exceeds the 10 percent (10%) limitation, as set forth under section 407(a)(2) of the Act, U S WEST has requested exemptive relief from the provisions of section 406(a)(1)(E) and 407(a)(2) of the Act. Because immediately after the first in-kind contribution of Stock to the Assurance Trust on March 31, 1994, the fair market value of such Stock constituted more than 10 percent (10%) of the assets of the Assurance Trust, U S WEST has requested retroactive exemptive relief, effective as of March 31, 1994. In addition, to the extent the 10 percent (10%) limit was exceeded as a result of: (1) The recapitalization of U S WEST; and/or (2) the Second Contribution of Stock to the Assurance Trust, U S WEST has also requested relief. Further, to the extent the 10 percent (10%) limit will be exceeded, U S WEST has requested relief: (1) for any future contributions of Stock to any Trust, any replacement publicly traded shares; and (2) for any purchases of Stock in connection with rebalancing of such Trust's holding of "C" shares and "M" shares.

In addition, in the opinion of U S WEST the contributions of QES in the form of Stock to any of the Trusts may be prohibited by section 406(b). Specifically, U S WEST, as the sponsoring employer of Plans, is a fiduciary to such Plans, pursuant to section 3(21) of the Act. Section 406(b)(1) of the Act prohibits a plan fiduciary from dealing with the assets of a plan in his own interest or for his own account. Section 406(b)(2) of the Act prohibits a plan fiduciary from acting in a transaction involving a plan on behalf of a party whose interests may be adverse to the interests of such plan, including such plan fiduciary's own interests. Thus, in the view of U S WEST, any transaction between it and any of the Plans may be deemed to involve self-dealing or a conflict of interest prohibited by section 406(b)(1) and 406(b)(2) for which relief has been requested.

7. With regard to the past two contributions in-kind, U S WEST represents that the aggregate fair market value of all Stock contributed by U S WEST to the Assurance Trust, or acquired as a result of the recapitalization of U S WEST, plus the fair market value of all Stock, other QES and QERP held by the Assurance Trust did not exceed 25 percent (25%) of the fair market value of the assets of the Assurance Trust immediately after such transactions. Further, U S WEST proposes that it be permitted in the future to contribute amounts of Stock to any of the Trusts; provided that the aggregate fair market value of all Stock contributed by U S WEST, and/or acquired as a result of the replacement of such Stock or of purchases of Stock in connection with rebalancing of a Trust's holding of Stock, plus the fair market value of all Stock, other QES and QERP held by such Trust, does not exceed 25 percent (25%) of the fair market value of the assets of such Trust immediately after such transactions.

A Trust may hold Stock, other QES, and QERP in amounts above 25 percent (25%), if the aggregate fair market value of such Stock and other QES, and QERP exceeds 25 percent (25%) of the assets of such Trust solely by reason of: (1) A greater rate of appreciation to the value of such Stock, other QES and QERP relative to that of assets in that Trust other than such Stock and other QES and QERP; or (2) a greater decline in the value of the other assets of such Trust relative to that of such Stock, other QES, and QERP.

In addition, U S WEST represents that some or all of the Plans may have invested or may invest in one or more unrelated common or collective trust funds which are maintained by independent managers. As it is possible that securities issued by U S WEST, including the Stock, may be held in such funds (particularly in index-type passively managed funds), U S WEST wishes to ensure that the percentage limitations, as set forth in Section III(f) of the exemption, will be applied without regard to amounts of U S WEST securities that may be held by such funds in which a Plan may invest. In this regard, U S WEST estimates that the market value of the securities issued by U S WEST and held in such funds does not exceed 5 percent (5%) of the fair market value of each such fund and that no more than 10 percent (10%) of all interests in each such fund are held by Plans maintained by U S WEST. Further, U S WEST represents that the conditions of PTCE 91–38 have been and will at all times be satisfied. In the opinion of U S WEST, the limited nature of the investment by Plans in such funds demonstrates that the amount of U S WEST securities held by such funds, if any, is not subject to influence by U S WEST or the I/F of the Plans, as appears to be the intent in section I(a)(1)(A) of PTCE 91–38. Accordingly, paragraph (g) of Section III of this exemption provides that the percentage limitations, as set forth above in paragraph (f) of Section III, will be applied without regard to amounts of securities issued by U S WEST that may be held by unrelated common or collective trust funds which are maintained by independent managers and in which any of the Plans may have invested or may invest, provided that the fair market value of the securities issued by U S WEST and held in each such fund does not exceed 5 percent (5%) of the fair market value of such fund; that the interests of Plans maintained by U S WEST in each such fund does not exceed 10 percent (10%) of the total of all assets in such fund; and that the remaining conditions of PTCE 91–38 are satisfied.

8. U S WEST maintains that specific safeguards included in this exemption ensure that the rights of the participants and beneficiaries of the Plans have been and will be fully protected with respect to the transactions. In this regard, neither the Plans nor the Trusts have paid or will pay any consideration for the contributions in-kind of the Stock, either in cash, in other property, or in any diminution of a mandatory funding obligation of U S WEST. Further, neither the Plans nor the Trusts have paid any commissions, nor will the Plans or the Trusts pay any commissions with respect to such in-kind contributions. However, it is represented that the costs of preparing and filing the application for exemption were and will be allocated to the Plans, and the fees of the I/F of such Plans have been and will be borne by the Trusts.

9. U S WEST maintains that the transactions have been and will be administratively feasible and the level of oversight required by the Department has been and will be minimal. In this regard, it is represented that the Guidelines for the Trusts, the documents of the Plans, and the financial statements of the Trusts and of the Plans are readily available for inspection and have been and will be subject to the audit requirements of section 103(a)(3)(A) of the Act. Further, U S WEST represents that the transactions are in the interest of the Plans, as growth in the telecommunications industry will cause any Stock contributed to the Trusts to appreciate in value. For this reason, U S WEST believes the Stock to be a highly desirable investment. Further, U S WEST represents that the exemption is protective of the participants and beneficiaries, in that the transactions

also provide security regarding the continuation of benefits to current and former employees of U S WEST.

10. It is represented that acceptance of the past contributions of Stock on March 31, 1994, and on March 31, 1995, by U S WEST to the Assurance Trust was approved by an I/F. Further, it is represented that an I/F will approve any future in-kind contribution of such Stock into any of the Trusts.

In this regard, U S WEST appointed United States Trust Company of New York (U.S. Trust) to serve as I/F and as equity investment manager of the Account in the Assurance Trust which held the Stock contributed in-kind by U S WEST. U.S. Trust is a bank and trust company organized under the laws of New York. U.S. Trust represents that as an experienced employee benefits trust fiduciary with a large professional staff, it is qualified to serve as independent fiduciary. As of May 12, 1994, U.S. Trust had approximately $393 billion of assets in custody and, as of June 19, 1995, had approximately $40 billion in assets under discretionary management. U.S. Trust is independent in that it is totally unrelated to U S WEST and does not have any directors in common. Further, U.S. Trust represents that it receives less than one percent (1%) of its income from U S WEST.

It is represented that in its capacity as independent investment manager of the Accounts under the Assurance Trust, U.S. Trust acted as a fiduciary with responsibility: (1) For evaluating the appropriateness of accepting any contribution in-kind of Stock; (2) for establishing the value of such Stock contributions; and (3) for managing the Accounts on an ongoing basis, including making all decisions regarding acquisition, retention, or sale of the Stock contributed by U S WEST, including exercising any and all voting rights appurtenant to the Stock in accordance with the U S WEST Trust Investment Proxy Voting Policy. It is represented that U.S. Trust retained the right to delegate these responsibilities to its affiliate, U.S. Trust Company of California, N.A., a national financial institution providing specialized fiduciary services primarily to plans covered by the Act.

It is represented that after its appointment U.S. Trust had full discretion to manage the Accounts, subject to specific investment guidelines (the Guidelines), as mutually agreed between U S WEST and U.S. Trust, which were reevaluated at least annually by both parties. Such Guidelines specify that there would be no short sales, trading on margin, or lending of securities without the prior approval of U S WEST. Further, the Guidelines specify that there are no requirements for or restrictions against realization of net investment gains or losses during the calendar year. It is represented that U.S. Trust has engaged in all transactions on behalf of the Trusts on an agency, rather than principal, basis.

The Guidelines specify that the assets in the Accounts are invested solely in QES, cash, cash equivalents, and/or other derivative financial investments to hedge the Accounts consistent with the Guidelines. In this regard, it is represented that cash equivalents are held for transactional purposes only and average no more than 5% of the portfolio of any of the Accounts. It is anticipated that the Stock will be held in the Accounts for long-term income or appreciation, unless U.S. Trust or its successor deems it imprudent to do so.[8]

It is represented that the emphasis in measurement under the Guidelines is on long-term performance. U.S. Trust or its successor is responsible for achieving a higher return over time than an appropriate market index chosen by U S WEST.[9]

Specifically, the Guidelines state that the ten (10) year average annual returns are expected to meet or exceed the return of U.S. Treasury Bills, plus five (5) percentage points per year. It is represented that returns are measured net of fees and have been and will be reported periodically by Boston Safe Deposit and Trust Company, as trustee of the Assurance Trust. In addition, regularly scheduled meetings between U.S. Trust and U S WEST have been held and information regarding investment results, strategies, and holdings have been reviewed quarterly.

It is represented that U.S. Trust began the process of determining whether and under what circumstances the Assurance Trust should accept the Stock contributed in-kind, by analyzing the investment needs of the Health Plan and the nature of the contribution.[10]

With respect to the investment needs of the Health Plan, it is represented that U.S. Trust in its capacity as I/F: (1) Reviewed the investment allocation policy and investment guidelines of the Health Plan; (2) determined that it was appropriate to rely on such guidelines with respect to the percentage to be committed to the Stock; (3) determined the value of the assets of the Health Plan committed to equities at that time; and (4) determined that the Health Plan could accept the contribution of Stock without exceeding the guidelines relating to equity investments. In this regard, U.S. Trust determined: (1) that the allocation policy and investment guidelines of the Health Plan relating to investments in employer securities were appropriate; (2) that acceptance of the contribution in-kind of the Stock was within such allocation policy and investment guidelines; (3) that the contribution in-kind was not accepted in lieu of any other assets or cash contributions; (4) the contribution was accepted as part of an investment portfolio structured to meet the Health Plan's liquidity needs; and (5) the in-kind contribution of the Stock had no detrimental effect on the ability of the Health Plan to meet its liquidity needs.

With respect to the nature of the contribution in-kind, U.S. Trust represents that it undertook to perform an analysis of the Stock and of U S WEST, to value such Stock, and to analyze the acquisition of such Stock in light of the overall portfolio of the Assurance Trust. In making these analyses, U.S. Trust represents that it had access to all information on U S WEST that it reasonably required, including financial statements, annual reports, materials filed with the Securities and Exchange Commission, and independent research and reports. Based on this information, U.S. Trust concluded that U S WEST will remain a major player in the emerging telecommunications industry and that the near term prospects for the company remain favorable. U.S. Trust stated that the financial performance of U S WEST is likely to continue to improve in light of strong regional demand and the commitment of U S WEST to increasing internal efficiencies. Accordingly, in the opinion of U.S. Trust, the Stock offers good total return potential in a long-term investment horizon.

With respect to the fair market value of the Stock, U.S. Trust noted that such Stock is traded on the NYSE, and like other publicly traded shares, is subject to price fluctuations. In this regard, in order to establish the fair market value of the Stock and to ensure that the value of the Stock contributed on March 31,

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[8] Notwithstanding the fact that U.S. Trust and U S WEST have adopted a long term performance policy for the assets in the Accounts, U.S. Trust and any successor I/F remains subject to the fiduciary responsibility provisions of section 404 of the Act. In this regard, the Department expects that U.S. Trust and any successor I/F will use its authority to dispose of as much of the Stock as is necessary to comply with its fiduciary responsibilities at the appropriate time regardless of the policy that the assets of the Accounts be held for long term appreciation.

[9] The Department, herein, is not opining on the appropriateness of the index selected by U.S. Trust to evaluate the long term performance of the Accounts under the Guidelines.

[10] At the time U.S. Trust rendered its opinion the assets in the Assurance Trust were being used solely for the purpose of pre-funding post-retirement health benefits under the Health Plan.

1994, did not exceed 25 percent (25%) of the assets of the Health Plan, U.S. Trust determined to accept the value of the Stock at its closing price, as of the previous day, March 30, 1994. It is represented that the price utilized by U.S. Trust in valuing the Stock is verifiable by the publicly disclosed trading prices of such Stock on March 30, 1994. U.S. Trust believes that this method of determining the fair market value of such Stock was reasonable and appropriate.

U.S. Trust determined not to discount the value of the Stock, because the Stock comprised only slightly more than one percent (1%) of the issued and outstanding Stock. As such, in the opinion of U.S. Trust the amount of Stock contributed did not represent such a large block that it would not be possible to dispose of such Stock within a reasonable period of time. It is represented that the 4.6 million shares contributed by U S WEST constituted approximately five (5) days of normal trading volume of such Stock. Given the fluctuation in trading volume of such Stock from day to day, U.S. Trust concluded that a purchase or sale of this amount of Stock over a two to three week period would have little effect on the market price of such Stock.

Prior to the contribution in-kind of the Stock by U S WEST on March 31, 1994, it is represented that U.S. Trust was granted full authority to accept or reject any part of the in-kind contribution of Stock. In this regard, U.S. Trust analyzed the impact of the contribution in-kind on the risk and return characteristics of the Assurance Trust portfolio. In analyzing such impact, U.S. Trust reviewed: (1) The expected return of the portfolio; (2) the overall volatility of the portfolio; (3) the beta risk level or market risk of the portfolio. In addition, U.S. Trust compared the performance of five (5) modeled portfolios that included the Stock with the performance of comparable portfolios which excluded such Stock. Based on the results of its analysis, U.S. Trust concluded that by accepting the in-kind contribution of Stock, the risk/return tradeoff using traditional portfolio analysis was at least as favorable, and possibly more so, to the Health Plan than it would have been without such contribution of such Stock.

U.S. Trust concluded that the contribution in-kind of Stock satisfied two of the three conditions, as set forth in section 408(e) of the Act. Specifically, no commission was charged to the Health Plan or the Assurance Trust as a result of the contribution in-kind of the Stock that occurred on March 31, 1994. Further, the Health Plan did not pay more than "adequate consideration" for such Stock, since no Plan or Trust has paid or will pay any consideration for the contribution, either in cash or other property, or in any diminution of a mandatory funding obligation of U S WEST. Moreover, as discussed above, U.S. Trust ensured that the value assigned to the Stock was the fair market value on the date of the contribution and that such amount represented less than 25 percent (25%) of the assets of the Health Plan, based on a valuation of the assets of the Health Plan performed by Boston Safe Deposit and Trust Company, as trustee of the Assurance Trust.

U.S. Trust also concluded that acquisition of Stock by the Health Plan on March 31, 1994, was not inconsistent with the diversification requirements of section 404(a)(1) of the Act, even though the value of such Stock contributed on March 31, 1994, represented approximately 25 percent (25%) of the assets of the Health Plan on that date. In the opinion of U.S. Trust, the ability of the Health Plan to pay benefits and expenses when due were not impaired by the acquisition of the Stock contributed in-kind on March 31, 1994. It is represented that U.S. Trust reached such conclusion mindful of the fact that U S WEST has no statutory or contractual obligation to pre-fund any of the benefits provided by the Health Plan and that pre-funding through the in-kind contribution of Stock necessarily provides better security to participants and beneficiaries of the Health Plan than would otherwise be required.

Based on its review and examination, it is the conclusion of U.S. Trust that it was in the interest of the Health Plan and protective of the participants and beneficiaries of the Health Plan to accept the contribution in-kind of Stock on March 31, 1994, at a total value of $183,425,000 for the following reasons: (1) The Health Plan did not give up any rights to cash or other property in connection with its acceptance of the contribution of such Stock; (2) the contribution of such Stock will increase the assets available to pay benefits under the Health Plan at no cost to such plan; (3) the I/F is authorized to sell such Stock at any time; (4) as the Stock contributed on March 31, 1994, represents only slightly more than one percent (1%) of the total outstanding shares, such that if cash were needed to pay benefits under the Health Plan, the Stock could be liquidated over a relatively short period of time without adversely impacting the market price; (5) the Health Plan and the Assurance Trust paid no commission in connection with the acquisition of the Stock; (6) the Stock was transferred to the Assurance Trust at fair market value as of the date of the contribution; and (7) the transaction was at least as favorable to the Health Plan as an arm's length transaction with an unrelated third party.

With respect to the Second Contribution of shares of Stock by U S WEST on March 31, 1995, U.S. Trust, in its capacity as independent fiduciary, evaluated the appropriateness of accepting such additional contribution of Stock and assessed the value of such Stock. It is represented that U.S. Trust began the process of determining whether and under what circumstances to accept the Second Contribution by: (1) Reviewing the terms of the Health Plan and the circumstances under which U S WEST made the first contribution in-kind; (2) reviewing the asset allocation policies and investment guidelines of the Health Plan and determining that acceptance of the Second Contribution by the Health Plan did not violate the terms and restrictions of such policies and guidelines; (3) verifying that the Second Contribution consisted of "qualifying employer securities," as defined by the Act; and (4) analyzing the value of the Stock. In fulfilling its responsibility, U.S. Trust represented that it had access to all information about U S WEST that it reasonably required and had sufficient information relating to the Stock to make an appropriate analysis. It was represented that given U S WEST's favorable operating environment, pro-active competitive posture and future growth prospects, combined with its solid earnings base from the regional telephone business, in the opinion of U.S. Trust, the Stock offers good total return potential in a long-term investment horizon.

In order to establish the current fair market value of the Stock contributed on March 31, 1995, and to ensure that the value assigned to such Stock would comprise no more than 25 percent (25%) of the assets of the Assurance Trust, as of the date of the Second Contribution, U.S. Trust determined to accept the value of the Stock at its closing price on the NYSE, as of March 30, 1995, the day before the Second Contribution. U.S. Trust represented that this method of determining the fair market value of the Stock was reasonable and appropriate. It is represented that the price utilized by U.S. Trust in valuing the Stock is verifiable by the publicly disclosed trading prices of such Stock on March 30, 1995.

U.S. Trust determined not to apply a discount to the value of the Stock contributed on March 31, 1995. In this regard, U.S. Trust determined that no minority interest discount was necessary, because such Stock was already valued on a minority interest basis. A marketability discount was not applicable, in the opinion of U.S. Trust, because the Stock is registered and fully tradeable. Further, all of the Stock acquired in both contributions in-kind on March 31, 1994, and March 31, 1995, constituted less than 1.3 percent (1.3%) of the outstanding Stock. In the opinion of U.S. Trust the entire holding of Stock (totaling 6.1 million shares after completion of the Second Contribution) does not represent such a large block that it would not be possible to dispose of such Stock within a reasonable period of time. It is represented that the 6.1 million shares contributed by U S WEST represent approximately nine (9) days of normal trading volume of such Stock. Given the fluctuation in trading volume of the Stock from day to day, U.S. Trust concluded that a purchase or sale of this amount of Stock over a two to three week period would have little effect on the market price of such Stock.

With respect to the liquidity of the Health Plan, U.S. Trust determined that the ability of the Health Plan to pay benefits and expenses when due will not be impaired by the acceptance of the Second Contribution. With respect to diversification, U.S. Trust confirmed that the fair market value of the Stock contributed in-kind on March 31, 1995, comprised 22.8 percent (22.8%) of the assets of the Health Plan, as of that date.[11]

Upon completion of its review of the Second Contribution, U.S. Trust concluded that it would be in the interest of the Health Plan and its participants and beneficiaries to accept the contribution of 1.5 million shares of Stock valued on a per share basis of $40.50 and valued in the aggregate at $60,750,000. In support of its conclusion, U.S. Trust gave the following reasons: (1) The Health Plan did not give up any rights to cash or other property in connection with its acceptance of the Second Contribution; (2) the Second Contribution will increase the assets available to pay benefits under the Health Plan at no cost to such plan; (2) there is no guarantee that U S WEST will make additional attempts to pre-fund the Health Plan in the future; (3) the I/F is authorized to sell the Stock at any time; (4) the combined holdings of the Assurance Trust represent only 1.3 percent (1.3%) of the total outstanding Stock; (5) the Stock could be liquidated over a relatively short period of time if needed to pay benefits under the Health Plan without adversely impacting the market price of such Stock; (6) the Health Plan and the Assurance Trust paid no commissions in connection with the acquisition of the Stock; (7) acceptance of the Stock is consistent with the guidelines and the asset allocation policy applicable to the Assurance Trust; (8) the Stock was transferred to the Assurance Trust at fair market value, as of the date of the Second Contribution; (9) the Second Contribution was at least as favorable to the Health Plan as an arm's length transaction with an unrelated third party.

11. U.S. Trust served as the I/F with respect to the transactions which are the subject of this exemption and investment manager of the assets in the Account in the Assurance Trust from March 31, 1994, through October 31, 1995. However, it is represented that U.S. Trust was replaced by State Street Bank and Trust Company (State Street), headquartered in Boston, Massachusetts. In this regard, it is represented that the replacement of U.S. Trust did not create a gap in independent fiduciary oversight of the Assurance Trust and did not result from any dissatisfaction with the services provided by U.S. Trust. Rather, following its recapitalization, U S WEST made a determination to retain State Street as an independent fiduciary to undertake responsibility for the active management of employer securities in the portfolios of several U S WEST plans, including the Health Plan. U S WEST represents that as a result of the selection of State Street these Plans would receive at more competitive fees the sophisticated analytical ability and experience of State Street in managing employer securities portfolios.

Further, effective November 1, 1995, U S WEST retained State Street to act as the investment manager with respect to the active management of the assets held in the Assurance Trust including the Stock, consisting of the "C" shares and the "M" shares. As investment manager, State Street is responsible for all decisions regarding acquisitions, voting, tenders, conversions, exchanges, sales, and generally for the exercise of all rights, powers, and privileges with respect to the employer securities held by the Assurance Trust. State Street has represented that it understands and acknowledges its duties and responsibilities under the Act as a fiduciary in performing these services with respect to the Assurance Trust.

It is represented that in managing the portfolio of the Assurance Trust of "C" shares and "M" shares, State Street has utilized and will utilize an active management strategy as opposed to a more passive strategy generally utilized in stock accounts consisting of a single employer security. It is represented that the active management approach enables State Street to maximize value while attempting to minimize risk.

In general with regard to its active management strategy, State Street attempts to identify the difference between the underlying value of each stock compared to its market price. Using extensive market analysis tools, research and in-house investment expertise, State Street attempts to take advantage of market opportunities considering the projected growth, financial strength, and the future stream of earnings and dividends of such stock while carefully considering the volatility of each stock and the overall risk associated with the holding of such stock.

The application of the active management strategy would allow State Street to vary the relative mix of "C" shares and "M" shares in the portfolio. The change in the mix is accomplished either by selling "C" shares and reinvesting all or part of (but no more than) the cash proceeds from such sale in "M" shares, or selling "M" shares and reinvesting all or part of (but no more than) the cash proceeds from such sale in "C" shares. For example, if the market price of the "M" shares at a particular time is viewed as over-valued, and the market price of the "C" shares at that time is viewed as under-valued, State Street would sell a portion of the "M" shares and reinvest the proceeds in "C" shares thereby taking advantage of a market opportunity.

It is represented that to accomplish this active management strategy, a communication analyst at State Street monitors daily and analyzes the "C" shares, and a media analyst monitors daily and analyzes the "M" shares to evaluate the performance of each investment, identify any value opportunities, and determine the prudence of those shares as an investment. It is represented that these analysts will compare their conclusions, jointly evaluate the portfolio, present the portfolio performance, and recommend changes to the State Street Trust Investment Committee which in turn reports to the State Street Retirement Investment Services Fiduciary Committee for a final determination.

It is represented that as of March 9, 1998, the Assurance Trust no longer

[11] See footnote 4.

holds any of the shares of Stock contributed in-kind by U S WEST. As of the same date, U S WEST confirms that State Street has not engaged in any "rebalancing" transactions involving the repurchase of Stock. However, with regard to any shares of Stock which may in the future be contributed in-kind by U S WEST to any of the Trusts, it is anticipated that State Street may engage in "rebalancing" transactions for the benefit of such trust. In this regard, it is represented that all sales and subsequent purchases of Stock in connection with rebalancing of the holding of Stock by such Trusts will occur in "blind" transactions on the open market and that all Stock acquired in such transactions will be "qualifying employer securities" within the meaning of section 407(d)(5) of the Act. Further, in accordance with the condition of this exemption, as set forth in Section III(f) above, any acquisition of Stock, including any rebalancing of the holding of Stock by a Trust, must not cause immediately after such acquisition the fair market value of such Stock, plus the fair market value of all Stock and other QERP and QES held by such Trust to exceed 25 percent (25%) of the fair market value of its assets, on the date of such transaction.

It is represented that before accepting any future in-kind contributions of Stock from U S WEST, State Street will identify the other holdings in the Assurance Trust and review asset allocation for such trust as determined by U S WEST. In addition, State Street will review the structural process that U S WEST has in place to monitor the overall investment mix, the manner by which asset allocation determinations are made, and any changes or shifts in the asset allocation policy of U S WEST. Further, State Street will evaluate the Stock being contributed to determine if such contribution is prudent and will evaluate the effect of such contribution on the portfolio of the Assurance Trust. Specifically, State Street will review the impact such contributions have on the volatility of such portfolio and will make any necessary adjustments. It is represented that State Street will monitor the holding of the Stock in the Assurance Trust and will continue to hold the Stock only if such holding continues to be in the best interest of the Assurance Trust.

State Street represents that it is qualified to act as I/F and investment manager with respect to the assets held in the Assurance Trust (consisting of the "C" shares and the "M" shares) in that it has been in the business of serving as a discretionary fiduciary with respect to employer securities since 1985, and in the past two years has created two business units dedicated exclusively to independent fiduciary transactions and the management of employer securities. The experience of State Street includes acting as discretionary fiduciary for more than $30 billion in employer securities held in approximately ninety (90) qualified retirement plans. Further, State Street, as an independent fiduciary, has represented the interests of retirement plan participants in over eighty (80) transactions involving employer securities.

Although State Street currently provides administrative and investment management services to other plans sponsored by U S WEST, State Street represents that it is sufficiently independent of U S WEST to serve as I/F and investment manager for the Assurance Trust with respect to the management of the "C" shares and the "M" shares. In this regard, the total revenue received by State Street from U S WEST and its plans constitutes less than one-tenth of one percent (.1%) of the annual revenues of State Street.

12. In summary, the applicant represents that the proposed transactions meet the statutory criteria for an exemption under section 408(a) of the Act because:

(a) all Stock contributed in-kind by U S WEST to any of the Trusts or acquired by such Trusts, as a result of the recapitalization of U S WEST constituted QES; and all Stock contributed in-kind in the future, any replacement publicly traded shares of such Stock, or any Stock acquired as a result of purchases in connection with rebalancing of a Trust's holding of Stock will constitute QES;

(b) all purchases of Stock will only occur in connection with rebalancing of a Trust's holding of Stock and in connection with the active management of the Stock by an I/F;

(c) all sales and subsequent purchases of Stock in connection with rebalancing of a Trust's holding of Stock will occur in "blind" transactions with unrelated third parties on the open market at the fair market value of such Stock on the date of such transactions, or where appropriate to minimize any adverse market impact on the value of the Stock remaining in any Trust, will occur in private transactions with persons who are not "parties in interest" at the fair market value of such Stock on the date of such transactions;

(d) the Plan provisions explicitly authorize U S WEST to pre-fund benefits through in-kind contributions of Stock, and all contributions of Stock were, and will be made in conformity with such Plan provisions;

(e) Stock contributed in-kind by U S WEST or acquired as a result of the recapitalization of U S WEST has been held by Trusts which are qualified under section 501(c)(9) of the Code, and which are established for the purpose of funding life, sickness, accident, and other welfare benefits for the participants and beneficiaries of the Plans; and all Stock contributed in the future, any replacement publicly traded shares of such Stock, or any Stock acquired as a result of purchases in connection with rebalancing will be held in such Trusts;

(f) all Stock contributed in-kind by U S WEST to any Trust or acquired by any Trust as a result of the recapitalization of U S WEST has been held in separate Accounts under such Trusts and all Stock contributed in-kind in the future, any replacement publicly traded shares of such Stock, or any Stock acquired as a result of purchases in connection with rebalancing of a Trust's holding of Stock will be held in separate Accounts under such Trusts;

(g) the Accounts in such Trusts have been and will be managed by an I/F who is an independent, qualified investment manager, or a successor independent, qualified investment manager and who has represented and has represented and will represent the interests of the Plans which are funded by such Trusts for all purposes with respect to the Stock for the duration of the Trust's holding of any of such Stock;

(h) the I/F for the Accounts in any Trust which fund welfare plan benefits, has accepted and will accept contributions in-kind of Stock by U S WEST to any of the Trusts and has accepted acquisitions of Stock in connection with the recapitalization of U S WEST and will accept through future in-kind contributions, through any replacement publicly traded shares of such Stock, or through purchases of such Stock in connection with rebalancing of such Trust's holding of Stock, only after such I/F determines that such transactions are feasible, in the interest of, and protective of participants and beneficiaries of the Plans which are funded by such Trusts;

(i) an I/F has had sole responsibility and at all times will have sole responsibility for the ongoing management of the Accounts under the Trusts which hold the Stock has taken and will take whatever action is necessary to protect the rights of the Plans which are funded by such Trusts;

(j) any contributions in-kind of Stock by U S WEST to any Trust or acquisitions of Stock in connection with the recapitalization of U S WEST did not cause immediately after such

transactions the aggregate fair market value of such Stock, plus the fair market value of all other QERP and QES held by such Trust to exceed 25 percent (25%) of the fair market value of the assets of such Trust on the date of such transaction; and any future contributions in-kind of Stock by U S WEST to any Trust, any replacement publicly traded shares of such Stock, or any purchases of Stock in connection with rebalancing of any Trust's holding of Stock will not cause immediately after such transactions the aggregate fair market value of such Stock, plus the fair market value of all other QERP and QES held by such Trust to exceed 25 percent (25%) of the fair market value of the assets of such Trust on the date of such transaction;

(k) none of the assets of the Trust have reverted nor will revert to the use or benefit of U S WEST;

(l) neither the Plans nor the Trusts have paid nor will pay, whether in cash or in other property or in a diminution of any funding obligation of U S WEST, any consideration for Stock contributed in-kind by U S WEST;

(m) none of the Plans have ceded nor will cede any right to receive cash contributions from U S WEST;

(n) none of the Plans or the Trusts have paid nor will pay any commissions in connection with the contribution in-kind of Stock by U S WEST; and

(o) U S WEST has no obligation to pre-fund welfare benefits provided to participants under any of the Plans, either pursuant to the plan documents, the terms of any collective bargaining agreement, or the provisions of the Act.

Notice to Interested Persons

Those persons who may be interested in the pendency of the requested exemption include all active employees of U S WEST and all retirees. It is represented that these two classes of interested persons will be notified through different methods.

In this regard, it is represented that notice will be provided, within sixty (60) calendar days of the date of publication of the Notice in the **Federal Register**, to all active employees of U S WEST by posting at those locations within the principal places of employment of U S WEST which are customarily used for notices regarding labor-management matters for review. Such posting will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the supplemental statement (the Supplemental Statement), as required, pursuant to 29 CFR 2570.43(b)(2), which will advise such interested persons of their right to comment and to request a hearing.

It is represented that notice will be provided to all retirees who participate in the Plans by mailing first class a retiree newsletter within sixty (60) calendar days of the date of publication of the Notice. Such newsletter will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the Supplemental Statement, as required, pursuant to 29 CFR 2570.43(b)(2), which will advise such interested persons of their right to comment and to request a hearing. It is represented that the newsletter containing the Notice and the Supplemental Statement will be enclosed with the monthly retirement benefit checks to retirees.

It is represented that notice will be provided to all terminated participants in the Plans who are not yet receiving retirement benefits by mailing bulk rate mail within sixty (60) calendar days from the date of publication of the Notice, a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the Supplemental Statement, as required, pursuant to 29 CFR 2570.43(b)(2), which will advise such interested persons of their right to comment and to request a hearing.

All written comments and requests for a hearing must be received by the Department no later than thirty (30) days from the date such interested persons receive a copy of the Notice and the Supplemental Statement.

For Further Information Contact: Angelena C. Le Blanc of the Department, telephone (202) 219–8883 (This is not a toll-free number.)

Union Bank of Switzerland (UBS/Swiss) and UBS Securities, LLC (UBS Securities) Located in Zurich, Switzerland and New York, New York, Respectively

[Exemption Application Nos. D–10459 and D–10460]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed (1) lending of securities to UBS/Swiss, UBS Securities, UBS Ltd. (UBS/UK), and UBS Securities Limited (UBS/Japan), which are affiliated domestic or foreign broker-dealers of UBS Securities,[12] by employee benefit plans (the Client Plans or Plans), including commingled investment funds holding plan assets, for which UBS/Swiss, acting through its New York branch in connection with securities lending activities (UBS NY), an affiliate of the proposed UBS Borrowers, may serve as a securities lending agent, sub-agent, or as a custodian or a directed trustee to Client Plans under either of two securities lending arrangements, referred to herein as "Plan A" or "Plan B"; and (2) the receipt of compensation by UBS NY in connection with these transactions.

This proposed exemption is subject to the following conditions:

(a) For each Client Plan, neither UBS NY, any of the UBS Borrowers nor any affiliate of those entities has discretionary authority or control with respect to the investment of the Plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets.

(b) With regard to—

(1) Plan A, under which UBS NY lends securities of a Client Plan to any UBS Borrowers in either an agency or sub-agency capacity, such arrangement is approved in advance by a Plan fiduciary who is independent of UBS NY and the UBS Borrower and is negotiated by UBS NY which acts as a liaison between the lender and the borrower to facilitate the securities lending transaction.[13]

(2) Plan B, under which the UBS Borrower directly negotiates the agreement with the fiduciary of a Client Plan, including a Plan for which UBS NY provides services with respect to the portfolio of securities to be loaned pursuant to an exclusive borrowing arrangement (the Exclusive Borrowing Arrangement), such Client Plan fiduciary is independent of both the UBS Borrower and UBS NY, and UBS NY does not participate in any such negotiations.

[12] For purposes of this proposed exemption, UBS/Swiss, UBS/UK and UBS/Japan are collectively referred to as the UBS Foreign Borrowers. In addition, UBS Securities and the UBS Foreign Borrowers are together referred to herein as the UBS Borrowers or individually as a UBS Borrower.

[13] The Department, herein, is not providing exemptive relief for securities lending transactions engaged in by primary lending agents, other than UBS NY, beyond that provided pursuant to Prohibited Transaction Exemption (PTE) 81–6 (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987) and PTE 82–63 (47 FR 14804, April 6, 1982).

(c) The independent fiduciary of a Client Plan approves the general terms of the securities loan agreement (the Loan Agreement) between the Client Plan and the UBS Borrower.

(d) The terms of each loan of securities by a Client Plan to a UBS Borrower are at least as favorable to such Plan as those of a comparable arm's length transaction between unrelated parties.

(e) A Client Plan may terminate the agency or sub-agency arrangement under Plan A or an Exclusive Borrowing Agreement under Plan B at any time, without penalty, on five business days notice, whereupon the UBS Borrowers will deliver certificates for securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization or merger of the issuer of the borrowed securities) to the Client Plan within—

(1) The customary delivery period for such securities;

(2) Five business days; or

(3) The time negotiated for such delivery by the Client Plan and the UBS Borrowers, whichever is less.

(f) The Client Plan or its designee receives from each UBS Borrower by physical delivery or by book entry in a securities depository located in the United States, wire transfer or similar means by the close of business on or before the day the loaned securities are delivered to the UBS Borrower, collateral consisting of U.S. currency, securities issued or guaranteed by the United States Government or its agencies or instrumentalities, or irrevocable bank letters of credit issued by a U.S. bank, other than UBS NY or an affiliate thereof, or any combination thereof, or other collateral permitted under Prohibited Transaction Exemption (PTE) 81–6 (46 FR 7527, January 23, 1981) as it may be amended or superseded.

(g) The market value (or in the case of a letter of credit, a stated amount) of the collateral on the close of business on the day preceding the day of the loan is initially at least 102 percent of the market value of the loaned securities. The applicable Loan Agreement gives the Client Plan a continuing security interest in and a lien on the collateral. The level of collateral is monitored daily (either by UBS NY under Plan A, or by UBS NY or another designee of the Client Plan under Plan B). If the market value of the collateral, on the close of trading on a business day is less than 100 percent of the market value of the loaned securities at the close of business on that day, the UBS Borrower is required to deliver, by the close of business on the next day, sufficient additional collateral to bring the level to at least 102 percent.

(h) Prior to entering into a Loan Agreement, the applicable UBS Borrower furnishes each Client Plan its most recently available audited and unaudited statements to UBS NY, and in turn, such statements are provided to the Client Plan before the Client Plan approves the terms of the Loan Agreement. The Loan Agreement contains a requirement that the applicable UBS Borrower must give prompt notice at the time of a loan of any material adverse changes in its financial condition since the date of the most recently furnished financial statements. If any such changes have taken place, UBS NY does not make any further loans to the UBS Borrower unless an independent fiduciary of the Client Plan is provided notice of any material change and approves the loan in view of the changed financial condition.

(i) In return for lending securities, the Client Plan either—

(1) Receives a reasonable fee, which is related to the value of the borrowed securities and the duration of the loan; or

(2) Has the opportunity to derive compensation through the investment of cash collateral. (Under such circumstances, the Client Plan may pay a loan rebate or similar fee to UBS Borrowers, if such fee is not greater than the fee the Client Plan would pay in a comparable arm's length transaction with an unrelated party.)

(j) All procedures regarding the securities lending activities will, at a minimum, conform to the applicable provisions of PTEs 81–6 and 82–63 as well as to applicable securities laws of the United States, Switzerland, the United Kingdom or Japan.

(k) UBS NY agrees to indemnify and hold harmless the Client Plan in the United States (including the sponsor and fiduciaries of such Client Plan) for any transactions covered by this exemption with a UBS Borrower so that the Client Plan does not have to litigate, in the case of a UBS Foreign Borrower, in a foreign jurisdiction nor sue the UBS Foreign Borrower to realize on the indemnification. Such indemnification, by UBS NY, is against any and all reasonably foreseeable damages, losses, liabilities, costs and expenses (including attorney's fees) which the Client Plan may incur or suffer, arising from any impermissible use by the UBS Borrower of the loaned securities or the failure of the UBS Borrower to deliver loaned securities in accordance with the applicable Loan Agreement or to otherwise comply with the terms of such agreement, except to the extent that such losses or damages are caused by the Client Plan's own negligence.

(l) If any event of default occurs, UBS NY, promptly and at its own expense (subject to rights of subrogation in, to the collateral and against such borrower), purchases or causes to be purchased, for the account of the Client Plan, securities identical to the borrowed securities (or their equivalent as discussed above). If the collateral is insufficient to accomplish such purchase, UBS NY indemnifies the Client Plan for any shortfall in the collateral plus interest on such amount and any transaction costs incurred (including attorney's fees of the Client Plan for legal actions arising out of the default on loans or failure to properly indemnify under this provision). Alternatively, if such replacement securities cannot be obtained on the open market, UBS NY pays the Client Plan the difference in U.S. dollars between the market value of the loaned securities and the market value of the related collateral on the date of the borrower's breach of its obligation to return the loaned securities.

(2) If, however, the event of default is caused by the UBS Borrower's failure to return the securities within the designated time, the Client Plan has the right to purchase securities identical to the borrowed securities and apply the collateral to payment of the purchase price and any other expenses of the Plan associated with the sale and/or purchase.

(l) The Client Plan receives the equivalent of all distributions made to holders of the borrowed securities, including all interest and dividends on the loaned securities during the loan period.

(m) Prior to any Client Plan's approval of the lending of its securities to any UBS Borrower, a copy of this exemption, if granted, (and the notice of pendency) are provided to the Client Plan.

(n) Each Client Plan receives monthly reports with respect to securities lending transactions, including, but not limited to, the information described in Representation 26, so that an independent fiduciary of a Client Plan may monitor such transactions with the UBS Borrower.

(o) Only Client Plans with total assets having an aggregate market value of at least $50 million are permitted to lend securities to UBS Borrowers; provided, however, that —

(1) In the case of two or more Client Plans which are maintained by the same employer, controlled group of corporations or employee organization

(the Related Client Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are "plan assets" under 29 CFR 2510.3–101 (the Plan Asset Regulation), which entity is engaged in securities lending arrangements with UBS Borrowers, the foregoing $50 million requirement is deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million; provided that, if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the $50 million threshold amount attributable to Client Plan investment in the commingled entity, which are in excess of $100 million.

(2) In the case of two or more Client Plans which are not maintained by the same employer, controlled group of corporations or employee organization (the Unrelated Client Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are "plan assets" under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with UBS Borrowers, the foregoing $50 million requirement is deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million; provided that the fiduciary responsible for making the investment decision on behalf of such group trust or other entity

(A) Is neither the sponsoring employer, a member of the controlled group of corporations, the employee organization, nor an affiliate;

(B) Has full investment responsibility with respect to Client Plan assets invested therein; and

(C) Has total assets under its management and control, exclusive of the $50 million threshold amount attributable to Client Plan investment in the commingled entity, which are in excess of $100 million. (In addition, none of the entities described above must be formed for the sole purpose of making loans of securities.)

(p) With respect to any calendar quarter, at least 50 percent or more of the outstanding dollar value of securities loans negotiated on behalf of Client Plans will be to unrelated borrowers.

(q) In addition to the above, all loans involving UBS Foreign Borrowers, have the following requirements:

(1) Such Foreign Borrower is registered as a broker-dealer with the Securities and Futures Authority of the United Kingdom (the SFA) in the case of UBS/UK, the Swiss Federal (the Swiss Banking Commission) in the case of UBS/Swiss, and the Ministry of Finance (the MOF), in the case of UBS/Japan;

(2) Such Foreign Borrower is in compliance with all applicable provisions of Rule 15a–6 (17 CFR 240.15a–6) under the Securities Exchange Act of 1934 (the 1934 Act) which provides for foreign broker-dealers a limited exemption from United States registration requirements;

(3) All collateral is maintained in United States dollars or U.S. dollar-denominated securities or letters of credit;

(4) All collateral is held in the United States and the situs of the securities lending agreements (either the Loan Agreement under Plan A or the Exclusive Borrowing Agreement under Plan B) is maintained in the United States under an arrangement that complies with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404(b)–1; and

(5) Prior to a transaction involving a UBS Foreign Borrower, the applicable UBS Foreign Borrower to—

(A) Agrees to submit to the jurisdiction of the United States;

(B) Agrees to appoint an agent for service of process in the United States, which may be an affiliate, (the Process Agent);

(C) Consents to service of process on the Process Agent; and

(D) Agrees to be indemnified in the United States for any transactions covered by this exemption.

(r) UBS NY and each UBS Foreign Borrower maintain, or cause to maintain within the United States for a period of six years from the date of such transaction, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable the persons described in paragraph (s)(1) to determine whether the conditions of the exemption have been met this exemption have been met, except that —

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of UBS NY and/or its affiliates, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest other than UBS NY or its affiliates shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required below by paragraph (s)(1).

(s)(1) Except as provided in subparagraph (s)(2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (r) are unconditionally available at their customary location during normal business hours by:

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission (the SEC);

(B) Any fiduciary of a participating Client Plan or any duly authorized representative of such fiduciary;

(C) Any contributing employer to any participating Client Plan or any duly authorized employee representative of such employer; and

(D) Any participant or beneficiary of any participating Client Plan, or any duly authorized representative of such participant or beneficiary.

(s)(2) None of the persons described above in paragraphs (s)(1)(B)–(s)(1)(D) of this paragraph (s)(1) are authorized to examine the trade secrets of UBS NY or its affiliates or commercial or financial information which is privileged or confidential.

Summary of Facts and Representations

Parties to the Proposed Transactions

1. UBS/Swiss and UBS Securities (together, the Applicants), UBS NY, UBS/UK and UBS/Japan, all of which are the parties to the proposed transactions, are described as follows:

(a) *UBS/Swiss,* a banking organization formed under Swiss law in 1912, is a major global bank. Headquartered in Zurich, Switzerland, an Organization for Economic Cooperation and Development (OECD) member country,[14] UBS/Swiss is subject to regulatory oversight by the Swiss Banking Commission, the Federal Reserve Board and the New York Superintendent of Banking. As of December 31, 1996, UBS/Swiss had total assets that were in excess of $324 billion.

(b) *UBS Securities,* an affiliate of UBS/Swiss, is a New York limited liability company. UBS Securities is registered with and regulated by the SEC as a broker-dealer and by the Commodity Futures Trading Commission as a futures commission merchant. UBS Securities is a member of the New York Stock Exchange, other principal securities exchanges in the United

[14] According to the Applicants, an OECD member country is generally viewed as having a stable and regulated financial market.

States and the National Association of Securities Dealers. As of June 30, 1997, UBS Securities had total assets of approximately $65.3 billion.

Acting as principal, UBS Securities actively engages in the borrowing and lending of securities, with daily outstanding loan volume averaging several billion dollars. UBS Securities uses borrowed securities to satisfy its trading requirements or to re-lend to other broker-dealers and others who need a particular security for various periods of time. All borrowings by UBS Securities must conform to applicable provisions of the Federal Reserve Board's Regulation T.[15]

(c) *UBS NY* is the New York-based affiliate of UBS/Swiss. UBS NY is subject to regulatory oversight by the Federal Reserve Board and the Superintendent of Banking in New York State. It provides a variety of banking services to its clients and it may serve as custodian, clearing agent or as a directed trustee. As of June 30, 1997, UBS NY had total assets of approximately $19.75 billion.

(d) *UBS/UK*, an affiliate of UBS Securities and a wholly owned subsidiary of UBS/Swiss, is located in the United Kingdom, another OECD member country. UBS/UK is regulated by the SFA and is registered thereunder as a broker-dealer. As of June 30, 1997, UBS/UK had total assets of approximately $26.5 billion.

(e) *UBS/Japan*, an affiliate of UBS Securities and a wholly owned subsidiary of UBS/Swiss, is located in Tokyo, Japan, an OECD-member country. UBS/Japan is regulated by the MOF and is registered as a broker-dealer. As of June 30, 1997, UBS/Japan had total assets of approximately $11.6 billion.

Regulation of UBS Foreign Borrowers

2. UBS/UK is authorized to conduct an investment business in and from the United Kingdom as a broker-dealer regulated by the SFA. Although not registered with the SEC, UBS/UK is governed by the rules, regulations and membership requirements of the SFA. In this regard, UBS/UK is subject to rules relating to minimum capitalization, reporting requirements, periodic examinations, client money and safe custody rules and books and records requirements with respect to client accounts. These rules and regulations set forth by the SFA, share a common objective: the protection of the investor by the regulation of the securities industry. The SFA rules require each firm which employs registered representatives or registered traders to have a positive tangible net worth and be able to meet its obligations as they may fall due. In addition, the SFA rules set forth comprehensive financial resource and reporting/disclosure rules regarding capital adequacy. Further, to demonstrate capital adequacy, the SFA rules impose reporting/disclosure requirements on broker-dealers with respect to risk management, internal controls, and transaction reporting and recordkeeping requirements to the effect that required records must be produced at the request of the SFA at any time. Finally, the rules and regulations of the SFA for broker-dealers impose potential fines and penalties which establish a comprehensive disciplinary system.

3. Similarly, UBS/Swiss is regulated by the Swiss Banking Commission whose powers include licensing banks, issuing directives to address violations by or irregularities involving banks, requiring information from a bank or its auditor regarding supervisory matters and revoking bank licenses. The Swiss Banking Commission exercises oversight over Swiss banks such as UBS/Swiss, through independent auditors known as "Recognized Auditors" which act on behalf of the Commission under detailed statutory provisions. Each Swiss bank, including UBS/Swiss, must appoint a Recognized Auditor and notify the Swiss Banking Commission of an intent to change its auditor. The Recognized Auditor may take action within a bank as deemed necessary or as instructed by the Swiss Banking Commission and must inform the Swiss Banking Commission of supervisory matters.

The Swiss Banking Commission ensures that UBS/Swiss has procedures for monitoring and controlling its worldwide activities through various statutory and regulatory standards. Among these standards are requirements for adequate internal controls, oversight, administration and financial resources. The Swiss Banking Commission reviews compliance with these limitations on operations and internal control requirements through an annual audit performed by the Recognized Auditor.

The Swiss Banking Commission obtains information on the condition of UBS/Swiss and its foreign offices and subsidiaries, by requiring submission of periodic, consolidated financial reports and through a mandatory annual report prepared by the Recognized Auditor. The Swiss Banking Commission also receives information regarding capital adequacy, country risk exposure and foreign exchange exposures from UBS/Swiss.

Swiss banking law mandates penalties to ensure correct reporting to the Swiss Banking Commission. Recognized Auditors face penalties for gross violations of their duties in auditing, for reporting misleading information, omitting essential information from the audit report, failing to request pertinent information or failing to report to the Swiss Banking Commission.

In addition to regulation by the Swiss Banking Commission, the Applicants note that in approving UBS/Swiss' establishment of UBS NY, the Federal Reserve Board has concluded that UBS/Swiss is subject to comprehensive supervision and regulation by its home country supervisors. In making this determination, the Applicants represent that the Federal Reserve Board has considered, among other factors, the extent to which the country supervisors have (a) ensured that the bank has adequate procedures for monitoring and controlling its activities, worldwide; (b) obtained information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports or otherwise; (c) obtained information on the dealings with and relationship between the bank and its affiliates, both foreign and domestic; (d) received from the bank financial reports that are consolidated on a worldwide basis, or comparable information that permits analysis of the bank's financial condition on a worldwide consolidated basis; and (e) evaluated prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis.

4. UBS/Japan is regulated by the MOF which has regulatory authority over both broker-dealers and banks in Japan. In applying the same analysis as that employed with Swiss regulatory authorities, the Applicants represent that the Federal Reserve Board has concluded that the MOF provides comprehensive supervision and regulation through (a) periodic examinations and inspections which focus on capital adequacy, asset quality, management, earnings, liquidity, compliance with applicable laws and risk management; (b) financial reporting requirements; and (c) the use of administrative sanctions to ensure compliance with applicable law or regulations.

5. In addition to the protections afforded by the SFA, the Swiss Banking Commission, the MOF, or for that matter, the Federal Reserve Board, UBS/UK and UBS/Japan will comply with all

[15] Under Regulation T (12 CFR 220.6(h)), permitted borrowing purposes include making delivery of securities in the case of short sales or failures of a broker to receive securities it is required to deliver.

applicable provisions of Rule 15a–6 of the 1934 Act. Rule 15a–6 provides foreign broker-dealers with a limited exemption from SEC registration requirements and, as described below, offers additional protections. Specifically, Rule 15a–6 provides an exemption from U.S. broker-dealer registration for a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security (including over-the-counter equity and debt options) by a "U.S. institutional investor" or a "U.S. major institutional investor," provided that the foreign broker-dealer, among other things, enters into these transactions through a U.S. registered broker-dealer intermediary. The term "U.S. institutional investor," as defined in Rule 15a–6(b)(7), includes an employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 (the Act) if (a) the investment decision is made by a plan fiduciary, as defined in section 3(21) of the Act, which is either a bank, savings and loan association, insurance company or registered investment adviser, or (b) the employee benefit plan is a self-directed plan with investment decisions made solely by persons that are "accredited investors" as defined in Rule 501(a)(1) of Regulation D of the Securities Exchange Act of 1933, as amended. The term "U.S. major institutional investor" is defined in Rule 15a–6(b)(4) as a person that is a U.S. institutional investor that has total assets in excess of $100 million or an investment adviser registered under Section 203 of the Investment Advisers Act of 1940 that has total assets under management in excess of $100 million.

6. The Applicants represent that under Rule 15a–6, a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security by a U.S. institutional or major institutional investor must, among other things—

(a) Consent to service of process for any civil action brought by, or proceeding before, the SEC or any self-regulatory organization;

(b) Provide the SEC with any information or documents within its possession, custody or control, any testimony of any such foreign associated persons, and any assistance in taking the evidence of other persons, wherever located, that the SEC requests and that relates to transactions effected pursuant to Rule 15a–6; and

(c) Rely on the U.S. registered broker-dealer through which the transactions with the U.S. institutional and major institutional investors are effected to (among other things):

(1) Effect the transactions, other than negotiating their terms;

(2) Issue all required confirmations and statements;

(3) As between the foreign broker-dealer and the U.S. registered broker-dealer, extend or arrange for the extension of credit in connection with the transactions;

(4) Maintain required books and records relating to the transactions, including those required by Rules 17a–3 (Records to be Made by Certain Exchange Members) and 17a–4 (Records to be Preserved by Certain Exchange Members, Brokers and Dealers) of the 1934 Act;

(5) Receive, deliver and safeguard funds and securities in connection with the transactions on behalf of the U.S. institutional investor or U.S. major institutional investor in compliance with Rule 15c3–3 of the 1934 Act (Customer Protection—Reserves and Custody of Securities); and

(6) Participate in all oral communications (e.g., telephone calls) between the foreign associated person and the U.S. institutional investor (not the U.S. major institutional investor), and accompany the foreign associated person on all visits with both U.S. institutional and major institutional investors. By virtue of this participation, the U.S. registered broker-dealer would become responsible for the content of all these communications.

Securities Lending, Generally

7. As with UBS Securities, UBS/UK, UBS Japan and UBS/Swiss (i.e., the UBS Foreign Borrowers), acting as principals, actively engage in the borrowing and lending of securities, with daily outstanding loan volume averaging several billion United States dollars. The UBS Foreign Borrowers utilize borrowed securities to satisfy their trading requirements, or to re-lend to other broker-dealers and banks who need a particular security for various periods of time.

An institutional investor, such as a pension plan, lends securities in its portfolio to a broker-dealer or bank in order to earn a fee in addition to interest, dividends or other distributions paid on these securities. The lender generally requires that the security loans be fully collateralized and the collateral usually is in the form of cash or high quality liquid securities such as U.S. Government or Federal Agency obligations or certain bank letters of credit. When cash is the collateral, the lender generally invests the cash and rebates a portion of the earnings on the collateral to the borrower. The "fee" received by the lender will be the difference between the earnings on the collateral and the amount of rebate paid to the borrower. When a loan of securities is collateralized with securities, a fee is paid directly by the borrower to the lender. Institutional investors often utilize the services of an agent in the performance of their securities lending transactions. The lending agent is paid a fee for its services which may be calculated as a percentage of the income earned by the investor from its securities lending activity. The Applicants believe that the essential functions which define a securities lending agent are the identification of appropriate borrowers of securities and the negotiation of the terms of a loan to the borrowers. There are services ancillary to securities lending which may include acting as custodian or directed trustee of the securities being loaned, monitoring the level of collateral and the value of the loaned securities and investing the collateral in some instances.

Request for Exemptive Relief

8. UBS/Swiss and UBS Securities request an exemption for the lending of securities to Client Plans under either of two distinct arrangements—Plan A (permitting UBS Borrowers to borrow securities from those Client Plans for which UBS NY will act as primary lending agent or sub-agent) [16] or Plan B (permitting UBS Borrowers to enter into Exclusive Borrowing Agreements with Client Plans), following disclosure of the relationship between UBS/Swiss and UBS NY as well as UBS NY's affiliation with the UBS Borrowers. In addition, the Applicants request exemptive relief from the Department to allow UBS NY to receive compensation in connection with these transactions.

Because UBS NY is a branch of UBS/Swiss, an intended borrower, and because each of the other UBS Borrowers is an affiliate of UBS/Swiss, the lending of securities to UBS Borrowers by Plans for which UBS NY serves as securities lending agent (or may otherwise be a service provider to the Plans) could be deemed to be prohibited under the Act. Further, because UBS NY, under Plan A, would have discretion to lend Plan securities to UBS Borrowers and receive a fee, and because, under Plan B, the Client Plan

[16] For the sake of simplicity, future references to UBS NY's performance of services as securities lending agent should be deemed to include its parallel performance as securities lending sub-agent and references to Client Plans should be deemed to also refer to those Client Plans for which UBS NY is acting as sub-agent with respect to securities lending activities, unless otherwise indicated specifically or by the context of the reference.

will receive a fee for the Exclusive Borrowing Agreement with the UBS Borrower (which may not necessarily be related to the value of the borrowed securities and the duration of the loan) [17], and because all UBS Borrowers are not registered under the 1934 Act, the lending of securities to UBS Borrowers by Client Plans may be outside of the scope of relief provided by PTE 81–6 and PTE 82–63. [18]

Plan A

9. When acting as securities lending agent, UBS NY, pursuant to authorization from its client, will negotiate the terms of loans with borrowers and otherwise act as a liaison between the lender (and its custodian) and the borrower to facilitate the lending transaction. As securities lending agent, UBS NY will also have responsibility for monitoring receipt of all required collateral, marking such collateral to market daily so that adequate levels of collateral can be maintained, monitoring and evaluating on a continuing basis the performance and creditworthiness of the borrowers, and if authorized by the client, holding and investing cash collateral pursuant to investment guidelines established by the client. UBS NY may also act as a custodian or directed trustee for the Client Plan's portfolio of securities available to be lent. All procedures for lending securities will be designed to comply with applicable conditions of PTEs 81–6 and 82–63.

UBS NY may also be retained from time to time by primary lending agents to provide securities lending services in a sub-agent capacity with respect to portfolio securities of clients of such primary lending agents. As securities lending sub-agent, UBS NY's role under the lending transactions would parallel its role under lending transactions for which it acts as a primary lending agent on behalf of its clients.

10. Where UBS NY is the direct securities lending agent, a fiduciary of a Client Plan who is independent of UBS NY and UBS Borrowers, will sign a securities lending agency agreement with UBS NY (the Agency Agreement) before the Client Plan participates in a securities lending program. The Agency Agreement will, among other things, describe the operation of the lending program, prescribe the form of securities Loan Agreement to be entered into on behalf of the Client Plan with borrowers, specify the securities which are available to be lent, specify the required margin and required daily marking-to-market, and provide a list of permissible borrowers, including UBS Borrowers. The Agency Agreement will also set forth the basis and rate for UBS NY's compensation from the Client Plan for the performance of securities lending services.

The Agency Agreement will contain provisions to the effect that if any UBS Borrower is designated by the Client Plan as an approved borrower (a) the Client Plan will acknowledge the relationship between the UBS Borrower and UBS NY and (b) UBS NY will represent to the Client Plan that each and every loan made to the UBS Borrower on behalf of the Client Plan will be at market rates which are no less favorable to the Client Plan than a loan of such securities, made at the same time and under the same circumstances, to an unrelated borrower.

11. When UBS NY is lending securities under a sub-agency arrangement, before the Client Plan participates in the securities program, the primary lending agent will enter into a securities lending agreement (the Primary Lending Agreement) with a fiduciary of a Client Plan who is independent of such primary lending agent, UBS NY and UBS Borrowers. The primary lending agent will be unrelated to UBS NY and UBS Borrowers. The Primary Lending Agreement will contain substantive provisions akin to those in the Agency Agreement relating to the description of the lending program, use of an approved form of Loan Agreement, specification of securities which are available to be lent, specification of the required margin and the requirement of daily marking-to-market, and provision of a list of approved borrowers (which will include one or more UBS Borrowers). In addition, the Primary Lending Agreement will specifically authorize the primary lending agent to appoint sub-agents (which may include UBS NY), to facilitate its performance of securities lending agency functions. Under such circumstances, sub-agents may be appointed if the primary lending agent does not have the expertise or adequate systems to conduct securities lending activities or where the Client Plan desires to diversify lending responsibility among multiple entities. If UBS NY is to act as a sub-agent, the Primary Lending Agreement will expressly disclose that UBS NY is to so act. Further, the Primary Lending Agreement will set forth the basis and rate for the primary lending agent's compensation from the Client Plan for the performance of securities lending services and will authorize the primary lending agent to pay a portion of its fee, as the primary lending agent determines in its sole discretion, to any sub-agent(s) it retains (including UBS NY) pursuant to the authority granted under such agreement.

Pursuant to its authority to appoint sub-agents, the primary lending agent will enter into a securities lending sub-agency agreement (the Sub-Agency Agreement) with UBS NY under which the primary lending agent will retain and authorize UBS NY, as sub-agent, to lend securities of the primary lending agent's Client Plans, subject to the same terms and conditions as are specified in the Primary Lending Agreement. Thus, for example, the form of Loan Agreement and the list of permissible borrowers under the Sub-Agency Agreement (which will include one or more UBS Borrowers) will be limited to those approved borrowers listed as such under the Primary Lending Agreement.

UBS NY represents that the Sub-Agency Agreement will contain provisions which are in substance comparable to those described above in connection with an Agency Agreement in situations where UBS NY is the primary lending agent. In this regard, UBS NY will make the same representation in the Sub-Agency Agreement as described above with respect to arm's length dealing with UBS Borrowers. The Sub-Agency Agreement will also set forth the basis and rate for UBS NY's compensation to be paid by the primary lending agent.

12. In all cases, UBS NY will maintain, in the United States for a period of six years, such records as necessary to assure compliance with its representations that all loans to UBS Borrowers are effectively at arm's length terms. Such records will be provided to the appropriate Client Plan fiduciary in the manner and format agreed to with the lending fiduciary, without charge to the Client Plan.

[17] The Applicants note that in an exclusive borrowing arrangement, the fee paid by a borrower need not necessarily be computed in the same manner as under a non-exclusive or Plan A arrangement. This is because there is additional value to a borrower in having an assured access to a supply of securities. Accordingly, the lender is able to exact different consideration, be it a premium, some form of a guaranteed return or otherwise.

[18] PTE 81–6 provides an exemption under certain conditions from section 406(a)(1)(A) through (D) of the Act and the corresponding provisions of section 4975(c) of the Code for the lending of securities that are assets of an employee benefit plan to certain broker-dealers or banks which are parties in interest.

PTE 82–63 provides an exemption under specified conditions from section 406(b)(1) of the Act and section 4975(c)(1)(E) of the Code for the payment of compensation to a plan fiduciary for services rendered in connection with loans of plan assets that are securities. PTE 82–63 permits the payment of compensation to a plan fiduciary for the provision of securities lending services only if the loan of securities is not prohibited under section 406(a) of the Act.

In addition, UBS NY shall retain for six months tape recordings evidencing all securities loan transactions with UBS Borrowers. This will enable Client Plans and the Department to review UBS NY's adherence to its representation that all loans to UBS Borrowers are at arm's length.

13. A Client Plan may terminate the Agency Agreement (or the Primary Lending Agreement) at any time, without penalty to the Plan, on five business days notice whereupon the UBS Borrowers will deliver certificates for securities identical to the borrowed securities (or the equivalent in the event of reorganization, recapitalization or merger of the issuer of the borrowed securities to the Client Plan within (a) the customary delivery period for such securities; (b) five business days; or (c) the time negotiated for such delivery by the Client Plan and the UBS Borrowers, whichever is less.

14. UBS NY will enter into the same form of Loan Agreement with the applicable UBS Borrower on behalf of Client Plans as it does with all other borrowers. An independent fiduciary of the Client Plan will approve the terms of the Loan Agreement. The Loan Agreement will specify, among other things, the right of the Client Plan to terminate a loan at any time and the Plan's rights in the event of any default by a UBS Borrower. The Loan Agreement will explain the basis for compensation to the Client Plan for lending securities to the UBS Borrower under each category of collateral. The Loan Agreement also will contain a requirement that the UBS Borrower must pay all transfer fees and transfer taxes related to the security loans.

However, before entering into the Loan Agreement, the applicable UBS Borrower will furnish each Client Plan its most recently available audited and unaudited statements to UBS NY, and in turn, such statements are provided to the Client Plan before the Client Plan approves the terms of the Loan Agreement. The Loan Agreement will contain a requirement that the applicable UBS Borrower must give prompt notice at the time of a loan of any material adverse changes in its financial condition since the date of the most recently furnished financial statements.[19] If any such changes have taken place, UBS NY will not make any further loans to the UBS Borrower unless an independent fiduciary of the Client Plan approves the loan in view of the changed financial condition. Conversely, if the UBS Borrower fails to provide notice of such a change in its financial condition, such failure will trigger an event of default under the Loan Agreement.

15. As noted above, the agreement by UBS NY to provide securities lending services, as agent, to a Client Plan will be embodied in the Agency Agreement. The Client Plan and UBS NY will agree to the arrangement under which UBS NY will be compensated for its services as lending agent. This fee arrangement will generally be a percentage of either the return earned on cash collateral by the Client Plan or, in the case of non-cash collateralized loans, a percentage of the fee paid to the Client Plan by the UBS Borrower. Several factors may impact the fee structures, such as industry practices and changes in the market, as well as the types of securities being lent (e.g., domestic versus foreign securities). Such agreed upon fee arrangement will be set forth in the Agency Agreement and thereby will be subject to the prior written approval of a fiduciary of the Client Plan who is independent of the UBS Borrower and UBS NY. In any event, the securities lending fee to be paid to UBS NY will, at all times, comply with PTE 82–63.[20] In addition, an independent fiduciary of the Client Plan may authorize UBS NY to act as custodian or directed trustee of the Client Plan's portfolio of securities available for lending and to receive a reasonable and customary fee for such services.

Similarly, with respect to arrangements under which UBS NY is acting as securities lending sub-agent, the agreed upon fee arrangement of the primary lending agent will be set forth in the Primary Lending Agreement, and such agreement will specifically authorize the primary lending agent to pay a portion of its fee (the portion to be determined by the primary lending agent, in its sole discretion) to any sub-agent, including UBS NY, which is to provide securities lending services to the Client Plan. The Client Plan will be provided with any reasonably available information which is necessary for the Plan fiduciary to make a determination whether to enter into or continue to participate under the Agency Agreement (or the Primary Lending Agreement) and any other reasonably available information which the Plan fiduciary may reasonably request.

16. Each time a Client Plan lends securities to a UBS Borrower pursuant to the Loan Agreement, UBS NY will reflect in its records the material terms of the loan, including the securities to be loaned, the required level of collateral and the fee or rebate payable. The terms of the fee or rebate payable for each loan will be at least as favorable to the Client Plan as those of a comparable arm's length transaction between unrelated parties.

17. The Client Plan will be entitled to the equivalent of all distributions made to holders of the borrowed securities, including interest and dividends during the loan period.[21] The Loan Agreement will provide that the Client Plan may terminate any loan at any time. Upon a termination, the UBS Borrower will be contractually obligated to return securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization or merger of the issuer of the borrowed securities) to the Client Plan within five business days of written notification of termination or, if sooner, within the normal settlement period in the principal market in which the loaned securities are traded (unless a longer period of time permitted pursuant to an applicable Department exemption). The Loan Agreement will give the Client Plan a continuing security interest in and a lien on the collateral. If the UBS Borrower fails to return the securities within the designated time, the Client Plan will have the right under the Loan Agreement to purchase securities identical to the borrowed securities and apply the collateral to payment of the purchase price and any other expenses of the Plan associated with the sale and/or purchase.

[19] With respect to capital adequacy rules, it is represented that UBS NY monitors the creditworthiness of all borrowers and adjusts exposure limits to such UBS Borrowers where necessary. Under the Loan Agreement, the UBS Borrower represents that it will comply, at all times, with all applicable laws and regulations of applicable regulatory and self-regulatory organizations. Noncompliance with required capitalization levels would constitute an event of default under the Loan Agreement, thereby enabling a Client Plan to exercise remedies by terminating the loans, liquidating the collateral and applying the collateral against the purchase of replacement securities.

[20] Conditions (c) and (d) of PTE 82–63 require that the payment of compensation to a "lending fiduciary" is made under a written instrument and is subject to prior written authorization of an independent "authorizing fiduciary." In the event that a commingled investment fund will participate in the securities lending program, the special rule applicable to such funds concerning the authorization of the compensation arrangement set forth in paragraph (f) of PTE 82–63 will be satisfied.

[21] The Applicants represent that dividends and other distributions on foreign securities payable to a lending Client Plan are subject to foreign tax withholdings. Under these circumstances, the applicable UBS Borrower, where necessary, will gross-up the in-lieu-of-payment (in respect of such dividend or distribution it makes) to the Client Plan so that the Client Plan will receive back what it otherwise would have received (by way of dividend or distribution) had it not loaned the securities.

18. UBS NY will establish each day a written schedule of lending fees [22] and rebate rates [23] with respect to new loans of designated classes of securities, such as U.S. government securities, U.S. equities and corporate bonds, international fixed income securities and international equities, in order to assure uniformity of treatment among borrowing brokers and to limit the discretion UBS NY would have in negotiating securities loans to UBS Borrowers. Loans to all borrowers of a given security on that day will be made at rates or lending fees on the relevant daily schedules or at rates or lending fees which may be more advantageous to the Client Plans. It is represented that in no case will loans be made to UBS Borrowers at rates or lending fees that are less advantageous to the Client Plans than those on the schedule. In addition, it is represented that the method of determining the daily securities lending rates (fees and rebates), the minimum lending fees payable by UBS Borrowers and the maximum rebate payable to UBS Borrowers will be specified in an exhibit attached to the Agency Agreement to be executed between the independent fiduciary of the Client Plan and UBS NY in cases where UBS NY is the direct securities lending agent.

19. The rebate rates with respect to cash-collateralized loans made by Client Plans will also take into account the potential demand for loaned securities, the applicable benchmark cost of funds indices (typically, Federal Funds, overnight repo rate or the like) and anticipated investment return on overnight investments which are permitted by the relevant Client Plan fiduciary. Further, the lending fees with respect to loans made by Client Plans collateralized by other than cash will be set daily to reflect conditions as influenced by potential market demand.

20. UBS NY will negotiate rebate rates for cash collateral payable to each borrower, including UBS Borrowers, on behalf of a Client Plan. Where cash collateral is derived from a loan with an expected maturity date (i.e., a term loan) and is intended to be invested in instruments with maturities corresponding generally to the maturity of the term loan, the aggregate rebate over the life of the loan will be less than the total investment return (assuming no investment default). Where cash collateral is derived from a loan with an overnight maturity or an open maturity (i.e., no specified maturity date), the aggregate rebate will be less than the total investment return (assuming no investment default) for the period during which the securities were outstanding on loan. For example, where cash collateral derived from an overnight loan is intended to be invested in a generic repurchase agreement, any rebate determined with respect to an overnight purchase agreement benchmark will be set below the "ask" quotation therefor.

With respect to any loan to a UBS Borrower, UBS NY, at the inception of such loan, will not negotiate and agree to a rebate rate with respect to such loan which would produce a zero or negative return to the Client Plan over the life of the loan (assuming no default on the investments made by UBS NY where it has investment discretion over the cash collateral or on investments expected to be made by the Client Plan's designee, where UBS NY does not have investment discretion). In this regard, with respect to each designated class of securities, the maximum daily rebate rate will generally be the lower of (a) the overnight repo rate or Federal Funds rate, minus a stated percentage and (b) the actual investment rate for the relevant cash collateral, minus a stated percentage. As noted above, UBS NY will disclose the formula for determining the maximum daily rebate rate to an independent fiduciary of a Client Plan for approval before lending any securities to UBS Borrowers on behalf of the Plan.

21. If UBS NY reduces the lending fee or increases the rebate rate on any outstanding loan to an affiliated borrower (except for any change resulting from a change in the value of any third party independent index with respect to which the fee or rebate is calculated), UBS NY, by the close of business on the date of such adjustment, will provide the independent fiduciary of the Client Plan with notice that it has reduced such fee or increased the rebate rate to such affiliated borrower and that the Client Plan may terminate such loan at any time. In addition, UBS NY will provide the independent fiduciary of the Client Plan with such information as the fiduciary may reasonably request regarding such adjustment.

With respect to any calendar quarter, at least 50 percent or more of the outstanding dollar value of securities loans negotiated on behalf of Client Plans will be to unrelated borrowers. Thus, the competitiveness of the loan fee will be continuously tested in the marketplace. Accordingly, the Applicants believe that loans to UBS Borrowers should result in competitive rate income to the lending Client Plan.

22. At all times, UBS NY will effect loans in a prudent and diversified manner. While UBS NY will normally lend securities to requesting borrowers on a "first come, first served" basis, as a means of assuring uniformity of treatment among borrowers, it should be recognized that in some cases it may not be possible to adhere to a "first come, first served" allocation. This can occur, for instance where (a) the credit limit established for such borrower by UBS NY and/or the Client Plan has already been satisfied; (b) the "first in line" borrower is not approved as a borrower by the particular Client Plan whose securities are sought to be borrowed; or (c) the "first in line" borrower cannot be ascertained, as an operational matter, because several borrowers spoke to different UBS NY representatives at or about the same time with respect to the same security. [24] In situations (a) and (b), loans would normally be effected with the "second in line." In situation (c), securities would be allocated equitably among all eligible borrowers.

23. UBS NY agrees to indemnify and hold harmless the applicable Client Plan (including the sponsor and fiduciaries of such Client Plan) in the United States for any transactions covered by this exemption with the UBS Borrower so that the Client Plan does not have to litigate, in the case of a UBS Foreign Borrower, in a foreign jurisdiction nor sue the UBS Foreign Borrower to realize on the indemnification. Such indemnification by UBS NY will be against any and all reasonably foreseeable damages, losses, liabilities, costs and expenses (including attorney's fees) which the Client Plan may incur or suffer arising from any impermissible use by the UBS Borrower of the loaned securities. The applicable UBS Borrower

[22] UBS NY will adopt minimum daily lending fees for non-cash collateral payable by UBS Borrowers to UBS NY on behalf of a Client Plan. Separate minimum daily lending fees will be established with respect to loans of designated classes of securities, such as those identified above. With respect to each designated class of securities, the minimum lending fee will be stated as a percentage of the principal value of the loaned securities. UBS NY will submit such minimum daily lending fees to an independent fiduciary of the Client Plan for approval before initially lending any securities to UBS Borrowers on behalf of such Client Plan.

[23] Separate maximum daily rebate rates will be established with respect to loans of securities within the designated classes identified above.

[24] According to the Applicants, the "first come, first served" allocation would not apply where UBS NY is not acting as a securities lending agent, but rather is acting as, for example, a custodian or directed trustee to a Client Plan that has entered into an exclusive arrangement with the borrower as described under Plan B. In such a situation, the Applicants note that the UBS Borrower would be choosing from whom to borrow and UBS NY has no right or obligation to lend to the UBS Borrower the securities from other clients or lend the securities which are subject to such Exclusive Borrowing Agreements.

will also be liable to the Client Plan for breach of contract for any failure by such UBS Borrower to deliver loaned securities when due in accordance with the provisions of the Loan Agreement or to otherwise comply with the terms of the Loan Agreement.

If any event of default occurs, UBS NY, promptly and at its own expense, will purchase, or cause to be purchased on the open market, for the account of the Client Plan securities identical to the borrowed securities (or their equivalent as discussed above). If the collateral is insufficient to accomplish such purchase, UBS NY will indemnify the Client Plan for any shortfall in the collateral plus interest on such amount and any transaction costs incurred (including attorney's fees of the Client Plan for legal actions arising out of the default on the loans or failure to indemnify properly under this provision). Alternatively, if such replacement securities cannot be obtained on the open market, UBS NY will pay the Client Plan the difference in dollars between the market value [25] of the loaned securities and the market value of the collateral on the date of the borrower's breach of its obligation to return the loaned securities.

If, however, as noted in Representation 17, the event of default is caused by the UBS Borrower's failure to return the securities within the designated time, the Client Plan will have the right to purchase securities identical to the borrowed securities and apply the collateral to payment of the purchase price and any other expenses of the Plan associated with the sale and/or purchase.

24. The Client Plan, or its designee, will receive collateral from each UBS Borrower by physical delivery, book entry in a U.S. securities depository, wire transfer or similar means by the close of business on or before the day the loaned securities are delivered to the UBS Borrower. All collateral will be received by the Client Plan, or its designee, in the United States. The collateral will consist of U.S. currency, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, or irrevocable bank letters of credit issued by a U.S. bank other than UBS NY or an affiliate thereof, or any combination thereof, or other collateral permitted under PTE 81–6, as amended, modified, supplemented or superseded by Department exemption or promulgation.

The market value (or, in the case of a letter of credit, a stated amount) of the collateral on the close of business on the day preceding the day of the loan will be at least 102 percent of the market value of the loaned securities. The Loan Agreement will give the Client Plan a continuing security interest in and a lien on the collateral. UBS NY will monitor the level of the collateral daily. If the market value of the collateral, on the close of trading on a business day, is less than 100 percent (or such greater percentage as agreed to by the parties) of the loaned securities at the close of business on that day, UBS NY will require the UBS Borrowers to deliver by the close of business on the next day sufficient additional collateral to bring the level back to at least 102 percent.

25. UBS NY will maintain the situs of the Loan Agreements (evidencing the Client Plan's right to return of the loaned securities and the Plan's continuing interest in and lien on the collateral) in the United States and, prior to a transaction involving a UBS Foreign Borrower, the applicable UBS Foreign Borrower will (a) agree to submit to the jurisdiction of the courts of the United States; (b) agree to appoint a Process Agent for service of process in the United States, which may be an affiliate; (c) consent to service of process on the Process Agent; and (d) agree to be indemnified in the United States for any transaction covered by this exemption.

26. Unless otherwise agreed, each Client Plan participating in the lending program will be sent a monthly transaction report. Such report will provide a list of all security loans outstanding and closed for a specified period. The report will identify for each open loan position, the securities involved, the value of the security for collateralization purposes, the current value of the collateral, the rebate or loan premium (as the case my be) at which the security is loaned, and the number of days the security has been on loan. In addition, if requested by the lending customer, UBS NY will provide daily confirmations of securities lending transactions and weekly reports setting forth for each transaction made or outstanding during the relevant reporting period, the loaned securities, the related collateral, rebates and loan premiums and such other information in such format as shall be agreed to by the parties. Further, prior to a Client Plan's approval of a securities lending program, UBS NY will provide a Plan fiduciary with copies of the proposed exemption and notice granting the exemption.

27. In order to provide the means for monitoring lending activity, rates on loans to UBS Borrowers compared with loans to other brokers and the level of collateral on the loans, it is represented that the monthly report will show, on a daily basis, the market value of all outstanding security loans to UBS Borrowers and to other borrowers as compared to the total collateral held for both categories of loans. Further, the monthly report will state the daily fees where collateral other than cash is utilized and will specify the details used to establish the daily rebate payable to all brokers where cash is used as collateral. The monthly report also will state, on a daily basis, the rates at which securities are loaned to UBS Borrowers compared with those at which securities are loaned to other brokers. This statement will give an independent fiduciary information which can be compared to that contained in the daily rate schedule.

28. To ensure that any lending of securities to a UBS Borrower will be monitored by an independent fiduciary of above average experience and sophistication in matters of this kind, only Client Plans with total assets having an aggregate market value of at least $50 million are permitted to lend securities to UBS Borrowers. However, in the case of two or more Client Plans which are maintained by the same employer, controlled group of corporations or employee organization (i.e., the Related Client Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are "plan assets" under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with UBS Borrowers, the foregoing $50 million requirement will be deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million. However, if the fiduciary responsible for making the investment decision on behalf of such master trust

[25] In relevant part, the "market value" of any securities listed on a national securities exchange in the U.S. will be the last sales price on such exchange on the preceding business day (the Business Day) or, if there is no sale on that day, the last sale price on the next preceding Business Day on which there is a sale on such exchange, as quoted on the consolidated tape (the Consolidated Tape). If the principal market for securities to be valued is the over-the-counter market, their market value will be the closing sale price as quoted on the National Association of Securities Dealers Automated Quotation System (NASDAQ) on the preceding Business Day or the closing price on such Business Day if the securities are issues for which last sale prices are not quoted on NASDAQ. If the securities to be valued are not quoted on NASDAQ, their market value shall be the highest bid quotation appearing in The Wall Street Journal, National Quotation Bureau pink sheets, Salomon Brothers quotation sheets, quotation sheets of registered market makers and, if necessary, dealers' telephone quotations on the preceding Business Day. (In each case, if the relevant quotation does not exist on such day, then the relevant quotation on the next preceding Business Day in which there is such a quotation would be the market value.)

or other entity is not the employer or an affiliate of the employer, such fiduciary will be required to have total assets under its management and control, exclusive of the $50 million threshold amount attributable to Client Plan investment in the commingled entity, which are in excess of $100 million.

In the case of two or more Client Plans which are not maintained by the same employer, controlled group of corporations or employee organization (i.e., the Unrelated Client Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are "plan assets" under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with UBS Borrowers, the foregoing $50 million requirement will be deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million. However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity (a) must not be the sponsoring employer, a member of the controlled group of corporations, the employee organization, or an affiliate; (b) must have full investment responsibility with respect to plan assets invested therein; and (c) must have total assets under its management and control, exclusive of the $50 million threshold amount attributable to Client Plan investment in the commingled entity, which are in excess of $100 million.

In addition, none of the entities described above must be formed for the sole purpose of making loans of securities.

29. The Applicants represent that the conditions set forth in this proposed exemption will subject UBS NY and UBS Borrowers to all of the conditions imposed on broker-dealers under PTE 81–6, other than registration under the 1934 Act with respect to the UBS Foreign Borrowers. The Applicants note that such conditions in PTE 81–6 include requirements relating to daily marking to market, setting collateral at 100 percent of the market value of the securities, the rules for termination of the loan and the return of the borrowed securities.

Plan B

30. UBS Borrowers may directly negotiate Exclusive Borrowing Agreements with fiduciaries of Client Plans, including Plans for which UBS NY will serve as custodian or directed trustee or provide other related services with respect to the portfolio of securities to be loaned, where such fiduciary is independent of the UBS Borrowers and UBS NY. Under such an Agreement, UBS Borrowers will have exclusive access for a specified period of time to borrow certain securities of the Client Plan pursuant to certain conditions. UBS NY will not participate in the negotiation of the Exclusive Borrowing Agreement. The involvement of UBS NY, if any, will be limited to such activities as holding securities available for lending, handling the movement of borrowed securities and collateral and investing or depositing any cash collateral and supplying the Client Plan with certain reports. The Applicants represent that, under the Exclusive Borrowing Agreement, neither UBS NY nor UBS Borrowers will perform for Client Plans, the functions which constitute the essential functions of a securities lending agent.

31. On or prior to delivery of loaned securities to a UBS Borrower, the Client Plan or its designee, will receive from the UBS Borrower by physical delivery, book entry in a securities depository, wire transfer or similar means. The collateral will consist of those types of collateral permitted under PTE 81–6, as amended, modified, supplemented or superseded by Department exemption or promulgation.

The market value of the collateral on the day the loan settles will be at least 102 percent of the market value of the loaned securities. The Exclusive Borrowing Agreement will give the Client Plan a continuing security interest in and a lien on the collateral. UBS NY, or another designee of the Client Plan, will monitor the level of the collateral daily and, if its market value falls below 100 percent, the UBS Borrower will deliver sufficient additional collateral by the following day such that the market value of all collateral will equal at least 102 percent of market value of the loaned securities.

32. The UBS Borrower will maintain, or cause to be maintained, the situs of the Exclusive Borrowing Agreement (evidencing the Client Plan's right to return the loan securities and the Plan's continuing interest in and lien on the collateral) in the United States, and prior to a transaction involving a UBS Foreign Borrower, the applicable UBS Foreign Borrower will (a) agree to submit to the jurisdiction of the courts of the United States; (b) agree to appoint a Process Agent for service of process in the United States, which may be an affiliate; (c) consent to service of process on the Process Agent; and (d) agree to be indemnified in the United States for any transaction covered by this exemption.

33. Before entering into an Exclusive Borrowing Agreement, the UBS Borrower will furnish to the Client Plan the most recent publicly-available audited and unaudited statements of its financial condition. The Exclusive Borrowing Agreement will also contain a representation by the UBS Borrower that, as of each time it borrows securities, there have been no material adverse changes in its financial condition. Further, all procedures under the Exclusive Borrowing Agreement will, at a minimum, conform to the applicable provisions of PTE 81–6 and PTE 82–63 (except as otherwise noted herein).

Unless otherwise agreed, the UBS Borrower or, in the case of some Client Plans, UBS NY, will provide a monthly report to the Client Plan showing, on a daily basis, the aggregate market value of all outstanding security loans to each UBS Borrower and the aggregate market value of the collateral.

34. With regard to those Client Plans for which UBS NY provides custodial, trustee, clearing and/or reporting functions relative to securities loans, an independent Plan fiduciary shall review and approve any fees which may be paid to UBS NY for such services. Any such fee would be in addition to any fee UBS NY has negotiated to receive from any such Client Plan for standard custodial or other services unrelated to the securities lending activity. The arrangement to have UBS NY provide such services relative to securities loans to a UBS Borrower under an Exclusive Borrowing Agreement will be terminable by the Client Plan within five business days of receipt of written notice, without penalty to the Client Plan, other than any return to the UBS Borrower of the portion of the fee paid by the UBS Borrower to the Client Plan if the Client Plan also terminates its Agreement with the UBS Borrower. Procedures similar to those described under Plan A (see Representation 13) will be followed.

Before entering into or renewing an Exclusive Borrowing Agreement with a Client Plan to provide such administrative services relative to securities loans to UBS Borrowers, UBS NY will furnish to the Client Plan any publicly available information which it believes is necessary for the Client Plan to determine whether to enter into or renew the Agreement.

35. In exchange for the exclusive right to borrow certain securities from a Client Plan, the UBS Borrower will pay the Client Plan either a flat fee, or a minimum flat fee plus a percentage (to be negotiated at the time the Exclusive Borrowing Agreement is entered into) of the total balance outstanding of borrowed securities, or a percentage of

the total balance outstanding without any flat fee. In light of this arrangement, all earnings generated by cash collateral will be returned to the UBS Borrower.

36. As under Plan A, the Client Plan will be entitled, under Plan B, to the equivalent of all interest, dividends or other distributions on any borrowed securities that the Client Plan would have received had it remained the record owner of the securities (see Representation 17 as well as the representations regarding foreign tax withholdings). In addition, as under Plan A, the same asset limitations and investor sophistication requirements that are set forth in Representation 28 as well as the conditions of PTE 81–6, except as otherwise noted herein, will be applicable.

37. The Exclusive Borrowing Agreement may be terminated by either party to the agreement at any time. Each UBS Borrower will agree that upon termination, it will deliver any borrowed securities back to the Client Plan within five business days of written notification of termination or, if sooner, within the normal settlement period in the principal market in which the loaned securities are traded (unless a longer period is permitted pursuant to an applicable Department exemption). If the UBS Borrower fails to return the securities or the equivalent thereof, the Client Plan will have certain rights under the Agreement to realize upon the collateral.

38. Under the Exclusive Borrowing Agreement, UBS NY will indemnify and hold harmless the Client Plan in the United States (including the sponsor and fiduciaries of such Client Plan) for any transactions covered by this exemption with a UBS Borrower so that the Client Plan does not have to litigate, in the case of a UBS Foreign Borrower, in a foreign jurisdiction nor sue the UBS Foreign Borrower to realize on the indemnification. Such indemnification, by UBS NY, will be against any and all reasonably foreseeable damages, losses, liabilities, costs and expenses (including attorney's fees) which the Client Plan may incur or suffer, arising from any impermissible use by the UBS Borrower of the loaned securities or the failure of the UBS Borrower to deliver loaned securities in accordance with the applicable Loan Agreement or to otherwise comply with the terms of such agreement, except to the extent that such losses or damages are caused by the Client Plan's own negligence. In the event any default occurs with respect to the borrowed securities, UBS NY will follow the procedures described above in Representation 23.

39. In summary, the Applicants represent that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) Plan A requires that the form of the Loan Agreement pursuant to which any loan is effected will be approved by a fiduciary of the Client Plan who is independent of UBS NY and UBS Borrowers before a Client Plan lends any securities to UBS Borrowers, while under Plan B, UBS Borrowers will directly negotiate Exclusive Borrowing Agreements with a Client Plan, the fiduciary of which is also independent of UBS NY and the UBS Borrowers.

(b) The lending arrangements under both Plan A and Plan B will permit Client Plans to lend to UBS Borrowers and will enable such Plans to diversify the list of eligible borrowers and earn additional income from the loaned securities on a secured basis, while continuing to receive dividends, interest payments and other distributions due on those securities.

(c) With respect to securities lending transactions in which a UBS Foreign Borrower is the borrower, the proposed exemption will enable Client Plans to realize low-risk returns on securities that otherwise would remain idle, as in securities lending transactions executed pursuant to PTE 81–6, by broker-dealers registered in the United States, and the proposed exemption generally imposes terms and conditions upon transactions entered into by UBS Foreign Borrowers which are the same as or comparable to those imposed on U.S. borrowers under PTE 81–6, except as otherwise noted herein.

(d) Under both Plan A and Plan B, the Client Plan will receive sufficient information concerning each UBS Borrower's financial condition before the Client Plan lends any securities to such UBS Borrower.

(e) Under both Plan A and Plan B, the collateral on each loan to a UBS Borrower initially will be at least 102 percent of the market value of the loaned securities, which is in excess of the 100 percent collateral required under PTE 81–6, and the collateral levels will be monitored daily by UBS NY under Plan A and by UBS NY or another custodian under Plan B.

(f) Under both Plan A and Plan B, the Client Plans will receive agreed upon periodic reports (prepared no less frequently than monthly) containing information on loan activity, fees, the level of the collateral and loan return/yield.

(g) Under both Plan A and Plan B, UBS NY and UBS Borrowers will have no discretionary authority or control over the Client Plan's acquisition or disposition of securities available for loan.

(h) Under both Plan A and Plan B, the applicable fee or rebate payable for each loan and other terms of the loan will be at least as favorable to the Client Plans as those of a comparable arm's length transaction between unrelated parties.

(i) Under both Plan A and Plan B, all of the procedures under the proposed transactions will, at a minimum, conform to the applicable provisions of PTE 81–6, PTE 82–63 and Rule 15a–6, except as otherwise noted herein, and also will be in compliance with the applicable securities laws of the United States, the United Kingdom, Switzerland and Japan.

Notice to Interested Persons

Notice of the proposed exemption will be provided to interested persons by UBS NY within five (5) days of the publication of the notice of proposed exemption in the **Federal Register**. Such notice will be provided to appropriate trustees or fiduciaries of Client Plans which have an interest in lending securities to UBS Borrowers by first-class mail or by hand delivery. The notice will include a copy of the notice of proposed exemption as published in the **Federal Register** and a supplemental statement as required pursuant to 29 CFR 2570.43(b)(2). The supplemental statement will inform interested persons of their right to comment on and/or to request a hearing with respect to the pending exemption. Written comments and hearing requests are due within thirty-five (35) days of the publication of the proposed exemption in the **Federal Register**.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Beer Nuts, Inc. Profit Sharing Plan (the Plan) Located in Bloomington, Illinois

[Exemption Application No. D–10531]

Proposed Exemption

The Department is considering granting a retroactive exemption under the authority of section 408(a) of the Act and 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale (the Sale) by the Plan of certain limited partnership interests (the

Interests) to Beer Nuts, Inc. (Beer Nuts), a party in interest and a disqualified person with respect to the Plan, provided that the following conditions were satisfied:

(a) the terms of the Sale were at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party;

(b) the Sale was a one-time transaction for cash;

(c) the Plan paid no commissions or other expenses relating to the Sale; and

(d) The Sale price was not less than the fair market value of the Interests as determined by a qualified independent appraiser.

Effective Date: If granted, the proposed exemption will be effective as of December 30, 1996.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with 59 participants. The Plan is sponsored and administered by Beer Nuts, manufacturer of a specialty line of snack nuts. The trustees (the Trustees) of the Plan are Mr. James A. Shirk, President and CEO of Beer Nuts, and Mr. Russell O. Shirk, Chairman of the Board of Directors for Beer Nuts. As of December 31, 1996, the Plan held assets valued at $5,413,988.

2. Beer Nuts seeks a retroactive exemption for its December 30, 1996 purchase of the Interests from the Plan. The Interests consisted of 100 units of the Balcor Equity Pension Investors I (Balcor I) limited partnership and 200 units of the Balcor Pension Investors VI (Balcor VI) limited partnership. The limited partnerships, established in and subject to the laws of the State of Illinois, were designed to invest in real estate. The general partner is the Balcor Company of Deerfield, Illinois.

According to the applicant, the Plan originally purchased the Balcor I units in 1983 for $50,000, or $500 per unit. While holding the units, the Plan received $37,347, or $373.47 per unit, in total distributions. On December 30, 1996, Beer Nuts purchased the Balcor I units from the Plan for $32,067, or $320.67 per unit. Thus, the Plan received a total of $69,414 ($694.14 per unit) on an investment of $50,000.

The Plan also purchased the 200 Balcor VI units in 1983, paying a total of $50,000, or $250 per unit. While holding these units, the Plan received $48,072, or $240.36 per unit, in total distributions. The Plan sold the Balcor VI units to Beer Nuts on December 30, 1996 for $19,100, or $95.50 per unit. Therefore, the plan received a total of $67,172 ($335.86 per unit) on an investment of $50,000.

3. The Plan's need to sell the Interests arose primarily out of the decision by the Trustees to transfer the Plan's administrative duties to the Principal Mutual Life Insurance Company (the Principal), and to purchase a group annuity contract therefrom. The Interests could not be held under the group annuity contract, but would instead be considered "outside assets" by the Principal, resulting in additional expenses related thereto. Furthermore, the Trustees wanted to liquidate underperforming assets and reinvest in an asset providing for a higher rate of return.

Acting on the advice of their insurance agent, the Trustees decided to obtain an appraisal for the Interests and then purchase them directly from the Plan. Accordingly, the Trustees consulted the September 30, 1996 appraisal which was jointly performed by two firms, Valuation Counselors Group, Inc. and Darby and Associates (VCG-Darby). Each firm has had extensive experience in valuing partnership interests and was independent of Beer Nuts. VCG-Darby had been hired by the Balcor Company to value, on an ongoing basis, partnership interests issued by 16 of the Balcor Company's partnerships, including Balcor I and Balcor VI.

Adjusted for the October 1996 distributions,[26] the Balcor I units had a net value of $320.67 per unit, and the Balcor VI units had a net value of $95.50 per unit. Before undertaking the transaction, however, the Plan received an unsolicited offer for the Balcor I units on December 2, 1996 from an unrelated third party, the First Trust Company, LP (First Trust). First Trust offered to purchase up to 4.9% of the limited partnership interests in Balcor I at a price of $200 per unit. Because the amount of the offer was significantly lower than the VCG-Darby valuation, Beer Nuts opted to purchase the Interests from the Plan using VCG-Darby's figures.

In further support of its claim that it acted in good faith, the applicant points to three subsequent offers for the Interests. On January 1, 1997, First Trust submitted an unsolicited offer to buy up to 4.9% of the Balcor VI units for $61 per unit. On March 6, 1997, Madison Partnership Liquidity Investors CC, LLC (Madison) offered to purchase up to 4.9% of the Balcor I units for $110 per unit, and up to 4.9% of the Balcor VI units for $36 per unit. Beer Nuts believes that the fact it paid an amount significantly in excess of the First Trust and Madison offers demonstrates that it conducted the transaction in a manner designed to protect the interests of the Plan and those of the participants and beneficiaries.

4. According to the applicant, neither the Trustees of the Plan nor the officers of Beer Nuts involved in the transaction were aware of the prohibited nature of the transaction until contacting their accountant, Mr. Bruce Breitweiser, in early 1997 about changing the Plan year to a calendar year in conjunction with the transfer of the Plan's assets to the Principal. While reviewing the Plan's records, Mr. Breitweiser discovered the prohibited transaction. Upon informing the applicant, Mr. Breitweiser learned that the Trustees engaged in the transaction on the advice of their insurance agent. Soon thereafter, he contacted the legal department at the Principal, which agreed with his conclusion as to the prohibited nature of the transaction. At this point, Mr. Breitweiser began obtaining all of the documentation from Beer Nuts and the Principal pertaining to the transaction. After doing so, he contacted the Department about securing retroactive exemptive relief.

5. The applicant represents that the transaction was administratively feasible in that it was a one-time transaction for cash. Furthermore, the applicant states that the transaction was in the interests of the Plan and its participants and beneficiaries because it provided for the consolidation of the Plan's assets, reduced record-keeping costs, ensured that the Plan received a return on the Interests in excess of its original investment, and disposed of illiquid and underperforming assets facilitating the investment of the proceeds in an asset better suited to the needs of the Plan and its participants and beneficiaries. Finally, the applicant represents that the transaction was protective of the rights of the participants and beneficiaries because the Plan received for the Interests an amount determined by a qualified, independent appraiser.

6. In summary, the applicant represents that the subject transaction satisfied the statutory criteria for an exemption under section 408(a) of the Act for the following reasons: (a) the terms of the Sale were at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party; (b) the Sale was a one-time transaction for cash; (c) the Plan

[26] According to documents submitted by the applicant, the unadjusted September 30, 1996 VCG-Darby valuation for the Interests was $366 per unit for the Balcor I units and $122 per unit for the Balcor VI units. However, adjustments were made for subsequent distributions from the partnership of $45.33 per Balcor I unit and $26.50 per Balcor VI unit.

paid no commissions or other expenses relating to the Sale; and (d) the Sale price was not less than the fair market value of the Interests as determined by a qualified, independent appraiser.

Notice to Interested Persons

Notice of the proposed exemption shall be given to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and request a hearing with respect to the proposed exemption. Comments and requests for a hearing are due on or before May 15, 1998.

For Further Information Contact: Mr. James Scott Frazier of the Department, telephone (202) 219–8891 (this is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 25th day of March 1998.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 98–8197 Filed 3–30–98; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL LABOR RELATIONS BOARD

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: National Labor Relations Board.

TIME AND DATE: 3:00 p.m., Tuesday, March 17, 1998.

PLACE: Board Conference Room, Eleventh Floor, 1099 Fourteenth St., N.W., Washington, D.C. 20570.

STATUS: Closed to public observation pursuant to 5 U.S.C. Section 552b(c)(2) (internal personnel rules and practices); and (c)(6) (personnel information where disclosure would constitute a clearly unwarranted invasion of personal privacy).

MATTERS TO BE CONSIDERED: Personal matters.

CONTACT PERSON FOR MORE INFORMATION: John J. Toner, Executive Secretary, Washington, D.C. 20570; Telephone: (202) 273–1940.

Dated: Washington, D.C., March 25, 1998.
By direction of the Board.

John J. Toner,

Executive Secretary, National Labor Relations Board.

[FR Doc. 98–8511 Filed 3–27–98; 11:38 am]

BILLING CODE 7545–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–327 and 50–328]

In the Matter of Tennessee Valley Authority; Sequoyah Nuclear Plant Units 1 and 2; Exemption

I

The Tennessee Valley Authority (TVA or the licensee) is the holder of Facility Operating License Nos. DPR–77 and DPR–79, which authorize operation of the Sequoyah Nuclear Plant (SQN), Units 1 and 2, respectively. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of two pressurized-water reactors at the licensee's site located in Hamilton County, Tennessee.

II

Section 70.24 of Title 10 of the Code of Federal Regulations, "Criticality Accident Requirements," requires that each licensee authorized to possess special nuclear material (SNM) shall maintain a criticality accident monitoring system in each area where such material is handled, used, or stored. Subsections (a)(1) and (a)(2) of 10 CFR 70.24 specify detection and sensitivity requirements that these monitors must meet. Subsection (a)(1) also specifies that all areas subject to criticality accident monitoring must be covered by two detectors. Subsection (a)(3) of 10 CFR 70.24 requires licensees to maintain emergency procedures for each area in which this licensed SNM is handled, used, or stored and provides that (1) the procedures ensure that all personnel withdraw to an area of safety upon the sounding of a criticality accident monitor alarm, (2) the procedures must include drills to familiarize personnel with the evacuation plan, and (3) the procedures designate responsible individuals for determining the cause of the alarm and placement of radiation survey instruments in accessible locations for use in such an emergency. Subsection (b)(1) of 10 CFR 70.24 requires licensees to have a means to identify quickly personnel who have received a dose of 10 rads or more. Subsection (b)(2) of 10 CFR 70.24 requires licensees to maintain personnel decontamination facilities, to maintain arrangements for a physician and other medical personnel qualified to handle radiation emergencies, and to maintain arrangements for the transportation of contaminated individuals to treatment facilities outside the site boundary. Paragraph (c) of 10 CFR 70.24 exempts Part 50 licensees from the requirements of paragraph (b) of 10 CFR 70.24 for SNM used or to be used in the reactor. Paragraph (d) of 10 CFR 70.24 states that any licensee who believes that there is good cause why he should be granted an exemption from all or part of 10 CFR 70.24 may apply to the Commission for such an exemption and shall specify the reasons for the relief requested.

III

The SNM that could be assembled into a critical mass at SQN is in the form of nuclear fuel; the quantity of SNM other than fuel that is stored on site is small enough to preclude achieving a critical mass. The Commission's technical staff has evaluated the possibility of an inadvertent criticality of the nuclear fuel at SQN, and has determined that it is extremely unlikely for such an accident to occur if the licensee meets the following seven criteria:

1. Only one fuel assembly is allowed out of a shipping cask or storage rack at one time.

2. The k-effective does not exceed 0.95, at a 95% probability, 95% confidence level in the event that the fresh fuel storage racks are filled with fuel of the maximum permissible U-235 enrichment and flooded with pure water.

3. If optimum moderation occurs at low moderator density, then the k-effective does not exceed 0.98, at a 95% probability, 95% confidence level in the event that the fresh fuel storage racks are filled with fuel of the maximum permissible U-235 enrichment and flooded with a moderator at the density corresponding to optimum moderation.

4. The k-effective does not exceed 0.95, at a 95% probability, 95% confidence level in the event that the spent fuel storage racks are filled with fuel of the maximum permissible U-235 enrichment and flooded with pure water.

5. The quantity of forms of special nuclear material, other than nuclear fuel, that are stored on site in any given area is less than the quantity necessary for a critical mass.

6. Radiation monitors, as required by General Design Criterion 63, are provided in fuel storage and handling areas to detect excessive radiation levels and to initiate appropriate safety actions.

7. The maximum nominal U-235 enrichment is limited to 5.0 weight percent.

By letter dated December 5, 1997, the licensee requested an exemption from 10 CFR 70.24. In this request the licensee addressed the seven criteria given above. The Commission's technical staff has reviewed the licensee's submittals and has determined that SQN meets the criteria for prevention of inadvertent criticality; therefore, the staff has determined that it is extremely unlikely for an inadvertent criticality to occur in SNM handling or storage areas at SQN.

The purpose of the criticality monitors required by 10 CFR 70.24 is to ensure that if a criticality were to occur during the handling of SNM, personnel would be alerted to that fact and would take appropriate action. The staff has determined that it is extremely unlikely that such an accident could occur; furthermore, the licensee has radiation monitors, as required by General Design Criterion 63, in fuel storage and handling areas. These monitors will alert personnel to excessive radiation levels and allow them to initiate appropriate safety actions. The low probability of an inadvertent criticality, together with the licensee's adherence to General Design Criterion 63, constitutes good cause for granting an exemption to the requirements of 10 CFR 70.24.

IV

The Commission has determined that, pursuant to 10 CFR 70.14, this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the Tennessee Valley Authority an exemption from the requirements of 10 CFR 70.24.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment (63 FR 14481).

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 25th day of March 1998.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–8407 Filed 3–30–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of March 30, April 6, 13, and 20, 1998.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of March 30

Monday, March 30

2:00 p.m.
Briefing by Nuclear Waste Technical Review Board (NWTRB) (PUBLIC MEETING)

Tuesday, March 31

10:00 a.m.
Briefing on Fire Protection (PUBLIC MEETING) (Contact: Tad Marsh, 301–415–2873)

3:00 p.m.
Briefing by Organization of Agreement States and Status of IMPEP Program (PUBLIC MEETING) (Contact: Richard Bangart, 301–415–3340)

Thursday, April 2

1:00 p.m.
Meeting with Advisory Committee on Reactor Safeguards (ACRS) (PUBLIC MEETING) (Contact: John Larkins, 301–415–7360)

2:30 p.m.
Briefing on Improvements to the Senior Management Meeting Process (PUBLIC MEETING) (Contact: Bill Borchard, 301–415–1257)

Friday, April 3

9:00 a.m.
Briefing on MOX Fuel Fabrication Facility Licensing (PUBLIC MEETING) (Contact: Ted Sherr, 301–415–7218)

11:30 a.m.
Affirmation Session (PUBLIC MEETING): *(PLEASE NOTE: This item will be affirmed immediately following the conclusion of the preceding meeting.) a: Final Amendments to 10 CFR Parts 60, 72, 73, 74, and 75, "Physical Protection for Spent Nuclear Fuel and High-Level Radioactive Waste" (Tentative)

Week of April 6—Tentative

There are no meetings the week of April 6.

Week of April 13—Tentative

There are no meetings the week of April 13.

Week of April 20—Tentative

There are no meetings the week of April 20.

* THE SCHEDULE FOR COMMISSION MEETINGS IS SUBJECT TO CHANGE ON SHORT NOTICE. TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 415–1292. CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at:

http://www.nrc.gov/SECY/smj/schedule.htm

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This notice is distributed by mail to several hundred subscribers: if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting over the Internet system is available. If you interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: March 27, 1998.

William M. Hill, Jr.

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 98–8557 Filed 3–27–98; 1:43 pm]

BILLING CODE 7590–01–M

SECURITES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23076; 812–10768]

Barr Rosenberg Series Trust and Rosenberg Institutional Equity Management; Notice of Application

March 25, 1998.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") for an exemption from section 12(d)(1)(G)(i)(II).

SUMMARY OF THE APPLICATION: Applicants seek an order that would permit a fund of funds relying on section 12(d)(1)(G) of the Act to invest directly in securities and other instruments.

APPLICANTS: Barr Rosenberg Series Trust (the "Trust") and Rosenberg Institutional Equity Management ("RIEM"). The requested order also would extend to any existing or future open-end management investment company or series thereof advised by RIEM (an "Upper Tier Fund") that wishes to invest in another registered open-end management investment company or series thereof that is advised by RIEM and is part of the same "group of investment companies" (as defined in section 12(d)(1)(G)(ii) of the Act) (together with the series of the Trust excluding the Barr Rosenberg Double Alpha Market Fund, the "Underlying Funds") as the investing Upper Tier Fund.[1]

FILING DATES: The application was filed on September 2, 1997, and amended on December 24, 1997. Applicants have agreed to file an additional amendment, the substance of which is incorporated in this notice, during the notice period.

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 the 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 April 20, 1998, 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 contest. Persons may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W, Washington, DC 20549. Applicants, 4 Orinda Way, Building E, Orinda, CA 94563.

FOR FURTHER INFORMATION CONTACT: Annmarie J. Zell, Staff Attorney, at (202) 942–0532, 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 from the SEC's Public Reference Branch, 450 Fifth Street, N.W, Washington, DC 20549 (telephone (202) 942–8090).

Applicants' Representations

1. The Trust, a registered open-end management investment company organized as a Massachusetts business trust, currently consists of five series (collectively, the "Funds").[2] RIEM, an investment adviser registered under the Investment Advisers Act of 1940, is the investment adviser for the Funds.

2. The Barr Rosenberg Double Alpha Market Fund (the "Double Alpha Fund"), a series of the Trust, will seek a total return greater than that of the Standard & Poor's 500 Composite Stock Price Index (the "S & P 500 Index") by investing in shares of the Barr Rosenberg Market Neutral Fund (the "Market Neutral Fund"), while also investing in S & P 500 Index Futures, options on S & P 500 Index Futures, and equity swap contracts (collectively, "S & P Instruments"). The Market Neutral Fund seeks long-term capital appreciation while maintaining minimal exposure to general equity market risk by taking long positions in stocks principally traded in the markets of the United States the RIEM has identified as undervalued and short positions that RIEM has identified as overvalued. By investing in shares of the Market Neutral Fund, the Double Alpha Fund seeks to capture the return generated by the "market neutral strategy" of the Market Neutral Fund. The Double Alpha Fund and the Upper Tier Funds would also like to retain the flexibility to invest in other securities and financial instruments, including financial futures, swaps, reverse repurchase agreements, options on currencies and precious metals.

3. RIEM currently reduces and expects to reduce its management fees and bear certain expenses to the extent that each Fund's total annual operating expenses (excluding nonrecurring account fees and extraordinary expenses) exceed a specified percentage of net assets (the "Voluntary Expense Limit"). Any advisory fee that RIEM charges to the Double Alpha Fund will be for services that are addition to, rather than duplicative of, services provided to the Underlying Funds. Shareholders of the Double Alpha Fund will also pay a proportionate share of the advisory fees and expenses paid by shareholders of the Underlying Funds. Neither the Double Alpha Fund nor the Underlying Funds shares are subject to a sales charge and the Double Alpha Fund intends to invest only in shares of the Underlying Funds that are not subject to distribution or shareholder servicing fees. Applicants believe that the proposed operation of the Double Alpha Fund will benefit investors by lowering transaction and operational costs and providing them with a unique investment alternative.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) provides that no registered open-end investment company may sell it securities to another investment company if the sale will cause the

[1] All existing entities that currently intend to rely on the order are listed as applicants and any Upper Tier Fund that may rely on this order in the future will do so only in accordance with the terms and conditions of the application.

[2] Barr Rosenberg Double Alpha Market Fund, Barr Rosenberg Market Neutral Fund, U.S. Small Capitalization, Japan Series and International Small Capitalization Series.

acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (a) the acquiring company and the acquired company are part of the same group of investment companies; (b) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (c) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) by a securities association registered under section 15A of the Securities Exchange Act of 1934, or the Commission; and (d) the acquired company has a policy that prohibits it from acquiring securities of registered open-end investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G).

3. Applicants state that the proposed arrangement would comply with the provisions of section 12(d)(1)(G), but for the fact that the Double Alpha Funds' investment policies contemplate that it will invest in S & P 500 Instruments and other securities and financial instruments.

4. Section 12(d)(1)(J) provides that the SEC may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent the exemption is consistent with the public interest and the protection of investors. Applicants believe that permitting the Double Alpha Fund or other Upper Tier Funds to invest in securities as described in the application would not raise any of the concerns that the requirements of section 12(d)(1)(G) were designed to address.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Before approving any advisory contract under section 15 of the Act, the board of trustees of the Double Alpha Fund or Upper Tier Fund, including a majority of the trustees who are not "interested persons" as defined in section 2(a)(19) of the Act, will find that advisory fees, if any, charged under such contract are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Underlying Fund's advisory contract. The finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the Double Alpha Fund or Upper Tier Fund.

2. Applicants will comply with all provisions of section 12(d)(1)(G) of the Act, except for section 12(d)(1)(G)(i)(II) to the extent that it restricts the Double Alpha Fund or Upper Tier Fund from investing in securities as described in the application.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–8319 Filed 3–30–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Columbus Energy Corp., Common Stock, Par Value $0.20) File No. 1–9872

March 25, 1998.

Columbus Energy Corp. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the Pacific Exchange, Inc. ("Exchange" or "PCX").

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Security also is listed for trading on the American Stock Exchange ("Amex") where it trades under the symbol EGY.

The Company has represented that the volume of trading in the Security conducted on the PCX has always been low compared to trading in the Security effected elsewhere. The Company has further represented that in one or more recent months there was no trading in the Security conducted on the PCX.

The Company stated that it has approximately 470 Security holders of record. Of those, about 20 Security holders reside in California and hold a small portion of the outstanding Security (12,000 shares out of 4,257,715 shares outstanding).

In the opinion of the Company's management, maintaining the Security's listing on the Exchange is no longer cost effective in light of the annual listing fee and any future additional listing fee charges.

At its regular meeting held on February 12, 1998, the Company's Board of Directors authorized the Company's management to proceed with the voluntary delisting of the Security from the Exchange.

In its letter dated March 4, 1998, the Exchange informed the Company that it would not object to the withdrawal of the Security from listing and registration of the Exchange.

The Company has represented that the Security will continue to trade on the Amex.

Any interested person may, on or before April 15, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–8316 Filed 3–30–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39799; File No. SR–NASD–97–26]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval to Amendment No. 4 Relating to an Extension of the Pilot for the NASD's Rule Permitting Market Makers To Display Their Actual Quotation Size

March 25, 1998.

I. Background

On March 5, 1998, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly-owned subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission" or "SEC") Amendment No. 4 to a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Exchange Act"),[1] and Rule 19b–4 thereunder,[2] to amend NASD Rule 4613(a)(1)(C), seeking to extend through June 30, 1998, the pilot program in which market makers may quote their actual size (*i.e.*, one normal unit of trading) in 150 Nasdaq stocks ("Actual Size Rule").

The Commission is publishing this notice to solicit comments from interested persons and is approving Amendment No. 4 on an accelerated basis.

II. Proposed Rule Change

The NASD proposes to amend NASD Rule 4613(a)(1)(C) to extend the Actual Size Rule through June 30, 1998. The text of the proposed rule change is as follows. (Additions are italicized; deletions are bracketed.)

* * * * *

4613. Character of Quotations

(a) Two-Sided Quotations.

(1) No Change.

(A)–(B) No Change.

(C) As part of a pilot program implemented by The Nasdaq Stock Market, during the period January 20, 1997 through at least [March 27, 1998] *June 30, 1998*, a registered market maker in a security listed on The Nasdaq Stock Market that became subject to mandatory compliance with SEC Rule 11Ac1–4 on January 20, 1997 or identified by Nasdaq as being otherwise subject to the pilot program as expanded and approved by the Commission must display a quotation size for a least one normal unit of trading (or a larger multiple thereof) when it is not displaying a limit order in compliance with SEC Rule 11Ac1–4, provided, however, that a registered market maker may augment its displayed quotation size to display limit orders priced at the market maker's quotation.

* * * * *

III. Discussion

On August 29, 1996, the Commission promulgated a new rule, the Limit Order Display Rule[3] and adopted amendments to the Quote Rule,[4] which together are designed to enhance the quality of published quotations for securities and promote competition and pricing efficiency in U.S. securities markets (collectively, the "Order Execution Rules").[5] To facilitate implementation of the Order Execution Rules, the Commission later approved a variety of amendments to NASD Rules concerning Nasdaq's Small Order Execution System ("SOES") and the SelectNet Service ("SelectNet").[6]

In particular, the Commission temporarily approved a pilot program[7] whereby Nasdaq market makers in the first 50 stocks subject to the Commission's Limit Order Display Rule were only required to display a minimum quotation size of one normal unit of trading when quoting solely for their own proprietary account.[8] For non-pilot Nasdaq stocks, the minimum quotation rise requirements of 1,000, 500, or 200 shares remained the same.[9]

Although the first 50 stocks were chosen to provide a broad cross section of the most liquid Nasdaq stocks, on October 29, 1997, the Commission approved a NASD filing to amend NASD Rule 461(a)(1)(C) to expand the pilot program to 150 Nasdaq stocks. The Commission also extended the pilot until March 28, 1998.[10] The additional 100 stocks were part of an enhanced sample designed to better represent the entire Nasdaq Market.[11] The Commission approved the expansion in response to comment letters suggesting that the first 50 stocks did not sufficiently represent the Nasdaq market because all 20 of the largest Nasdaq stocks were subject to the 100 share minimum. Thus, some commenters suggested that it was difficult to gauge the Actual Size Rule's effect on large Nasdaq stocks since there were no sufficiently large non-pilot stocks with which to compare.

The NASD has concluded an analysis of an expanded pilot, and on March 5, 1998, it filed with the Commission a proposed rule change to apply permanently the Actual Size Rule to all Nasdaq Stocks ("Expansion Proposal").[12] As part of that filing, the NASD published a 127 page economic study of the 150 stock pilot ("March 1998 Study").[13]

In the March 1998 Study, the NASD concluded that:

- The Actual Size Rule did not affect the market quality—in terms of spreads, volatility, depth, or liquidity—of pilot stocks.
- The Actual Size Rule has not altered the ability of investors to access market maker capital. For pilot stocks, retail investors continue to have substantial and reasonable access to dealer capital via both SOES and marker maker proprietary autoexecution systems.
- There was no evidence of any material difference in market quality of pilot stocks and peer non-pilot stocks during the market stress on October 27 and 28, 1997.

In order to provide the Commission and public commenters an opportunity to review the March 1998 Study and its proposal to expand the Actual Size Rule to all Nasdaq stocks on a permanent basis, the NASD proposes to extend the current 150 stock pilot through June 30, 1998.

IV. Commission's Findings and Order Granting Accelerated Approval of Amendment No. 4 to the Proposed Rule Change

The Commission approved the Actual Size Rule on a pilot basis so that its effects could be assessed. In doing so, the Commission stated that it believed that a reduction in the quotation size requirement could reduce the risks that market makers must take, produce accurate and informative quotations, and encourage market makers to maintain competitive prices even in the changing market conditions resulting from the Order Execution Rules.

As discussed above, the NASD has produced an extensive economic analysis of the pilot. The data appears to suggest that the pilot has not resulted in harm to the Nasdaq market. Indeed, as discussed above, the Actual Size Rule appears to be an appropriate adjustment of market making obligations in light of the changing market dynamics resulting from the Order Execution Rules. Nevertheless, the pilot report is lengthy and the Commission would like to receive informed comment on both the report and the NASD's proposal to adopt permanently the Actual Size Rule. Extending the pilot through June 30, 1998, should provide the Commission and the public with adequate time to examine the report and comment more

[1] 15 U.S. 78s(b)(1).

[2] 17 FR 240.19b–4.

[3] 17 CFR 240.11Ac1–4.

[4] 17 CFR 240.11Ac1–1.

[5] See Securities Exchange Act Release No. 37619A (September 6, 1997) 61 FR 48290 (September 12, 1996) ("Order Execution Rules Adopting Release").

[6] See Securities Exchange Act Release No. 38156 (January 10, 1997) 62 FR 2415 (January 16, 1997) (order partially approving SR–NASD–96–43) ("Actual Size Rule Approval Order").

[7] *Id.*

[8] The Actual Size Rule does not affect a market maker's obligation to display the full size of a customer limit order. If a market maker is required to display a customer limit order for 200 or more shares, it must display a quote size reflecting the size of the customer's order, absent an exception from the Limit Order Display Rule. Market makers may display a greater quotation size if they so choose or if required by the Limit Order Display Rule.

[9] See NASD Rule 4613(a)(2).

[10] See SEC Release No. 34–39285 (October 29, 1997), 62 FR 59932 (November 5, 1997).

[11] See Securities Exchange Act Release No. 39285 (October 29, 1997) 62 FR 59932 (November 5, 1997).

[12] See Securities Exchange Act Release No. 39760 (March 16, 1998) 63 FR 13894 (March 23, 1998).

[13] This report is available on the NASD's world wide web site (http://www.nasd.com).

fully the possible impact of the Actual Size Rule on the Nasdaq market. The Commission also believes that approving Amendment No. 4 to the proposed rule change will provide it with greater time to review the public comments before determining whether to expand the Actual Size Rule to all Nasdaq stocks on a permanent basis.

For the reasons discussed above, the Commission finds that the NASD's proposal is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities association and has determined to approve the extension of the pilot through June 30, 1998, on an accelerated basis.

The Commission also finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing in order to continue the pilot on an uninterrupted basis for an additional brief period of time.

Accordingly, the Commission believes that the proposed rule change (SR–NASD–97–26) is consistent with Sections 15A(b)(6) and (b)(9) of the Exchange Act [14] and *it is therefore ordered*, pursuant to Section 19(b)(2) of the Exchange Act,[15] that the proposed rule change, SR–NASD–97–26, be and hereby is approved through June 30, 1998.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–97–26 and should be submitted by April 21, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–8361 Filed 3–30–98; 8:45 am]

BILLING CODE 8010–01–M

[14] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. The proposed rule change will provide the Commission and public commenters with additional time to evaluate the March 1998 Study. Since the Commission believes that the data discussed above indicates that the pilot has not harmed the Nasdaq market thus far, the net effect of approving the proposed rule change will be positive. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23077; 812–11060]

Piper Funds Inc., et al.; Notice of Application

March 25, 1998.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(a) of the Act.

Summary of the Application: The requested order would permit the implementation, without prior shareholder approval, of new investment advisory and sub-advisory agreements ("Interim Agreements") for a period of up to 120 days following consummation of the merger between Piper Jaffray Companies Inc. ("Piper Jaffray") and U.S. Bancorp ("USB") (but in no event later than August 31, 1998) (the "Interim Period"). The order also would permit Piper Capital Management Incorporated (the "Adviser"), Edinburgh Fund Managers plc ("Edinburgh"), Federated Advisers ("Federated"), and Salmon Brothers Asset Management Inc ("Salomon") (Edinburgh, Federated, and Salomon collectively, the "Sub-Advisers) to receive all fees earned under the Interim Agreements following shareholder approval.

Applicants: Piper Funds Inc. ("PFI"), Piper Funds Inc.–II ("PFI–II"), Piper Global Funds Inc. ("PGF"), Piper Institutional Funds Inc. ("PIF"), each on behalf of its separate investment portfolios, American Government Income Fund Inc. ("AGF"), American Government Income Portfolio, Inc. ("AAF"), American Opportunity Income Fund Inc. ("OIF"), American Municipal Term Trust Inc. ("AXT"), American Municipal Term Trust Inc.–II ("BXT"), American Municipal Term Trust Inc.–III ("CXT"), Minnesota Municipal Term Trust Inc. ("MNA"), Minnesota Municipal Term Trust Inc.–II ("MNB"), American Municipal Income Portfolio Inc ("XAA"), Minnesota Municipal Income Portfolio Inc. ("MXA"), American Strategic Income Portfolio Inc. ("ASP"), American Strategic Income Portfolio Inc.–II ("BSP"), American Strategic income Portfolio Inc.–III ("CSP"), American Select Portfolio Inc. ("SLA"), The Americans Income Trust Inc. ("XUS"), Highlander Income Fund Inc. ("HLA"), (collectively, "Piper Funds"), the Adviser, and the Sub-Advisers.

Filing Dates: The application was filed on March 12, 1998.

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 April 20, 1998, 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, N.W., Washington, D.C. 20549. Piper Funds, 222 Sought Ninth Street, Minneapolis, MN 55402–3204; Edinburgh Fund Managers plc, Donaldson House, 97 Haymarket Terrace, Edinburgh, Scotland EH12, 5HD; Federated Advisers, Federated Investors Tower, Pittsburgh, PA 15222–3779; Salomon Brothers Asset Management Inc, Seven World Trade Center, New York, NY 10048.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Knisely, Staff Attorney, at (202) 942–0517, 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, N.W., Washington, D.C. 20549 (tel. 202–942–8090).

Applicants' Representations

1. The Piper Funds are each organized as a Minnesota corporation. PFI, PFI–II,

PGF, and PIF are each registered under the Act as an open-end management investment company. PFI is organized as a series investment company and currently offers twelve separate portfolios. PFI–II offers a single portfolio, PGF is organized as a series company and currently offers two portfolios. PIF offers a single portfolio. The Piper Funds also include the following closed-end investment companies, each of which is registered under the Act: AGF, AAF, OIF, AXT, BXT, CXT, MNA, MNB, XAA, MXA, ASP, BSP, CSP, SLA, XUS, and HLA.

2. The Adviser, a wholly-owned subsidiary of Piper Jaffray, is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). The Adviser serves as investment adviser to the Piper Funds. The Adviser also serves as sub-adviser to The Monitor Mortgage Securities Fund (the "Monitor Fund") (Monitor Fund, together with the Piper Funds, the "Funds"), under a sub-advisory agreement with the Huntington Trust Company ("Huntington").

3. Edinburgh, a wholly-owned subsidiary of Edinburgh Fund Managers Group plc and an investment adviser registered under the Advisers Act, serves as sub-adviser to the Pacific-European Growth Fund and Emerging Markets Growth Fund series of PGF. Federated, a subsidiary of Federated Investors and an investment adviser registered under the Advisers Act, serves as sub-adviser to HLA. Salomon, an indirect subsidiary of Travelers Group Inc. and an investment adviser registered under the Advisers Act, serves as sub-adviser to XUS.

4. On December 14, 1997, USB and Piper Jaffray entered into an agreement and plan of merger pursuant to which USB will acquire Piper Jaffray and its direct and indirect subsidiaries (the "Merger"). On the date and at the time when the Merger becomes effective (the "Effective Date"), a wholly-owned subsidiary of USB, organized for the purpose of participating in the Merger, will merge into Piper Jaffray and Piper Jaffray will continue as the surviving corporation and a wholly-owned subsidiary of USB. The consummation of the Merger is subject to certain closing conditions, including the approval of the shareholders of Piper Jaffray and the receipt of certain regulatory approvals. Piper Jaffray and USB anticipate that the Merger will occur during the second quarter of 1998.

5. Applicants believe that the Merger may result in the assignment and thus automatic termination of the existing investment advisory agreements between the Piper Funds and the Adviser, the sub-advisory agreements between the Adviser and the Sub-Advisers, and the sub-advisory agreement between the Adviser and Huntington (collectively, the "Existing Agreements"). Applicants request an exemption to permit (i) the implementation prior to obtaining shareholder approval, of the Interim Agreements, and (ii) the Adviser and the Sub-Advisers to receive, upon approval of the Fund shareholders, any and all fees earned under the relevant Interim Agreement during the Interim Period. Applicants state that the terms and conditions of the corresponding Existing and Interim Agreements will be the same, except with respect to their effective and termination dates and the inclusion of escrow arrangements described below.

6. Applicants state that the board of directors of each Fund (collectively, the "Boards") will convene regular or special meetings on a date prior to the Effective Date to discuss the Merger and its implications for the respective Funds. Applicants represent that in connection with these meetings the Boards will receive from representatives of the Adviser, the Sub-Advisers, and USB such information as they may request as reasonably necessary to evaluate, among other things, the terms of the proposed Interim Agreements and to determine whether the Interim Agreements are in the best interests of the respective Funds and their shareholders. Applicants state that each Interim Agreement will not be implemented unless (i) the respective Board, including in each case a majority of the Board members who are not "interested persons," as that term is defined in section 2(a)(19) of the Act, of the Fund (the "Independent Directors"), after a full evaluation, with the advice and assistance of independent counsel, votes, in the manner prescribed in section 15(c) of the Act, to approve the Interim Agreement; and (ii) the Board votes to recommend that shareholders of the Fund approve the Interim Agreement during the 120-day period commencing on the Effective Date.[1]

7. Fees earned under the Interim Agreements during the Interim Period will be maintained in an interest-bearing escrow account with an unaffiliated bank. The escrow agent will release the amounts held in the escrow account (including any interest earned): (i) to the Adviser and, if applicable, any Sub-Adviser, only upon approval of the Interim Agreements by the shareholders of the relevant Fund; or (ii) to the relevant Fund, in the absence of approval by its shareholders. Before amounts are released from the escrow account, the Board will be notified.

[1] To the extent that the Board of any Fund cannot meet prior to the Effective Date, applicants acknowledge that such Fund may not rely on the exemptive relief requested in the application.

Applicant's Legal Analysis

1. Section 15(a) of the Act provides, in pertinent part, that it shall be unlawful for any person to serve or act as investment adviser of a registered investment company except pursuant to a written contract that has been approved by the vote of a majority of the outstanding voting securities of the registered investment company. Section 15(a) further requires that the written contract provides for its automatic termination in the event of its "assignment." Section 2(a)(4) of the Act defines "assignment" to include any direct or indirect transfer of a contract by the assignor, or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor.

2. Applicants state that, as a result of the Merger, Piper Jaffray will become a wholly-owned subsidiary of USB. Applicants believe, therefore, that the Merger may result in the "assignment" of the Existing Agreements, thus terminating the Agreements pursuant to their terms.

3. Rule 15a–4 under the Act provides, in pertinent part, that if an investment advisory contract with a registered investment company is terminated by assignment, the adviser may continue to serve for 120 days under a written contract that has not been approved by the company's shareholders, provided that: (i) the new contract is approve by that company's board of directors (including a majority of non-interested directors); (ii) the compensation to be paid under the new contract does not exceed the compensation that would have been paid under the contract most recently approved by the company's shareholders; and (iii) neither the adviser nor any controlling person of the adviser "directly or indirectly receives money or other benefit" in connection with the assignment. Applicants state that they may not be entitled to rely on rule 15a–4 because of the benefits that Piper Jaffray and the Adviser will receive from the Merger.

4. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction from any provision of the Act, 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 Act. Applicants believe that the requested relief meets this standard.

5. Applicants note that the timing of the Merger was determined in response to a number of business concerns substantially unrelated to the Funds or the Adviser. Applicants state that the pending Effective Date and the form of transaction deemed most appropriate by Piper Jaffray and USB do not permit an opportunity to secure prior approval of the Interim Agreements by the Funds' shareholders. Applicants state that, in addition, because it is likely that many of the Funds will be merged into corresponding funds of the First American family of funds during the Interim Period ("Family Fund Combination"), the granting of the requested order will allow the Funds to undertake a single proxy solicitation for obtaining shareholder approval of the Merger, the Interim Agreements, and any Family Fund Combination. Applicants believe a single proxy solicitation will, by eliminating unnecessary burdens and reducing shareholder confusion, be in the best interests of the Funds and their shareholders.

6. Applicants submit that they will take all appropriate actions to prevent any diminution in the scope or quality of services provided to the Funds during the Interim Period.

Applicants state that the Existing Agreements were approved by the Board and the shareholders of the Funds. Applicants represent that the Interim Agreements will have the same terms and conditions as the Existing Agreements, except for the dates of commencement and termination and the inclusion of escrow arrangements. Accordingly, applicants assert that each Fund will receive, during the Interim Period, substantially identical investment advisory and/or sub-advisory services, provided in the same manner, as it received prior to the Effective Date. Applicants state that, in the event there is any material change in the personnel of the Adviser or Sub-Adviser providing services under the Interim Agreements during the Interim Period, the Adviser or Sub-Adviser, as the case may be, will apprise and consult the Boards to assure that the Boards, including a majority of Independent Directors, are satisfied that the services provided by the Adviser or Sub-Adviser will not be diminished in scope or quality.

7. Applicants contend that to deprive the Adviser and the Sub-Advisers of their customary fees during the Interim Period would be an unduly harsh and unreasonable penalty. Applicants note that the fees payable to the Adviser and the Sub-Advisers under the Interim Agreements will not be released to the Adviser or, if applicable, any Sub-Adviser, by the escrow agent without the approval of the Fund shareholders.

Applicants' Conditions

Applicants agree as conditions to the issuance of the exemptive order requested by this application that:

1. Each Interim Agreement will have the same terms and conditions as the respective Existing Agreement, except for the effective and termination dates and the inclusion of the escrow arrangements.

2. Fees earned by the Adviser or any Sub-Adviser during the Interim Period in accordance with an Interim Agreement will be maintained in an interest-bearing escrow account with an unaffiliated bank, and amounts in such account (including interest earned on such paid fees) will be paid to the Adviser and, if applicable, any Sub-Adviser, only upon approval of the related Fund shareholders or, in the absence of such approval, to the related Fund.

3. Each Fund will hold a meeting of shareholders to vote on approval of the related Interim Agreement or Interim Agreements on or before the 120th day following termination of the Existing Agreements, but in on event later than August 31, 1998.

4. Piper Jaffray, USB and/or one or more subsidiaries of the foregoing, but not the Funds, will pay the costs of preparing and filing the application and the costs relating to the solicitation of the approval of the Funds' shareholders of the Interim Agreements.

5. The Adviser and the Sub-Advisers will take all appropriate actions to ensure that the scope and quality of advisory and other services provided to the Funds under the Interim Agreements will be at least equivalent, in the judgment of the respective Boards, including a majority of the Independent Directors, to the scope and quality of services provided under the Existing Agreements. In the event of any material change in personnel providing services pursuant to the Interim Agreements, the Adviser or a Sub-Adviser, as the case may be, will apprise and consult the Boards of the affected Funds to assure that such Boards, including a majority of the Independence Directors, are satisfied that the services provided by the Adviser or such Sub-Adviser will not be diminished in scope or quality.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–8363 Filed 3–31–98; 8:45 a.m.]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39794; File No. SR–NASD–98–17]

Self-Regulatory Organizations; Notice of Extension of the Comment Period for the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to an Integrated Order Delivery and Execution System

March 25, 1998.

On February 19, 1998, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly-owned subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") a series of proposed rule changes.[1] The NASD is proposing new rules and amendments to existing NASD rules to establish an integrated order delivery and execution system ("System").

As proposed, the new System will have three types of registered executing participants (as it does currently): market makers, electronic communication networks ("ECNs"), and UTP exchange specialists. Executing participants' quotes will be displayed on Nasdaq workstations, disseminated through information vendors, and accessible by System participants. Registered NASD members, and certain customers they sponsor, will be able to deliver various sized orders (up to 999,999 shares, if the Actual Size Rule is expanded to all Nasdaq stocks[2] through the new System to electronically access the displayed quotations.

The System features a voluntary central limit order file that all market participants will be able to access either directly or through a System participant. System participants will be able to send

[1] Exchange Act Release No. 39718 (March 4, 1998) 63 FR 12124 (March 12, 1998) (File No. SR–NASD–98–17). As originally noticed, the comment period ran through April 2, 1998.

[2] The Actual Size Rule allows market makers to quote their actual size by reducing the minimum quotation size requirement to one normal unit of trading (*i.e.*, 100 shares). The Actual Size Rule currently applies to 150 Nasdaq stocks on a pilot basis. The NASD has filed a proposal to expand the pilot program to cover all Nasdaq stocks permanently. *See* Exchange Act Release No. 39760 (March 16, 1998) 63 FR 13894 (March 23, 1998).

directed (*i.e.*, to a particular market maker) or non-directed orders. Orders will remain anonymous until they are executed. The System will replace the Small Order Execution System ("SOES") and SelectNet (and related NASD rules), while maintaining features of each. Primary market makers will be able to sponsor other firms (*e.g.*, institutions), giving them System access.

As proposed, the System would operate differently depending on whether the Commission approves the NASD's request to permit Market Makers to quote their actual size for all Nasdaq stocks.[3] If the Actual Size Rule is not extended to all Nasdaq stocks, the Nasdaq proposes that nonmarket makers will not be permitted to enter orders larger than 1,000 shares for non-directed orders, and that the SOES prohibition on splitting orders and the Five Minute Rule (*i.e.*, any orders sent within a five minute period are considered part of one order) will be retained. Also, if Actual Size is not expanded to cover all Nasdaq stocks, the NASD proposes that non-market makers be prohibited from entering principal orders. Finally, if Actual Size is approved for all Nasdaq stocks, the order splitting and Five Minute Rules will not apply.

Under the proposal, market makers will no longer be "SOESed-Out-of-the-Box" when they allow their quote size to be diminished to zero.[4] Instead, the NASD proposes that after three (rather than the current five) minutes, a firm that is effectively out of the market (*i.e.*, has not refreshed its quote) will be automatically reestablished at the lowest ranked bid and offer for 1,000 shares.

Given the proposal's complexity and the Commission's desire to give the public sufficient time to consider the proposal, the NASD has consented to extend the comment period to May 8, 1998.[5]

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. 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 ruld change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–98–17 and should be submitted by May 8, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–8317 Filed 3–30–98; 8:45 am]

BILLING CODE 8010–01–M

[3] *Id.*

[4] See Exchange Act Release No. 39423 (December 10, 1997) 62 FR 66160 (December 17, 1997).

[5] See letter from Richard G. Ketchum, President and Chief Operating Officer, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated March 24, 1998.

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39787; File No. SR–PCX–98–14]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval, of Proposed Rule Change by the Pacific Exchange, Inc. and Amendment No. 1 Thereto, Relating to a Supervisory Specialist Pilot Program

March 24, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 3, 1998, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. On March 12, 1998, the PCX filed an amendment to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX, to Marc McKayle, Attorney, Division of Market Regulation, Commission (March 12, 1998) ("Amendment No. 1"). In Amendment No. 1 PCX provides a basis for accelerated effectiveness of the proposal pursuant to Section 19(b)(2) of the Act. PCX explains that seats are trading at record prices making it increasingly difficult to operate a specialist post on the equities floor. PCX maintains that accelerated effectiveness of the proposed rule will permit specialist firms greater control over the impact of seat prices, and preserve the quality of the Exchange's markets and services provided to the public and its members.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCX is proposing to adopt a temporary program, effective ninety days, under which PCX specialist firms may operate two specialist posts based upon one Exchange membership.[4] The text of the proposed rule change is available at the Office of the Secretary, PCX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In an effort to streamline the way business is conducted on the Exchange's Equities Floors, and to provide Exchange Specialist Firms with greater control over the management and costs of their operations, the Exchange is proposing to adopt the Supervisory Specialist Pilot Program ("Program"). Under the Program, the Exchange's Executive Committee will permit qualified specialist Firms to participate in the Program during a limited, ninety day period. Throughout the course of the Program, the Executive Committee will seek to assure an orderly transition of Specialist Firms into the Program. The Program will apply to trading on the Equities Floors only and will not apply to trading on the Options Floor.

Under the Program, a Specialist Firm may operate two specialist posts based upon one Exchange membership, provided that both posts will be staffed by Specials who have been qualified by the Exchange as Register Specialists

[4] The Commission notes that the Exchange also has filed a proposed rule change to implement a one year Supervisory Specialist Pilot Program to become effective upon the termination of the instant ninety day program ("Companion Filing"). See SR–PCX–98–13.

under the rules of the Exchange.[5] The Program will permit one specialist post to be staffed by a Member who is registered as the supervising specialist (the "Supervisory Specialist"), while the other post is staffed by an Associated Person of the Specialist Firm who is otherwise qualified to act as a Registered Specialist (the "Associate Specialist"). Under the Program, the Supervisory Specialist will act as supervising specialist over the Associate Specialist.

Under the Program, both the Supervisory Specialist and the Associate Specialist will be obligated to pay the dues, fees and charges as specified in the Exchange's Schedule of Fees and Charges for Exchange Services.

Specialist Firms may apply to participate in the Program by submitting an application to the Executive Committee. The Executive Committee will take into account certain relevant factors including those specified below. The Executive Committee may, at its discretion, approve a Specialist Firm to participate in the Program based on the following primary factors: the applicant Specialist Firm's current cost of operating its specialist posts, including the rental cost (if any) of each seat; whether the value and revenue stream from existing specialist posts will be retained if the application is approved; and whether the long-term viability of the business and trading volume of a specialist post will be retained if the application is approved. The Executive Committee will also take into account the following secondary factors in reviewing an application: the past experience of individuals who are proposed to serve as Specialists under the Program; recent specialist performance ratings of individuals who are proposed to serve as Specialists under the Program (these ratings should include evaluation scores for the last eight quarters, if they are available);[6] the disciplinary history of the Specialist Firm and the individuals who are proposed to serve as Specialists under the Program; and other relevant factors that the applicant wishes the Executive Committee to consider.

The Executive Committee will oversee the implementation of the Program and will study the impact of the Program on the quality of markets at specialist posts operating under the Program. Based on this study, the Executive Committee may adopt more specific standards and procedures for operating the Program. The Executive Committee is not required to approve any number of applicants, and there are no limits on the number of applicants who may be approved under the Program. Applicants, however, are restricted to Exchange Members with seats on the Equity floor, and no more than two specialist posts may be operated per membership.[7]

Under the Program, a Specialist Firm may operate two trading posts based upon one membership, provided that the following conditions are met:

a. The two trading posts must be contiguous.

b. Each post must be operated by a person who meets all of the qualifications of a Registered Specialist. Specifically, each Associate Specialist must achieve a passing grade of at least 80% on a written examination for Registered Specialists prepared by the Exchange. This is the same examination and the same passing score required for all Registered Specialists, as provided in PCX Rule 5.27(c)(ii).

c. The Associate Specialist must be an "Associated Person" of the Specialist Firm as defined PCX Rule 1.1(d). Associate Specialists may consummate transactions on the Equity Floors of the Exchange, provided that they do so under the supervision of a Supervisory Specialist.

d. The Supervisory Specialist must be registered with the Exchange as a "Member" as defined in PCX Rule 1.1(i). The Supervisory Specialist will act as supervising specialist over the Associate Specialist. A Supervisory Specialist is a member who has been qualified by the Exchange to act as a specialist and who is responsible for supervising the trading activities of an Associate Specialist.

e. The performance of the Supervising Specialist and the Associate Specialist will be evaluated individually pursuant to PCX Rule 5.37 ("Evaluation of Specialist Performance").

Under the Program, an Associate Specialist will be deemed to be a Registered Specialist for all purposes under the rules of the Exchange, unless otherwise specified herein.[8]

[5] See e.g., PCX Rule 5.27.

[6] Supervisory and Associate Specialists will be evaluated pursuant to the criteria set forth in PCX Rule 5.37(a). The five separate measures of performance are (1) Executions, (2) Specialist Evaluation Questionnaire Survey, (3) Book Display Time, (4) Post 1 P.M. Parameters and (5) Quote Performance.

[7] Telephone conversation between Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX, and Marc McKayle, Attorney, Division of Market Regulation, Commission (March 23, 1998).

[8] In addition to the Exchange requirements as discussed above, the Associate Specialist (as well as the Supervisory Specialist) must comply with all applicable federal securities law requirements. See e.g., Exchange Act Section 14 (requiring broker-dealers to register with the Commission).

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b)[9] of the Act, in general, and Section 6(b)(5),[10] in particular, in that it is designed to facilitate transactions in securities and to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on the competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendment, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–98–14 and should be submitted by April 21, 1998.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, 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. In particular, the

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

Commission believes the proposal is consistent with the Exchange Act Section 6(b)(5)[11] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public. The proposal is designed to reduce the cost of operations for PCX Specialist firms, while ensuring that the Specialist firms maintain managerial control over the posts they supervise. The Program could enhance liquidity in equity securities traded on the Exchange and reduce costs to Exchange members by giving Specialist firms the opportunity to become specialists in more stocks without incurring additional membership costs.

In addition, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register.** The PCX has represented that seat prices on the Exchange are trading at record prices, thus making it increasingly difficult for equity specialists to operate at a profit.[12] Accordingly, the Commission believes it is appropriate for the PCX to implement the Supervisory Specialist Pilot Program without delay. Moreover, the Commission notes that the Program is effective only for ninety days, and that the companion filing will be published for the full twenty-one day comment period.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–PCX–98–14) is hereby approved on an accelerated basis through June 22, 1998. For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–8360 Filed 3–30–98; 8:45 am]

BILLING CODE 8010–01–M

[11] *Id.*

[12] See Amendment No. 1, *supra,* note 3.

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3 (a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39802; File No. SR–PHLX 98–13]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Continuing Education Requirements of Registered Persons

March 25, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on March 11, 1998, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commision is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.[2]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, in support of the recommendations of The Securities Industry/Regulatory Council on Continuing Education, proposes to amend both the regulatory and firm element requirements of Rule 640.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and statutory basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has already published for comment rule proposals by four other self-regulatory organizations which are virtually identical to this Phlx filing. See Securities Exchange Act Release Nos. 39574 (January 23, 1998), 63 FR 4510 (January 29, 1998)(SR–NASD–98–03); 39575 (January 23, 1998), 63 FR 4507 (January 29, 1998) (SR–CBOE–97–68); 39576 (January 23 1998), 63 FR 4509 (January 29, 1998) (SR–MSRB–98–02); and 39577 (January 23, 1998), 63 FR 4513 (January 29, 1998) (SR–NYSE–97–33). The Commission received 5 comment letters, which were discussed in the order approving the other proposals. See Securities Exchange Act Release No. 39712 (March 3, 1998).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to revise Rule 640 to strengthen the Continuing Education Requirements for registered persons and implement a new program specifically designed for managers and supervisors. Exchange Rule 640 provides for a continuing education program for registered persons of Exchange members and member organizations. The program, which is uniform within the industry, consists of two parts—a Regulatory Element and a Firm Element. The Regulatory Element requires registered persons to participate in interactive computer-based training at specified intervals and encompasses regulatory and compliance issues, sale practice concerns and business ethics.

The Regulatory Element program applies generally to all registered persons and currently does not discern between registration types or categories. The existing program contains content common to registered representatives, supervisory persons as well as other registration categories. The Securities Industry/Regulatory Council on Continuing Education (a council of broker-dealer and Self-Regulatory Organization ("SRO")[3] representatives that oversees and provides ongoing development and operation of the program) has recommended development of a new program component specifically for supervisors. In addition, it is contemplated that in the future, specific programs may be implemented for other registration categories. The proposed amendments to Rule 640 will allow for the Exchange to require specific new programs as appropriate with customized training for various registration categories, with the supervisor's program, being the first such initiative. For purposes of Exchange rules, the following registration categories shall de deemed to be included in the supervisory category: Series 4 (Registered Options Principal Examination); Series 8 (General Securities Sales Supervisor Examination); Series 27 (Financial and Operations Principal Examination); Series 28 (Introducing Broker-Dealer Financial and Operational Principal Examination); the Series 53 (Municipal

[3] SROs represented on the Council include the American Stock Exchange, Chicago Board Options Exchange, Municipal Securities Rulemaking Board, National Association of Securities Dealers, New York Stock Exchange, and the Phlx.

Securities Principal Qualification Examination).

The proposed amendments also address the time-frames at which registered persons must participate in the Regulatory Element computer-based training. Rule 640 currently requires all registered persons to complete the training on three occasions, *i.e.*, their second, fifth and tenth registration anniversaries, and also when they are the subject of significant disciplinary action(s). Once persons are registered for more than ten years they are currently graduated from the program and are not required to participate further in the Regulatory Element unless they become subject to significant disciplinary action. The Council has recommended that the requirement be revised to require ongoing participation in the program by registered persons. In accordance with that recommendation, the proposed amendments to Rule 640 will require participation in the Regulatory Element throughout a registered person's career, specifically, on the second registration anniversary and every three years thereafter (*i.e.*, the fifth, eighth, eleventh, etc. anniversaries), with no graduation from the program.

Proposed amended Rule 640 will allow a one-time exemption for persons currently graduated from the program by providing that those persons who have been registered for more than ten years as of the effective date of the rule amendments, and who have not been the subject of a disciplinary action during the past ten years, will continue to be excluded from required ongoing participations in the Regulatory Element. However, persons registered in a supervisory capacity will have to have been registered in a supervisory capacity for more than 10 years in order to be covered by this one-time provision for graduation from participation in the program. Therefore, those supervisors who have graduated from the program requirements based on their initial registration date, but who have not completed 10 years as a supervisor, will be required to re-enter the program to participate in the supervisory program.

The Firm Element requires that each member and member organization conduct annually an analysis of their training needs and administer such training, as is appropriate, to their registered persons who have direct contact with customers and the immediate supervisors of such registered persons, on an ongoing basis in topics specifically related to their business such as new products, sales practices, risk disclosure and new regulatory requirements and concerns. The proposed amendments to Rule 640 will required members and member organizations to additionally focus on supervisory training needs in conducting their analysis of training needs and, if it is determined that there is a specific need for supervisory training, address such training needs in the Firm Element training plan.

2. Statutory Basis

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 Section 6(c)(3) of the Act.[4] Under that Section, it is the Exchange's responsibility to prescribe standards of training, experience and competence for persons associated with Exchange members and member organizations. Pursuant to this statutory obligation, the Exchange has proposed this rule change in order to enhance the establishment continuing education program for registered persons.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed ruled change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 Phlx. All submissions should refer to the file number SR–Phlx–98–13 and should be submitted by April 21, 1998.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the Exchange's proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[5] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and 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 further believes that the proposed rule change is consistent with the provisions of Section 6(c)(3)(B) of the Act,[6] which makes it the responsibility of an exchange to prescribe standards of training, experience, and competence for persons associated with SRO members.

The Commission also believes that the proposed rule change is consistent with the purposes underlying Section 15(b)(7) of the Act, which generally prohibits a registered person from effecting any transaction in, or inducing the purchase or sale of, any security unless such registered person meets the standard of training, competence and other qualifications as the Commission finds necessary or appropriate in the public interest or for the protection of investors. The Commission believes that the Exchange's proposed rule change is an appropriate means of maintaining and reinforcing the initial qualification standards required of a registered person and will significantly enhance the continuing education program by requiring all registered persons to participate in the Regulatory Element throughout their securities industry careers.[7]

The Commission therefore finds good cause for approving the proposed rule change (SR–Phlx–98–13) prior to the

[4] 15 U.S.C. 78f(c)(3).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(c)(3)(B).

[7] These amendments proposed by the Phlx on continuing education have been uniformly adopted by the other SRO Council members. *See* Securities Exchange Act Release Nos. 39711 (March 3, 1998) and 39712 (March 3, 1998).

thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–Phlx–98–13) be, and hereby is, approved. The rule change shall become effective on July 1, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–8362 Filed 3–30–98; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities; Submissions for OMB Review

This notice lists information collection packages that have been sent to the Office of Management and Budget (OMB) for clearance, in compliance with Pub. L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995.

1. *Government Pension Questionnaire—0960–0160.* The Social Security Act and Regulations provide that an individual receiving spouse's benefits and concurrently receiving a Government pension, based on the individual's own earnings, may have the Social Security benefit amount reduced by two-thirds of the pension amount. The data collected on Form SSA–3885 is used by the Social Security Administration (SSA) to determine if the individual's Social Security benefit will be reduced, the amount of reduction, the effective date of the reduction and if one of the exceptions in 20 CFR 404.408a applies. The respondents are individuals who are receiving (or will receive) Social Security spouse's benefits and also receive their own Government pension.

Number of Respondents: 76,000.

Frequency of Response: 1.

Average Burden Per Response: 12.5 minutes.

Estimated Annual Burden: 15,833 hours.

2. *Telephone Replacement Card Interview Script—0960–0570.* SSA will conduct a pilot study by telephone to obtain information from individuals who need a duplicate Social Security Number (SSN) card. The information collected will be used to properly identify an individual prior to releasing a replacement SSN card, thus eliminating the need for the respondent to take or mail his/her identity documents to a Social Security office. The information provided, which should be known by the true Social Security number holder, will be compared to information available in our current electronic systems. The respondents are U.S. Citizens applying for a replacement SSN card.

Number of Respondents: 100,000.

Frequency of Response: 1.

Average Burden Per Response: 4 minutes.

Estimated Average Burden: 6,667 hours.

3. *Reconsideration Report for Disability Cessation—0960–0350.* Form SSA–782-BK will be used by claimants and SSA field offices to document new developments on the claimant's condition (as perceived by the claimant), since the prior continuing disability interview was conducted. The form will also be used by the SSA interviewer to provide his/her observations of the claimant. The respondents are claimants for Old-Age, Survivors and Disability Insurance and Supplemental Security Income, who file a Request for Reconsideration—Disability Cessation.

Number of Respondents: 100,000.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Average Burden: 50,000 hours.

Written comments and recommendations regarding the information collection(s) should be directed within 30 days to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses:

(OMB)

Office of Management and Budget, OIRA Attn: Laura Oliven, New Executive Office Building, Room 10230, 725 17th St., NW., Washington, D.C. 20503

(SSA)

Social Security Administration, DCFAM, Attn: Nicholas E. Tagliareni, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235

To receive a copy of any of the forms or clearance packages, call the SSA Reports Clearance Officer on (410) 965–4125 or write to him at the address listed above.

Dated: March 25, 1998.

Nicholas E. Tagliareni,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 98–8277 Filed 3–30–98; 8:45 am]

BILLING CODE 4190–29–P

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

This statement amends part T of the Statement of the Organization, Functions and Delegations of Authority which covers the Social Security Administration (SSA). Chapter TE covers the Deputy Commissioner for Communications. Notice is given that Chapter TE, the Office of Communications is being amended to reflect the establishment of subordinate components within the Office of Communications Policy and Technology (TEB) and the retitling of the component. The changes are as follows:

Section TE.10 *Office of Communications*—(Organization):

Retitle:

D. The "Office of Communications Policy and Technology" (TEB) to the "Office of Communications Planning and Technology" (TEB).

Establish:

1. The Office of Media Development (TEBA).

2. The Office of Media Technologies(TEBB).

Section TE.20 *The Office of Communications*—(Functions):

Retitle:

D. The "Office of Communications Policy and Technology" (TEB) to the "Office of Communications Planning and Technology" (TEB).

Establish:

1. The Office of Media Development (TEBA).

a. Directs the Agency's overall internal and external communications and public information activities.

b. Oversees the development, implementation and monitoring of national policies, standards, guidelines, objectives and measures related to all SSA PI/PA activities.

c. Directs a comprehensive program of internal SSA communication activities for employees at all levels in all headquarters and field locations.

d. Directs the dissemination of PI/PA material ranging from program pamphlets and information packets for external consumption to broadcast quality video productions.

e. Provides Agency leadership in the identification of the special communications needs of the non-English speaking population and directs and/or coordinates related PI/PA activities for this population.

f. Provides ongoing consultative advice and support to other SSA headquarters and field components regarding program specific, regional and/or local PI/PA activities.

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

g. Conducts evaluation and assessment of the results and effects of PI/PA activities and assesses the effectiveness of PI/PA material produced by the Office of Communications (OCOMM) or other SSA components.

2. The Office of Media Technologies (TEBB).

a. Directs the Agency's overall communications technology design, development, procurement and implementation activities and applications.

b. Directs the development of Agency-level strategies and policies for the effective use of a wide variety of communications technologies in support of SSA-wide PI/PA activities.

c. Directs the design, development, production and distribution of all PI/PA audiovisual and graphics material within and external to SSA.

d. Evaluates media proposal, products or productions intended for internal or external use in SSA's PI/PA activities.

Dated: March 13, 1998.

Paul D. Barnes,

Deputy Commissioner for Human Resources.

[FR Doc. 98–8278 Filed 3–30–98; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings, Agreements Filed During the Week Ending March 20, 1998

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–98–3636
Date Filed: March 17, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC3 Telex Mail Vote 918
Malaysia–TC3 Reso 010u
Intended effective date: July 1, 1998

Docket Number: OST–98–3645
Date Filed: March 19, 1998
Parties: Members of the International Air Transport Association
Subject:
COMP Telex Mail Vote 917
Childrens/Youth Charges from Germany
Telex TW858—Amendment to Mail Vote
r–1—010t r–4—078c r–7—074kk r–10—080j
r–2—076q r–5—074aa r–8—078d r–11—080tt
r–3—076jj r–6—076w r–9—080ff r–12—074w
Intended effective date: April 1, 1998

Docket Number: OST–98–3646
Date Filed: March 19, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC23 Telex Mail Vote 919
New Guinea to Europe/Middle East/Africa Reso 010v
Telex TW866—Technical Correction
Intended effective date: April 1, 1998

Paulette V. Twine,

Federal Register Liaison.

[FR Doc. 98–8365 Filed 3–30–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending March 20, 1998

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–98–3633.
Date Filed: March 16, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: April 13, 1998.

Description: Amendment No. 2 to the Application of Uzbekistan Airways, pursuant to 49 U.S.C. Section 41302 and Subpart Q of the Regulations, for a foreign air carrier permit, requesting that the permit, when issued, contain all of the rights available to UZB pursuant to the recently concluded Open Skies agreement between the United States and the Republic of Uzbekistan; and Motion for leave to amend.

Docket Number: OST–98–3654.
Date Filed: March 20, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: April 17, 1998.

Description: Application of DHL Airways, Inc. pursuant to 49 U.S.C. 41102 and Subpart Q of the Regulations, request an amendment to its certificate of public convenience and necessity for all-cargo foreign air transportation to Mexico on Route 725 to add Austin, Texas as a coterminal point so that it would be authorized without limitation of time, to perform foreign air transportation of property and mail between the coterminal points Cincinnati, Ohio, Houston, Texas, and Austin, Texas, on the one hand, and the coterminal points Mexico City, Guadalajara, and Monterrey, Mexico, on the other hand.

Paulette V. Twine,

Federal Register Liaison.

[FR Doc. 98–8366 Filed 3–30–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Fitness Determination of Vintage Props & Jets, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 98–3–24, Order to Show Cause.

SUMMARY: The Department of Transportation is proposing to find Vintage Props & Jets, Inc., fit, willing, and able to provide commuter air service under 49 U.S.C. 41738.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, X–56, Department of Transportation, 400 Seventh Street, SW., Room 6401, Washington, DC, 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than April 8, 1998.

FOR FURTHER INFORMATION CONTACT: Carol Woods, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC, 20590, (202) 366–2340.

Dated: March 25, 1998.

Charles A. Hunnicutt.

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 98–8307 Filed 3–30–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–98–5]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 20, 1998.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–CNTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Tawana Matthews (202) 267–9783 or Angela Anderson (202) 267–9681 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on March 25, 1998.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29127.

Petitioner: National Aeronautics and Space Administration.

Sections of the Far Affected: Section 40102(a)(37)(B) of Title 49.

Description of Relief Sought: To permit NASA to operate its KC–135 aircraft as a public aircraft in support of scientific, aerospace, and aeronautical programs in cooperation with State and foreign Governments, universities, and private industry while carrying certain passengers or receiving reimbursement for these operations.

Docket No.: 29139.

Petitioner: Helicopter Association International.

Sections of the FAR Affected: 14 CFR 61.197(a)(2)(iii).

Description of Relief Sought: To permit each graduate of an HAI-sponsored Federal Aviation Administration-approved flight instructor refresher course to renew his or her flight instructor certificate more than 90 days preceding the expiration month of that certificate.

Docket No.: 29032.

Petitioner: Lake Area Technical Institute.

Sections of the FAR Affected: Part A of subtitle VII of Title 49.

Description of Relief Sought: To permit LATI to operate its Beechcraft U–21A aircraft as a public aircraft.

Docket No.: 29143.

Petitioner: Honeywell, Inc.

Sections of the FAR Affected: 14 CFR 145.47(b).

Description of Relief Sought: To permit Honeywell, a Federal Aviation Administration (FAA)-certificated repair station (No. HWOY904N), to substitute the instrument calibration standards of the Instituto Nacional de Metrologia, Normalizacao e Qualidade Industrial, Brazil's national standards laboratory, and the pressure standards of France's Bureau National de Metrologie, Laboratoire Primarire du Temps et des Frequences, for the calibration standards of the U.S. National Institute of Standards and Technology, formerly the National Bureau of Standards, to test its inspection and test equipment.

Dispositions of Petitions

Docket No.: 28569.

Petitioner: Rocky Mountain Holdings, L.L.C.

Sections of the FAR Affected: 14 CFR 133.1(d), 133.35(a), and 133.45(e)(1).

Description of Relief Sought: To permit RMH to conduct external-hoist, high-altitude rescue operations using two Agusta A109K2 (A109K2) helicopters type certificated in the normal category and not capable of maintaining a hover with one engine inoperative.

GRANT, March 19, 1998, Exemption No. 6740.

Docket No.: 23869.

Petitioner: The Uninsured Relative Workshop, Inc.

Sections of the FAR Affected: 14 CFR 105.43(c).

Description of Relief Sought/ Disposition: To permit TURWI to allow its employees, representatives, and other volunteer experimental parachute test jumpers under its direction and control to make tandem parachute jumps while wearing a dual-harness, dual-parachute pack having at least one main parachute and one auxiliary parachute packed in accordance with § 105.43(a). It also permits pilots in command of aircraft involved in these operations to allow such persons to make these parachute jumps.

GRANT, March 13, 1998, Exemption No. 4943I.

Docket No.: 29130.

Petitioner: Trans-Exec Air Services, Inc.

Sections of the FAR Affected: 14 CFR 135.152(a).

Description of Relief Sought/ Disposition: To permit TEAS to operate its Gulfstream III aircraft under part 135 without it being equipped with the digital flight data recorder currently required.

GRANT, March 18, 1998, Exemption No. 6739.

Docket No.: 28582.

Petitioner: Atlas Air, Inc.

Sections of the FAR Affected: 14 CFR 121.583(a)(8).

Description of Relief Sought/ Disposition: To permit up to three dependents of Atlas employees who are accompanied by an employee sponsor traveling on official business only and are trained and qualified in the operation of emergency equipment on Atlas' Boeing 747 cargo aircraft to be added to the list of persons specified in § 121.583(a)(8) that Atlas is authorized to transport without complying with the passenger-carrying operation requirements in §§ 121.309(f), 121.310, 121.391, 121.571, and 121.587; the passenger-carrying operations requirements in §§ 121.157(c), 121.161. and 121.291; and the requirements pertaining to passengers in §§ 121.285, 121.313(f), 121.317, 121.547, and 121.573.

GRANT, March 10, 1998, Exemption No. 6487A.

Docket No.: 27258.

Petitioner: Air Methods Corporation.

Sections of the FAR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit AMC to operate the aircraft listed in Attachment A under the provisions of part 135 without a TSO–C112 transponder installed.

GRANT, March 10, 1998, Exemption No. 5720B.

Docket No.: 28419.

Petitioner: United Parcel Service.

Sections of the FAR Affected: 14 CFR 121.433(c)(1)(iii), 121.440(a), 121.441(a)(1), and (b)(1), and appendix F.

Description of Relief Sought/ Disposition: To permit UPS to combine recurrent flight and ground training and proficiency checks for UPS's pilots in command, seconds in command, and flight engineers in a single annual training and proficiency evaluation program (i.e., a single-visit training program).

GRANT, March 10, 1998, Exemption No. 6434A.

Docket No.: 25060.

Petitioner: Douglas Aircraft Company.

Sections of the FAR Affected: 14 CFR 21.197.

Description of Relief Sought/ Disposition: To permit DAC to conduct training of DAC's pilot flight crewmembers while operating under special flight permits issued for the purpose of production flight testing.

GRANT, March 3, 1998, Exemption No. 4936C.

Docket No.: 28861.

Petitioner: Vertical Flite.

Sections of the FAR Affected: 14 CFR 91.119(b).

Description of Relief Sought/ Disposition: To permit Vertical Flite to operate Air and Space 18A gyroplanes (AS–18A) in visual meteorological conditions below the minimum altitudes specified in § 91.119(b) and (c) while conducting aerial photography or contracted "police and highway" flights.

DENIAL, March 3, 1998, Exemption No. 6738.

Docket No.: 27170.

Petitioner: Minuteman Aviation, Inc.

Sections of the FAR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit MAI to operate its helicopters without a TSO–C112 (Mode S) transponder installed.

GRANT, March 3, 1998, Exemption No. 6737.

Docket No.: 25242.

Petitioner: Experimental Aircraft Association.

Sections of the FAR Affected: 14 CFR 61.58(c) and 91.5.

Description of Relief Sought/ Disposition: To permit EAA members to complete an approved training course in lieu of a pilot proficiency check. The exemption applies to training courses for the following aircraft: Boeing B–17; North American B–25; Douglas B–26, C–47, and C–54; Consolidated PBY; Martin PBM; Grumman S–2–F; Curtiss C–46; and Ford Tri-Motor.

GRANT, March 5, 1998, Exemption No. 4941E.

Docket No.: 26696.

Petitioner: Ryan International Airlines, Inc.

Sections of the FAR Affected: 14 CFR 121.503(b) and 121.511(a).

Description of Relief Sought/ Disposition: To permit pilots and flight engineers employed by Ryan to complete certain scheduled coast-to-coast, all-cargo, transcontinental flights with no more than one intermediate stop and a maximum of 11 hours of flight time during any 24 consecutive hours before being provided with at least 16 hours of rest.

GRANT, March 3, 1998, Exemption No. 5461C.

Docket No.: 28172.

Petitioner: Helicopter Services, Inc.

Sections of the FAR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit HSI to operate without a TSO–C112 (Mode S) transponder installed in its aircraft operating under the provisions of part 135.

GRANT, March 3, 1998, Exemption No. 6109A.

Docket No.: 28479.

Petitioner: Strong Enterprises.

Sections of the FAR Affected: 14 CFR 105.43(a).

Description of Relief Sought/ Disposition: To permit employees, representatives, and other volunteer experimental parachute test jumpers under Strong's control to make tandem parachute jumps while wearing a dual-harness, dual-parachute pack that has at least one main parachute and one approved auxiliary parachute. The exemption also permits pilots in command of aircraft involved in these operations to allow such persons to make these parachute jumps.

GRANT, March 11, 1998, Exemption No. 6474B.

[FR Doc. 98–8378 Filed 3–30–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[RTCA Special Committee 172]

Future Air-Ground Communications In The VHF Aeronautical Data Band (118–137 MHz

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 172 meeting to be held April 14–17, 1998, starting at 9:00 a.m. The first two days of the meeting will be held at the Army and Navy Club (coat and tie required), 901 17th Street, NW., Washington, DC 20006, phone (202) 628–8400; the last two days will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036.

The agenda will be as follows: Tuesday, April 14: (1) Plenary Convenes at 9:00 a.m. for 30 minutes: (2) Introductory Remarks; (3) Review and Approval of the Agenda; (4) Working Group (WG)–2, VHF Data Radio Signal-in-space MASPS, Complete Work on VDL Mode 2 and Continue Work on VDL Mode 3. Wednesday, April 15: (a.m.) (5) WG–2 Continues; (p.m.) (6) WG–3, Review of Activities in VHF Digital Radio MOPS Document Program and Further Work. Thursday, April 16 (at RTCA): (a.m.) (7) Plenary Reconvenes at 9:00 a.m.; (8) Review Summary Minutes of Previous Plenary of SC–172; (9) Reports from WG's 2 & 3 Activities; (10) Report on VDL Activities and Prepartion for AMCP; (11) EUROCAE WG–47 Report and Discussion of Schedule for Further Joint Meetings with WG–3; (12) Review Issues List and Address Future Work; (13) Other Business; (14) Dates and Places of Next Meetings; (p.m.) (15) WG's Continue as Necessary. Friday, April 17: (16) WG's Continue as Necessary.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 25, 1998.

Jane P. Caldwell,

Designated Official.

[FR Doc. 98–8377 Filed 3–30–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–97–3658]

Notice of Receipt of Petition for Decision That Nonconforming 1992–1996 Ducati 600SS Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1992–1996 Ducati 600SS motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1992–1996 Ducati 600SS motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is April 30, 1998.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 10 am to 5 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

Champagne Imports, Inc. of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90–009) has petitioned NHTSA to decide whether 1992–1996 Ducati 600SS motorcycles are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1992–1996 Ducati 750SS motorcycles that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared 1992–1996 Ducati 600SS motorcycles to 1992–1996 Ducati 750SS motorcycles, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1992–1996 Ducati 600SS motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as 1992–1996 Ducati 750SS motorcycles, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that 1992–1996 Ducati 600SS motorcycles are identical to 1992–1996 Ducati 750SS motorcycles with respect to compliance with Standard Nos. 106 *Brake Hoses,* 111 *Rearview Mirrors,* 116 *Brake Fluid,* 119 *New Pneumatic Tires for Vehicles other than Passenger Cars,* and 122 *Motorcycle Brake Systems.*

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* installation of U.S.-model headlamp assemblies.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* installation of a tire information placard.

Standard No. 123 *Motorcycle Controls and Displays:* installation of a U.S. model speedometer calibrated in miles per hour.

The petitioner also states that vehicle identification number plates meeting the requirements of 49 CFR Part 565 will be affixed to 1992–1996 Ducati 600SS motorcycles.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: March 25, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 98–8308 Filed 3–30–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3660]

Notice of Receipt of Petition for Decision That Nonconforming 1995 Bentley Turbo R Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1995 Bentley Turbo R passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1995 Bentley Turbo R that was not originally manufactured to comply with all applicable Federal

motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is April 30, 1998.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 10 am to 5 pm.]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

Bayway Auto of Newark, New Jersey ("Bayway") (Registered Importer 98–166) has petitioned NHTSA to decide whether 1995 Bentley Turbo R passenger cars are eligible for importation into the United States. The vehicle which Bayway believes is substantially similar is the 1995 Bentley Turbo R that was manufactured for importation into, and sale in, the United States and certified by its manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1995 Bentley Turbo R to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the non-U.S. certified 1995 Bentley Turbo R, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1995 Bentley Turbo R is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems* 104 *Windshield Wiping and Washing Systems* 105 *Hydraulic Brake Systems* 106 *Brake Hoses* 109 *New Pneumatic Tires* 113 *Hood Latch Systems* 116 *Brake Fluid* 124 *Accelerator Control Systems* 201 *Occupant Protection in Interior Impact* 202 *Head Restraints* 204 *Steering Control Rearward Displacement* 205 *Glazing Materials* 206 *Door Locks and Door Retention Components* 207 *Seating Systems* 209 *Seat Belt Assemblies* 210 *Seat Belt Assembly Anchorages* 212 *Windshield Retention* 216 *Roof Crush Resistance* 219 *Windshield Zone Intrusion* and 302 *Flammability of Interior Materials.*

The petitioner contends that the vehicle meets the Theft Prevention Standard found in 49 CFR Part 541.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays* (a) substitution of a lens marked "Brake" for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) installation of U.S.-model headlamp assemblies that incorporate headlamps with DOT markings; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies.

Standard No. 110 *Tire Selection and Rims* installation of a tire information placard.

Standard No. 111 *Rearview Mirror* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection* installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems*: rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection*: (a) installation of a U.S.-model seat belt in the driver's position, or a belt webbing-actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer; (c) replacement of the driver's and passenger's side air bags and knee bolsters with U.S.-model components if the vehicle is not so equipped. The petitioner states that the vehicles are equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button at both front designated seating positions, with combination lap and shoulder restraints that release by means of a single push button at both rear outboard designated seating positions, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection*: installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity*: installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Additionally, the petitioner states that the bumpers on the non-U.S. certified 1995 Bentley Turbo R must be reinforced to comply with the Bumper Standard found in 49 CFR Part 581.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicle to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and

will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: March 25, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 98–8309 Filed 3–30–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3661]

Notice of Receipt of Petition for Decision That Nonconforming 1994–1998 Mercedes-Benz E320 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for a decision that nonconforming 1994–1998 Mercedes-Benz E320 passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1994–1998 Mercedes-Benz E320 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is April 30, 1998.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 10 am to 5 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

Champagne Imports, Inc. of Lansdale, Pennsylvania ("Champagne") (Registered Importer No. R–90–009) has petitioned NHTSA to decide whether 1994–1998 Mercedes-Benz E320 passenger cars are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1994–1998 Mercedes-Benz E320 passenger cars that were manufactured for importation into and sale in the United States and that were certified by their manufacturer, Daimler-Benz, A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner contends that it carefully compared non-U.S. certified 1994–1998 Mercedes-Benz E320 passenger cars to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most applicable Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1994–1998 Mercedes-Benz E320 passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1994–1998 Mercedes-Benz E320 passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * *.*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that non-U.S. certified 1994–1998 Mercedes-Benz E320 passenger cars comply with the Bumper Standard found in 49 CFR Part 581 and the Theft Prevention Standard found in 49 CFR Part 541.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies which incorporate headlamps with a DOT marking; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirrors:* replacement of the passenger side rear view mirror with a U.S.-model component.

Standard No. 114 *Theft Protection*: installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 118 *Power Window Systems*: rewiring of the power window

system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection*: (a) installation of a U.S.-model seat belt in the driver's position, or a belt webbing-actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer; (c) replacement of the driver's and passenger's side air bags and knee bolsters with U.S.-model components if the vehicle is not so equipped. The petitioner states that the vehicles are equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button at both front designated seating positions, with combination lap and shoulder restraints that release by means of a single push button at both rear outboard designated seating positions, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection*: installation of reinforcing beams. NHTSA understands that Daimler Benz did not certify the 1994 Mercedes-Benz E320 as meeting the dynamic performance requirements of this standard, but that it did certify 1995 through 1998 models as meeting those requirements.

Standard No. 301 *Fuel System Integrity*: installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicles to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the Federal Register pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: March 25, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 98–8310 Filed 3–30–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3572]

Uniroyal Goodrich Tire Manufacturing; Grant of Application for Decision of Inconsequential Noncompliance

Uniroyal Goodrich Tire Manufacturing (Uniroyal) of Greenville, South Carolina, which is an operating unit of Michelin North America, Inc., has determined that some of its tires fail to comply with the labeling requirements of 49 CFR 571.109, Federal Motor Vehicle Safety Standard (FMVSS) No. 109, "New Pneumatic Tires," and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." Uniroyal has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published, with a 30-day comment period, on November 4, 1997, in the **Federal Register** (62 FR 59755). NHTSA received no comments on this application during the 30-day comment period.

In FMVSS No. 109, paragraph S4.3.5 requires that "if the maximum inflation pressure of a tire is 420 kPa (60 psi), the tire shall have permanently molded into or onto both sidewalls, in letters and numerals not less than ½ inch high, the words 'Inflate to 60 psi or Inflate to 420 kPa (60 psi)' ".

From the 30th through the 37th week of 1997, the Uniroyal plant located in Woodburn, Indiana, produced approximately 4,800 temporary spare tires (T115/70D14 Uniroyal Hideaway tires) with a minor omission of the markings required by 49 CFR 571.109 S4.3.5 on one side of the tire. Instead of "INFLATE TO 60 PSI" these tires were marked "NFLATE TO 60 PSI." A total of 2,750 of the 4,800 tires were delivered to Original Equipment Manufacturers (OEM) customers, the remaining 2,050 have been isolated in Uniroyal's warehouses and will be brought into full compliance with the marking requirements of FMVSS No. 109 or scrapped.

Uniroyal supports its application for inconsequential noncompliance with the following four statements:

1. All performance requirements of FMVSS No. 109 are met or exceeded.

2. The correct marking appears on one side of the tire.

3. It is reasonable to expect that the consumer will interpret "NFLATE TO 60 PSI" as "INFLATE TO 60 PSI," especially when it is used in reference to a pressure of 60 PSI.

4. The vehicle placard, as required by 49 CFR 571.110 S4.3, [specifies] the proper inflation pressure to use.

The primary safety purpose of requiring "INFLATE TO 60 PSI" on this motor vehicle tire is to ensure that the end-user selects the appropriate inflation pressure. The absence of this labeling would likely result in an improper tire inflation pressure selection by the tire dealer or vehicle owner. In this case, Uniroyal stated the correct inflation pressure of 60 PSI; however, on one side of the tire, the letter "I" was omitted from the word "INFLATE." The agency agrees with Uniroyal's rationale that it is reasonable to expect that the consumer will interpret "NFLATE TO 60 PSI" as "INFLATE TO 60 PSI," especially when it is used in reference to a pressure of 60 PSI.

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that the noncompliance it describes is inconsequential to safety. Accordingly, its application is granted, and the applicant is exempted from providing the notification of the noncompliance that is required by 49 U.S.C. 30118, and from remedying the noncompliance, as required by 49 U.S.C. 30120. (49 U.S.C. 30118; 49 U.S.C. 30120; delegations of authority at 49 CFR 1.50 and 501.8).

Issued on: March 26, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–8411 Filed 3–30–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33566]

City of Tacoma and Beltline Division of Tacoma Public Utilities; Change in Operator Exemption; Tacoma Eastern Railway Company

City of Tacoma (City),WA,[1] has filed a verified notice of exemption under 49 CFR 1150.41 for Beltline Division of Tacoma Public Utilities to operate approximately 131.5 miles of City rail line in Pierce, Thurston, and Lewis Counties, WA: (1) between milepost 2192.0, at Tacoma, and milepost 17.7, at Chehalis; and (2) between milepost 2192.0, at Tacoma, and milepost 64.2, at Morton. The lines have been operated previously by Tacoma Eastern Railway Company.

Because the projected revenues of the rail lines to be operated will exceed $5 million, City has certified to the Board that the required notice of its change in operators was posted at the workplace of the employees on the affected lines on March 11, 1998. See 49 CFR 1150.42(e). The earliest the transaction can be consummated is May 18, 1998, the effective date of the exemption (60 days after City's March 19, 1998 certification to the Board).[2]

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33566, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on City of Tacoma, Office of City Attorney, 747 Market Street, Room 1120, Tacoma, WA 98402–3767.

Decided: March 23, 1998.

[1] Applicant represents that the Charter of the City divides its operations into Public Utilities and General Government. The General Government portion of the City evidently owns the lines discussed in this notice and is negotiating with the Public Utilities portion of the City, which is evidently responsible for operations.

[2] The City's representative has acknowledged by telephone that the earliest the transaction can go forward is May 18, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–8116 Filed 3–30–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Notice of Change in Status of Plant.

DATES: Written comments should be received on or before June 1, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Jim Ficaretta, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8230.

SUPPLEMENTARY INFORMATION:

Title: Notice of Change in Status of Plant.

OMB Number: 1512–0202.

Form Number: ATF F 5110.34.

Abstract: ATF F 5110.34 is necessary to show the use of distilled spirits plant premises for other activities or by alternating proprietors. It describes the proprietor's use of plant premises and other information to show that the change in plant status is in conformity with laws and regulations.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1,000.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 24, 1998.

William T. Earle,

Assistant Director (Management)/CFO.

[FR Doc. 98–8293 Filed 3–30–98; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Tax Deferral Bond—Distilled Spirits (Puerto Rico).

DATES: Written comments should be received on or before June 1, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Marjorie Ruhf, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8202.

SUPPLEMENTARY INFORMATION:

Title: Tax Deferral Bond—Distilled Spirits (Puerto Rico).

OMB Number: 1512–0209.

Form Number: ATF F 5110.50.

Abstract: A manufacturer who ships distilled spirits from Puerto Rico to the U.S. may either choose to pay the tax prior to shipment or file a bond and defer payment of taxes. ATF F 5110.50 is the bond form which a manufacturer in Puerto Rico must file if such manufacturer elects to defer the taxes for payment on a semi-monthly tax return system. The form may be destroyed 5 years after discontinuance of business or after all outstanding liabilities have been satisfied, or after elimination of the requirement for the bond.

Current Actions: The filing address has been changed and the title of Regional Director (Compliance) has been deleted on the form.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 10.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 10.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 24, 1998.

William T. Earle,

Assistant Director (Management)/CFO.

[FR Doc. 98–8294 Filed 3–30–98; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 6118

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 6118, Claim of Income Tax Return Preparers.

DATES: Written comments should be received on or before June 1, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Claim of Income Tax Return Preparers.

OMB Number: 1545–0240.

Form Number: 6118.

Abstract: Form 6118 is used by tax return preparers to file for a refund of penalties incorrectly charged. The information enables the IRS to process the claim and have the refund issued to the tax return preparer.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 10,000.

Estimated Time Per Respondent: 59 min.

Estimated Total Annual Burden Hours: 9,900.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. 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.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 23, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–8283 Filed 3–30–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 6197

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and

other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 6197, Gas Guzzler Tax.

DATES: Written comments should be received on or before June 1, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Gas Guzzler Tax.

OMB Number: 1545–0242.

Form Number: 6197.

Abstract: Internal Revenue Code section 4064 imposes a gas guzzler tax on the sale, use, or first lease by a manufacturer or importer of automobiles whose fuel economy does not meet certain standards for fuel economy. The tax is computed on Form 6197. The IRS uses the information to verify computation of the tax and compliance with the law.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 485.

Estimated Time Per Respondent: 5 hr., 58 min.

Estimated Total Annual Burden Hours: 2,892.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. 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.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 23, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–8284 Filed 3–30–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 6497

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 6497, Information Return of Nontaxable Energy Grants or Subsidized Energy Financing.

DATES: Written comments should be received on or before June 1, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Information Return of Nontaxable Energy Grants or Subsidized Energy Financing.

OMB Number: 1545–0232.

Form Number: 6497.

Abstract: Section 6050D of the Internal Revenue Code requires an information return to be made by any person who administers a Federal, state, or local program providing nontaxable grants or subsidized energy financing. Form 6497 is used for making the information return. The IRS uses the information from the form to ensure that recipients have not claimed tax credits or other benefits with respect to the grants or subsidized financing.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and federal, state, local or tribal governments.

Estimated Number of Respondents: 250.

Estimated Time Per Respondent: 3 hr., 2 min.

Estimated Total Annual Burden Hours: 760.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. 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.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information

technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 23, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–8285 Filed 3–30–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request For Form 8860

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8860, Qualified Zone Academy Bond Credit.

DATES: Written comments should be received on or before June 1, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Qualified Zone Academy Bond Credit.

OMB Number: To be assigned later.

Form Number: Form 8860.

Abstract: Under Internal Revenue Code section 1397E, a qualified zone academy bond is a taxable bond issued after 1997 by a state or local government, with the proceeds used to improve certain eligible public schools. In lieu of receiving interest payments from the issuer, an eligible holder of the bond is generally allowed an annual income tax credit. Eligible holders of qualified zone academy bonds use Form 8860 to figure and claim this credit.

Current Actions: This is a new collection of information.

Type of Review: New OMB approval.

Affected Public: Business or other for-profit organizations and state, local or tribal governments.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 5 hours, 16 minutes.

Estimated Total Annual Burden Hours: 5,260.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. 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.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 24, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–8286 Filed 3–30–98; 8:45 am]

BILLING CODE 4830–01–P

UNITED STATES ENRICHMENT CORPORATION

Sunshine Act Meeting

AGENCY: United States Enrichment Corporation.

SUBJECT: Board of Directors.

TIME AND DATE: 10 a.m., Thursday, April 2, 1998.

PLACE: Telephonic Meeting.

STATUS: The Board meeting will be closed to the public.

MATTER TO BE CONSIDERED: Issues relating to the privatization of the Corporation and other commercial, financial and operational issues of the Corporation.

CONTACT PERSON FOR MORE INFORMATION: Joseph Tomkowicz 301/564–3345.

Dated: March 26, 1998.

William H. Timbers, Jr.,

President and Chief Executive Officer.

[FR Doc. 98–8491 Filed 3–26–98; 5:08 pm]

BILLING CODE 8720–01–M

Corrections

Federal Register
Vol. 63, No. 61
Tuesday, March 31, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy and Regulatory Commission

[Docket No. RP94-43-017]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

Correction

In notice document 98–7752 beginning on page 14440, in the issue of Wednesday, March 25, 1998, make the following correction:

On page 14440, in the first column, the docket number is corrected to read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP98-266-000, CP98-267-000, CP98-268-000]

Enogex Interstate Transmission L.L.C. and Ozark Gas Transmission, L.L.C.; Notice of Application

Correction

In notice document 98–7254 beginning on page 13646, in the issue of Friday, March 20, 1998, make the following correction:

On page 13646, in the second column, the docket number is corrected to read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy and Regulatory Commission

[Docket No. SA98-43-000]

Leo Helzel; Notice of Petition for Adjustment

Correction

In notice document 98–7544 beginning on page 14079, in the issue of Tuesday, March 24, 1998, make the following correction:

On page 14079, in the first column, the docket number is corrected to read as set forth above.

BILLING CODE 1505-01-D

OFFICE OF PERSONNEL MANAGEMENT

Proposed Civilian Acquisition Workforce Personnel Demonstration Project; Department of Defense (DoD)

Correction

In notice document 98–7486 beginning on page 14254, in the issue of Tuesday, March 24, 1998, make the following correction:

On page 14327, in the third column, in the file line, "43–23–98" should read "3–23–98".

BILLING CODE 1505-01-D

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3053; Amendment #2]

State of North Carolina

Correction

In notice document 98–5328 appearing on page 10255, in the issue of Monday, March 2, 1998, the heading should read as set forth above.

BILLING CODE 1505-01-D

federal register

Tuesday
March 31, 1998

Part II

Department of Housing and Urban Development

Super Notice of Funding Availability (SuperNOFA) for Housing and Community Development Programs; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4340–N–01]

Super Notice of Funding Availability (SuperNOFA) for Housing and Community Development Programs

AGENCY: Office of the Secretary, HUD.

ACTION: Super Notice of Funding Availability (SuperNOFA) for Housing and Community Development Programs.

SUMMARY: This Super NOFA of Funding Availability (SuperNOFA) announces the availability of approximately $1,247,906,870 in HUD program funds covering nineteen (19) Housing and Community Development Programs operated and managed by the following HUD Offices: Community Planning and Development (CPD), Public and Indian Housing (PIH), Housing, Policy Development and Research (PD&R), Office of Lead Hazard Control, and Fair Housing and Equal Opportunity (FHEO). The General Section of this SuperNOFA contains the procedures and requirements applicable to all 19 programs. The applications for funding for these programs have been consolidated into 6 applications. The Programs Section of this SuperNOFA contains a description of the specific programs for which funding is made available under this SuperNOFA and additional procedures and requirements that are applicable to each.

APPLICATION DUE DATES: The information contained in this "APPLICATION DUE DATES" section applies to all programs contained in this SuperNOFA. Completed applications must be submitted to HUD no later than the deadline established for the program for which you are seeking funding. Applications may not be sent by facsimile (FAX). See the Program Chart for specific application due dates.

ADDRESSES AND APPLICATION SUBMISSION PROCEDURES: *Addresses.* Completed applications must be submitted to the location specified in the Programs Section of this SuperNOFA. When submitting your application, please refer to the program name for which you are seeking funding.

For Applications to HUD Headquarters. Applications to be submitted to HUD Headquarters are due at: Department of Housing and Urban Development, 451 Seventh Street, SW, Room _____ (See Program Chart or Programs Section for room location), Washington DC 20410.

For Applications to HUD Field Offices. For those programs for which applications are due to the HUD Field Offices, please see the Programs Section for the exact locations for submission.

Applications Procedures. Mailed Applications. Applications will be considered timely filed if postmarked on or before 12:00 midnight on the application due date and received by the designated HUD Office on or within ten (10) days of the application due date.

Applications Sent by Overnight/ Express Mail Delivery. Applications sent by overnight delivery or express mail will be considered timely filed if received before or on the application due date, or upon submission of documentary evidence that they were placed in transit with the overnight delivery service by no later than the specified application due date.

Hand Carried Applications. For applications submitted to HUD Headquarters, hand carried applications delivered before and on the application due date must be brought to the specified location and room number between the hours of 8:45 am to 5:15 pm, Eastern time. Applications hand carried on the application due date will be accepted in the South Lobby of the HUD Headquarters Building at the above address from 5:15 pm until 12:00 midnight, local time. Applications due to HUD Field Office locations must be delivered to the appropriate HUD Field Office in accordance with the instructions specified in the Programs Section of the SuperNOFA.

For applications submitted to the HUD Field Offices, hand carried applications will be accepted during normal business hours before the application due date. On the application due date, business hours will be extended to 6:00 pm. (Please see the Appendix A to this SuperNOFA listing the hours of operations for the HUD Field Offices.)

COPIES OF APPLICATIONS TO HUD OFFICES: The Programs Section of this SuperNOFA may specify that to facilitate processing and review of your submission a copy of the application also be sent to an additional HUD location (for example, a copy to the HUD Field Office if the original application is to be submitted to HUD Headquarters, or a copy to HUD Headquarters, if the original application is to be submitted to a HUD Field Office). Please follow the requirements of the Programs Section to ensure that you submit your application to the proper location. HUD requests additional copies in order to expeditiously review your application and appreciates your assistance in providing the copies. Please note that for those applications for which copies are being submitted to the Field Offices and HUD Headquarters, timeliness of submission will be based on the time the application is received at HUD Headquarters.

FOR APPLICATION KITS, FURTHER INFORMATION AND TECHNICAL ASSISTANCE: The information contained in this section is applicable to all programs contained in this SuperNOFA.

For Application Kits and SuperNOFA User Guide. HUD is pleased to provide you with application kits and/or a guidebook to all HUD programs. When requesting an application kit, please refer to the program name of the application kit you are interested in receiving. Please be sure to provide your name, address (including zip code), and telephone number (including area code).

Requests for application kits should be made immediately to ensure sufficient time for application preparation. We will distribute application kits as soon as they become available.

The SuperNOFA Information Center (1–800–HUD–8929) can provide you with assistance, application kits, and guidance in determining which HUD Office(s) should receive a copy of your application.

Consolidated Application Submissions. Where an applicant can apply for funding under more than one program in this SuperNOFA, the applicant need only submit one originally signed SF–424 and one set of original signatures for the other required assurances and certifications, accompanied by the matrix contained in each application kit. As long as the applicant submits one originally signed set of these documents with an application, only copies of these documents may be submitted with any additional application submitted by the applicant.

For Further Information. For answers to your questions about this SuperNOFA, you have several options. You may call the HUD Office or Processing Center serving your area at the telephone number listed in your program area section to this SuperNOFA, or you may contact the SuperNOFA Information Center at 1–800–HUD–8929. Persons with hearing or speech impairment may call the Center's TTY number at 1–800–483–2209. Information on this SuperNOFA also may be obtained through the HUD web site on the Internet at http://www.HUD.gov.

For Technical Assistance. Before the application due date, HUD staff will be available to provide general guidance

and technical assistance about this SuperNOFA. Current law does not permit HUD staff to assist in preparing the application. Following selection of applicants, but prior to award, HUD staff will be available to assist in clarifying or confirming information that is a prerequisite to the offer of an award or Annual Contributions Contract (ACC) by HUD.

Introduction to the SuperNOFA Process

To further HUD's objective, under the direction of Secretary Andrew Cuomo, of improving customer service and providing the necessary tools for revitalizing communities and improving the lives of people within those communities, HUD will publish three SuperNOFAs in 1998, which coordinate program funding for 39 programs and cut across traditional program lines.

(1) The first is this SuperNOFA and consolidated application process for Housing and Community Development Programs, published in today's **Federal Register**, covering 19 Housing and Community Development Programs.

(2) The second is the SuperNOFA and consolidated application process for Economic Development and Empowerment Programs. This second SuperNOFA includes funding for the following programs and initiatives: Brownfields; Youthbuild; Economic Development Initiative; Neighborhood Initiatives; Tenant Opportunity Program, Economic Development and Supportive Services; and the Section 8 Family Self-Sufficiency Service Coordinators.

(3) The third is the SuperNOFA and consolidated application process for Targeted Housing and Homeless Assistance Programs. This third SuperNOFA includes the following programs and initiatives: Housing Opportunities for Persons with AIDS; Continuum of Care Assistance; Section 202 Elderly Housing; Section 811 Disabled Housing; Service Coordinators; Section 8 Designated Housing; Section 8 Mainstream Housing Opportunities; Family Unification; and Elderly Housing Revitalization.

All three SuperNOFAs and consolidated applications, to the greatest extent possible, given statutory, regulatory and program policy distinctions, will have one set of rules that, together, offer a "menu" of approximately 39 programs. From this menu, communities will be made aware of funding available for their jurisdictions. Nonprofits, public housing agencies, local and State governments, tribal governments and tribally designated housing entities, veterans service organizations, faith-based organizations and others will be able to identify the programs for which they are eligible for funding. HUD is anticipating publishing all three SuperNOFAs before May 1, 1998.

The National Competition NOFA. In addition to the three SuperNOFAs, HUD also will publish a single NOFA for three national competitions: the Fair Housing Initiatives Program National Competition; the Lead-Based Paint Hazard Control National Competition; and the Housing Counseling National Competition. HUD also anticipates publishing this national competition NOFA before May 1, 1998.

The Housing and Community Development SuperNOFA. This first SuperNOFA announces the availability of approximately $1,247,906,870 in HUD program funds covering nineteen (19) Housing and Community Development Programs operated and managed by the following HUD Offices: Community Planning and Development (CPD), Public and Indian Housing (PIH), Housing, Policy Development and Research (PD&R), Office of Lead Hazard Control, and Fair Housing and Equal Opportunity (FHEO).

Assisting Communities To Make Better Use of Available Resources

This first SuperNOFA represents a marked departure from, and HUD believes a significant improvement over, HUD's past approach to the funding process. In the past, HUD has issued as many as 40 separate NOFAs, all with widely varying rules and application processing requirements. This individual program approach to funding, with NOFAs published at various times throughout the fiscal year, did not encourage and, at times, unintentionally impeded local efforts directed at comprehensive planning and development of comprehensive local solutions. Additionally, the old approach seemed to require communities to respond to HUD's needs rather than HUD responding to local needs. Secretary Cuomo brings to the leadership of HUD the experience of successfully implementing a consolidated planning process in HUD's community development programs. As Assistant Secretary for Community Planning and Development, Secretary Cuomo consolidated the planning, application, and reporting requirements of several community development programs. The Consolidated Plan rule, published in 1995, established a renewed partnership among HUD, State, and local governments, public and private agencies, tribal governments, and the general citizenry by empowering field staff to work with other entities in fashioning creative solutions to community problems.

The SuperNOFA approach builds upon Consolidated Planning implemented by the Secretary Cuomo in HUD's community development programs, and also reflects the Secretary's organizational changes for HUD, as described in the Secretary's management reform plan. On June 26, 1997, Secretary Cuomo released the HUD 2020 Management Reform Plan, which provides for significant management reforms at HUD. This plan calls for significant consolidation of like programs to maximize efficiency and dramatically improve customer service. The plan also calls for HUD to improve customer service by adopting a principle of "menus not mandates."

By announcing the funding of these nineteen programs in one NOFA, HUD hopes to assist communities in making better use of available resources to address their needs and the needs of those living within the communities in a holistic and effective fashion. These funds are available for eligible applicants to support individual program objectives, as well as cross-cutting and coordinated approaches to improving the overall effective use of available HUD program funds.

To date, HUD has been consolidating and simplifying the submission requirements of many of its formula grant and discretionary grant programs to offer local communities a better opportunity to shape available resources into effective and coordinated neighborhood housing and community development strategies that will help revitalize and strengthen their communities, physically, socially and economically. To complement this overall consolidation and simplification effort, HUD designed this process to increase the ability of applicants to consider and apply for funding under a wide variety of HUD programs in response to a single NOFA. Everyone interested in HUD's housing and community development assistance programs can benefit from having this information made available in one NOFA.

Coordination, Flexibility, and Simplicity in the HUD Funding Process

This SuperNOFA places heavy emphasis on the coordination of activities to provide (1) greater flexibility and responsiveness in meeting local housing and community development needs, and (2) greater flexibility to eligible applicants to determine what HUD program resources best fit the community's needs, as identified in local Consolidated Plans

and Analysis of Impediments to Fair Housing Choice ("Analysis of Impediments" (AI)).

This SuperNOFA will simplify the application process; promote effective and coordinated use of program funds in communities; reduce duplication in the delivery of services and housing and community development programs; allow interested applicants to seek to deliver a wider, more integrated array of services; and improve the system for potential grantees to be aware of, and compete for program funds.

HUD encourages applicants to work together to coordinate and, to the maximum extent possible, join their activities to form a seamless and comprehensive program of assistance to meet identified needs in their communities, and address barriers to fair housing and equal opportunity that have been identified in the community's Consolidated Plan and Analysis of Impediments in the geographic area(s) in which they are seeking assistance.

As part of the simplification of this funding process, and to avoid duplication of effort, the SuperNOFA provides for consolidated applications for several of the programs for which funding is available under this NOFA. HUD programs that provide assistance for similar activities, e.g., technical assistance, drug elimination, modernization and revitalization, have a consolidated application that reduces the administrative and paperwork burden applicants may otherwise encounter in submitting an application for each program. The Program Chart in this introductory section of the SuperNOFA identifies the programs that have been consolidated and for which a consolidated application is made available to eligible applicants.

The funding of these nineteen programs through this SuperNOFA will not affect the ability of eligible applicants to seek HUD funding. *Eligible applicants are able, as they have been in the past, to apply for funding under as few as one or as many as all programs for which they are eligible.*

The specific statutory and regulatory requirements of each of the nineteen separate programs continue to apply to each programs. The SuperNOFA reflects, where necessary, the statutory requirements and differences applicable to the specific programs. *Please pay careful attention to the individual program requirements that are identified for each program. Also, you will note that not all applicants are eligible to receive assistance under all nineteen programs identified in this SuperNOFA.*

The SuperNOFA contains two major sections. The General Section of the SuperNOFA contains the procedures and requirements applicable to all applications. The Programs Section of the SuperNOFA describes each program for which funding is made available in the NOFA. As in the past, each program provides a description of eligible applicants, eligible activities, factors for awards, and any additional requirements or limitations that apply to the program. Please read carefully both the General Section and the Programs Section of the SuperNOFA for the program(s) to which you are applying. This will ensure that you apply for program funding for which your organization is eligible to receive funds and you fulfill all the requirements for that program(s).

The Programs of This SuperNOFA and the Amount of Funds Allocated

The nineteen programs for which funding availability is announced in this SuperNOFA are identified in the following chart. The approximate available funds for each program are listed as expected funding levels based on appropriated funds. Should recaptured or other funds become available for any program, HUD reserves the right to increase the available program funding amounts by the amount available.

The chart also includes the application due date for each program, the OMB approval number for the information collection requirements contained in the specific program, and the Catalog of Federal Domestic Assistance (CFDA) number.

Program name	Funding available	Due date	Submission location and room
Community Development Technical Assistance Programs	$82,395,140	6–24–98	HUD Headquarters Processing and Control Branch, Room 7251 and copies to appropriate CPD Field Offices.
Community Development Block Grant (CDBG) Technical Assistance. CFDA No.: 14.227 OMB Approval No.: pending	5,000,000		
Community Housing Development Organization (CHDO) Technical Assistance. CFDA No: 14.239 OMB Approval No.: pending	42,000,000		
HOME Technical Assistance ..... CFDA No: 14.239 OMB Approval No.: pending	31,000,000		
Supportive Housing Program (SHP) Technical Assistance CFDA No.: 14.235 OMB Approval No.: pending	4,395,140		
University and College Programs	13,500,000	7–8–98	HUD Headquarters, Processing and Control Branch, Room 7251, and Appropriate Field Offices where noted in Programs Section.
Community Outreach Partnership Centers (COPCs) ..... CFDA No.: 14.511 OMB Approval No.: 2528–0180	7,000,000		
Historically Black Colleges and Universities (HBCUs) Program. CFDA No.: 14.237 OMB Approval No.: 2506–0122	6,500,000		
Fair Housing Initiatives and Assisted Housing Counseling Programs.	29,500,000	6–1–98	HUD Headquarters Room 5234, except if only applying for Assisted Housing Counseling.
Education and Outreach Initiative (EOI)	1,000,000		

Program name	Funding available	Due date	Submission location and room
CFDA No.: 14.409			
OMB Approval No.: 2529–0033			
Private Enforcement Initiative (PEI)	9,300,000		
CFDA No.: 14.410			
OMB Approval No.: 2529–0033			
Fair Housing Organizations Initiative (FHOI)	1,200,000		
CFDA No.: 14.413			
OMB Approval No.: 2529–0033			
Housing Counseling Program	18,000,000		Appropriate HUD Field Office.
• Local Housing Counseling Agencies ($5,000,000)			
• National, Regional and Multi-State Intermediaries ($6,000,000)			
• State Housing Finance Agencies ($7,000,000)			
CFDA No.: 14.169			
OMB Approval No: 2502–0261			
Lead-Based Paint Hazard Control Program	50,000,000	6–1–98	Postal Service: HUD Headquarters, Office of Lead Hazard Control, Room B–133 Courier Service or Hand Carried: HUD Office of Lead Hazard Control, 490 East L'Enfant Plaza, S.W., Suite 3206, Washington, DC 20024.
CFDA No.: 14.900			
OMB Approval No.: 2539–0005			
Modernization and Revitalization Programs	745,762,796	6–29–98	HUD Headquarters, Room 4138, and copies to appropriate Local HUD Field Office, where noted in the Programs Section.
Comprehensive Improvement Assistance Program (CIAP)	304,000,000		
CFDA No.: 14.852			
OMB Approval No.: 2577–0044			
HOPE VI Public Housing Revitalization	441,762,796		
CFDA No.: 14.866			
OMB Approval No.: 2577–0208			
Drug Elimination in Public and Assisted Housing Programs	326,748,934	6–15–98	Appropriate local Field Office except if only applying for Drug Elimination TA.
Public Housing Drug Elimination Program (Including Youth Sports Eligible Activities).	*288,498,934		
CFDA No.: 14.854			
OMB Approval No.: 2577–0124			
Public Housing Drug Elimination Program—New Approaches (Formerly Safe Neighborhood Grant).	20,000,000		
CFDA No.: 14.854			
OMB Control No.: 2577–0124			
Drug Elimination Grants for Multifamily Low Income Housing.	16,250,000		
CFDA No.: 14.193			
OMB Approval No.: 2502–0476			
Public Housing Drug Elimination Program-Technical Assistance.	2,000,000		HUD Headquarters, Room 4112.
CFDA No.: 14.854			
OMB Approval No: 2577–0124			

*This amount includes $44,935,934 in FY 97 funds for applicants not funded in 1997.

Paperwork Reduction Act Statement. For those programs listed in the chart above which have OMB approval numbers, the information collection requirements contained in this SuperNOFA for those programs have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). For those programs listed in the chart for which an OMB approval number is pending, the approval number when received will be announced by HUD in the **Federal Register**. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

General Section of the SuperNOFA

I. Authority; Purpose; Amount Allocated; Eligible Applicants and Eligible Activities

(A) Authorities

The authority for Fiscal Year 1998 funding availability under this SuperNOFA is the Department of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1998 (Pub. L. 105–65, approved October 27, 1997) (FY 1998 HUD Appropriations Act). Where applicable, additional authority for each program in this SuperNOFA is identified in the Programs Section.

(B) Purpose

The purpose of this SuperNOFA is to:

(1) Make funding available through a variety of programs to empower communities and their residents, particularly the poor and disadvantaged, to develop viable communities, provide decent housing and a suitable living environment for all citizens, without discrimination in order to improve themselves both as individuals and as a community.

(2) Simplify and streamline the application process for funding under HUD programs. By making available to State and local governments, public housing agencies, tribal governments, non-profit organizations and others, the application requirements for HUD housing and community development programs in one NOFA, HUD hopes that the result will be a less time consuming and less complicated application process. This new process also allows an applicant to submit one application for funds for several programs. Except where statutory or regulatory requirements or program policy mandate differences, the SuperNOFA strives to provide for one set of rules, standardized rating factors, and uniform and consolidated application procedures.

(3) Enhance the ability of applicants to make more effective and efficient use of housing and community development funding when addressing community needs and implementing coordinated housing and community development strategies established in local Consolidated Plans, which is the single application for HUD housing and community development and other formula funds submitted by the local or State government. Through this SuperNOFA process, applicants are encouraged to: (i) create opportunities for strategic planning and citizen participation in a comprehensive context at the local level in order to establish a full continuum of housing and services; and (ii) promote methods for developing more coordinated and effective approaches to dealing with urban, suburban, and rural problems by recognizing the interconnections among the underlying problems and ways to address them through layering of available HUD programs;

(4) Promote the ability of eligible non-profit organizations to participate in many of the programs contained in this SuperNOFA; provide an increased opportunity to assist communities in maintaining, rehabilitating, and constructing affordable housing for low and moderate income families; improve the quality of life for residents of public housing; develop and implement programs which promote fair housing practices and open housing opportunities within a community or geographic area; and provide technical assistance and services to improve program results and increase the productivity of HUD programs in meeting community needs; and

(5) Recognize and make better use of the expertise that each of the programs, and organizations eligible for funding under this SuperNOFA, can contribute when developing and implementing local housing and community development plans, the Consolidated Plan, and the HUD required Analysis of Impediments to Fair Housing Choice.

(C) Amounts Allocated

The amounts allocated to specific programs in this SuperNOFA are based on appropriated funds. Should recaptured funds become available in any program, HUD reserves the right to increase the available funding amounts by the amount of funds recaptured.

(D) Eligible Applicants and Eligible Activities

The eligible applicants and eligible activities for each program are identified and described for the program in the Programs Section of the SuperNOFA.

II. Requirements and Procedures Applicable to All Programs

Except as may be modified in the Programs Section of this Super NOFA, or as noted within the specific provisions of this Section II, the following principles apply to all programs. Please be sure to read the program area section of the SuperNOFA for additional requirements or information.

(A) Statutory Requirements

All applicants must meet and comply with all statutory and regulatory requirements applicable to the program for which they are seeking funding in order to be awarded funds. Copies of the regulations are available from the SuperNOFA Information Center or through the Internet at http://www.HUD.gov. HUD may reject an application from further funding consideration if the activities or projects proposed are ineligible, or HUD may eliminate the ineligible activities from funding consideration and reduce the grant amount accordingly.

(B) Threshold Requirements—Compliance With Fair Housing and Civil Rights Laws

All applicants, with the exception of Federally recognized Indian tribes, must comply with all Fair Housing and civil rights laws, statutes, regulations and executive orders as enumerated in 24 CFR § 5.105(a). Federally recognized Indian tribes must comply with the Age Discrimination Act of 1975, Section 504 of the Rehabilitation Act of 1973, and the Indian Civil Rights Act. If an applicant (1) has been charged with a violation of the Fair Housing Act by the Secretary; (2) is the defendant in a Fair Housing Act lawsuit filed by the Department of Justice; or (3) has received a letter of noncompliance findings under Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, or Section 109 of the Housing and Community Development Act, the applicant is not eligible to apply for funding under this SuperNOFA until the applicant resolves such charge, lawsuit, or letter of findings to the satisfaction of the Department.

(C) Additional Nondiscrimination Requirements

Applicants must comply with the Americans with Disabilities Act, and Title IX of the Education Amendments Act of 1972.

(D) Affirmatively Furthering Fair Housing

Unless otherwise specified in the Programs Section of this SuperNOFA, each successful applicant will have a duty to affirmatively further fair housing. Applicants should include in their work plans the specific steps that they will take to (1) address the elimination of impediments to fair housing that were identified in the jurisdiction's Analysis of Impediments (AI) to Fair Housing Choice; (2) remedy discrimination in housing; or (3) promote fair housing rights and fair housing choice. Further, applicants have a duty to carry out the specific activities cited in their responses to the rating factors that address affirmatively furthering fair housing in the Programs Section of this SuperNOFA.

(E) Economic Opportunities for Low and Very Low-Income Persons (Section 3)

Certain programs in this SuperNOFA require recipients of HUD assistance to comply with section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. § 1701u (Economic Opportunities for Lower Income Persons in Connection with Assisted Projects), and the HUD regulations at 24 CFR part 135, including the reporting requirements in subpart E. Section 3 provides that recipients shall ensure that training, employment and other economic opportunities, to the greatest extent feasible, be directed to (1) low and very low income persons, particularly those who are recipients of government assistance for housing and (2) business concerns which provide economic opportunities to low and very low income persons. Section 3 is applicable to the following programs in this SuperNOFA: HOPE VI Revitalization; CIAP; and Lead-Based Paint Hazard Reduction, and may be applicable to certain activities of other programs of this SuperNOFA.

(F) Relocation

Any person (including individuals, partnerships, corporations or associations) who moves from real property or moves personal property from real property as a direct result of a written notice to acquire or the acquisition of the real property, in whole or in part, for a HUD-assisted activity is covered by acquisition policies and procedures and the relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and the implementing governmentwide regulation at 49 CFR part 24. Any person who moves permanently from real property or moves personal property from real property as a direct result of rehabilitation or demolition for an activity undertaken with HUD assistance is covered by the relocation requirements of the URA and the governmentwide regulation.

(G) Forms, Certifications and Assurances

Each applicant is required to submit signed copies of the standard forms, certifications, and assurances, listed in this section, unless the program funding in the Programs Section specifies otherwise. Additionally, the Programs Section may specify additional forms, certifications or assurances that may be required for particular program in this SuperNOFA.

(1) Standard Form for Application for Federal Assistance (SF–424);

(2) Standard Form for Budget Information—Non-Construction Programs (SF–424A) or Standard Form for Budget Information-Construction Programs (SF–424C), as applicable;

(3) Standard Form for Assurances—Non-Construction Programs (SF–424B) or Standard Form for Assurances—Construction Programs (SF–424D), as applicable;

(4) Drug-Free Workplace Certification (HUD–50070);

(5) Certification and Disclosure Form Regarding Lobbying (SF–LLL); (Tribes and tribally designated housing entities (THDEs) established by an Indian tribe as a result of the exercise of the tribe's sovereign power are not required to submit this certification. Tribes and TDHEs established under State law are required to submit this certification.)

(6) Applicant/Recipient Disclosure Update Report (HUD–2880);

(7) Certification that the applicant will comply with the requirements of the Fair Housing Act, Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, and will affirmatively further fair housing. CDBG recipients also must certify to compliance with section 109 of the Housing and Community Development Act. Federally recognized Indian tribes must certify that they will comply with the requirements of the Age Discrimination Act of 1975, section 504 of the Rehabilitation Act of 1973, and the Indian Civil Rights Act.

(8) Certification required by 24 CFR 24.510. (The provisions of 24 CFR part 24 apply to the employment, engagement of services, awarding of contracts, subgrants, or funding of any recipients, or contractors or subcontractors, during any period of debarment, suspension, or placement in ineligibility status, and a certification is required.)

(H) OMB Circulars

The policies, guidances, and requirements of OMB Circular No. A–87 (Cost Principles Applicable to Grants, Contracts and Other Agreements with State and Local Governments) and 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally recognized Indian tribal governments) apply to the award, acceptance and use of assistance under the programs of this SuperNOFA, and to the remedies for noncompliance, except when inconsistent with the provisions of the FY 1998 HUD Appropriations Act, other Federal statutes or the provisions of this SuperNOFA. Compliance with additional OMB Circulars may be specified for a particular program in the Programs Section of the SuperNOFA. Copies of the OMB Circulars may be obtained from EOP Publications, Room 2200, New Executive Office Building, Washington, DC 10503, telephone (202) 395–7332 (this is not a toll free number).

(I) Environmental Requirements

For programs under this SuperNOFA that assist physical development activities or property acquisition, grantees are generally prohibited from acquiring, rehabilitating, converting, leasing, repairing or constructing property, or committing or expending HUD or non-HUD funds for these program activities, until one of the following has occurred:

(1) HUD has completed an environmental review in accordance with 24 CFR part 50; or (2) for programs subject to 24 CFR part 58, HUD has approved a grantee's Request for Release of Funds (HUD Form 7015.15) following a Responsible Entity's completion of an environmental review. Applicants should consult the Programs Section for the applicable program to determine the procedures for, timing of, and any exclusions from environmental review under a particular program.

III. Application Selection Process

(A) General

To review and rate applications, HUD may establish panels including persons not currently employed by HUD to obtain certain expertise and outside points of view, including views from other Federal agencies.

(1) *Rating.* All applications for funding in each program listed in this SuperNOFA will be evaluated and rated against the criteria in this SuperNOFA. The rating of the "applicant" or the "applicant's organization and staff" for technical merit or threshold compliance, unless otherwise specified, will include any sub-contractors, consultants, sub-recipients, and members of consortia which are firmly committed to the project.

(2) *Ranking.* Applicants will be ranked within each program. Applicants will be ranked only against others that applied for the same program funding and where there are set-asides within the competition, the applicant would only compete against applicants in the same set-aside competition.

(B) Threshold Requirements

HUD will review each application to determine whether the application meets all of the threshold criteria described for program funding made available under this SuperNOFA. Applications that meet all of the threshold criteria will be eligible to be rated and ranked, based on the criteria described, and the total number of points to be awarded.

(C) Factors For Award Used To Evaluate and Rate Applications

For all of the programs for which funding is available under this SuperNOFA, the points awarded for the factors total 100. The maximum number of points to be awarded, however, total 102. The SuperNOFA provides for two bonus points.

(1) *Bonus Points.* The SuperNOFA provides for the award of two bonus points for eligible activities/projects that are proposed to be located in federally designated Empowerment Zones, Enterprise Communities, Enterprise Communities, or Urban Enhanced Enterprise Communities, and serve the EZ/EC residents, and are certified to be consistent with the strategic plan of the EZs and ECs. The application kit contains a certification which must be

completed for the applicant to be considered for EZ/EC bonus points. A listing of the federally designated EZs, EZs, Enhanced ECs are available from the SuperNOFA Information Center, or through the HUD web site on the Internet at http://www.HUD.gov.

(2) *The Five Standard Rating Factors.* The factors for rating and ranking applicants are listed in this Section III(c)(2) and maximum points for each factor, are provided in the Programs Section of the SuperNOFA. Each applicant should carefully read the factors for award as described in the program area section that they are seeking funding. While HUD has established the following basic factors for award, these may have been modified or adjusted to take into account specific program needs, or statutory or regulatory limitations imposed on a program. The standard factors for award, except as modified in the program area section are:

Factor 1: Capacity of the Applicant and Relevant Organizational Staff
Factor 2: Need/Extent of the Problem
Factor 3: Soundness of Approach
Factor 4: Leveraging Resources
Factor 5: Comprehensiveness and Coordination

(D) Negotiation

After all applications have been rated and ranked and a selection has been made, in several programs, HUD requires that all winners participate in negotiations to determine the specific terms of the grant agreement and budget. In cases where HUD cannot successfully conclude negotiations or a selected applicant fails to provide HUD with requested information, awards will not be made. In such instances, HUD may offer an award to the next highest ranking applicant, and proceed with negotiations with the next highest ranking applicant.

(E) Adjustments to Funding

HUD reserves the right to fund less than the full amount requested in any application to ensure the fair distribution of the funds and to ensure the purposes of the programs contained in this SuperNOFA are met. HUD may choose not to fund portions of the applications that are ineligible for funding under applicable program statutory or regulatory requirements, or which do not meet the requirements of this General Section of this SuperNOFA or the requirements in the Programs Section for the specific program, and fund eligible portions of the applications.

If funds remain after funding the highest ranking applications, HUD may fund part of the next highest ranking application in a given program area. If the applicant turns down the award offer, HUD will make the same determination for the next highest ranking application. If funds remain after all selections have been made, remaining funds may be available for other competitions for each program area where there is a balance of funds.

Additionally, in the event of a HUD procedural error that, when corrected, would result in selection of an otherwise eligible applicant during the funding round of this SuperNOFA, HUD may select that applicant when sufficient funds become available.

(F) Performance and Compliance Actions of Grantees

Performance and compliance actions of grantees will be measured and addressed in accordance with applicable standards and sanctions of their respective programs.

IV. Application Submission Requirements

As discussed earlier in the introductory section of this SuperNOFA, part of the simplification of this funding process, is to reduce the duplication effort involved in completing and submitting similar applications for HUD funded programs. As the Program Chart shows above, this SuperNOFA provides for consolidated applications for several of the programs for which funding is available under this SuperNOFA.

V. Corrections to Deficient Applications

After the application due date, HUD may not, consistent with 24 CFR part 4, subpart B, consider unsolicited information from an applicant. HUD may contact an applicant, however, to clarify an item in the application or to correct technical deficiencies. Applicants should note, however, that HUD may not seek clarification of items or responses that improve the substantive quality of the applicant's response to any eligibility or selection criterion. *Examples* of curable technical deficiencies include failure to submit the proper certifications or failure to submit an application containing an original signature by an authorized official. In each case, HUD will notify the applicant in writing by describing the clarification or technical deficiency. HUD will notify applicants by facsimile or by return receipt requested. Applicants must submit clarifications or corrections of technical deficiencies in accordance with the information provided by HUD within 14 calendar days of the date of receipt of the HUD notification. If the deficiency is not corrected within this time period, HUD will reject the application as incomplete.

VI. Promoting Comprehensive Approaches to Housing and Community Development

(A) General

HUD believes the best approach for addressing community problems is through a community-based process that provides a comprehensive response to identified needs. By making HUD's Housing and Community program funding available in one NOFA, applicants may be able to relate the activities proposed for funding under this SuperNOFA to the recent and upcoming NOFAs and the community's Consolidated Plan and Analysis of Impediments to Fair Housing Choice. A complete schedule of NOFAs to be published during the fiscal year and those already published appears under the HUD Homepage on the Internet, which can be accessed at http://www.hud.gov/nofas.html.

(B) Linking Program Activities With AmeriCorps

Applicants are encouraged to link their proposed activities with AmeriCorps, a national service program engaging thousands of Americans on a full or part-time basis to help communities address their toughest challenges, while earning support for college, graduate school, or job training. For information about AmeriCorps, call the Corporation for National Service at (202) 606–5000.

(C) Encouraging Visitability in New Construction and Substantial Rehabilitation Activities

In addition to applicable accessible design and construction requirements, applicants are encouraged to incorporate visitability standards where feasible in new construction and substantial rehabilitation projects. Visitability standards allow a person with mobility impairments access into the home, but does not require that all features be made accessible. Visitability means at least one entrance at grade (no steps), approached by an accessible route such as a sidewalk; the entrance door and all interior passage doors are at least 2 feet 10 inches wide, allowing 32 inches of clear passage space. Allowing use of 2'10" doors is consistent with the Fair Housing Act (at least for the interior doors), and may be more acceptable than requiring the 3 foot doors that are required in fully accessible areas under the Uniform

Federal Accessibility Standards for a small percentage of units. A visitable home also serves persons without disabilities, such as a mother pushing a stroller, or a person delivering a large appliance. Copies of the UFAS are available from the Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development, Room 5230, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 755–5404 or the TTY telephone number, 1–800–877 8399 (Federal Information Relay Service).

(D) Developing Healthy Homes

HUD's Healthy Homes Initiative is one of the initiatives developed by the White House Task Force on Environmental Health Risks and Safety Risks to Children that was established under Executive Order 13045 ("Protection of Children from Environmental Health Risks and Safety Risks"). HUD encourages the funding of activities (to the extent eligible under specific programs) that promote healthy homes, or that promote education on what is a healthy home. These activities may include, but are not limited to the following: educating homeowners or renters about the need to protect children in their home from dangers that can arise from items such as curtain cords, electrical outlets, hot water, poisons, fire, and sharp table edges, among others; incorporating child safety measures in the construction, rehabilitation or maintenance of housing, which include but are not limited to: child safety latches on cabinets, hot water protection devices, properly ventilated windows to protect from mold, window guards to protect children from falling, proper pest management to prevent cockroaches which can cause asthma, and activities directed to control of lead-based paint hazards. The National Lead Information Hotline is 1–800–424–5323.

VII. Findings and Certifications

(A) Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Regulations Division, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500.

(B) Federalism, Executive Order 12612

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this SuperNOFA will not have substantial direct effects on States or their political subdivisions, or on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Specifically, the SuperNOFA solicits applicants to expand their role in addressing community development needs in their localities, and does not impinge upon the relationships between the Federal government and State and local governments. As a result, the SuperNOFA is not subject to review under the Order.

(C) Prohibition Against Lobbying Activities

Applicants for funding under this SuperNOFA are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991, 31 U.S.C. 1352 (the Byrd Amendment), which prohibits recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant, or loan. Applicants are required to certify, using the certification found at Appendix A to 24 CFR part 87, that they will not, and have not, used appropriated funds for any prohibited lobbying activities. In addition, applicants must disclose, using Standard Form LLL, "Disclosure of Lobbying Activities," any funds, other than Federally appropriated funds, that will be or have been used to influence Federal employees, members of Congress, and congressional staff regarding specific grants or contracts. Tribes and tribally designated housing entities (THDEs) established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but tribes and TDHEs established under State law are not excluded from the statute's coverage.)

(D) Section 102 of the HUD Reform Act; Documentation and Public Access Requirements

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) (HUD Reform Act) and the regulations codified in 24 CFR part 4, subpart A, contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992 (57 FR 1942), HUD published a notice that also provides information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 apply to assistance awarded under this SuperNOFA as follows:

(1) *Documentation and public access requirements.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this SuperNOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations in 24 CFR part 15.

(2) *Disclosures.* HUD will make available to the public for 5 years all applicant disclosure reports (HUD Form 2880) submitted in connection with this SuperNOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than 3 years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

(3) *Publication of Recipients of HUD Funding.* HUD's regulations at 24 CFR 4.7 provide that HUD will publish a notice in the **Federal Register** on at least a quarterly basis to notify the public of all decisions made by the Department to provide:

(i) Assistance subject to section 102(a) of the HUD Reform Act; or

(ii) Assistance that is provided through grants or cooperative agreements on a discretionary (non-formula, non-demand) basis, but that is not provided on the basis of a competition.

(E) Section 103 HUD Reform Act

HUD's regulations implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a), codified in 24 CFR part 4, apply to this funding competition. The regulations continue to apply until the announcement of the selection of successful applicants. HUD employees

involved in the review of applications and in the making of funding decisions are limited by the regulations from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Ethics Law Division at (202) 708–3815. (This is not a toll-free number.) For HUD employees who have specific program questions, the employee should contact the appropriate field office counsel, or Headquarters counsel for the program to which the question pertains.

VIII. The FY 1998 SuperNOFA Process and Future HUD Funding Processes

In FY 1997, Secretary Cuomo took the first step at changing HUD's funding process to better promote comprehensive, coordinated approaches to housing and community development. In FY 1997, the Department published related NOFAs on the same day or within a few days of each other. In the individual NOFAs published in FY 1997, HUD advised that additional steps on NOFA coordination may be considered for FY 1998. The three SuperNOFAs to be published for FY 1998 represent the additional step taken by HUD to improve HUD's funding process and assist communities to make better use of available resources through a coordinated approach. This new SuperNOFA process was developed based on comments received from HUD clients and the Department believes it represents a significant improvement over HUD's approach to the funding process in prior years. For FY 1999, HUD may take even further steps to enhance this process. HUD welcomes comments from applicants and other members of the public on this process, and how it may be improved in future years.

The description of program funding available under this first SuperNOFA for Housing and Community Development programs follows.

Dated: March 23, 1998.

Saul N. Ramirez, Jr.,

Acting Deputy Secretary.

Table of Contents of HUD Programs in This SuperNOFA

BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

COMMUNITY DEVELOPMENT TECHNICAL ASSISTANCE PROGRAMS

Community Development Block Grant (CDBG) Technical Assistance

Community Housing Development Organization (CHDO) Technical Assistance

HOME Technical Assistance

Supportive Housing Program (SHP) Technical Assistance

BILLING CODE 4210–32–C

Funding Availability for Community Development Technical Assistance (TA) Programs—CDBG, CHDO, Home and Supportive Housing

Program Description: Approximately $82.4 million in technical assistance (TA) funds is available from four separate technical assistance programs: Community Development Block Grant (CDBG) TA, Community Housing Development Organization (CHDO) TA, HOME TA and Supportive Housing TA (collectively "CD–TA").

The funding of these four CD–TA programs through a single funding availability announcement will not affect the ability of eligible applicants to seek CD–TA funding. Eligible applicants are able to apply for funding under as few as one, and as many as four, separate CD–TA programs, individually or collectively, singularly or in combination. The specific provisions of the four separate CD–TA programs have not been changed. This Community Development Technical Assistance Programs section of the SuperNOFA reflects the statutory requirements and differences in the four different CD–TA programs.

Application Due Date: Completed applications (an original and one copy) must be submitted no later than 12:00 midnight, Eastern time, on June 24, 1998. The original application submitted to Headquarters is considered the official application. A copy of the application also should be sent to the HUD CPD Field Office or Field Offices in which you are seeking to provide services. The application kit contains the addresses and hours of operation for the HUD CPD Field Offices. See the General Section of this SuperNOFA for specific procedures governing the form of application submission (e.g., mailed applications, express mail, overnight delivery, or hand carried).

Addresses for Submitting Applications: The completed original application to be submitted to HUD Headquarters should be submitted to U.S. Department of Housing and Urban Development, CPD Processing and Control Branch, Room 7251, 451 Seventh Street, SW, Washington, DC 20410. The copy of the application to be submitted to the appropriate CPD Field Office should be sent to the address shown on the list of HUD CPD Field Offices included in the application kit. When submitting your application, please refer to the Community Development Technical Assistance Program. Be sure to include your name, mailing address (including zip code) and telephone number (including area code).

For Application Kits, Further Information, and Technical Assistance

For Application Kits. For an application kit and any supplemental information, please call the SuperNOFA Information Center at 1–800–HUD–8929. Persons with hearing or speech impairments may call the Center's TTY number at 1–800–483–2209. When requesting an application kit, please refer to "Community Development Technical Assistance Programs." Please be sure to provide your name, address (including zip code), and telephone number (including area code).

For Further Information and Technical Assistance. For answers to your questions, you have several options. You may call the HUD CPD Office serving your area at the telephone number listed in the list of HUD CPD Field Offices included in the application kit, or you may contact the SuperNOFA Information Center at 1–800–HUD–8929. Persons with hearing or speech impairments may call the Center's TTY number at 1–800–483–2209. Information on this SuperNOFA may also be obtained through the HUD web site on the Internet at http://www:HUD.gov.

Additional Information

I. Authority; Purpose; Amount Allocated; Program Award Period; Eligible Applicants; Eligible and Ineligible Activities; and Sub-Grants/ Pass-Through Funds.

The Authority, Purpose of the Program, Amount Allocated, Eligible Applicants, Eligible Activities, Ineligible Activities, and *Additional* Program Requirements, as applicable, are delineated under each technical assistance program area for which funding is being made available. Applicants should take care in reviewing this section to ensure they are eligible to apply for funds and that they meet the additional program requirements and limitations described for each program.

(A) Authority

CDBG Technical Assistance: The Community Development Block Grant Technical Assistance Program is authorized under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301–5320; 24 CFR 570.402).

CHDO Technical Assistance: The CHDO Technical Assistance Program is authorized by the Home Investment Partnerships Act (42 U.S.C. 12773) 24 CFR part 92.

HOME Technical Assistance. The HOME Technical Assistance Program is authorized by the Home Investment Partnerships Act (42 U.S.C. 12781–12783) 24 CFR part 92.

Supportive Housing Program Technical Assistance. The Supportive Housing Program is authorized under 42 U.S.C. 11381 *et seq.*; 24 CFR 583.140.

(B) Purpose of the Program

The purposes of the technical assistance programs in this SuperNOFA are:

Community Development Block Grant Technical Assistance. To increase the effectiveness with which States and units of general local government plan, develop and administer their Community Development Block Grant (CDBG) Programs, including assistance to aid non-profits and other recipients of CDBG funds.

CHDO Technical Assistance. To provide educational and organizational support assistance to Community Housing Development Organizations (CHDOs) to promote their ability to maintain, rehabilitate and construct housing for low-income and moderate-income families; to facilitate the education of low-income homeowners and tenants; and to help women who reside in low- and moderate-income neighborhoods to rehabilitate and construct housing in the neighborhoods.

HOME Technical Assistance. To help HOME participating jurisdictions design and implement HOME programs, including: improving their ability to design and implement housing strategies and incorporate energy efficiency into affordable housing; facilitating the exchange of information to help participating jurisdictions carry out their programs; facilitating the establishment and efficient operation of employer-assisted housing programs and of land bank programs; and encouraging private lenders and for-profit developers of low-income housing to participate in public-private partnerships.

Supportive Housing Program Technical Assistance. To provide HUD-funded supportive housing projects with technical assistance to promote the development of supportive housing and supportive services as part of a Continuum of Care approach, including innovative approaches to assist homeless persons in the transition from homelessness, and promoting the provision of supportive housing to homeless persons to enable them to live as independently as possible.

(C) Amount Allocated

(1) The amounts allocated for each CD–TA program are as follows:
CDBG TA funds: $5,000,000

CHDO TA funds: $42,000,000
HOME TA funds: $31,000,000
SHP TA funds: $4,395,140

(2) Each HUD/CPD Field Office has been allocated a "fair-share" of CD–TA funds for purposes of this competition. (See CD–TA Appendix A for the fair share allocations) The amounts are based on workload allocations of HOME, CDBG and SHP entitlement funds and competitive programs for which Field Offices have management oversight. These amounts are only for guidance purposes to applicants in developing their program budgets by Field Office jurisdiction and are not the exact amounts to be awarded in each area or to each provider.

The total amount to be awarded to any provider will be determined by HUD based upon the size and needs of the provider's service area within each Field Office jurisdiction in which the provider is selected to operate, the funds available for that area, the number of other awardees selected in that area, and the scope of the technical assistance to be provided. Additionally, HUD may reduce the amount of funds allocated for Field Office jurisdictions to fund national CD–TA providers and other CD–TA providers for activities which cannot be budgeted or estimated by Field Office jurisdiction. HUD may require selected applicants, as a condition of funding, to provide coverage on a geographically broader basis than applied for in order to supplement or strengthen the intermediary network in terms of the location (service area), types and scope of technical assistance proposed.

(3) To the extent permitted by funding constraints, HUD intends to provide coverage for as full a range, as possible, of eligible CD–TA activities of each CD–TA program in each Field Office jurisdiction. To achieve this objective, HUD will fund the highest ranking providers that bring the required expertise in one or more specialized activity areas, and fund portions of providers' proposed programs in which they have the greatest skill and capability for given geographic areas or on a national basis. HUD also may require national, multi-jurisdictional, or other providers to provide coverage to Field Office jurisdictions which cannot otherwise receive cost-effective support from a CD–TA provider. In selecting applicants for funding, in addition to the rating factors, HUD will apply program policy criteria identified in Section III of this CD–TA Program section of SuperNOFA to select a range of providers and activities that would best serve program objectives for each program serviced by the CD–TA funded under this SuperNOFA.

(D) Program Award Period

(1) Cooperative Agreements will be for a period of up to 36 months. HUD, however, reserves the right to:

(a) Terminate awards in accordance with provisions contained in OMB Circular A–102, and 24 CFR parts 84 and 85 anytime after 12 months;

(b) Withdraw funds from a specific provider, if HUD determines that the urgency of need for the assistance is greater in other Field Office jurisdictions or the need for assistance is not commensurate with the award for assistance;

(c) Extend the performance period of individual awardees up to a total of 12 additional months.

(2) In cases where an applicant selected for funding under this program section of the SuperNOFA currently is providing CD technical assistance under an existing CD–TA grant/cooperative agreement, HUD reserves the right to adjust the start date of funding under this program to coincide with the conclusion of the previous award, or to incorporate the remaining activities from the previous award into the new agreement, adjusting the funding levels as necessary.

(E) Eligible Applicants

(1) *General.* The eligible applicants for each of the four CD–TA programs are listed in paragraphs (2), (3), and (4) of this Section (E). This paragraph (1) lists requirements applicable to all applicants.

(a) Many organizations are eligible to apply for more than one CD–TA program and are encouraged to do so to the extent they have the requisite experience, expertise and capability.

(b) All applicant organizations must have demonstrated ability to provide CD–TA in a geographic area larger than a single city or county and must propose to serve an area larger than a single city or county.

(c) An organization may not provide assistance to itself, and any organization funded to assist CHDOs under this CD–TA Program section of the SuperNOFA may not act as a CHDO itself within its service area while under award with HUD.

(d) A consortium of organizations may apply for one or more CD–TA programs, but HUD will require that one organization be designated as the legal applicant, where legally feasible. Where one organization cannot be so designated for all proposed activities, HUD may execute more than one cooperative agreement with the members of a consortium.

(e) All applicants must meet minimum statutory eligibility requirements for each CD–TA program for which they are chosen in order to be awarded a cooperative agreement. Copies of the Technical Assistance program regulations will be provided with the application kit.

(f) All eligible CD–TA providers may propose assistance using in-house staff, consultants, sub-contractors and sub-recipients, networks of private consultants and/or local organizations with requisite experience and capabilities. Whenever possible, applicants should make use of technical assistance providers located in the Field Office jurisdiction receiving services. This draws upon local expertise and persons familiar with the opportunities and resources available in the area to be served while reducing travel and other costs associated with delivering the proposed technical assistance services.

(2) *CDBG and Supportive Housing Eligible Applicants.*

(a) States and units of general local government.

(b) Public and private non-profit or for-profit groups, including educational institutions and area-wide planning organizations, qualified to provide technical assistance on CDBG programs or Supportive Housing projects. With respect to the CDBG program, an applicant group must be designated as a technical assistance provider to a unit of government's CDBG program by the chief executive officer of each unit to be assisted, unless the assistance is limited to conferences/workshops attended by more than one unit of government.

(3) *CHDO Eligible Applicants.* Public and private non-profit intermediary organizations that customarily provide services (in more than one community) related to affordable housing or neighborhood revitalization to CHDOs, or similar organizations that engage in community revitalization, including all eligible organizations under section 233 of the Cranston-Gonzalez National Affordable Housing Act, as amended.

An intermediary will be considered as a primarily single State technical assistance provider if it can document that more than 50% of its past activities in working with CHDOs or similar nonprofit and other organizations (on the production of affordable housing or revitalization of deteriorating neighborhoods and/or the delivery of technical assistance to these groups) was confined to the geographic limits of a single State.

(4) *HOME Eligible Applicants.*

(a) A for-profit or non-profit professional and technical services company or firm that has demonstrated capacity to provide technical assistance services;

(b) A HOME participating jurisdiction (PJ) or agency thereof;

(c) A public purpose organization responsible to the chief elected official of a PJ and established pursuant to State or local legislation;

(d) An agency or authority established by two or more PJs to carry out activities consistent with the purposes of the HOME program;

(e) A national or regional non-profit organization that has membership comprised predominantly of entities or officials of entities of PJs or PJs' agencies or established organizations.

(F) Eligible and Ineligible Activities

Eligible and ineligible activities as appropriate for each of the four CD–TA programs are listed below:

(1) *Community Development Block Grant Technical Assistance.*

(a) *Eligible Activities.* Activities performed with CDBG funds must meet the substantive nexus test contained in 24 CFR 570.402(a)(2) and may include:

(i) The provision of technical or advisory services;

(ii) The design and operation of training projects such as workshops, seminars, conferences, or computer-based training;

(iii) The development and distribution of technical materials and information;

(iv) Other methods of demonstrating and making available skills, information and knowledge to assist States, units of general local government, in planning, developing, administering or assessing assistance under CDBG programs in which they are participating or seeking to participate.

(b) *Ineligible Activities.* Activities for which costs are ineligible for funding under the Community Development Block Grant Technical Assistance Program include:

(i) In the case of technical assistance for States, the cost of carrying-out the administration of the State CDBG program for non-entitlement communities;

(ii) The cost of carrying out the activities authorized under the CDBG Program, such as the provision of public services, construction, rehabilitation, planning and administration for which the technical assistance is to be provided;

(iii) The cost of acquiring or developing the specialized skills or knowledge to be provided by a group funded under this section;

(iv) Research activities;

(v) The cost of identifying units of governments needing assistance (except the cost of selecting recipients of technical assistance under the provision of 24 CFR 570.402(j) is eligible); or

(vi) Activities designed primarily to benefit HUD, or to assist HUD, in carrying out the Department's responsibilities; such as research, policy analysis of proposed legislation, training or travel of HUD staff, or development and review of reports to Congress.

(2) *CHDO Technical Assistance.* CHDO Technical Assistance funds may be used only for the following eligible activities:

(a) Organizational Support—Organizational support assistance may be made available to community housing development organizations to cover operational expenses and to cover expenses for training and technical, legal, engineering and other assistance to the board of directors, staff, and members of the community housing development organization;

(b) Housing Education—Housing education assistance may be made available to community housing development organizations to cover expenses for providing or administering programs for educating, counseling, organizing homeowners and tenants who are eligible to receive assistance under other provisions of the HOME Program;

(c) Program-Wide Support of Nonprofit Development and Management—Technical assistance, training, and continuing support may be made available to eligible community housing development organizations for managing and conserving properties developed under the HOME Program;

(d) Benevolent Loan Funds—Technical assistance may be made available to increase the investment of private capital in housing for very low-income families, particularly by encouraging the establishment of benevolent loan funds through which private financial institutions will accept deposits at below-market interest rates and make those funds available at favorable rates to developers of low-income housing and to low-income homebuyers;

(e) Community Development Banks and Credit Unions—Technical assistance may be made available to establish privately owned, local community development banks and credit unions to finance affordable housing;

(f) Community Land Trusts—Organizational support, technical assistance, education, training and continuing support under this subsection may be made available to community land trusts (as such term is defined in section 233(f) of the Cranston-Gonzalez National Affordable Housing Act) and to community groups for the establishment of community land trusts; and

(g) Facilitating Women in Homebuilding Professions—Technical assistance may be made available to businesses, unions, and organizations involved in construction and rehabilitation of housing in low- and moderate-income areas to assist women residing in the area to obtain jobs involving such activities, which may include facilitating access by helping such women develop nontraditional skills, recruiting women to participate in such programs, providing continuing support for women at job sites, counseling and educating businesses regarding suitable work environments for women, providing information to such women regarding opportunities for establishing small housing construction and rehabilitation businesses, and providing materials and tools for training such women (in an amount not exceeding 10% of any assistance provided under this paragraph). The Secretary shall give priority under this paragraph to providing technical assistance for organizations rehabilitating single family or multifamily housing owned or controlled by the Secretary pursuant to title II of the National Housing Act and which have women members in occupations in which women constitute 25% or less of the total number of workers in the occupation (in this section referred to as "nontraditional occupations").

(3) *HOME Technical Assistance Program.* HUD will provide assistance to:

(a) Facilitate the exchange of information that would help participating jurisdictions carry out the purposes of the HOME statute, including information on program design, housing finance, land use controls, and building construction techniques;

(b) Improve the ability of States and units of local government to design and implement housing strategies, particularly those States and units of local government that are relatively inexperienced in the development of affordable housing;

(c) Encourage private lenders and for-profit developers of low-income housing to participate in public-private partnerships to achieve the purposes of the HOME statute;

(d) Improve the ability of States and units of local government, community

housing development organizations, private lenders, and for-profit developers of low-income housing to incorporate energy efficiency into the planning, design, financing, construction and operation of affordable housing;

(e) Facilitate the establishment and efficient operation of employer-assisted housing programs, through research, technical assistance, and demonstration projects; and

(f) Facilitate the establishment and efficient operation of land bank programs, under which title to vacant and abandoned parcels of real estate located in or causing blighted neighborhoods is cleared for use consistent with the purposes of the HOME statute.

(4) *Supportive Housing Program Technical Assistance.* Funds are available to provide technical assistance to HUD-funded Supportive Housing projects. Funds may be used to provide technical assistance to prospective applicants, applicants, recipients or other providers (project sponsors) of Supportive Housing or SHP-funded services for homeless persons. The assistance may include, but is not limited to, written information such as papers, monographs, manuals, guides and brochures; person-to-person exchanges; and training and related costs.

(G) Sub-Grants/Pass-Through Funds

Applicants may propose to make sub-grants to achieve the purposes of their proposed CD–TA programs in accordance with program requirements in Section II of this CD–TA Program section of the SuperNOFA. In the case of CHDO TA, these sub-grants (also called "pass-through" funds) may be made for eligible activities and to eligible entities as identified in Section 233(b)(1), (2), and (7) of the Cranston-Gonzalez National Affordable Housing Act. When CHDO TA sub-grants are made to CHDOs, two statutory provisions apply:

(1) The sub-grant amount, when combined with other capacity building and operating support available through the HOME program, cannot exceed the greater of 50% of the CHDO's operating budget for the year in which it receives the funds, or $50,000 annually;

(2) An amount not exceeding 10% of the total funds awarded for the "Women in the Homebuilding Professions" eligible activity may be used to provide materials and tools for training such women.

II. Program Requirements

In addition to the program requirements listed in the General Section of this SuperNOFA, applicants are subject to the following requirements:

(A) Profit/Fee

No increment above cost, no fee or profit, may be paid to any recipient or subrecipient of an award under this CD–TA Program section of the SuperNOFA.

(B) Demand/Response Delivery System

(1) All awardees must operate within the structure of the demand/response system described in this section. They must coordinate their plans with, and operate under the direction of, each HUD Field Office within whose jurisdiction they are operating. When so directed by a Field Office, they will coordinate their activities instead through a lead CD–TA provider or other organization designated by the Field Office.

(2) If selected as the lead CD–TA provider in any Field Office jurisdiction, the awardee must coordinate the activities of other CD–TA providers selected under this CD–TA Program section of the SuperNOFA under the direction of the HUD Field Office. Joint activities by CD–TA providers may be required.

(3) Under the demand/response system, CD–TA providers will be required to:

(a) When requested by a Field Office or GTR, market the availability of their services to existing and potential clients to include local jurisdictions in which the assistance will be delivered.

(b) Respond to requests for assistance from the HUD Field Office(s) with oversight of the geographic service area for which the technical assistance will be delivered, including responding to priorities established by the Field Office in its Grants Management System. CHDOs, HOME PJs, CDBG and Supportive Housing grantees may request assistance from the CD–TA provider directly, but such requests must be approved by the local HUD Field Office.

(c) When requested by a Field Office or GTR, conduct a Needs Assessment to identify the type and nature of the assistance needed by the recipients of the assistance. Such needs assessments should typically identify the nature of the problem to be addressed by the technical assistance services; the plan of action to address the need including the type of technical assistance services to be provided, the duration of the service, the staff assigned to provide the assistance, anticipated products and/or outcomes, and the estimated cost for the provision of services; and the relationship of the proposed services to the planned or expected Consolidated Plan submission to HUD and to other technical assistance providers providing service within the locality.

(d) Obtain approval for the Technical Assistance Delivery Plan (TADP) from the HUD Field Office(s) with oversight for the area in which service will be provided. (See Section C below).

(e) Work cooperatively with other CD–TA providers in their geographic areas to ensure that clients are provided with the full range of CD–TA services needed and available. CD–TA providers are expected to be knowledgeable about the range of services available from other providers, make referrals and arrange visits by other CD–TA providers when appropriate, and carry out CD–TA activities concurrently when it is cost-effective and in the interests of the client to do so. HUD Field Offices may direct CD–TA providers to conduct joint activities.

(C) Technical Assistance Delivery Plan (TADP)

(1) After selection for funding but prior to award, each applicant must develop a TADP for each Field Office jurisdiction or National Program for which it has been selected, in consultation with the Field office and/or GTR.

(2) In developing the TADP, the applicant shall be guided by the Field Office's management strategies/workplans for each community/State in the Field Office's jurisdiction. It shall use these management strategies/workplans in determining its priority work activities, location of activities, and organizations to be assisted during the cooperative agreement performance period.

(3) The grantee management strategies/workplans are part of the Field Office's Grants Management Process (GMP) and should indicate the issues to be addressed by CD–TA, the improved performance expected as a result of CD–TA, and methods for measuring the success of the CD–TA.

(4) The TADP must delineate all the tasks and sub-tasks for each CD program the applicant will undertake in each Field Office jurisdiction. It shall show the location of the community/State in which the CD–TA activities will occur, the level of CD–TA funding and proposed activities by location, the improved program performance or other results expected from the CD–TA and the methodology to be used for measuring the success of the CD–TA. A

time schedule for delivery of the activities, budget-by-task and staffing plan shall be included in the TADP.

(D) Negotiation

After all applications have been rated and ranked and a selection has been made, HUD requires that all winners participate in negotiations to determine the specific terms of the TADP and the budget. HUD will follow the negotiation procedures described in Section III(D) of the General Section of the SuperNOFA.

(E) Forms, Certifications and Assurances

Each applicant must submit (1) the forms, certifications and assurances listed in the General Section of this SuperNOFA, and after selection for funding but prior to award (2) the CDBG Nexus Statement (where applicable).

(F) Financial Management and Audit Information

After selection for funding but prior to award, each applicant must submit a certification from an Independent Public Accountant or the cognizant government auditor, stating that the financial management system employed by the applicant meets prescribed standards for fund control and accountability required by 24 CFR part 84 for Institutions of Higher Education and other Non-Profit Institutions, 24 CFR part 85 for States and local governments, or the Federal Acquisition Regulations (for all other applicants). The information should include the name and telephone number of the independent auditor, cognizant Federal auditor, or other audit agency as applicable.

(G) Designation for CDBG/CHDO Technical Assistance Providers

CDBG TA providers will be expected to obtain designation as technical assistance providers by the chief executive officers of each community within which they are working as required by 24 CFR 570.402(c)(2). CHDO TA providers will be responsible for securing a technical assistance designation letter from a PJ stating that a CHDO or prospective CHDO to be assisted by the provider is a recipient or intended recipient of HOME funds and indicating, at its option, subject areas of assistance that are most important to the PJ.

(H)) Training Sessions

When conducting training sessions as part of its CD–TA activities, CD–TA providers are required to:

(1) Design the course materials as "step-in" packages (also called "train-the trainer" packages) so that a Field Office or other CD–TA provider may separately give the course on its own;

(2) Arrange for joint delivery of the training with Field Office participation when so requested by the Field Office; and

(3) When requested by a Field Office and/or Government Technical Representative (GTR), make provision for professional videotaping of the workshops/courses and ensure their production in a professional and high quality manner suitable for viewing by other CD clients (if this requirement is implemented, additional funds may be requested).

(I) Reports to Field Offices and/or GTRs

CD–TA providers will be required to report to the HUD Field Office(s) with oversight of the geographic area(s) in which CD–TA services are provided or to Headquarters GTRs in the case of national providers. At a minimum, this reporting shall be on a quarterly basis unless otherwise specified in the approved TADP.

(J) Active Participation

HUD Field Offices will be active participants in the delivery of all technical assistance by funded providers throughout the term of the cooperative agreement.

(K) CHDO Pass-Through Funds

CD–TA providers proposing pass-through grants are required to:

(1) Establish written criteria for selection of CHDOs receiving pass-through funds which includes the following:

(a) Participating jurisdictions (PJs) must designate the organizations as CHDOs.

(b) Generally, the organizations should not have been in existence more than 3 years.

(2) Enter into an agreement with the CHDO that the agreement and pass-through funding may be terminated at the discretion of the Department if no written legally binding agreement to provide assistance for a specific housing project (for acquisition, rehabilitation, new construction or tenant-based rental assistance) has been made by the PJ with the CHDO within 24 months of receiving the pass-through funding.

(L) Affirmatively Furthering Fair Housing

Section II(D) of the General Section of the SuperNOFA does not apply to these technical assistance programs.

III. Application Selection Process

(A) Rating and Ranking

(1) Applications will be evaluated competitively and ranked against all other applicants that have applied for the same CD–TA program (CDBG, HOME, CHDO and Supportive Housing) within each Field Office or as a National Provider. There will be separate rankings for each CD–TA program, and applicants will be ranked only against others that have applied for the same CD–TA program.

(2) Once scores are assigned, all applications will be listed in rank order for each CD–TA program for which they applied by Field Office jurisdiction and/or National Program. In each Field Office jurisdiction or National Program area, all applications for the CDBG TA program will be listed in rank order on one list, all applications for the CHDO TA program will be listed in rank order on a second list, all applications for the HOME TA program will be listed in rank order on a third list, and all applications for the Supportive Housing TA program will be listed in rank order on a fourth list. Under this system, a single application from one organization for all four CD–TA programs could be assigned different scores and different rankings for each program in different Field Offices.

(3) Applications will be funded in rank order for each CD–TA program by Field Office jurisdiction, except for national providers and others which cannot be ranked by Field Office jurisdiction. National providers and others will be ranked separately and funded in rank order for each CD–TA program. Irrespective of final scores, HUD may apply program policy criteria to select no more than one applicant per Field Office among all four CD–TA programs in this section of the SuperNOFA, to ensure diversity of methods, approaches, or kinds of projects. HUD will apply these program policy criteria to provide coverage of CD–TA services for minorities; women, particularly women in the homebuilding professions under section 233(b)(7) of the Cranston-Gonzalez National Affordable Housing Act; the disabled; homeless; persons with special needs; and rural areas.

(4) In addition to the authority in the General Section to adjust funding, HUD reserves the right to adjust funding levels for each applicant for each CD–TA program as follows:

(a) Pursuant to section 233(d)(1) and (2) of the Cranston-Gonzalez National Affordable Housing Act, funding to any single eligible nonprofit intermediary organization seeking to provide CHDO

CD–TA, whether as an independent or joint applicant, is limited to the lesser of 20% of all funds, or an amount not to exceed 20% of the organization's operating budget for any one year (not including funds sub-awarded or passed through the intermediary to CHDOs);

(b) Award additional funds to organizations designated as lead CD–TA providers as discussed in Section II.(B) of this CD–TA Program section of the SuperNOFA;

(c) Adjust funding levels for any provider based upon the size and needs of the provider's service area within each Field Office jurisdiction in which the provider is selected to operate, the funds available for that area, the number of other awardees selected in that area, funds available on a national basis for providers that will be operating nationally, or the scope of the technical assistance to be provided;

(d) To negotiate increased grant awards with applicants approved for funding if HUD requests them to offer coverage to geographic areas for which they did not apply or budget, or if HUD receives an insufficient amount of applications.

(5) If funds remain after all selections have been made, remaining funds may be:

(a) Distributed among all HUD Field Offices (in proportion to their fair-share awards) and/or the National Program, or

(b) Made available for other CD–TA program competitions.

(B) Factors for Award Used to Evaluate and Rate Applications

The factors and maximum points for each factor are provided below. The maximum number of points to be awarded for a CD–TA application is 100. The CD–TA program is not an eligible program for the EZ/EC bonus points, as described in Section III(C) of the General Section of the SuperNOFA.

Rating of the "applicant" or the "applicant's organization and staff", unless otherwise specified, will include any sub-contractors, consultants, sub-recipients, and members of consortia which are firmly committed to the project.

When addressing the Factors for Award, the applicant should discuss the specific TA projects, activities, tasks, etc. that are suggested to be carried out by the applicant during the term of the cooperative agreement.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (20 Points)

In rating this factor, HUD will consider the extent to which the application demonstrates:

(1) (4 points) Recent, relevant and successful experience of the applicant's organization and staff in providing technical assistance in all eligible activities and to all eligible entities for the CD–TA program(s) applied for, as described in the regulations;

(2) (4 points) The experience and competence of key personnel in managing complex, multi-faceted or multi-disciplinary programs which require coordination with other CD–TA entities or multiple, diverse units in an organization;

(3) (4 points) The applicant has the skills and knowledge to aid grantees in the development of Consolidated Submissions for CD programs, comprehensive plans and planning processes and citizen participation activities, or in the case of SHP TA applicants, aid grantees in the development of supportive housing and supportive services as part of a Continuum of Care approach;

(4) (4 points) The applicant has a working knowledge of, and established relationships with, key public bodies and private organizations involved in CD programs in the geographic or national areas in which it proposes to serve;

(5) (4 points) The applicant has sufficient personnel or access to qualified experts or professionals to deliver the proposed level of technical assistance in each proposed service area in a timely and effective fashion.

Rating Factor 2: Potential Effectiveness of the Application in Meeting Needs of Target Groups/Localities and Accomplishing Project Objectives for Each CD–TA Program for which Funds Are Requested (20 Points)

In rating this factor, HUD will consider the extent to which the application:

(1) (4 points) Identifies high priority needs and issues to be addressed for each CD–TA program for which funding is requested;

(2) (4 points) Outlines a clear and effective plan of suggested TA activities for addressing those needs and aiding a broad diversity of eligible grantees and/or beneficiaries, including those which traditionally have been under-served;

(3) (4 points) Identifies creative and promising ways of carrying out eligible activities which will result in better or less costly service to CD–TA program grantees and/or program beneficiaries;

(4) (4 points) Identifies creative activities to assist eligible grantees in participating in the development of, and improving, local Consolidated Plans and comprehensive strategies;

(5) (4 points) Identifies creative ways to assist grantees in achieving the economic development and continuum of care objectives of local consolidated plans and comprehensive strategies or of creating linkages between activities they are assisting and activities to achieve these objectives.

Rating Factor 3: Soundness of Approach (40 Points)

In rating this factor, HUD will consider the extent to which the application:

(1) (20 points) Provides a technically and cost effective plan for designing, organizing, and carrying out the suggested technical assistance activities within the framework of the Demand/Response System;

(2) (10 points) Demonstrates an effective and creative plan for coordinating and conducting activities to be carried out jointly by the applicant and other entities it has partnered with in each Field Office jurisdiction in which it will operate; and/or demonstrates an effective and creative plan for working in partnership with all other CD TA providers in each Field Office jurisdiction;

(3) (5 points) Provides for full geographic coverage, including urban and rural areas, (directly or through a consortium of providers) of a single State or Field Office jurisdiction or is targeted to address the needs of rural areas, minority groups or other under-served groups;

(4) (5 points) Proposes a feasible, creative plan, which uses state of the art or new promising technology, to transfer models and lessons learned in each of its CD–TA program's activities to grantees and/or program beneficiaries in other CD–TA programs.

Rating Factor 4: Leveraging Resources (10 Points)

This factor addresses the ability of the applicant to secure community resources (note: financing is a community resource) which can be combined with HUD's program resources to achieve program purposes. In evaluating this factor HUD will consider:

The extent to which the applicant has partnered with other entities to secure additional resources to increase the effectiveness of the proposed program activities. Resources may include funding or in-kind contributions, such as services or equipment, allocated to the purpose(s) of the award the applicant is seeking. Resources may be provided by governmental entities, public or private nonprofit organizations, for-profit private

organizations, or other entities willing to partner with the applicant. Applicants may also partner with other program funding recipients to coordinate the use of resources in the target area.

Applicants must provide evidence of leveraging/partnerships by including in the application letters of firm commitments, memoranda of understanding, or agreements to participate from those entities identified as partners in the application. Each letter of commitment, memorandum of understanding, or agreement to participate should include the organization's name, proposed level of commitment and responsibilities as they relate to the proposed program. The commitment must also be signed by an official of the organization legally able to make commitments on behalf of the organization.

Rating Factor 5: Comprehensiveness and Coordination (10 Points)

This factor addresses the extent to which the applicant coordinated its activities with other known organizations, participates or promotes participation in a community's Consolidated Planning process, and is working towards addressing a need in a holistic and comprehensive manner through linkages with other activities in the community.

In evaluating this factor, HUD will consider the extent to which the applicant demonstrates it has:

(1) Coordinated its proposed activities with those of other groups or organizations prior to submission in order to best complement, support and coordinate all known activities and if funded, the specific steps it will take to share information on solutions and outcomes with others. Any written agreements, memoranda of understanding in place, or that will be in place after award should be described.

(2) Taken or will take specific steps to work with recipients of technical assistance services become active in the community's Consolidated Planning process (including the Analysis of Impediments to Fair Housing Choice) established to identify and address a need/problem that is related to the activities the applicant proposes.

(3) Taken or will take specific steps to develop linkages to coordinate comprehensive solutions through meetings, information networks, planning processes or other mechanisms with:

(a) Other HUD-funded projects/activities outside the scope of those covered by the Consolidated Plan; and

(b) Other Federal, State or locally funded activities, including those proposed or on-going in the community.

IV. Application Submission Requirements

In addition to the forms, certifications and assurances listed in Section II(G) of the General Section of the SuperNOFA, all applications must, at a minimum, contain the following items:

(A) Transmittal Letter which identifies the SuperNOFA, the CD–TA programs for which funds are requested and the dollar amount requested for each program, and the applicant or applicants submitting the application.

(B) Narrative statement addressing the Factors for Award described in Section III(B) of this CD–TA Program section of this SuperNOFA. The narrative response should be numbered in accordance with each factor for award. This narrative statement will be the basis for evaluating the application. It should include a plan of suggested TA activities as described in Factors 2(b), 3(a), and elsewhere. These suggested TA activities may form a starting point for negotiating the TADP described in Section II(C) of this CD–TA Program section of the SuperNOFA.

(C) Statement which identifies the Field Office jurisdictions in which the applicant proposes to offer services. If services will not be offered throughout the full jurisdictional area of the Field Office, the statement should identify the service areas involved (e.g., States, counties, etc.), as well as the communities in which services are proposed to be offered.

(D) A matrix which summarizes the amount of funds requested for each CD–TA program in each Field Office jurisdiction or National Program for which funding is requested. (See CD–TA Appendix B for a copy of the matrix to be submitted.)

(E) A statement as to whether the applicant proposes to use pass-through funds for CHDOs under the CHDO TA program, and, if so, the amount and proposed uses of such funds.

(F) If applying for the CHDO TA program, a statement as to whether the applicant qualifies as a primarily single-State provider under section 233(e) of the Cranston-Gonzalez Affordable Housing Act and as discussed in Section I(E)(3) of the CD–TA Program section of this SuperNOFA.

(G) A statement as to whether the applicant proposes to be considered for the role of lead CD–TA provider in one or more specific program areas in a Field Office jurisdiction, and if so, the capabilities and attributes of the organization that qualify it for the role.

(H) For applicants for national program funds in one or more specific program areas, a statement as to the capabilities and attributes of the organization that qualify it to operate on a national basis. The statement should also include the nature of the suggested TA activities that make them inappropriate for funding under Field Office jurisdictions.

(I) Budget identifying costs for implementing the plan of suggested TA activities by cost category for each CD–TA program for which funds are requested by Field Office or as a National Provider (in accordance with the following):

(1) Direct Labor by position or individual, indicating the estimated hours per position, the rate per hour, estimated cost per staff position and the total estimated direct labor costs;

(2) Fringe Benefits by staff position identifying the rate, the salary base the rate was computed on, estimated cost per position, and the total estimated fringe benefit cost;

(3) Material Costs indicating the item, quantity, unit cost per item, estimated cost per item, and the total estimated material costs;

(4) Transportation Costs, as applicable.

(5) Equipment charges, if any. Equipment charges should identify the type of equipment, quantity, unit costs and total estimated equipment costs;

(6) Consultant Costs, if applicable. Indicate the type, estimated number of consultant days, rate per day, total estimated consultant costs per consultant and total estimated costs for all consultants;

(7) Subcontract Costs, if applicable. Indicate each individual subcontract and amount;

(8) Other Direct Costs listed by item, quantity, unit cost, total for each item listed, and total other direct costs for the award;

(9) Indirect Costs should identify the type, approved indirect cost rate, base to which the rate applies and total indirect costs.

These line items should total the amount requested for each CD–TA program area. The grand total of all CD–TA program funds requested should reflect the grand total of all funds for which application is made.

V. Corrections to Deficient Applications

The General Section of the SuperNOFA provides the procedures for corrections to deficient applications.

VI. Environmental Requirements

In accordance with 24 CFR 50.19(b)(9) and 58.34(a)(9), the assistance provided

by these programs relates only to the provision of technical assistance and is categorically excluded from the requirements of the National Environmental Policy Act and not subject to environmental review under the related laws and authorities. This determination is based on the ineligibility of real property acquisition, construction, rehabilitation, conversion, leasing or repair for HUD assistance under these technical assistance programs.

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Appendix A to CD-TA Program: "Fair-Share" Amounts Allocated to Each HUD CPD Office

HUD Field Office	CDBG TA	CHDO TA	HOME TA	SHP TA
Alabama State Office	$50,000	$442,750	$322,000	$40,000
Alaska State Office	$50,000	$250,250	$182,000	$40,000
Arkansas State Office	$50,000	$377,300	$274,400	$40,000
California State Office	$318,360	$2,644,950	$1,923,600	$345,858
Los Angeles Area Office	$325,920	$2,710,400	$1,971,200	$364,434
Caribbean Office	$83,580	$693,000	$504,000	$40,000
Colorado State Office	$174,300	$1,447,600	$1,052,800	$63,192
Connecticut State Office	$68,040	$565,950	$411,600	$40,000
District of Columbia Office	$68,040	$565,950	$411,600	$118,989

HUD Field Office	CDBG TA	CHDO TA	HOME TA	SHP TA
Florida State Office	$76,020	$631,400	$459,200	$100,379
Jacksonville Area Office	$91,140	$754,600	$548,800	$70,657
Georgia State Office	$91,140	$754,600	$548,800	$44,616
Hawaii State Office	$50,000	$250,250	$182,000	$40,000
Illinois State Office	$189,420	$1,574,650	$1,145,200	$208,258
Indiana State Office	$91,140	$754,600	$548,800	$55,762
Kansas/Missouri State Office	$83,580	$693,000	$504,000	$40,000
St. Louis Area Office	$50,000	$377,300	$274,400	$52,047
Kentucky State Office	$50,000	$442,750	$322,000	$52,047

HUD Field Office	CDBG TA	CHDO TA	HOME TA	SHP TA
Louisiana State Office	$68,040	$565,950	$411,600	$63,192
Maryland State Office	$50,000	$377,300	$274,400	$52,047
Massachusetts State Office	$189,420	$1,574,650	$1,145,200	$260,305
Michigan State Office	$159,180	$1,324,400	$963,200	$197,078
Minnesota State Office	$68,040	$565,950	$411,600	$74,372
Mississippi State Office	$50,000	$377,300	$274,400	$40,000
Nebraska State Office	$60,480	$504,350	$366,800	$44,616
New Jersey State Office	$159,180	$1,324,400	$963,200	$74,372
New Mexico State Office	$50,000	$250,250	$182,000	$40,000

HUD Field Office	CDBG TA	CHDO TA	HOME TA	SHP TA
New York State Office	$204,540	$1,701,700	$1,237,600	$342,198
Buffalo Area Office	$363,720	$3,026,100	$2,200,800	$81,803
North Carolina State Office	$91,140	$754,600	$548,800	$40,000
Ohio State Office	$181,860	$1,513,050	$1,100,400	$148,745
Oklahoma State Office	$50,000	$442,750	$322,000	$40,000
Oregon State Office	$60,480	$504,350	$366,800	$40,000
Pennsylvania State Office	$159,180	$1,324,400	$963,200	$152,461
Pittsburgh Area Office	$91,140	$754,600	$548,800	$81,803
South Carolina State Office	$76,020	$631,400	$459,200	$40,000

HUD Field Office	CDBG TA	CHDO TA	HOME TA	SHP TA
Tennessee Knoxville Area Office	$76,020	$631,400	$459,200	$48,332
Texas State Office	$219,660	$1,828,750	$1,330,000	$126,384
San Antonio Area Office	$60,480	$504,350	$366,800	$40,901
Virginia State Office	$68,040	$565,950	$411,600	$40,000
Washington State Office	$98,700	$820,050	$596,400	$96,664
Wisconsin State Office	$83,580	$693,000	$504,000	$78,088
National	$300,420	$3,507,700	$3,005,600	$395,540
Total	$5,000,000	$42,000,000	$31,000,000	$4,395,140

Appendix B to CD-TA Program - Matrix of Amount of Funds Requested

HUD Field Office	CDBG TA	CHDO TA	HOME TA	SHP TA
Alabama State Office	$	$	$	$
Alaska State Office	$	$	$	$
Arkansas State Office	$	$	$	$
California State Office	$	$	$	$
Los Angeles Area Office	$	$	$	$
Caribbean Office	$	$	$	$
Colorado State Office	$	$	$	$
Connecticut State Office	$	$	$	$
District of Columbia Office	$	$	$	$

HUD Field Office	CDBG TA	CHDO TA	HOME TA	SHP TA
Florida State Office	$	$	$	$
Jacksonville Area Office	$	$	$	$
Georgia State Office	$	$	$	$
Hawaii State Office	$	$	$	$
Illinois State Office	$	$	$	$
Indiana State Office	$	$	$	$
Kansas/Missouri State Office	$	$	$	$
St. Louis Area Office	$	$	$	$
Kentucky State Office	$	$	$	$

HUD Field Office	CDBG TA	CHDO TA	HOME TA	SHP TA
Louisiana State Office	$	$	$	$
Maryland State Office	$	$	$	$
Massachusetts State Office	$	$	$	$
Michigan State Office	$	$	$	$
Minnesota State Office	$	$	$	$
Mississippi State Office	$	$	$	$
Nebraska State Office	$	$	$	$
New Jersey State Office	$	$	$	$
New Mexico State Office	$	$	$	$

HUD Field Office	CDBG TA	CHDO TA	HOME TA	SHP TA
New York State Office	$	$	$	$
Buffalo Area Office	$	$	$	$
North Carolina State Office	$	$	$	$
Ohio State Office	$	$	$	$
Oklahoma State Office	$	$	$	$
Oregon State Office	$	$	$	$
Pennsylvania State Office	$	$	$	$
Pittsburgh Area Office	$	$	$	$
South Carolina State Office	$	$	$	$

HUD Field Office	CDBG TA	CHDO TA	HOME TA	SHP TA
Tennessee Knoxville Area Office	$	$	$	$
Texas State Office	$	$	$	$
San Antonio Area Office	$	$	$	$
Virginia State Office	$	$	$	$
Washington State Office	$	$	$	$
Wisconsin State Office	$	$	$	$
National	$	$	$	$
Total	$	$	$	$
Grand Total*	$			

* Grand Total must equal total amount of funds requested

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

UNIVERSITY AND COLLEGE PROGRAMS

Community Outreach Partnership Centers (COPCs)

Historically Black Colleges and Universities (HBCUs) Program

BILLING CODE 4210-32-C

Funding Availability for Community Outreach Partnership Centers

Program Description: Approximately $7 million is available to establish and operate Community Outreach Partnership Centers (COPCs) to assist in outreach and applied research activities addressing the problems of urban areas.

Application Due Date: Completed applications must be submitted no later than 12:00 midnight, Eastern time on July 8, 1998 at HUD Headquarters. See the General Section of this SuperNOFA for specific procedures governing the form of application submission (e.g., mailed applications, express mail, overnight delivery, or hand carried).

Address for Submitting Applications: Completed applications (one original and two copies) must be submitted to: Processing and Control Branch, Office of Community Planning and Development, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7251, Washington, DC 20410. When submitting your application, please refer to COPC, and include your name, mailing address (including zip code) and telephone number (including area code).

For Application Kits, Further Information and Technical Assistance

For Application Kits. For an application kit and supplemental information please call the SuperNOFA Information Center at 1–800–HUD–8929. Persons with hearing or speech impairments may call the Center's TTY number at 1–800–483–2209. The application kit also will be available on the Internet through the HUD web site at http://www.HUD.gov. When requesting an application kit, please refer to COPC and provide your name, address (including zip code), and telephone number (including area code).

For Further Information. Jane Karadbil, Office of University Partnerships in the Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, S.W., Room 8110, Washington, DC 20410, telephone (202) 708–5918, ext. 218. Persons with speech or hearing impairments may call HUD's TTY number (202) 708–0770, or 1–800–877 8399 (the Federal Information Relay Service TTY). Other than the "800" number, these numbers are not toll-free. Ms. Karadbil can also be reached via the Internet at Jane__R.__Karadbil@HUD.GOV.

For Technical Assistance. An information broadcast via satellite will be held for potential applicants to learn more about the program and preparation of an application. For more information about the date and time of this broadcast, please consult the HUD web site at the web address listed above.

Additional Information

I. Authority; Purpose; Amount Allocated; and Eligibility

(A) Authority

This program is authorized under the Community Outreach Partnership Act of 1992 (42 U.S.C. 5307 note; hereafter referred to as the "COPC Act"). The COPC Act is contained in section 851 of the Housing and Community Development Act of 1992 (Pub.L. 102–550, approved October 28, 1992) (HCD Act of 1992). Section 801(c) of the HCD Act of 1992 authorizes $7.5 million for each year of the 5-year demonstration to create Community Outreach Partnership Centers as authorized in the COPC Act.

(B) Purpose

The purpose of this COPC Program is to assist in establishing or carrying out outreach and applied research activities addressing the problems of urban areas. Funding under this demonstration program shall be used to establish and operate Community Outreach Partnership Centers (COPC).

The six key concepts of the COPC Program are:

(1) The program should provide outreach, technical assistance, applied research, and empowerment to neighborhoods and neighborhood-based organizations based on what the residents decide is needed, not based on what the institution thinks is appropriate for that neighborhood;

(2) Community-based organizations should be partners with the institutions throughout the life of the project, from planning to implementation;

(3) Components of the program may address metropolitan or regional strategies. The applicant must clearly demonstrate how:

(a) Those strategies are directly related to what the targeted neighborhoods and neighborhood-based organizations have decided is needed; and

(b) Neighborhoods and neighborhood organizations are involved in the development and implementation of the metropolitan or regional strategies;

(4) The applied research should be related to the outreach activities and be usable in these activities within the grant period or shortly after it ends, rather than research without practical application;

(5) Assistance through the grant should be provided primarily by faculty, students, or to a limited extent, by neighborhood residents or community-based organizations funded by the university; and

(6) The program should be part of the institution's broader effort to meet its urban mission, and be supported by senior officials, rather than just the work of a few faculty members. Proposed activities should not duplicate those of other entities in the community and should be appropriate for an institution of higher education to undertake in light of its teaching, research, and service missions.

The statute states that grants under the COPC Program must focus on the following specific problems: "problems associated with housing, economic development, neighborhood revitalization, infrastructure, health care, job training, education, crime prevention, planning, community organizing, and other areas deemed appropriate by the Secretary." Furthermore, the COPC Act states: "The Secretary shall give preference to institutions of higher education that undertake research and outreach activities by bringing together knowledge and expertise in the various social science and technical disciplines that relate to urban problems."

(C) Amount Allocated

The competition in this program is for up to $7.0 million to fund the fifth year of the COPC Program to fund New Grants. Institutionalization Grants will not be funded under this funding announcement for COPC. COPC grantees that have previously received a New or Institutionalization grant are not eligible to apply under this COPC funding announcement, nor are institutions of higher education that received Joint Community Development Program grants.

New Grants will be awarded to institutions of higher education to begin or expand their applied research and outreach activities. Each New Grant will be for a three-year period of performance (i.e., applicants must complete their proposed activities within three years). In order to ensure that as many eligible applicants are funded as possible, HUD has set the maximum size of any new grant at $400,000. Because these projects are quite complex, HUD has also set the minimum grant size at $250,000. Since the Statement of Work and other facets of the technical review are assessed in the context of the proposed budget and grant request, and in the interest of fairness to all applicants, HUD will not accept an application that is under $250,000 or over $400,000.

(D) Eligible Applicants

Eligible applicants are public or private nonprofit institutions of higher education granting two-or four-year degrees and accredited by a national or regional accrediting agency recognized by the U.S. Department of Education. Consortia of eligible institutions may apply, as long as one institution is designated the lead applicant. Since the Statement of Work and other facets of the technical review are assessed in the context of the proposed staffing, and in order to fund as many eligible applicants as possible, HUD has determined that each institution may be part of only one consortium or submit only one application or it will be disqualified. HUD will hold an institution responsible for ensuring that neither it nor any part of the institution, including specific faculty, participates in more than one application.

Different campuses of the same university system are eligible to apply, even if one campus has already received COPC funding. Such campuses are eligible as separate applicants only if they have administrative and budgeting structures independent of other campuses in the system.

(E) Eligible Activities

COPC Programs must combine research with outreach, work with communities and local governments and address the multidimensional problems that beset urban areas. To meet the threshold requirements, applications should be multifaceted and address three or more urban problems. Single purpose applications are not eligible.

To be most effective during the term of the demonstration, the funded research must have a clear near-term potential for solving specific, significant urban problems. The selected institutions must have the capacity to apply their research results and to work with communities and local institutions, including neighborhood groups and other appropriate community stakeholders, in applying these results to specific real-life urban problems.

Eligible activities include:

(1) Research activities which have practical application for solving specific problems in designated communities and neighborhoods, including evaluation of the effectiveness of the outreach activities. In order to ensure that the primary focus of local projects is on outreach, research may not total more than one-quarter of the total project costs contained in any grant made under this COPC funding announcement (including the required 50% match).

(2) Outreach, technical assistance and information exchange activities which are designed to address specific urban problems in designated communities and neighborhoods. Such activities must total no less than three-quarters of the total project costs (including the required 25% match). Examples of outreach activities include, but are not limited to:

(a) Job training and other training projects, such as workshops, seminars and one-on-one and on-the-job training;

(b) Design of community or metropolitan strategies to resolve urban problems of communities and neighborhoods;

(c) Innovative use of funds to provide direct technical expertise and assistance to local community groups, residents, and other appropriate community stakeholders to assist them in resolving local problems such as homelessness, housing discrimination, and impediments to fair housing choice;

(d) Technical assistance in business start-up activities for low-and moderate-income individuals and organizations, including business start-up training and technical expertise and assistance, mentor programs, assistance in developing small loan funds, business incubators, etc;

(e) Technical assistance to local public housing authorities on welfare-to-work initiatives and physical transformations of public or assisted housing;

(f) Assistance to communities to improve consolidated housing and community development plans and remove impediments to design and implementation of such plans;

(g) Assistance to communities to improve the fair housing planning process; and

(h) Regional projects that maximize the interaction of targeted inner city distressed neighborhoods with suburban opportunities similar to HUD's Bridges-to-Work or Moving to Opportunity programs, or projects that link inner-city and suburban youth with leadership training that focuses on the needs of the distressed targeted neighborhoods.

(3) Funds for faculty development including paying for course time or summer support to enable faculty members to work on the COPC.

(4) Funds for stipends for students (which cannot cover tuition and fees) when they are working on the COPC.

(5) Activities to carry out the "Responsibilities" listed under Section II.(A) below. These activities may include leases for office space in which to house the Community Outreach Partnership Center, under the following conditions:

(a) The lease must be for existing facilities;

(b) No repairs or renovations of the property may be undertaken with Federal funds; and

(c) Properties in the Coastal Barrier Resource System designated under the Coastal Barrier Resources Act (16 U.S.C. 3501) cannot be leased with Federal funds.

(F) Ineligible Activities

(1) Research activities which have no clear and immediate practical application for solving urban problems or do not address specific problems in designated communities and neighborhoods.

(2) Any type of construction, rehabilitation, or other physical development costs.

(3) Costs used for routine operations and day-to-day administration of regular programs of institutions of higher education, local governments or neighborhood groups.

II. Program Requirements

In addition to the program requirements listed in the General Section of this SuperNOFA, grantees must meet the following program requirements:

(A) Responsibilities

In accordance with section 851(h) of the HCD Act of 1992, each COPC shall:

(1) Employ the research and outreach resources of its sponsoring institution of higher education to solve specific urban problems identified by communities served by the Center;

(2) Establish outreach activities in areas identified in the grant application as the communities to be served;

(3) Establish a community advisory committee comprised of representatives of local institutions and residents of the communities to be served to assist in identifying local needs and advise on the development and implementation of strategies to address those issues;

(4) Coordinate outreach activities in communities to be served by the Center;

(5) Facilitate public service projects in the communities served by the Center;

(6) Act as a clearinghouse for dissemination of information;

(7) Develop instructional programs, convene conferences, and provide training for local community leaders, when appropriate; and

(8) Exchange information with other Centers.

The clearinghouse function in (6) above refers to a local or regional clearinghouse for dissemination of information and is separate and distinct from the functions in (8) above, which

relate to the provision of information to the University Partnerships Clearinghouse, which is the national clearinghouse for the program.

(B) Cap on Research Costs

No more than 25% of the total project costs (Federal share plus match) can be spent on research activities.

(C) Match

This non-Federal share may include cash or the value of non-cash contributions, equipment and other allowable in-kind contributions as detailed in 24 CFR part 84, and in particular § 84.23 entitled "cost sharing or matching." Applicants must meet the match requirements identified below:

(1) *Research Activities.* 50% of the total project costs of establishing and operating research activities.

(2) *Outreach Activities.* 25% of the total project costs of establishing and operating outreach activities.

An example of how to calculate the match is included in the application kit.

(D) Administrative

The grant will be governed by the provisions of 24 CFR part 84 (Grants and Agreements with Institutions of Higher Education, Hospitals and other Nonprofit Organizations), A–122 (Cost Principles for Nonprofit Organizations), and A–133 (Audits of States, Local Governments and Nonprofit Organizations).

III. Application Selection Process

Two types of reviews will be conducted: a threshold review to determine applicant eligibility; and a technical review to rate the application based on the rating factors in this Section III.

(A) Additional Threshold Criteria for Funding Consideration

Under the threshold review, the applicant will be rejected from the competition if the applicant is not in compliance with the requirements of the General Section of the SuperNOFA and if the following additional standards are not met:

(1) The applicant has met the statutory match requirements.

(2) The applicant has proposed a program in which no more than 25% of the total project costs will be for research activities.

(3) The applicant has requested a Federal grant that is no less than $250,000 and no more than $400,000 over the three-year grant period.

(4) The application addresses at least three urban issues, such as affordable housing, fair housing, economic development, neighborhood revitalization, infrastructure, health care; job training, education, crime prevention, planning, and community organizing.

(5) The applicant, and any part of the applicant's organization, does not participate in more than one application.

(B) Factors for Award Used To Evaluate and Rate Applications

The factors for rating and ranking applicants, and maximum points for each factor, are provided below. The maximum number of points for this program is 102. This includes two EZ/EC bonus points, as described in the General Section of the SuperNOFA.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (15 Points)

This factor addresses the extent to which the applicant has the organizational resources necessary to successfully implement the proposed activities in a timely manner. The rating of the "applicant" or the "applicant's organization and staff" for technical merit or threshold compliance, unless otherwise specified, will include any faculty, sub-contractors, consultants, sub-recipients, and members of consortia which are firmly committed to the project. In rating this factor HUD will consider the extent to which the proposal demonstrates:

(1) (10 points) The knowledge and experience of the overall proposed project director and staff, including the day-to-day program manager, consultants and contractors in planning and managing programs for which funding is being requested. Experience will be judged in terms of recent, relevant and successful experience of the applicant's staff to undertake eligible program activities. In rating this factor, HUD will consider the extent to which the applicant's organization and staff have recent, relevant, and successful experience in:

(a) Undertaking research activities in specific communities that have a clear near-term potential for practical application to significant urban issues, such as affordable housing, fair housing, economic development, neighborhood revitalization, infrastructure, health care, job training, education, crime prevention, planning, and community organizing;

(b) Undertaking outreach activities in specific communities to solve or ameliorate significant urban issues;

(c) Undertaking projects with community-based organizations or local governments; and

(d) Providing leadership in solving community problems and making national contributions to solving long-term and immediate urban problems.

(2) (3 points) The applicant has sufficient personnel or will be able to quickly access qualified experts or professionals, to deliver the proposed activities in each proposed service area in a timely and effective fashion, including the readiness and ability of the applicant to immediately begin the proposed work program.

(3) (2 points) The applicant has demonstrated experience in managing programs, and carrying out *grant management* responsibilities for programs, similar in scope or nature directly relevant to the work activities proposed. If the applicant has managed large, complex, interdisciplinary programs, the applicant should include the information in the response.

Rating Factor 2: Need/Extent of the Problem (15 Points)

This factor addresses the extent to which there is a need for funding the proposed program activities and an indication of the urgency of meeting the need in the target area. In responding to this factor, applicants will be evaluated on:

(1) (10 points) The extent to which they document the level of need for the proposed activity: and

(2) (5 points) The urgency in meeting the need. Applicants should use statistics and analyses contained in a data source(s) that:

(a) Is sound and reliable. To the extent that the applicant's community's Consolidated Plan and Analysis of Impediments to Fair Housing Choice (AI) identifies the level of the problem and the urgency in meeting the need, references to these documents should be included in the response. The Department will review more favorably those applicants who used these documents to identify need, when applicable.

If the proposed activity is not covered under the scope of the Consolidated Plan and Analysis of Impediments to Fair Housing Choice (AI), applicants should indicate such, and use other sound data sources to identify the level of need and the urgency in meeting the need. Types of other sources include, but are not limited to, Census reports, Continuum of Care gaps analysis, law enforcement agency crime reports, Public Housing Authorities' Five Year Comprehensive Plan, and other sound and reliable sources appropriate for the specific program and activities for which an applicant is applying for funding. Applicants may also address

needs in terms of fulfilling court orders or consent decrees, settlements, conciliation agreements, and voluntary compliance agreements. For technical assistance programs, input from HUD State and Area Office(s) and assessments are included among the data sources that may be used to identify need.

(b) To the extent possible, specific to the area where the proposed activity will be carried out. Specific attention must be paid to documenting need as it applies to the area where activities will be targeted, rather than the entire locality or state. If the target area is an entire locality or state, then documenting need at this level is appropriate.

The applicant should discuss how it took into account existing and planned efforts of government agencies, community-based organizations, faith-based institutions, for-profit firms and other entities to address such needs in the community(ies) to be served, how the proposed program compliments or supplements these existing efforts, and why additional funds are being requested.

Rating Factor 3: Soundness of Approach (50 Points)

This factor addresses the quality and cost-effectiveness of the applicant's proposed work plan. There must be a clear relationship between the proposed activities, community needs and the purpose of the program funding for an applicant to receive points for this factor. The factor will be evaluated based on the extent to which the proposed activities will:

(1) (4 points) Help solve or address an urgent need or problem as identified under Rating Factor 2—Need/Extent of the Problem. The impact of the activity will be evaluated, including the tangible benefits to be attained by the community and by the target population including affirmatively furthering fair housing for classes protected under the Fair Housing Act. The applicant should demonstrate a strong familiarity with the existing and planned efforts of government agencies, community-based organizations, faith-based organizations, for-profit firms and other entities to address such needs in the communities to be served, and should demonstrate that the applicant can cost-effectively complement any such efforts to attain measurable results.

(2) (8 points) The extent to which the proposed work program identifies the specific services or activities to be performed. In reviewing this subfactor HUD will consider the extent to which:

(a) The applicant's proposal outlines a clear research agenda, based on a thorough familiarity with existing research on the subject. The applicant should demonstrate that the proposed research does not duplicate research previously completed or currently underway by others.

(b) The applicant demonstrates how the research will fit into and strengthen the outreach strategy and activities. For example, an applicant proposing to study the extent of housing abandonment in a neighborhood and then designing a plan for reusing this housing would be able to demonstrate the link between the proposed research and outreach strategies.

(c) The applicant's plan outlines a clear outreach agenda;

(d) There is a plan for involving the university as a whole in the execution of the outreach strategy.

(e) The extent to which grant funds will pay for activities conducted by the grantee, rather than passed through to other entities.

(3) (7 points) The extent to which the proposed program of activities involves the communities to be served in implementation of these activities. In reviewing this subfactor, HUD will look at the extent to which:

(a) One or more Community Advisory Committees, comprised of representatives of local institutions and a balance of the race, ethnic, disability status, gender, and income of the residents of the communities to be served, has been or will be formed to work in partnership with the COPC to develop and implement strategies to address the needs identified in Factor 2. Applicants will be expected to demonstrate that they have already formed such a committee(s) or secured the commitment of the appropriate persons to serve on the committee(s), rather than just describing generally the types of people whose involvement they will seek.

(b) A wide range of neighborhood organizations and local government entities participated in the identification of the research and outreach activities.

(c) The outreach program provides for on-site or a frequent presence in the targeted communities and neighborhoods.

(d) The outreach agenda includes training projects for local community leaders, for example, to increase their capacity to direct their organizations or undertake various kinds of community development projects.

(4) (6 points) The extent to which the proposed activities will achieve the purposes of the program from which funding is requested within the grant period. The applicant should identify specific time phased and measurable objectives to be accomplished during the period of performance; the proposed short and long term program objectives to be achieved as a result of the proposed activities; the tangible and measurable impacts the work program will have on the community in general and the target area or population in particular; and the relationship of the proposed activities to other on-going or proposed efforts to improve the economic, social or living environment in the impact area.

(5) (4 points) The extent to which the proposed project will potentially yield innovative strategies or "best practices" that can be replicated and disseminated to other organizations, including nonprofit organizations, State and local governments. In reviewing this factor, HUD will assess the demonstrated ability of the applicant to disseminate results of research and outreach activities to other COPCs and communities. HUD will evaluate the past experience of the applicant and the scope and quality of the applicant's concrete plan to disseminate information on COPC results, strategies, and lessons learned through such means as conferences, cross-site technical assistance, publications, etc.

(6) (3 points) The extent to which the proposed application will further and support the policy priorities of HUD including:

(a) Promoting healthy homes;

(b) Providing opportunities for self-sufficiency, particularly for persons enrolled in welfare to work programs;

(c) Enhancing on-going efforts to eliminate drugs and crime from neighborhoods through program policy efforts such as "One Strike and You're Out" or the "Officer Next Door" initiative;

(d) Providing educational and job training opportunities through such initiatives as Neighborhood Networks, Campus of Learners and linking to AmeriCorps activities.

(7) (5 points) The extent to which the applicant's work will include activities that affirmatively further fair housing, for example:

(a) Overcoming impediments to fair housing, such as discrimination in the sale or rental of housing or in advertising, provision of brokerage services, or lending;

(b) Promoting fair housing through the expansion of homeownership opportunities and improved quality of city services for minorities, families with children, and persons with disabilities; or

(c) Providing mobility counseling.

(8) (13 points) The extent to which the proposed COPC will result in the COPC function and activities being sustained by becoming part of the urban mission of the institution and being funded in the future by sources other than HUD. In reviewing this subfactor, HUD will consider the extent to which:

(a) COPC activities relate to the institution's urban mission; are part of a climate that rewards faculty work on these activities through promotion and tenure policies; benefit students because they are an overall part of a service learning program at the institution; and are reflected in the curriculum. HUD will look at the institution's commitment to faculty and staff continuing work in COPC neighborhoods or replicating successes in other neighborhoods and to its longer term commitment (e.g., five years after the start of the COPC) of hard dollars to COPC work.

(b) The applicant has received commitments for funding from sources outside the university for related non-COPC-funded projects and activities in the targeted neighborhood or other distressed neighborhoods. Funding sources to be considered include, but are not limited to, local governments, neighborhood organizations, private businesses, and foundations.

Rating Factor 4: Leveraging Resources (10 Points)

This factor addresses the ability of the applicant to secure community resources which can be combined with HUD's program resources to achieve program purposes. In evaluating this factor HUD will consider:

The extent to which the applicant has partnered with other entities to secure additional resources to increase the effectiveness of the proposed program activities. Resources may include funding or in-kind contributions, such as services or equipment, allocated to the purpose(s) of the award the applicant is seeking. Resources may be provided by governmental entities, public or private nonprofit organizations, for-profit private organizations, or other entities willing to partner with the applicant. Applicants may also partner with the funding recipients in other grant programs to coordinate the use of resources in the target area.

Because COPC has a matching requirement, rating points for this factor will be allocated based upon the extent to which an applicant has exceeded the program's minimum match requirement. Up to a total of 5 points will be awarded for a match that is 50% over the statutorily-required match.

The Department is concerned that applicants should be providing hard dollars as part of their matching contributions in order to enhance the tangible resources going into targeted neighborhoods. Thus, while indirect costs can count towards meeting the statutorily required match, they will not be used in calculating match overage. Only direct costs can count in this factor.

In addition, because HUD is interested in promoting the institutionalization of COPC projects and activities, up to an additional 5 points will be awarded for the extent to which matching funds are provided from eligible sources other than the applicant (e.g., funds from the city, including CDBG, other State or local government agencies, public or private organizations, or foundations).

Applicants must provide evidence of leveraging/partnerships by including in the application letters of firm commitment, memoranda of understanding, or agreements to participate from those entities identified as partners in the application. Each letter of commitment, memorandum of understanding, or agreement to participate should include the organization's name, proposed level of commitment and responsibilities as they relate to the proposed program. The commitment must also be signed by an official of the organization legally able to make commitments on behalf of the organization.

Rating Factor 5: Comprehensiveness and Coordination (10 Points)

This factor addresses the extent to which the applicant coordinated its activities with other known organizations, participates or promotes participation in a community's Consolidated Planning process, and is working towards addressing a need in a holistic and comprehensive manner through linkages with other activities in the community.

In evaluating this factor, HUD will consider the extent to which the applicant demonstrates it has:

(1) (4 points) Coordinated its proposed activities with those of other groups or organizations prior to submission in order to best complement, support and coordinate all known activities and if funded, the specific steps it will take to share information on solutions and outcomes with others. Any written agreements, memoranda of understanding in place, or that will be in place after award should be described.

(2) (3 points) Taken or will take specific steps to become active in the community's Consolidated Planning process (including the Analysis of Impediments to Fair Housing Choice) established to identify and address a need/problem that is related to the activities the applicant proposes.

(3) (3 points) Taken or will take specific steps to develop linkages to coordinate comprehensive solutions through meetings, information networks, planning processes or other mechanisms with:

(a) Other HUD-funded projects/activities outside the scope of those covered by the Consolidated Plan; and

(b) Other Federal, State or locally funded activities, including those proposed or on-going in the community.

(C) Selections

In order to be funded under COPC, an applicant must receive a minimum score of 70. It is HUD,s intent to fund at least one eligible applicant that serves colonias, as defined by section 916(d) of the Cranston-Gonzalez National Affordable Housing Act, as long as the applicant receives a minimum score of 70.

If two or more applications have the same number of points, the application with the most points for Factor 3, Soundness of Approach shall be selected. If there is still a tie, the application with the most points for Factor 4, Leveraging Resources shall be selected.

HUD reserves the right to make selections out of rank order to provide for geographic distribution of funded COPCs. The approach HUD will use, if it decides to implement this option, will be based on combining two adjacent standard HUD regions (e.g., Southwest and Southeast Regions, Great Plains and Midwest Regions, etc.). If the rank order does not yield at least one fundable COPC within each combined region, then HUD may select the highest ranking application from such a combination, as long as the minimum score of 70 points is achieved.

After all applications have been rated and ranked and selections have been made, HUD may require that all winners participate in negotiations to determine the specific terms of the Statement of Work and the grant budget. In cases where HUD cannot successfully conclude negotiations, or a selected applicant fails to provide HUD with requested information, awards will not be made. In such instances, HUD may elect to offer an award to the next highest ranking applicant, and proceed with negotiations with the next highest ranking applicant.

After award but before grant execution, winners will be required to

provide a certification from an Independent Public Accountant or the cognizant government auditor, stating that the financial management system employed by the applicant meets proscribed standards for fund control and accountability required by OMB Circular A–133, Uniform Administrative Requirements for Grant Agreements With Institutions of Higher Education, Hospitals, and other Non-Profit Organizations, Revised OMB Circular A–110, or 24 CFR part 85 for States and local governments, or the Federal Acquisition Regulations (for all other applicants). This information should contain the name and telephone number of the Independent Auditor, cognizant Federal auditor, or other audit agency, as applicable.

IV. Application Submission Requirements

The application should include an original and two copies of the items listed below. In order to be able to recycle paper, please do not submit applications in bound form; binder clips or loose leaf binders are acceptable. Also, please, do not use colored paper. Please note the page limits below for some of the items listed below and do not exceed them.

In addition to the forms, certifications and assurances listed in Section II(G) of the General Section, all applications must, at a minimum, contain the following items:

(A) *Transmittal Letter* which must be signed by the Chief Executive Officer of the institution or his or her designee. If a designee signs, the application must include the official delegation of signatory authority;

(B) *A Statement of Work* (25 page limit) which incorporates all activities to be funded in the application and details how the proposed work will be accomplished. Following a task-by-task format, the Statement of Work must:

(1) Arrange the presentation of related major activities by project functional category (e.g., economic development, affordable housing, capacity building), summarize each activity, identify the primary persons involved in carrying out the activity, and delineate the major tasks involved in carrying it out.

(2) Indicate the sequence in which the tasks are to be performed, noting areas of work which must be performed simultaneously.

(3) Identify specific numbers of quantifiable intermediate and end products and objectives the applicant aims to deliver by the end of the award agreement period as a result of the work performed.

(C) *Narrative statement addressing the Factors for Award in Section III. (B) (2) above.* (30 page limit, not including tables, maps, and letters of matching commitments). Your narrative response should be numbered in accordance with each factor and subfactor. Please do not repeat material in your Statements of Work or Need; instead focus on how you meet each factor.

(D) *Budget.* The budget presentation should be consistent with the Statement of Work and include:

(1) Budget Form—The sample budget form included in the application kit should be used to prepare the budget.

(2) A narrative explanation of how the applicant arrived at its cost estimates, for any line item over $1,000.

(3) A statement of compliance with the 20% limitation on "Planning and Administration" Costs.

(4) An explanation of compliance with the requirement that not more than 25% of the total budget be allocated to research activities.

(5) An explanation of compliance with the matching requirements. More guidance on all of these items is included in the application kit.

(E) *Abstract.* (1 page limit) An abstract describing the goals and activities of the program.

V. Corrections to Deficient Applications

The General Section of the SuperNOFA provides the procedures for corrections to deficient applications.

VI. Environmental Requirements

In accordance with 24 CFR 50.19(b) of the HUD regulations, activities assisted under this program are categorically excluded from the requirements of the National Environmental Policy Act and are not subject to environmental review under the related laws and authorities.

Funding Availability for the Historically Black Colleges and Universities Program

Program Description: Approximately $6,500,000 is available in funding for the Historically Black Colleges and Universities (HBCU) Program. The HBCU Program assists HBCUs expand their role and effectiveness in addressing community development needs in their localities, including neighborhood revitalization, housing, and economic development.

Application Due Date: Completed applications must be submitted no later than 12:00 midnight, Eastern time on July 8, 1998, at HUD Headquarters with a copy to the appropriate HUD CPD Field Office. See the General Section of this SuperNOFA for specific procedures governing the form of application submission (e.g., mailed applications, express mail, overnight delivery, or hand carried).

Address for Submitting Applications: An original signed application and one copy shall be submitted to the following address: Processing and Control Branch, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7251, Washington, DC 20410. When submitting your application, please refer to the HBCU Program, and include your name, mailing address (including zip code) and telephone number (including area code).

Copies of Applications to HUD Offices. To facilitate processing and review of an application, one copy of the application also should be sent to the Community Planning and Development (CPD) Director in the appropriate HUD Field Office for the HBCU. The list of HUD Field Offices is included in the application kit.

HUD will accept only *one* application per HBCU. If more than one application is received from a single HBCU, the application from that HBCU that was received earliest will be considered for funding, and the application(s) submitted later will be ineligible. If more than one application is received simultaneously from an HBCU then all such applications will be considered ineligible for funding. Applicants should take these policies into account and take steps to ensure that multiple applications are not submitted.

For Application Kits, Further Information, and Technical Assistance:

For Application Kits. For an application kit and any supplemental information, please call the SuperNOFA Information Center at 1–800–HUD–8929. Persons with hearing or speech impairments may call the Center's TTY number at 1–800–843–2209. The application kit also will be available on the Internet through the HUD web site at http://www.HUD.gov. When requesting an application kit, please refer to the HBCU Program and provide your name, address (including zip code), and telephone number (including area code).

For Further Information and Technical Assistance. For answers to your questions, you have several options. You may call Ms. Delores Pruden, Historically Black Colleges and Universities Program, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh St, SW, Washington, DC 20410; telephone (202) 708–1590. (This is not a toll-free number.) Persons with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service toll-free at 1–800–877–8339. Information may also be obtained from the HUD Field Office located in the applicant's geographic area. The application kit contains the names, addresses and telephone numbers of the HUD Field Offices. For general information and information regarding training on this HBCU Program section of the SuperNOFA, applicants can call the SuperNOFA Information Center at 1–800–HUD–8929.

Additional Information:

I. Authority; Purpose; Amount Allocated; and Eligibility.

(A) Authority

This program is authorized under section 107(b)(3) of the Housing and Community Development Act of 1974 (the 1974 Act) (42 U.S.C. 5307(b)(3)), which was added by section 105 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235). The HBCU Program is governed by regulations contained in 24 CFR 570.400 and 570.404, and in 24 CFR part 570, subparts A, C, J, K, and O.

(B) Purpose

The purpose of the HBCU Program is to assist HBCUs expand their role and effectiveness in addressing community development needs in their localities, including neighborhood revitalization, housing, and economic development, consistent with the purposes of Title I of the Housing and Community Development Act of 1974, as amended.

(1) For the purposes of this program, the term "locality" includes any city, county, town, township, parish, village, or other general political subdivision of a State or the U.S. Virgin Islands within which an HBCU is located.

(2) An HBCU located in a metropolitan statistical area (MSA), as established by the Office of Management and Budget, may consider its locality to be one or more of these entities within the entire MSA. The nature of the locality for each HBCU may differ, therefore, depending on its location.

(3) A "target area" is the locality or area within the locality that the HBCU will implement its proposed HUD grant activities.

(C) Amount Allocated

(1) In order to ensure that some previously unfunded HBCUs will receive awards in this competition, approximately one-third of the available funds will be awarded to applicants that have not previously been funded under the HUD HBCU program. (The FY 1991 competition was the first funded under the current HBCU Program authorization, section 107(b)(3) of the 1974 Act.) Therefore, of the $6.5 million in FY 1998 funds made available under this SuperNOFA for the HBCU Program:

(a) Approximately $2.2 million will be awarded to HBCUs that have not received funding in past HUD HBCU competitions under section 107(b)(3) of the Housing and Community Development Act of 1974, as amended, which includes competitions for Fiscal Years 1991 through 1997 ("Previously-unfunded HBCUs").

(b) The remaining approximately $4.3 million of FY 1998 funds will be awarded to HBCUs that have received funding under such competitions ("Previously-funded HBCUs") (Previously funded HBCUs are listed in HBCU Appendix A to this HBCU Program section of the SuperNOFA. Previously-unfunded HBCUs are listed in HBCU Appendix B section of the SuperNOFA.).

If recaptured funds are made available, those funds will also be divided proportionately between the two types of applicant i.e. one third to Previously-unfunded HBCUs and two-thirds to Previously-funded HBCUs.

(2) The maximum period for performance of a proposed program under this SuperNOFA for the HBCU Program is 24 months. The performance period will commence on the effective date of the grant agreement. HUD reserves the right to make awards for less than the maximum amount or less than the amount requested in a particular application. The awards will be made in the form of grants. The

maximum amount awarded to any applicant will be $400,000.

(D) Eligible Applicants

Only HBCUs as determined by the Department of Education in 34 CFR 608.2 in accordance with that Department's responsibilities under Executive Order 12876, dated November 1, 1993, are eligible for funding under the HBCU Program. As indicated above, funds available under this program will be split between two classes of HBCU applicant.

(1) The first category, previously-funded HBCUs, includes HBCUs that have received funding in past HUD HBCU competitions under section 107(b)(3) of the Housing and Community Development Act of 1974, which includes competitions for Fiscal Years 1991 through 1997.

(2) The second category of eligible applicant, Previously-unfunded HBCUs, includes HBCUs that *have not* received funding under such competitions. Lists of Previously-funded HBCUs and Previously-unfunded HBCUs appear as Appendices A and B to the HBCU Program section of the SuperNOFA. HUD will use these lists to determine in which category the application should be considered.

(E) Eligible Activities

(1) *General.* Each activity proposed for funding must meet both a Community Development Block Grant (CDBG) Program national objective AND the CDBG eligibility requirements, which are described in Section III of the HBCU Program section of the SuperNOFA. Eligible activities that may be funded under this HBCU Program section of the SuperNOFA are those activities eligible for CDBG funding. The activities are listed in 24 CFR part 570, subpart C, particularly §§ 570.201 through 570.206. Ineligible activities are listed at § 570.207. Additionally, an activity which otherwise is eligible under §§ 570.201 through 570.206 may not be funded if State or local law requires that it be carried out by a governmental entity.

(2) *Examples of Eligible Activities.* Examples of activities that generally can be carried out with these funds include, but are not limited to:

(a) Acquisition of real property;

(b) Clearance and demolition;

(c) Rehabilitation of residential structures to increase housing opportunities for low- and moderate-income persons and rehabilitation of commercial or industrial buildings to correct code violations or for certain other purposes; e.g., making accessibility and visitability modifications to housing. Applicants proposing to undertake this activity will be required to provide reasonable estimates, from a *qualified* entity other than the applicant, of the cost to complete projects. Such an entity must be involved in the business of housing rehabilitation, construction and/or management;

(d) Direct homeownership assistance to low- and moderate-income persons, as provided in section 105(a)(25) of the Housing and Community Development Act of 1974;

(e) Acquisition, construction, reconstruction, rehabilitation, or installation of public facilities and improvements, such as water and sewer facilities and streets. Applicants proposing to undertake this activity will be required to provide reasonable estimates, from a *qualified* entity other than the applicant, of the cost to complete projects. Such an entity must be involved in the business of housing rehabilitation, construction and/or management;

(f) Special economic development activities described at 24 CFR 570.203;

(g) Eligible public service activities, including activities that provide a continuum of care for the homeless; adult basic education classes; GED preparation and testing; job and career counseling and assessment; citizen participation academies, and public access telecommunications centers including "Campus of Learners" (COL) and "Neighborhood Networks" (NN); social and medical services; other support activities for youth, senior citizens, and other low- and moderate-income residents; and/or fair housing services designed to further the fair housing objectives of the Fair Housing Act (42 U.S.C. 3601–20) by making all persons, without regard to race, color, religion, sex, national origin, family status and/or disability aware of the range of housing opportunities available to them;

(h) Assistance to facilitate economic development by providing technical or financial assistance for the establishment, stabilization, and expansion of microenterprises, including minority enterprises;

(i) Establishment of a Community Development Corporation (CDC) to undertake eligible activities;

(j) Assistance to a community based development organization (CBDO) to carry out a CDBG neighborhood revitalization, community economic development, or energy conservation project, in accordance with 24 CFR 570.204. This could include activities in support of a HUD approved local CDBG Neighborhood Revitalization Strategy (NRS) or HUD approved State CDBG Community Revitalization Strategy (CRS). HBCUs proposing a Community Development Corporation (CDC) component may qualify for CBDO activities; and

(k) Program administration costs related to the planning and execution of community development activities assisted in whole or in part with grant funds. In order to expand the capacity of HBCUs eligible under this SuperNOFA, applicants may propose to use up to 10% of the award funds to acquire technical assistance (TA) from a qualified TA provider to assist in implementing the proposed activities. While applicants are responsible for ensuring that potential TA providers are qualified, HUD would expect that the most qualified providers would be entities/organizations that have demonstrated the expertise and capacity to successfully conceptualize, develop and implement community and economic development projects and initiatives similar to those proposed by the applicant. Although pre-award technical assistance costs may not be paid out of grant funds (not including matching funds, if any), applicants expecting to need technical assistance are encouraged, nonetheless, to choose a TA provider as early as possible, to ensure that the TA provider is involved in the early stages of proposal development. Previously-unfunded HBCUs are particularly encouraged to consider acquiring technical assistance from a qualified HBCU TA provider.

(3) *Activities Designed to Promote Training and Employment Opportunities.* In selecting proposed eligible activities, applicants are urged to propose undertaking activities designed to promote opportunities for training and employment of low-income residents in connection with HUD initiatives such as "Campus of Learners" (COL) in public housing and "Neighborhood Networks" (NN) in other Federally-assisted or insured housing. Applicants are also encouraged, whenever feasible, to propose implementing activities in a Federally-designated Urban or Rural (HUD or Department of Agriculture) Empowerment Zone, Urban or Rural Enterprise Community (EZ or EC), or a HUD-approved local CDBG Neighborhood Revitalization Strategy Area or HUD-approved State CDBG Community Revitalization Strategy Area.

(4) *Use of Grant Funds for Acquisition of Computer Hardware and Software.* Although acquisition of equipment is not generally an eligible activity (subject to the exceptions provided in 24 CFR

570.207(b)(1)), applicants are encouraged to propose the use of grant funds, at reasonable levels, for the acquisition of computer hardware and software compatible with Internet access and HUD's Community Planning 2020 Software , if they do not currently have such capability. More information on the Community 2020 Software can be obtained from the local HUD Community Planning and Development Office.

(5) *Use of Grant Funds for the Provision of Public Services.* Those applicants planning to use grant funds for the provision of public services are bound by the statutory requirement that not more than 15% of the total grant amount be used for public service activities. Therefore, at least 85% of the grant amount must be proposed to be used for activities qualifying under an eligibility category other than public services (as described at 24 CFR 570.201(e)).

II. Program Requirements

In addition to the program requirements listed in the General Section of this SuperNOFA, applicants are subject to the following requirements:

(A) Submission of a Budget

The budget should include:

(1) A budget summary covering the Federal and non-Federal share of costs proposed, by cost category, and a budget justification which includes assumptions used to determine the costs of budget items in each category. The proposed cost estimates should be reasonable for the work to be performed and consistent with rates established for the level of expertise required to perform the work in the proposed geographic area.

The application kit includes Budget Forms which must be completed in full. The Federal Share Budget Summary Forms should indicate the use of funds the applicant will receive from HUD under this HBCU funded program. In addition, funds received from other HUD programs, awarded under a locality's CDBG Program, or through other Federal agencies should be identified on the non-Federal share portion of the budget summary sheets. The non-Federal share should also identify other public or private sector funds which will be used to implement the proposed program activities.

While HUD recognizes that the costs are based upon estimates, the summary should include information such as quotes from various vendors or historical data relied upon in determining projected costs. All direct labor or salaries must be supported with mandated city/state pay scales or other documentation. Indirect costs must be substantiated and approved by the cognizant Federal agency or the applicant must provide an indirect cost rate plan.

Particular attention should be paid to:

(a) Accurately estimating costs;

(b) The necessity and reasonableness of costs; and

(c) Accurate computation of all budget items and totals.

(2) A budget-by-task, which will include a listing of tasks to be completed for each activity necessary to be performed to implement the program, the overall costs for each task, and the cost for each funding source. The budget-by-task should clearly indicate the HUD grant amount and identify the source and dollar amount of the matching funds, if any. HUD will award points on the extent to which the budget documents clearly demonstrate a cost-effective use of resources based on reasonable assumptions.

This form of the budget will show the total budget by line item for the program activities to be carried out with the proposed HUD HBCU grant. This will be a functional budget. Each line item represents the task to be done, not the person who will do it. Producing the budget in this format provides both financial and reporting information that will allow the program to be more easily evaluated.

Since one person may be assigned to do several tasks, that person's salary may be prorated to the various tasks for which he or she is responsible. For example, the Program Manager may spend some of his or her time in outreach and recruitment, some time developing leadership training, and some time in evaluation or other administrative tasks. His or her time may be divided between those activities to come up with the budget. However, if the Manager and other staff are primarily engaged in program management and oversight, the HUD funded salary cost should be budgeted as an administrative cost.

Each dollar amount on this budget must represent an actual cost of the program. Do not include the value of any in-kind goods and/or services contributions to the tasks. For example, if a social service organization is donating staff time to do social work, do not enter the value of that time for a task. If a fee is to be paid for counseling work, however, enter that amount for the appropriate task. Although the dollar value of in-kind goods and/or service contributions should not be included in the budget, remember to state this information on the Match Form.

The Line Item for Administrative costs covers salaries (except to the extent that they are attributed to other tasks) and related costs, and other costs for goods and services required for the program such as rental or purchase of office equipment, utilities, insurance, legal, staff training, office supplies, rental and maintenance of office space, mailing, advertising, and technical assistance.

Applicants proposing to undertake: rehabilitation of residential, commercial and industrial structures; *and/or* acquisition, construction, or installation of public facilities and improvements must submit reasonable cost estimates supplied by a *qualified* entity other than the applicant. Such an entity must be involved in the business of housing rehabilitation, construction and/or management. Guidance for securing these estimates can be obtained from the CPD Director in the HUD field office or the local government.

A format for the budget summary and the budget-by-task is included in the application kit.

(B) Leveraging

Although a match is not required to qualify for funding, if applicants claim a match, they must provide letters or other documentation evidencing the extent and firmness of commitments of a match from other Federal (e.g., Americorps Programs), State, local, and/or private sources (including the applicant's own resources). These letters or documents must be dated no earlier than the date of this published SuperNOFA. An Applicant which has evidence in support of its proposed match commitment is eligible for more rating points than those applicants not having a firm commitment for a match.

Potential Sources of Assistance

- State and local governments.
- Housing Authorities.
- Local or national nonprofit organizations.
- Banks and private businesses.
- Foundations.
- Faith Communities.

Documentation Requirements

For each match, the applicant must submit a letter from the provider on the provider's letterhead. Number each letter as a page in the application. Each Match must be supported by a letter from the provider that addresses the following:

- The dollar amount or dollar value of the in-kind goods and/or services committed. For each cash match, the

dollar amount in the commitment letter must be consistent with the dollar amount indicated by the applicant on the SF–424 and in the Budget-By-Task;

- How the Match is to be used;
- The date the Match will be made available and a statement that it will be for the duration of the grant period;
- Any terms and conditions affecting the commitment, other than receipt of a HUD HBCU Grant; and
- The signature of the appropriate executive officer authorized to commit the funds and/or goods and/or services. (See the application kit for a sample commitment letter.)

(C) Environmental Review

If the applicant proposes activities (such as physical development activities) that are not excluded from environmental review under 24 CFR 50.19(b), an environmental review by HUD is required in accordance with 24 CFR part 50, as indicated by 24 CFR 570.404(i) before HUD approves the proposal (i.e., releases CDBG funds). Before any grant funds are released, environmental approval must be secured. If the requirements of part 50 are not met, HUD reserves the right to terminate all or portions of the award. The grantee is not authorized to proceed with any activity requiring such approval until written approval is received from the appropriate HUD Field Environmental Clearance Officer in its area certifying that the project has been approved and released from all environmental conditions.

(D) Forms, Certifications and Assurances

HBCU applicants are required to submit the following forms, certifications and assurances:

(1) Standard Form (SF) 424 Application for Federal Assistance;

(2) Standard Form (SF) 424 B for Non-Construction Programs;

(3) Applicant Certification;

(4) Certification of Consistency with the Local Consolidated Plan; and

(5) Letter Certifying Local Approval.

(6) Certification Form for EZ/EC bonus points. These bonus points will only be awarded when the HBCU is located within the geographic boundaries of the EZ/EC.

III. Application Selection Process

(A) Rating and Ranking

(1) *Threshold Review; National Objectives.* HUD will evaluate applications for funding under the HBCU Program competitively and will award points based on responses to the Factors For Award identified in this section. Applications must be complete and consistent with the requirements of this for the HBCU Program section in this SuperNOFA, the application kit, and the HBCU Program regulations (24 CFR 570.404) in order for the application to be eligible to compete in this competition.

To be considered for funding, applicants must receive a minimum score of 70 out of the total of 100 points possible for Factors 1 through 5. HUD will not fund specific proposed activities that do not meet eligibility requirements (see, particularly, 24 CFR part 570, subpart C), or that do not meet a national objective in accordance with 24 CFR 570.208. The CDBG Publication entitled "Everything You Wanted to Know About CDBG" discusses the regulations, and a copy can be ordered from HUD's Community Connections Information Clearinghouse at 1–800–998–9999. Each activity that may be funded under this SuperNOFA for the HBCU Program must meet one of the three national objectives of the Community Development Block Grant program:

(a) Benefit to low- or moderate-income persons;

(b) Aid in the prevention or elimination of slums or blight; or

(c) Meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health and welfare of the community, and other financial resources are not available to meet such needs.

Criteria for determining whether an activity addresses one or more of these objectives are provided at 24 CFR 570.208. (It is not necessary for applicants to comply with the primary objective requirement of 24 CFR 570.200(a)(3), which requires recipients to ensure that not less than 70% of the grant expenditures be for activities benefiting low and moderate income persons)

(2) *Funding of Applications.* Within each category of eligible applicant, HUD will fund applications in rank order, until it has awarded all available funds for that category of applicant, or until there are no fundable applications remaining in that category. If there is a tie in the point scores of two applications, the rank order will be determined by the applicant's scores on Factor 2. HUD will give the higher rank to the application with the most points on Factor 2. If there is still a tie, the rank order will be determined by the applicant's scores on Factor 3. HUD will give the higher rank to the application with the most points for Factor 3. If funds remain after approving all fundable applications within a category of applicants, HUD may choose to add those funds to the funds available for the other category of applicants.

(3) *Leveraging.* Although a match is not required to qualify for funding, HUD encourages HBCUs to participate in public/private partnerships, i.e., with local or national nonprofit organizations, the local banking and real estate community, local builders/developers, faith communities, etc., to secure matches of cash and/or in-kind goods or services. The maximum number of rating points an applicant can receive for leveraging is 10 points for Factor 4 below. Applicants having a cash match will receive a higher number of points than those providing in-kind goods or services of the same value. To be recognized as leveraging, contributions must be made available for the duration of the grant period, regardless of the form of investment provided to the project. Applicants *without* evidence of leveraging will receive *zero (0) points.*

(4) *After Selection.* After selection, but prior to award, an applicant will be required to:

(a) Negotiate. After all applications have been rated and ranked and a selection of competition winners has been made, HUD requires that all winners participate in negotiations to determine the specific terms of the Statement of Work and the grant budget. HUD will follow the negotiation procedures described in Section III(D) of the General Section of the SuperNOFA.

(b) Provide Financial Management and Audit Information. After selection for funding but prior to award, each successful applicant will be required to submit a certification from an Independent Public Accountant, or the cognizant government auditor, stating that the financial management system employed by the applicant meets prescribed standards for fund control and accountability required by OMB Circular A–133, as codified at 24 CFR part 84.

(B) Factors for Award Used To Evaluate and Rate Applications

HUD will use the Factors For Award set forth below to evaluate applications. Each application must contain sufficient information to be reviewed for its merits. The score for each factor will be based on the qualitative and quantitative aspects of the applicant's response to that factor. Applicants may use up to a total of thirty (30) pages to respond to Factor 1 through 5. Limitation applies to the applicant's

narrative response and NOT to tables, maps and firm commitment letters.

The maximum number of points that may be awarded is 102. This includes two EZ/EC bonus points, as described in the General Section of the SuperNOFA.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (15 Points)

This factor addresses the extent to which the applicant has the organizational resources necessary to successfully implement the proposed activities in a timely manner. In rating this factor, HUD will consider the extent to which the proposal demonstrates:

(1) (10 points) The knowledge and experience of the overall proposed project director and staff, including the day-to-day program manager, consultants and contractors in planning and managing programs for which funding is being requested. Experience will be judged in terms of recent, relevant and successful experience of the applicant's staff to undertake eligible program activities. In rating this factor, HUD will consider the extent to which the applicant's organization and staff have recent, relevant, and successful experience in:

(a) Undertaking outreach activities in specific communities to solve or ameliorate significant housing and community development issues;

(b) Undertaking projects with community-based organizations or local governments; and

(c) Providing leadership in solving community problems and making national contributions to solving long-term and immediate housing and community development problems.

(2) (3 points) The applicant has sufficient personnel or will be able to quickly access qualified experts or professionals, to deliver the proposed activities in each proposed service area in a timely and effective fashion, including the readiness and ability of the applicant to immediately begin the proposed work program.

(3) (2 points) The applicant has demonstrated experience in managing programs, and carrying out *grant management* responsibilities for programs, similar in scope or nature directly relevant to the work activities proposed. If the applicant has managed large, complex, interdisciplinary programs, the applicant should include the information in the response.

Rating Factor 2: Need/Extent of the Problem (15 Points)

This factor addresses the extent to which there is a need for funding the proposed program activities and an indication of the importance of meeting the need in the target area. In responding to this factor, applicants will be evaluated on:

(1) (10 points) The extent to which they document the level of need for the proposed activity: and

(2) (5 points) The importance of meeting the need.

Applicants should use statistics and analyses contained in a data source(s) that:

(a) Is sound and reliable. To the extent that the applicant's community's Consolidated Plan and Analysis of Impediments to Fair Housing Choice (AI) identifies the level of the problem and the urgency in meeting the need, references to these documents should be included in the response. The Department will review more favorably those applicants who used these documents to identify need, when applicable.

If the proposed activity is not covered under the scope of the Consolidated Plan and Analysis of Impediments to Fair Housing Choice (AI), applicants should indicate such, and use other sound data sources to identify the level of need and the urgency in meeting the need. Types of other sources include, but are not limited to, Census reports, Continuum of Care gaps analysis, law enforcement agency crime reports, Public Housing Authorities' Five Year Comprehensive Plan, and other sound and reliable sources appropriate for the specific SuperNOFA program and activities for which an applicant is applying. Applicants may also address needs in terms of fulfilling court orders or consent decrees, settlements, conciliation agreements, and voluntary compliance agreements. For technical assistance programs, input from HUD State and Area Office(s) and assessments are included among the data sources that may be used to identify need.

(b) To the extent possible, specific to the area where the proposed activity will be carried out. Specific attention must be paid to documenting need as it applies to the area where activities will be targeted, rather than the entire locality or state. If the target area is an entire locality or state, then documenting need at this level is appropriate.

Rating Factor 3: Soundness of Approach (50 Points)

This factor addresses the quality and cost-effectiveness of the applicant's proposed work plan. There must be a clear relationship between the proposed activities, community needs and the purpose of the HUD HBCU Program for an applicant to receive points for this factor.

HUD will consider the effectiveness/impact and feasibility of the applicant's work plan in addressing the needs described in the applicant's response to Factor 2 including the extent to which the applicant will provide geographic coverage for the target area and describes how each proposed activity meets both a CDBG Program national objective and the CDBG eligibility requirements described above. HUD will also consider the extent to which the proposed activities will yield innovative strategies or "best practices" that can be readily disseminated to other organizations and State and local governments.

(1) *Work Plan* (40 Points). The applicant's work plan must incorporate all proposed activities, describing in detail how the activities will alleviate and/or fulfill the needs identified in Factor 2, including how the activities will benefit low-income and elderly residents, welfare recipients, and the working poor in the target area to be served, and how the activities will be implemented. In evaluating this factor, HUD will consider:

(a) (10 points) The extent to which the proposed work program identifies the specific services or activities to be performed. In reviewing this subfactor, HUD will consider the extent to which:

(i) The applicant's proposal outlines a clear agenda based on a thorough familiarity with existing work/activities in the target area. The applicant should demonstrate that the proposed activities do not duplicate work/activities previously completed or work/activities currently underway by others;

(ii) The applicant demonstrates how the activities will fit into and strengthen their role in addressing community development needs in their locality;

(iii) The applicant's plan outlines a clear agenda for citizen involvement in the planning and implementation.

(b) (10 points) The extent to which the proposed work/activities involve the communities to be served in implementation of these activities. In reviewing this subfactor, HUD will look at the extent to which:

(i) Representatives of the local communities are involved and have a balance of race, ethnic, disability, status, gender and income of the residents of the community to be served, or will be involved to address the needs identified in Factor 2;

(ii) Evidence is provided that neighborhood organizations and local government entities were invited to, or participated in, the identification of activities to be undertaken;

(iii) The methodology employed to outreach to the community during the development and implementation of the proposed program.

(c) (10 points) The extent to which the proposed activities will achieve the purposes of the program from which funding is requested within the grant period. The applicant should identify specific time phased and measurable objectives to be accomplished during the period of performance; the proposed short and long term program objectives to be achieved as a result of the proposed activities; the tangible and measurable impacts the work program will have on the community in general and the target area or population in particular; and the relationship of the proposed activities to other on-going or proposed efforts to improve the economic, social, or living environment in the impact area.

(d) (6 points) The extent to which the proposed project will potentially yield innovative strategies or "best practices" that can be duplicated and disseminated to other organizations.

(e) (4 points) The extent to which the proposed application will further and support the policy priorities of HUD including:

(i) Promoting healthy homes;

(ii) Enhancing on-going efforts to eliminate drugs and crime from neighborhoods through program policy efforts such as "One Strike and You Are Out" or the "Officer Next Door" initiative; and

(iii) Providing educational, job training, and homeownership opportunities through such initiatives as High Hopes, Neighborhood Networks, Campus of Learners, Local Homeownership Partnerships and linking programs to Americorps activities.

The High Hopes initiative promotes partnerships between colleges and middle or junior high schools in low-income communities, to help teach students how they should go to college by informing them about college options, academic requirements, costs, and financial aid, and by providing support services—including tutoring, counseling, and mentoring;

The Neighborhood Networks (NN) initiative enhances the self-sufficiency, employability, and economic self-reliance of low-income families and the elderly living in HUD-insured and HUD-assisted properties by providing such residents with on-site access to computer and training resources;

The Campus of Learners (COL) initiative is designed to transform public housing into safe and livable communities where families undertake training in new telecommunications and computer technology and partake in educational opportunities and job training initiatives; and/or

Local Homeownership Partnerships (LPs) recognized by the National Partners in Homeownership. Local Homeownership Partnerships are local manifestations of the National Homeownership Strategy and are designed to increase homeownership opportunity through public-private collaboration.

If relocation is to be a part of the work activities the applicant should discuss the plan for temporary or permanent relocation of occupants of units affected, including storage or moving of household goods, stipends and/or incentives. The work plan must delineate tasks and subtasks for each activity, and indicate the sequence in which the tasks are to be performed, noting areas of work which must be performed simultaneously.

To the maximum extent feasible, the applicant should provide HUD with measurable results to be achieved with the requested funds, i.e., the number of persons to be trained, number of persons to be employed, number of houses to be built (pursuant to 24 CFR 570.207) or rehabilitated, number of minority owned businesses to be started, etc., in the target area as a result of the implementation of the proposed activities.

(2) *Affirmatively Furthering Fair Housing* (5 Points)

If an applicant has designed activities to affirmatively further fair housing, for example:

(a) Overcoming impediments to fair housing, such as discrimination in the sale or rental of housing or in advertising, provision of brokerage services, or lending;

(b) Promoting fair housing through the expansion of homeownership opportunities and improved quality of city services for minorities, families with children, and persons with disabilities; or (c) providing mobility counseling, 5 points will be awarded.

(3) *Products Deliverable Schedule* (5 Points)

As a result of the implementation of the proposed activities, describe products to be delivered in 6 month intervals, up to 24 months. Indicate which of the staff described under Factor 1 will be responsible and accountable for deliverables. This sub-factor will be evaluated on the extent to which the schedule represents an efficient and feasible plan for implementation of the proposed activities.

Rating Factor 4: Leveraging Resources (10 Points)

This factor addresses the ability of the applicant to secure community resources (note: financing is a community resource) which can be combined with HUD program funds to achieve the program objective to assist HBCUs expand their role and effectiveness in addressing community development needs in their localities, including neighborhood revitalization, housing, and economic development.

In evaluating this factor, HUD will consider the extent to which the applicant has partnered with other entities to secure additional resources to increase the effectiveness of the proposed activities. Resources may include funding or in-kind contributions, such as services or equipment, allocated to the purpose(s) of the award the applicant is seeking. Resources may be provided by governmental entities, public or private nonprofit organizations, for-profit private organizations, or other entities willing to partner with the applicant. Applicants may also partner with other program funding recipients to coordinate the use of resources in the target area.

Applicants must provide letters or other documentation evidencing the extent and firmness of commitments of a match from other Federal (e.g., Americorps Programs), State, local, and/or private sources (including the applicant's own resources). These letters or documents must be dated no earlier than the date of this published SuperNOFA. An applicant which has evidence in support of its proposed match commitment is eligible for more rating points than those applicants not having a firm commitment for a match.

The maximum number of rating points an applicant can receive for leveraging is 10 points. Applicants having a cash match will receive a higher number of points than applicants receiving in-kind goods or services of the same value. To be recognized as leveraging, contributions must be made available for the duration of the grant period, regardless of the form of investment provided to the project. Applicants without evidence of leveraging will receive zero (0) points for this Factor.

Rating Factor 5: Comprehensiveness and Coordination (10 Points)

This factor addresses the extent to which the applicant coordinated its activities with other known organizations, participates or promotes participation in a community's

Consolidated Planning process, and is working towards addressing a need in a holistic and comprehensive manner through linkages with other activities in the community.

In evaluating this factor, HUD will consider the extent to which the applicant demonstrates it has:

(1) (4 points) Coordinated its proposed activities with those of other groups or organizations prior to submission in order to best complement, support and coordinate all known activities, and if funded, the specific steps it will take to share information on solutions and outcomes with others. Any written agreements, memoranda of understanding in place, or that will be in place after award should be described.

(2) (3 points) Taken or will take specific steps to become active in the community's Consolidated Planning process (including the Analysis of Impediments to Fair Housing Choice) established to identify and address a need/problem that is related to the activities the applicant proposes.

(3) (3 points) Taken or will take specific steps to develop linkages to coordinate comprehensive solutions through meetings, information networks, planning processes or other mechanisms with:

(a) Other HUD-funded projects/activities outside the scope of those covered by the Consolidated Plan; and

(b) Other Federal, State or locally funded activities, including those proposed or on-going in the community.

IV. Application Submission Requirements

Applicants must complete and submit applications for HBCU grants in accordance with instructions contained in the FY 1998 Historically Black Colleges and Universities Program Application Kit. The application kit will request information in sufficient detail for HUD to determine whether the proposed activities are feasible and meet all the requirements of applicable statutes, regulations, and this SuperNOFA for the HBCU Program. Following is a list of items required for HBCU applications:

(A) Transmittal Letter

A transmittal letter shall accompany the application. This cover letter shall be signed by the *Chief Executive Officer* (usually the President or Provost) of the applicant institution. If the Chief Executive Officer has delegated this responsibility to another official, that person may sign, but a copy of the delegation must also be included.

(B) Application Checklist

(C) Abstract

(D) Budget Documents

(E) Narrative Statement Responding to the Factors for Award

(F) Certifications

Certification forms signed by the Chief Executive Officer of the applicant institution.

Appendices are not permitted. General support letters and resumes shall not be submitted. Letters of commitment and other documentation shall be included with responses to the appropriate Factors for Award.

V. Corrections to Deficient Applications

The General Section of the SuperNOFA provides the procedures for corrections to deficient applications.

HBCU Program Appendix A

Historically Black Colleges and Universities

(Previously Funded By HUD During Fiscal Years 1991–1997)

Alabama

Alabama A&M University
Alabama State University
Oakwood College
Stillman College
Talladega College
Tuskegee University

Arkansas

Arkansas Baptist College
Philander Smith College
University of Arkansas at Pine Bluff

District of Columbia

Howard University
University of the District of Columbia

Florida

Florida A&M University

Georgia

Albany State University
Clark Atlanta University
Fort Valley State University
Morris Brown College
Spelman College

Kentucky

Kentucky State University

Louisiana

Grambling State University
Southern University
Southern University at Shreveport/Bossier City
Xavier University of New Orleans

Maryland

Bowie State University
Coppin State College
Morgan State University

Mississippi

Alcorn State University
Jackson State University
Mississippi Valley State University
Rust College
Tougaloo College

Missouri

Harris-Stowe State College
Lincoln University

North Carolina

Bennett College
Elizabeth City State University
Fayetteville State University
Johnson C. Smith University
North Carolina A&T State University
North Carolina Central University
St. Augustine's College
Shaw University
Winston-Salem State University

Ohio

Central State University

Oklahoma

Langston University

Pennsylvania

Lincoln University

South Carolina

Benedict College
Claflin College
South Carolina State University
Voorhees College

Tennessee

Fisk University
Lemoyne-Owen College

Texas

Prairie View A&M University
Saint Phillip's College
Texas Southern University
Wiley College

Virginia

Hampton University
Norfolk State University
Saint Paul's College

HBCU Program Appendix B

Historically Black Colleges and Universities

(Previously Unfunded By HUD During Fiscal Years 1991–1996)

Alabama

Bishop State Community College
Concordia College
Fredd State Technical College
Lawson State Community College
Miles College
Selma University
J.F. Drake Technical College
Trenholm State Technical College

Arkansas

Shorter College

Delaware

Delaware State University

Florida

Bethune-Cookman College
Edward Waters College
Florida Memorial College

Georgia

Interdenominational Theological Center
Morehouse College
Morehouse School of Medicine
Paine College
Savannah State College

Louisiana

Dillard University

Southern University at
Maryland
University of Maryland Eastern Shore
Michigan
Lewis College of Business
Mississippi
Coahoma Community College
Hinds Community College
Mary Holmes College
North Carolina
Barber-Scotia College
Livingstone College
Ohio
Wilberforce University
Pennsylvania
Cheyney University of Pennsylvania
South Carolina
Allen University
Clinton Junior College
Denmark Technical College
Morris College
Tennessee
Knoxville College
Lane College
Meharry Medical College
Tennessee State University
Texas
Huston-Tillotson College
Jarvis Christian College
Paul Quinn College
Southwestern Christian College
Texas College
Virginia
Virginia State University
Virginia Union University
West Virginia
Bluefield State College
West Virginia State University
U.S. Virgin Islands
University of the Virgin Islands

BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

FAIR HOUSING INITIATIVES AND ASSISTED HOUSING COUNSELING PROGRAMS

Education and Outreach Initiative (EOI)

Private Enforcement Initiative (PEI)

Fair Housing Organizations Initiative (FHOI)

Housing Counseling Program

- Local Housing Counseling Agencies
- National, Regional and Multi-State Intermediaries
- State Housing Finance Agencies

BILLING CODE 4210-32-C

Funding Availability for the Fair Housing Initiatives Program

Program Description: Approximately $11,500,000 of funding is available for the Fair Housing Initiatives Program (FHIP) from the $15,000,000 appropriation. The availability of the remaining $3.5 million will be announced under a separate NOFA. This program assists projects and activities designed to enforce and enhance compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws. Under this competition, HUD will fund projects undertaken through the Private Enforcement Initiative (PEI), Education and Outreach Initiative (EOI), and Fair Housing Organizations Initiative (FHOI).

Application Due Date: Completed applications for all Initiatives/Components are due no later than 12:00 midnight, Eastern time on June 1, 1998 at HUD Headquarters. See the General Section of this SuperNOFA for specific procedures governing the form of application submission (e.g., mailed applications, express mail, overnight delivery, or hand carried).

Address for Submitting Applications: Completed applications (one original and two copies) should be submitted to: FHIP/FHAP Support Division, Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 5234, Washington, DC 20410. When submitting your application, please refer to FHIP and provide your name, mailing address (including zip code) and telephone number (including area code).

For Application Kits, Further Information, and Technical Assistance:

For Application Kits. For an application kit and supplemental information please call the HUD SuperNOFA Information Clearinghouse at 1–800–HUD–8929. Persons with hearing or speech impairments may call the Center's TTY at 1–800–483–2209. The application kit also will be available on the Internet at: http://www.HUD.gov. When requesting an application kit, please refer to FHIP, and provide your name, address (including zip code), and telephone number (including area code).

For Further Information and Technical Assistance. For answers to your questions, you have several options. You may contact Ivy L. Davis, Director, FHIP/FHAP Support Division at 202–708–0800 (this is not a toll-free number), or persons who use a text telephone (TTY) may call 1–800–290–1617. You may also call the SuperNOFA Information Center at 1–800–HUD–8929. Persons with hearing or speech impairments may call the Center's TTY number at 1–800–483–2209.

Additional Information

I. Authority; Purpose; Amount Allocated; Ineligible Activities; and Eligibility

(A) Authority

Section 561 of the Housing and Community Development Act of 1987 (42 U.S.C. 3616 note, established the Fair Housing Initiatives Program (FHIP)) and the implementing regulations are found at 24 CFR part 125.

(B) Purpose

The purpose of the FHIP is to assist projects and activities designed to enforce and enhance compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws. Eligible applicants may apply to carry out private enforcement activities, educational activities and projects that establish or build the capacity of organizations to provide fair housing services.

(1) In September 1997, HUD announced a "crackdown on housing discrimination" and pledged to double its enforcement actions. The projects funded under this NOFA are expected to contribute to the accomplishment of this goal and applications will be evaluated based upon their responsiveness to this objective in Rating Factor 3.

(2) As immigrants settle in the U.S., there is a concern that they may encounter actual or perceived discriminatory housing practices. As such, it is critical that fair housing efforts be directed to educating these individuals about their fair housing rights as well as ensuring that enforcement mechanisms address the specific type of discrimination they, in particular, encounter. Therefore, activities under this NOFA should be particularly focused on addressing both the fair housing educational and enforcement needs of these new immigrant groups, as well as other underserved populations. Applicants will be evaluated on this objective in Rating Factor 2.

(3) Although almost ten years have passed since the enactment of the Fair Housing Act amendments affecting persons with disabilities, it appears that in many areas of the country, much of the covered housing still fails to comply with the Fair Housing Act requirements and persons with disabilities are still often discriminated against and are refused reasonable accommodations. HUD recognizes the critical role that disability advocacy groups have in addressing the unique needs of persons with disabilities. For this funding round, under the Fair Housing Organizations Initiative (FHOI)—Continued Development Component (CDC), applications must include the participation of disability advocacy organizations.

(C) Amount Allocated

Of the funds appropriated for the Fair Housing Initiatives Program in FY 1998, approximately $11,500,000 is being made available on a competitive basis to eligible organizations that submit timely applications and are selected in response to this SuperNOFA.

HUD retains the right to shift funds among the FHIP Initiatives and Components listed below, within statutorily prescribed limitations. The amounts included in this SuperNOFA are subject to change based on funds availability. The amount of FY 1998 funding available for the FHIP is divided among three Initiatives as follows:

(1) *Education and Outreach Initiative (EOI).* This SuperNOFA makes available $1,000,000 for EOI projects under the Regional, local, and community-based component. Under this component, 18-month projects, with an award cap of $100,000, will be funded that support regional, local and community-based education and outreach efforts. An additional $3,500,000 will be made available for projects which are national in scope through a separate NOFA.

(2) *Private Enforcement Initiative (PEI).* The amount of $9,300,000 is being used for the PEI for the following components:

(a) *General Component.* Of the $9,300,000, $7,800,000 is available for 24-month projects, with an award cap of $350,000. Recipients of FHIP PEI grants awarded based upon applications submitted under the FY 1997 NOFA—RFA–97–1, FY 1996 FHIP NOFA—RFA–96–1, and the FY 1995 FHIP NOFA—RFA–95–1, are ineligible to apply under the FY 1998 competition for multi-year PEI—General Component awards unless their above-referenced PEI award will expire by 3/31/99. Regardless of when their awards expire, those recipients are eligible to apply for PEI—Joint Enforcement Project Component awards, as well as FHOI and EOI awards.

(b) *Joint Enforcement Project component.* Of the $9,300,000, $1,500,000 is available for 18-month projects, with an award cap of $300,000, that promote partnerships between private fair housing enforcement

organizations, FHAP agencies and/or traditional civil rights organizations to focus on systemic investigations of housing discrimination.

(3) *Fair Housing Organizations Initiative (FHOI).* The amount of $1,200,000 is available for the FHOI for single and multi-year projects, to be used for the establishment of a new fair housing enforcement organization and for supporting the fair housing enforcement capacity development of eligible organizations to address the fair housing needs of persons with disabilities, under the following two components.

(a) *Establishing New Organizations Component (ENOC).* Of the FHOI total of $1,200,000, $400,000 is available for a 24–36 month project to fund the creation of a new fair housing enforcement organization in an underserved area, with an award cap of $400,000.

(b) *Continued Development Component (CDC).* HUD is reserving $800,000 of the $1,200,000 under the FHOI for 18-month projects, with an award cap of $200,000, to utilize the capacity of organizations to assist persons with disabilities in developing fair housing enforcement programs to address this protected class.

(D) Definitions

The definitions that apply to this FHIP section of the SuperNOFA are as follows:

Fair Housing Assistance Program Agencies means State and local agencies funded by the Fair Housing Assistance Program (FHAP), as described in 24 CFR part 115.

Fair Housing Enforcement Organization (FHO) means an organization engaged in fair housing activities as defined in 24 CFR 125.103.

Meritorious Claims means enforcement activities by an organization as defined in 24 CFR 125.103.

Qualified Fair Housing Enforcement Organization (QFHO) means an organization engaged in fair housing activities as defined in 24 CFR 125.103.

Regional/Local/Community-Based Activities are defined at 24 CFR 125.301(d).

(E) Ineligible Activities/Applications for All Components

(1) *Fair Housing and Free Speech.* None of the amounts made available under this NOFA may be used to investigate or prosecute under the Fair Housing Act any otherwise lawful activity engaged in by one or more persons, including the filing or maintaining of a nonfrivolous legal action, that is engaged in solely for the purpose of achieving or preventing action by a government official or entity, or a court of competent jurisdiction.

(2) *Research Activities.* Projects to be aimed solely or primarily at research or dependent upon such data-gathering, including but not limited to surveys and questionnaires, are not eligible for funding under this NOFA.

(3) *Award Caps.* In order to maximize the number of grants awarded and to allow HUD to fairly assess the quality of an applicant's proposed program, applications that request FHIP funding in excess of the award cap will be deemed ineligible.

(4) *Litigation.* In accordance with 24 CFR 125.104(f), no recipient of assistance under the FHIP may use any funds provided by HUD for the payment of expenses in connection with litigation against the United States.

(F) Eligibility for Education and Outreach Initiative—Regional/Local/ Community-Based Component

(1) *Eligible Applicants.* HUD particularly encourages the submission of applications from traditional civil rights organizations, which are defined as private non-profit organizations or institutions and/or private entities that are formulating or carrying out programs to prevent or eliminate discriminatory housing practices and which have a history and primary mission of engaging in programs designed to secure Federal civil rights protections for groups and individuals. The following organizations are eligible to receive funding under the EOI—Regional/Local/ Community-Based Component: QFHOs; FHOs; public or private non-profit organizations or institutions and other public or private entities that are formulating or carrying out programs to prevent or eliminate discriminatory housing practices; State or local governments; and FHAP Agencies.

(2) *Eligible Activities.* All projects funded under this competition must be focused on addressing the fair housing needs of underserved populations and/ or new immigrant populations in geographic areas to be specified in the grant application. EOI activities must be designed to increase the referral of fair housing complaints and other information to HUD and to educate the public about their fair housing rights and the procedures for filing complaints with HUD. The application must outline the referral process and projected referrals to HUD expected in the proposed Statement of Work. The final performance measures for deliverables will be negotiated between the grantee and HUD as part of the executed grant agreement and will be based upon the applicant's proposal.

Activities may include holding educational forums, duplication of existing fair housing materials for distribution throughout the project area, providing fair housing counseling services, conducting outreach and providing information on fair housing through printed and electronic media, developing or implementing Fair Housing Month activities, and informing persons with disabilities and/ or their support organizations and service providers, housing providers, and the general public on the rights of persons with disabilities under the Fair Housing Act. Activities may not include the development of new fair housing materials except as a supplement to existing materials, but instead must use existing approved materials available locally or through the Fair Housing Information Clearinghouse.

(3) *Additional Requirements.* The following requirements are applicable to all applications under the EOI:

(a) All projects must address or have relevance to housing discrimination based on race, color, religion, sex, disability, familial status, or national origin.

(b) All proposals must contain a description of how the activities or the final products of the projects can be used by other agencies and organizations and what modifications, if any, would be necessary for that purpose.

(c) Each non-governmental applicant for funding under the EOI Regional, Local and Community-Based Component that is located within the jurisdiction of a FHAP agency must provide, with its application, documentation (such as letters between the two organizations) that it has consulted with the agency or agencies to coordinate activities to be funded under the EOI. This coordination will minimize duplication and fragmentation of activities.

(G) Eligibility for Private Enforcement Initiative (PEI)

(1) *Eligible applicants.*

(a) Organizations that are eligible to receive FY 1998 funding assistance under the PEI are QFHOs and FHOs with at least one year of experience in complaint intake, complaint investigation, testing for fair housing violations, and enforcement of meritorious claims.

(b) Current recipients of FHIP PEI grants awarded based upon applications submitted under the FY 97, FY 96 and FY 95 NOFAs that will not expire by March 31, 1999 are ineligible to apply

for multi-year PEI—General Component awards. However they are eligible to apply for PEI—Joint Enforcement Project Component awards, as well as FHOI and EOI awards.

(2) *Eligible Activities.*

(a) *General Component projects.* Project applications must include more than one type of activity and address more than one fair housing issue. All projects must include a description of and the estimated amount of projected enforcement referrals to HUD. Eligible activities may include, but are not limited to, the following:

(i) Conducting complaint intake of allegations of housing discrimination;

(ii) Conducting testing, evaluating testing results or providing other investigative support for administrative and judicial enforcement of fair housing laws;

(iii) Conducting preliminary investigations of individual and systemic housing discrimination for further enforcement processing by HUD;

(iv) Building the capacity to investigate, through testing and other investigative methods, housing discrimination complaints covering all protected classes;

(v) Conducting mediations or other voluntary resolutions of allegations of fair housing discrimination;

(vi) Providing funds for the costs and expenses of litigating fair housing cases, including expert witness fees.

(b) *Joint Enforcement Project (JEP) Component Projects.* The objective of the FHIP JEP project is that partnerships between private fair housing enforcement organizations, FHAP agencies and/or traditional civil rights organizations will focus on systemic investigations of housing discrimination. Grantee activities will result in either complaints being filed with HUD or in information being provided to HUD sufficient for the filing of Secretary-Initiated Complaints. Funding under this component is for investigative/enforcement activities producing outcomes/deliverables that are provided to HUD for determination of appropriate actions/use of data. These deliverables must meet or exceed the annual performance measures outlined in the application and agreed to in the executed grant agreement. It is anticipated that the majority of the project activities would be related to cases involving allegations of systemic discrimination as defined in 24 CFR 103.205.

Through frequent and regular contact with HUD, applicants will carry out activities to be performed in conjunction with a FHAP agency/agencies, private fair housing enforcement organization(s), and/or traditional civil rights organization(s), in order to achieve the objective outlined above. Project proposals must contain a strategy for achieving project deliverables, with related timelines and annual milestones. The activities to be performed to achieve project deliverables must include, but are not limited to:

(i) Sharing of data analyses for use in developing the investigations;

(ii) Conducting joint preliminary investigative activities through testing, review of property records, development of strategies, interviews, etc.;

(iii) Development of investigative materials for referral to HUD for action;

(iv) Regular meetings among organizations and with HUD to share information about potential violations for investigation based upon complaints, data, or other sources; and

(v) Regular contact with HUD to ensure project activities conform with planned deliverables and that deliverables meet grant agreement requirements.

All PEI–JEP applications must be submitted by a QFHO/FHO as the sole recipient, but must contain detailed letter(s) of commitment from all FHAP agencies and traditional civil rights organizations identified as part of the JEP. The project budget should include any costs related to subcontract(s) with FHAP agencies and traditional civil rights organizations which account for activities related to the subcontractor's role in the project. A separate detailed budget for each subcontract should be included in the application.

(3) *Other Provisions.*

(a) Successful multi-year PEI projects will receive incremental funding during the life of the award subject to periodic performance reviews. Applications that request FHIP funding in excess of the award cap will be deemed ineligible.

(b) Neither the grantee nor any subcontractors are permitted to charge or claim credit for any activities performed under the JEP grant toward any other Federal project/funds. For example, FHAP agencies will not be able to count any cases/referrals arising under this project toward their FHAP case processing calculations.

(c) All applicants proposing to conduct testing must include as initial tasks in their Statement of Work that they will provide to HUD for review and approval the testing methodology to be used and the training to be provided to testers. These tasks, as well as any others identified during grant negotiations, must be completed and accepted by HUD prior to HUD's disbursement of FHIP funds.

(H) Eligibility for the Fair Housing Organizations Initiative (FHOI)

(1) *Eligible Applicants.* (a) *Establishing New Organizations Component (ENOC).* Eligible applicants for funding under this component of the FHOI are limited to QFHOs.

(b) *Continued Development Component (CDC).* The following organizations are eligible to receive funding under the FHOI—CDC: QFHOs; FHOs; and non-profit groups organizing to build their capacity to provide fair housing enforcement.

(2) *Eligible activities.* (a) *Establishing New Organizations Component.* Eligible for funding under this purpose of the FHOI are 24–36 month projects that help establish, organize and build the capacity of a fair housing enforcement organizations in underserved areas. "Underserved areas" is defined as areas which are currently underserved or not served by one or more fair housing enforcement organizations as well as those areas where large concentrations of protected classes exist. Applicants must provide a justification for the selection of the geographic jurisdiction to be served by the proposed new organization and describe how the jurisdiction is underserved by any existing public or private fair housing organizations, including FHAP agencies. Applications must propose the establishment of a new fair housing enforcement organization in an underserved area. Applicants must provide a justification for the selection of the geographic jurisdiction to be served by the proposed new organization and how the jurisdiction is underserved by any existing public or private fair housing organizations, including FHAP agencies. This justification must include data and studies that indicate the presence of housing discrimination, segregation, and new immigrant groups, and/or other indices of discrimination in the locality based upon race, color, religion, sex, national origin, familial status, or disability. Project applications must include more than one type of activity and address more than one fair housing issue. Additionally, all projects must include a basis for the specific activities relating to referral of enforcement proposals to HUD.

(b) *Continued Development Component.* (i) Applications in this category are for 18-month projects that propose to expand eligible applicants' capacity to provide fair housing enforcement services that address the needs of persons with disabilities.

Project applications must include more than one type of activity and address more than one fair housing issue. For purposes of this competition, "disability advocacy groups" are defined as organizations that traditionally have provided for the civil rights of persons with disabilities, including organizations such as Independent Living Centers and cross-disability legal services groups. These organizations must: be organized as a private, tax-exempt, non-profit, charitable organization; be established with a primary purpose to assist persons with a broad range of disabilities, including physical, cognitive and psychiatric/mental disabilities, in exercising or protecting their fair housing and/or other civil rights (persons with disabilities need not be the only class served by the organization and fair housing and/or civil rights protection need not be the only activity of the organization); and demonstrate actual involvement of persons with disabilities throughout their activities, including on staff and board levels. Recognizing the critical role that disability advocacy groups have addressing the unique needs of persons with disabilities, HUD is requiring that proposals follow one of the approaches described below:

(*1*) Disability advocacy groups may apply to carry out activities that will expand their organization's capacity to provide the full-range of fair housing enforcement services to its clientele; or

(*2*) Fair housing enforcement organizations may apply to expand their capacity to provide fair housing services to persons with disabilities, through the utilization of subcontract(s) with disability advocacy groups (preferably with groups located within the local jurisdiction to be served).

(i) Eligible activities for funding under this purpose of the FHOI are any of the activities listed as eligible under the PEI in Section I(F)(2) of this FHIP section of the SuperNOFA, as long as they meet the focus on disability issues as outlined in Section I(F)(2)(b)(i) of this FHIP section of the SuperNOFA. Additionally, all projects must include a basis for the specific activities relating to enforcement proposal referrals to HUD and the projected number of enforcement proposal referrals to HUD.

(ii) Funding under the FHOI–CDC may not exceed more than 50 percent of the operating budget of the recipient organization for any one year. For purposes of the limitation of this paragraph, *operating budget* means the applicant's total planned budget expenditures from all sources, including the value of in-kind and monetary contributions, in the 18 months for which funding is sought.

II. Program Requirements

(A) FHIP Specific Requirements

(1) Through the Private Enforcement Initiative (PEI) and Fair Housing Organizations Initiative (FHOI) components of this SuperNOFA, HUD will fund only full service and broad-based fair housing enforcement projects that address discrimination against persons protected by the Fair Housing Act and contribute in measurable ways to HUD's commitment to double its enforcement actions. Enforcement projects must include more than one type of activity. Full-service projects must include more than one of the following enforcement-related activities: interviews with potential victims of discrimination, analysis of housing-related issues; complaint intake; testing; evaluation of testing results; preliminary investigation; mediation; enforcement of meritorious claims through litigation or referral to administrative enforcement agencies; and dissemination of information about fair housing laws. "Broad-based" means not limited to a single fair housing issue, but rather covering multiple issues related to discrimination in the provision of housing covered under the Fair Housing Act, such as: rental, sales and financing of housing.

(2) *Applicants Limited to a Single Award.* Applicants may apply for funding for more than one project or activity under one or more Initiatives. However, applicants are limited to one award under this FHIP section of the SuperNOFA. If more than one eligible application is submitted by an applicant and both are within funding range, HUD will select the application which the applicant has indicated as its preference for award should more than one application submitted be within funding range. One exception is for applicants that submit a successful application under the FHOI–ENOC, which is targeted at creating new fair housing enforcement organizations. In such cases, FHOI recipients will also be eligible to receive one additional award under either the EOI or PEI.

(3) *Independence of Awards.* There are no limits on the number of applications that can be submitted by a single applicant. However, each project or activity proposed in an application must be independent and capable of being implemented without reliance on the selection of other applications submitted by the applicant or other applicants. This provision does not preclude an applicant from submitting a proposal which includes other organizations as subcontractors to the proposed project or activity.

(4) *Project Starting Period.* HUD has determined that all applications must propose that the project will begin no later than October 1, 1998.

(5) *Page Limitation.* Applicants will be limited to 10 pages of narrative responses for each of the five selection criteria (this does not include forms or documents which are required under each criterion). Furthermore, unrequested items such as brochures and news articles, will not be considered in the evaluation process. Applicants that exceed the 10-page limit for each criterion will only have the first 10 pages evaluated for each criterion. Failure to provide narrative responses to all selection criteria will result in an applicant not receiving points for the information omitted. Failure to receive points for a factor may significantly impact an applicant's ability to receive an award.

(6) *Training.* All applications must include a training set-aside of $3,000 for single-year projects and $6,000 (total) for multi-year projects in all project budgets. HUD will permit grantees to use these funds to attend both HUD-sponsored and HUD-approved training.

(7) *Payment Contingent on Completion.* Payment to grantees will be contingent on the satisfactory completion of all project activities on an annual basis, including the successful achievement of tasks relating to enforcement proposals and/or complaint referrals to HUD.

(8) *Mandatory Referrals.* All PEI/FHOI recipients are required to refer to HUD all cases arising out of audit testing under FHIP grants.

(9) *Accessibility Requirements.* All activities and materials funded by FHIP must be reasonably accessible to persons with disabilities.

(10) *Outreach Expenses.* Applications may designate up to 5% of requested funds to conduct education and outreach to promote awareness of the services provided by the project, but such promotion must be necessary for the successful implementation of the project.

(11) *Tester Requirements.* Testers in testing activities funded with PEI and FHOI funds must not have prior felony convictions or convictions of crimes involving fraud or perjury, and they must receive training or be experienced in testing procedures and techniques. Testers and the organizations conducting tests, and the employees and agents of these organizations may not:

(a) Have an economic interest in the outcome of the test, without prejudice to

the right of any person or entity to recover damages for any cognizable injury;

(b) Be a relative of any party in a case;

(c) Have had any employment or other affiliation, within one year, with the person or organization to be tested; or

(d) Be a licensed competitor of the person or organization to be tested in the listing, rental, sale, or financing of real estate.

(12) *Review and Approval of Testing Methodology.* HUD reserves the right to require applicants proposing to conduct testing to include as initial tasks in their Statement of Work that they will provide to HUD for review and approval the testing methodology to be used and the training to be provided to testers. These tasks, as well as any others identified during grant negotiations, must be completed and accepted by HUD prior to HUD's disbursement of FHIP funds.

(13) *Enforcement Log.* Recipients of funds under the PEI and FHOI shall be required to record, in a case tracking log (or Fair Housing Enforcement Log) to be supplied by HUD, information appropriate to the funded project relating to the number of complaints of possible discrimination received; the protected basis of these complaints; the issue, test type, and number of tests utilized in the investigation of each allegation; the respondent type and testing results; the time for case processing, including administrative or judicial proceedings; the cost of testing activities and case processing; to whom the case was referred; and the resolution and type of relief sought and received. The recipient must agree to make this log available to HUD.

(14) *Certifications.* (a) All PEI and FHOI proposals must certify that the applicant will not solicit funds from or seek to provide fair housing educational or other services or products for compensation, directly or indirectly, to any person or organization which has been the subject of FHIP funded testing by the applicant during the 12 month period following the test. This does not preclude settlement based on investigative findings.

(b) All PEI and FHOI proposals must certify that an applicant which receives any compensation, directly or indirectly from a settlement, conciliation or award of damages as a result of activities funded under this SuperNOFA, will use such monies only to carry out activities eligible under the FHIP and specifically authorized by the grant agreement provision addressing the use of such funds. Such provision will be part of the cooperative/grant agreement. HUD reserves the right to negotiate with successful applicants provisions addressing potential conflicts of interest.

(B) General Requirements

The program requirements listed in the General Section of this SuperNOFA are applicable to applicants applying for FHIP funding under this SuperNOFA.

III. Application Selection Process

(A) Rating and Ranking

(1) *General.* Each application for funding will be evaluated competitively under one of the five categories: PEI-General Component; PEI-Joint Enforcement Project Component; EOI-Regional, local and community-based component; FHOI-Establishing New Organizations Component; or FHOI-Continued Development Component. Then, in each category, they will be awarded points and assigned a score based on the Selection Criteria for Rating Applications for Assistance identified in Section III(B) of this FHIP section of the SuperNOFA. After eligible applications are evaluated against the factors for award and assigned a score, they will be organized by rank order. Awards for each category listed above will be funded in rank order until all available funds have been obligated, or until there are no acceptable applications, with the exception described in Section III(A) (2) and (3), immediately below, which is designed to achieve geographic distribution of awards and to achieve full service and broad-based fair housing enforcement projects. The final decision rests with the selecting official, the Assistant Secretary for Fair Housing and Equal Opportunity or her designee.

(2) *Achieving Geographic Distribution of Awards.* The Assistant Secretary, or designee, will have the discretion to make awards out of rank order and fund or not fund applications in order to provide broader geographic representation in accordance with the following procedure. For each Initiative and component, awards will be funded in rank order, except as follows: only the highest ranking application under any Initiative or component for activities to be conducted in a Metropolitan Statistical Area (MSA), as defined by the Bureau of the Census, will be selected. No other application proposing activities in the same MSA under the same Initiative or component will be selected, unless there are not enough applications of sufficient quality to permit the awarding of all funds in an Initiative or component. If the Assistant Secretary determines that there are not enough applications of sufficient quality in any Initiative or component, then the next highest ranked application(s) that had previously been passed over may be funded in the same MSA.

(3) *Tie Breaking.* When there is a tie in the overall total score, the award will be made to the applicant that has the higher score under Rating Factor 3 (Soundness of Approach). If these applications are equal in this respect, the application that receives a total higher number of points under Rating Factor 1 (Capacity of the Applicant and Relevant Organizational Experience) will receive the award. If these scores are identical then the award will be made to the applicant with the lower request for FHIP funding.

(B) Factors for Award Used to Evaluate and Rate Applications

The factors for rating and ranking applicants, and maximum points for each factor, are provided below. The maximum number of points to be awarded is 102. This includes two EZ/EC bonus points, as described in the General Section of the NOFA.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (20 Points)

The rating of the "applicant" or the "applicant's organization and staff" for technical merit will include any sub-contractors, consultants, sub-recipients, and members of consortia that are identified as participants in the project.

This factor addresses the extent to which the applicant has the organizational resources necessary to successfully implement the proposed activities in a timely manner. In rating this factor HUD will consider the extent to which the proposal demonstrates:

(1) (10 points) The knowledge and experience of the proposed project director and staff, including the day-to-day program manager, consultants and contractors in planning and managing programs for which funding is being requested. Experience will be judged in terms of recent, relevant and successful experience of the applicant's staff to undertake eligible program activities. The applicant has sufficient personnel or will be able to quickly access qualified experts or professionals, to deliver the proposed activities in a timely and effective fashion, including the readiness and ability of the applicant to immediately begin the proposed work program. To demonstrate that the applicant has sufficient personnel, the applicant must submit the proposed number of staff years by the employees and experts to be allocated to the project, the titles and

relevant professional background and experience of each employee and expert proposed to be assigned to the project, and the roles to be performed by each identified employee and expert.

(2) (10 points) for either (a) or (b):

(a) The applicant's past experience in terms of its ability to attain demonstrated measurable progress in the implementation of its most recent activities where performance has been assessed as measured by expenditures and measurable progress in achieving the purpose of the activities. HUD will also consider any documented evidence of the grantee's failure under past awards to comply with grant award provisions; or

(b) If the FHIP applicant has not received funding in the past, the applicant's demonstrated experience in managing programs, and carrying out grant management responsibilities for programs similar in scope or nature directly relevant to the work activities proposed. If the applicant has managed large, complex, interdisciplinary programs, the applicant should include the information in the response.

Rating Factor 2: Need/Extent of the Problem (20 Points)

This factor addresses the extent to which there is a need for funding the proposed activities and an indication for the urgency of meeting the need in the target area. In responding to this factor, applicants will be evaluated on the Statement of Need, which addresses the following:

(1) (10 points) The extent to which applicants document a level of need for the project activities in the target area, including a focus on the targeted groups of new immigrant and other underserved populations, and the urgency in meeting the need using statistics and analyses contained in a data source(s) that is sound and reliable. To the extent that the applicant's community's Consolidated Plan and Analysis of Impediments to Fair Housing Choice (AI) identify the level of the problem and urgency in meeting the need, references to these documents should be included in the response. The Department will review more favorably those applicants who used these documents to identify need, when applicable. If the project activity is not covered under the scope of the AI, applicants should indicate such, and use other reliable data sources to identify the level of need and the urgency in meeting the need. Types of other data sources include, but are not limited to, HUD reports and analyses, relevant economic and/or demographic data including indices of segregation in areas by race or national origin, government or foundation reports and studies, news articles, and other information which relate to the project activities.

(2) (10 points) To the extent possible, is specific to the area where the project activity will be carried out. Specific attention must be paid to documenting need as it applies to the area where activities will be targeted, rather than the entire locality or State. If the target area is an entire locality or State, then documenting need at this level is appropriate. The Statement of Need must demonstrate how specific community or neighborhood needs can be resolved through the activities proposed. The applicant should discuss how it took into account existing and planned efforts of government agencies, community-based organizations, faith-based institutions, for-profit firms, and other entities to address such needs in the community(ies) to be served, how the proposed program compliments or supplements existing efforts and why additional funds are being requested.

Rating Factor 3: Soundness of Approach (40 Points)

This criterion addresses the quality and cost-effectiveness of the applicant's proposed work plan. There must be a clear relationship between the project activities, community needs and the purpose of the program funding for the applicant to receive points for this factor.

(1) (15 points) For all projects, applicants must describe how their project activities will result in the referral of enforcement proposals to HUD and projected number of enforcement proposal referrals expected. Specifically, the applicant must describe the project activities that specifically relate to complaints being referred to HUD during the period of performance of the grant. In responding to this factor, the applicant should describe the methods to be developed or used to identify and refer enforcement actions to HUD. Applicants to the extent that their past activities have resulted in successful enforcement proposals being referred to HUD should describe these actions and the outcome of such referrals. "Enforcement proposals" is defined as well-developed information which could be considered to be timely, jurisdictional, potential complaints under the Fair Housing Act and which can reasonably be expected to become an enforcement action if an impartial investigation finds evidence supporting the allegations and the case proceeds to a resolution with HUD involvement.

(a) Examples of enforcement proposals include:

(i) Allegations that are supported by evidence that meet the requirements for a filed complaint under the Fair Housing Act, including prima facie evidence, with or without related testing evidence;

(ii) Results of testing or audits demonstrating potential housing discrimination;

(iii) Well-developed analysis of data including Home Mortgage Disclosure Act (HMDA)/CRA Analysis/Census data, current studies of residential segregation, or other similar documentation supporting allegations of discrimination; and

(iv) Referrals of complaints to HUD on behalf of individuals or groups other than the grant recipient.

(b) Specifically, the applicant should provide the following:

(i) All PEI and FHOI applications must provide a basis for the specific activities relating to enforcement proposal referrals to HUD and the projected number of enforcement referral proposals that are described in the Statement of Work. The final performance measures for enforcement proposal referrals will be negotiated between the grantee and HUD as part of the executed grant agreement and will be based upon the proposal.

(ii) All EOI applications must provide a basis for the specific activities relating to the referral of individuals with fair housing complaints to HUD, the procedures for filing complaints of discrimination, and outline the projected referrals to HUD and the projected number of enforcement referral proposals in the proposed Statement of Work. The final performance measures for complaint referrals will be negotiated between the grantee and HUD as part of the executed grant agreement and will be based upon the proposal.

(2) (15 points) Additionally, HUD is looking for efficient, effective and feasible Statements of Work that:

(a) Meet the needs articulated in response to Factor 2 including the extent to which the applicant is providing geographic coverage, specific protected class focus, as well as serving persons traditionally underserved. Efforts to increase community awareness in a culturally sensitive manner through education and outreach efforts will also be evaluated;

(b) Provide clarity with regard to the specific, sequential tasks and subtasks to be performed, noting those which should occur simultaneously and the feasibility that tasks can be completed within the grant period;

(c) Describe immediate benefits of the project and indicators by which the benefits will be measured;

(d) Provide for proposed tasks and sub-tasks that clearly provide technically competent methodologies for conducting the work to be performed;

(e) Describe the extent to which the proposed design and size of project or activity is appropriate to the achievement of program funding purposes articulated for the FHIP section in this SuperNOFA; and

(f) Identify specific numbers of quantifiable end products and program improvements the applicant aims to deliver by the end of the award agreement period as a result of the work performed.

(g) The extent to which the project activities will affirmatively further fair housing (AFFH). The applicant can best demonstrate its commitment to affirmatively further fair housing by describing how proposed activities will assist the jurisdiction in overcoming impediments to fair housing choice identified in the jurisdiction's AI (Analysis of Impediments to Fair Housing Choice), which is a component of the jurisdiction's Consolidated Plan, or other planning document that addresses fair housing issues. Additional examples may be obtained from Chapter 5 of the "Fair Housing Planning Guide, Vol. 1" which may be ordered from HUD's Fair Housing Information Clearinghouse by calling (800) 343–3442.

(3) (10 points) HUD also will assess the soundness of the applicant's approach by assessing the following:

(a) The quality, thoroughness and reasonableness of the cost estimates provided. As part of the applicant's response, a summary budget should be provided which identifies costs by cost category in accordance with the following:

(i) *Direct Labor* by position or individual, indicating the estimated hours per position, the rate per hour, estimated cost per staff position and the total estimated direct labor costs;

(ii) *Fringe Benefits* by staff position identifying the rate, the salary base the rate was computed on, estimated cost per position, and the total estimated fringe benefit cost;

(iii) *Material Costs* indicating the item, unit cost per item, the number of items to be purchased, estimated cost per item, and the total estimated material costs;

(iv) *Transportation Costs,* as applicable. Where local private vehicle is proposed to be used, costs should indicate the proposed number of miles, rate per mile of travel identified by item, and estimated total private vehicle costs. Where Air transportation is proposed, costs should identify the destination(s), number of trips per destination, estimated air fare and total estimated air transportation costs. If other transportation costs are listed, the applicant should identify the other method of transportation selected, the number of trips to be made and destination(s), the estimated cost, and the total estimated costs for other transportation costs. In addition, applicants should identify per diem or subsistence costs per travel day and the number of travel days included, the estimated costs for per diem/subsistence and the total estimated transportation costs;

(v) *Equipment charges,* if any. Equipment charges should identify the type of equipment, quantity, unit costs and total estimated equipment costs;

(vi) *Consultant Costs,* if applicable. Indicate the type, estimated number of consultant days, rate per day, total estimated consultant costs per consultant and total estimated costs for all consultants;

(vii) *Subcontract Costs,* if applicable. Indicate each individual subcontract and amount. Each proposed subcontract should include a separate budget which identifies costs by cost categories;

(viii) *Other Direct Costs* listed by item, quantity, unit cost, total for each item listed, and total direct costs for the award;

(ix) *Indirect Costs* should identify the type, approved indirect cost rate, base to which the rate applies and total indirect costs. The submission should include:

(b) The rationale used to determine costs and validation of fringe and indirect cost rates, if the applicant is not using an accepted, Federally negotiated indirect cost rate;

(c) The extent to which the program is cost effective in achieving the anticipated results of the proposed activities as well as in achieving significant community impact; and

(d) The extent to which the applicant demonstrates capability in handling financial resources with adequate financial control procedures and accounting procedures. In addition, considerations will include findings identified in their most recent audits, internal consistency in the application of numeric quantities, accuracy of mathematical calculations and other available information on financial management capability.

Rating Factor 4: Leveraging Resources (10 Points)

This factor addresses the ability of the applicant to secure community resources (Note: financing is a community resource) which can be combined with HUD's program resources to achieve program purposes. In evaluating this factor HUD will consider:

(1) (5 points) The extent to which the applicant has partnered with other entities to secure additional resources to increase the effectiveness of the proposed project activities. Resources may include funding or in-kind contributions, such as services or equipment, allocated to the purpose(s) of the award the applicant is seeking. Resources may be provided by governmental entities, public or private nonprofit organizations, for-profit private organizations, or other entities willing to partner with the applicant. Applicants may also partner with other program funding recipients to coordinate the use of resources in the target area.

(2) (5 points) Applicants must provide evidence of leveraging partnerships by including in the application letters of firm commitments, memoranda of understanding, or agreements to participate from those entities identified as partners in the application. Each letter of commitment, memorandum of understanding, or agreement to participate should include the organization's name, proposed level of commitment and responsibilities as they relate to the proposed program. The commitment must also be signed by an official of the organization legally able to make commitments on behalf of the organization. Applicants for funding under the FHOI-Continued Development Component must describe efforts undertaken to obtain the participation of disability advocacy organizations and indicate the disability advocacy organizations that participated and describe their participation.

Rating Factor 5: Comprehensiveness and Coordination (10 Points)

This factor addresses the extent to which the applicant coordinated its activities with other known organizations, participates or promotes participation in a community's Consolidated Planning (including Analysis of Impediments to Fair Housing Choice) process, and is working towards addressing a need in a holistic and comprehensive manner through linkages with other activities in the community.

In evaluating this factor, HUD will consider the extent to which the applicant demonstrates it has:

(1) Coordinated its project activities with those of other groups or organizations prior to submission in order to best complement, support and coordinate all known activities and if funded, the specific steps it will take to share information on solutions and outcomes with others. Any written agreements, memoranda of understanding in place, or that will be in place after award should be described.

(2) Taken or will take specific steps to become active in the community's Consolidated Planning process (including the Analysis of Impediments to Fair Housing Choice) established to identify and address a need/problem that is related to the activities the applicant proposes.

(3) Taken or will take specific steps to develop linkages to coordinate comprehensive solutions through meetings, information networks, planning processes or other mechanisms with:

(a) Other HUD-funded projects/ activities outside the scope of those covered by the Consolidated Plan; and

(b) Other Federal, State or locally funded activities, including those proposed or on-going in the community(ies) served.

(C) Applicant Notification and Award Procedures

(a) *Notification.* No information will be available to applicants during the period of HUD evaluation, approximately 90 days, except for notification in writing or by telephone to those applicants that are determined to be ineligible or that have technical deficiencies in their applications that may be corrected. Selectees will be announced by HUD upon completion of the evaluation process, subject to final negotiations and award.

(b) *Negotiations.* After HUD has ranked the applications and provided notifications to applicants whose scores are within the funding range, HUD will require that applicants in this group participate in negotiations to determine the specific terms of the cooperative or grant agreement. HUD will follow the negotiation procedures described in Section II(D) of the General Section of the SuperNOFA.

(c) *Funding Instrument.* HUD expects to award a cost reimbursable or fixed-price cooperative or grant agreement to each successful applicant. HUD reserves the right, however, to use the form of assistance agreement determined to be most appropriate after negotiation with the applicant.

(d) *Adjustments to Grant Amounts.* As provided in Section III(E) of the General Section of the SuperNOFA, HUD may approve an application for an amount lower than the amount requested, fund only portions of an application, withhold funds after approval, and/or require the grantee to comply with special conditions added to the grant agreement, in accordance with 24 CFR 84.14, the requirements of this NOFA, or where:

(i) HUD determines the amount requested for one or more eligible activities is unreasonable or unnecessary;

(ii) The applicant has proposed an ineligible activity in an otherwise eligible project;

(iii) Insufficient amounts remain in that funding round to fund the full amount requested in the application, and HUD determines that partial funding is a viable option; or

(iv) The applicant has demonstrated an inability to manage HUD grants, particularly FHIP grants.

(e) *Performance Sanctions.* A recipient failing to comply with the procedures set forth in its grant agreement will be liable for such sanctions as may be authorized by law, including repayment of improperly used funds, termination of further participation in the FHIP, and denial of further participation in programs of HUD or any Federal agency.

IV. Application Submission Requirements

In addition to the forms, certifications and assurances required in Section II(G) of the General Section of the SuperNOFA and the applicant's responses to the five rating factors in Section III(B) of this FHIP section of the SuperNOFA, all applications must, at a minimum, contain the following items:

(A) Transmittal Letter

This letter identifies the NOFA, the program under the NOFA for which funds are requested, the specific FHIP Initiative and component under which the application is submitted, and the dollar amount requested for each program, and the applicant submitting the application.

(B) Narrative Statement

The narrative statement addresses the Factors for Award in Section III(B) of this FHIP section of the SuperNOFA. Your narrative response should be numbered in accordance with each factor for award identified under Section III(B) of this FHIP section of the SuperNOFA.

(C) Financial Management and Audit Information

Each applicant must submit a certification from an Independent Public Accountant or the cognizant government auditor, stating that the financial management system employed by the applicant meets proscribed standards for fund control and accountability required by: OMB Circular A–133, Audits of States, Local Governments and Non-Profit Organizations; OMB Circular A–110 (as codified at 24 CFR part 84), Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and other Non-Profit Organizations; and/or OMB Circular A–102 (as codified at 24 CFR Part 85) Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments. This information should contain the name and telephone number of the Independent Auditor, cognizant Federal auditor, or other audit agency, as applicable.

V. Corrections to Deficient Applications

The General Section of the SuperNOFA provides the procedures for corrections to deficient applications.

VI. Environmental Requirements

In accordance with 24 CFR 50.19(b) (9) and (12) of HUD regulations, activities assisted under this program are categorically excluded from the requirements of the National Environmental Policy Act and are not subject to environmental review under related laws and authorities.

Funding Availability for the Housing Counseling Program

Program Description: Approximately $18.0 million is available for the Housing Counseling Program. HUD's Housing Counseling Program is directed to promoting and protecting the interests of housing consumers participating in HUD and other housing programs, as well as, to protecting the interests of HUD and mortgage lenders.

Application Due Date: Completed applications must be received no later than 6:00 pm local time, on June 1, 1998, at the appropriate address shown below. See the General Section of this SuperNOFA for specific procedures governing the form of application submission (e.g., mailed applications, express mail, overnight delivery, or hand carried).

Addresses for Submitting Applications:

For Local and State Housing Finance Agencies. For local housing counseling agency and state housing finance agency applicants: an original and two copies of the completed application must be submitted to the respective HUD Homeownership Center having jurisdiction over the locality, area or state in which the proposed program is located. These copies should be sent to the attention of the Marketing and Outreach Division Director, and the envelope should be clearly marked, "FY 1998 Counseling Application." A list of Marketing and Outreach Division Directors, HUD Homeownership Centers and jurisdictions appears in the application kit.

For National, Regional and Multi-State Housing Agencies. For national, regional, and multi-state housing counseling intermediaries: an original and two copies of the completed application must be submitted to the Director, Marketing and Outreach Division, Office of Single Family Housing, HUD Headquarters. (See the Application Kit for name and address.) The envelope should be clearly marked, "FY 1998 Intermediary Application." Failure to submit an application to HUD Headquarters in accordance with the above procedures may result in disqualification of the application.

For Application Kits, Further Information and Technical Assistance:

For Application Kits. For an application kit and any supplemental information, please call the SuperNOFA Information Center at 1–800–HUD–8929. Persons with hearing or speech impairments may call the Center's TTY number at 1–800–483–2209. The application kit also will be available on the Internet through the HUD web site at http://www.HUD.gov. When requesting an application kit, please refer to the Housing Counseling Program. The SuperNOFA Information Center can provide you with assistance in determining which HUD locations should receive a copy of your application.

For Further Information and Technical Assistance. For local housing counseling agencies or State housing finance agencies, you may call the HUD Homeownership Center serving your area. For national, regional, or multi-state intermediaries, you may call HUD Headquarters. Please see your application kit for a list of offices and telephone numbers you can call to receive assistance. Before the application deadline, HUD staff will be available to provide general guidance.

Additional Information

I. Authority; Purpose; Amount Allocated; and Eligibility

(A) Authority

HUD's Housing Counseling Program is authorized by section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x), and is generally governed by HUD Handbook 7610.1, REV–4, dated August 9, 1995.

(B) Purpose and Background

Section 106 of the Housing and Urban Development Act of 1968 authorizes HUD to provide counseling and advice to tenants and homeowners with respect to property maintenance, financial management, and such other matters as may be appropriate to assist tenants and homeowners in improving their housing conditions and meeting the responsibilities of tenancy and homeownership.

In addition, HUD-approved housing counseling agencies are encouraged by HUD to conduct community outreach activities and provide counseling to individuals with the objective of increasing awareness of homeownership opportunities and improving access of low and moderate income households to sources of mortgage credit. HUD believes that this activity is key to the revitalization and stabilization of low income and minority neighborhoods. In FY 1998, HUD encourages applicants to focus on:

(1) The counseling needs of first-time homebuyers by offering Homebuyer Education and Learning Program (HELP) training sessions;

(2) The counseling needs of eligible persons 62 or older who desire to use the Home Equity Conversion Mortgage (HECM) in order to convert their equity into a lump sum payment or an income stream that can be used for home improvements, medical costs, and/or pay living expenses.

(C) Amount Allocated and Funding Levels

(1) *Amount Allocated.* Under this SuperNOFA, $18 million is made available for eligible applicants for three (3) programs under Housing Counseling.

(a) The estimated amount of funds available for sub-allocation is as follows:

(i) *Local Housing Counseling Agencies.* Approximately $5 million has been made available for grants to local HUD-approved housing counseling agencies. Funding allocated to each of the HUD Homeownership Centers by a formula that reflects the increased emphasis on the expansion of homeownership opportunities for first-time homebuyers and its intent to ensure appropriate geographical distribution of program funds. For FY 1998, no individual local housing counseling agency may be awarded more than $100,000.

A local, HUD-approved housing counseling agency may apply for a sub-grant to a State housing finance agency, whether or not the local agency has a housing counseling grant from HUD. The local agency, however, shall disclose all funding sources to HUD.

Allocations for use in local agency programs by HUD Homeownership Center are estimated as follows:

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HUD Field Office		Default Data		First Time H	Homebuyer Data		
HUD Homeownership Center/Jurisdiction	No. of Defaults	% of Nat'l Defaults	Allocation Amount	No. of 1st Timer	% of Nat'l 1st Timers	Allocation Amount	Total Allocation
PHILADELPHIA HOC							
Albany	2892	1.43%	35,731	6,209	1.16%	28,977	64,709
Baltimore	5222	2.58%	64,519	12,850	2.40%	59,971	124,490
Boston	1077	0.53%	13,307	6,854	1.28%	31,987	45,294
Buffalo	3212	1.59%	39,685	5,411	1.01%	25,253	64,938
Camden	5106	2.52%	63,086	6,880	1.28%	32,109	95,195
Charleston	143	0.07%	1,767	1,030	0.19%	4,807	6,574
Cincinnati	1454	0.72%	17,965	6,305	1.18%	29,425	47,390
Cleveland	3596	1.78%	44,430	7,269	1.36%	33,924	78,354
Columbus	2085	1.03%	25,761	5,722	1.07%	26,704	52,465
Detroit	3346	1.65%	41,341	11,415	2.13%	53,274	94,614
Flint	551	0.27%	6,808	1,836	0.34%	8,569	15,376
Grand Rapids	1058	0.52%	13,072	5,021	0.94%	23,433	36,505
Hartford	1821	0.90%	22,499	8,108	1.51%	37,840	60,339
Manchester *	533	0.26%	6,585	5,126	0.96%	23,923	30,508
*(NH, MA, VT)			0		0.00%	0	0
New York	5232	2.59%	64,643	10,345	1.93%	48,280	112,923
Newark	2855	1.41%	35,274	9,094	1.70%	42,441	77,716
Philadelphia *	7186	3.55%	88,785	14,161	2.64%	66,089	154,874
(* DE)			0		0.00%	0	0
Pittsburgh	1492	0.74%	18,434	4,977	0.93%	23,228	41,662
Providence	298	0.15%	3,682	1,849	0.35%	8,629	12,311
Richmond	5037	2.49%	62,233	11,405	2.13%	53,227	115,460
Washington DC	5683	2.81%	70,215	13,674	2.55%	63,816	134,031
Phil. HOC Subotal	59879		739,821	155,541		725,906	1,465,726
ATLANTA HOC							
Atlanta	8431	4.17%	104,167	15,173	2.83%	70,812	174,979
Birmingham	2792	1.38%	34,496	6,143	1.15%	28,669	63,165
Caribbean	4134	2.04%	51,077	8,814	1.65%	41,135	92,211
Chicago & Spring.	10090	4.99%	124,665	21,137	3.95%	98,646	223,310
Coral Gables	8164	4.03%	100,868	14,289	2.67%	66,686	167,555

Columbia	2161	1.07%	26,700	4,048	0.76%	18,892	45,592
Greensboro	3291	1.63%	40,661	10,633	1.98%	49,624	90,285
Indianapolis	3832	1.89%	47,345	10,420	1.95%	48,630	95,975
Jackson	2275	1.12%	28,108	3,880	0.72%	18,108	46,216
Jacksonville	2099	1.04%	25,934	4,915	0.92%	22,938	48,872
Knoxville	1247	0.62%	15,407	3,554	0.66%	16,586	31,993
Louisville	1004	0.50%	12,405	4,682	0.87%	21,851	34,255
Memphis	5820	2.88%	71,908	6,347	1.18%	29,621	101,529
Nashville	1821	0.90%	22,499	4,393	0.82%	20,502	43,001
Orlando	3851	1.90%	47,580	7,537	1.41%	35,175	82,755
Tampa	3330	1.65%	41,143	6,494	1.21%	30,307	71,450
Atlanta HOC Subtotal	64342		794,962	132,459		618,183	1,413,145
DENVER HOC							
Albuquerque	700	0.35%	8,649	3,005	0.56%	14,024	22,673
Denver *	3028	1.50%	37,412	20,626	3.85%	96,261	133,673
*(WY, ND, SD)							
Des Moines	494	0.24%	6,103	2,489	0.46%	11,616	17,720
Ft Worth & Dallas	8075	3.99%	99,769	17,715	3.31%	82,675	182,444
Helena	429	0.21%	5,300	1,590	0.30%	7,420	12,721
Houston	3760	1.86%	46,456	7,753	1.45%	36,183	82,639
Kansas City/Topeka	2358	1.17%	29,134	8,406	1.57%	39,231	68,364
Little Rock	2161	1.07%	26,700	5,182	0.97%	24,184	50,884
Lubbock	1544	0.76%	19,077	4,051	0.76%	18,906	37,982
Milwaukee	757	0.37%	9,353	2,957	0.55%	13,800	23,153
Minneapolis	3417	1.69%	42,218	12,828	2.39%	59,868	102,086
New Orleans	2438	1.20%	30,122	6,218	1.16%	29,019	59,141
Oklahoma City	1401	0.69%	17,310	4,904	0.92%	22,887	40,197
Omaha	716	0.35%	8,846	5,147	0.96%	24,021	32,867
Salt Lake City	1292	0.64%	15,963	6,829	1.27%	31,871	47,834
San Antonio	3475	1.72%	42,935	11,021	2.06%	51,435	94,369
Shreveport	1225	0.61%	15,135	1,649	0.31%	7,696	22,831
St Louis	2086	1.03%	25,773	6,085	1.14%	28,399	54,172
Tulsa	923	0.46%	11,404	2,981	0.56%	13,912	25,316
Denver HOC Subtotal	40279		497,657	131,436		613,408	1,111,066
SANTA ANA HOC							

Anchorage	223	0.11%	2,755	1,708	0.32%	7,971	10,726
Boise	683	0.34%	8,439	2,900	0.54%	13,534	21,973
Fresno	3849	1.90%	47,555	10,896	2.03%	50,851	98,407
Honolulu	447	0.22%	5,523	851	0.16%	3,972	9,494
Las Vegas & Reno	2177	1.08%	26,897	7,199	1.34%	33,598	60,495
Los Angeles	7447	3.68%	92,010	21,589	4.03%	100,755	192,765
Phoenix	4044	2.00%	49,965	11,547	2.16%	53,890	103,854
Portland	698	0.34%	8,624	5,313	0.99%	24,796	33,420
Sacramento	2436	1.20%	30,097	8,139	1.52%	37,985	68,082
San Diego	969	0.48%	11,972	4,433	0.83%	20,689	32,661
San Francisco	1356	0.67%	16,754	6,029	1.13%	28,137	44,891
Santa Ana	10857	5.37%	134,141	24,858	4.64%	116,012	250,153
Seattle & Spokane	2003	0.99%	24,748	8,915	1.66%	41,606	66,354
Tucson	654	0.32%	8,080	1,866	0.35%	8,709	16,789
Santa Ana HOC Subtotal	37843		467,560	116,243		542,503	1,010,063
GRAND TOTAL	202343	100.00%	2,500,000	535,679	100.00%	2,500,000	5,000,000

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(ii) *National, Regional, and Multi-State Intermediaries.* Approximately $6 million is being set aside to fund HUD-approved national, regional and multi-state intermediaries that apply for funding under this SuperNOFA. No national, regional, or multi-state intermediaries may receive more than $1 million. No affiliate of an intermediary, as a sub-grantee, can be awarded a sub-grant more than $100,000. An affiliate may apply to a State housing finance agency for a sub-grant whether or not the affiliate received a sub-grant from a HUD-approved national, regional, or multi-state intermediary.

(iii) *State Housing Finance Agencies.* Approximately $7 million is being set aside to fund State housing finance agencies, that have a role as a housing counseling agency and/or as an intermediary to affiliates, offering housing counseling services. The amount of funding available to each of the four HUD Homeownership Center jurisdictions is as follows:

Homeownership center	Funding allocation
Atlanta, GA	$1,978,375.00
Denver, CO	1,555,575.00
Philadelphia, PA	2,051,875.00
Santa Ana, CA	1,414,175.00

No State housing finance agency may receive more than $500,000, and no affiliate of a State housing finance agency, as a sub-grantee, can be awarded a sub-grant more than $100,000. A State housing finance agency may provide a sub-grant to local, HUD-approved housing counseling agencies, and to affiliates of national, regional, or multi-state intermediaries.

(iv) *Remaining and Deobligated Funds/Reallocations.* If funds remain after HUD has funded all approvable grant applications in its Homeownership Center jurisdictions, or Headquarters, or if any funds become available due to deobligation, that amount shall be reallocated and used in keeping with the statute and in a manner that will improve the delivery of housing counseling service nationwide.

(b) *Funding Levels.* The Factors for Award will be used to determine successful applicants for funding. HUD requires that successful applicants participate in negotiations to determine the specific grant amount and the terms of the grant agreement. HUD will follow the negotiation procedures described in Section III(D) of the General Section of the SuperNOFA.

(i) *Local Housing Counseling Agencies.* HUD will fund local housing counseling agencies according to the budget submitted with the application, in an amount not to exceed $100,000. Amounts requested by local housing counseling agencies should reflect anticipated operating needs for housing counseling activities, based upon counseling experience during the previous fiscal year and current agency capacity.

(ii) *National, Regional, or Multi-State Intermediaries.* The intermediaries will distribute the majority of funds awarded to their proposed local housing counseling affiliates. HUD will give the selected intermediaries wide discretion to implement the housing counseling program with their affiliates. The intermediary may decide how to allocate funding among its affiliates, and may determine funding levels at or below $100,000 for individual affiliates with the understanding that a written record will be kept of how this determination is made. This record shall be made available to the agencies affiliated with the intermediary and to HUD. Affiliates are not eligible for capacity building costs. Intermediaries should budget an amount which reflects their best estimate of cost to oversee and fund these housing counseling efforts, as well as, funding the needs of their affiliates.

(iii) *State Housing Finance Agencies.* HUD will fund State housing finance agencies according to the budget submitted with the application, in an amount not to exceed $500,000. State housing finance agencies have two roles. The agency can operate as a housing counseling agency and/or as an intermediary for affiliates that perform housing counseling functions in their respective States or territories.

(c) *Capacity Building and Capacity Building Costs.* In FY 1998, the following amounts of housing counseling grant funds may be used by each grantee for "capacity building" and/or upgrading "capacity building", as defined in this Housing Counseling Program section of the SuperNOFA (see capacity building costs in the application kit).

Local Housing Counseling Agencies—up to $4,000

National, Regional, or Multi-State Intermediaries—up to $5,000

State Housing Finance Agencies—up to $5,000

(i) Capacity building costs are: purchasing computer equipment and housing counseling case management and tracking software capable of exporting the HUD–9902 data into a database file, such as Data Now; enhancing telephone service, such as purchasing telecommunications equipment for the hearing-impaired (TTY) to serve persons with hearing impairments (as an alternative to using the TTY relay service); installing FAX machines.

(ii) For local housing counseling agencies, intermediaries and state housing finance agencies that do not have an adequate computer system or need to upgrade computer equipment, HUD requires that up to $4,000 of the grant, for local housing counseling agencies, and up to $5,000 of the grant, for intermediaries and State housing finance agencies, be used to acquire items defined as capacity building costs. Affiliates of State housing finance agencies and intermediaries are not eligible for capacity building costs. Any equipment purchased must meet HUD specifications. Title to equipment acquired by a recipient with program funds shall vest in the recipient, subject to the provisions of 24 CFR part 84, subpart E. Computer training for one staff person may be paid from the capacity building cost set-aside, as may training on how to use a TTY.

(d) *Use of Counseling Funds and Supplementing HUD Funding.*

(i) *Housing Counseling Role.* Amounts requested by the State housing finance agency should reflect anticipated operating needs for housing counseling activities, based upon the counseling experience during FY 1997 and current agency capacity. To the maximum extent possible, State housing finance agencies must seek other private and public sources of funding to supplement HUD funding. HUD never intends for its counseling grant funds to cover all costs incurred by an agency participating in the program. State finance housing agencies may use the HUD grant to undertake any of the eligible counseling activities described in the Housing Counseling Program section of the SuperNOFA.

(ii) *Intermediary Role.* Amounts requested by the State housing finance agency should reflect their best estimates of costs to oversee and fund its housing counseling affiliates. In this intermediary role, the agency will distribute HUD funds to its affiliates. Note that HUD housing counseling funding is not intended to fully fund either the agency in its intermediary role or the housing counseling programs of their affiliates. To the maximum extent possible, the State housing finance agency and its affiliates are expected to seek other private and public sources of funding for housing counseling to supplement HUD funding.

(e) *Program Award Period.* Housing Counseling grants are fundable for a

period of twelve (12) calendar months. This period may begin from the date that the award is executed by HUD, or not more than 90 days prior thereto.

(D) Eligible Applicants

Under the housing counseling program, HUD contracts with qualified public or private nonprofit organizations to provide the services authorized by the statute. Currently there are approximately 1250 HUD-approved local housing counseling agencies, including branch offices, and approximately 13 HUD-approved intermediary organizations. Annually, all HUD-approved agencies and intermediaries are eligible to apply for housing counseling grants. *However, an agency or intermediary that is approved by HUD, or a state housing finance agency does not automatically receive HUD funding. HUD expects that all agencies, intermediaries and state housing finance agencies will continually work to develop other funding resources.* In FY 1997, 350 HUD-approved local housing counseling agencies and 5 HUD-approved national, regional, and multi-state intermediaries received funding from HUD. For the first time, under this SuperNOFA, HUD is encouraging State housing finance agencies, that perform housing counseling functions either as a practitioner and/or as an intermediary to local or statewide housing counseling affiliates, to apply for funding.

(1) Three types of organizations are eligible to submit applications in accordance with this Housing Counseling Program section to this SuperNOFA:

(a) HUD-approved national, regional, or multi-state housing counseling organizations (also known as "intermediaries" or "umbrella groups");

(b) HUD-approved local housing counseling agencies; and,

(c) State housing finance agencies.

(2) National, regional, and multi-state intermediaries; and State housing finance agencies must identify all their proposed affiliates in their application.

Note: National, regional, and multi-state intermediaries must assure that their proposed affiliates are unique to their team, and will *not* undertake a separate application for funds, either as an affiliate of another intermediary or State housing finance agency, or directly as a HUD-approved local housing counseling agency. Should any duplication occur, both the intermediary and the local housing counseling agency involved will automatically be ineligible for further consideration to receive FY 1998 housing counseling funds.

(a) An intermediary and State housing finance agency applicant must also assure that it will execute a sub-grant agreement with its affiliates that clearly delineates their mutual responsibilities for program management, and includes appropriate time frames for reporting results to HUD. Once funded, the national, regional, and multi-state intermediaries and state housing finance agencies will be given broad discretion in implementing their housing counseling programs.

(b) On behalf of HUD, the intermediaries and State housing finance agencies will act as managers in the housing counseling process, and as such, may determine funding levels and counseling activity for each of their affiliates, except that no single affiliate may receive more than $100,000. HUD will hold the intermediary and State housing finance agency accountable for the performance of its affiliates.

(c) Local housing counseling agencies may apply either directly to HUD for funding, or as a part of an affiliated intermediary or state housing finance agency network. Continuation of funding for housing counseling activities, as a separate and discrete program for FY 1999, and thereafter, is not guaranteed. Therefore, HUD encourages local housing counseling agencies to consider affiliating with a larger entity as one avenue of possible future funding and support for local programs.

(d) Local housing counseling agencies that are not currently HUD-approved, may receive FY 1998 funding only as an affiliate of a HUD-approved national, regional, or multi-state intermediary; or State housing finance agency. In this instance, the intermediary or State housing finance agency must certify that the quality of services provided will meet, or exceed, standards for local HUD-approved housing counseling agencies.

(E) Eligible Activities

Eligible activities will vary depending upon whether the applicant is a HUD-approved local housing counseling agency; a HUD-approved national, regional, or multi-state housing counseling intermediary, or affiliate; or, a State housing finance agency, or affiliate.

(1) *Comprehensive Housing Counseling.* Local Housing Counseling Agencies funded under this SuperNOFA may use HUD funds to deliver comprehensive housing counseling, or to specialize in the delivery of particular housing counseling services, according to the housing needs they identified for their target area in the plan that is part of its application. HUD recognizes that local housing counseling agencies may offer a wide range of services, including:

(a) *Homebuyer Education Programs* where HUD's Homebuyer Education and Learning Program (HELP) materials are used in sessions that consist of approximately sixteen (16) hours of training. Completion of the training may allow graduates to receive first-time homebuyer incentives, such as, the reduction in the FHA insurance premium. Marketing and Outreach personnel at each HUD Homeownership Center will be available to assist agencies in this endeavor.

(b) *Pre-purchase Homeownership Counseling* covering such issues as purchase procedures, mortgage financing, down payment/closing cost fund accumulation, accessibility requirements of the property, and if appropriate, credit improvement, and debt consolidation.

(c) *Post-purchase Counseling* including such issues as property maintenance, and personal money management.

(d) *Mortgage delinquency and default resolution counseling* including restructuring debt, arrangement of reinstatement plans, loan forbearance, and loss mitigation.

(e) *Home Equity Conversion Mortgage (HECM) counseling* that assist clients, who are 62 years old or older, with the complexities of converting the equity in their home to income that is used to pay living expenses or medical expenses.

(f) *Loss Mitigation Counseling* for clients who may be facing default and foreclosure, and need mortgage default resolution and foreclosure avoidance counseling.

(g) *Outreach Initiatives* including providing general information about housing opportunities within the community and providing appropriate information to persons with disabilities.

(h) *Renter Assistance* including information about rent subsidy programs, rights and responsibilities of tenants, and lease and rental agreements.

(2) *Housing Counseling Clients.* HUD-funded local housing counseling agencies may elect to offer their services to a wide range of clients, or may elect to serve a more limited audience, provided limitations do not violate the requirements of the Fair Housing Act. Potential clients include: first-time homebuyers, homebuyers and homeowners eligible for, and applying for, HUD, VA, FmHA (or its successor agency), State, local, or conventionally financed housing or housing assistance; or persons who occupy such housing and seek the assistance of a HUD-approved housing counseling agency to

resolve a housing need. This includes accessible housing needs for persons with disabilities, renters, or, persons age 62 or older, who wish to convert the equity in their home to avoid default/foreclosure, pay medical expenses or create an income stream that can be used to pay living expense. Local housing counseling agencies may elect to offer this assistance in conjunction with any HUD housing program; however, they must be familiar with FHA's single family and multifamily housing programs.

(3) *National, Regional, or Multi-State Counseling Intermediaries.* The primary activity of HUD-approved national, regional, or multi-state intermediaries will be to manage the use of HUD housing counseling funds. This includes the distribution of housing counseling funding to affiliated local housing counseling agencies. Local affiliates of the selected national, regional, or multi-state intermediaries are eligible to undertake any or all of the housing counseling activities, described herein for the HUD-approved local housing counseling agencies. The local affiliates receiving funding through intermediaries do not need to be HUD-approved in order to receive these funds from the intermediary. However, the national, regional, or multi-state intermediary organization must be HUD-approved, as of this SuperNOFA publication date.

(4) *State Housing Finance Agencies.* The primary activity of State housing finance agencies will be to provide housing counseling services as a local housing counseling agency and/or manage the use of HUD housing counseling funds, including the distribution of counseling funding to its affiliated local housing counseling organizations. The State housing finance agency, and its local affiliates, are eligible to undertake any or all of the housing counseling activities, described herein, for the HUD-approved local housing counseling agencies. The State housing finance agencies, as either a housing counseling agency or intermediary, and it local affiliates do not need to be HUD-approved in order to receive these funds.

II. Program Requirements

In addition to the requirements listed in the General Section of the SuperNOFA. In addition, the following requirements apply.

Requirements Applicable to Religious Organizations. Where the applicant is, or proposes to contract with, a primarily religious organization, or a wholly secular organization established by a primarily religious organization, to provide, manage, or operate a housing counseling program, the organization must undertake its responsibilities under the counseling program in accordance with the following principles:

(1) It will not discriminate against any employee or applicant for employment under the program on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;

(2) It will not discriminate against any person applying for counseling under the program on the basis of religion and will not limit such assistance or give preference to persons on the basis of religion; and

(3) It will provide no religious instruction or religious counseling, conduct no religious services or worship, engage in no religious proselytizing, and exert no other religious influence in the provision of assistance under the Housing Counseling Program.

III. Application Selection Process

(A) General

Applications will be evaluated competitively, and ranked against all other applicants that have applied for the same funding program. However, after selection, the actual amount funded will be based on successful completion of negotiations. There will be separate rankings for each program, and applicants will be ranked only against others that applied for the same program. National, regional, and multi-State applications will be rated and ranked in HUD Headquarters, and selected for funding in rank order. Local agency applications will be rated and ranked by the HUD Homeownership Centers and selected for funding in rank order.

(B) Competitive Categories/Selection Parameters

All applications meeting the requirements of this SuperNOFA will be rated/ranked/selected for funding within their competitive category. The competitive categories are:

(1) HUD-approved housing counseling agency applicants within the HUD Homeownership Center's jurisdiction;

(2) HUD-approved national, regional, or multi-state intermediaries; and

(3) State housing finance agencies.

Intermediaries and State housing finance agencies, in their role as intermediary, will award sub-grants to affiliates.

(C) Factors for Award Used To Rate and Rank Applications

The factors for rating and ranking applicants, and maximum points for each factor, are provided below. The maximum number of points for each applicant is 102. This includes two EZ/EC bonus points, as described in the General Section of the SuperNOFA.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (20 Points)

This factor addresses the extent to which the applicant has the organizational resources necessary to successfully implement the proposed activities in a timely manner. In rating this factor, HUD will consider the extent to which the proposal demonstrates:

The rating of the "applicant" or the "applicant's organization and staff" for technical merit will include any subcontractors, consultants, subrecipients, and members of consortia that are identified as participants in the project.

(a) (10 points) The knowledge and experience of the proposed project director and staff, including the day-to-day program manager, consultants and contractors in planning and managing programs for which funding is being requested. Experience will be judged in terms of recent, relevant and successful experience of the applicant's staff to undertake eligible program activities. The applicant has sufficient personnel or will be able to quickly access qualified experts or professionals, to deliver the proposed activities in a timely and effective fashion, including the readiness and ability of the applicant to immediately begin the proposed work program. To demonstrate that the applicant has sufficient personnel, the applicant must submit the proposed number of staff years by the employees and experts to be allocated to the project, the titles and relevant professional background and experience of each employee and expert proposed to be assigned to the project, and the roles to be performed by each identified employee and expert.

(b) (10 points) The applicant's past experience in terms of its ability to attain demonstrated measurable progress in the implementation of its most recent activities where performance has been assessed as measured by expenditures and measurable progress in achieving the purpose of the activities. HUD will also consider any documented evidence of the grantee's failure under past awards to comply with grant award provisions.

Rating Factor 2: Need/Extent of the Problem (20 Points)

This factor addresses the extent to which there is a need for funding the proposed program activities to address a documented problem in the target area. To the extent that the community served by the housing counseling organization has documented the need in the community's Consolidated Plan or Analysis of Impediments to Fair Housing Choice (AI), or requirements of court orders or consent decrees, settlements and voluntary compliance agreements. References to these documents should be included in the response. If the proposed activities are not covered under the scope of the Consolidated Plan or AI, applicants should indicate such and use other sound data sources to identify the level of need for the proposed activity.

In responding to this factor, applicants will be evaluated on the extent to which they document a critical level of need for the proposed activities in the area where activities will be carried out.

The documentation of need should demonstrate the extent of the problem being addressed by the proposed activities. Examples of data that might be used to demonstrate need, include, but is not limited to, economic and demographic data relevant to the target area. There must be a clear relationship between the proposed activities, community needs and the purpose of the program funding for an applicant to receive points for this factor.

Rating Factor 3: Soundness of Approach (40 Points)

This factor addresses the quality and effectiveness of the applicant's proposed work plan. In rating this factor, HUD will consider the following:

(1) The extent to which the proposed design and scope of the activities provide for geographic coverage for target areas as well as persons traditionally underserved, including identification of immediate benefits to be achieved and indicators by which these benefits will be measured;

(2) The extent to which the applicant has a clear agenda of the work activities to be performed;

(3) Proposed tasks that use technically competent methodologies that have been documented for conducting the work to be performed. HUD will make an evaluation of the applicant's soundness of approach by assessing the extent to which the proposed work plan identifies documented methodologies for the types of services to be performed.

(4) Relationship between the proposed activities, community needs and the purpose of the program funding.

(5) Affirmatively furthering fair housing may be undertaken in a variety of ways, as appropriate to the community. Making counseling offices and services accessible to persons with a wide range of disabilities and helping such persons to locate suitable housing in locations throughout the metropolitan or community area are suggested for both national, regional, or multi-state housing counseling organization, as well as for local counseling agencies. The following are additional suggestions:

(a) *For National, Regional, or Multi-State Intermediaries and State Housing Finance Agencies.*

(i) Implement affirmative marketing strategies to attract all segments of the population listed as prohibited bases in the Fair Housing Act, who are least likely to apply for housing counseling to purchase or retain their homes.

(ii) Taking actions to reduce concentrations of poverty and/or minority populations. This could include working with, or adopting the counseling practices of, agencies which conduct opportunity counseling to encourage low-income and minority persons to move to low-concentration areas and helping to locate suitable housing in such areas. It could also include working with local lenders to develop alternative lending criteria: For instance, the counseling agency may make referrals to the lenders of clients with good credit and payment histories, but who do not fit the standard profiles for lending practices or of clients with financial patterns which reflect cultural differences (such as family savings pools common among some Asian populations). Such activity should also focus on finding appropriate housing, free from environmental hazards, for all segments of the population in neighborhoods with good transportation, schools, employment opportunities, and other services.

(b) *For Local Housing Counseling Agencies.* Participate in local fair housing strategies with major emphasis on remedying the effects of past discrimination and limitations in the community. This could include: working with CPD Entitlement Jurisdictions to help to identify impediments to fair housing choice which have been identified in the process of working with clients; becoming familiar with the jurisdiction's identified impediments and adjusting its counseling activities to help overcome these impediments; and/or working with other public and private resources to develop fair housing strategies applicable to the counseling activities, on a community-wide or metropolitan-wide basis. HUD also will evaluate the extent to which the proposed work plan contains community awareness, education and outreach programs.

Rating Factor 4: Leveraging Resources (10 Points)

This factor addresses the ability of the applicant to secure community resources which can be combined with HUD's program resources to achieve program purposes.

In evaluating this factor HUD will consider:

(1) The extent to which the applicant has partnered with other entities to secure additional resources to increase the effectiveness of the proposed program activities. Resources may include funding or in-kind contributions, such as services or equipment, allocated to the purpose(s) of the award the applicant is seeking. Resources may be provided by governmental entities, public or private nonprofit organizations, for-profit private organizations, or other entities willing to partner with the applicant. Applicants may also partner with other program funding recipients to coordinate the use of resources in the target area.

(2) Applicants must provide evidence of leveraging/partnerships by including in the application letters of firm commitments, memoranda of understanding, or agreements to participate from those entities identified as partners in the application. Each letter of commitment, memoranda of understanding, or agreement to participate should include the organization's name, proposed level of commitment and responsibilities as they relate to the proposed program. The commitment must also be signed by an official of the organization legally able to make commitments on behalf of the organization.

To the maximum extent possible, local counseling agencies also must seek other private and public sources of funding to supplement HUD funding. HUD never intends for its counseling grant funds to cover all costs incurred by an agency participating in the program.

Local housing counseling agencies may use the HUD grant to undertake any of the eligible housing counseling activities described in this Housing Counseling Program section of the SuperNOFA and included in their HUD-approved plan.

Note: HUD housing counseling funding is not intended to fully fund, either the intermediary's housing counseling program, or the housing counseling programs of the its local affiliates. To the maximum extent possible, intermediaries and their local affiliates are expected to seek other private and public sources of funding for housing counseling to supplement HUD funding.

Rating Factor 5: Comprehensiveness and Coordination (10 Points)

This factor addresses the extent to which the applicant coordinated its activities with other known organizations, participates or promotes participation in a community's Consolidated Planning process and is working towards addressing a need in a holistic and comprehensive manner through linkages with other activities in the community.

In evaluating this factor, HUD will consider the extent to which the applicant demonstrates it has:

(1) Coordinated its proposed activities with those of other groups or organizations prior to submission in order to best complement, support and coordinate all known activities and if funded, the specific steps it will take to share information on solutions and outcomes with others. Any written agreements or memoranda of understanding in place should be described.

(2) Taken or will take specific steps to become active in the community's Consolidated Planning process (including the Analysis of Impediments to Fair Housing Choice) established to identify and address a need/problem that is related to the activities the applicant proposes.

(3) Taken or will take specific steps to develop linkages to coordinate comprehensive solutions through meetings, information networks, planning processes or other mechanisms with:

(a) Other HUD-funded projects/activities outside the scope of those covered by the Consolidated Plan; and

(b) Other Federal, State or locally funded activities, including those proposed or on-going in the community(s) served.

IV. Application Submission Requirements

(A) General

Contents of an application will differ somewhat for: local housing counseling agencies; national, regional, or multi-state intermediaries; and, State housing finance agencies. However, all applicants are expected to submit the forms, certifications and assurances set forth in the General Section of the NOFA. Copies of all form/documents required to be completed by an applicant can be found in the application kit. In addition to these certifications and assurances the following are required to be part of the housing counseling application:

(1) Form HUD–9902, Housing Counseling Agency Fiscal Year Activity Report, for fiscal year October 1, 1996 through September 30, 1997. Where an applicant did not participate in HUD's Housing Counseling Program during FY 1997, this report should be completed to reflect the agency's counseling workload during that period. This form must be fully completed and submitted by every applicant for FY 1998 HUD funding;

(2) Computer Equipment Inventory (if applicable);

(3) Budget Work Sheet. A realistic, proposed budget for use of HUD funds, if awarded. This should be broken down into two categories (i) direct housing counseling costs and (ii) capacity building costs:

(4) Exhibits for national, regional, multi-state, or agencies and State housing finance agencies as described in (2)(a)–(2)(c) below and in the application kit;

(5) Evidence of Housing Counseling Funding Sources (required by all applicants);

(6) Descriptive Narrative—Each applicant is to provide a descriptive narrative that sets forth the prior fiscal year's performance as related to its goals, objectives and mission. The narrative describes the most recent operational and program activities of the organization;

(7) Current Housing Counseling Plan. The plan describes the applicant's housing counseling needs, goals, and objectives as related to the scope of services it will provide, including a description of counseling activities to be performed.

(8) A description of organization capability;

(9) Direct-labor and Hourly-labor rate and Counseling Time Per Client;

(10) Congressional District Information;

(11) State housing finance agencies must submit their statutory background that created the respective agency, and sets forth its authorities to operate as a State housing finance agency.

(B) National, Regional, and Multi-State Intermediaries; and State Housing Finance Agencies

National, regional, and multi-state intermediaries; and, State housing finance agencies; must submit an application which covers both their network organization and their affiliated agencies. This application must include:

(1) *Description of affiliated agencies.* For each, list the following information:

(a) Organization name;

(b) Address;

(c) Director and contact person (if different);

(d) Phone/FAX numbers (including TTY, if appropriate);

(e) Federal tax identification number;

(f) ZIP code service areas;

(g) Number of staff providing counseling;

(h) Type of services offered (defined by homebuyer education programs, pre-purchase counseling, post-purchase counseling, mortgage default and delinquency counseling, HECM counseling, outreach initiatives, renter assistance, and other);

(i) Number of years of housing counseling experience.

(2) *Relationship with Affiliates.* Briefly describe the intermediary's, or State housing finance agency's, relationship with affiliates (i.e. membership organization, field or branch offices, subsidiary organizations, etc.).

(3) *Oversight System.* Describe the process that will be used for determining affiliate funding levels, distributing funds, and monitoring affiliate performance.

V. Corrections to Deficient Applications

The General Section of the SuperNOFA provides the procedures for corrections to deficient applications.

VI. Environmental Requirements

In accordance with 24 CFR 50.19(b)(9) and (12) of the HUD regulations, activities assisted under this program are categorically excluded from the requirements of the National Environmental Policy Act and are not subject to environmental review under the related laws and authorities.

BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Lead-Based Paint Hazard Control Program

BILLING CODE 4210–32–C

Funding Availability for the Lead-Based Paint Hazard Control Program

Program Description: Approximately $50 million is available in funding for the Lead-Based Paint Hazard Control Program. Lead-Based Paint Hazard Control grants assist State and local governments in undertaking programs for the identification and control of lead-based paint hazards in eligible privately-owned housing units for rental occupants and owner-occupants.

Application Due Date: An original and two copies of the completed application must be received by HUD no later than 12:00 midnight, Eastern time on June 1, 1998 at HUD Headquarters. See the General Section of this SuperNOFA of this SuperNOFA for specific procedures governing the form of application submission (e.g., mailed applications, express mail, overnight delivery, or hand carried).

Address for Submitting Applications: The completed application (original and two copies) must be submitted to: Office of Lead Hazard Control, Department of Housing and Urban Development, Room B–133, 451 Seventh Street, SW, Washington, DC 20410. Hand carried applications should be delivered to Suite 3206, 490 East L'Enfant Plaza, Washington, DC, 20024.

For Application Kits, Further Information, and Technical Assistance:

For Application Kits: For an application kit and any supplemental information, please call the SuperNOFA Information Center at 1–800–HUD–8929. Persons with hearing or speech impairments may call the Center's TTY number at 1–800–483–2209. When requesting an application kit, please refer to the Lead-Based Paint Hazard Control Grant Program. Please be sure to provide your name, address (including zip code), and telephone number (including area code).

For Further Information: Ellis G. Goldman, Director, Program Management Division, Office of Lead Hazard Control, at the address above; telephone (202) 755–1785, extension 112 (this is not a toll-free number). Hearing- and speech-impaired persons may access the above telephone numbers via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

For Technical Assistance: Please refer to the General Section of this SuperNOFA for information regarding the provision of technical assistance. The HUD staff that will provide technical assistance for the Lead-Based Paint Hazard Control Program is in HUD's Office of Lead Hazard Control. Please see the "For Further Information" section above for the address and phone number.

Additional Information

I. Authority; Purpose; Amount Allocated; and Eligibility

(A) Authority

The Lead-Based Paint Hazard Control Program is authorized by section 1011 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X of the Housing and Community Development Act of 1992) (Title X).

(B) Purpose

(1) Lead-Based Paint Hazard Control (LBPHC) grants are to assist State and local governments in undertaking programs for the identification and control of lead-based paint hazards in eligible privately-owned housing units for rental occupants and owner-occupants. The application kit for this LBPHC Program section of the SuperNOFA lists HUD-associated housing programs that may have housing units meeting the definition of eligible housing. Because lead-based paint is a national problem, these funds are awarded in a manner that:

(a) Maximizes the number of housing units where lead-hazards have been controlled;

(b) Stimulates cost-effective State and local approaches that can be replicated in as many settings as possible;

(c) Disperses the grants as widely as possible across the nation to ensure the capacity developed is geographically distributed;

(d) Builds local capacity; and

(e) Affirmatively furthering fair housing and environmental justice.

(2) The objectives of this program include:

(a) Implementation of a national strategy, as defined in Title X, to build the infrastructure necessary to eliminate lead-based paint hazards in all housing, as widely and expeditiously as possible;

(b) Encouragement of effective action to prevent childhood lead poisoning by establishing a workable framework for lead-based paint hazard identification and control;

(c) Mobilization of public and private resources, involving cooperation among all levels of government and the private sector, to develop the most promising, cost-effective methods for identifying and controlling lead-based paint hazards;

(d) Integration of lead-safe work practices into housing maintenance, repair, and improvements;

(e) Integration of lead hazard control into rehabilitation, weatherization, and other related programs;

(f) Development of sustainable lead-safe programs (beyond the life of the grant);

(g) Establishment of a publicly accessible registry of lead-safe housing; and

(h) To the greatest extent feasible, promoting job training, employment, and other economic opportunities for low-income and minority residents and businesses which are owned by and/or employ low-income and minority residents as defined in 24 CFR 135.5 (See 59 FR 33881, June 30, 1994).

(C) Amount Allocated

(1) Fifty million dollars ($50 million) will be made available for the grant program from the appropriations made for the Lead-Based Paint Hazard Reduction Program.

(2) Approximately 15–25 grants of $1 million–$4 million each will be awarded. Previously unfunded applicants are eligible to apply for grants of $1 million–$4 million. Existing grantees are eligible to apply for grants of $1 million–$3 million. A maximum of 50% of the Funds under this LBPHC Program section of the SuperNOFA shall be available to current Lead-Based Paint Hazard Control grantees. Applications of existing grantees will be evaluated and scored as a separate class and will not be in direct competition with previously unfunded applicants.

(3) In the selection process, once available funds have been allocated to meet the requested or negotiated amounts of the top eligible applicants, HUD reserves the right, in successive order, to offer any residual amount as partial funding to the next eligible applicant provided HUD, in its sole judgment, is satisfied that the residual amount is sufficient to support a viable, though reduced effort, by such applicant(s). Such applicant(s) shall have a maximum of seven (7) calendar days to accept such a reduced award, or shall be considered to have declined the award. Applicant(s) may reapply in a future round.

(D) Eligible Applicants

(1) Applicants must be a State or unit of local government that has a currently approved Consolidated Plan to be eligible to apply for a grant. Applicants under this LBPHC Program section of the SuperNOFA must submit documentation that HUD has approved their current program year Consolidated Plan. Applicants must submit, as an appendix, a copy of the lead-based paint element included in the approved Consolidated Plan.

(2) Applicants that do not have a currently approved Consolidated Plan,

but are otherwise eligible for this grant program, must include their abbreviated Consolidated Plan which includes a lead-based paint hazard control strategy developed and submitted in accordance with 24 CFR 91.235.

(3) Applicants that were funded under Category A of the FY 1997 LBPHC NOFA issued June 3, 1997 (61 FR 30380) are not eligible for this round of funding.

(E) Eligible Activities

(1) Funds shall be available only for projects conducted by contractors, risk assessors, inspectors, workers and others engaged in lead-based paint activities who meet the requirements of a State Lead-Based Paint Contractor Certification and Accreditation Program that is at least as protective as the Federal certification program standards outlined in the application kit to this LBPHC Program section of the SuperNOFA or which meets the requirements of a State program authorized by EPA under the requirements of section 404 of the Toxic Substances Control Act (TSCA).

(2) HUD is interested in promoting lead hazard control approaches that result in the reduction of this health threat for the maximum number of low-income residents, and that demonstrate replicable techniques which are cost-effective and efficient. The following direct and support activities are eligible under this grant program.

(a) *Direct Project Elements* (activities of the grantee and all sub-grantees):

(i) Performing risk assessments, inspections and testing of eligible housing constructed prior to 1978 to determine the presence of lead-based paint, lead dust, or leaded soil through the use of acceptable testing procedures.

(ii) Conducting pre-hazard control blood lead testing of children under the age of six residing in units undergoing risk assessment, inspection or hazard control.

(iii) Conducting lead hazard control which may include any combination of the following: interim control of lead-based paint hazards in housing (which may include intensive cleaning techniques to address lead dust); hazard abatement for programs that apply a differentiated set of resources to each unit (dependent upon conditions of the unit and the extent of hazards); and abatement of lead-based paint hazards, including soil and dust, by means of removal, enclosure, encapsulation, or replacement methods. *Complete abatement of all lead-based paint is not recommended as a cost effective strategy except under exceptional circumstances.*

(iv) Carrying out temporary relocation of families and individuals during the period in which hazard control is conducted and until the time the affected unit receives clearance for reoccupancy.

(v) Performing blood lead testing and air sampling to protect the health of the hazard control workers, supervisors, and contractors.

(vi) Undertaking minimal housing rehabilitation activities that are specifically required to carry out effective hazard control, and without which the hazard control could not be completed and maintained. Grant funds under this program may also be used for the lead-based paint hazard control component in conjunction with other housing rehabilitation programs.

(vii) Conducting pre-hazard control and clearance dust-wipe testing and analysis.

(viii) Carrying out engineering and architectural costs that are necessary to, and in direct support of, lead hazard control.

(ix) Providing lead-based paint worker or contractor certification training and/or licensing to low-income persons.

(x) Providing training on lead-safe maintenance practices to homeowners, renters, painters, remodelers, and apartment maintenance staff working in low income housing.

(xi) Providing cleaning supplies for lead-hazard control to community/neighborhood-based organizations, homeowners, and renters in low income housing.

(xii) Conducting general or targeted community awareness or education programs on lead hazard control and lead poisoning prevention. This activity would include educating owners of rental properties on the provisions of the Fair Housing Act and training on lead-safe maintenance and renovation practices. It would also include making all materials available in alternative formats for persons with disabilities (e.g.; Braille, audio, large type), upon request.

(xiii) Securing liability insurance for lead-hazard control activities.

(xiv) Supporting data collection, analysis, and evaluation of grant program activities. This includes compiling and delivering such data as may be required by HUD. This activity is separate from administrative costs.

(xv) Applied research activities directed at demonstration of cost effective methods for lead hazard control as described in Section III of this LBPHC Program section of the SuperNOFA.

(xvi) Preparing a final report at the conclusion of grant activities.

(b) *Support Elements.*

(i) Administrative costs of the grantee. There is a 10% maximum for administrative costs.

(ii) Program planning and management costs of sub-grantees and other sub-recipients.

(3) *Ineligible Activities.* Grant funds shall not be used for:

(a) Purchase of real property.

(b) Purchase or lease of capital equipment having a per unit cost in excess of $5,000, except for X-ray fluorescence analyzer (XRF). If purchased, capital equipment (under $5,000) and the XRF analyzers shall remain the property of the grantee at the conclusion of the project. Funds may be used, however, to lease equipment specifically for the Lead-Based Paint Hazard Control Grant Program. If leased equipment becomes the property of the grantee as the result of a lease arrangement, it may remain the property of the grantee at the end of the grant period; and

(c) Chelation or other medical treatment costs related to children with elevated blood lead levels. Non-Federal funds used to cover these costs may be counted as part of the required matching contribution.

II. Program Requirements

In addition to the program requirements listed in the General Section of this SuperNOFA, applicants are subject to the following requirements:

(A) General

Grantees will be afforded considerable latitude in designing and implementing the methods of lead-based paint hazard control to be employed in their jurisdictions. Experience and data from past and ongoing evaluations has identified effective approaches. HUD is interested in promoting lead hazard control approaches that result in the reduction of this health threat for the maximum number of low-income residents, and that demonstrate replicable techniques which are cost-effective and efficient. Flexibility will be allowed within the parameters established below.

(B) Budgeting

(1) *Matching Contribution.* Each grantee shall provide a matching contribution of at least 10% of the requested grant sum. This may be in the form of a cash or in-kind contribution or a combination of both. Federal funds from other programs cannot constitute matching funds, with the exception of Community Development Block Grant (CDBG) funds. Applicants who do not

show a 10% match will be required to provide the matching contribution during grant negotiations.

(2) *Applied Research Activities.* A maximum of five (5%) percent of the total grant request may be identified for applied research activities.

(3) *Administrative Costs.* There is a 10% maximum for administrative costs.

(C) Period of Performance

The period of performance cannot exceed 36 months.

(D) Certified Performers

Funds shall be available only for projects conducted by certified contractors, risk assessors, inspectors, workers and others engaged in lead-based paint activities. An applicant must provide the documents listed in Section IV(A)(4) of this LBPHC section of the SuperNOFA to demonstrate its compliance with this requirement.

(E) Coastal Barrier Resources Act

Pursuant to the Coastal Barrier Resources Act (16 U.S.C. 3501), grant funds may not be used for properties located in the Coastal Barrier Resources System.

(F) Flood Disaster Protection Act

Under the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128), grant funds may not be used for construction, reconstruction, repair or improvement or lead-based paint hazard control of a building or mobile home which is located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless:

(1) The community in which the area is situated is participating in the National Flood Insurance Program in accordance with the applicable regulations (44 CFR 59–79), or less than a year has passed since FEMA notification regarding these hazards; and

(2) Where the community is participating in the National Flood Insurance Program, flood insurance on the property is obtained in accordance with section 102(a) of the Flood Disaster Protection Act (42 U.S.C. 4012a(a)). Applicants are responsible for assuring that flood insurance is obtained and maintained for the appropriate amount and term.

(G) National Historic Preservation Act

The National Historic Preservation Act of 1966 (16 U.S.C. 470) (NHPA) and the regulations at 36 CFR part 800 apply to the lead-based paint hazard control activities that are undertaken pursuant to this program. HUD and the Advisory Council for Historic Preservation have developed an optional Model Agreement (See the application kit for this program) for use by grantees and State Historic Preservation Officers in carrying out activities under this program.

(H) Waste Disposal

Waste disposal will be handled according to the requirements of the appropriate local, State or Federal regulatory agency. Disposal of wastes from hazard control activities that contain lead-based paint but are not classified as hazardous will be handled in accordance with the HUD *Guidelines for the Evaluation and Control of Lead-Based Hazards in Housing* (HUD *Guidelines*).

(I) Worker Protection Procedures

The applicant shall observe the procedures for worker protection established in the HUD Guidelines, as well as the requirements of the Occupational Health and Safety Administration (OSHA) (29 CFR 1926.62—Lead Exposure in Construction), or the State or local occupational safety and health regulations, whichever are most stringent. If other applicable OSHA requirements contain more stringent requirements than the HUD *Guidelines*, the OSHA standards shall govern.

(J) Prohibited Practices

Lead hazard control methods which are considered prohibited practices are not allowed. The applicant is cautioned that methods that generate high levels of lead dust, such as abrasive sanding, shall be undertaken only with requisite worker protection, containment of dust and debris, suitable clean-up, and clearance. Prohibited practices are practices which are not allowed because of the risks to health. Prohibited practices include:

(1) Open flame burning or torching;

(2) Machine sanding or grinding without a high-efficiency particulate air (HEPA) exhaust control;

(3) Uncontained hydroblasting or high pressure wash;

(4) Abrasive blasting or sandblasting without HEPA exhaust control;

(5) Heat guns operating above 1100 degrees Fahrenheit;

(6) Chemical paint strippers containing methylene chloride; and

(7) Dry scraping or dry sanding, except scraping in conjunction with heat guns or around electrical outlets or when treating no more than two (2) square feet in any one interior room or space, or totaling no more than 20 square feet on exterior surfaces.

(K) Proposed Modifications From Current Procedures

Proposed methods requiring a variance from currently approved standards or procedures will be considered on their merits through a separate HUD review and approval process after the grant award is made and a specific justification has been presented. When such a request is made, either in the application or during the planning phase, HUD may consult with experts from both the public and private sector as part of its final determinations and will document its findings in an environmental assessment. Proposed modifications which involve a lowering of standards with potential to adversely affect the health of residents, contractors or workers, or the quality of the environment will not be approved.

(L) Written Policies and Procedures

Written policies and procedures for all phases of lead hazard control, including risk assessment, inspection, development of specifications, pre-hazard control blood lead testing, financing, relocation and clearance testing must be clearly established in writing and adhered to by all grantees, subcontractors, sub-grantees, sub-recipients, and their contractors.

(M) Continued Availability of Lead Safe Housing to Low-Income Families

Units in which lead hazards have been controlled under this program shall be occupied by and/or continue to be available to low-income residents as required by Title X. Grantees are required to maintain a registry of units in which lead hazards have been controlled for distribution and marketing to agencies and families as suitable housing for children under six.

(N) Development of Application Cost Proposal

In developing the application cost proposal, applicants shall include costs for the pre- and post-hazard control testing for each dwelling that will undergo either a lead-based paint risk assessment and/or inspection and hazard control according to HUD *Guidelines*, as follows:

(1) *XRF on-site (or supplementary laboratory) testing.* Such testing must be conducted according to the HUD *Guidelines, with particular attention to the 1997 revision of its chapter 7 on lead-based paint inspection.* The applicant must pretest every room or area in each dwelling unit planned for hazard control, using each XRF analyzer in accordance with its manufacturer's operating instructions and its

Performance Characteristics Sheet (PCS);

(2) *Blood lead testing.* Before lead hazard control work begins, the applicant must test each occupant who is a child under six years old according to the recommendations contained in *Preventing Lead Poisoning in Young Children* (1991), published by the Centers for Disease Control and Prevention (CDC).

(3) *Dust testing.* Such testing must be conducted according to the HUD *Guidelines.* Specifically, the applicant must pre-test before lead hazard control work begins, and conduct a clearance test before reoccupying a unit or area.

(4) *Testing.*

(a) *General.* All testing and sampling shall conform to the HUD *Guidelines.* It is particularly important to provide this full cycle of testing for hazard control, including interim controls.

(b) *Required Thresholds for Hazard Control.* While the HUD *Guidelines* employ two hazard control thresholds, one milligram per square centimeter (1.0 mg/cm^2) or 0.5% by weight, applicants may use other thresholds, provided that the alternative threshold is justified adequately and is accepted by HUD. The justification must state why the applicant believes the proposed threshold will provide satisfactory health protection for occupants, and cost savings and benefits expected to result from using the proposed approach.

(c) *Surfaces which require lead hazard control.* The HUD *Guidelines* identify hazards considered to be of greatest threat to young children which require hazard control. Friction surfaces are subject to abrasion and may generate lead-contaminated dust in the dwelling; chewable surfaces are protruding surfaces that are easily chewed on by young children; and impact surfaces may become deteriorated through forceful contact. The applicant may choose to treat fewer surfaces or apply other hazard control techniques, provided that an adequate rationale, including periodic monitoring, is presented to and accepted by HUD. The rationale must state why the proposed approach will provide satisfactory health protection for occupants and at the same time, provide cost savings or other benefits.

(d) *Clearance thresholds.* Grantees are required to meet the post-hazard control dust-wipe test clearance thresholds contained in the HUD *Guidelines.* Wipe tests shall be conducted by a certified inspector who is independent of the lead hazard control contractor. Dust-wipe and soil samples, and any paint samples to be analyzed by a laboratory, must be analyzed by a laboratory recognized by the Environmental Protection Agency's National Lead Laboratory Accreditation Program (NLLAP). Units shall not be reoccupied until clearance levels are achieved.

(O) Cooperation With Related Research and Evaluation

Applicants shall cooperate fully with any research or evaluation sponsored by HUD and associated with this grant program, including preservation of the data and records of the project and compiling requested information in formats provided by the researchers, evaluators or HUD. This cooperation may also include the compiling of certain relevant local demographic, dwelling unit, and participant data not contemplated in the applicant's original proposal. Participant data shall be subject to Privacy Act protection.

(P) Data Collection

Grantees will be required to collect and maintain the data necessary to document the various lead hazard control methods used in order to determine the effectiveness and relative cost of these methods.

(Q) Environmental Requirements

(1) In accordance with HUD regulations in 24 CFR part 58 recipients of lead-based paint hazard control grants will assume Federal environmental review responsibilities. Recipients of a grant under this program will be given guidance in these responsibilities.

(R) Section 3 Employment Opportunities

Please see Section II(E) of the General Section of this SuperNOFA. The requirements of Section 3 are applicable to the Lead-Based Paint Hazard Control Program.

(S) Forms, Certifications and Assurances

In addition to the forms, certifications and assurances listed in the General Section of this SuperNOFA, applicants are required to submit signed copies of the following:

(1) A certification of compliance with the environmental laws and authorities described in 24 CFR part 58.

(2) A certification of compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and the implementing regulations at 49 CFR 24; and HUD Handbook 1378 (Tenant Assistance, Relocation and Real Property Acquisition).

(3) An assurance that the applicant's financial management system meets the standards for fund control and accountability described in 24 CFR 85.20.

(4) An assurance that pre-hazard control and clearance testing will be conducted by certified performers.

(5) An assurance that, to the extent possible, the blood lead testing, blood lead level test results, and medical referral and follow up will be conducted for children under six years of age occupying affected units according to the recommendations of the Centers for Disease Control and Prevention (CDC) publication *Preventing Lead Poisoning in Young Children* (1991).

(6) An assurance that Lead-Based Paint Hazard Control Grant Program funds will not replace existing resources dedicated to any ongoing project.

(7) An assurance that the housing units in which lead hazards have been controlled under this program shall be occupied by and/or continue to be available to low-income residents as required by Title X. Grantees are required to maintain a registry of units in which lead hazards have been controlled for distribution and marketing to agencies and families as suitable housing for children under six.

(8) A certification that the applicant will carry out its lead hazard control program under an operational State program established pursuant to lead-based paint contractor certification and accreditation legislation that is at least as protective as the training and certification program requirements cited in the application kit for this LBPHC Program section of the SuperNOFA.

III. Application Selection Process

(A) Rating and Ranking

HUD intends to fund the highest ranked applications within the limits of funding, but reserves the right to advance other eligible applicants in funding rank based on the following considerations which will: foster either local approaches or lead hazard control methods which have not been employed before, or provide lead hazard control services to populations or communities that have high need (as measured by the "Need" factor for award) and have never received funding under this grant program.

(B) Factors for Award Used to Evaluate and Rate Applications

The factors for rating and ranking applicants, and maximum points for each factor, are provided below. The maximum number of points to be awarded is 102. This includes two EZ/EC bonus points, as described in the General Section of the SuperNOFA.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (15 Points for Previously Unfunded Applicants; 25 Points for Existing Grantees)

This factor addresses the extent to which the applicant has the organizational resources necessary to successfully implement the proposed activities in a timely manner. The rating of the "applicant" or the "applicant's staff" for technical merit or threshold compliance, unless otherwise specified, will include any sub-contractors, consultants, sub-recipients, and members of consortia which are firmly committed to the project. In rating this factor, HUD will consider the extent to which the proposal demonstrates:

(1) Recent, relevant and successful experience of the applicant's staff to undertake eligible program activities. Applicants must describe the knowledge and experience of the proposed overall project director and day-to-day program manager in planning and managing large and complex interdisciplinary programs, especially involving housing rehabilitation, public health, or environmental programs. As an appendix, the applicant should include a clearly identified organizational chart for the lead hazard control grant program effort, as well as resumes, position descriptions, and salaries of key personnel identified to carry out the requirements of this grant program. Applicants must indicate the percentage of time that key personnel will devote to the project and any salary costs to be paid by the grant. A full-time day-to-day program manager is highly recommended.

(2) That the applicant has sufficient personnel or will be able to quickly access qualified experts or professionals, to immediately begin the proposed work program and to deliver the proposed activities in each proposed service area in a timely and effective fashion. The application must describe how other principal components of the applicant agency or other organizations will participate in or otherwise support the grant program. The institutional capacity of the applicant may be demonstrated by prior experience in initiating and implementing lead hazard control efforts and/or related environmental, health, or housing projects and should be thoroughly described. The applicant should indicate how this prior experience will be used in carrying out its planned comprehensive Lead-Based Paint Hazard Control Grant Program.

(3) If the applicant received HUD Lead Hazard Control Grant funding in previous years, the applicant's past experience will be evaluated in terms of its progress in achieving the purpose of its previous grant. An existing grantee applicant must provide a description of its progress in implementing its most recent grant award within the period of performance, including the total number of housing units completed as of the latest calendar quarter.

Rating Factor 2: Need/Extent of the Problem (20 Points)

This factor addresses the extent to which there is a need for funding the proposed program activities to address a documented problem in the target area.

(1) The applicant must document a critical level of need for the proposed activities in the area where activities will be carried out. Specific attention must be paid to documenting need as it applies to the area where activities will be targeted, rather than the entire locality or state. If the target area is an entire locality or state, then documenting need at this level is appropriate.

(2) The documentation of need should demonstrate the extent of the problem being addressed by the proposed activities. Examples of data that might be used to demonstrate need, include, but are not limited to:

(a) Economic and demographic data relevant to the target area, including poverty and unemployment rates;

(b) Levels of homelessness;

(c) Lead poisoning rates;

(d) Housing market data available from HUD or other data sources including the Public Housing Authority's Five Year Comprehensive Plan, State or local Welfare Department's Welfare Reform Plan; or

(e) Lack of other Federal, State or local funding that could be, or is used, to address the problem HUD program funds are designed to address.

(3) To the extent that statistics and other data contained in the community's Consolidated Plan or Analysis of Impediments to Fair Housing Choice (AI) supports the extent of the problem, references to the Consolidated Plan and the AI should be included in the response.

(4) It is also desirable that the applicant provide information on the following for the applicant's jurisdiction, or more preferably, the areas targeted for the lead hazard control activities (data may be available in the applicant jurisdiction's currently approved Consolidated Plan, or derived from 1990 Census Data):

(a) The age and condition of housing;

(b) The number and percentage of very-low and low income families whose incomes do not exceed 80% of the median income for the area, as determined by HUD, with adjustments for smaller and larger families;

(c) The number and proportion of children under six years of age (72 months) at risk of lead poisoning;

(d) The magnitude of the lead poisoning problem in children under six years of age in target areas;

(e) The health and economic impacts of Superfund or Brownfields sites on the targeted neighborhoods or communities; and

(f) Other socioeconomic or environmental factors that document a need to establish or continue lead hazard control work in the applicant's jurisdiction.

(5) The applicant must also provide documentation of the priority that the community's Consolidated Plan has placed on addressing the needs described by the applicant.

(6) Applicants that address needs that are in the Consolidated Plan, Analysis of Impediments to Fair Housing Choice, court orders or consent decrees, settlements, conciliation agreements, and voluntary compliance agreements will receive a greater number of points than applicants that do not relate their program to identified needs.

(7) There must be a clear relationship between the proposed activities, community needs, and the purpose of the program funding for an applicant to receive points for this factor.

Rating Factor 3: Soundness of Approach (45 Points for Previously Unfunded Applicants and 35 Points for Existing Grantees)

This factor addresses the quality and cost-effectiveness of the applicant's proposed work plan. This factor will allow applicants to present information on the proposed lead-based paint hazard control program and how it will satisfy the identified needs. The work plan and budget should include the following elements:

(1) *Lead Hazard Control Strategy* (30 points for previously unfunded applicants; 20 points for existing grantees). A description of the strategy to be used in planning and executing the lead hazard control grant program effort. Applicants should provide information on:

(a) *Implementing a Lead Hazard Control Program* (10 points for previously unfunded applicants; 5 points for existing grantees). The applicant must describe the overall strategy for the proposed lead hazard

control program. The description must include a discussion of:

(i) The applicant's previous experience in reducing or eliminating lead-based paint hazards in conjunction with other Federal, State or locally funded programs.

(ii) The applicant's overall strategy for the identification, selection, prioritization, and enrollment of units of eligible privately-owned housing in which lead hazard control will be undertaken.

(iii) The total number of owner occupied and/or rental units in which lead hazard control activities will be conducted.

(iv) The degree to which the work plan focuses on eligible privately-owned housing units with children under 6 years old. The applicant must describe the planned approach to control lead hazards before children are poisoned and/or to control lead hazards in units where children have already been identified with an elevated blood lead level. The applicant must also describe the process for the referral of children with elevated blood lead levels for medical case management.

(v) The financing mechanism, including eligibility criteria, terms, conditions, and amounts available, to be employed in carrying out lead hazard control activities. The applicant must discuss the way these funds will be administered (e.g. use of grants, deferred loans, forgivable loans, other resources, private sector financing, etc.) as well as the agency which will administer the process. The applicant should describe how the proposed program will satisfy the needs articulated or will assist in addressing the impediments in the AI. The applicant should describe how the proposed program will further and support the policy priorities of the Department, including promoting healthy homes; providing opportunities for self-sufficiency, particularly for persons enrolled in welfare to work programs; or providing educational and job training opportunities through such initiatives as Neighborhood Networks, Campus of Learners, and linking to AmeriCorps activities.

(b) *Lead Hazard Control Outreach and Community Involvement* (5 points). The applicant must describe:

(i) Proposed community awareness, education, training, and outreach programs in support of the work plan and objectives. This should include general and/or targeted efforts undertaken to assist the program in reducing lead poisoning. To the extent possible, programs should be culturally sensitive, targeted, and linguistically appropriate.

(ii) Proposed involvement of community or neighborhood based organizations in the performance of activities proposed by the applicant. These activities could include outreach, community education, marketing, inspection, and the actual conduct of lead hazard control activities.

(iii) Outreach strategies and methodologies to affirmatively further fair housing and provide lead-safe housing to all segments of the population: homeowners, owners of rental properties, and tenants; especially for occupants least likely to receive its benefits. Once the population to which outreach will be "targeted" is identified, (e.g.; homeowners who are racial minorities living in minority-concentrated areas or owners of properties with under-served tenants such as minority renters with young children), outreach strategies directed specifically to them should be multifaceted. This criterion goes beyond testing and hazard control; it concerns what happens to the units after the lead hazard control and tries to ensure that all families will have adequate, lead-safe housing.

(c) *Technical Approach for Conducting Lead Hazard Control Activities* (15 points for previously unfunded applicants; 10 points for existing grantees)

(i) The applicant must describe the process for the risk assessment and/or inspection of units of eligible privately-owned housing in which lead hazard control will be undertaken. Housing having a risk assessment or inspection already performed by certified inspectors or risk assessors in accordance with the HUD *Guidelines* and identified with lead-based paint hazards may be included in the inventory.

(ii) The applicant must describe the testing methods, schedule, and costs for performing blood lead testing, risk assessments and/or inspections to be used. If the applicant plans to use a standard more restrictive than the HUD thresholds (e.g. 0.5% or 1.0 mg/cm ^{2}), the applicant must identify the lead-based paint threshold for undertaking lead hazard control which will be used. All testing methods shall be performed in accordance with the HUD *Guidelines*.

(iii) The applicant must describe the lead hazard control methods to be undertaken and the number of units to be treated for each method selected (interim controls, hazard abatement, and complete abatement). The applicant must provide an estimate of the per unit costs (and a basis for those estimates) for each method the applicant plans to use in conducting lead hazard control activities. The applicant must also provide a schedule for initiating and conducting lead hazard control work in the selected units. The applicant should discuss efforts to incorporate cost-effective lead hazard control methods. If complete abatement is proposed, the applicant must describe the rationale for that decision, and explain why hazard control approaches were not proposed.

(iv) The applicant must describe its process for the development of work specifications for the selected lead hazard control method. The applicant must describe the management processes which will be used to ensure the cost-effectiveness of the lead hazard control methods. The application must include a discussion of the contracting process that will be used to obtain contractors to conduct lead hazard control activities in the selected units.

(v) The applicant must describe its plan for the temporary relocation of occupants of units selected for lead hazard control work. This discussion should address the use of safe houses and other housing arrangements, storage of household goods, stipends, incentives, etc.

(vi) Existing grantees must describe how the lead hazard control work being proposed in the application will occur concurrently with ongoing HUD lead hazard control grants.

(vii) Existing grantees must describe their progress in implementing their most recent lead hazard control grant award. If the production achieved is low and no changes are proposed, the applicant should explain why the strategy in the earlier grant remains appropriate.

(2) *Coordination with housing rehabilitation, housing and health codes, and other related housing programs* (7 points).

(a) The applicant must describe the degree to which lead hazard control work will be done in conjunction with other housing-related activities (i.e., rehabilitation, weatherization, removal of code violations, and other similar work), and the applicant's plan for the integration and coordination of lead hazard control activities into those activities.

(b) The applicant must describe how it plans to incorporate lead-based paint maintenance and hazard control standards with the applicable housing codes and health regulations.

(c) The applicant must describe how it plans to generate and use public subsidies or other resources (such as revolving loan funds) to finance future lead hazard control activities.

(d) The applicant must describe how it plans to develop public-private

lending partnerships to finance lead hazard control as part of acquisition and rehabilitation financing.

(e) The applicant must describe how it plans to develop and ensure the continued availability of a registry of publicly available information on lead-safe units, so that families (particularly those with children under age six) can make informed decisions regarding their housing options.

(f) Evidence of firm commitments from participating organizations should include:

(i) The name of each organization;

(ii) The capabilities or focus of each organization;

(iii) The proposed level of effort of each organization; and

(iv) The resources and responsibilities of each organization, including the applicant's clearly proposed plans for the training and employment of low-income residents.

(g) The applicant must describe its plan for the coordination of lead-based paint hazard control activities under this grant with lead-related Superfund or Brownfields efforts.

(h) The applicant must detail the extent to which the policy of fair housing for minorities and the disabled is furthered by the proposed activities. Detail how the applicant's work plan will support the community's efforts to further housing choices. Applicants with existing grants should discuss activities which have contributed to enhanced lead-hazard free housing opportunities to all segments of the population.

(3) *Economic Opportunity* (5 points). The applicant must describe the methods to be used which will result in economic opportunities for residents and businesses in the community. This discussion should include information on how employment, business development, and contract opportunities will be promoted as part of the lead hazard control program. The applicant should also describe how they will satisfy the requirements of Section 3 of the Housing and Community Development Act of 1992 to give preference to hiring of low and very low-income persons or contracting with businesses owned by or employing low- and very-low-income persons.

(4) *Program Evaluation and/or Data Collection* (3 Points) The applicant must identify the specific methods to be used (in addition to HUD reporting or data collection forms) to measure progress, evaluate program effectiveness, and make program changes to improve performance. The applicant should describe how the information will be obtained, documented, and reported. In addition, the applicant should provide a detailed description of any proposed applied research activities.

(5) *Budget* (Not Scored) The applicant's proposed budget (for the maximum 36 month period of performance) will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of grant funds. HUD is not required to approve or fund all proposed activities. Applicants may devote up to 36 months for the planning, execution, and completion of lead hazard control activities. The applicant must thoroughly document and justify all budget categories and costs (Part B of Standard Form 424A) and all major tasks. The applicant must describe in detail the budgeted costs for each program element (major task) included in the overall plan (administrative costs, program management, lead hazard control strategy, community awareness, education and outreach, program evaluation, and data collection).

Rating Factor 4: Leveraging Resources (10 Points)

This factor addresses the ability of the applicant to secure other community resources (financing is a community resource) which can be combined with HUD's program resources to achieve program purposes.

(1) In evaluating this factor, HUD will consider the extent to which the applicant has partnered with other entities to secure additional resources to increase the effectiveness of the proposed program activities. Resources may include funding or in-kind contributions (such as services or equipment) allocated to the purpose(s) of the award the applicant is seeking. Resources may be provided by governmental entities, public or private nonprofit organizations, for-profit private organizations, or other entities willing to partner with the applicant. Applicants may also partner with other program funding recipients to coordinate the use of resources in the target area.

(2) Funding from any Federally funded programs (except the CDBG program) may not be included as part of the required 10% match. Other resources committed to the program that exceed the required 10% match will provide points for this rating factor and may include match from Federally funded programs. Each source of contributions, cash or in-kind, both for the required minimum and additional amounts, shall be supported by a letter of commitment from the contributing entity, whether a public or private source, which shall describe the contributed resources that will be used in the program. Staff in-kind contributions should be given a monetary value. The absence of letters providing specific details and the amount of the actual contributions will result in those contributions not being counted.

(3) Applicants must provide evidence of leveraging/partnerships by including in the application letters of firm commitment, memoranda of understanding, or agreements to participate from those entities identified as partners in the application. Each letter of commitment, memorandum of understanding, or agreement to participate should include the organization's name and the proposed level of commitment and responsibilities as they relate to the proposed program. The commitment must also be signed by an official of the organization legally able to make commitments on behalf of the organization.

Rating Factor 5: Comprehensiveness and Coordination (10 Points)

This factor addresses the extent to which the applicant's program reflects a coordinated, community-based process of identifying needs and building a system to address the needs by using available HUD funding resources and other resources available to the community.

In evaluating this factor, HUD will consider the extent to which the applicant demonstrates it has:

(1) Coordinated its proposed activities with those of other groups or organizations in order to best complement, support and coordinate all known activities and, the specific steps it will take to share information on solutions and outcomes with others. Any written agreements, memoranda of understanding in place, or that will be in place after award should be described.

(2) Taken or will take specific steps to become active in the community's Consolidated Planning process (including the Analysis of Impediments to Fair Housing Choice) established to identify and address a need/problem that is related to the activities the applicant proposes.

(3) Taken or will take specific steps to develop linkages to coordinate comprehensive solutions through meetings, information networks, planning processes or other mechanisms with:

(a) Other HUD funded projects/ activities outside the scope of those covered by the Consolidated Plan; and

(b) Other HUD, Federal, State or locally funded activities, including those proposed or on-going in the community(s) served.

IV. Application Submission Requirements

(A) Applicant Information

(1) *Application Format.* The applicant's narrative response to the Rating Factors is limited to a maximum of 25 pages. Responses must be typewritten on one (1) side only on 8½" × 11" paper using a 12 point (minimum) font with not less than ¾" margins on all sides. Appendices should be referenced and discussed in the narrative response. Materials provided in the appendices should directly apply to the rating factor narrative.

(2) *Application Checklist.* In addition to the forms, certifications and assurances listed in the General Section of the SuperNOFA, the applicant must submit the following:

(a) Transmittal Letter that identifies what the program funds are requested for, the dollar amount requested, and the applicant or applicants submitting the application.

(b) The name, mailing address, telephone number, and principal contact person of the applicant. If the applicant has consortium associates, sub-grantees, partners, major subcontractors, joint venture participants, or others contributing resources to the project, similar information shall also be provided for each of these partners. (c)(i) For State applicants, copies of existing statutes, regulations or other appropriate documentation regarding the State's Lead-Based Paint Contractor Certification and Accreditation Program must be included.

(ii) A State applicant which has an existing statute that is acceptable to HUD, but which has not implemented an acceptable lead-based paint contractor certification program, shall furnish assurances from the Governor that an acceptable certification program will be implemented within one (1) year from the date of the application deadline date and that the designated agency implementing the certification program shall offer training sessions leading to certification within six (6) months of the effective date of implementing regulations.

(iii) If legislative approval of proposed regulations is also required, a similar assurance must be provided by the chairs of committees having jurisdiction.

(iv) Local government applicants in States which have not implemented an acceptable contractor certification program must provide assurances that only certified contractors and trained workers from State certification programs acceptable to HUD will be used in conducting lead hazard control work.

(d) Evidence of the applicant's commitment and experience in eliminating or reducing significant lead-based paint hazards in privately-owned eligible housing as detailed in the applicant's work plan for lead-based paint hazard control.

(e) A detailed description of the funding mechanism, selection process, and other proposed activities that the applicant plans to use to assist any sub-grantees or sub-recipients under this grant.

(f) A detailed budget with supporting cost justifications for all budget categories of the grant request. There shall be a separate estimate for the overall grant management element (Administrative Costs), which is more fully defined in the application kit for this LBPHC Program section of the SuperNOFA. The budget shall include not more than 10% for administrative costs and not less than 90% for direct project elements.

(g) An itemized breakout (using the SF–424A) of the applicant's required matching contribution, including:

(i) Values placed on donated in-kind services;

(ii) Letters or other evidence of commitment from donors; and

(iii) The amounts and sources of contributed resources.

(h) Memoranda of Understanding or Agreement, letters of commitment or other documentation describing the proposed roles of agencies, local broad-based task forces, participating community or neighborhood-based groups or organizations, local businesses, and others working with the program.

(i) A copy of the applicant's approval notification for the current program year for its Consolidated Plan. The applicant should also include a copy of the applicant's lead hazard control element included in the current program year Consolidated Plan.

(B) Proposed Activities

All applications must, at a minimum, contain the following items:

(1) *A description of the affected housing and population to be served.*

(a) The applicant shall describe the size and general characteristics of the target housing within its jurisdiction, including a description of the housing's location, condition, and occupants, and a current estimate of the number of children under the age of six in these units. Other characteristics described in Rating Factor 2 (Need) should be provided. If specific area(s) (neighborhoods, census tracts, etc.) within an applicant's jurisdiction are specifically targeted for lead hazard control activities, the applicant shall describe these same characteristics for the area. Vacant housing that subsequently will be occupied by low-income renters or owners should also be included in this description. Maps may be included as an appendix.

(b) To the extent practical, preference shall be given to occupied eligible housing units with children under the age of six. In addition, as a measure of its ongoing commitment to lead-based paint programs, the applicant shall provide information on the magnitude and extent of the childhood lead poisoning problem within its jurisdiction and for any area(s) to be included in the lead hazard control program. Current efforts undertaken to provide health care services for children with elevated blood lead levels and efforts to address lead-based paint hazards shall be described.

(2) *Discussion of program activities.* The applicant shall provide a discussion of the overall proposed hazard control program, including, but not limited to, information on the following:

(a) *Needs Assessment.* Each applicant is required to submit a statement of the extent of need for the program funds they are seeking. The statement of need must demonstrate how specific community or neighborhood needs can be resolved through the activities proposed to be undertaken with the funds being applied for. This statement may be integrated into the response to Rating Factor 2 (Need). The statement must identify:

(i) The population to be served;

(ii) How these needs were determined;

(iii) How the needs identified are consistent with the needs identified in the community's Consolidated Plan; and

(iv) Barriers that have been identified in the community's AI.

(b) *Program Work Plan and Budget.* The work plan and budget must include:

(i) A description of:

(*1*) The applicant's program management methods;

(*2*) The applicant's lead hazard control strategy;

(*3*) The number of eligible housing units in the target jurisdiction;

(*4*) The applicant's hazard control methods;

(*5*) The applicant's blood lead and environmental testing methods;

(6) The applicant's costs;
(7) The applicant's financing mechanisms;
(8) The applicant's relocation plans; and
(9) A description of the community's lead hazard awareness and education efforts.

(ii) A Statement of Work that describes all of the activities proposed for funding and details how the proposed work will be accomplished. Following a task-by-task format, the Statement of Work must:

(1) Discuss the tasks and sub-tasks involved in the program. The discussion must identify how the tasks meet the rating factors for award.

(2) Indicate the sequence in which the tasks are to be performed, noting areas of work which must be performed simultaneously.

(3) Include a project management and staff allocation plan for carrying out the activities proposed in the Statement of Work. The project management plan and staff allocation submission should cover the proposed number of staff years by employee allocated to the project, the titles and relevant professional background and experience of each employee proposed to be assigned to the project, and the roles to be performed by each identified staff member. The project management and staff allocation plan must cover the proposed period of performance. The applicant may make use of in-house staff, consultants, sub-contractors and sub-recipients and networks of private consultants and/or local organizations with requisite experience and capabilities. To the maximum extent practicable, applicants should make use of local expertise and persons familiar with the opportunities and resources available in the area to be served. Regardless of the type of staffing resources identified, the plan should identify activities to be undertaken by the staff indicated in the plan.

(iii) A summary budget identifying costs by cost category in accordance with the following:

(1) Direct labor by position or individual, indicating the estimated hours per position, the rate per hour, estimated cost per staff position and the total estimated direct labor costs;

(2) Fringe benefits by staff position identifying the rate, the salary base the rate was computed on, estimated cost per position, and the total estimated fringe benefit cost;

(3) Material costs indicating the item, unit cost per item, the number of items to be purchased, estimated cost per item, and the total estimated material costs;

(4) Transportation costs, as applicable. Where local private vehicles are proposed to be used, costs should indicate the proposed number of miles, rate per mile of travel identified by item, and estimated total private vehicle costs. Where air transportation is proposed, costs should identify the destination(s), number of trips per destination, estimated air fare and total estimated air transportation costs. If other transportation costs are listed, the applicant should identify the other method of transportation selected, the number of trips to be made and destination(s), the estimated cost, and the total estimated costs for other transportation costs. In addition, applicants should identify per diem or subsistence costs per travel day and the number of travel days included, the estimated costs for per diem/subsistence and the total estimated transportation costs;

(5) Equipment charges, if any. Equipment charges should identify the type of equipment, quantity, unit costs and total estimated equipment costs;

(6) Consultant costs, if applicable. The applicant must indicate the type, estimated number of consultant days, rate per day, total estimated consultant costs per consultant and total estimated costs for all consultants;

(7) Subcontract costs, if applicable. The applicant must identify proposed subcontracts and provide estimated costs.

(8) Other direct costs listed by item, quantity, unit cost, total for each item listed, and total direct costs for the award.

(9) Indirect costs should identify the type, approved indirect cost rate, base to which the rate applies and total indirect costs. These line items should total the amount requested for each cost category. The grand total of all program funds requested should reflect the grand total of all funds for which the applicant is applying. The submission should include the rationale used to determine costs and validation of fringe and indirect cost rates.

(c) Narrative statement addressing the rating factors for award listed in Section III of this LBPHC section of the SuperNOFA. The narrative statement must be numbered in accordance with each factor for award (Factor 1 through 5).

V. Corrections to Deficient Applications

The General Section to this SuperNOFA provides the procedures for corrections to this NOFA.

BILLING CODE 4210-32-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

MODERNIZATION AND REVITALIZATION PROGRAMS

Comprehensive Improvement Assistance Program (CIAP)

HOPE VI Public Housing Revitalization

BILLING CODE 4210-32-C

Funding Availability for the Comprehensive Improvement Assistance Program (CIAP)

Program Description: Approximately $304,000,000 is available in funding for the Comprehensive Improvement Assistance Program (CIAP). The CIAP provides modernization funds to housing authorities (HAs) that own or operate less than 250 units of public housing, to enable them to improve the physical condition and upgrade the management and operations of existing public housing developments to assure their continued availability for low-income families.

Application Due Date: The CIAP Application is due on or before 6:00 p.m., local time on June 29, 1998. An original CIAP Application and two copies must be received at the HUD Field Office with jurisdiction over the HA, Attention: Director, Office of Public Housing (OPH). See the General Section of this SuperNOFA for specific procedures governing the form of application submission (e.g., mailed applications, express mail, overnight delivery, or hand carried).

Emergency Modernization Applications. The HA may submit a CIAP Application for Emergency Modernization whenever needed. See Sections III(A)(3)(a) and III(A)(9) of this CIAP section of the SuperNOFA.

Address for Submitting Applications: CIAP applications must be delivered by the application due date to the HUD Field Office with jurisdiction over the HA, Attention: Director, Office of Public Housing (OPH).

For Application Kits, Further Information, and Technical Assistance:

For Application Kits. A CIAP Application Kit will automatically be transmitted under separate cover to every eligible HA to supplement the policies and procedures set forth in this CIAP section of the SuperNOFA. The application kit will include copies of forms needed for application submission. Application kits and any supplementary information also may be obtained by contacting the SuperNOFA Information Center at 1–800–HUD–8929. Persons with hearing or speech impairments may call the Center's TTY number at 1–800–483–2209. The application kit also will be available on the Internet through the HUD web site at http://www.HUD.gov. When requesting an application kit, please refer to CIAP and provide your name, address (including zip code), and telephone number (including area code).

For Further Information and Technical Assistance. William J. Flood, Director, Office of Capital Improvements, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4134, Washington, D.C. 20410. Telephone (202) 708–1640. (This is not a toll free number.) Applicants also may contact the SuperNOFA Information Center at the telephone listed, above.

Additional Information

I. Authority; Purpose; Amount Allocated; and Eligibility

(A) Authority

Section 14, U. S. Housing Act of 1937 (42 U.S.C. 14371); and the CIAP regulations in 24 CFR part 968, subparts A and B.

(B) Purpose

The CIAP provides modernization funds to HAs that own or operate less than 250 units of public housing, to enable them to improve the physical condition and upgrade the management and operations of existing public housing developments to assure their continued availability for low-income families.

(C) Amount Allocated

(1) In FY 1998, a total of $2.5 billion is available for the Modernization Program (CIAP and CGP), of which approximately $304 million will be available to HAs with fewer than 250 housing units.

(2) Modernization funds are allocated between CIAP and CGP agencies based on the relative shares of backlog needs (weighted at 50%) and accrual needs (weighted at 50%), as determined by the field inspections conducted for the HUD-funded Abt Associates study of modernization needs. This allocation results in CIAP agencies receiving approximately *11*% and CGP agencies receiving approximately *89*% of the total funds available.

(a) *Backlog needs* are needed repairs and replacements of existing physical systems, items that must be added to meet the HUD modernization and energy conservation standards and State or local codes, and items that are necessary for the long-term viability of a specific housing development.

(b) *Accrual needs* are needs that arise over time and include needed repairs and replacements of existing physical systems and items that must be added to meet the HUD modernization and energy conservation standards and State or local codes.

(3) *Assignment of Funds to Field Offices of Public Housing (OPH).* In past years, the distribution of Public Housing CIAP funds for each Field OPH has been based solely on the relative shares of backlog and accrual needs for CIAP PHAs. In order to obtain a more equitable distribution of available funds relative to historical demand within each Field Office (FO) jurisdiction, Headquarters has determined that the FY 1998 distribution of Public Housing CIAP funds for each Field Office of Public Housing (Field OPH) will be based on the relative shares of backlog and accrual needs for CIAP PHAs (weighted at 50%) and the relative demand for CIAP funds, as evidenced by the CIAP funds requested in FY 1997 (weighted at 50%). However, to ensure that the relative demand side of the allocation formula does not give undue weight to FOs that were able to fund a higher percentage of funds requested in prior years, each Field OPH was capped by Headquarters in FFY 1997 to an allocation amount that would fund no more than 30% of funds requested by PHAs in that FOs jurisdiction in FFY 96. Those same percentages are being used in FFY 98.

(a) The Field OPH Director shall have authority to make Joint Review selections and CIAP funding decisions.

(b) If additional funds for Public Housing CIAP become available, Headquarters will allocate the funds to each Field OPH based on the table below.

(c) If a Field OPH does not receive sufficient fundable applications to use its allocation, Headquarters will reallocate the remaining funds to one or more Field OPHs that have the highest unfunded demand, as evidenced by approvable applications.

The following table shows the percentage distribution of CIAP funds for PHAs assigned by Headquarters to each Field OPH. The percentage distributions for the Texas State and Houston Area Offices have been further broken down to indicate what percentage of their distribution will be allocated to HAs involved in the East Texas civil rights case (i.e., *Young* v. *Cuomo*) to meet the requirements of the settlement agreement, which is subject to judicial oversight, along with other modernization needs.

BILLING CODE 4210–32–P

OFFICE OF PUBLIC HOUSING (OPH)	PERCENT OF THE CIAP ALLOCATION
NEW ENGLAND	
Massachusetts State Office	2.4560
Connecticut State Office	.8107
New Hampshire State Office	1.5676
Rhode Island State Office	.4361
NEW YORK/NEW JERSEY	
Buffalo Area Office	2.0783
New Jersey State Office	2.3160
New York State Office	1.4892
MID-ATLANTIC	
Maryland State Office	.4214
West Virginia State Office	1.3081
Pennsylvania State Office	.6837
Pittsburgh Area Office	.9155
Virginia State Office	.4234
District of Columbia Office	.1672

SOUTHEAST	
Georgia State Office	8.2709
Alabama State Office	5.0915
South Carolina State Office	1.2749
North Carolina State Office	2.9244
Mississippi State Office	1.6542
Jacksonville Area Office	2.5183
Knoxville Area Office	1.0628
Kentucky State Office	4.7477
Tennessee State Office	2.7438
Florida State Office	1.0793
MIDWEST	
Illinois State Office	3.9655
Cincinnati Area Office	.4645
Cleveland Area Office	.5422
Ohio State Office	1.1608
Michigan State Office	1.8521

Grand Rapids Area Office	2.6617
Indiana State Office	1.1643
Wisconsin State Office	2.5429
Minnesota State Office	3.7183
SOUTHWEST	
New Mexico State Office	1.3046
Texas State Office East Texas HAs Non-East Texas HAs	7.2209 (0.361045 or 5% of 7.2209) (6.859855 or 95% of 7.2209)
Houston Area Office East Texas HAs Non-East Texas HAs	1.7024 (0.817152 or 48% of 1.7024) (0.885248 or 52% of 1.7024)
Arkansas State Office	2.1839
Louisiana State Office	3.9607
Oklahoma State Office	2.3203
San Antonio Area Office	3.1643

GREAT PLAINS	
Iowa State Office	.5858
Kansas/Missouri State Office	2.7413
Nebraska State Office	1.0943
St. Louis Area Office	1.0715
ROCKY MOUNTAIN	
Colorado State Office	3.1227
PACIFIC/HAWAII	
Los Angeles Area Office	.2670
Arizona State Office	.9903
Sacramento Area Office	.0808
California State Office	1.7445
NORTHWEST/ALASKA	
Oregon State Office	.6706
Washington State Office	1.2608
TOTAL	**100.0000**

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(D) Eligible Applicants

Public Housing Agencies (HAs) that own or operate fewer than 250 public housing units are eligible to apply and compete for CIAP funds. HAs with 250 or more public housing units are entitled to receive a formula grant under the Comprehensive Grant Program (CGP) and are *not* eligible to apply for CIAP funds. Entities other than HAs are not eligible to apply for CIAP funds. Indian Housing Authorities are not eligible to apply for these funds.

(E) Eligible Activities

(1) An HA may use financial assistance received under this CIAP section of the SuperNOFA for activities including, but not limited to:

(a) Physical improvements, e.g., alterations, betterments, additions, and accessibility features;

(b) Demolition and conversion costs;

(c) General management improvements, e.g., management, financial and accounting control systems;

(d) Economic development costs;

(e) Resident management costs;

(f) Drug elimination costs;

(g) Lead-based paint abatement costs;

(h) Administrative costs;

(i) Salaries and employee benefit contributions; and

(j) Architectural/engineering and consultant fees.

(2) *Repeal of the Expansion of Eligible Activities.* The FY 1998 Appropriations Act did *not* continue the expanded eligible activities that could be funded, with prior HUD approval, as provided in section 14(q) of the U.S. Housing Act of 1937, as amended in section 201 of the HUD FY 1996 Appropriations Act. These activities include: new construction or acquisition of additional public housing units, including replacement units; modernization activities related to the public housing portion of housing developments held in partnership or cooperation with non-public housing entities; other activities related to public housing, including activities eligible under the Urban Revitalization Demonstration (HOPE VI), such as community services; and operating subsidy purposes (not to exceed 10 percent of the grant amount). Therefore, funds approved under this CIAP section of the SuperNOFA, i.e., Fiscal Year (FY) 98 funds, may not be used for the above purposes. However, HAs may still use previously apposed grant funds (FFY 97 and prior years) that are unobligated for the above activities with prior HUD approval, where applicable. Relief from this prohibition is pending in Congress.

II. Program Requirements

In addition to the program requirements listed in the General Section of this SuperNOFA, applicants are subject to the following requirements:

(A) Forms, Certifications and Assurances

In addition to the forms, certifications and assurances listed in the General Section of this SuperNOFA, applicants are required to submit signed copies of Form HUD–50071, Certification for Contracts, Grants, Loans and Cooperative Agreements.

(B) Departmental Priority

The transformation of public housing is one of the Department's major priorities. To facilitate the modernization of public housing so that it is integrated in the broader community, the Department encourages HAs to consider the following:

(1) *Design.* When identifying physical improvement needs to meet the modernization standards, HAs are encouraged to consider a design which supports the integration of public housing into the broader community. Although high priority needs, such as those related to health and safety, vacant, substandard units, structural or system integrity, and compliance with statutory, regulatory or court-ordered deadlines, will receive funding priority, HAs should plan their modernization in a way which promotes good design, but maintains the modest nature of public housing. The HA should pay particular attention to design, which is sensitive to traditional cultural values, and be receptive to creative, but cost-effective approaches suggested by architects, residents, HA staff, and other local entities. Such approaches may complement the planning for basic rehabilitation needs. It should be noted that there will be no increase in operating subsidy as a result of any modernization activities.

(2) *Physical Accessibility and Visitability.* In addition to the design considerations set forth in Section II(C)(1) of this CIAP section of the SuperNOFA, HAs must comply with accessibility requirements and are encouraged to provide units that are "visitable" by persons with mobility impairments. Visitability gets the person into the home, but does not require that all features be made accessible throughout the home.

(a) *Accessibility.* An accessible home means that the home is located on an accessible route (36" clear passage) and, when designed, constructed, altered or adapted, can be approached, entered, and used by an individual with physical disabilities.

(b) *Visitability.* Visitability restricts itself to two areas of a home; i.e., at least one entrance is at grade (no-step); and all doors inside provide a 32" clear passage. A visitable home serves not only persons with disabilities, but also persons without disabilities. (For example, a mother pushing a stroller; person delivering large appliances, etc.). One difference between "visitability" and "accessibility" is that accessibility requires that *all* features of a dwelling unit be made accessible for mobility impaired persons. A visitable home provides less accessibility than an accessible home. Examples of actions that HAs may take to support visitability include:

(i) When conducting a "needs assessment," the HA may identify some single family scattered site homes and make those units visitable.

(ii) When undertaking substantial alterations as defined in 24 CFR 8.23(a), the HA may identify some units in an elderly development not subject to the new construction requirements of 24 CFR 8.22 and make those units visitable.

(iii) The HA may target the first floor of an existing 3-story family apartment complex and make those units visitable.

(3) *Provision of Community Space for Welfare-to-Work Initiatives.* HAs are encouraged to provide community space for Welfare-to-Work initiatives, which include, but are not limited to, services coordination/case management, training, child care, health care, transportation, and economic development. Where community space is not otherwise available, CIAP funds may be used to convert existing dwelling space, renovate existing nondwelling space, or construct or acquire nondwelling space for this purpose. Where CIAP funds will be used to provide community space, HAs are required to submit written evidence from a qualified local agency or provider that the agency or provider agrees to furnish, equip, operate and maintain the community space, as well as provide insurance coverage. Where HAs themselves intend to operate the community space, they must submit written evidence of the continuing funding sources to furnish, equip, operate, maintain and insure the community space.

(4) *Elimination of Vacant Units.* HAs are encouraged to apply for CIAP funds to address vacant units where the work does not merely involve routine maintenance, but will result in reoccupancy.

(C) Accessibility Requirements

In carrying out modernization work, HAs are required to comply with the requirements of 24 CFR 8.23(a) regarding substantial alterations and 24 CFR 8.23(b) regarding other alterations, as well as with Title II of the Americans with Disabilities Act and 28 CFR part 35. Title II is applicable to HAs established under State law. Also, the HA shall comply with the requirements of 24 CFR 8.22 and 24 CFR 100.205 (the Fair Housing Act) regarding new construction.

(D) Expediting the Program

HAs must obligate approved funds within two years and expend within three years of program approval (Annual Contributions Contract (ACC) Amendment execution) unless a longer implementation schedule (Part III of the CIAP Budget) is approved by the Field Office due to the size or complexity of the program. However, HUD strongly encourages the minimum amount of time feasible for program completion and contends that an 18 month timeframe for fund obligation is generally reasonable. Failure to obligate funds in a timely manner may result in the termination of the program and recapture of the funds.

(E) Planning

In preparing its CIAP Application, the HA is encouraged to assess all its physical and management improvement needs. Physical improvement needs should be reviewed against the modernization standards as set forth in HUD Handbook 7485.2, as revised, physical accessibility requirements as set forth in 24 CFR part 8, and 28 CFR part 35, and any cost-effective energy conservation measures identified in updated energy audits. The modernization standards include development specific work to ensure the long-term viability of the developments, such as amenities and design changes to promote the integration of low-income housing into the broader community. In addition, the HA is strongly encouraged to contact the Field Office to discuss its modernization needs and obtain information.

(F) Resident Involvement and Local Official Consultation Requirements

(1) *Residents/Homebuyers.* The CIAP regulations at 24 CFR 968.215 require the HA to establish a Partnership Process to ensure full resident participation in the planning, implementation and monitoring of the modernization program, as follows:

(a) Before submission of the CIAP Application, consultation with the residents, resident organization, and resident management corporation (herein referred to as residents) of the development(s) being proposed for modernization regarding its intent to submit an application and to solicit resident comments;

(b) Reasonable opportunity for residents to present their views on the proposed modernization and alternatives to it, and full and serious consideration of resident recommendations;

(c) Written response to residents indicating acceptance or rejection of resident recommendations, consistent with HUD requirements and the HA's own determination of efficiency, economy and need, with a copy to the Field Office at Joint Review. If the Joint Review is conducted off-site, a copy shall be mailed to the Field Office;

(d) After HUD funding decisions, notification to residents of the approval or disapproval and, where requested, provision to residents of a copy of the HUD-approved CIAP Budget; and

(e) During implementation, periodic notification to residents of work status and progress and maximum feasible employment of residents in the modernization effort.

(2) *Local Officials.* Before submission of the CIAP Application, consultation with appropriate local/tribal officials regarding how the proposed modernization may be coordinated with any local plans for neighborhood revitalization, economic development, drug elimination and expenditure of local funds, such as Community Development Block Grant funds.

(G) Environmental Requirements

Under 24 CFR part 58, the responsible entity, as defined in 24 CFR 58.2(a)(7), must assume the environmental responsibilities for projects being funded under the CIAP. If the HA objects to the responsible entity conducting the environmental review, on the basis of performance, timing or compatibility of objectives, the Field OPH Director will review the facts to determine who will perform the environmental review. At any time, the Field OPH Director may reject the use of a responsible entity to conduct the environmental review in a particular case on the basis of performance, timing or compatibility of objectives, or in accordance with 24 CFR 58.77(d)(1). If a responsible entity objects to performing an environmental review, or if the Field OPH Director determines that the responsible entity should not perform the environmental review, the Field OPH Director may designate another responsible entity to conduct the review or may itself conduct the environmental review in accordance with the provisions of 24 CFR part 50. After selection by the Field Office for Joint Review, the HA shall provide any documentation to the responsible entity (or Field Office, where applicable) that is needed to perform the environmental review.

(1) Where the environmental review is completed before Field Office approval of the CIAP budget and the HA has submitted its request for release of funds (RROF), the budget approval letter shall state any conditions, modifications, prohibitions, etc. as a result of the environmental review.

(2) Where the environmental review is not completed and/or the HA has not submitted the RROF before Field Office approval of the CIAP budget, the budget approval letter shall instruct the HA to refrain from undertaking, or obligating or expending funds on, physical activities or other choice-limiting actions, until the Field PH Director approves the HA's RROF and the related certification of the responsible entity (or the Field Office has completed the environmental review). The budget approval letter also shall advise the HA that the approved budget may be modified on the basis of the results of the environmental review.

(H) Declaration of Trust

Where the Field Office determines that a Declaration of Trust is not in place or is not current, the HA shall execute and file for the record a Declaration of Trust, as provided under the ACC, to protect the rights and interests of HUD throughout the 20-year period during which the HA is obligated to operate its developments in accordance with the ACC, the Act, and HUD regulations and requirements.

(I) HA Submission of Additional Documents

After the Field Office Public Housing Director's funding decisions, the HA shall submit the following documents within the time frame prescribed by the Field Office:

(a) Form HUD–52825, CIAP Budget/Progress Report, which includes the implementation schedule(s), in an original and two copies.

(b) Form HUD–52820, HA Board Resolution Approving CIAP Budget, in an original only.

(J) ACC Amendment

After HUD approval of the CIAP Budget, the Field Office and the HA shall enter into an ACC amendment in order for the HA to draw down modernization funds. The ACC

amendment shall require low-income use of the housing for not less than 20 years from the date of the ACC amendment (subject to sale of homeownership units in accordance with the terms of the ACC). The HA Executive Director, where authorized by the Board of Commissioners and permitted by State law, may sign the ACC amendment on behalf of the HA. HUD has the authority to condition an ACC amendment (e.g., to require an HA to hire a modernization coordinator or contract administrator to administer its modernization program).

(K) Use of Dwelling Units for Economic Self-Sufficiency Services and/or Drug Elimination Activities

CIAP funds may be used to convert dwelling units for purposes related to economic self-sufficiency services and/or drug elimination activities. Regarding the eligibility for funding under the Performance Funding System of dwelling units used for these purposes, refer to 24 CFR 990.108(b)(2).

(L) Duplication of Funding

The HA shall not receive duplicate funding for the same work item or activity under any circumstance and shall establish controls to assure that an activity, program, or project that is funded under any other HUD program shall not be funded by CIAP.

(M) Conflict of Interest

In addition to the conflict of interest requirements in 24 CFR part 85, no person who is an employee, agent, consultant, officer, or elected or appointed official and who exercises or has exercised any functions or responsibilities with respect to activities assisted under this grant, or who is in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

(N) Wage Rates

The wage rate requirements at 24 CFR 968.110(e) and (f) apply to assistance under this program.

III. Application Selection Process

(A) Rating and Ranking

(1) *General.* The rating and ranking of applications, the grouping of applications, the technical review process and funding decisions will be in accordance with HUD's regulations in 24 CFR 968.210.

(2) *Eligibility Review.* After the HA's CIAP application is determined to be complete and accepted for review, the Field Office eligibility review shall determine if the application is eligible for full processing or processing on a reduced scope, and shall assess the applicant's management and modernization capability.

(a) *Full Eligibility.* To be eligible for full processing, the applicant must be in compliance with the program requirements listed in Section II of the CIAP section of the SuperNOFA, and additionally must be in compliance with the following:

(i) Each eligible development for which work is proposed has reached the Date of Full Availability (DOFA) and is under ACC at the time of CIAP application submission; and

(ii) Where funded under Major Reconstruction of Obsolete Projects (MROP) after FY 1988, the development/building has reached DOFA or, where funded during FYs 1986–1988, all MROP funds for the development/building have been expended.

(b) *Reduced Eligibility.* When the following conditions exist, the HA's application will be reviewed on a reduced scope in accordance with HUD's regulations in 24 CFR 968.210.

(i) An HA that has been Not designated as Troubled under 24 CFR part 901, Public Housing Management Assessment Program (PHMAP), or

(ii) Designated as Troubled, but has a reasonable prospect of acquiring management capability through CIAP-funded management improvements and administrative support. A Troubled PHA is eligible for Emergency Modernization only, unless it is making reasonable progress toward meeting the performance targets established in its memorandum of agreement or equivalent under 24 CFR 901.140 or has obtained alternative oversight of its management functions.

(iii) An HA that has been designated as Modernization Troubled under 24 CFR part 901, PHMAP is eligible for Emergency Modernization only, unless it is making reasonable progress toward meeting the performance targets established in its memorandum of agreement or equivalent under 24 CFR 901.140 or has obtained alternative oversight of its modernization functions. Where an HA does not have a funded modernization program in progress, the Field Office shall determine whether the HA has a reasonable prospect of acquiring modernization capability through hiring staff or contracting for assistance.

(3) *Long-Term Viability and Reasonable Cost.* On Form HUD–52822, CIAP application, the HA certifies whether the developments proposed for modernization have long-term physical and social viability, including prospects for full occupancy. During Joint Review, the Field Office will review with the HA the determination of reasonable cost for the proposed modernization to ensure that unfunded hard costs do not exceed 90 percent of the computed total development cost (TDC) for a new development with the same structure type and number and size of units in the market area. The Field Office shall make a final viability determination. Where the estimated per unit unfunded hard cost is equal to or less than the per unit TDC for the smallest bedroom size at the development, no further computation of the TDC limit is required.

(a) If the Field Office determines that completion of the improvements and replacements will not reasonably ensure the long-term physical and social viability of the development at a reasonable cost, the Field Office shall only approve Emergency Modernization or non-emergency funding for essential non-routine maintenance needed to keep the property habitable until the demolition or disposition application is approved and residents are relocated.

(b) Where the Field Office wishes to fund a development with hard costs exceeding 90 percent of computed TDC, the Field Office shall submit written justification to Headquarters for final decision. Such justification shall include:

(i) Any special or unusual conditions have been adequately explained, all work has been justified as necessary to meet the modernization and energy conservation standards, including development specific work necessary to provide a modest, non-luxury development; and

(ii) Reasonable cost estimates have been provided, and every effort has been made to reduce costs; and

(c) Rehabilitation of the existing development is more cost-effective in the long-term than construction or acquisition of replacement housing; or

(d) There are no practical alternatives for replacement housing.

(4) *"Fast Tracking" Emergency Applications.* Emergency applications do not have to be processed within the normal processing time allowed for other applications. Where an immediate hazard must be addressed, HA emergency applications may be submitted and processed at any time during the year when funds are

available. The Field Office shall "fast track" the processing of these emergency applications so that fund reservation may occur as soon as possible. An emergency application is comprised of the forms, certifications and assurances listed in the General Section of the SuperNOFA, and also the following documents:

(a) *Form HUD–52825, CIAP Budget/ Progress Report,* which includes the implementation schedule(s), in an original and two copies.

(b) *Form HUD–52820, HA Board Resolution Approving CIAP Budget,* in an original only.

(c) At the option of the HA, photographs or video cassettes showing the physical condition of the developments.

(B) Factors for Award Used To Evaluate and Rate Applications.

The factors for rating and ranking applicants, and maximum points for each factor, are provided below. The maximum number of points to be awarded is 102. This includes two EZ/ EC bonus points, as described in the General Section of the SuperNOFA.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (20 Points)

This factor addresses the extent to which the applicant has the organizational resources necessary to successfully implement the proposed activities in a timely manner. The rating of the "applicant" or the "applicant's organization and staff" for technical merit or threshold compliance, unless otherwise specified, will include any sub-contractors, consultants, sub-recipients, and members of consortia which are firmly committed to the project. In rating this factor HUD will consider the extent to which the proposal demonstrates:

(1) The knowledge and experience of the overall proposed project director and staff, including the day-to-day program manager, consultants and contractors in planning and managing programs for which funding is being requested. Experience will be judged in terms of recent, relevant and successful experience of the applicant's staff to undertake eligible program activities.

(2) The applicant has sufficient personnel or will be able to quickly access qualified experts or professionals, to deliver the proposed activities in each proposed service area in a timely and effective fashion, including the readiness and ability of the applicant to immediately begin the proposed work program. The adequacy of the personnel for an HA will be determined on the basis of the amount of funding and the complexity of the proposed activities.

(3) The applicant has demonstrated experience in managing programs, and carrying out grant management responsibilities for programs, similar in scope or nature directly relevant to the work activities proposed. If the applicant has managed large, complex, interdisciplinary programs, the applicant should include that information in the response.

(4) If the applicant received funding in previous years in the program area for which they are currently seeking funding, the applicant's past experience will be evaluated in terms of their ability to attain demonstrated measurable progress in the implementation of their *most recent grant award* as measured by obligation and expenditures and measurable progress in achieving the purpose for which funds are provided.

(5) The Field Office shall evaluate the HA's management capability. Particular attention shall be given to the adequacy of the HA's maintenance in determining the HA's management capability. This assessment shall be based on the compliance aspects of on-site monitoring, such as audits, reviews or surveys which are currently available within the Field Office, and on performance reviews. The HA has management capability if it is:

(a) Not designated as Troubled under 24 CFR part 901, Public Housing Management Assessment Program (PHMAP), or

(b) Designated as Troubled, but has a reasonable prospect of acquiring management capability through CIAP-funded management improvements and administrative support.

(6) The Field Office shall evaluate the HA's modernization capability, including the progress of previously approved modernization and the status of any outstanding findings from CIAP monitoring visits. The HA has modernization capability if it is:

(a) Not designated as Modernization Troubled under 24 CFR part 901, PHMAP, or

(b) Designated as Modernization Troubled, but has a reasonable prospect of acquiring modernization capability through CIAP-funded management improvements and administrative support, such as hiring staff or contracting for assistance.

Rating Factor 2: Need/Extent of the Problem (20 Points)

This factor addresses the extent to which there is a need for funding the proposed program activities and an indication of the urgency of meeting the need in the target area. In responding to this factor, applicants will be evaluated on:

(1) The extent to which they document the level of need for the proposed activity and the urgency in meeting the need using statistics and analyses contained in a data source(s) that:

(a) Is sound and reliable. To the extent that the applicant's community's Consolidated Plan and Analysis of Impediments to Fair Housing Choice (AI) identifies the level of the problem and the urgency in meeting the need, references to these documents should be included in the response. HUD will review more favorably those applicants who used these documents to identify need, when applicable.

If the proposed activity is not covered under the scope of the Consolidated Plan and Analysis of Impediments to Fair Housing Choice (AI), applicants should indicate such, and use other sound data sources to identify the level of need and the urgency in meeting the need. Types of other sources include, but are not limited to, law enforcement agency crime reports, an HA's assessment of its physical and management needs, HUD review reports, and other sound and reliable sources appropriate for the specific SuperNOFA program and activities for which an applicant is applying. For technical assistance programs, input from HUD State and Area Office(s) and assessments are included among the data sources that may be used to identify need.

(b) Is specific to the development where the proposed activity will be carried out or where applicable, documents the need for an HA-wide activity(s). Specific attention must be paid to documenting need which has a direct impact on the surrounding community, e.g., where a design change facilitates the integration of public housing into the surrounding community.

(2) The extent of vacancies based on the HA-wide vacancy rate, where the vacancies are not due to insufficient demand.

Rating Factor 3: Soundness of Approach (40 Points)

This factor addresses the quality and cost effectiveness of the applicant's proposed work plan. There must be a clear relationship between the proposed activities, community needs and the purpose of the program funding for an applicant to receive points for this factor. In evaluating this factor, HUD will consider the following:

(1) (5 Points) The quality of the cost estimates for the proposed work.

(2) (25 Points) The extent to which the proposed physical improvement needs meet the modernization standards, and support the integration of public housing into the broader community. Although high priority needs, such as those related to health and safety, vacant, substandard units, structural or system integrity, and compliance with statutory, regulatory or court-ordered deadlines, will receive funding priority, to the extent possible, HAs should plan their modernization in a way which promotes good design, but maintains the modest nature of public housing.

(3) (5 Points) Degree to which the PHA Affirmatively Furthers Fair Housing. Actions that assist the jurisdiction in overcoming impediments to fair housing choice identified in the jurisdiction's Analysis of Impediments (AI) to Fair Housing Choice, which is a component of the jurisdiction's Consolidated Plan, or any other planning document that addresses fair housing issues. Examples of actions that can be taken may include, but are not limited to: neighborhood revitalization efforts that encourage fair housing choice (such as schools, grocery stores, transportation and the quality of services); implementing site selection policies which give priority to sites located outside of minority and low-income areas; participating in mobility counseling programs and clearing houses which offer housing opportunities both within and outside of high-poverty areas; increasing the supply of accessible housing available to low-income persons with disabilities; and ensuring accessibility and visitability for persons with disabilities to aspects of the program. Additional examples may be obtained from Chapter 5 of the "Fair Housing Planning Guide, Vol. 1" which may be ordered from HUD's Fair Housing Clearinghouse by calling (800–343–3442).

(5 Points for Subfactors (4) through (8))

(4) The degree of resident involvement in HA operations as described in the Narrative Statement and supported by FO file evidence.

(5) The degree of HA activity in coordinating/providing resident services related to Welfare-to-Work initiatives in community facilities at or near HA developments based on FO file evidence. Such services include, but are not limited to services coordination/case management, training, child care, health care, transportation, and economic development.

(6) The degree of HA activity in resident initiatives, including resident management, economic development, homeownership, and drug elimination efforts or other resident initiatives for non-elderly as described in the Narrative Statement and supported by FO file evidence.

(7) The degree of non-elderly resident employment through direct hiring or contracting/subcontracting or job training initiatives as described in the Narrative Statement and supported by FO file evidence.

(8) Further and support the policy priorities of HUD including:

(a) Promoting healthy homes;

(b) Providing opportunities for self-sufficiency, particularly for persons enrolled in welfare to work programs;

(c) Enhancing on-going efforts to eliminate drugs and crime from neighborhoods through program policy efforts such as "One Strike and You're Out" or the "Officer Next Door" initiative;

(d) Providing educational and job training opportunities through such initiatives as Neighborhood Networks, Campus of Learners and linking to AmeriCorps activities.

Rating Factor 4: Leveraging Resources (10 Points)

This factor addresses the ability of the applicant to secure community resources (note: financing is a community resource) which can be combined with HUD's program resources to achieve program purposes. In evaluating this factor HUD will consider:

(1) To the extent possible, the applicant has taken the initiative to partner with other entities to secure additional resources to increase the effectiveness of the proposed program activities, e.g., CDBG funds may be committed for infrastructures. Resources may include funding or in-kind contributions, such as services or equipment, allocated to the purpose(s) of the award the applicant is seeking, e.g., an educational institution may provide training in conjunction with a management improvement activity. Resources may be provided by governmental entities, public or private nonprofit organizations, for-profit private organizations, or other entities willing to partner with the applicant. Applicants may also partner with other program funding recipients to coordinate the use of resources in the area of the public housing development.

(2) Where applicable, applicants should provide evidence of other resources by including in the application letters of firm commitment, memoranda of understanding, or agreements to participate from those entities identified as partners in the application. Each letter of commitment, memorandum of understanding, or agreement to participate should include the organization's name, proposed level of commitment and responsibilities as they relate to the proposed program. The commitment must also be signed by an official of the organization legally able to make commitments on behalf of the organization.

(3) The local government support for proposed modernization, through either funding or in-kind contributions, over and above what is required under the Cooperation Agreement for municipal services, such as police and fire protection and refuse collection, within the last 12 months, that will *directly benefit* the public housing or the neighborhood surrounding the public housing.

Rating Factor 5: Comprehensiveness and Coordination (10 Points)

This factor addresses the extent to which the applicant coordinated its activities with other known organizations, participates or promotes participation in a community's Consolidated Planning process, and is working towards addressing a need in a holistic and comprehensive manner through linkages with other activities in the community.

In evaluating this factor, HUD will consider the extent to which the applicant demonstrates that it has:

(1) Coordinated its proposed activities with those of other groups or organizations prior to submission in order to best complement, support and coordinate all known activities and if funded, the specific steps it will take to share information on solutions and outcomes with others. Any written agreements, memoranda of understanding in place, or that will be in place after award should be described.

(2) Taken or will take specific steps to become active in the community's Consolidated Planning process (including the Analysis of Impediments to Fair Housing Choice) established to identify and address a need/problem that is related to the activities the applicant proposes.

(3) Taken or will take specific steps to develop linkages to coordinate comprehensive solutions through meetings, information networks, planning processes or other mechanisms with:

(a) Other HUD-funded projects/activities outside the scope of those covered by the Consolidated Plan; and

(b) Other Federal, State or locally funded activities, including those proposed or on-going in the community.

IV. Application Submission Requirements.

The HA shall submit the CIAP Application to the Field Office, with a copy to appropriate local officials, e.g., the mayor, City Manager. The HA may obtain the necessary forms from the Field Office. The CIAP Application is comprised of the following documents:

(A) *Form HUD–52822, CIAP Application,* in an original and two copies, which includes:

(1) A general description of HA development(s), in priority order, (including the current physical condition, for each development for which the HA is requesting funds, or for all developments in the HA's inventory) and physical and management improvement needs to meet the Secretary's standards in 24 CFR 968.115; description of work items required to correct identified deficiencies, including accessibility work; and the estimated cost. Where the HA has not included some of its developments in the CIAP Application, the Field Office may not consider funding any non-emergency work at excluded developments or subsequently approve use of leftover funds at excluded developments. Therefore, to provide maximum flexibility, the HA may wish to include all of its developments in the CIAP Application, even though there are no known current needs. Following is an example of the general description:

Development 1–1: 50 units of low-rent; 25 years old; physical needs are: new roofs; storm windows and doors; and electrical upgrading at estimated cost of $150,000.

Development 1–2: 40 units of low-rent; 20 years old; physical needs are: physical accessibility for kitchens, bathrooms and doors in 2 units and common laundry room; visitability in 4 ground floor units; kitchen floors; shower/bathtub surrounds; fencing; and exterior lighting at estimated cost of $130,000.

Development 1–3: 35 units of Turnkey III; 15 years old; physical needs are: physical accessibility in 3 units; and roof insulation at estimated cost of $50,000.

Development 1–4: 20 units of low-rent; 5 years old; no physical needs; no funding requested.

(2) Where funding is being requested for management improvements, an identification of the deficiency, a description of the work required for correction, and estimated cost. Examples of management improvements include, but are not limited to, the following areas:

(a) The management, financial, and accounting control systems of the HA;

(b) The adequacy and qualifications of personnel employed by the HA in the management and operation of its developments by category of employment; and

(c) The adequacy and efficacy of resident programs and services, resident and development security, resident selection and eviction, occupancy and vacant unit turnaround, rent collection, routine and preventive maintenance, equal opportunity, and other HA policies and procedures.

(3) A certification that the HA has met the requirements for consultation with local officials and residents/homebuyers and that all developments included in the application have long-term physical and social viability, including prospects for full occupancy. If the HA cannot make this certification with respect to long-term viability, the HA shall attach a narrative, explaining its viability concerns.

(B) *A Narrative Statement,* in an original and two copies, addressing each of the rating factors in Section III(B) of this CIAP section of the SuperNOFA. In addressing the affirmatively furthering fair housing technical review factor, actions that the HA has taken, or plans to take, to accomplish this objective may include, but are not limited to the following:

(1) Actions that contribute toward the reduction of concentration of low-income-persons who are protected under the Fair Housing Act and Title VI of the Civil Rights Act. Such actions may include housing programs/activities that provide information regarding housing opportunities outside of minority concentrated areas within the HA's jurisdictional boundaries, or efforts that encourage landlords/owners to make available housing opportunities outside of minority concentrated areas. For example, the HA may refer applicants to other available housing as part of an established housing counseling service or assist applicants in getting on other waiting lists.

(2) Actions that overcome the consequences of prior discriminatory practices or usage which may have tended to exclude persons of a particular race, color or national origin; or that overcome the effects of past discrimination against persons with disabilities. Such actions may include those actions taken without any kind of legally binding order, but which have changed previous discriminatory management, tenant selection and assignment or maintenance practices.

(3) Actions that assist the jurisdiction in overcoming impediments to fair housing choice identified in the jurisdiction's AI (Analysis of Impediments to Fair Housing Choice), which is a component of the jurisdiction's Consolidated Plan, or any other planning document that addresses fair housing issues. Examples of actions that can be taken may include, but are not limited to: neighborhood revitalization efforts that encourage fair housing choice (such as schools, grocery stores, transportation, and the quality of services); implementing site selection policies which give priority to sites located outside of minority and low-income areas; participating in mobility counseling programs and clearinghouses which offer housing opportunities both within and outside of high-poverty areas; increasing the supply of accessible housing available to low-income persons with disabilities; and ensuring accessibility and visitability for persons with disabilities to aspects of the program. Additional examples may be obtained from Chapter 5 of the Fair Housing Planning Guide, Vol 1" which may be ordered from HUD's Fair Housing Clearinghouse by calling (800) 343–3442.

(C) *Form HUD–50071, Certification for Contracts, Grants, Loans and Cooperative Agreements,* in an original only, required of HAs established under State law, applying for grants exceeding $100,000.

(D) *Evidence of Physical Condition of the Developments.* At the option of the HA, photographs or video cassettes showing the physical condition of the developments.

V. Corrections to Deficient Applications

The General Section of the SuperNOFA provides the procedures for corrections to deficient applications.

Funding Availability for Revitalization of Severely Distressed Public Housing (Hope VI Revitalization)

Program Description: Approximately $441 million is available in funding for the Revitalization of Severely Distressed Public Housing (the "HOPE VI Revitalization Program"), as provided in the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998. The continued funding of the HOPE VI Program is to enable revitalization and transformation of the physical site of severely distressed public housing developments and the social dynamics of life for low-income residents at that site, or in any off-site replacement housing.

Application Due Date: Applications must be received at HUD Headquarters on or before 12:00 pm. Eastern time on June 29, 1998, at HUD Headquarters. See the General Section of this SuperNOFA for specific procedures governing the form of application of submission (e.g., mailed applications, express mail, overnight delivery, or hand carried).

Addresses for Submitting Applications: One copy of the completed application must be received at HUD Headquarters, 451 Seventh Street, SW, Room 4138, Washington, DC 20410, Attention: Deputy Assistant Secretary for Public Housing Investments. In addition, two copies of the completed application also must be received at the appropriate HUD Field Office HUB.

For Application Kits, Further Information, Technical Assistance:

For Application Kits. A copy of the application kit will be mailed to every eligible PHA. Application kits and any supplementary information also may be obtained by contacting the SuperNOFA Information Center at 1–800-HUD–8929. Persons with hearing or speech impairments may call the Center's TTY number at 1–800–483–2209. The application kit also will be available on the Internet through the HUD web site at http://www.HUD.gov. When requesting an application kit, please refer to HOPE VI and provide your name, address (including zip code), and telephone number (including area code).

For Further Information and Technical Assistance. For answers to your questions, you may call Mr. Milan Ozdinec, Director, Office of Urban Revitalization, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4142, Washington, DC 20410; telephone (202) 401–8812 (this is not a toll free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8399.

I. Additional Information

(A) Authority

The funding for HOPE VI Revitalization grants under this SuperNOFA is provided by the FY 1998 HUD Appropriations Act under the heading "Revitalization of Severely Distressed Public Housing (HOPE VI)."

(B) Purpose

The purpose of the HOPE VI Program is to enable revitalization and transformation of the physical site of severely distressed public housing developments and the social dynamics of life for low-income residents at that site, or in any off-site replacement housing. The HOPE VI Revitalization Program provides for grants to public housing agencies to assist in:

(1) The demolition of severely distressed public housing projects or portions of these projects;

(2) The revitalization (where appropriate) of sites (including remaining public housing units) on which such projects are located;

(3) The provision of replacement housing which will avoid or lessen concentration of very low-income families;

(4) Tenant-based assistance in accordance with section 8 of the U.S. Housing Act of 1937;

(5) Assisting tenants displaced by demolition.

The FY 1998 HOPE VI appropriation also provides for grant funds to be used for the demolition of severely distressed elderly public housing projects and the replacement, where appropriate, and revitalization of the elderly public housing as new communities for the elderly designed to meet the special needs and physical requirements of the elderly.

(C) Amount Allocated

(1) *Revitalization grants.* Approximately $416 million of the FY 1998 HOPE VI appropriation has been allocated to fund HOPE VI Revitalization grants.

(2) *Elderly Housing grants.* In accordance with the FY 1998 HUD Appropriations Act, $26 million of the HOPE VI appropriation has been allocated to fund projects proposing demolition of severely distressed elderly public housing projects and the replacement, where appropriate, and revitalization of the elderly public housing as new communities for the elderly designed to meet the special needs and physical requirements of the elderly.

(a) Targeted developments may be either:

(i) Housing designated for the elderly, persons with disabilities, or mixed-populations, in accordance with section 7 of the U.S. Housing Act of 1937; or

(ii) Projects of a PHA designated as elderly by HUD in accordance with requirements in effect prior to enactment of the Housing and Community Development Act of 1992.

(iii) A PHA may, after revitalization, designate the targeted development through a HUD-Approved allocation plan.

(b) Applications targeting elderly developments will be rated in a separate competition, and will be ranked only with other elderly applications.

(c) Of the $26 million made available for elderly housing, the FY 1998 HUD Appropriation Act included up to $10 million for Heritage House in Kansas City, Missouri. HUD awarded $6,570,500 to Heritage House under the FY 1997 HOPE VI NOFA, therefore the full $10 million will not be needed. After funding the needs of Heritage House, the balance of the $10 million set-aside will be made available for Elderly Housing grants eligible for funding under this SuperNOFA.

(3) *HOPE VI Demolition-Only Grants.* Up to $60 million in HOPE VI funds will be made available for the demolition of obsolete public housing without revitalization. Those funds will be distributed through a separate NOFA.

(4) *Section 8.* Up to $91 million (approximately 10,000 units) has been allocated for Section 8 tenant-based certificates and vouchers for public housing relocation or public housing replacement (including units selected for the HOPE VI Program). The Section 8 funds will be allocated by HUD after HUD approval of the applicant's demolition/disposition application or distressed public housing conversion plan submitted in lieu of a demolition/disposition application in conformance with the statutory requirements for the mandatory conversion of distressed public housing units as required by section 202 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996. These section 8 funds will be distributed through a separate notice.

(D) Eligible Applicants

PHAs that own public housing units are eligible to apply. Indian Housing Authorities are not eligible to apply.

(E) Eligible Activities and Program Authority

Eligible activities are those eligible under sections 5 and 14 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f, 1437l) (1937 Act). Revitalization activities using HOPE VI funds must be for public housing developments. Accordingly, certain activities under the revitalization plan are subject to statutory requirements applicable to public housing developments under the U.S. Housing Act of 1937 (the 1937 Act), other statutes, and the ACC. Within such restrictions, HUD seeks innovative solutions to the long-standing problems of severely distressed developments.

In order to satisfy any particular statutory requirement, a Grantee may take measures as described in implementing regulations, or upon request to HUD for a different approach, as otherwise approved in writing by HUD. As of the date of publication of this SuperNOFA, the provisions of section 14(q) of the U.S. Housing Act of 1937, as amended by section 201 of the FY 1996 HUD Appropriation Act, including provisions in sections 14(q)(2), (3), and (4) of the U.S. Housing Act of 1937 concerning mixed-income development, have not been extended to cover FY 1998 HOPE VI or section 14 Modernization Funding.)

The recipient must conduct the following activities, which may be undertaken with HOPE VI grant funds, in accordance with the cited program requirements or otherwise with HUD's written approval, consistent with the 1998 Appropriations Act and this SuperNOFA. Activities which may be funded with HOPE VI grant funds include but are not limited to:

(1) Total or partial demolition of buildings, in accordance with 24 CFR part 970;

(2) Disposition of property, in accordance with 24 CFR part 970;

(3) Public housing development through the acquisition of land, or acquisition of off-site units with or without rehabilitation to be used as public housing, in accordance with 24 CFR part 941;

(4) Major rehabilitation and other physical improvements of housing and community facilities primarily intended to facilitate the delivery of self-sufficiency, economic development, or other supportive service opportunities for residents of the targeted development, in accordance with 24 CFR 968.112(b), (d), (e), and (g)–(o), 24 CFR 968.130, and 24 CFR 968.135(b) and (d);

(5) Construction of replacement rental housing, both on-site and off-site, and community facilities primarily intended to facilitate the delivery of self-sufficiency, economic development, or other supportive service opportunities for residents of the targeted development and off-site replacement housing, in accordance with 24 CFR part 941, including mixed-finance development in accordance with subpart F;

(6) Homeownership units will be deemed Replacement Units only as specified in the Urban Revitalization heading of the 1993 Appropriations Act (Pub.L. 102–389; approved October 6, 1992); that is, if they meet the statutory requirements of the Section 5(h) Program (42 U.S.C. 1437c(h)); the HOPE II program (42 U.S.C. 12871–80; Pub. L. 101–625, secs. 421–31; 104 Stat. 4079, 4162–72); the HOPE III program (42 U.S.C. 12891–98; Pub.L. 101–625, secs. 441–48; 104 Stat. 4079, 4172–80); or are made available through housing opportunity programs of construction or substantial rehabilitation of homes meeting essentially the same eligibility requirements as the Nehemiah Program.

(7) Management improvements;

(8) Administration, planning, and technical assistance;

(9) Programs designed to help residents gain employment and attain self-sufficiency;

(10) Programs designed to meet the special needs and physical requirements of the elderly and/or disabled and enable the elderly and/or disabled to live where one chooses with dignity, control, and independence.

(11) Relocation, conducted in accordance with 24 CFR 970.5 (demolition) or 24 CFR 968.108 (rehabilitation), as appropriate.

(F) Waivers

PHAs may request, for the revitalized development, a waiver of HUD regulations (that are not statutory requirements) governing rents, income eligibility, or other areas of public housing management to permit a PHA to undertake measures that enhance the long-term viability of a development revitalized under this program.

(G) Limitations on Use of Funds

No funds awarded for the HOPE VI Revitalization Program under this SuperNOFA shall be used for any purpose that is *not* provided for under the: FY 1998 HUD Appropriations Act; United States Housing Act of 1937; the Appropriations Acts for the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies, for the Fiscal Years 1993, 1994, 1995, and 1997; and the Omnibus Consolidated Rescissions and Appropriations Act of 1996. Additionally, no funds awarded for the HOPE VI Program under this SuperNOFA shall be used directly or indirectly by granting competitive advantage in awards to settle litigation or pay judgements.

II. Program Requirements

In addition to the program requirements listed in the General Section of this SuperNOFA, applicants are subject to the following requirements:

(A) Severely Distressed

In order to be eligible for HOPE VI funding, a public housing development, or portion of the development, must be severely distressed as to physical condition, location, or other factors, making the development, in its current condition, unusable for housing purposes. Major problems indicative of severe distress are:

(1) *Physical Condition:* structural deficiencies (e.g. settlement of earth below the building caused by inadequate structural fills, faulty structural design, or settlement of floors), substantial deterioration (e.g., severe termite damage or damage caused by extreme weather conditions), or other design or site problems (e.g., severe erosion or flooding).

(2) *Location:* physical deterioration of the neighborhood; change from residential to industrial or commercial development; or environmental conditions as determined by HUD environmental review, which was previously conducted in accordance with 24 CFR part 50, which jeopardize the suitability of the site or a portion of the site and its housing structures for residential use.

(3) Other factors which have seriously affected the marketability, usefulness, or management of the property, such as significant numbers of families living in poverty, significant incidence of serious crime, high vacancy rate, high turnover rate, low rent collections, etc.

(B) Grant Limitations

The following grant amount limits apply to HOPE VI grants under this SuperNOFA. The grant amount shall be limited by the total amount determined by addition of paragraphs (1), (2), (3), and (4) below, as applicable.

(1) *Total Development Cost (TDC).* TDC is limited to the sum of:

(a) TDCs up to, but not to exceed 100% of, HUD's published TDC limits for the costs of demolition and new construction multiplied by the number of public housing Replacement Units; and/or

(b) 90% of such TDC limits multiplied by the number of public housing units to be substantially rehabilitated.

Total Development Cost (TDC) is limited by the HUD-published TDC Cost Tables, which are issued for each fiscal year for the building type and bedroom distribution for the public housing replacement units. Duplicative funding is prohibited for any replacement units previously funded by HOPE VI or other HUD funds. This requirement does not prohibit any non-HUD funds to be used to supplement HUD funds for any project cost. Disclosure of all prior HUD grant assistance is required for the targeted development. The only exception to this rule is that the receipt of Section 8 relocation assistance does not affect the eligibility of the applicant to receive subsequent HOPE VI Revitalization funding for replacement of the same units.

The Department has developed a new TDC policy and cost control which applies to 1998 grants. A HUD Notice and rule describing this policy will be issued in the near future.

(2) *Community and Supportive Services Programs.* Applicants may request up to $5,000 per household for community and supportive services, including self-sufficiency programs, based on:

(a) The number of households in occupied units in the project to be revitalized at the time of application submission, and

(b) The estimated number of new households that are expected to occupy replacement units after revitalization; or

(3) *Services to Assist the Elderly.* Applicants may request up to $5,000 per household for human services programs to address quality of life and other social needs, as opposed to self-sufficiency programs of family HOPE VI projects, rewarding innovative objectives and programs, particularly as related to aging in place and assisted living.

(4) *Relocation.* Applicants may request no more than $3,000 per occupied unit at the time of HOPE VI application submission for relocation services and expenses.

(5) *Total Grant Amount.*

(a) Revitalization Applications.

(i) A PHA may submit one or two separate Revitalization applications. The *total* amount requested in one or both applications may not exceed $35 million. If a PHA submits two applications, each application will be reviewed separately, subject to the grant limitation amounts above, and if both applications are selected, the total amount the applicant may receive may not exceed $35 million.

(ii) Notwithstanding the fact that a PHA may submit one or two Revitalization applications, each individual application may include a request for funds for only one public housing development. Developments that are contiguous, immediately adjacent to one another, or within four city blocks from each other will be considered one development for the purposes of the HOPE VI Program under this SuperNOFA. There is no minimum or maximum number of housing units for which funds may be requested in a single application.

(b) Elderly Housing Grant Applications.

(i) A PHA may submit only one application under the Elderly Housing grant requesting no more than $5 million.

(ii) A PHA may not submit an application for an Elderly Housing grant that targets the same units targeted in a Revitalization application.

(iii) Each application will be evaluated independently and must be viable regardless of whether a PHA applies for funds under the Revitalization grant.

(C) Public Meeting

The application must include a certification that at least one public meeting was held to notify residents and community members of the proposed activities described in the application. The meeting must be held after the publication date of this SuperNOFA. Issues that must be covered in the public meeting include:

(a) The extent of proposed demolition;

(b) Relocation issues; and

(c) Other revitalization activities.

(D) Replacement Units

(1) Rental units will be deemed Replacement Units and qualify for operating subsidy only if they are to be placed under Annual Contributions Contract and operated as Public Housing.

(2) Homeownership units will be deemed Replacement Units only as specified in the Urban Revitalization heading of the 1993 Appropriations Act (Pub. L. 102–389; approved October 6, 1992); that is, if they meet the statutory requirements of the Section 5(h) program (42 U.S.C. 1437c(h)); the HOPE II program (42 U.S.C. 12871–80; Pub. L. 101–625, secs. 421–31; 104 Stat. 4079, 4162–72); the HOPE III program (42 U.S.C. 12891–98; Pub.L. 101–625, secs. 441–48; 104 Stat. 4079, 4172–80); or are made available through housing opportunity programs of construction or substantial rehabilitation of homes meeting essentially the same eligibility requirements as the Nehemiah program.

(3) HOPE VI funds may not directly support mixed-finance units which are not themselves to be placed under ACC or be sold as homeownership units as specified above.

(E) Section 3 Economic Opportunities

Please see Section II(E) of the General Section of this SuperNOFA. The requirements of Section 3 are applicable to HOPE VI.

(F) Flood Insurance

In accordance with the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128), HUD will not approve applications for grants providing financial assistance for acquisition or construction (including rehabilitation) of properties located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(1) The community in which the area is situated is participating in the National Flood Insurance program (see 44 CFR parts 59 through 79), or less than one year has passed since FEMA notification regarding such hazards; and

(2) Where the community is participating in the National Flood Insurance Program, flood insurance is obtained as a condition of approval of the application.

(G) Coastal Barrier Resources Act

In accordance with the Coastal Barrier Resources Act (16 U.S.C. 3501), HUD will not approve grant applications for properties in the Coastal Barrier Resources System.

(H) OMB Circulars

Please see Section II(H) of the General Section of this SuperNOFA.

(I) Conflict of Interest

(1) In addition to the conflict of interest requirements in 24 CFR part 85, no person who is an employee, agent, consultant, officer, or elected or appointed official and who exercises or has exercised any functions or responsibilities with respect to activities assisted by HOPE VI funds, or who is in a position to participate in a decisionmaking process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom her or she has family or business ties, during his or her tenure or for one year thereafter.

(2) HUD may grant an exception to the exclusion in paragraph (1) of this section on a case-by-case basis when it determines that such an exception will serve to further the proposes of the program and the effective and efficient administration of the revitalization activities. HUD will consider an exception only after the applicant or recipient has provided a disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made, and an opinion of the applicant's or recipient's attorney that the interest for which the exception is sought would not violate State or local laws. In determining whether to grant a requested exception, HUD will consider the cumulative effect of the following factors, as applicable:

(a) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the revitalization program that would otherwise not be available;

(b) Whether an opportunity was provided for open competitive bidding or negotiation;

(c) Whether the person affected is a member of a group or class intended to be the beneficiaries of the activity, and the exception will permit such person to receive generally the same interest or benefits as are being made available or provided to the group or class;

(d) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decisionmaking process, with respect to the specific activity in question;

(e) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (1) of this section;

(f) Whether undue hardship will result either to the applicant, recipient, or the person affected when weighted against the public interest served by avoiding the prohibited conflict; and

(g) Any other relevant considerations.

(J) Labor Standards

Where HOPE VI funds provide assistance with respect to low-income housing that will be subject to a contract for assistance under the U.S. Housing Act of 1937, Davis-Bacon or HUD-determined wage rates apply to development or operation of the housing to the extent required under section 12 of the Act. Under section 12, the wage rate requirements do not apply to individuals who: perform services for which they volunteered; do not receive compensation for those services or are paid expenses, reasonable benefits, or a nominal fee for the services; and are not otherwise employed in the work involved (24 CFR part 70). In addition, if other Federal programs are used in connection with the revitalization program, labor standards requirements apply to the extent required by such other Federal programs, on portions of the development that are not subject to Davis-Bacon rates under the Act.

(K) Lead-Based Paint Testing and Abatement

Any property assisted under the HOPE VI Program is covered by the Lead-Based Paint Poisoning Prevention Act (24 U.S.C. 4821 *et seq.*) and is therefore subject to 24 CFR part 35; 24 CFR part 965, subpart H; and 24 CFR 968.110(k).

(L) Building Standards

All activities that include construction, rehabilitation, lead-based paint removal, and related activities:

(1) Must meet or exceed local building codes; and

(2) Must comply with the 1992 Model Energy Code issued by the Council of American Building Officials.

(M) Program Income

Where a plan contemplates the receipt of program-related income prior to grant closeout (e.g., from sale of homeownership Replacement Units, or the disposition of improved land), such income must be reflected in the HOPE VI budget and used for program purposes.

III. Application Selection Process

(A) Threshold Criteria for Funding Consideration

(1) The applicant must be an eligible Public Housing Agency.

(2) The targeted public housing development or portion thereof must be severely distressed, as defined in Section II(A) of this HOPE VI Program section of the SuperNOFA.

(3) The application must include all required forms, certifications and assurances, properly signed and executed, after any period provided for the curing of deficiencies consistent with section V below.

(4) Applications that propose new construction of replacement housing must comply with the requirements of section 6(h) of the 1937 Act by submitting the information described in either paragraphs (a) or (b) of this section:

(a) A PHA comparison of the costs of new construction (in the neighborhood where the PHA proposes to construct the housing) and the costs of acquisition of existing housing or acquisition and rehabilitation in the same neighborhood (including estimated costs of lead-based paint testing and abatement), or

(b) A PHA certification, accompanied by supporting documentation, that there is insufficient existing housing in the neighborhood to develop housing through acquisition of existing housing or acquisition and rehabilitation.

(B) Application Rating Factors

The factors for rating and ranking applications and the maximum points for each factor, are provided below. The maximum number of points for each application is 102. This includes two EZ/EC bonus points, as described in the General Section of this SuperNOFA.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (20 Points)

This factor addresses the extent to which the applicant has the organizational resources necessary to successfully implement the proposed activities in a timely manner. In order to ensure that revitalization efforts take place without delays attributable to administration and management, applications that demonstrate the highest degree of capability to implement revitalization in an expeditious manner upon grant award will be awarded the most points under this rating factor.

The rating of the "applicant" or the "applicant's organization and staff," unless otherwise specified, will include any sub-contractors, consultants, subrecipients, and members of consortia which are firmly committed to the project.

In rating this factor, HUD will consider the extent to which:

(1) The applicant and/or its proposed partners, including the overall proposed project director and staff, the day-to-day program manager, consultants, and contractors, have knowledge and recent, successful experience in planning, implementing, adapting, and managing:

(a) Revitalization activities;

(b) Self-sufficiency programs;

(c) Supportive services for the elderly, if applicable;

(d) Other programs similar in scope or nature to the proposed activities.

HUD does not require that the applicant have its program manager and/or developer selected prior to submission of the application, although the PHA may elect to do so. Rather, the PHA must demonstrate its capacity or its ability to identify needs in its current staffing to successfully implement its program, and/or describe in detail its proposed method for securing a program manager and/or development partner to implement the plan.

(2) The applicant has adequate experience in management and marketing. The applicant has thoroughly evaluated the obstacles that prevented good management, as well as other problems that contributed to the obsolescence of the targeted development, and the new management plan will protect against such obstacles and problems and will improve the efficiency and economy of management. PHAs may propose private management or self-management, but in the latter case *must* demonstrate its capacity to self-manage; or

(3) The applicant has sufficient personnel or will be able to procure partners quickly to implement the revitalization plan in a timely and effective fashion immediately after grant award;

(4) The applicant proposes an appropriate balance of oversight and autonomy in its use of partners and/or contractors;

(5) The applicant has satisfactory managerial experience with resident initiatives;

(6) If the applicant received HOPE VI funding in previous years, HUD will evaluate its ability to demonstrate progress through its expenditure rate and achievement of program objectives.

Rating Factor 2: Need/Extent of the Problem (20 Points)

This factor addresses the extent to which there is a need for funding the proposed program activities to address a documented problem in the target area.

In rating this factor, HUD will consider:

(1) The extent to which the applicant has documented a critical level of need for the proposed activities at the targeted development. Documentation of need must demonstrate that:

(a) There is a significant level of physical deterioration of buildings and sites, as supported by information and data which shows the extent of physical problems at the site such as major structural deficiencies, electrical systems under code, poor site conditions, leaking roofs, deteriorated infrastructure, high levels of deferred maintenance, number of units that do not meet Housing Quality Standards, levels of lead based paint, and other factors;

(i) The level of distress at the site is urgent and threatens to become imminently greater without immediate intervention;

(ii) The PHA lacks the funds to revitalize the development to provide decent, safe, and sanitary housing at the site;

(b) The level of physical distress in the surrounding community is extreme and contributes to the obsolescence of the site, as evidenced by information and data addressing such factors as housing density, housing deterioration, and lack of adequate infrastructure or utilities;

(c) The community as a whole has a demonstrated level of social distress, as evidenced by indicators such as significant incidence of criminal activity, a high vacancy rate, high rates of housing turnover, truancy, and unemployment, low rates of rent collections, graduation, and other objective, measurable indicators;

(d) The distress at the site was caused or exacerbated by obsolescence, not factors within the applicant's control;

(2) The extent to which the level of need for the proposed activity and the urgency in meeting the need are documented with statistics and analyses contained in a data source(s) that is sound and reliable. To the extent that the applicant's community's Consolidated Plan and Analysis of Impediments to Fair Housing Choice (AI) identifies the level of the problem and the urgency in meeting the need, references to these documents should be included in the response. The Department will review more favorably those applicants who used these documents to identify need, when applicable.

If the proposed activity is not covered under the scope of the Consolidated Plan and Analysis of Impediments to Fair Housing Choice (AI), applicants should indicate such, and use other sound data sources to identify the level of need and the urgency in meeting the need. Types of other sources include, but are not limited to, Census reports, Continuum of Care gaps analysis, law enforcement agency crime reports, Public Housing Authorities' Five Year Comprehensive Plan, and other sound and reliable sources appropriate for the specific SuperNOFA program and activities for which an applicant is applying. For technical assistance programs, input from HUD State and Area Office(s) and assessments are included among the data sources that may be used to identify need.

(3) The PHA agrees that they are subject to the provisions found at 24 CFR part 971 and that they are required to submit a conversion plan, i.e., a plan for removal of the distressed development from the public housing inventory, in accordance with the requirements at 24 CFR 971.7(b).

Rating Factor 3: Soundness of Approach (40 Points)

This factor addresses the quality and cost-effectiveness of the applicant's proposed revitalization plan. There must be a clear relationship between the proposed activities, community needs and the purpose of the program funding for an applicant to receive points for this factor. In rating this factor, HUD will consider the extent to which:

(25 Points for Subfactors (1) through (7))

(1) There is a demonstrated considerable market for the revitalized and/or replacement units of the type and size proposed;

(2) The purposes and goals of the program for which funding is requested will be achieved within an appropriate and reasonable timeframe and program activities will result in measurable accomplishments consistent with the purposes of the program.

(3) The cost estimates of program activities:

(a) Are financially sustainable over the long run;

(b) Are developed through the use of technically competent methodologies

(c) Represent a cost-effective plan for designing, organizing and carrying out the proposed activities;

(d) Are reasonable for the work to be performed and consistent with rates established for the level of expertise required to perform the work in the proposed geographic area;

(e) Are projected to be within HUD TDC and Community and Supportive Service limits;

(f) Are reasonable relative to the cost of providing section 8 tenant-based assistance.

(4) The information and strategies described are coherent and internally consistent.

(5) The proposal will lessen concentration of low-income residents and create desegregation opportunities:

(a) The physical design of the proposed housing will significantly reduce the isolation of low-income residents and/or significantly promote mixed-income communities in well-functioning neighborhoods;

(b) Access to municipal services, job information, mentoring opportunities, transportation, and educational facilities will be increased;

(c) Operational and management principles will promote economic and social diversity;

(d) Intensive counseling will be provided to section 8 certificate or voucher holders to find housing in non-poor areas and prepare these residents for self-sufficiency;

(6) The revitalization plan proposes innovative approaches to public housing transformation.

(a) Applicants are encouraged to design forward-thinking programs that incorporate the most current sound research on planning, implementation, financing, partnerships, management, and operation of public housing and self-sufficiency and educational programs. Conventional approaches should be reserved for HUD's formula-based capital programs.

(b) Applications should have the potential to yield innovative strategies or "best practices" that can be replicated and disseminated to other organizations, including nonprofit organizations, State and local governments. HUD will assess the transferability of results in terms of model programs or lessons learned from the work performed under the award. Applicants will be required to prepare an analysis of best practices as part of their reports to HUD that may be used by HUD to inform others who may be interested in learning from the experiences gained from the work performed under awards funded through this SuperNOFA.

(7) The design of the revitalized development demonstrates an achievable effort to blend into and enrich the urban landscape;

(10 Points for Subfactors (8) through (11))

(8) Applications for Elderly Housing grants:

(a) Will create new communities for the elderly and disabled designed to meet the special needs and physical requirements of the elderly and disabled. Applicants' elderly program strategies complement their overall HOPE VI revitalization strategy.

(b) Address the issues of transportation, access to health care, security, and affordability with innovative approaches.

(c) Propose demonstration programs based on recent research and program innovations. Applicants are free, however, to propose programs that address elderly and disabled needs in the manner most appropriate for their locality.

(d) Include provisions for sustainability beyond the proposed program period.

(10 points for Subfactors (9) through (11))

(9) Applications targeted toward families propose opportunities for self-sufficiency, particularly for persons enrolled in welfare-to-work programs. The self-sufficiency plan:

(a) Demonstrates objectives that are results-oriented, with measurable goals and outcomes;

(b) Demonstrates consistency with state and local welfare reform goals;

(c) Is financially and programmatically sustainable over the long run;

(d) Is well integrated with the development process;

(e) Proposes a program that is of an appropriate scale, type, and variety of services to meet the needs of residents;

(f) Proposes resident training, self-motivation, employment, and education;

(g) Includes opportunities for economic and retail development at or near the public housing site, as appropriate.

(h) Provides commitments by service providers to provide services and/or funding;

(i) Demonstrates that relationships have been forged with local Boards of Education, institutions of higher learning, non-profit or for-profit educational institutions and public/private mentoring programs that will lead to new or improved educational facilities and improved educational achievement of children of PHA residents from birth through higher education;

(j) Identifies employers and potential employment opportunities for residents who complete community and supportive service training: and

(k) Demonstrates an effective use of technology.

(10) Residents and members of the communities to be affected by the proposed activities have had and will continue to have full and meaningful involvement in the planning and implementation of the revitalization effort:

(a) In addition to meeting the requirement for at least one public meeting to inform residents and members of the surrounding community of the revitalization plan as presented in the application submitted to HUD, the PHA has provided meaningful opportunities for participation to residents and members of the surrounding community of the meeting(s) through:

(i) Clear information about the application;

(ii) Prominent posting of information about the application and scheduled meetings in locations likely to attract notice; and

(iii) Posting of the information in adequate time to allow participants to plan to attend meetings.

(b) Residents and non-resident members of the surrounding community:

(i) Have had the opportunity to participate in the shaping of the application;

(ii) Support the activities proposed in the submitted application;

(iii) Will have opportunities for continued involvement and participation as program activities proceed.

(11) The proposed operation and management principles will accomplish all of the following goals:

(a) Achieve efficient and effective property management and maintenance through private or PHA management;

(b) Lead to a range of incomes in the targeted development including substantial numbers of working residents through effective self-sufficiency programs;

(c) Reward work and promote family stability through positive incentives such as income disregards and ceiling rents. PHAs may establish ceiling rents and may institute earned income disregards for FY 1998;

(d) Provide greater safety and security by:

(i) Instituting tough screening requirements;

(ii) Enforcing tough lease and eviction provisions;

(iii) Enhancing on-going efforts to eliminate drugs and crime from neighborhoods through collaborative efforts with local law enforcement agencies and local United States Attorneys and program policy efforts such as "One Strike and You're Out," the "Officer Next Door" initiative, or Department of Justice "Weed and Seed" programs;

(iv) Promoting healthy homes, i.e., improving the safety and security of residents through anti-crime measures and the installation of physical security or design enhancements.

(e) Promote economic and demographic diversity through a system of local preferences; and

(f) Encourage self-sufficiency by including lease requirements that promote resident involvement in the tenants association, community service, self-sufficiency, and transition from public housing.

(12) (5 Points) The Revitalization Plan will affirmatively further fair housing by actively ensuring that marketing, locations of housing, and structural accessibility of housing will encourage natural integration and discourage inappropriate concentrations of minorities in undesirable neighborhoods.

(a) Developments constructed or rehabilitated with HOPE VI funds must meet the accessibility requirements contained in various civil rights statutes

and regulations, and may receive points under this factor if they meet the visitability standards adopted by the Department that apply to those units not otherwise covered by the accessibility requirements.

(b) PHAs are encouraged to promote greater opportunities for housing choice by making at least 5% of for-sale units accessible to individuals with mobility disabilities and 2% of for-sale units accessible to individuals who have visual or hearing disabilities.

(c) Innovative designs are encouraged, particularly with respect to for-sale house configurations, which simultaneously meet accessibility requirements and achieve marketability for non-disabled households.

(d) Program activities should aid a broad diversity of eligible residents, including those that have been traditionally underserved. Efforts to increase community awareness in a culturally sensitive manner through education and outreach will also be evaluated, if applicable.

Rating Factor 4: Leveraging Resources (10 Points)

This factor addresses the ability of the applicant to secure additional resources for the proposed activities which can be combined with HUD's program resources to achieve program purposes. Resources include in-kind contributions such as staff or supplies; grants, loans, and other financing; or other types of contributions to the program activities. This factor emphasizes the importance of a PHA not just seeking endorsements and vendor relationships with others, but actively enlisting other stakeholders who are vested in the revitalization effort, including public and private non-profit and for-profit entities with experience in the development and/or management of low- and moderate-income housing, those that are skilled in the delivery of services to residents of public housing, educational institutions, foundations, banks, and other organizations. HUD will evaluate the strength of commitment articulated in letters of support.

If a PHA is also a redevelopment agency or otherwise has citywide responsibilities, HUD will consider the city's redevelopment or other functional area to be a separate partner with which the housing authority function is partnering, where appropriate.

In rating this factor, HUD will consider the extent to which:

(1) The PHA has initiated strong partnerships with entities that will provide significant, *firm* funding and other commitments if HOPE VI funds are awarded. Applicants must provide evidence of leveraging and partnerships by including in the application letters of firm commitments, memoranda of understanding, agreements to participate, or letters of support if firm commitments cannot be secured. All such documentation must include the organization's name, proposed level of commitment, and proposed responsibilities as they relate to the revitalization plan. The commitment must be signed by an official of the organization legally authorized to make commitments on behalf of the organization.

(2) The infusion of HOPE VI dollars will leverage additional resources after grant award, including municipal funds, charitable contributions, private debt and equity, and other partnerships which may not have a dollar value but are critical to the successful transformation of the development and the lives of its residents.

Rating Factor 5: Comprehensiveness and Coordination (10 Points)

This factor addresses the extent to which the applicant coordinated its activities with other known organizations, participates or promotes participation in a community's Consolidated Planning process, and is working towards addressing a need in a holistic and comprehensive manner through linkages with other activities in the community.

In rating this factor, HUD will consider the extent to which the applicant demonstrates that it has:

(1) Coordinated its proposed activities with those of other groups or organizations prior to submission in order to best complement, support and coordinate all known activities and if funded, the specific steps it will take to share information on solutions and outcomes with others. Any written agreements, memoranda of understanding in place, or that will be in place after award should be described;

(2) Taken or will take specific steps to become active in the community's Consolidated Planning process (including the Analysis of Impediments to Fair Housing Choice) established to identify and address a need/problem that is related to the activities the applicant proposes.

(3) Taken or will take specific steps to develop linkages to coordinate comprehensive solutions through meetings, information networks, planning processes or other mechanisms with:

(i) Other HUD-funded projects/activities outside the scope of those covered by the Consolidated Plan;

(ii) Civil rights organizations;

(iii) Local Area Agency on Aging, if applicable;

(iv) Local agency serving persons with disabilities, if applicable;

(v) Local Weed and Seed task force, if the targeted development is located in a designated Weed and Seed area; and

(vi) Other Federal, State or locally funded activities, including those proposed or on-going in the community.

(vii) Local law enforcement agencies and the local United States Attorney.

(C) Application Evaluation.

Awards under this HOPE VI Program section of the SuperNOFA will be made through a selection process that will award grants to the most meritorious applications.

(1) *Revitalization Applications.*

(a) HUD will preliminarily review, rate and rank each eligible application on the basis of the evaluation factors set forth in Section III(B) of this HOPE VI Program section of the SuperNOFA, above, excluding Factor 3(8), which is specific to applications proposing revitalization of elderly housing.

(b) A final review panel will assess each of the applications advanced to final review and will assign the final scores. The final review panel will review the scores of all applications:

(i) Whose preliminary score is above a base score established by HUD. HUD intends to set the base scores so that applications requesting a total of approximately $900 million are advanced to the final review stage.

(ii) That proposed revitalization activities at sites for which HOPE VI revitalization implementation applications were submitted to HUD in the FY 1997 HOPE VI revitalization competition but were not selected for funding.

(c) HUD will select for funding the most highly-rated eligible applications up to available funding, except that HUD, in its discretion, may choose to select a lower-rated approvable application over a higher-rated application in order to increase the level of national geographic diversity of applications selected under this HOPE VI Program section of the SuperNOFA.

(2) *Elderly Housing Grant Applications.*

(a) HUD will preliminarily review, rate and rank each eligible application on the basis of the evaluation factors set forth in Section III(B), above, excluding Factor 3(9), which is specific to applications proposing revitalization of family housing.

(b) A final review panel will assess each application and will assign the final scores;

(c) HUD will select for funding the most highly-rated eligible applications up to available funding.

(D) Notification of Funding Decisions.

(1) In accordance with the HUD Reform Act, HUD may not notify applicants as to whether or not they have been selected to participate until the announcement of the selection of all recipients for this HOPE VI Program under this SuperNOFA. HUD will provide written notification to all applicants.

(2) HUD's notification of award to a selected applicant will constitute a preliminary approval by HUD subject to:

(a) The completion of a subsidy layering review pursuant to 24 CFR 941.10(b);

(b) The execution by HUD and the recipient of a Grant Agreement; and

(c) A HUD environmental review. Selection for participation (preliminary approval) does not constitute approval of the proposed site. Each preliminarily-selected PHA must assist HUD in complying with environmental review procedures, conducted by HUD in accordance with 24 CFR part 50. The PHA may not acquire, rehabilitate, convert, lease, repair, or construct a property, or commit HUD or local funds to these activities, until written approval is received from the appropriate HUD Environmental Clearance Officer in its area, certifying that the proposed activities have been approved and the PHA is released from all environmental conditions. The results of the environmental review may require that proposed activities be modified or the proposed site rejected.

(E) Grant Agreement.

Because the HOPE VI Program does not have Federal regulations, upon selection for funding, HUD and the recipient will execute a Grant Agreement setting forth the amount of the grant and applicable rules, terms, and conditions, including sanctions for violation of the agreement. The Grant Agreement will set forth the precise schedules of the HOPE VI Program, provide program requirements, describe requirements for implementation of the revitalization plan, and provide any special conditions on the Grantee, as applicable. Among other things, the Grant Agreement will provide that the recipient agrees to:

(1) Carry out the program in accordance with the provisions of this NOFA, applicable law, the approved application, and all other applicable requirements, including requirements for mixed finance development, and section 202 of OCRA;

(2) Comply with such other terms and conditions, including recordkeeping and reports, as HUD may establish for the purposes of administering, monitoring, and evaluating the program in an effective and efficient manner, including full cooperation with HUD's program oversight contractor;

(3) Assemble a team to implement the HOPE VI Program that has a strong management and development track record and has the capability to commence and carry out a quality HOPE VI program. If the Grantee fails to make this demonstration to the satisfaction of HUD and its program oversight manager, HUD will direct corrective actions as a condition of retaining the grant;

(4) Execute a construction contract within 18 months (or a period specified in the Grant Agreement). Failure to obligate funds will result in the enforcement of default remedies up to and including withdrawal of funding; and

(5) Establish interim performance goals and complete the physical component of the HOPE VI revitalization within 48 months of execution of the grant agreement. The Secretary shall enforce this requirement through default remedies up to and including withdrawal of funding that the PHA has not obligated. HUD will take into consideration those delays caused by factors beyond the control of the Grantee when enforcing these schedules; and

(6) Execute an ACC Amendment for Mixed-Finance development.

(F) Failure to Proceed

In the event that an applicant selected to receive HOPE VI funding does not proceed in a manner consistent with its application, HUD may withdraw any unobligated balances of funding and make this funding available, subject to applicable law, in HUD's discretion, to the next highest ranked applicant that was not selected for funding in the most recently conducted HOPE VI selection process or combined with funding under an upcoming competitive selection process. Failure to proceed with respect to obligated funds will be governed by the terms of the Grant Agreement or ACC amendment, as applicable.

IV. Application Submission Requirements.

Each HOPE VI revitalization application must conform to the requirements of the HOPE VI Revitalization Application Kit, both in format and content. In addition to the forms, certifications and assurances required by Section II of the General Section of this SuperNOFA, each application must include the following, as directed by the application kit:

(A) A description of existing conditions that describes the extent of need for the program funds requested;

(B) Revitalization Plan which describes all revitalization activities to be funded in the application and details how the proposed work will be accomplished;

(C) For Revitalization applications, a description of plans for resident Self-Sufficiency Programs, including plans for resident consultation and documentation of resident involvement in the planning process;

(D) For Elderly Housing grant applications, a description of plans for resident services, including plans for resident consultation and documentation of resident involvement in the planning process;

(E) A proposed Management Plan which describes the capacity of the applicant and partners to carry out the plan, and proposed management principles which will be implemented to support revitalization efforts;

(F) Documentation of program financing and resources;

(G) A description of any capital funds received by the PHA within the past five years for improvement of the project, including but not limited to Modernization funding under section 14 and MROP funding.

(H) A program schedule.

(I) A certification that at least one public meeting was held to notify residents and community members of the proposed activities described in the application.

V. Corrections to Deficient Applications

The General Section of this SuperNOFA provides the procedures for corrections to deficient applications.

BILLING CODE 4210-32-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

DRUG ELIMINATION IN PUBLIC AND ASSISTED HOUSING PROGRAMS

Public Housing Drug Elimination Program (Including Youth Sports Eligible Activities)

Public Housing Drug Elimination Program -- New Approaches (Formerly Safe Neighborhood Grant Program)

Drug Elimination Grants for Multifamily Low Income Housing

Public Housing Drug Elimination Technical Assistance

billing code 4210-32-C

Funding Availability for the Public Housing Drug Elimination Program

Program Description: Approximately $288,498,934 is available in FY 1998 for the Public Housing Drug Elimination Program (PHDEP). The PHDEP provides funds for public housing authorities and tribally designated housing entities to develop and finance drug and drug-related crime elimination efforts in their developments. Funds may be used for enhancing security within the developments, making physical improvements to improve security or developing and implementing prevention, intervention and treatment programs to help curtail the use of drugs in public and Indian housing. Approximately $44.9 million in FY 1997 funds is available only for public and Indian housing authorities that have not already received an award of FY 1997 PHDEP funds.

Application Due Date: Completed applications (an original and two copies) must be submitted no later than 6:00 pm local time on June 15, 1998 at the address shown below. See the General Section of this SuperNOFA for specific procedures governing the form of application submission (e.g., mailed applications, express mail, overnight delivery, or hand carried).

Address for Submitting Applications: An original and two copies of the application must be received by the application due date at the local Field Office with delegated public or assisted housing responsibilities attention: Director, Office of Public or Assisted Housing, or, in the case of the Native American population, to the local HUD Administrator, Area Office of Native American Programs (AONAP), as appropriate.

For Application Kits, Further Information, and Technical Assistance

For Application Kits. For an application kit and any supplemental information, please call the SuperNOFA Information Center at 1–800–HUD–8929. Persons with hearing or speech impairments may call the Center's TTY number at 1–800–483–2209, or, from the local HUD Field Office HUB with delegated housing responsibilities over an applying housing agency, or from the AONAPs with jurisdiction over the Tribally Designated Housing Entity preparing an application or by calling HUD's Drug Information and Strategy Clearinghouse (DISC) at 800–578–3472. When requesting an application kit, please refer to the Public Housing Drug Elimination Program (PHDEP). Please be sure to provide your name, address (including zip code, and telephone number (including area code). The application kit contains information on all exhibits, forms, and certifications required for the PHDEP under this SuperNOFA.

For Further Information and Technical Assistance. For further information or technical assistance, please contact the local HUD Field Office HUB with delegated housing responsibilities over an applying housing agency, or from the AONAPs with jurisdiction over the Tribally Designated Housing Entity preparing an application or by calling HUD's Drug Information and Strategy Clearinghouse (DISC) at 800–578–3472.

Additional Information

I. Authority; Purpose; Amount Allocated; and Eligibility

(A) Authority

The Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 ((42 U.S.C. 11901 et. seq), as amended by section 581 of the National Affordable Housing Act of 1990 (Pub.L. 101–625, approved November 28, 1990) (NAHA), and section 161 of the Housing and Community Development Act of 1992 (Pub.L. 102–550, approved October 28, 1992 (HCDA 1992). The regulations for this program are found in 24 CFR part 761, Drug Elimination Programs.

(B) Purpose

HUD is making FY 1997 PHDEP funds available to public housing agencies (PHAs) and former Indian Housing Authorities (IHAs) (PHAs and IHAs are collectively referred to as HAs) that have not already received an award of FY 1997 PHDEP funds, and FY 1998 PHDEP funds available to PHAs and Tribally Designated Housing Entities (TDHEs) for use in eliminating drug-related crime. In FY 1998, HUD is not announcing a separate competition for the Youth Sports Program, although youth sports-type activities are eligible under "Programs to Reduce/Eliminate Drug Activities."

HUD strongly encourages housing agencies to work closely with law-enforcement agencies and target the drug elimination resources to improve safety and security in public and Indian housing communities. These resources shall be made available and leveraged with other resources focusing on violent crime and drug-related crime within public housing authorities through programs such as the Operation Safe Home Program and Operation Weed and Seed. Operation Weed and Seed, conducted through the Department of Justice, is a comprehensive multi-agency approach to combating violent crime, drug use, and gang activity in high crime neighborhoods. Through Operation Weed and Seed, the approach is to "weed" out crime from targeted neighborhoods and then "seed" the sites with a wide range of crime and drug prevention programs.

HUD encourages grantees to establish collaborative relationships with, and increase over and above existing levels, the efforts of local municipal police departments and/or other law enforcement agencies, local social and/or religious organizations, and other public and private nonprofit organizations who provide community-wide services to offer substance abuse prevention, intervention, treatment, aftercare, education, assessment, and referral programs and services for residents of public housing. The applicants shall include "One Strike and You're Out" activities underway to ensure the broadest range of tools for making and maintaining a safe residential community.

(C) Amount Allocated

(1) *FY 1998 Funding.* FY 1998 HUD Appropriations Act appropriated $310,000,000 for the Public Housing Drug Elimination Program. Of the total $310,000,000 appropriated, approximately $243,563,000 is being made available for Public Drug Elimination grants through this SuperNOFA.

(2) *FY 1997 Funding.* The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, (Pub.L. 104–204, approved September 26, 1996, (the FY 1997 HUD Appropriations Act) appropriated $290 million for the Public Housing Drug Elimination Program to remain available until expended. Approximately $250,649,052 was made available for competitive funding in a NOFA published on May 23, 1997 (62 FR 28538). HUD made 533 awards for a total of approximately $205,714,118 under that FY 1997 NOFA.

In this SuperNOFA, approximately $50 million of FY 1997 funds is being made available to housing authorities that did not receive an award under the May 23, 1997, PHDEP NOFA. Any housing authority that has already received an FY 1997 PHDEP award is not eligible to apply under this PHDEP notice for these FY 1997 funds. Housing authorities applying for FY 1997 PHDEP funding shall complete a separate proposal and budget and submit these documents in order to be considered for funding.

(3) *Maximum Grant Award Amounts.* HUD is distributing grant funds for

PHDEP under this SuperNOFA on a national competition basis. Maximum grant award amounts are computed for the Public Housing Drug Elimination Program on a sliding scale, using an overall maximum cap, depending upon the number of housing authority units.

(a) PHAs: The unit count includes rental, Turnkey III Homeownership and Section 23 leased housing bond-financed projects,

(b) IHAs and TDHEs: The unit count includes rental, Turnkey III and Mutual Help units which have not been conveyed to a homebuyer, and Section 23 lease housing bond-financed projects. Such units must be counted as Current Assisted Stock under the Indian Housing Block Grant Program.

Eligible units are those units which are under management, fully developed, and occupied. However, applicants should note that in determining the unit count for PHA-owned or Native American rental housing, a long-term vacancy unit, as defined in 990.102 or 24 CFR 950.102 (as revised May 1, 1996), is still included in the count. Applicants for Native American housing developments must certify that the targeted units were covered by an Annual Contributions Contract (ACC) on September 30, 1997. Eligible PHA projects must be covered by an ACC during the period of the grant award.

(c) *Minimum and Maximum FY 1998 grant awards.*

(i) For housing authorities and TDHEs with 1–1,250 units: the *minimum* grant award amount is $50,000 or a *maximum* grant award cap of $300.00 per unit;

(ii) For housing authorities and TDHEs with 1,251–24,999 units; the *maximum* grant award is a maximum grant award cap of $260.00 per unit;

(iii) For housing authorities and TDHEs with 24,000–49,999 units the *maximum* grant award is a maximum grant cap of $230.00 per unit; and

(iv) For housing authorities and TDHEs with 50,000 or more units; the *maximum* grant award is a maximum cap of $200.00 per unit up to, but not to exceed, a *maximum* grant award of $30 million.

(d) *Minimum and Maximum FY 1997 grant awards.*

(i) For HAs with 1–499 units: the maximum grant award amount is either $50,000 or a grant award cap of $500.00 per unit, whichever is greater;

(ii) For HAs with 500–1,249 units: the maximum grant award is either $250,000 or a maximum grant award cap of $300.00 per unit, whichever is greater;

(iii) For HAs with 1,250–49,999 units: the maximum grant award is either $375,000 or a maximum grant award cap of $250,000 per unt, whichever is greater; and

(iv) For HAs with 50,000 or more units: the maximum grant award is $200.00 per unit, not to exceed a maximum grant award of $12 million.

(D) Eligible Applicants.

Eligible entities qualified to receive grants include for FY 1998 funding public housing agencies and Tribally Designated Housing Entities (TDHEs); and for FY 1997 funding, public housing agencies and Indian housing authorities. IHAs applying for FY 1997 funding must have been eligible to apply for funding as September 30, 1997 and continue to own and/or manage the targeted developments. Resident Management Corporations (RMCs) may continue to receive funding from housing authority grantees as sub-grantees, to develop security programs and substance abuse prevention programs involving site residents as they have in the past.

(E) Eligible Activities

The following is a listing of eligible activities under this program and guidance as to their parameters (the term TDHEs includes those IHAs applying for FY 1997 funding:

(1) *Physical Improvements to Enhance Security.*

(a) Physical improvements that are specifically designed to enhance security are permitted under this program. These improvements may include (but are not limited to) the installation of barriers, speed bumps, lighting systems, fences, surveillance equipment (e.g., Closed Circuit Television (CCTV), software, fax, cameras, monitors, components and supporting equipment) bolts, locks; and the landscaping or reconfiguration of common areas so as to discourage drug-related crime in the housing authorities and development(s) proposed for funding.

(b) An activity cost that is funded under any other HUD program, such as the modernization program at 24 CFR part 968, shall not also be funded by this program. Housing authorities are encouraged to fund physical security improvements under their approved modernization programs whenever possible since the PHDEP program is designed essentially to fund "soft" costs rather than "hard" costs. The applicant must demonstrate program compliance, accountability, financial and audit controls of PHDEP funds and prevent duplication of funding any activity. Housing authorities shall not co-mingle funds of HUD multiple programs such as: CIAP, CGP, OTAR, ED/SS, TOP, IHBG, HOPE projects, Family Investment, Elderly Service Coordinator, and Operating Subsidy.

(c) Funding is not permitted for physical improvements that involve the demolition of any units in a development.

(d) Funding is not permitted for any physical improvements that would result in the displacement of persons.

(e) Funding is not permitted for the acquisition of real property.

(f) Funding is permitted for purchase or lease of house trailers used for eligible community policing, educational, employment, and youth activities.

(g) All physical improvements must also be accessible to persons with disabilities. For example, some types of locks, buzzer systems, etc. are not accessible to persons with limited strength or mobility or to persons who have hearing impairments, and should not be utilized. Accessible alternatives should be utilized. All physical improvements must meet the accessibility requirements of 24 CFR part 8.

(2) *Programs to Reduce/Eliminate the Use of Drugs (Prevention, Intervention, Treatment, Short/Long Range Structured Aftercare and Individual Support Systems).* Programs that reduce/eliminate drug-related crime "in and around" the premises of the housing authority/development(s), including substance abuse prevention, intervention, and referral programs, and programs of local social and/or religious and other organizations that provide treatment services [contractual or otherwise] for dependency/remission, and structured aftercare/support system programs, *are permitted* under this program.

The applicant must establish a confidentiality policy regarding medical and disability-related information. For purposes of this section, the goals of this program are best served by focusing resources directly upon housing authority residents and families. Successful strategies (best practices) have incorporated substance abuse prevention, intervention and treatment (dependency/remission and short and long term aftercare) activities into a "continuum of care" approach that assists persons that are using or are at-risk of using drugs and/or committing drug-related crime by providing alternative activities, such as education, training and employment development opportunities.

The applicant's goal must be to reduce/eliminate drug-related crime through a program designed to provide education, training and employment

opportunities for residents. Such programs create a prime opportunity for housing authorities to leverage resources and bring additional Federal, State, local and Tribal resources into the housing authority community. While housing authorities provide space and other infrastructure, other public or private agencies can provide staff and other resources with limited cost or no cost. Applicants are encouraged to use the PHDEP resources in this fashion.

A community-based approach requires a culturally appropriate strategy. Curricula, activities, and staff should address the cultural issues of the local community, which requires familiarity and facility with the language and cultural norms of the community. As applicable, this strategy should discuss cultural competencies associated with Hispanic, African-American, Asian, Native American or other racial or ethnic communities. Applicants are encouraged to develop a substance abuse/sobriety (remission)/ treatment (dependency) strategy to facilitate substance abuse prevention, intervention, treatment, and structured aftercare efforts, that include outreach to community resources, youth activities, and that facilitate bringing these resources onto the premises, or providing resident referrals to treatment programs or transportation to out-patient treatment programs away from the premises.

Funding Is Permitted for reasonable, necessary and justified purchasing or leasing (whichever can be documented as the most cost effective) of vehicles for grant administration, resident youth and adult education, and training and employment opportunity activities directly related to reducing/eliminating drug-related crime. Based upon the current Diagnostic and Statistical Manual (DSM) of Mental Disorders of the American Psychiatric Association dated May 1994, as it applies to substance abuse, dependency and structured aftercare, related activities and programs *are eligible* for funding under this program. For additional information regarding the DSM Manual contact APPI, 1400 K. Street, NW, Suite 1100, Washington, DC 20005 on 1 (800) 368–5777 or World Wide Web site at http://www.appi.org.

Funding Is Permitted for reasonable, necessary and justified program costs, such as meals, beverages and transportation, incurred only for training, education and employment activities, as set forth in OMB Circular A–87, directly related to reducing/ eliminating drug-related crime.

(a) *Prevention.* Prevention programs that will be considered for funding under this notice should provide a comprehensive prevention approach for the housing authority resident(s) that addresses the individual resident and his or her relationship to family, peers, and the community and that reduces/ eliminates drug-related crime. Prevention programs should include activities designed to identify and change the factors present in housing authorities that lead to drug-related crime, and thereby lower the risk of drug usage. Many components of a comprehensive approach, such as refusal and restraint skills training programs or drug, substance abuse/ dependency, and family counseling, may already be available in the community of the applicant's housing developments.

(i) *Educational Opportunities.* Providing young people with the working knowledge and skills they need to reject illegal drugs has been identified by the Office of National Drug Control Policy as one of the top five goals and objectives to address in its 10-Year Strategy Commitment. The causes and effects of illegal drug/substance abuse must be discussed in a culturally appropriate and structured setting. Grantees may contract (in accordance with 24 CFR 85.36) with professionals to provide such knowledge and skills with training programs or workshops. The professionals contracted to provide these services shall be required to base their services upon the needs assessment and program plan of the grantee. These educational opportunities may be a part of resident meetings, youth activities, or other gatherings of public and Indian housing residents.

(ii) *Family and Other Support Services.* For purposes of this section, the term "supportive services" means services to provide housing authority families with access to prevention, educational and employment opportunities, such as: child care; employment training; computer skills training; remedial education; substance abuse counseling; assistance in the attainment of certification of high school equivalency; and other services to reduce drug-related crime. In addition, substance abuse and other prevention programs must demonstrate that they will provide directly, or otherwise make available, services designed to distribute substance/drug education information, to foster effective parenting skills, and to provide referrals for treatment and other available support services in the housing development or the community for housing authority families.

(iii) *Adult and Youth Services.* Prevention programs must demonstrate that they have included groups composed of young people as a part of their prevention programs. These groups should be coordinated by adults with the active participation of youth to organize youth leadership, sports, recreational, cultural and other activities involving housing authority youth. The dissemination of information designed to reduce drug-related crime, such as prevention programs, employment opportunities; employment training; literacy training; computer skills training; remedial education; substance abuse and dependency/ remission counseling; assistance in the attainment of certification of high school equivalency; and other appropriate services and the development of peer leadership skills and other prevention activities must be a component of youth services.

(iv) *Economic and Educational Opportunities for Resident Adult and Youth Activities.* Prevention programs must demonstrate a capacity to provide housing authority residents the opportunities for interaction with, or referral to, established higher education or vocational institutions with the goal of developing or building on the residents' skills to pursue educational, vocational and economic goals. Programs such as computer learning centers for both adults and youth, employment service centers coordinated with Federal, Tribal, State and local employment offices, and micro-business centers *are eligible* under this program.

The application should demonstrate that the proposed activities will provide housing authority residents the opportunity to interact with private sector businesses in their immediate and surrounding communities for the same desired goals. Economic and educational opportunities for residents and youth activities should be discussed in the context of "welfare to work" and related Federal, Tribal, State and local government efforts for employment training, education and employment opportunities related to "welfare to work" goals.

Limited educational scholarships *are permitted* under this section. No one individual award may exceed $500.00, and there is a total maximum scholarship program cap of $25,000. Educational scholarship FY 1997 PHDEP funds must be obligated and expended during the term of the grant. The applicant must demonstrate in its plan and timetable the scholarship strategy; the financial and audit controls that will be used; and projected outcomes. Student financial assistance

is permitted for individual public and Indian housing scholarship activities. These activities must be reasonable, necessary and justified.

(b) *Intervention.* The aim of intervention is to provide housing authority residents substance abuse/dependency remission services, and assist them in modifying their behavior and maintaining remission, and in obtaining early substance abuse, treatment and structured aftercare, if necessary.

(c) *Substance Abuse/Dependency Treatment.*

(i) Treatment funded under this program should be "in and around" the premises of the housing authority/development(s) proposed for funding. HUD has defined the term "in and around" to mean within, or adjacent to, the physical boundaries of a public or Indian housing development. The intent of this definition is to make certain that program funds and program activities are targeted to benefit, as directly as possible, public and Indian housing developments, the intended beneficiaries of PHDEP. The goals of this program are best served by focusing its resources directly upon the residents of housing authorities and development(s). The applicant must establish a confidentiality policy regarding medical and disability-related information.

(ii) Funds awarded under this program shall be targeted towards the development and implementation of sobriety maintenance, substance-free maintenance support groups, substance abuse counseling, referral treatment services and short or long range structured aftercare, or the improvement of, or expansion of, such program services for housing authority residents.

(iii) Each proposed drug program must address, but is not limited to, the following goals:

(*1*) Increase resident accessibility to treatment services;

(*2*) Decrease drug-related crime "in and around" the housing authority/development(s) by reducing and/or eliminating drug use among residents; and

(*3*) Provide services designed for youth and/or adult drug abusers and recovering addicts, e.g., prenatal and postpartum care, specialized family and parental counseling, parenting classes, or other supportive services such as domestic or youth violence counseling.

(iv) Independent approaches that have proven effective with similar populations will be considered for funding. Applicants must consider in the overall strategy the following criteria:

(*1*) Formal referral arrangements to other treatment programs in cases where the resident is able to obtain treatment costs from sources other than this program.

(*2*) Family/youth counseling.

(*3*) Linkages to educational and vocational training and employment counseling.

(*4*) Coordination of services from and to appropriate local substance abuse/treatment agencies, HIV-related service agencies, mental health and public health programs.

(v) As applicable, applicants must demonstrate a working partnership with the Single State Agency or local, Tribal or State license provider or authority with substance abuse program(s) coordination responsibilities to coordinate, develop and implement the substance dependency treatment proposal.

(vi) Applicants must demonstrate that counselors (contractual or otherwise) meet Federal, State, Tribal, and local government licensing, bonding, training, certification and continuing training re-certification requirements.

(vii) The Single State Agency or authority with substance abuse and dependency programs coordination responsibilities must certify that the proposed program is consistent with the State plan; and that the service(s) meets all Federal, State, Tribal and local government medical licensing, training, bonding, and certification requirements.

(viii) Funding is permitted for drug treatment of housing authority residents at local in-patient medical (contractual or otherwise) treatment programs and facilities. PHDEP funding for structured in-patient drug treatment under PHDEP funds is limited to 60 days, and structured drug out-patient treatment, which includes individual/family aftercare, is limited to 6 months. The applicant must demonstrate how individuals that complete drug treatment will be provided employment training, education and employment opportunities related to "welfare to work," if applicable.

(ix) Funding is permitted for detoxification procedures designed to reduce or eliminate the short-term presence of toxic substances in the body tissues of a patient.

(x) Funding is not permitted for maintenance drug programs. Maintenance drugs are medications that are prescribed regularly for a short/long period of supportive therapy (e.g. methadone maintenance), rather than for immediate control of a disorder.

(xi) All activities described in this section I.(E)(8) of this PHDEP notice to reduce/eliminate the use of drugs and reduce/eliminate drug-related crime should demonstrate efforts to coordinate with Federal, Tribal, State and local employment training and development services, "welfare to work" efforts, or other new "welfare reform" efforts related to education, training and employment of housing authority residents receiving Federal, Tribal, State or local assistance, in public and Indian housing authorities/development(s).

(xii) Funding is permitted to contractually hire organizations and/or consultant(s) to conduct independent assessments and evaluations of the effectiveness of the PHDEP program.

(3) *Resident Management Corporations (RMCs), Resident Councils (RCs), and Resident Organizations (ROs).* Funding under this program is permitted for housing authorities' RMCs and incorporated RCs and ROs to develop security and substance abuse prevention programs involving site residents. Such programs may include (but are not limited to) voluntary tenant patrol activities, substance abuse education, intervention, and referral programs, youth programs, and outreach efforts. For the purposes of this Section I(E)(9) of this PHDEP section of the SuperNOFA. The elimination of drug-related crime within housing authorities/developments requires the active involvement and commitment of public housing residents and their organizations.

To enhance the ability of housing authorities to combat drug-related crime within their developments, Resident Councils (RCs), Resident Management Corporations (RMCs), and Resident Organizations (ROs) will be permitted to undertake program management functions specified in this part, notwithstanding the otherwise applicable requirements of 24 CFR parts 1000 and 964. In order to implement the approved activity, the housing authority shall be the grantee and enter into a sub-contract with the RMC/RC/RO setting forth the amount of funds, applicable terms, conditions, financial controls, payment mechanism schedule, performance and financial report requirements, special conditions, including sanctions for violation of the agreement, and monitoring.

Expenditures for activities under this section will not be incurred by the housing authority (grantee) and/or funds will not be released by the local HUD Field Office until the grantee has met all of the above requirements. Activities described in this PHDEP section of the SuperNOFA should demonstrate efforts to coordinate with Federal, Tribal, State and local employment training and development services, "welfare to

work" efforts, or other new but related "welfare reform" efforts related to education, employment training and employment of housing authority residents receiving Federal, Tribal, State or local assistance.

(4) *Employment of HA Security Personnel.* Employment of HA security personnel *is permitted* under this section. Employment of security personnel is divided into two categories: security personnel services, and housing authority police departments. The following requirements apply to all employment of security personnel activities funded under this PHDEP section of the SuperNOFA:

(a) *Compliance.* Security guard personnel and public housing authority police departments funded under this PHDEP section of the SuperNOFA must meet, and demonstrate compliance with, all relevant Federal, State, Tribal or local government insurance, licensing, certification, training, bonding, or other similar law enforcement requirements.

(b) *Law Enforcement Service Agreement.* The applicant and the local law enforcement agency, and if relevant, the contract provider of security personnel services, are required to enter into a law enforcement service agreement, in addition to the housing authority's cooperation agreement, that describes the following:

(i) The activities to be performed by security guard personnel or the public housing authority police department; the scope of authority, written policies, procedures, and practices that will govern security personnel or public housing authority police department performance (i.e., a policy manual and how security guard personnel or the public housing authority police department shall coordinate activities with the local law enforcement agency;

(ii) The types of activities that the approved security guard personnel or the public housing authority police department are expressly prohibited from undertaking.

(c) *Policy Manual.* Security guard personnel services and public housing authority police departments funded under this PHDEP section of the SuperNOFA shall be guided by a policy manual that directs the activities of its personnel and contains the policies, procedures, and general orders that regulate conduct and describe in detail how jobs are to be performed. The policy manual must exist before execution of the grant agreement. The housing authority shall ensure all security guard personnel and housing authority police officers are trained, at a minimum, in the following areas that must be covered in the policy manual: use of force, resident contacts, enforcement of HA rules, response criteria to calls, pursuits, arrest procedures, reporting of crimes and workload, feedback procedures to victims, citizens' complaint procedures, internal affairs investigations, towing of vehicles, authorized weapons and other equipment, radio procedures internally and with local police, training requirements, patrol procedures, scheduling of meetings with residents, reports to be completed, record keeping and position descriptions on all personnel, post assignments, monitoring, and self-evaluation program requirements.

(d) *Data Management.* A daily activity and incident complaint form approved by the housing authority must be used by security personnel and officers funded under this PHDEP section of the SuperNOFA for the collection and analysis of criminal incidents and responses to service calls. Security guard personnel and housing authority police departments funded under this PHDEP section of the SuperNOFA must establish and maintain a system of records management for the daily activity and incident complaint forms that appropriately ensures the confidentially of personal criminal information. Management Informational Systems (MIS) (computers, software, and associated equipment) and management personnel in support of these activities are eligible for funding.

(5) *Security Personnel Services.* Contracting for, or direct housing authority employment of, security personnel services in and around housing development(s) *is permitted* under this program. Contracts for security personnel services must be awarded on a competitive basis.

(a) *Eligible Services—Over and Above.* Security guard personnel funded by this program must perform services that are over and above those usually performed by local municipal law enforcement agencies on a routine basis. Eligible services may include patrolling inside buildings, providing personnel services at building entrances to check for proper identification, or patrolling and checking car parking lots for appropriate parking decals.

(b) *Employment of Residents.* Housing authorities *are permitted* and encouraged to demonstrate in plans the employment of qualified resident(s) as security guard personnel, and/or to contract with security guard personnel firms that demonstrate in a proposed contract a program to employ qualified residents as security guard personnel. An applicant's program of eliminating drug-related crime should promote "welfare to work" in housing authorities and development(s).

(6) *Employment of Personnel and Equipment for HUD Authorized Housing Authority Police Departments.* Funding for equipment and employment of housing authority police department personnel *is permitted* for housing authorities that already have their own public housing authority police departments. The below-listed twelve (12) housing authorities have been identified by HUD as having eligible public housing police departments/agencies under the FY 1998 PHDEP:

Baltimore Housing Authority and Community Development, Baltimore, MD
Boston Housing Authority, Boston, MA
Buffalo Housing Authority, Buffalo, NY
Chicago Housing Authority, Chicago, IL
Cuyahoga Metropolitan Housing Authority, Cleveland, OH
Housing Authority of the City of Los Angeles, Los Angeles, CA
Housing Authority of the City of Oakland, Oakland, CA
Philadelphia Housing Authority, Philadelphia, PA
Housing Authority of the City of Pittsburgh, Pittsburgh, PA
Waterbury Housing Authority, Waterbury, CT
Virgin Islands Housing Authority, Virgin Islands
District of Columbia Housing Authority, Washington, DC

(a) On September 22, 1995, HUD issued Notice PIH 95–58 (Guidelines for Creating, Implementing and Managing Public Housing Authority Police Departments in Public Housing Authorities). This notice identifies the prerequisites for creating public housing police departments and provides guidance regarding technical assistance to housing authorities to assist in making decisions regarding public housing security, analysis of security needs, and performance measures and outcomes.

(b) Housing authorities that have established their own public housing authority police departments, but are not included on this list, shall file a written request to be recognized by HUD as a public housing authority police department by contacting the Office of the Deputy Assistant Secretary for Assisted Housing Delivery, Public and Indian Housing, Department of Housing and Urban Development, Room 4126, 451 Seventh Street, SW, Washington, D.C. 20410. This request must be submitted and approved by HUD prior to the submission of the FY 1998 PHDEP application.

(c) An applicant seeking funding for this activity must describe the current level of local law enforcement agency baseline services being provided to the housing authority/development(s) proposed for assistance. Local law enforcement baseline services are defined as ordinary and routine services provided to the residents as a part of the overall city and county-wide deployment of police resources, to respond to crime and other public safety incidents, including: 911 communications, processing calls for service, routine patrol officer responses to calls for service, and investigative follow-up of criminal activity.

(d) Applicants for funding of housing authority public housing authority police department officers must have car-to-car (or other vehicles) and portable-to-portable radio communications links between public housing authority police officers and local municipal law enforcement officers to assure a coordinated and safe response to crimes or calls for services. The use of scanners (radio monitors) is not sufficient to meet the requirements of this section. Applicants that do not have such links must submit a plan and timetable for the implementation of such communications links, which is an activity eligible for funding. A housing authority funded under the FY 1994, 1995, 1996 and/or 1997 PHDEP for public housing police departments shall demonstrate in its plan what progress has been made in implementing its communications links. HUD will monitor results of the housing authority's plan and timetable.

(e) Public housing authority police departments funded under this program that are not employing a community policing concept must submit a plan and timetable for the implementation of community policing. A housing authority funded under the FY 1994, 1995, 1996 or 1997 PHDEP for public housing police departments shall demonstrate in its plan what progress has been made in implementing its community policing program. HUD will monitor results of the housing authority's plan and timetable.

(i) Community policing has a variety of definitions; however, for the purposes of this program, it is defined as follows: Community policing is a method of providing law enforcement services that stresses a partnership among residents, police, schools, churches, government services, the private sector, and other local, State, Tribal, and Federal law enforcement agencies to prevent crime and improve the quality of life by addressing the conditions and problems that lead to crime and the fear of crime.

(ii) This method of policing involves a philosophy of proactive measures, such as foot patrols, bicycle patrols, motor scooters patrols, KOBAN activities (community police officers who operate through community-based facilities in housing authorities (e.g., community center, police mini-station) providing human resource activities with inner-city youth who demonstrate high risk behaviors which can lead to drug-related crime), and citizen contacts. For additional information regarding KOBAN community policing contact Marvin Klepper, (202) 708–1197, extension 4229. This concept empowers police officers at the beat and zone level and residents in neighborhoods in an effort to: reduce crime and fear of crime; assure the maintenance of order; provide referrals of residents, victims, and the homeless to social services and government agencies; assure feedback of police actions to victims of crime; and promote a law enforcement value system on the needs and rights of residents.

(f) Housing authority police departments funded under this program that are not nationally or state accredited must submit a plan and timetable for such accreditation. Housing authorities may use either their State accreditation program, if one exists, or the Commission on Accreditation for Law Enforcement Agencies (CALEA) for this purpose. Use of grant funds for public housing police department accreditation activities *is permitted*. Housing authorities receiving grants for funding (public housing police departments) are required to hire a public housing police department accreditation specialist to manage the accreditation program. Housing authority police departments must submit a plan and timetable in order to be funded for this activity. Any public housing police department funded under the FY 1994, 1995, 1996 or 1997 PHDEP shall demonstrate in its plan what progress has been made in implementing its accreditation program and the projected date of accreditation. HUD will monitor results of the housing authority's plan and timetable. Future funding will be based on an evaluation its accreditation status and accomplishments to maintain its accreditation status.

(g) Housing authorities that have been identified by HUD as having authorized public housing police departments *are permitted* to use PHDEP funds to purchase or lease any law enforcement clothing or equipment, such as, vehicles, uniforms, ammunition, firearms/weapons, police vehicles; including cars, vans, buses, and protective vests, or any other equipment that supports their crime prevention and security mission. Housing authorities not identified by HUD as having an authorized public housing police department *are not permitted to use PHDEP funds* to directly purchase any clothing or equipment for use by local municipal police departments and/or other law enforcement agencies.

(7) *Reimbursement of Local Law Enforcement Agencies for Additional (Supplemental—Over and Above Local Law Enforcement Baseline Services) Security and Protective Services.* Additional (supplemental) security and protective services *are permitted* under this program, but such services must be over and above the local police department's current level of baseline services. Housing authorities and TDHEs are required to identify the level of local law enforcement services that they are required to receive pursuant to their local cooperation agreements, as well as the current level of services being received. For purposes of PHDEP section of the SuperNOFA, local police department baseline services are defined as ordinary and routine services, including patrols, police officer responses to 911 communications and other calls for service, and investigative follow-up of criminal activity, provided to housing authority residents as a part of the overall deployment of police resources by the local jurisdiction in which the housing authority is located.

(8) *Employment of Investigators.* Employment of and equipment for one or more individuals *is permitted* under this program to investigate drug-related crime "in and around" the real property comprising any housing authority's development(s) and provide evidence relating to any such crime in any administrative or judicial proceedings.

(a) Housing authorities that employ investigators funded by this program must meet and demonstrate compliance with all relevant Federal, Tribal, State or local government insurance, licensing, certification, training, bonding, or other similar law enforcement requirements.

(b) The housing authority and TDHE (grantee), and the provider of the investigative services are required to enter into and execute a written agreement that describes the following:

(i) The nature of the activities to be performed by the housing authority investigators, their scope of authority, reports to be completed, established policies, procedures, and practices that will govern their performance (i.e., a Policy Manual and how housing authority investigators will coordinate their activities with local, State, Tribal,

and Federal law enforcement agencies); and

(ii) The types of activities that the housing authority investigators are expressly prohibited from undertaking.

(c) Under this section, reimbursable costs associated with the investigation of drug-related crimes (e.g., travel directly related to the investigator's activities, or costs associated with the investigator's testimony at judicial or administrative proceedings) may only be those directly incurred by the investigator.

(d) Housing authority and TDHE investigator(s) shall report on drug-related crime and other part I and part II crimes in the housing authority and developments. Housing authorities shall establish, implement and maintain a system of records management that ensures confidentiality of criminal records and information. Housing authority-approved activity forms must be used for the collection, analysis and reporting of activities by housing authority investigators funded under this section. Management Information Systems (MIS) (Computers, software, hardware, and associated equipment) and management personnel are encouraged and are eligible program expenses in support of a housing authority's crime and workload data collection activity and its crime prevention and security mission.

(e) Funding is permitted for housing authority investigator(s) to use PHDEP funds to purchase or lease any law enforcement clothing or equipment, such as vehicles, uniforms, ammunition, firearms/weapons, or vehicles; including cars, vans, buses, protective vests, and any other supportive equipment, to support the activities of the investigators.

(f) Expenditures for activities under this section will not be incurred by the housing authority (grantee) and funds will not be released by the local HUD Field Office until the grantee has met all of the above requirements.

(9) *Voluntary Tenant Patrols.* Active voluntary tenant patrol activities, to include purchase of uniforms, equipment and related training, *are permitted* under this section. For the purposes of this section, the elimination of drug-related crime within and around the housing authority/development(s) requires the active involvement and commitment of residents and their organizations.

(a) The provision of training and equipment (including uniforms) for use by voluntary tenant patrols acting in cooperation with officials of local law enforcement agencies is permitted under this program. Members must be volunteers and must be residents of the housing authority's development(s). Voluntary tenant patrols established under this program are expected to patrol in the housing authority's development(s) proposed for assistance, and to report illegal activities to appropriate housing authority staff, and local, State, Tribal, and Federal law enforcement agencies, as appropriate. Housing authorities are required to obtain liability insurance to protect themselves and the members of the voluntary tenant patrol against potential liability for the activities of the patrol under this program. The cost of this insurance is an eligible program expense.

(b) The housing authority (grantee) and cooperating local law enforcement agency, and the members of the voluntary tenant patrol are required, prior to expending any grant funds, to enter into and execute a written housing authority/local municipal police department agreement that describes the following:

(i) The nature of the activities to be performed by the voluntary tenant patrol, the patrol's scope of authority, assignment, the established policies, procedures, and practices that will govern the voluntary tenant patrol's performance and how the patrol will coordinate its activities with the law enforcement agency;

(ii) The types of activities that a voluntary tenant patrol is expressly prohibited from undertaking, including, but not limited to, the carrying or use of firearms or other weapons, nightstick, clubs, handcuffs, or mace in the course of their duties under this program;

(iii) The initial and follow-up voluntary tenant patrol training the members receive from the local law enforcement agency (training by the local law enforcement agency is required before putting the voluntary tenant patrol into effect); and

(iv) Voluntary tenant patrol members must be advised that they may be subject to individual or collective liability for any actions undertaken outside the scope of their authority and that such acts are not covered under a housing authority's liability insurance.

(c) Uniforms, communication and related equipment eligible for funding under this program shall be reasonable, necessary, justified and related to the operation of the voluntary tenant patrol and must be otherwise permissible under local, State, Tribal, or Federal law.

(d) Under this program, bicycles, motor scooters, all season uniforms and associated equipment to be used, exclusively, by the members of the housing authority's voluntary tenant patrol *are eligible items.* Voluntary tenant patrol uniforms and equipment must be identified with specific housing authority/development(s) identification and markings.

(e) PHDEP grant funds shall not be used for any type of financial compensation, such as any full-time wages or salaries for voluntary tenant and/or patrol participants. Funding for housing authority personnel or resident(s) to be hired to coordinate this activity is permitted.

(F) Ineligible Activities

PHDEP funding *is not permitted* for any of the activities listed below, unless otherwise specified in this PHDEP section of the SuperNOFA.

(1) Costs incurred before the effective date of the grant agreement (Form HUD–1044), including, but not limited to, consultant fees related to the development of an application or the actual writing of the application.

(2) The purchase of controlled substances for any purpose. Controlled substance shall have the meaning provided in section 102 of the Controlled Substance Act (21 U.S.C. 802).

(3) Compensation of informants, including confidential informants. These should be part of the baseline services provided and budgeted by local law enforcement agencies.

(4) Direct purchase or lease of any law or military enforcement clothing or equipment, such as vehicles, including cars, vans, buses, uniforms, ammunition, firearms/weapons, protective vests, and any other supportive equipment. Exceptions are public housing police departments, and investigator activities listed in this NOFA.

(5) Wages or salaries for voluntary tenant patrol participants. Housing authorities and TDHEs *are permitted* to fund housing authority/resident coordinator(s) to be hired for this activity. Staffing must be reasonable, necessary and justified. Excessive staffing *is not permitted.*

(6) Construction of any facility space in a building or unit, although *funding is permitted* for the costs of retrofitting/modifying existing building space owned by the housing authorities and TDHEs for eligible activities/programs such as: community policing mini-station operations, adult/youth education, and employment training facilities. The goal of this funding is to reduce/eliminate drug-related crime and form partnerships with Federal, Tribal, State and local government resources.

Program costs *are permitted* if shared among other HUD programs. The applicant must demonstrate the use of program compliance, accountability, financial and audit controls of PHDEP funds and controls to prevent duplicate funding of any activity. Housing authorities shall not co-mingle funds of multiple programs such as CIAP, CGP, OTAR, TOP, EDSS, IHBG, Family Investment Center, Elderly Service Coordinators, and Operating Subsidy. House trailers of any type that are not designated as a building *are eligible items* for purchase or lease for specific community policing, educational, employment, and youth activities.

(7) Organized fund raising, advertising, financial campaigns, endowment drives, solicitation of gifts and bequests, rallies, marches, community celebrations and similar expenses.

(8) Costs of entertainment, amusements, or social activities and for the expenses of items such as meals, beverages, lodgings, rentals, transportation, and gratuities related to these ineligible activities. However, under Section I.(E)(8) of this PHDEP notice, funding *is permitted* for reasonable, necessary and justified program costs, as defined in OMB Circular A–87, such as meals, beverages and transportation, incurred only for prevention programs, employment training, education and youth activities directly related to reducing/eliminating drug-related crime.

(9) Costs (such as court costs and attorneys fees) related to screening or evicting residents for drug-related crime. However, housing authority and TDHE investigators funded under this program may participate in judicial and administrative proceedings as provided in and listed under section I.(E)(5) (Employment of Investigator(s)), of this NOFA.

(10) Although participation in activities with Federal drug interdiction or drug enforcement agencies *is encouraged*, the transfer of PHDEP grant funds to any Federal agency.

(11) Establishment of councils, resident associations, resident organizations, and resident corporations since HUD funds these activities under a separate NOFA.

(12) Indirect costs as defined in OMB Circular A–87 *are not permitted under this program* (only direct costs are permitted).

(13) Supplant existing positions/activities. For purposes of the PHDEP, supplanting is defined as "taking the place of or to supersede".

(14) The PHDEP is targeted by statute at controlled substances as defined at section 102 of the Controlled Substances Act (21 U.S.C. 802). Since alcohol is a legal substance, alcohol-exclusive activities and programs *are not eligible* for funding under this NOFA, although activities and programs may address situations of multiple abuse involving controlled substances and alcohol.

Eligible Activities for the Youth Sports Program. (1) Any qualified entity that receives a grant may use the funds to assist in carrying out a youth sports program in the following manner:

(2) Provision of public services, including salaries and expenses for staff or youth sports programs and cultural activities, educational programs relating to drug abuse, and sports and recreation equipment.

(a) Non-profit programs that have partnered with housing authorities that provide scheduled organized sports competitions, cultural, educational, recreational, or other activities designed to involve public housing youth as alternatives to drug related criminal activity are eligible activities. Examples include but are not limited to professional sports and/or national prevention organizations for youth, nationally and locally recognized youth programs such as Boys and Girls Clubs, YMCAs, YWCAs, Scouts, National Association of Midnight Basketball Leagues, national or local sports figures, etc.

(b) The purchase of recreational equipment to be used by program participants is permitted under this program.

(c) Cultural and recreational activities, such as ethnic heritage classes, art, dance, drama and music appreciation and instruction programs are eligible Youth Sports Program activities.

(d) Youth leadership skills training for program participants is permitted under this program. These activities must be designed to involve youth in peer leadership roles in the implementation of program activities, for example, as team or activity captains, counselors to younger program participants, assistant coaches, and equipment or supply managers. Grantees may contract with youth trainers to provide services which may include training in peer pressure reversal, resistance or refusal skills, life skills, goal planning, parenting skills, and other relevant topics.

(e) Transportation costs directly related to youth sports activities (for example, leasing a vehicle to transport a youth sports team to a game) are eligible program expenses and liability insurance costs directly related to youth sports activities are eligible program expenses.

II. Program Requirements

In addition to the program requirements listed in the General Section of this SuperNOFA, applicants are subject to the following requirements:

(A) Threshold Requirements

Housing authorities applying for PHDEP funds are required to submit the following threshold information:

(1) Applicants must submit a program plan/evaluation specifically demonstrating how the activities under this program will be evaluated. This is an eligible expense.

(2) A description of how PHDEP resources will be used to establish collaborative relationships with, and increase over and above existing levels, the efforts of local municipal police departments and/or other law enforcement agencies, local social and/or religious organizations, and other public and private nonprofit organizations who provide community-wide services to offer substance abuse prevention, intervention, treatment, aftercare, education, assessment, and referral programs and services.

(3) A discussion, in their comprehensive anti-crime strategies, of how the proposed PHDEP drug and crime prevention activities will be coordinated with larger Empowerment and Enterprise Zone strategies and Welfare Reform efforts, especially in the areas of training and employment of PHA residents. The PHDEP application may include specific opportunities for resident employment and training with such activities as contracting or hiring of residents as security guard personnel, housing authority police officers, and for referrals to employment and training opportunities. The applicant must demonstrate how the employment and training qualifies as an eligible activity. PHDEP applicants should coordinate with Federal, Tribal, State and local agencies to increase employment and training opportunities for low-income residents, and thereby decrease drug-related crime. Many communities are already developing and providing such services, and housing authorities are strongly encouraged to provide community facility space to allow the provision of these services for residents living "in and around" housing authorities.

(4) A description of how the applicant plans to increase the use of housing authority community facilities, and bring back a community focus to housing authority properties. Expenses related to community policing; police mini-stations; and resident training,

substance abuse prevention, intervention, treatment, structured aftercare, and other human resources programs that comply with the requirements of this program are eligible program expenses. HUD encourages applicants to use housing authority community facilities in all eligible PHDEP activities. Community policing, resident training, substance abuse prevention, intervention and treatment (dependency, structured aftercare, and support systems) are all activities most effectively implemented in housing authority community facilities. While all PHDEP activities must be carried out "in and around" housing authorities, often the use of the community facilities is taken for granted, and not considered when planning effective implementation of PHDEP activities. HUD encourages applicants to consider current and future use of their community facilities for eligible activities, and to incorporate a strategy regarding facilities for on-site service delivery.

(5) As applicable, incorporate "One Strike and You're Out" elements in applications to ensure PHAs have available the broadest range of tools for making and maintaining a safe residential community. "One Strike and You're Out" activities in applications may be eligible program expenses but to qualify as eligible activities, they must be included in the plan to address the crime problem in public and Indian housing developments required by this PHDEP section of the SuperNOFA. Factors related to the One Strike initiative, such as screening applicants and lease enforcement, are addressed in this PHDEP section of the SuperNOFA. As a part of the Public Housing Management Assessment Program (PHMAP), PHA performance will be measured, in part, by PHMAP indicator #8, "Security", which was included in the revised PHMAP rule published on December 30, 1996, (61 FR 68894). Any successful, comprehensive anti-crime strategy in public housing only (PHMAP does not apply to Indian housing) should address the elements of the PHMAP security indicator: tracking and reporting crime-related problems, screening applicants, enforcing lease requirements, and stating and achieving anti-crime strategies/goals in appropriate HUD grant programs.

(B) Affirmatively Furthering Fair Housing

The first two sentences of the requirement in Section II(D) of the General Section of this SuperNOFA do not apply to this program.

III. Application Selection Process.

(A) Rating and Ranking

Applications will be evaluated competitively and ranked against all other applicants that have applied for Drug Elimination grants. HUD will review each application to determine that it meets the requirements of this SuperNOFA and to assign points in accordance with the rating factors.

HUD will select and fund the highest ranking applications based on score, and continue the process until all funds allocated to it have been awarded or to the point where there are insufficient acceptable applications for which to award funds.

In the event of a tie, HUD will select the highest ranking application that can be fully funded. In the event that two eligible applications receive the same score, and both cannot be funded because of insufficient funds, the applicant with the highest score in rating factor two will be funded. If rating factor two is scored identically, the scores in rating factors one and four will be compared in that order, until one of the applications receives a higher score. If both applications still score the same then the application which requests the least funding will be selected in order to promote the more efficient use of resources. Each application submitted will be evaluated on the basis of the selection criteria set forth below.

(B) Factors for Award to Evaluate and Rank Applications

The factors for rating and ranking applicants and maximum points for each factor, are provided below. The maximum number of points for this program is 102. This includes two EZ/EC bonus points, as described in the General Section of the SuperNOFA.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (20 Points).

This factor addresses the extent to which the applicant has proper organizational resources necessary to successfully implement the proposed activities in a timely manner. The rating of the "applicant" or the "applicants organization and staff" for technical merit or threshold compliance, unless otherwise specified, will include any subcontractors, consultants, sub-recipients, and members of consortia which are firmly committed to the project. In rating this factor, HUD will consider the following:

(1) The knowledge and experience of the staff and administrative capability to manage grants, including administrative support functions, procurement, lines of authority, and fiscal management capacity.

(a) For PHAs (and TDHEs that had previously applied as IHAs), HUD will consider such measurement tools as PHMAP, uniform crime index, physical inspections, agency monitoring of records, Line of Credit Control System Reports (LOCCS), audits and such other relevant information available to HUD on the capacity of the owner or manager to undertake the grant.

(b) For owners of multifamily housing, HUD will consider the most recent Management Review (including Rural Development Management Review), HQS review, State Agency review and such other relevant information available to HUD on the capacity of the owner or manager to undertake the grant.

(c) A description of established performance goals to define the results expected to be achieved by all major grant activities proposed in the grant application, and a description of the goals expressed in an objective, quantifiable, and measurable form. The goals must be outcome or result-oriented and not out-put related. Outcomes include accomplishments, results, impact and the ultimate effects of the program on the drug or crime problem in the target/project area.

(2) The applicant's performance in administering Drug Elimination funding in the previous 5 years.

(a) For PHAs the applicant's past experience will be evaluated in terms of their ability to attain demonstrated measurable progress in tracking drug related crime, enforcement of screening and lease procedures in implementation of the "One Strike and You're Out Initiative" (as applicable), the extent to which the applicant has formed a collaboration with Tribal, State and local law enforcement agencies and courts to gain access to criminal conviction records of applicants to determine their suitability for residence in public housing. Such data will be measured and evaluated based on the Public Housing Management Assessment Program at 24 CFR part 901.

(b) The applicant must identify their participation in HUD grant programs within the preceding three years and discuss the degree of the applicant's success in implementing and managing program implementation, timely drawdown of funds, timely submission of required reports with satisfactory outcomes related to the plan and timetable, audit compliance, whether there are any unresolved findings from prior HUD reports (e.g. performance or finance) reviews of audits undertaken

by HUD, the Office of Inspector General, the General Accounting Office or independent public accountants.

(3) Submission of evidence that applicants have initiated other efforts to reduce drug-related crime by working with Operation Safe Home, SNAP, Weed and Seed, or tenant and/or law enforcement groups.

(4) The applicant's performance in administering other Federal, State or local grant programs.

Rating Factor 2: Need/Extent of the Problem (25 Points)

This factor addresses the extent to which there is a need for funding the proposed program activities to address a documented problem in the target area (i.e., the degree of the severity of the drug-related crime problem in the project proposed for funding). In responding to this factor, applicants will be evaluated on the extent to which a critical level of need for the proposed activities is explained and an indication of the urgency of meeting the need in the target area. Applicants must include a description of the extent and nature of drug-related crime "in or around" the housing units or developments proposed for funding.

Applicants will be evaluated on the following:

(1) (15 points) "Objective Crime Data" relevant to the target area. For objective crime data, an applicant can be awarded up to 15 points. Such data should consist of verifiable records and not anecdotal reports. Where appropriate, the statistics should be reported both in real numbers and as an annual percentage of the residents in each development (e.g., 20 arrests in a two-year period for distribution of heroin in a development with 100 residents reflects a 20% occurrence rate). Such data may include:

(a) Police records or other verifiable information from records on the types or sources of drug related crime in the targeted developments and surrounding area;

(b) The number of lease terminations or evictions for drug-related crime at the targeted developments; and

(c) The number of emergency room admissions for drug use or that result from drug-related crime. Such information may be obtained from police departments and/or fire departments, emergency medical service agencies and hospitals. The number of police calls for service from housing authorities developments that include resident initiated calls, officer-initiated calls, domestic violence calls, drug distribution complaints, found drug paraphernalia, gang activity, graffiti that reflects drugs or gang-related activity, vandalism, drug arrests, and abandoned vehicles.

For PHAs, such data should include housing authority police records on the types and sources on drug related crime "in or around" developments as reflected in crime statistics or other supporting data from Federal, State, Tribal or local law enforcement agencies.

(2) (10 Points) Other Crime Data: *Other supporting data on the extent of drug-related crime.* For this section, an applicant can receive up to 10 points. To the extent that objective data as described above may not be available, or to complement that data, the assessment must use data from other verifiable sources that have a direct bearing on drug-related crime in the developments proposed for assistance under this program. However, if other relevant information is to be used in place of objective data, the application must indicate the reasons why objective data could not be obtained and what efforts were made to obtain it and what efforts will be made during the grant period to begin obtaining the data. Examples of the data should include (but are not necessarily limited to):

(a) Surveys of residents and staff in the targeted developments surveyed on drug-related crime or on-site reviews to determine drug/crime activity; and government or scholarly studies or other research in the past year that analyze drug-related crime activity in the targeted developments.

(b) Vandalism cost at the targeted developments, to include elevator vandalism (where appropriate) and other vandalism attributable to drug-related crime.

(c) Information from schools, health service providers, residents and Federal, State, local, and Tribal officials, and the verifiable opinions and observations of individuals having direct knowledge of drug-related crime and the nature and frequency of these problems in developments proposed for assistance. (These individuals may include Federal, State, Tribal, and local government law enforcement officials, resident or community leaders, school officials, community medical officials, substance abuse, treatment (dependency/remission) or counseling professionals, or other social service providers).

(d) The school dropout rate and level of absenteeism for youth that the applicant can relate to drug-related crime. If crime or other statistics are not available at the development or precinct level the applicant must use other verifiable, reliable and objective data.

(e) To the extent that the applicant community's Consolidated Plan identifies the level of the problem and the urgency in meeting the need, references to these documents should be included in the response. The Department will review more favorably those applicants who used these documents to identify need, when applicable.

Rating Factor 3: Soundness of Approach—(Quality of the Plan) (35 Points)

This factor addresses the quality and effectiveness of the applicant's proposed work plan. In rating this factor, HUD will consider the impact of the activity; if there are tangible benefits that can be attained by the community and by the target population.

An application must include a detailed narrative describing each proposed activity for crime reduction and elimination efforts for each development proposed for assistance, the amount and extent of resources committed to each activity or service proposed, and process used to collect, maintain, analyze and report Part I and II crimes as defined by the Uniform Crime Reporting (UCR System), as well as police workload data. The process must include the collection of police workload data such as, but not limited to, all calls for service at the housing authority by individual development, pattern over a period of time, type of crime, and plans to improve data collection and reporting.

In evaluating this factor, HUD will consider the following:

(1) (15 Points) The quality of the applicant's plan to address the drug-related crime problem, and the problems associated with drug-related crime in the developments proposed for funding, the resources allocated, and how well the proposed activities fit with the plan.

(2) (10 Points for (2) and (3)) The anticipated effectiveness of the plan and proposed activities in reducing or eliminating drug-related crime problems immediately and over an extended period, including whether the proposed activities enhance and are coordinated with on going or proposed programs sponsored by HUD such as Neighborhood Networks, Campus of Learners, Computerized Community Connections, Operation Safe Home, "One Strike and You're Out," Department of Justice Weed and Seed Efforts, or any other prevention intervention treatment activities.

(3) The rationale for the proposed activities and methods used including evidence that proposed activities have

been effective in similar circumstances in controlling drug-related crime. Applicants that are proposing new methods for which there is limited knowledge of the effectiveness, should provide the basis for modifying past practices and rationale for why they believe the modification will yield more effective results.

(4) (10 Points for (4) and (5)) The process it will use to collect, maintain, analyze and report Part I and II crimes as defined by the Uniform Crime Reporting (UCR System), as well as police workload data. The applicant's proposed analysis of the data collected should include a method for assessing the impact of activities on the collected crime statistics on an on-going basis during the award period.

(5) Specific steps the applicant will take to share and coordinate information on solutions and outcomes with other law-enforcement and governmental agencies, and a description of any written agreements in place or that will be put in place.

(6) The extent to which the applicant's elimination of crime in a development or neighborhood will expand fair housing choice and will affirmatively further fair housing.

Rating Factor 4: Leveraging Resources—(Support of Residents, the Local Government and the Community in Planning and Implementing the Proposed Activities) (10 Points)

This factor addresses the ability of the applicant to secure community and government resources which can be combined with HUD's program resources to achieve program purposes.

(1) In assessing this factor, HUD will consider the following:

Evidence of commitment of funding, staff, or in-kind resources, partnership agreements, and on-going or planned cooperative efforts with law enforcement agencies, memoranda of understanding, or agreements to participate. Such commitments must be signed by an official of the organization legally able to make commitments for the organization. This evidence of commitment must include organization name, resources, and responsibilities of each participant. This also includes interagency activities already undertaken, participation in local, state, Tribal or Federal anti-drug related crime efforts such as: education, training and employment provision components of Welfare Reform efforts, Operation Weed and Seed, Operation Safe Home, local law enforcement initiatives and/or successful coordination of its law enforcement, or other activities with local, state, Tribal or Federal law enforcement agencies.

(2) In evaluating this factor, HUD will also consider the extent to which these initiatives are used to leverage resources for the housing authority community, and are part of the comprehensive plan and performance measures outlines in Rating Factor 3, Soundness of Approach—Quality of the Plan.

(a) An application must describe what role residents in the targeted developments, applicable community leaders and organizations, and law enforcement agencies have had in planning the activities described in the application and what role they will have in carrying out such activities.

(b) The application must include a discussion of the extent to which community representatives and Tribal, local, state and Federal Government officials, including law enforcement agency officials were actively involved in the design and implementation of the applicant's plan and will continue to be involved in implementing such activities during and after the period of PHDEP funding.

(c) The application must demonstrate the extent to which the relevant governmental jurisdiction has met its local law enforcement obligations under the Cooperation Agreement with the applicant (as required by the grantees Annual Contributions Contract with HUD). The applicant must describe the current level of baseline local law enforcement services being provided to the housing authority/developments proposed for assistance.

Rating Factor 5: Comprehensiveness and Coordination (10 Points).

This factor addresses the extent to which the applicant coordinated its activities with other known organizations, participates or promotes participation in a Community's Consolidated Planning Process, and is working towards addressing a need in a holistic and comprehensive manner through linkages with other activities in the community. In evaluating this factor, HUD will consider the extent to which the applicant demonstrates it has:

(1) Coordinated its proposed activities with those of other groups or organizations prior to submission in order to best complement, support and coordinate all known activities and if funded, the specific steps it will take to share information on solutions and outcomes with others. Any written agreements, memoranda of understanding in place, or that will be in place after award should be described.

(2) Taken or will take specific steps to become active in the community's Consolidated Planning process (including the Analysis of Impediments to Fair Housing Choice) established to identify and address a need/problem that is related to the activities the applicant proposes.

(3) Taken or will take specific steps to develop linkages to coordinate comprehensive solutions through meetings, information networks, planning processes or other mechanisms with:

(a) Other HUD-funded projects/activities outside the scope of those covered by the Consolidated Plan; and

(b) Other Federal, State, or locally funded activities, including those proposed, or on-going in the community.

IV. Application Submission Requirement

Each applicant must comply with the submission requirements listed in Section IV of the General Section of the SuperNOFA. In addition, each application must specify whether it is for the FY 1997 or the FY 1998 funding competition. To qualify for a grant under this program, the application submitted to HUD shall also include those requirements listed under Section III of the PHDEP section of this SuperNOFA, including the plan to address the problem of drug-related crime in the developments proposed for funding. The applicant must accurately complete the form for HUD's application database entry. The form, with examples, is provided in the application kit.

V. Corrections to Deficient Applications

The General Section of this SuperNOFA provides the procedures for corrections to deficient applications.

VI. Environmental Requirements

It is anticipated that activities under the PHDEP will be categorically excluded under 24 CFR 50.19(b)(4)(b)(12), or (b)(13). If grant funds will be used to cover the cost of any non-exempt activities, HUD will perform an environmental review to the extent required by 24 CFR part 50, prior to grant awards.

Funding Availability for the New Approach Anti-Drug Program (Formerly Known as the Safe Neighborhood Grant Program)

Program Description: Approximately $20 million is available for funding for the New Approach Anti-Drug Program (formerly known as the Safe Neighborhood Grant Program). The purpose of these competitive grants under the New Approach Anti-Drug Program is to assist owners or managers of certain housing developments to: (1) augment security; (2) assist in the investigation and prosecution of drug-related criminal activity in and around the housing developments; and (3) provide for the development of capital improvements directly relating to the security of the developments.

Application Due Date: Applications must be physically received on or before 6:00 pm, local time June 15, 1998 at the address shown below. See the General Section of this SuperNOFA for specific procedures governing the form of application submission (e.g., mailed applications, express mail, overnight delivery, or hand carried).

Address for Submitting Applications: An original and two copies of the application must be physically received by the deadline at the local Field Office with delegated public or assisted housing responsibilities attention: Director, Office of Public or Assisted Housing, or, in the case of the Native American population, to the local HUD Administrator, Area Offices of Native American Programs (AONAPs), as appropriate.

For Application Kits, Further Information, and Technical Assistance

For Application Kits. For an application kit and any supplemental information, please call the SuperNOFA Information Center at 1–800–HUD–8929. Persons with hearing or speech impairments may call the Center's TTY number at 1–800–2209. An application kit also will be available on the Internet through the HUD web site at http://www.HUD.gov. When requesting an application kit, please refer to the New Approach Anti-Drug Program, and provide your name, address (including zip code) and telephone number (including area code).

For Further Information and Technical Assistance. For program, policy, and other guidance, contact Henry Colonna, Department of Housing and Urban Development, Virginia State Office, 3600 West Broad Street, Richmond, VA 23230–4920, telephone (804) 278–4505, x 3027, or (804) 278–4501 (the TTY number).

Additional Information

I. Authority; Purpose; Amount Allocated; and Eligibility

(A) Authority

The FY 1998 HUD Appropriations Act.

(B) Purpose of the New Approach Anti-Drug Program (Formerly the Safe Neighborhood Grant Program)

(1) The purpose of these competitive grants is to assist entities managing or operating Federally assisted multifamily housing developments, public and Indian housing developments (including those Indian housing units formerly defined as public housing under section 3 of the U.S. Housing Act of 1937 and now counted as current assisted stock under the Indian Housing Block Grant Program), or other multifamily-housing developments for low-income families supported by non-Federal governmental housing entities or similar housing developments supported by nonprofit private sources, to augment security (including personnel costs), assist in the investigation and/or prosecution of drug-related criminal activity in and around such developments, and provide for the development of capital improvements at such developments directly relating to the security of such developments. Housing authorities shall form partnerships as sub-grantees to be eligible for assistance.

(2) With these grants, HUD is taking a comprehensive neighborhood/community-based approach to crime. Crime fighting efforts are most effective when partnering takes place with law-enforcement agencies at various levels and with a full range of community stakeholders (such as public housing agencies (PHAs) and Tribally Designated Housing Entities (TDHEs)). Applicants who are owners/operators of eligible housing will be required to have as a subgrantee the unit of general local government (city or county—preferably with the local police department and the local district attorney or prosecutor's office) and other community stakeholders including the owners and residents of assisted housing developments in the benefitting neighborhoods to address crime in an entire neighborhood (a neighborhood may include more than one assisted housing development). Applicants shall also form partnerships with the following entities, if applicable: community residents; neighborhood businesses; and non-profit providers of support services, including spiritually-based organizations and their affiliates.

(C) Amount Allocated

(1) *Available Funding.* Twenty million dollars ($20 million) is available for funding under the New Approach Anti-Drug Program, as provided in the FY 1998 Appropriations Act.

(2) *Maximum Grant Award.* The maximum grant award amount is limited to $250,000 per application.

(3) *Reduction of Requested Grant Amounts.* HUD may award an amount less than requested if:

(a) HUD determines the amount requested for an eligible activity and/or any budget line item is unreasonable;

(b) Insufficient amounts remain under the allocation to fund the full amount requested by the applicant, and HUD determines that partial funding is a viable option;

(c) HUD determines that some elements of the proposed plan are suitable for funding and others are not; or

(d) HUD determines that a reduced grant would prevent duplicative Federal funding.

(4) *Distribution of Funds.* HUD is allocating funds to the highest scoring applications that have met all program threshold requirements and have been ranked by HUD or it's agent.

(5) *Grant Reductions After Award.* HUD may rescind and/or recapture grant funds based on the failure of the grantees or the grantee's' partners to perform in accordance with the Grant Agreement, including the project application that will be incorporated in the Grant Agreement by reference. In addition, grant funds not expended for eligible purposes and in accordance with OMB cost principles by the end of the grant term will be recaptured by HUD.

(D) Eligible Applicants

(1) *General.* Grants may be made to a lead applicant that must be an owner/operator of one or more housing developments that have received some form of financial support from a unit of government or from a private non-profit entity. Unless the lead applicant is a unit of general local government which operates the assisted project, the lead applicant must own an assisted housing development in the neighborhood to be assisted. Housing authorities shall form partnerships as sub-grantees to be eligible for assistance. Indian tribes or Tribally Designated Housing Entities may apply for assistance if they have eligible project areas and eligible assisted housing (see Section I(H) of this New Approach Anti-Drug Program section of the SuperNOFA). New Approach Anti-Drug Program grants

may be awarded to entities that manage or operate Federally assisted multifamily housing.

(2) *Lead Applicant.*

(a) The lead applicant, which if the application is selected for funding will be the grantee, must be an owner/operator of one or more housing developments that has received some form of financial support from a unit of government or from a private nonprofit entity. Housing Authorities shall form partnerships as sub-grantees to be eligible for assistance. Such support must be designated and assigned by the funding source specifically for the housing rather than for any specific resident household which may, however, benefit from the support in the form of reduced rent. The housing support may be provided on a one-time or periodic basis to pay for or waive: project development costs; costs of financing; operating costs (which include but are not limited to utilities, taxes, fees, and debt service payments); (iv) owner taxes; (v) unit rent levels; or (vi) tenant rent payments.

(b) Unless the lead applicant is a unit of general local government which owns the assisted project, the lead applicant must also own an assisted housing development (as defined in Section I(H) of this New Approach Anti-Drug Program section of the SuperNOFA) in the neighborhood to be assisted. The lead applicant may not have any outstanding findings of civil rights violations.

(c) Housing authorities may not be the lead applicant; housing authorities must form partnerships as sub-grantees to be eligible for assistance.

(3) *Subgrantees and Partnerships.*

(a) *Memorandum of Understanding.* The application must include a number of subgrantees. The chief executive officer or empowered designee of each subgrantee must enter into a Memorandum of Understanding (MOU) with the applicant. The MOU must describe the subgrantee's commitment to serve as a subgrantee, and must specify the expertise and/or resources that the subgrantee will contribute towards the success of the grant activity. The MOU must be included as part of the application.

(b) *Required Subgrantees.* The following entities must be included as subgrantees in the application:

(i) The unit(s) of general local government with primary law enforcement and community development jurisdiction over the project. The MOU of this entity must commit the local police department, prosecutor's office, and community development office to actively support the grant project in partnership with the grantee. The MOU must also describe the level of current services being provided by these entities, and the level of services above this baseline which the entities are committed to providing in support of the grant.

(ii) The owners of assisted housing developments in the neighborhood that will benefit from grant funding. HUD is inclined to reward applications in neighborhoods which have demonstrated that more than one assisted housing development will benefit, and where owners have agreed to participate in the grant activities.

(iii) Residents of each assisted low income project in the neighborhood that will benefit from grant funding. The residents' commitment must include the extent to which they are involved in the planning, and will be participating in and support the Action Plan. This commitment must be signed either by individuals from a majority of project resident households, or by one or more organized resident groups that, combined, have been endorsed by a majority of project resident households or recognized by a governmental entity as representing a majority of project residents.

(c) *Encouraged Partnerships.* In addition to the required subgrantees specified above, applicants are encouraged to partner with other appropriate neighborhood and community stakeholders, including: Neighborhood businesses and business associations; Nonprofit service providers; Neighborhood resident associations; and faith communities or religious institutions.

(E) Eligible Activities

The following is a listing of eligible activities under this program and guidance as to their parameters (the term TDHEs includes those IHAs applying for FY 1997) funding:

(1) *Augmenting Security (Including Personnel).*

(a) *General.* Subject to a Cost Reimbursement Agreement, the grantee may reimburse local law enforcement entities for the costs of additional police presence (police salaries and other expenses directly related to such presence or security) in and around assisted housing developments in the neighborhood over and above baseline services currently provided.

(b) *Baseline Services.* Additional/supplemental security services are permitted but must be over and above the local police department's current level of baseline services. An applicant seeking funding for augmenting security must describe the local police department's current level of baseline services to the neighborhood (including ordinary and routine services, patrols, police officer responses to 911 communications and other calls for services, and investigative follow-up of criminal activity). The description of baseline services must include the number of officers and the actual percent of their time assigned to the development(s) proposed for funding. The applicant must then demonstrate to what extent the proposed funded activity will represent an increase over and above this baseline.

(c) *Police Presence.* For any grant, at least 70 percent of such reimbursed costs must be for police presence in or immediately adjacent to the premises of assisted housing developments and the remainder of such reimbursed costs must be for police presence within the project area.

(d) *Crime Fighting Strategy.*

(i) In its criteria for awarding points in the funding competition, HUD is strongly encouraging that additional law enforcement in the assisted housing developments and surrounding neighborhoods be targeted to implementing an overall crime fighting strategy, rather than merely responding to crime emergencies. Two potentially effective anti-crime strategies that can benefit from additional police presence are:

(*1*) Combined multi-agency task force initiatives, in which local and Federal law enforcement agencies pool resources, first, to infiltrate organizations that promote violent and/or drug-related crime in the neighborhood and, second, to initiate strategic and coordinated mass arrests to break up these organizations; and

(*2*) Community policing (i.e., sustained proactive police presence in the development or neighborhood, often conducted from an on site substation or mini-station, that involves crime prevention, citizen involvement, and other community service activities, as well as traditional law enforcement).

(ii) If reimbursement is provided for community policing activities that are committed to occur over a period of at least 3 years and/or are conducted from a police substation or administration within the neighborhood, the costs during the grant period of constructing such a station or of equipping the substation with communications and security equipment to improve the collection, analysis and use of information about criminal activities in the properties and the neighborhood may be reimbursed.

(iii) Federal law enforcement activities may not be funded by the New Approach Program Grant.

(2) *Security Services Provided by Other Entities (such as the Owner of an Assisted Housing Development).*

(a) *General.*

(i) *Coordination.* The activities of any contract security personnel funded under this grant must be coordinated with other law enforcement and crime prevention efforts under the plan approved by HUD. Efforts to achieve such coordination must be described in the plan. The coordination efforts must include frequent periodic scheduled meetings of security personnel with housing project management and residents, local police and, as appropriate, with other public law enforcement personnel, neighboring residents, landlords, and other neighborhood stakeholders.

(ii) *Proven Ability to Address Crime Problems.* HUD is inclined, as stated elsewhere in this New Approach Anti-Drug Program section of the SuperNOFA, to reward applicants that partner with entities that have a proven ability to address crime problems.

(b) *Reimbursement of State and Local Law Enforcement Agencies.*

(i) Subject to a Cost Reimbursement Agreement, the grantee may reimburse local or State prosecuting offices and related public agencies for the prosecution or investigation of crime committed in the neighborhood related to the Action Plan. Such reimbursement must be for costs over and above what the office or agency incurred for such purposes for crimes committed in the same geographic area during the period equal in length and immediately prior to the period of reimbursement.

(ii) For any grant, at least 70 percent of such reimbursed costs must be in connection with crimes committed in or immediately adjacent to the premises of Assisted Housing developments and the remainder of such reimbursed costs directly related to crime committed elsewhere in the neighborhood.

(c) *Hiring of Private Investigator Services.* Subject to appropriate justification, grantees and subgrantees are permitted to use grant funds to hire private investigator services to investigate crime in and around the premises of an assisted housing development and/or the surrounding neighborhood. Based on HUD's inclination to reward applicants that partner with entities that have a proven ability to address crime problems, HUD is strongly inclined to provide more points under the rating factors entitled "Quality of Plan" and "Strength of Partnerships" to applications that propose reimbursing municipal police departments or prosecutor offices than those reimbursing private operators, for investigative or prosecutorial services (See Section III of this New Approach Anti-Drug Program section of this SuperNOFA).

(3) *Capital Improvements to Enhance Security.* Grantees and subgrantees may use grant funds for capital improvements to enhance security. All such improvements must be accessible to persons with disabilities. For example, locks or buzzer systems that are not accessible to people with restricted or impaired strength, mobility, or hearing may not be funded by the grant. Defensible space improvements must comply with civil rights requirements and cannot exclude or segregate persons based upon their race, color, or national origin from benefits, services, and other terms and conditions of housing. Under the selection criterion entitled "Quality of Plan," HUD is generally inclined to reward capital improvements to enhance the security of an entire neighborhood as opposed to specific projects at the expense of other dwellings in the neighborhood. The capital improvements may include, but are not limited to:

(a) The new construction or rehabilitation of structures housing police substations or mini-stations;

(b) The installation of barriers, speed bumps, the installation of fences, barriers, and appropriate use of close circuit television (CCTV);

(c) Improved door or window security such as locks, bolts, or bars; and

(d) The landscaping or other reconfiguration of common areas to discourage drug-related criminal activities.

(F) Eligible Project Areas

(1) The project area must be a "neighborhood." For purposes of the New Approach Anti-Drug Program, the term "neighborhood" means:

(a) A geographic area within a jurisdiction of a unit of general local government (but not the entire jurisdiction unless the population is less than 25,000) designated in comprehensive plans, ordinances, or other local documents as a neighborhood, village, or similar geographical designation; or

(b) The entire jurisdiction of a unit of general local government with a population of less than 25,000 persons.

(2) The project area must include at least one assisted low-income housing project under:

(a) Section 221(d)(3), section 221(d)(4), or section 236 of the National Housing Act (12 U.S.C. 1715*l*, 1715z–1), provided that such project has been provided a Below Market Interest Rate mortgage, interest reduction payments, or project-based assistance under Rent Supplement, Rental Assistance Payments (RAP) or Section 8 programs.

(b) Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s);

(c) Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f). This includes housing with project-based Section 8 assistance, whether or not the mortgage was insured by HUD–FHA, but does not include projects which receive only Section 8 tenant-based assistance (i.e., certificates or vouchers).

(3) HUD will award only one grant per project area.

(G) Ineligible Project Areas

FHA-insured projects which have no project-based subsidy but have tenants receiving housing vouchers or Section 8 tenant certificates are not considered Federally assisted housing and would not qualify an area for eligibility.

(H) Eligible Assisted Housing

The following definitions apply to this program.

(1) *Assisted Housing Development.*

(a) For purposes of this program, the term "assisted housing development" means four or more adjoining, adjacent, or scattered site (within a single neighborhood) housing units, developed simultaneously or in stages, having common ownership and project identity, and receiving a project-based financial subsidy from a unit of government at the Federal, State, or local level, or from a private nonprofit entity.

(b) Such subsidy must be associated with a requirement and/or contractual agreement that all or a portion of the units be occupied by households with incomes at or below those of families at the low income limit defined by the U.S. Housing Act of 1937, or by households at or below an alternative limit that falls below this statutory low income limit, at rents which the public or nonprofit entity determines to be affordable.

(2) *Assisted Housing Unit.* For purposes of this program, the term "assisted housing unit" means a unit within an assisted housing development for which occupancy is restricted to households with incomes at or below that of "low income families" as defined by the U.S. Housing Act of 1937 or to households meeting an income standard below that defined as "low income;" and rents are restricted to amounts that

the public or nonprofit entity determines to be affordable.

(3) *Project Based Subsidies.* For purposes of this program, the term "project based subsidies" is defined as financial assistance that is initially designated and assigned by the funding source specifically for the project rather than to eligible assisted resident households which might also benefit from these subsidies, and provided on a one time up-front or on a periodic basis to the project or its owner to write down, subsidize, or waive: project development costs; costs of financing; project operating costs (including but are not limited to: utilities, taxes, fees, maintenance and debt service payments); owner taxes; unit rent levels; or tenant rent payments.

(I) Ineligible Activities

New Approach Anti-Drug Program Grant funding is not permitted for any of the activities listed below, unless otherwise specified in this New Approach Anti-Drug Program section of this SuperNOFA.

(1) Crime prevention, treatment, or intervention activities are not permitted in this program.

(2) Costs incurred before the effective date of the grant agreement, including but not limited to consultant fees related to the development of an application or the actual writing of the application.

(3) Purchase of controlled substances for any purpose. Controlled substance shall have the meaning provided in section 102 of the Controlled Substance Act (21 U.S.C. 802).

(4) Compensating informants, including confidential informants. These should be part of the baseline services provided and budgeted by local law enforcement agencies.

(5) Although participation in activities with Federal drug interdiction or drug enforcement agencies is encouraged, these grant funds shall not be transferred to any Federal agency.

(J) Implementation Principles

HUD has established the following principles in its plan for implementing these New Approach Anti-Drug Program Grants:

(1) *Drug- and crime-fighting activities, if only directed to a single assisted housing development, may have the unfortunate effect of simply moving the problem to nearby housing and businesses.* With these grants, HUD is taking a comprehensive neighborhood/community-based approach to crime. Applicant owners/operators of eligible housing will be required to partner with the unit of general local government (city or county) and other stakeholders to address crime in an entire neighborhood (which may include more than one assisted housing development). (Units of local government that are owners/operators of eligible housing may also be designated grantees whether or not the neighborhood designated for assistance includes housing that they own.)

(2) *Crime fighting efforts are most effective when partnerships are formed with law-enforcement agencies and with a full range of community stakeholders.* Applicants will be required to demonstrate that they have formed a partnership with units of general local government, preferably with the local police department and the local district attorney or prosecutor's office playing key roles in this partnership. Applicants shall also form partnerships with the following entities, if applicable:

(a) Federal law enforcement agencies (such as the HUD Office of Inspector General (OIG), the U.S. Attorney's Office, the FBI, the Drug Enforcement Administration (DEA), and the U.S. Marshal's Office) and State and local law enforcement agencies;

(b) All owners of assisted housing developments in the targeted neighborhood; and

(c) Residents of these assisted housing developments and of the community.

(d) Neighborhood businesses; and

(e) Non-profit providers of support services, including spiritually-based organizations and their affiliates.

(3) *Law enforcement strategies, however effective in the short run, need to be combined with efforts to address the underlying causes of crime and deter its reappearance.* The long term solution to the crime problems of assisted housing developments and their surrounding neighborhoods rest in changing the conditions—and the culture that exists.

(4) *Encouraging Partnerships.*

(a) HUD encourages the use of effective working partnerships in new locations to leverage the many Federal resources that are available to eliminate crime in and around public and assisted housing developments through the Drug Elimination Grant, Operation Safe Home, and Weed and Seed programs. HUD now wishes to encourage these successful partnerships to address similar problems in and around privately-owned, Federally assisted housing. In addition to rewarding partnerships, HUD is requiring that at least one project in each targeted neighborhood be multifamily housing with either:

(i) A HUD-insured, held, or direct mortgage and Rental Assistance Payments (RAP), Rent Supplement, or interest reduction payments; or

(ii) Section 8 project-based assistance with or without HUD interest in the project mortgage.

(b) This emphasis on HUD assisted privately-owned housing does not negate the eligibility of other low-income housing developments assisted by Federal, State, and local government, and not-for-profit sources to apply for the New Approach Anti-Drug Program. By awarding points for neighborhoods with high concentrations of assisted housing, HUD is encouraging applicants to address the needs of multiple assisted housing developments which may feature a mix of ownership types and subsidy sources.

(5) *Complying with Civil Rights Requirements.* With the very real need to protect occupants of HUD-sponsored housing and the areas around the housing, the civil rights of all citizens must be protected. Proposed strategies should be developed to ensure that crime-fighting and drug prevention activities are not undertaken in such a manner that civil rights or fair housing statutes are violated. Profiling on any prohibited bases may not be allowed. In addition, all segments of the population should be represented in developing and implementing these crime-fighting strategies.

(6) *Coordination with Other Law Enforcement Efforts.* In addition to working closely with residents and local governing bodies, it is critically important that owners establish ongoing working relationships with Federal, State, and local law enforcement agencies in their efforts to address crime and violence in and around their housing developments. HUD firmly believes that the war on crime and violence in assisted housing can only be won through the concerted and cooperative efforts of owners and law enforcement agencies working together in cooperation with residents and local governing bodies. As such, HUD encourages owners to participate in Departmental and other Federal law enforcement agencies' programs, as described below:

(7) *Safe Neighborhood Action Program (SNAP).*

(a) The Safe Neighborhood Action Program (SNAP) initiative, announced June 12, 1994 by HUD, the National Assisted Housing Management Association (NAHMA), and the U.S. Conference of Mayors (USCM), is an anti-crime and empowerment strategies initiative in HUD-assisted housing neighborhoods in 14 SNAP cities. The major thrust of SNAP is the formation of local partnerships in 14 targeted

cities where ideas and resources from government, owners and managers of assisted housing, residents, service providers, law enforcement officials, and other community groups meet to work on innovative, neighborhood anti-crime strategies.

(b) There is no funding associated with SNAP, which relies on existing ideas and resources of the participants. Some common initiatives from these SNAP teams have included the following: community policing; crime watch programs; tenant selection policies; leadership training; individual development or job skills training; expansion of youth activities; police tip line or form; community centers; anti-gang initiatives; police training for security officers; environmental improvements; and a needs assessment survey to determine community needs.

(c) In addition, a HUD-sponsored initiative to increase the presence of AmeriCorps' VISTAs in assisted housing units has led to the placement of 25 VISTAs on 12 SNAP teams. The AmeriCorps VISTA program, which incorporates a theme of working within the community to find solutions to community needs, has provided additional technical assistance to the SNAP teams.

(d) The cities participating in the SNAP initiative include: Atlanta, GA; Boston, MA; Denver, CO; Houston, TX; Newark, NJ; Philadelphia, PA; Baltimore, MD; Columbus, OH; Detroit, MI; Los Angeles, CA; New Orleans, LA; Little Rock, AR; Richmond, VA; and Washington, DC.

(e) For more information on SNAP, contact Henry Colonna, National SNAP Coordinator, Virginia State Office, 3600 West Broad Street, Richmond, VA 23230–4920; telephone (804) 278–4505, extension 3027; or (804) 278–4501 (TTY). For more information on AmeriCorps' VISTAs in Assisted Housing, contact Deanna E. Beaudoin, National VISTAs in Assisted Housing Coordinator, Colorado State Office, First Interstate Tower North, 633 17th Street, Denver, CO 80202; telephone (303) 672–5291, extension 1068; or (303) 672–5248 (TTY). These numbers are not toll-free.

II. Program Requirements

The following requirements apply to all activities, programs, or functions used to plan, budget, implement, and evaluate the work funded under this program.

(A) Grant Agreement

After applications have been ranked and selected, HUD and the applicant shall enter into a grant agreement setting forth the amount of the grant, the physical improvements or other eligible activities to be undertaken, financial controls, and special conditions, including sanctions for violation of the agreement. The Grant Agreement will incorporate the HUD approved applications, as may be amended by any special condition in the Grant Agreement. HUD will monitor grantees, utilizing the Grant Agreements to ensure that grantees have achieved commitments set out in their HUD approved grant application. Failure to honor such commitments would be the basis for HUD determining a default of the Grant Agreement, and exercising available sanctions, including grant suspension, termination, and/or the recapture of grant funds.

(B) Requirements Governing Grant Administration, Audits and Cost Principles

The policies, guidelines, and requirements of this New Approach Anti-Drug Program section of the SuperNOFA, 48 CFR part 31, 24 CFR parts 44, 45, 84 and/or 85, OMB Circulars A–87 and/or A–122, other applicable administrative, audit, and cost principles and requirements, and the terms of grant/special conditions and subgrant agreements apply to the acceptance and use of assistance by grantees. The requirements cited above, as applicable, must be followed in determining procedures and practices related to the separate accounting of grant funds from other grant sources, personnel compensation, travel, procurement, the timing of drawdowns, the reasonableness and allocability of costs, audits, reporting and closeout, budgeting, and preventing conflict of interests or duplicative charging of identical costs to two different funding sources. All costs must be reasonable and necessary.

(C) Term of Grant

Grant funds must be expended within 24 months after HUD executes a Grant Agreement. There will be no extensions or waivers of this grant term.

(D) Subgrants and Subcontracting

(1) In accordance with an approved application, a grantee may directly undertake any of the eligible activities under this New Approach Anti-Drug Program section of the SuperNOFA, it may contract with a qualified third party, or it may make a subgrant to any entity approved by HUD as a member of the partnership, provided such party is a unit of government, is incorporated as a not-for-profit organization, or is an incorporated for-profit entity that owns and/or manages an assisted housing project benefiting from the grant. Resident groups that are not incorporated may share with the grantee in the implementation of the program, but may not receive funds as subgrantees. For-profit organizations other than owners or managers of an Assisted Housing project benefiting from the grant that have been approved by HUD as part of the partnership may only receive grant funds subject to the applicable Federal procurement procedures (See 24 CFR parts 84 or 85).

(2) Subgrants may be made only under a written agreement executed between the grantee and the subgrantee. The agreement must include a program budget that is acceptable to the grantee, and that is otherwise consistent with the grant application budget. The agreement must require the subgrantee to permit the grantee to inspect the subgrantee's work and to follow applicable OMB and HUD administrative requirements, audit requirements, and cost principles, including those related to procurement, drawdown of funds for immediate use only, and accounting to the grantee for the use of grant funds and implementation of program activities. In addition, the agreement must describe the nature of the activities to be undertaken by the subgrantee, the scope of the subgrantee's authority, and the amount of any insurance to be obtained by the grantee and the subgrantee to protect their respective interests.

(3) The grantee shall be responsible for monitoring, and for providing technical assistance to, any subgrantee to ensure compliance with applicable HUD and OMB requirements. The grantee must also ensure that subgrantees have appropriate insurance liability coverage.

(E) Environmental Requirements

Prior to the award of grant funds under the program, HUD will perform an environmental review to the extent required under the provisions of 24 CFR part 50. Should the environmental review indicate adverse environmental impacts, the application may be downgraded or rejected.

(F) Ineligible Contractors

The provisions of 24 CFR part 24 relating to the employment, engagement of services, awarding of contracts or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status apply to this grant.

(G) Employment Preference

A grantee under this program shall give preference to the employment of residents of Assisted Housing projects

in the neighborhood to be assisted by this grant, and shall comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and 24 CFR part 135, to carry out any of the eligible activities under this program, so long as residents provided such preferences have comparable qualifications and training as nonresident applicants.

(H) Drawdown of Grant Funds

All grantees will access the grant funds through HUD's Line of Credit Control System-Voice Response System in accordance with procedures for minimizing the time lapsing between drawdowns and use of funds for eligible purposes as described in 24 CFR parts 84 and/or 85, as applicable.

(I) Reports and Closeout

Each grantee receiving a grant shall submit to HUD a semiannual progress report in a format prescribed by HUD that indicates program expenditures and measures performance in achieving goals. At grant completion, the grantee shall participate in a closeout process as directed by HUD which shall include a final report in a format prescribed by HUD that reports final program expenditures and measures performance in achieving program goals. Closeout will culminate in a closeout agreement between HUD and the grantee and, when appropriate, in the return of grant funds which have not been expended in accordance with applicable requirements.

(J) Suspension or Termination of Funding

HUD may suspend or terminate funding if the grantee fails to undertake the approved program activities on a timely basis in accordance with the grant agreement, adhere to grant agreement requirements or special conditions, or submit timely and accurate reports.

(K) Affirmatively Furthering Fair Housing

The first two sentences of the requirement in Section II(D) of the General Section of the SuperNOFA do not apply to this program.

III. Application Selection Process

(A) Rating and Ranking

(1) HUD will evaluate all eligible applications based on the factors for award identified in this Section III.

(2) After the applications have been scored, HUD will rank by Field Office on a national basis. Awards will be made in ranked order until all funds are expended.

HUD will select the highest ranking applications whose eligible activities can be fully funded. Where there is insufficient funds to fully fund all applicants by Field Office, HUD will award remaining funds, regardless of Field Office, to the next highest ranking applicant. HUD will continue the process until all funds allocated to it have been awarded or to the point where there are insufficient acceptable applications for which to award funds.

(3) In the event of a tie, HUD will select the applicant with the highest score in Factor 1. If Factor 1 is scored identically, the scores in Factors 2, 3 and 4 will be compared in that order, until one of the applications receives a higher score. If both applications still score the same then the application which requests the least funding will be selected in order to promote the more efficient use of resources. In the event of a tie and there is not sufficient funds to fully fund an applicant, HUD will offer remaining funds to the highest ranking applicant following the procedures above.

(B) Factors for Award To Evaluate and Rank Applications

The maximum number of points for this program is 102. This includes two EZ/EC bonus points, as described in the General Section of the SuperNOFA. An application must receive a score of at least 70 points to be eligible for funding.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (20 Points)

This factor addresses the extent to which the applicant has proper organizational resources necessary to successfully implement the proposed New Approach Anti-Drug Program activities in an effective, efficient, and timely manner. In rating this factor, HUD will consider the extent to which the application demonstrates the capabilities described below:

(1) (7 Points) *The applicants' successful experience combined with its subgrantees' successful experience in utilizing similar strategies to alleviate crime.* To receive maximum points under this section, the applicant must have worked in partnership with one or more of its subgrantees (or, under some circumstances, two or more of the subgrantees may have worked together in partnership) using a similar strategy that reduced crime in and/or around Assisted Housing developments. The applicant must demonstrate the reduction in the occurrence of crime as indicated in Selection Factor 3 of this component of the SuperNOFA. Examples of other Federal programs which promote such partnerships are HUD's Operation Safe Home Program, Safe Neighborhood Action Program and, to some extent, the Drug Elimination Grant Program. In the absence of previous partnerships, the experience of the applicant will weigh more heavily than the experience of any single subgrantee in HUD's assignment of partial points under this subfactor.

(2) (6 Points) *The strength of the applicants' partnership as it relates to eliminating the crime problem identified in Factor 2.* Points in this area will be awarded based on the strength of resource commitments by subgrantees (both in terms of the amount of resources committed and the firmness of the commitments); evidence of the subgrantees' (including project tenants') pre-application role in the development of the plan and prospective role in program implementation; indications of the capacity of the Assisted Housing developments' ownership and management (based on available management reviews by governing public entities) to undertake their share of responsibilities in the partnership (including evidence of whether project management carefully screens applicants for units and takes appropriate steps to deal with tenants known to exhibit or suspected of exhibiting criminal behavior) and to cooperate with law enforcement actions by other partners on their project premises; the willingness of the unit of general local government (lead applicant) to use its prosecutor's office as its lead agency in implementing the grant; utilization of additional partners other than those required under the heading "Eligible Applicants" (for example, neighborhood business organizations); and the effectiveness of the partnership structure (synergistic arrangements of collective action will receive more points than a simple advisory committee of subgrantees).

(3) *The applicants' administrative capacity to implement the grant.* Points will be awarded based on the quality and amount of staff allocated to the grant activity by the grantee; the anticipated effectiveness of the grantee's systems for budgeting, procurement, drawdown, allocation, and accounting for grant funds and matching resources in accordance with OMB administrative requirements; and the lines of accountability for implementing the grant activity, coordinating the partnership, and assuring that the applicant's and subgrantees' commitments will be met. In assessing this factor, HUD will consider the following factors with the indicated total available points:

(a) (4 Points) The applicant must identify their participation in HUD grant programs within the preceding three years, and discuss the degree of the applicant's success in implementing and managing (program implementation, timely drawdown of funds, timely submission of required drawdown of funds, timely submission of required reports with satisfactory outcomes related to the plan and timetable, audit compliance and other HUD reviews) these grant programs.

(b) (3 Points) The local HUD Field Office shall evaluate the extent of the applicant's success or failure in implementing and managing an effective program under previous grants (prior three years). This evaluation will be based on, but not limited to, the relationship between the extent of the crime detailed in Factor 2 during the preceding years, and outcomes regarding reducing/eliminating drug-related crime described in the plans and achievements of proposed strategies regarding crime reduction goals outlined in HUD program performance outcome measurements relating to reducing drugs and crime activities, and HUD reviews, audits, and other monitoring methods.

Rating Factor 2: Need/Extent of the Problem (25 Points)

This factor addresses the extent to which there is a need for funding the proposed program activities to address a documented problem in the target area (i.e., the degree of the severity of the drug-related crime problem in the project proposed for funding). In responding to this factor, applicants will be evaluated on the extent to which a critical level of need for the proposed activities is explained and an indication of the urgency of meeting the need in the target area. Applicants must include a description of the extent and nature of drug-related crime "in or around" the housing units or developments proposed for funding.

Applicants will be evaluated on the following:

(1) (15 points) "Objective Crime Data" relevant to the target area. For objective crime data, an applicant can be awarded up to 15 points. Such data should consist of verifiable records and not anecdotal reports. Where appropriate, the statistics should be reported both in real numbers and as an annual percentage of the residents in each development (e.g., 20 arrests in a two-year period for distribution of heroin in a development with 100 residents reflects a 20% occurrence rate). Such data may include:

(a) Police records or other verifiable information from records on the types or sources of drug related crime in the targeted developments and surrounding area;

(b) The number of lease terminations or evictions for drug-related crime at the targeted developments; and

(c) The number of emergency room admissions for drug use or that result from drug-related crime. Such information may be obtained from police Departments and/or fire departments, emergency medical service agencies and hospitals. The number of police calls for service from housing authorities developments that include resident initiated calls, officer-initiated calls, domestic violence calls, drug distribution complaints, found drug paraphernalia, gang activity, graffiti that reflects drugs or gang-related activity, vandalism, drug arrests, and abandoned vehicles.

For PHAs, such data should include housing authority police records on the types and sources on drug related crime "in or around" developments as reflected in crime statistics or other supporting data from Federal, State, Tribal or local law enforcement agencies.

(2) (10 Points) Other Crime Data: *Other supporting data on the extent of drug-related crime.* For this section, an applicant can received up to 10 points. To the extent that objective data as described above may not be available, or to complement that data, the assessment must use data from other verifiable sources that have a direct bearing on drug-related crime in the developments proposed for assistance under this program. However, if other relevant information is to be used in place of objective data, the application must indicate the reasons why objective data could not be obtained and what efforts were made to obtain it and what efforts will be made during the grant period to begin obtaining the data. Examples of the data should include (but are not necessarily limited to):

(a) Surveys of residents and staff in the targeted developments surveyed on drug-related crime or on-site reviews to determine drug/crime activity; and government or scholarly studies or other research in the past year that analyze drug-related crime activity in the targeted developments.

(b) Vandalism cost at the targeted developments, to include elevator vandalism (where appropriate) and other vandalism attributable to drug-related crime.

(c) Information from schools, health service providers, residents and Federal, State, local, and Tribal officials, and the verifiable opinions and observations of individuals having direct knowledge of drug-related crime and the nature and frequency of these problems in developments proposed for assistance. (These individuals may include Federal, State, Tribal, and local government law enforcement officials, resident or community leaders, school officials, community medical officials, substance abuse, treatment (dependency/remission) or counseling professionals, or other social service providers.)

(d) The school dropout rate and level of absenteeism for youth that the applicant can relate to drug-related crime. If crime or other statistics are not available at the development or precinct level the applicant must use other verifiable, reliable and objective data.

(e) To the extent that the applicant's community's Consolidated Plan identifies the level of the problem and the urgency in meeting the need, references to the Consolidated Plan should be included in the response. The Department will review more favorably those applicants who used the Consolidated Plan to identify need, when applicable.

Rating Factor 3: Soundness of Approach (Quality of the Plan) (35 Points)

This factor addresses the quality and effectiveness of the applicant's proposed work plan. In rating this factor, HUD will consider the impact of the activity; if there are tangible benefits that can be attained by the community and by the target population.

An application must include a detailed narrative describing each proposed activity for crime reduction and elimination efforts for each development proposed for assistance, the amount and extent of resources committed to each activity or service proposed, and process used to collect, maintain, analyze and report Part I and II crimes as defined by the Uniform Crime Reporting (UCR System), as well as police workload data. The process must include the collection of police workload data such as, but not limited to, all calls for service at the housing authority by individual development, pattern over a period of time, type of crime, and plans to improve data collection and reporting.

In evaluating this factor, HUD will consider the following:

(1) (15 Points) The quality of the applicant's plan to address the drug-related crime problem, and the problems associated with drug-related crime in the developments proposed for funding, the resources allocated, and how well the proposed activities fit with the plan.

(2) (10 Points for (2) and (3)) The anticipated effectiveness of the plan and proposed activities in reducing or eliminating drug-related crime problems immediately and over an extended period, including whether the proposed activities enhance and are coordinated with on going or proposed programs sponsored by HUD such as Neighborhood Networks, Campus of Learners, Computerized Community Connections, Operation Safe Home, "One Strike and You're Out," Department of Justice Weed and Seed Efforts, or any other prevention intervention treatment activities.

(3) The rational for the proposed activities and methods used including evidence that proposed activities have been effective in similar circumstances in controlling drug-related crime. Applicants that are proposing new methods for which there is limited knowledge of the effectiveness, should provide the basis for modifying past practices and rationale for why they believe the modification will yield more effective results.

(4) (10 Points for (4) and (5)) The process it will use to collect, maintain, analyze and report Part I and II crimes as defined by the Uniform Crime Reporting (UCR System), as well as police workload data. The applicant's proposed analysis of the data collected should include a method for assessing the impact of activities on the collected crime statistics on an on-going basis during the award period.

(5) Specific steps the applicant will take to share and coordinate information on solutions and outcomes with other law-enforcement and governmental agencies, and a description of any written agreements in place or that will be put in place.

(6) The extent to which the applicant's elimination of crime in a development or neighborhood will expand fair housing choice and will affirmatively further fair housing.

Rating Factor 4: Leveraging Resources (Support of Residents, the Local Government and the Community in Planning and Implementing the Proposed Activities) (10 Points)

This factor addresses the ability of the applicant to secure community and government resources, in-kind services from local governments, non-profit or for-profit entities, private organizations be combined with HUD's program resources to achieve program purposes. In assessing this factor, HUD will consider the following:

(1) Evidence of commitment of funding, staff, or in-kind resources, partnership agreements, and on-going or planned cooperative efforts with law enforcement agencies, memoranda of understanding, or agreements to participate. Such commitments must be signed by an official of the organization legally able to make commitments for the organization. This evidence of commitment must include organization name, resources, and responsibilities of each participant. This also includes interagency activities already undertaken, participation in local, state, Tribal or Federal anti-drug related crime efforts such as: education, training and employment provision components of Welfare Reform efforts, Operation Weed and Seed, Operation Safe Home, local law enforcement initiatives and/or successful coordination of its law enforcement, or other activities with local, state, Tribal or Federal law enforcement agencies.

In evaluating this factor, HUD will also consider the extent to which these initiatives are used to leverage resources for the housing authority community, and are part of the comprehensive plan and performance measures outlines in Rating Factor 3, Soundness of Approach—Quality of the Plan.

(2) An application must provide a description of the Neighborhood and the Assisted Housing Developments in the Neighborhood, and the extent to which the community organizations, and law enforcement agencies have had in planning the activities described in the application and what role they will have in carrying out such activities.

(3) The application must include a discussion of the extent to which community representatives and Tribal, local, State and Federal Government officials, including law enforcement agency officials were actively involved in the design and implementation of the applicant's plan and will continue to be involved in implementing such activities during and after the period of PHDEP funding.

(4) The application must demonstrate the extent to which the relevant governmental jurisdiction has met its local law enforcement obligations under the Cooperation Agreement with the applicant (as required by the grantees Annual Contributions Contract with HUD). The applicant must describe the current level of baseline local law enforcement services being provided to the housing authority/developments proposed for assistance.

Rating Factor 5: Comprehensiveness and Coordination (10 points)

This factor addresses the extent to which the applicant coordinated its activities with other known organizations, participants or promotes participation in a community's Consolidated Planning process, and is working towards addressing a need in a holistic and comprehensive manner through linkages with other activities in the community.

In evaluating this factor, HUD will consider the extent to which the applicant demonstrated it has:

(1) Coordinated its proposed activities with those of either groups of organizations prior to submission in order to best complement, support and coordinate all known activities and if funded, the specific steps it will take to share information on solutions and outcomes with others. Any written agreements, memoranda of understanding in place, or that will be in place after award should be described.

(2) Taken or will take specific steps to become active in the community's Consolidated Planning process (including the Analysis of Impediments to Fair Housing Choice) established to identify and address a need/problem that is related to the activities the applicant proposes.

(3) Taken or will take specific steps to develop linkages to coordinate comprehensive solutions through meetings, information networks, planning processes or other mechanisms with:

(a) Other HUD-funded project/activities outside the scope of those covered by the Consolidated Plan; and

(b) Other Federal, State, or locally funded activities, including those proposed or on-going in the community.

IV. Application Submission Requirements

Each New Approach Anti-Drug application must conform to the requirements of the applicable application kit, both in format and content. Each New Approach Anti-Drug application must provide the following items in addition to the submission requirements listed in Section III of the New Approach Anti-Drug Program section of the SuperNOFA and Section IV of the General Section of this NOFA:

(A) Application Cover Letter;

(B) Congressional Summary—Summary of the proposed program activities in five (5) sentences or less:

(C) The neighborhood description must include a basic description (e.g., boundaries and size), population, number of housing units in the neighborhood, a map, a population profile (e.g., relevant census data on the socio-economic, ethnic and family makeup of neighborhood residents), and the basis on which the area meets the definition of "neighborhood" as

described in this notice (i.e., describe and include a copy of the comprehensive plan, ordinance or other official local document which defines the area as a neighborhood, village, or similar geographical designation). If the entire jurisdiction is defined as a neighborhood by virtue of having a population at less than 25,000, indicate the jurisdiction's population under the 1990 census and describe/include more recent information which gives the best indication as to the current population.

(D) The description of the Assisted Housing development(s) in the neighborhood. This must include the name of the project; the name of the project owner; the nature, sources, and program titles of all project based subsidies or other assistance provided to the project by units of government or private nonprofit entities (any names of public or nonprofit programs other than programs sponsored by HUD should be accompanied by a description of the program and the name and business phone number of a contact person responsible for administering the program for the subsidy provider); the number of housing units in the project; and the number of housing units in the project that meet the definition of "assisted housing units" in this notice, and a description of the restrictions on rents and resident incomes that, in combination with the subsidy provided to the project, qualify the units as assisted/affordable in accordance with the definition in this New Approach Anti-Drug Program section of the SuperNOFA; and the number, geographic proximity (adjoining, adjacent, or scattered site, and if scattered site, the distance between the two buildings which are furthest apart), and type (single family detached, townhouse, garden, elevator) of buildings in the project.

(E) Application for Federal Assistance form (Standard Form SF–424) signed by the chief executive officer of the lead applicant organization.

(F) A description of the subgrantees. The description must include the names of the subgrantees' relative roles and contributions of each subgrantee in implementing grant activities; structures for partnership coordination and joint decision making, e.g., form of partnership interaction (task force, advisory group or corporate entity), lines of accountability, degree of grant decision making power conferred by the applicant/grantee to its partners, frequency of meetings, etc.; the roles, if any, of subgrantees, especially project tenants) in designing the Action Plan; which subgrantees (if any) will be designated to receive and dispense grant funds for grant activities; and how the applicant (grantee) proposes to direct and monitor its partners to account for funds received or expended and to ensure that commitments are met; and a profile of each subgrantee including governmental or nonprofit status (copies of official up-to-date IRS verification of status must be provided for all nonprofit institutions), a detailed description of their experience and success in similar or related anti-crime initiatives, roles in and financial or in-kind contributions to the partnership, and the approximate value of any in-kind contributions.

(G) Accompanying the description must be letters from each subgrantee signed by their respective chief executive officers, describing their role if any in designing the application and, especially, the Action Plan; detailing the amounts and types of financial and other contributions to be made by the subgrantee firmly committing the subgrantee to such contributions; affirming the specific role(s) that the subgrantee will undertake in implementing Plan activities, including its agreement to act as subgrantee, and summarizing the subgrantee's experience in undertaking similar or related activities.

(H) With respect to subgrantees that are owners of Assisted Housing development(s), the application should include external assessment or evidence of the quality of the development's ownership or management (e.g., available management reviews by governing public entities) that relates to the capacity of the ownership and management to undertake their share of responsibilities in the partnership; and such related concerns as whether project management carefully screens applicants for units and takes appropriate steps to deal with tenants known to exhibit or suspected of exhibiting criminal behavior) and cooperates with law enforcement actions by other partners on their project premises.

(I) Overall budget and timetable that includes separate budgets, goals, milestones, and timetables for each activity and addresses milestones towards achieving the goals described above; and indicates the contributions and implementation responsibilities of each partner for each activity, goal, and milestone.

(J) *Staffing.* The number of staff years, the titles and professional qualifications, and respective roles of staff assigned full or part-time to grant implementation by the applicant/grantee.

(K) *Coordination.* The applicant/grantee's plan and lines of accountability (including an organization chart) for implementing the grant activity, coordinating the partnership, and assuring that the applicant's and subgrantees' commitments will be met. There must be a discussion of the various agencies of the unit of government that will participate in grant implementation (which must include the prosecutor's office and at least one, but preferably both, of the following: the police department and an agency dealing with community development), their respective roles (i.e., which has the lead), and their lines of communication.

V. Corrections to Deficient Applications

The General Section of this SuperNOFA provides the procedures for corrections to deficient applications.

Funding Available for Drug Elimination Grants for Federally Assisted Low-Income Housing (Multifamily Housing Drug Elimination)

Program Description: Approximately $16,250,000 in funding is available for Federally Assisted Low Income Housing Drug Elimination Grants. This Multifamily Housing Drug Elimination Program section of the SuperNOFA does not apply to the funding available under Public and Indian Housing.

Application Due Dates: Completed applications (an original and two copies) must be received no later than 6:00 pm local time in the HUD Office with jurisdiction over the applicant project June 15, 1998. See the General Section of this SuperNOFA for specific procedures governing the form of application submission (e.g., mailed applications, express mail, overnight delivery, or hand carried).

Address for Submitting Applications: Completed applications (an original and two copies) must be submitted no later than close of business to the HUD Office with jurisdiction over the applicant project. The application kit contains a list of the HUD Offices to which applications must be sent.

For Application Kits, Further Information, and Technical Assistance

For Application Kits. For an application kit and any supplemental information, please call the SuperNOFA Information Center at 1–800–HUD–8929. Persons with hearing or speech impairments, may call the Center's TTY number at 1–800–843–2209. An application kit also will be available on the Internet through the HUD web site at http://www.HUD.gov. When requesting an application kit, please refer to Multifamily Housing Drug Elimination Grants, and provide your name, address (including zip code) and telephone number (including area code).

For Further Information and Technical Assistance. Policy questions of a general nature may be referred to Carissa Janis, Housing Project Manager, Office of Portfolio Management, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; (202) 708–3291, extension 2487. (This number is not toll free). Hearing or speech impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8339. HUD will notify all applicants whether or not they were selected for funding.

Additional Information

I. Authority; Purpose; Amounts Allocated; and Eligibility

(A) Authority

This program is authorized under Chapter 2, subtitle C, title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 et. seq.), as amended by section 581 of the National Affordable Housing Act of 1990 (Pub. L. 102–550, approved October 28, 1992). The regulations for the program are found in 24 CFR part 761, Drug Elimination Programs.

(B) Purpose

The purpose of this Multifamily Housing Drug Elimination Grant Program is to:

(1) Enable owners of federally assisted low-income housing projects to deal effectively with drug-related criminal activity in and around the project.

(2) Improve the physical structure and the surrounding environment to enhance security designed to discourage drug-related criminal activity.

(3) Develop programs and security measures designed to reduce the use of drugs in and around federally assisted low-income housing projects, including drug-abuse prevention, intervention, referral, and treatment programs.

(C) Amounts Allocated

The maximum grant award amount is limited to $125,000 per project. Any grant funds under this Multifamily Drug Elimination Grant Program of the SuperNOFA that are allocated, but that are not reserved for grantees, must be released to HUD Headquarters for reallocation. If the Award Office determines that an application cannot be partially funded and there are insufficient funds to fund the application fully, any remaining funds after all other applications have been selected will be released to HUD Headquarters for reallocation. Amounts that may become available due to deobligation will also be reallocated to Headquarters.

All reallocated funds will be awarded in the following manner: HUD Award Office will submit to Headquarters a list of applications, with their scores and amount of funding requested, that would have been funded had there been sufficient funds in the appropriate allocation to do so. Headquarters will select applications from those submitted by the HUD Award Offices, using a random number lottery overseen by the Offices of Housing, General Counsel, and Inspector General, and make awards from any available reallocated funds.

Distribution of Funds. Each Award Office may recommend a total number of awards up to the amount allocated for the area covered by the Award Office. The Award Offices will receive the scores from each HUD Office which has received, rated, ranked, and scored its applications. The Award Offices will, in turn, request Headquarters to fund those properties with the highest score from each HUD Office. If sufficient funds remain, the next highest scored applications, regardless of HUD Office, will be awarded funds. HUD is allocating grant funds under this Multifamily Drug Elimination Grant Program section of the SuperNOFA to the four Award Offices, in accordance with the following schedule:

Award office	Covered	Allocation
Buffalo	Vermont, Massachusetts, Connecticut, Rhode Island, New York, Maine, New Hampshire, New Jersey, Pennsylvania, Delaware, Maryland, District of Columbia, West Virginia, Virginia.	$4,015,000
Knoxville	Kentucky, Tennessee, North Carolina, South Carolina, Georgia, Alabama, Puerto Rico, Mississippi, Florida, Iowa, Kansas, Missouri, Nebraska.	4,110,000
Minneapolis	Illinois, Minnesota, Indiana, Wisconsin, Michigan, Ohio,	3,919,000
Little Rock	Arkansas, Louisiana, New Mexico, Oklahoma, Texas, Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming, Arizona, California, Hawaii, Nevada, Alaska, Idaho, Oregon, Washington.	4,206,000

(D) Eligible Applicants

Eligible applicants include owners of the following low-income housing projects: Section 221(d)(3), Section 221(d)(4), or Section 236 of the National Housing Act with project-based assistance. (Note: Section 221(d)(3) and Section 221(d)(4) market rate projects with tenant-based assistance are not eligible for funding); Section 101 of the Housing and Urban Development Act of 1965; or Section 8 of the United States Act of 1937. This includes State Housing Agency projects, Rural Housing and Community Development projects, and Moderate Rehabilitation projects with project-based Section 8 assistance. This does not include Section 8 tenant-

based assistance. Owners of Section 8 tenant-based projects are also ineligible.

(E) Eligible Activities

Programs which foster interrelationships among the residents, the housing owner and management, the local law enforcement agencies, and other community groups impacting on the housing are greatly desired and encouraged. Resident participation in the determination of programs and activities to be undertaken is critical to the success of all aspects of the program. Working jointly with community groups, the neighborhood law enforcement precinct, residents of adjacent properties and the community as a whole can enhance and magnify the effect of specific program activities and should be the goal of all applicants.

(1) *Physical improvements to enhance security.* The improvement may include but are not limited to systems designed to limit building access to project residents, the installation of barriers, lighting systems, fences, bolts, locks; the landscaping or reconfiguration of common areas to discourage drug-related crime; and other physical improvements designed to enhance security and discourage drug-related activities. In particular, HUD is seeking plans that provide successful, proven, and cost-effective deterrents to drug-related crime that are designed to address the realities of federally assisted low-income housing environments. All physical improvements must also be accessible to persons with disabilities. For example, some types of locks or buzzer systems are not accessible to persons with limited strength, or mobility, or to persons who have hearing impairments and should not be utilized. Accessible alternatives should be utilities. All physical improvements must meet the accessibility requirements of 24 CFR part 8, Nondiscrimination Based on Handicap in Federally Assisted Programs and Activities of the Department of Housing and Urban Development.

(2) *Programs to Reduce the Use of Drugs.* Programs to reduce the use of drugs in and around the project, including drug-abuse prevention, intervention, referral, and treatment programs are eligible for funding under this program. The program should facilitate drug prevention, intervention, and treatment efforts, to include outreach to community resources and youth activities, and facilitate bringing these resources onto the premises, or provide resident referrals to treatment programs or transportation to out-patient treatment programs away from the premises. Funding is permitted for reasonable, necessary, and justified leasing of vehicles for resident youth and adult education and training activities directly related to "Programs to reduce the use of drugs" under this section. Alcohol-related activities and programs are not eligible for funding under this Multifamily Housing Drug Elimination Grant Program section of the SuperNOFA.

(3) *Drug Prevention.* Drug prevention programs that will be considered for funding under this Multifamily Housing Drug Elimination Grant Program section of the SuperNOFA must provide a comprehensive drug prevention approach for residents that will address the individual resident and his or her relationship to family, peers, and the community. Prevention programs must include activities designed to identify and change the factors present in federally assisted low-income housing that lead to drug-related problems, and thereby lower the risk of drug usage. Many components of a comprehensive approach, such as refusal and restraint skills training programs or drug-related family counseling, may already be available in the community of the applicant's housing projects, and the applicant must act to bring those available program components onto the premises. Activities that should be included in these programs are:

(a) *Drug Education Opportunities for Residents.* The causes and effects of illegal drug usage must be discussed in a formal setting to provide both young people and adults the working knowledge and skills they need to make informed decisions to confront the potential and immediate dangers of illegal drugs. Grantees may contract (in accordance with 24 CFR Part 85.36) with drug education professionals to provide training or workshops. The drug education professional contracted to provide these services shall be required to base their services upon the program plan of the grantee. These educational opportunities may be a part of resident meetings, youth activities, or other gatherings of residents.

(b) *Family and Other Support Services.* Drug prevention programs must demonstrate that they will provide directly or otherwise make available services designed to distribute drug education information, to foster effective parenting skills, and to provide referrals for treatment and other available support services in the project or the community for federally-assisted low-income housing families.

(c) *Youth Services.* Drug prevention programs must demonstrate that they have included groups composed of young people as a part of their prevention programs. These groups must be coordinated by adults with the active participation of youth to organize youth leadership, sports, recreational, cultural and other activities involving housing youth. The dissemination of drug education information, the development of peer leadership skills and other drug prevention activities must be a component of youth services.

(4) *Economic/Educational Opportunities for Resident Youth.* Drug prevention programs should demonstrate a capacity to provide residents the opportunity for referral to established higher education or vocational institutions with the goal of developing or building on the resident's skills to pursue educational, vocational, and economic goals. The program must also demonstrate the ability to provide residents the opportunity to interact with private sector businesses in their immediate community for the same desired goals.

(5) *Intervention.* The aim of intervention is to identify federally-assisted low-income housing resident drug users and assist them in modifying their behavior and in obtaining early treatment, if necessary. The applicant must establish a program with the goal of preventing drug problems from continuing once detected.

(6) *Drug Treatment.* Treatment funded under this program shall be in or around the premises of the project. Funds awarded under this program shall be targeted towards the development and implementation of new drug referral treatment services and/or aftercare, or the improvement of, or expansion of such program services for residents. Each proposed drug treatment program should address the following goals:

(a) Increase resident accessibility to drug treatment services;

(b) Decrease criminal activity in and around the project by reducing illicit drug use among residents;

(c) Provide services designed for youth and/or maternal drug abusers, e.g., prenatal/postpartum care, specialized counseling in women's issues; parenting classes, or other drug treatment supportive services. Approaches that have proven effective with similar populations will be considered for funding. Programs should meet the following criteria:

(i) Applicants may provide the service of formal referral arrangements to other treatment programs not in or around the project when the resident is able to obtain treatment costs from sources other than this program. Applicants may also provide transportation for residents to out-patient treatment and/or support programs.

(ii) Provide family/collateral counseling.

(iii) Provide linkages to educational/vocational counseling.

(iv) Provide coordination of services to appropriate local drug agencies, HIV-related service agencies, and mental health and public health programs.

(7) *Working Partnerships.* Applicants must demonstrate a working partnership with the Single State Agency or State license provider or authority with drug program coordination responsibilities to coordinate, develop and implement the drug treatment proposal. In particular, applicants must review and determine with the Single State Agency or State license provider or authority with drug program coordination responsibilities whether: A) the drug treatment provider(s) has provided drug treatment services to similar populations, identified in the application, for two prior years; and B) the drug treatment proposal is consistent with the State treatment plan and the treatment service meets all State licensing requirements.

(8) *Resident Councils.* Providing funding to resident councils to develop security and drug abuse programs.

(E) Ineligible Activities

The following activities are not eligible for funding:

(1) Any activity or improvement that is normally funded from project operating revenues for routine maintenance or repairs, or those activities or improvements that may be funded through reasonable and affordable rent increases;

(2) The acquisition of real property or physical improvements that involve the demolition of any units in the project or displacement of tenants;

(3) Costs incurred prior to the effective date of the grant agreement, including, but not limited to, consultant fees for surveys related to the application or its preparation;

(4) Reimbursement of local law enforcement agencies for additional security and protective services;

(5) The employment of one or more individuals to investigate drug-related crime on or about the real property comprising any federally-assisted low-income project and/or to provide evidence relating to such crime in any administrative or judicial proceeding;

(6) The provision of training, communications equipment and other related equipment for use by voluntary tenant patrols acting in cooperation with local law enforcement officials;

(7) Treatment of residents at any in-patient medical treatment programs or facilities;

(8) Detoxification procedures, short term or long term, designed to reduce or eliminate the presence of toxic substances in the body tissues of a patient;

(9) Maintenance drug programs. [Maintenance drugs are medications that are prescribed regularly for a long period of supportive therapy (e.g., methadone maintenance), rather than for immediate control of a disorder.]

II. Program Requirements

In addition to the program requirements listed in the General Section of this SuperNOFA, applicants are subject to the additional requirements in this Section II. These requirements apply to all activities, programs, and functions used to plan, budget, and evaluate the work funded under this program. After applications have been ranked and selected, HUD and the applicant shall enter into a grant agreement setting forth the amount of the grant, the physical improvements or other eligible activities to be undertaken, financial controls, and special conditions, including sanctions for violation of the agreement.

(A) General

The policies, guidelines, and requirements of this NOFA, along with applicable HUD program regulations, HUD Handbooks, and the terms of grant/special conditions and subgrant agreements apply to the acceptance and use of assistance by grantees and will be followed in determining the reasonableness and allocability of costs. All costs must be reasonable and necessary.

(B) Term of Funded Activities

The term of funded activities may not exceed 12 months. Owners must ensure that any funds received under this program are not commingled with other HUD or project operating funds. To avoid duplicate funding, owners must establish controls to assure that any funds from other sources, such as Reserve for Replacement, Rent increases, etc., are not used to fund the physical improvements to be undertaken under this program.

HUD may terminate funding if the grantee fails to undertake the approved program activities on a timely basis in accordance with the grant agreement. Grantees must adhere to grant agreement requirements and/or special conditions, and must submit timely and accurate reports.

(C) Subgrants—Subcontracting

A grantee may directly undertake any of the eligible activities under this Multifamily Drug Elimination Program section of the SuperNOFA or it may contract with a qualified third party, including incorporated Resident Councils. Resident groups that are not incorporated may share with the grantee in the implementation of the program, but may not receive funds as subgrantees. Subgrants to incorporated Resident Councils may be made only for eligible statutory activities and only under a written agreement executed between the grantee and the Resident Council. The agreement must include a program budget that is acceptable to the grantee, and that is otherwise consistent with the grant application budget. The agreement must obligate the incorporated Resident Council to permit the grantee to inspect and audit the Resident Council's financial records related to the agreement, and to account to the grantee on the use of grant funds, and on the implementation of program activities. In addition, the agreement must describe the nature of the activities to be undertaken by the subgrantee, the scope of the subgrantee's authority, and the amount of insurance to be obtained by the grantee and the subgrantee to protect their respective interests.

The grantee shall be responsible for monitoring and for providing technical assistance to any subgrantee to ensure compliance with HUD program requirements, including the regulations at 24 CFR part 84, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations. The procurement requirements of Part 84 also apply to Resident Councils. The grantee must also ensure that subgrantees have appropriate insurance.

(D) Forms, Certifications and Assurances

See General Section of the SuperNOFA for the applicable forms, certifications and assurances to be submitted.

(E) Affirmatively Furthering Fair Housing

The first two sentences of the requirement of Section II(D) of the General Section of the SuperNOFA do not apply to this program.

III. Application Selection Process

(A) Rating and Ranking

Applications will be evaluated competitively and ranked against all other applicants that have applied for these Drug Elimination Grants.

The maximum number of points for this program is 102. This includes two EZ/EC bonus points, as described in the General Section of the SuperNOFA.

(B) Factors for Award Used to Evaluate and Rate Applications. The five factors in this section total 100 points. An application must receive a score of at least 51 points out of the total of 100 points provided for the five factors to be eligible for funding under this competition. The Award Office will select the highest ranking application from each HUD Office whose eligible activities can be fully funded. The Award Office will then select the highest scored unfunded application submitted to it regardless of Field Office and continue the process until all funds allocated to it have been awarded or to the point where there are insufficient acceptable applications for which to award funds. Each application submitted will be evaluated on the basis of the selection criteria set forth below.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (20 Points).

This factor addresses the extent to which the applicant has proper organizational resources necessary to successfully implement the proposed activities in a timely manner. In rating this factor, HUD will consider the extent to which the application demonstrates the capabilities described below. In rating this factor, HUD will consider the following:

(1) The knowledge and experience of the staff and administrative capability to manage grants, including administrative support functions, procurement, lines of authority, and fiscal management capacity.

(a) For PHAs (and TDHEs that had previously applied as IHAs), HUD will consider such measurement tools as PHMAP, uniform crime index, physical inspections, agency monitoring of records, Line of Credit Control System Reports (LOCCS), audits and such other relevant information available to HUD on the capacity of the owner or manager to undertake the grant.

(b) For owners of multifamily housing, HUD will consider the most recent Management Review (including Rural Development Management Review), HQS review, State Agency review and such other relevant information available to HUD on the capacity of the owner or manager to undertake the grant.

(c) A description of established performance goals to define the results expected to be achieved by all major grant activities proposed in the grant application, and a description of the goals expressed in an objective, quantifiable, and measurable form. The goals must be outcome or result-oriented and not out-put related. Outcomes include accomplishments, results, impact and the ultimate effects of the program on the drug or crime problem in the target/project area.

(2) The applicant's performance in administering Drug Elimination funding in the previous 5 years.

(a) For PHAs the applicant's past experience will be evaluated in terms of their ability to attain demonstrated measurable progress in tracking drug related crime, enforcement of screening and lease procedures in implementation of the "One Strike and You're Out Initiative" (as applicable), the extent to which the applicant has formed a collaboration with Tribal, State and local law enforcement agencies and courts to gain access to criminal conviction records of applicants to determine their suitability for residence in public housing. Such data will be measured and evaluated based on the Public Housing Management Assessment Program at 24 CFR part 901.

(b) The applicant must identify their participation in HUD grant programs within the preceding three years and discuss the degree of the applicant's success in implementing and managing (program implementation, timely drawdown of funds, timely submission of required reports with satisfactory outcomes related to the plan and timetable, audit compliance, whether there are any unresolved findings from prior HUD reports (e g. performance or finance) reviews of audits undertaken by HUD, the Office of Inspector General, the General Accounting Office or independent public accountants.

(3) Submission of evidence that applicants have initiated other efforts to reduce drug-related crime by working with Operation Safe Home, SNAP, Weed and Seed, or tenant and/or law enforcement groups.

(4) The applicant's performance in administering other Federal, State or local grant programs.

Rating Factor 2: Need/Extent of the Problem (25 Points)

This factor addresses the extent to which there is a need for funding the proposed program activities to address a documented problem in the target area (i.e., the degree of the severity of the drug-related crime problem in the project proposed for funding). In responding to this factor, applicants will be evaluated on the extent to which a critical level of need for the proposed activities is explained and an indication of the urgency of meeting the need in the target area. Applicants must include a description of the extent and nature of drug-related crime "in or around" the housing units or developments proposed for funding.

Applicants will be evaluated on the following:

(1) (15 points) "Objective Crime Data" relevant to the target area. For objective crime data, an applicant can be awarded up to 15 points. Such data should consist of verifiable records and not anecdotal reports. Where appropriate, the statistics should be reported both in real numbers and as an annual percentage of the residents in each development (e.g., 20 arrests in a two-year period for distribution of heroin in a development with 100 residents reflects a 20% occurrence rate). Such data may include:

(a) Police records or other verifiable information from records on the types or sources of drug related crime in the targeted developments and surrounding area;

(b) The number of lease terminations or evictions for drug-related crime at the targeted developments; and

(c) The number of emergency room admissions for drug use or that result from drug-related crime. Such information may be obtained from police Departments and/or fire departments, emergency medical service agencies and hospitals. The number of police calls for service from housing authorities developments that include resident initiated calls, officer-initiated calls, domestic violence calls, drug distribution complaints, found drug paraphernalia, gang activity, graffiti that reflects drugs or gang-related activity, vandalism, drug arrests, and abandoned vehicles.

For PHAs, such data should include housing authority police records on the types and sources on drug related crime "in or around" developments as reflected in crime statistics or other supporting data from Federal, State, Tribal or local law enforcement agencies.

(2) (10 Points) Other Crime Data: *Other supporting data on the extent of drug-related crime.* For this section, an applicant can received up to 10 points. To the extent that objective data as described above may not be available, or to complement that data, the assessment must use data from other verifiable sources that have a direct bearing on drug-related crime in the developments proposed for assistance under this program. However, if other relevant information is to be used in place of objective data, the application must indicate the reasons why objective data could not be obtained and what efforts were made to obtain it and what efforts will be made during the grant period to begin obtaining the data. Examples of

the data should include (but are not necessarily limited to):

(a) Surveys of residents and staff in the targeted developments surveyed on drug-related crime or on-site reviews to determine drug/crime activity; and government or scholarly studies or other research in the past year that analyze drug-related crime activity in the targeted developments.

(b) Vandalism cost at the targeted developments, to include elevator vandalism (where appropriate) and other vandalism attributable to drug-related crime.

(c) Information from schools, health service providers, residents and Federal, State, local, and Tribal officials, and the verifiable opinions and observations of individuals having direct knowledge of drug-related crime and the nature and frequency of these problems in developments proposed for assistance. (These individuals may include Federal, State, Tribal, and local government law enforcement officials, resident or community leaders, school officials, community medical officials, substance abuse, treatment (dependency/remission) or counseling professionals, or other social service providers.)

(d) The school dropout rate and level of absenteeism for youth that the applicant can relate to drug-related crime. If crime or other statistics are not available at the development or precinct level the applicant must use other verifiable, reliable and objective data.

(e) To the extent that the applicant's community's Consolidated Plan identifies the level of the problem and the urgency in meeting the need, references to these documents should be included in the response. The Department will review more favorably those applicants who used these documents to identify need, when applicable.

Rating Factor 3: Soundness of Approach—(Quality of the Plan) (35 Points)

This factor addresses the quality and effectiveness of the applicant's proposed work plan. In rating this factor, HUD will consider the impact of the activity; if there are tangible benefits that can be attained by the community and by the target population.

An application must include a detailed narrative describing each proposed activity for crime reduction and elimination efforts for each development proposed for assistance, the amount and extent of resources committed to each activity or service proposed, and process used to collect, maintain, analyze and report Part I and II crimes as defined by the Uniform Crime Reporting (UCR System), as well as police workload data. The process must include the collection of police workload data such as, but not limited to, all calls for service at the housing authority by individual development, pattern over a period of time, type of crime, and plans to improve data collection and reporting.

In evaluating this factor, HUD will consider the following:

(1) The quality of the applicant's plan to address the drug-related crime problem, and the problems associated with drug-related crime in the developments proposed for funding, the resources allocated, and how well the proposed activities fit with the plan.

(2) The anticipated effectiveness of the plan and proposed activities in reducing or eliminating drug-related crime problems immediately and over an extended period, including whether the proposed activities enhance and are coordinated with on going or proposed programs sponsored by HUD such as Neighborhood Networks, Campus of Learners, Computerized Community Connections, Operation Safe Home, "One Strike and You're Out," Department of Justice Weed and Seed Efforts, or any other prevention intervention treatment activities.

(3) The rational for the proposed activities and methods used including evidence that proposed activities have been effective in similar circumstances in controlling drug-related crime. Applicants that are proposing new methods for which there is limited knowledge of the effectiveness, should provide the basis for modifying past practices and rationale for why they believe the modification will yield more effective results.

(4) The process it will use to collect, maintain, analyze and report Part I and II crimes as defined by the Uniform Crime Reporting (UCR System), as well as police workload data. The applicant's proposed analysis of the data collected should include a method for assessing the impact of activities on the collected crime statistics on an on-going basis during the award period.

(5) Specific steps the applicant will take to share and coordinate information on solutions and outcomes with other law-enforcement and governmental agencies, and a description of any written agreements in place or that will be put in place.

(6) The extent to which the applicant's elimination of crime in a development or neighborhood will expand fair housing choice and will affirmatively further fair housing.

Rating Factor 4: Leveraging Resources (10 Points)

In assessing this factor, HUD will consider the following:

(1) The extent to which the owner is participating in programs that are available from local governments or law enforcement agencies.

(2) The level of participation and support by the local government or law enforcement agency for the applicant's proposed activities. This may include letters of support to the owner, documentation that the owner participates in town hall type meetings to develop strategies to combat crime, or any other form of partnership with local government or law enforcement agencies.

(3) The level of assistance received from local government and/or law enforcement agencies.

(4) The extent to which an applicant has sought the support of residents in planning and implementing the proposed activities.

- Evidence that comments and suggestions have been sought from residents to the proposed plan for this program and the degree to which residents will be involved in implementation.
- Evidence of resident support for the proposed plan.

Rating Factor 5: Comprehensiveness and Coordination (10 Points)

This factor addresses the extent to which the applicant coordinated its activities with other known organizations, participates or promotes participation in a community's Consolidated Planning process, and is working towards addressing a need in a holistic and comprehensive manner through linkages with other activities in the community.

In evaluating this factor, HUD will consider the extent to which the applicant demonstrates it has:

(1) Coordinated its proposed activities with those of other groups or organizations prior to submission in order to best complement, support and coordinate all know activities and if funded, the specific steps it will take to share information on solutions and outcomes with others. Any written agreements, memoranda of understanding in place, or that will be in place after award should be described.

(2) Taken or will take specific steps to become active in the community's Consolidated Planning process (including the Analysis of Impediments to Fair Housing Choice) established to identify and address a need/problem

that is related to the activities the applicant proposes.

(3) Taken or will take specific steps to develop linkages to coordinate comprehensive solutions through meetings, information networks, planning processes or other mechanisms with:

(a) Other HUD-funded projects/activities outside the scope of those covered by the Consolidated Plan; and

(b) Other Federal, State, or locally funded activities, including those proposed or on-going in the community.

IV. Application Submission Requirements

An applicant is allowed to submit only one application for funding under this program. A separate application must be submitted for each project. If the grant is to serve connecting or adjacent properties, an applicant may submit one application that will serve all properties. In such a case, the applicant must describe in detail in its application how the grant will serve the properties. Only one project would receive the funding even though the grant would be serving several properties. The application includes the forms, certifications and assurances listed in the General Section of the SuperNOFA.

V. Corrections to Deficient Applications

The General Section of the SuperNOFA provides the procedures for corrections to deficient applications.

VI. Environmental Requirements

It is anticipated that activities under this program are categorically excluded under 24 CFR 50.19 (b)(4), (b)(12), or (b)(13). If grant funds will be used to cover the cost of any non-exempt activities, HUD will perform an environmental review to the extent required by 24 CFR part 50, prior to grant award.

Funding Availability for Public and Indian Housing Drug Elimination Technical Assistance Program

Program Description: Approximately $2 million is available for funding short-term, technical assistance services for the Public and Indian Housing Drug Elimination Technical Assistance (PHDE–TA) Program. The purpose of this program is to provide short-term (90 days for completion) technical assistance consultant services to assist public housing agencies (PHAs), Tribes and Tribally Designated Housing Entities (TDHEs), resident management corporations (RMCs), incorporated resident councils (RCs) and resident organizations (ROs) in responding immediately to drug and drug-related crime in public and Tribal housing communities.

Application Due Date: One original application must be received at the Office of Community Safety and Conservation (OCSC), Room 4112 at the HUD Headquarters Building at 451 Seventh Street, SW, Washington DC, 20410, no later than 12:00 midnight on June 15, 1998. See the General Section of this SuperNOFA for specific procedures governing the form of application submission (e.g., mailed applications, express mail, overnight delivery, or hand carried).

A copy of the application must be submitted to the appropriate HUD Field Office HUB with delegated housing responsibilities over an applying housing entity, or from the AONAPs with jurisdiction over the Tribes and Tribally Designated Housing Entities.

Applicants will also be required to submit with their applications to OCSC, a Confirmation Form documenting that the appropriate HUD Field Office received the TA application (this form is a threshold requirement).

PHDE–TA applications will be reviewed on a continuing basis until June 15, 1998, or until funds available under this program are expended. Due to the reduced availability of funds in FY 1998, HUD encourages early submission of applications. There is no application deadline for consultants or for HUD initiated Public Housing Drug Elimination Technical Assistance (PHDE–TA).

Address for Submitting Applications: Office of Community Safety and Conservation, Department of Housing and Urban Development, Room 4112, 451 Seventh Street, SW, Washington DC, 20410.

For Application Kits, Further Information, and Technical Assistance

For Application Kits. For an application kit and any supplemental information, please call the SuperNOFA Information Center at 1–800–HUD–8929. Persons with hearing or speech impairments may call the Center's TTY number at 1–800–843–2209. An application kit also will be available on the Internet through the HUD web site at http://www.hud.gov. When requesting an application kit, please refer to the Public Housing Drug Elimination Technical Assistance Program, and provide your name, address (including zip code) and telephone number (including area code).

For Further Information and Technical Assistance. For answers to your questions or for technical assistance, please call the local HUD Field Office HUB with delegated housing responsibilities over an applying housing entity, or the AONAPs with jurisdiction over the Tribes and Tribally Designated Housing Entities. The list of local HUD Field Office with jurisdiction over the applicant is provided in the application kit.

Additional Information

I. Authority; Purpose; Amount Allocated; Eligibility

(A) Authority

The FY 1998 HUD Appropriations Act under the heading, "Drug Elimination Grants for Low-Income Housing (Including Transfer of Funds)."

(B) Purpose

The funds for the Drug Elimination Technical Assistance (TA) Program are strictly used to hire HUD-registered consultants, whose fields of expertise address the strategies requested to eliminate drugs and drug-related crimes in public housing authorities (PHAs), Tribes, and tribally-designated housing entities (TDHEs), resident management corporations (RMCs), resident councils (RCs) or resident organizations (ROs) nationwide.

(C) Amount Allocated

For FY 1998, up to $2 million in funding is available for Public Housing Drug Elimination Technical Assistance.

(D) Eligible Applicants

Public housing agencies (PHAs), Tribes and Tribally Designated Housing Entities (TDHEs), incorporated resident councils (RCs), resident organizations (ROs) in the case of Tribes and TDHEs, and resident management corporations (RMCs) are eligible to receive short-term technical assistance services under this PHDE–TA Program section of the SuperNOFA. More specific eligibility requirements follow:

(1) An eligible RC or RO must be an incorporated nonprofit organization or association that meets all seven of the following requirements:

(a) It must be representative of the residents it purports to represent.

(b) It may represent residents in more than one development or in all of the developments of a PHA or Tribe or TDHE, but it must fairly represent residents from each development that it represents.

(c) It must adopt written procedures providing for the election of specific officers on a regular basis (but at least once every 3 years).

(d) It must have a democratically elected governing board. The voting membership of the board must consist of residents of the development or developments that the resident organization or resident council represents.

(e) It must be supported in its application by a public housing authority or a Tribe or TDHE.

(f) It must provide evidence of incorporation.

(g) It must provide evidence of adopted written procedures for electing officers.

(2) An eligible RMC must be an entity that proposes to enter into, or that enters into, a management contract with a PHA under 24 CFR part 964, or a management contract with a Tribe or TDHE. An RMC must have all seven of the following characteristics:

(a) It must be a nonprofit organization incorporated under the laws of the State or Indian tribe where it is located.

(b) It may be established by more than one resident organization or resident council, so long as each: approves the establishment of the corporation; and has representation on the Board of Directors of the corporation.

(c) It must have an elected Board of Directors.

(d) Its by-laws must require the Board of Directors to include representatives of each resident organization or resident council involved in establishing the corporation.

(e) Its voting members must be residents of the development or developments it manages.

(f) It must be approved by the resident council. If there is no council, a majority of the households of the development must approve the establishment of such an organization to determine the feasibility of establishing a corporation to manage the development.

(g) It may serve as both the resident management corporation and the resident council, so long as the corporation meets the requirements of 24 CFR part 964 for a resident council.

(In the case of a resident management corporation for a Tribe or TDHE, it may serve as both the RMC and the RO, so long as the corporation meets the requirements of this PHDE–TA Program section of the SuperNOFA for a resident organization.)

(3) Applicants can only submit one application per award period. Applicants are eligible to apply to receive technical assistance if they are already receiving technical assistance under this program, as long as the request creates no scheduling conflict with other PHDE–TA requests. For HUD-initiated TA, the recipient may receive more than one type of technical assistance concurrently unless HUD, in consultation with the recipient, determines that it may negatively affect the quality of the PHDE–TA.

(4) Applicants are eligible to apply to receive technical assistance whether or not they are already receiving drug elimination funds under the Public and Indian Housing Drug Elimination Program.

(5) The applicant must have substantially complied with the laws, regulations, and Executive Orders applicable to the Drug Elimination TA Program, including applicable civil rights laws.

(E) Eligible Consultants

(1) HUD is seeking individuals or entities who have experience working with public or Tribal housing or other low-income populations to provide short-term technical assistance under this PHDE–TA Program section of the SuperNOFA. Consultants who have previously been deemed eligible and are part of the TA Consultant Database need not reapply, but are encouraged to update their file with more recent experience and rate justification. To qualify as eligible consultants, individuals or entities should have experience in one or more of the following general areas:

(a) PHA/Tribe or TDHE-related experience with: agency organization and management; facility operations; program development; and experience working with residents and community organizations.

(b) Anti-crime- and anti-drug-related experience with: prevention/intervention programs; and enforcement strategies.

(c) Experience as an independent consultant, or as a consultant working with a firm with related experience and understanding of on-site work requirements, contractual, reporting and billing requirements.

(2) HUD is especially interested in encouraging TA consultant applications from persons who are qualified and have extensive experience planning, implementing, and/or evaluating the following professional areas:

(a) Lease, screening and grievance procedures;

(b) Defensible space, security and environmental design;

(c) Parenting, peer support groups and youth leadership;

(d) Career planning, job training, tutoring and entrepreneurship;

(e) Community policing, neighborhood watch and anti-gang work;

(f) Strengthening resident organizing, involvement, and relations with management; and

(g) "One Strike You're Out" programs.

(3) Additional requirements for consultants include the following:

(a) In addition to the conflict of interest requirements in 24 CFR part 85, no person who is an employee, agent, officer, or appointed official of the applicant may be funded as a consultant to the applicant by this Drug Elimination Technical Assistance Program.

(b) Consultants who wish to provide drug elimination technical assistance services through this program shall not have had any involvement in the preparation or submission of any PHDE–TA proposal. Any involvement of the consultant is considered a conflict of interest, making the consultant ineligible for providing consulting services to the applicant and will disqualify the consultant from future consideration. This prohibition shall also be invoked for preparing and distributing prepared generic or sample applications, when HUD determines that any application submitted by a PHA, Tribe or TDHE, RC, RO or RMC duplicates a sufficient amount of any prepared sample to raise issues of possible conflict of interest.

(4) HUD-registered consultants are eligible to receive funds to be reimbursed for up to $15,000 for conducting the short-term technical assistance, but long-term results are expected from each job. After the work is completed, evaluations are submitted from the housing authorities on the consultants' work performance. The evaluations are carefully reviewed to make sure the housing authorities are satisfied with the services provided through HUD. Afterwards, the consultants are reimbursed by HUD, which completes the PHDE–TA. In extreme cases of technical assistance needs, staff members of HUD headquarters and field offices may recommend specialized technical assistance for which HUD-registered consultants can receive up to $25,000 in funds. HUD encourages housing authorities/agencies and eligible resident organizations with or without a drug elimination grant in their communities to use this resource.

(F) Ineligible Consultants

Consultants and/or companies currently debarred or suspended by HUD are not eligible to perform services under this program.

(G) Eligible Activities

(1) Funding is limited to technical assistance for carrying out activities authorized under Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 et. seq.), as amended by section 581 of the National Affordable Housing Act of 1990 (Pub. L. 101–625, approved November 28, 1990) (NAHA), and section 161 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) (HCDA 1992).

(2) The PHDE–TA program is intended to provide *short-term, immediate assistance* to PHAs, Tribes and TDHEs, RMCs, RCs, and ROs in developing and/or implementing their strategies to eliminate drugs and drug-related crime. Short-term technical assistance means that consultants shall only be reimbursed for a maximum of 30 days of work, which must be completed in less than 90 days from the date of the approved statement of work. The program will fund the use of consultants who can provide the necessary consultation and/or training for the types of activities outlined below. HUD will fund the use of consultants to assist the applicant undertaking tasks including preparing a proposed strategic or long range plan for reducing drugs and drug-related crime, or conducting a needs assessment or comprehensive crime survey. The PHDE–TA program also funds efforts in:

(a) Assessing, quantifying and establishing performance measurement systems (including gathering baseline statistics) relating to drug and drug-related crime problems in public or Tribal housing development(s) and surrounding community(ies);

(b) Designing and identifying appropriate anti-crime and anti-drug-related practices and programs in the following areas:

(i) Law enforcement strategies, including negotiating with the local police, working with Federal law enforcement, Operation Safe Home, Weed and Seed, and other Federal anti-crime efforts;

(ii) Crime data collection for establishing baseline performance measurements;

(iii) Youth leadership development; youth anti-gang, anti-violence, anti-drug initiatives; youth peer mediation and conflict resolution to deal directly with anger/violence to prevent future violent episodes;

(iv) Resident Patrols;

(v) Security and physical design.

(c) Training for housing authority staff and residents in anti-crime and anti-drug prevention practices and programs;

(d) Evaluating current anti-crime and anti-drug-related crime programs.

(3) The following are activities which are eligible for HUD-Initiated Technical Assistance under the Public and Indian Housing Drug Elimination Technical Assistance Program. Eligible parties may receive technical assistance initiated and approved by HUD in circumstances determined by HUD to require immediate attention because of severe drug and crime issues and the presence of one of the following circumstances:

(a) HAs that were unsuccessful in gaining Drug Elimination Program Grants;

(b) Applicants having demonstrated an inability to explain the nature and extent of local drug or crime activities;

(c) Applicants with a demonstrated inability to identify or develop potential solutions to their local drug or crime problem;

(d) Applicants unable to develop local anti-drug, anti-crime partnerships;

(e) Applicants lacking the capability to carry out a plan due to a lack of anti-drug, anti-crime-related training;

(f) Applicants with an inability to effectively make progress to address pervasive drug-related violence;

(g) Applicants where there is an inability between tenants, and/or between tenants and management to effectively communicate about drug-and crime-related issues;

(h) Applicants that need an evaluation performed on their "One Strike You're Out" program; and

(i) Applicants lacking the capability to perform a program evaluation of current anti-drug, anti-crime activities.

(H) Ineligible Activities

Funding is not permitted for:

(1) Any type of monetary compensation for residents.

(2) Any activity that is funded under any other HUD program, including TA and training for the incorporation of resident councils or RMCs, and other management activities.

(3) Salary or fees to the staff of the applicant, or former staff of the applicant within a year of his or her leaving the housing authority or resident organization.

(4) Underwriting conferences.

(5) Conference speakers.

(6) Program implementation, proposal writing, the financial support of existing programs, or efforts requiring more than 30 billable days of technical assistance over a 90 day period; the purchase of hardware or equipment, or any activities deemed ineligible in the Drug Elimination Program, excluding consultant's fees.

II. Program Requirements

(A) Individual Award Amounts

Applications received from HAs and qualified RCs, ROs, and RMCs; and Tribes and their Tribally Designated Housing Entities (TDHEs) are eligible for a maximum amount of Technical Assistance (TA) no greater than $15,000. HUD-initiated TA is eligible for a maximum of $25,000 where HUD determines the circumstances require levels of assistance greater than $15,000, such as more than 30 billable days are required over a 90-day period for the technical assistance, as one example.

(1) Applications for short-term technical assistance may be funded up to $15,000, with HUD providing payment directly to the authorized consultant for the consultant's fee, travel, room and board, and other approved costs at the approved government rate.

(2) For technical assistance initiated by HUD, the TA may be for any amount up to $25,000 when HUD staff determine that more than 30 billable days of technical assistance over a 90-day period is justified.

(B) Receipt of More Than One Application

If HUD receives more than one application from a HA, or group of RCs, ROs, or RMCs in proximity to one another, HUD may exercise discretion to consider any two or more applications as one, recommending one or more consultants and executing contracts for any combination of applications.

(C) Forms, Certifications and Assurances

In addition to the forms, certifications and assurances listed in Section IV of the General Section of the SuperNOFA, the following, as directed by the application kit, must be complied with:

(1) Applications must be signed and certified by both the Executive Director or Tribal Council or authorized TDHE official and a resident leader, certifying the following:

(a) That a copy of the application was sent to the local HUD Field Office, Director of Public Housing Division, or Administrator, Office of Native American Programs; and

(b) That the application was reviewed by both the housing authority Executive Director or Tribal Council or authorized TDHE official, and a resident leader of the organization that is applying for the PHDE–TA and contains the following:

(i) A four page (or fewer) application letter responding to each of the threshold criteria listed below in Section III(C) of the PHDE–TA section of the SuperNOFA, or the completed application forms available in the application kit; and

(ii) A certification statement, or the form provided in the application kit, signed by the executive director of the housing authority and the authorized representative of the RMC or incorporated RC or RO, certifying that any technical assistance received will be used in compliance with all requirements in the SuperNOFA.

(D) Affirmatively Furthering Fair Housing

Section II(D) of the General Section does not apply to this technical assistance program.

III. Application Selection Process

(A) General

Applications will be reviewed on a continuing first-come, first-served basis, until funds under this PHDE–TA Program section of the SuperNOFA are no longer available or until the application deadline noted in this PHDE–TA Program section of the SuperNOFA. Applications for PHDE–TA will be reviewed as they are received. Applicants are encouraged to submit their applications as early as possible in the fiscal year to ensure that they avoid situations where applications are not eligible for funding. Consultant applications will be received throughout the year with no deadline. Eligible applications will be funded in the order in which negotiations for a statement of work are completed between the consultant and the PHDE–TA program administrator until all funds are expended.

(B) Threshold Criteria for Funding Consideration

(1) The applicant must meet the requirements outlined in this PHDE–TA Program section of the SuperNOFA.

(2) The application must not request an ineligible activity.

(3) The application must answer the following questions:

(a) What is the nature of the drug-related crime problem in your

community in terms of the extent of such crime, the types of crime, and the types of drugs being used? This should include quantifiable or qualitative data on drug problems or criminal activity.

(b) What is the nature of the housing authority's working relationships with law enforcement agencies, particularly local agencies? How will PHDE–TA be used to improve those relationships?

(c) Are housing authority residents selling or using drugs, or committing the crimes?

(d) What about non-residents?

(e) What are the problem(s) you need technical assistance to address and how will you know that the technical assistance provided was successful in addressing the problem?

Applicants cannot request PHDE–TA by answering "to conduct a needs assessment or survey;" they must be able to answer the above questions, and discuss what prevents them from identifying, describing and/or measuring the problems.

(4) The application must answer the following questions:

(a) Describe what type of technical assistance you need and how you will know it has been successful?

(b) What specific output, outcome, results, or deliverables do you expect from the consultant?

(5) The application must describe the steps you and your organization are currently taking to measure, understand or address the drug-related crime problem in your development or housing authority.

(6) The application must describe how the proposed assistance will allow you to develop an anti-drug, anti-crime strategy; or describe how the proposed assistance fits into your current strategy.

(7) The application must describe and provide documentation evidencing commitment to providing continued support of anti-drug and anti-crime activities. This must include the community's recommendations in developing and implementing the grant application and in working cooperatively in ensuring success occurs. Applications must include a description of how the community was involved in developing the application and resolutions of support from law enforcement officials and community service providers. The application must include a memorandum of understanding or other written agreement between the parties involved (e.g., housing authority, applicant, law enforcement officials and community service providers).

(8) The application must include a form, "HUD Field Office/AONAP Confirmation Form."

(C) Application Awards

(1) If the application is deemed eligible for funding and sufficient funds are available, the applicant will be contacted by HUD or its agent to confirm the work requirements.

(2) If HUD receives more than one application from a HA or TDHE; or group of RCs, ROs or RMCs in proximity to one another, HUD may exercise discretion to consider any two or more applications as one, assuming that the applications are received at the same time, or before approval by the Office of Finance and Accounting and the Office of Procurement and Contracts, executing the contract, and providing notification to the consultant to proceed to work. The TA Consultant Database is then searched for at least three consultants who have:

(a) A principal place of business or residence located within a reasonable distance from the applicant, as determined by HUD or its agent;

(b) The requisite knowledge and skills to assist the applicant in addressing its needs; and

(c) The most reasonable fees.

A list of the suggested consultants is forwarded to the applicant from the consultant data base which is updated annually. From this list, the applicant recommends a consultant to provide the requested technical assistance.

(3) The applicant must contact at least three TA consultants from the list provided. HUD may request confirmation from each recommended consultant. If HUD determines that any consultant was not contacted, HUD may consider the recommendation by the applicant void, and can choose a consultant independent of the applicant. After contacting each consultant, the applicant must send a written justification to HUD with a list of the consultants in order of preference, indicating any that are unacceptable, and stating the reasons for its preference. If the applicant finds that all referred consultants lack the requisite expertise, they must provide written documentation justifying this decision. If after HUD review, it is determined that the justification provided is adequate, the applicant will be provided with a second list of potential consultants. If the applicant does not provide HUD the written justification of consultant choice within 30 calendar days, HUD reserves the right to cancel the Technical Assistance. There is no guarantee that the applicant's first preference will be approved. Consultants will only be approved for the PHDE–TA if the request is not in conflict with other requests for the consultant's services.

(4) HUD or its agent will work with the consultant and applicant to develop a "statement of work." The statement of work should include: a time line and estimated budget; a discussion of the kind of technical assistance and skills needed to address the problem, and how the technical assistance requested will address these needs; and a description of the current crime and drug elimination strategy, and how the requested technical assistance will assist that strategy. If the applicant does not currently have a strategy, there should be a statement of how the technical assistance will help them develop a crime and drug elimination strategy. When HUD has completed the authorization to begin work, the consultant is contacted to start work. The consultant must receive written authorization from HUD or its authorized agent before beginning to provide technical assistance under this PHDE–TA Program section of the SuperNOFA. The applicant and the relevant Field Office or Area Office of Office of Native American Programs will also be notified. Consultants will only be reimbursed for a maximum of 30 days of work, which must be completed in fewer than 90 days from the date of the approved statement of work. Work begun before the authorized date will be considered unauthorized work and may not be compensated by HUD.

(D) Application Process for Consultants

(1) Individuals or entities interested in being listed in the PHDE–TA Consultant Database should prepare their applications and send them to the address specified in the application kit. Before they can be entered into the Consultant Database, consultants must submit an application that includes the following information:

(a) The Consultant Resource Inventory Questionnaire, including at least three written references, all related to the general areas listed in this PHDE–TA Program section of the SuperNOFA. One or two of the written references must relate to work for a public housing authority, Tribe or TDHE, RC, RO or RMC;

(b) A resume;

(c) Evidence submitted by the consultant to HUD that documents the standard daily fee previously paid to the consultant for technical assistance services similar to those requested under this PHDE–TA Program section of the SuperNOFA.

(i) For consultants who can justify up to the equivalent of ES–IV, or $462.00 per day, this evidence may include an

accountant's statement, W–2 Wage Statements, or payment statements, and it should be supplemented with a signed statement or other evidence from the employer of days worked in the course of the particular project (for a payment statement) or the tax year (for a W–2 Statement).

(ii) For consultants who can justify above the equivalent of ES–IV, or $462.00 per day, there must be three forms of documentation of the daily rate: (*1*) A previous invoice and payment statement showing the daily rate charged and paid, or the overall amount paid and the number of days for work of a similar nature to that offered in this PHDE–TA program;

(*2*) A certified accountant's statement outlining the daily rate with an explanation of how the rate was calculated by the accountant. This should include at a minimum the total number of jobs of a similar nature completed by the consultant in the past 12 months, an explanation of the specific jobs used to calculate the rate, and the daily rates for each of the jobs used to justify the rate; and

(*3*) A signed statement from the consultant that the certified daily rate was charged for work of a nature similar to that being provided for the Drug Elimination Technical Assistance Program. The accountant must be able to demonstrate independence from the consultant's business.

(2) No one individual may have active at one time any more than three contracts or purchase orders nor be involved with more than one company at a time that has active Technical Assistance contracts. If an individual is working as a member of a multi-person firm, the key individual for the specific contract must be listed on the contract as the key point of contact. The key point of contact must be on-site more hours than any other contracted staff billing to the purchase order, and that individual may have no more than three purchase orders active at the same time.

(3) HUD will determine a specific fee to pay a consultant based upon the evidence submitted under this PHDE–TA Program section of this SuperNOFA.

(4) Consultants may not be requested by name in any application. HUD or its agent will recommend consultants considering at least three elements including previous experience, proximity and cost. Section I of this PHDE–TA section of this SuperNOFA explains this further.

(5) An employee of a housing agency (HA), Tribe, or TDHE may not serve as a consultant to his or her employer. A HA employee who serves as a consultant to other than their employer must be on annual leave to receive the consultant fee.

IV. Application Submission Requirements

In addition to the program requirements listed in the General Section of this SuperNOFA, each TA application must conform to the requirements of the Public and Indian Housing Drug Elimination Technical Assistance Application Kit, both in format and content. A PHDE–TA application must include both the descriptive letter (or form provided in the application kit) and certification statement (or form provided in the application kit) to be eligible for funding.

V. Corrections to Deficient Applications

The General Section of the SuperNOFA provides the procedures for corrections to deficient applications.

VI. Environmental Requirements

In accordance with 24 CFR 50.19(b)(9), the assistance provided under this program relates only to the provision of technical assistance and therefore is categorically excluded from the requirements of the National Environmental Policy Act and is not subject to environmental review under the related laws and authorities. This determination is based on the ineligibility of real property acquisition, construction, rehabilitation, conversion, leasing, or repair for HUD assistance under this program.

Appendix A to SuperNOFA—HUD Field Office Contact Information

Not all Field Offices listed handle all of the programs contained in the SuperNOFAs. Applicants should look to the SuperNOFAs for contact numbers for information on specific programs. Office Hour listings are local time. Persons with hearing or speech impediments may access any of these numbers via TTY by calling the Federal Relay Service at 1–800–877–8339.

New England

Connecticut State Office, One Corporate Center, 19th Floor, Hartford, CT 06103–3220, 860–240–4800, Office Hours: 8:00 AM–4:30 PM

Maine State Office, 99 Franklin Street, Third Floor, Suite 302, Bangor, ME 04401–4925, 207–945–0467, Office Hours: 8:00 AM–4:30 PM

Massachusetts State Office, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Room 375, Boston, MA 02222–1092, 617–565–5234, Office Hours: 8:30 AM–5:00 PM

New Hampshire State Office, Norris Cotton Federal Building, 275 Chestnut Street, Manchester, NH 03101–2487, 603–666–7681, Office Hours: 8:00 AM–4:30 PM

Rhode Island State Office, Sixth Floor, 10 Weybosset Street, 6th floor, Providence, RI 02903–2808, 401–528–5230, Office Hours: 8:00 AM–4:30 PM

Vermont State Office, U.S. Federal Building, Room 237, 11 Elmwood Avenue, P.O. Box 879, Burlington, VT 05402–0879, 802–951–6290, Office Hours: 8:00 AM–4:30 PM

New York/New England

Albany Area Office, 52 Corporate Circle, Albany, NY 12203–5121, 518–464–4200, Office Hours: 7:30 AM–4:00 PM

Buffalo Area Office, Lafayette Court, 465 Main Street, Fifth Floor, Buffalo, NY 14203–1780, 716–551–5755, Office Hours: 8:00 AM–4:30 PM

Camden Area Office, Hudson Building, 800 Hudson Square, Second Floor, Camden, NJ 08102–1156, 609–757–5081, Office Hours: 8:00 AM–4:30 PM,

New Jersey State Office, One Newark Center, 13th Floor, Newark, NJ 07102–5260, 973–622–7900, Office Hours: 8:00 AM–4:30 PM

New York State Office, 26 Federal Plaza, New York, NY 10278–0068, 212–264–6500, Office Hours: 8:30 AM–500 PM

Mid Atlantic

Delaware State Office, 824 Market Street, Suite 850, Wilmington, DE 19801–3016, 302–573–6300, Office Hours: 8:00 AM–4:30 PM

District of Columbia Office, 820 First Street, N.E., Suite 450, Washington, DC 20002–4205, 202–275–9200, Office Hours: 8:30 AM–4:30 PM

Maryland State Office, City Crescent Building, 10 South Howard Street, Fifth Floor, Baltimore, MD 21201–2505, 410–962–2520, Office Hours: 8:30 AM–4:30 PM

Pennsylvania State Office, The Wanamaker Building, 100 Penn Square East, Philadelphia, PA 19107–3380, 215–656–0600, Office Hours: 8:30 AM–4:30 PM

Pittsburgh Area Office, 339 Sixth Avenue, Sixth Floor, Pittsburgh, PA 15222–2515, 412–644–6428, Office Hours: 8:30 AM–4:30 PM

Virginia State Office, The 3600 Centre, 3600 West Broad Street, Richmond, VA 23230–4920, 804–278–4539, Office Hours: 8:30 AM–430 PM

West Virginia State Office, 405 Capitol Street, Suite 708, Charleston, WV 25301–1795, 304–347–7000, Office Hours: 8:00 AM–430 PM

Southeast/Caribbean

Alabama State Office, Beacon Ridge Tower, 600 Beacon Parkway West, Suite 300, Birmingham, AL 35209–3144, 205–290–7617, Office Hours: 8:00 AM–430 PM

Caribbean Office, New San Juan Office Building, 159 Carlos E. Chardon Avenue, San Juan, PR 00918–1804, 787–766–5201, Office Hours: 8:00 AM–430 PM

Florida State Office, Gables One Tower, 1320 South Dixie Highway, Coral Gables, FL 33146–2926, 305–662–4500, Office Hours: 8:30 AM–5 PM

Georgia State Office, Richard B. Russell Federal Building, 75 Spring Street, S.W., Atlanta, GA 30303–3388, 404–331–5136, Office Hours: 8:00 AM–430 PM

Jacksonville Area Office, Southern Bell Tower, 301 West Bay Street, Suite 2200, Jacksonville, FL 32202–5121, 904–232–2627, Office Hours: 8:00 AM–4:30 PM

Kentucky State Office, 601 West Broadway, P.O. Box 1044, Louisville, KY 40201–1044, 502–582–5251, Office Hours: 8:00 AM–4445 PM

Knoxville Area Office, John J. Duncan Federal Building, 710 Locust Street, 3rd Floor, Knoxville, TN 37902–2526, 423–545–4384, Office Hours: 7:30 AM–4:15 PM

Memphis Area Office, One Memphis Place, 200 Jefferson Avenue, Suite 1200, Memphis, TN 38103–2335, 901–544–3367, Office Hours: 8:00 AM–4:30 PM

Mississippi State Office, Doctor A. H. McCoy Federal Building, 100 West Capital Street, Room 910, Jackson, MS 39269–1096, 601–965–4738, Office Hours: 8:00 AM–4:45 PM

North Carolina State Office, Koger Building, 2306 West Meadowview Road, Greensboro, NC 27407–3707, 910–547–4000, Office Hours: 8:00 AM–4:45 PM

Orlando Area Office, Langley Building, 3751 Maguire Blvd, Suite 270, Orlando, FL 32803–3032, 407–648–6441, Office Hours: 8:00 AM–4:30 PM

South Carolina State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Columbia, SC 29201–2480, 803–765–5592, Office Hours: 8:00 AM–4:45 PM

Tampa Area Office, Timberlake Federal Building Annex, 501 East Polk Street, Suite 700, Tampa, FL 33602–3945, 813–228–2501, Office Hours: 8:00 AM–4:30 PM

Tennessee State Office, 251 Cumberland Bend Drive, Suite 200, Nashville, TN 37228–1803, 615–736–5213 Office Hours: 8:00 AM–4:30 PM

Midwest

Cincinnati Area Office, 525 Vine Street, 7th Floor, Cincinnati, OH 45202–3188, 513–684–3451, Office Hours: 8:00 AM–4:45 PM

Cleveland Area Office, Renaissance Building, 1350 Euclid Avenue, Suite 500, Cleveland, OH 44115–1815, 216–522–4065, Office Hours: 8:00 AM–4:40 PM

Flint Area Office, The Federal Building, 605 North Saginaw, Suite 200, Flint, MI 48502–2043, 810–766–5108, Office Hours: 8:00 AM–4:30 PM

Grand Rapids Area Office, Trade Center Building, 50 Louis Street, NW, 3rd Floor, Grand Rapids, MI 49503–2648, 616–456–2100, Office Hours: 8:00 AM–4:30 PM

Illinois State Office, Ralph H. Metcalfe Federal Building, 77 West Jackson Blvd, Chicago, IL 60604–3507, 312–353–5680, Office Hours: 8:15 AM–4:45 PM

Indiana State Office, 151 North Delaware Street, Indianapolis, IN 46204–2526, 317–226–6303, Office Hours: 8:00 AM–4:45 PM

Michigan State Office, Patrick V. McNamara Federal Building, 477 Michigan Avenue, Detroit, MI 48226–2592, 313–226–7900, Office Hours: 8:00 AM–4:30 PM

Minnesota State Office, 220 Second St., South, Minneapolis, MN 55401–2195, 612–370–3000, Office Hours: 8:00 AM–4:30 PM

Ohio State Office, 200 North High Street, Columbus, OH 43215–2499, 614–469–5737, Office Hours: 8:00 AM–4:45 PM

Wisconsin State Office, Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Suite 1380, Milwaukee, WI 53203–2289, 414–297–3214, Office Hours: 8:00 AM–4:30 PM

Southwest

Arkansas State Office, TCBY Tower, 425 West Capitol Avenue, Suite 900, Little Rock, AR 72201–3488, 501–324–5931, Office Hours: 8:00 AM–4:30 PM

Dallas Area Office, Maceo Smith Federal Building, 525 Griffin Street, Room 860, Dallas, TX 75202–5007, 214–767–8359, Office Hours: 8:00 AM–4:30 PM

Houston Area Office, Norfolk Tower, 2211 Norfolk, Suite 200, Houston, TX 77098–4096, 713–313–2274, Office Hours: 7:45 AM–4:30 PM

Louisiana State Office, Hale Boggs Federal Building, 501 Magazine Street, 9th Floor, New Orleans, LA 70130–3099, 504–589–7201, Office Hours: 8:00 AM–4:30 PM

Lubbock Area Office, George H. Mahon Federal Building and United States Courthouse, 1205 Texas Avenue, Lubbock, TX 79401–4093, 806–472–7265, Office Hours: 8:00 AM–4:45 PM

New Mexico State Office, 625 Truman Street, N.E., Albuquerque, NM 87110–6472, 505–262–6463, Office Hours: 7:45 AM–4:30 PM

Oklahoma State Office, 500 West Main Street, Suite 400, Oklahoma City, OK 73102, 405–553–7401, Office Hours: 8:00 AM–4:30 PM

San Antonio Area Office, Washington Square, 800 Dolorosa Street, San Antonio, TX 78207–4563, 210–472–6800, Office Hours: 8:00 AM–4:30 PM

Shreveport Area Office, 401 Edwards Street, Suite 1510, Shreveport, LA 71101–3289, 318–676–3385, Office Hours: 7:45 AM–4:30 PM

Texas State Office, 1600 Throckmorton Street, P.O. Box 2905, Fort Worth, TX 76113–2905, 817–978–9000, Office Hours: 8:00 AM–4:30 PM

Tulsa Area Office, 50 East 15th Street, Tulsa, OK 74119–4030, 918–581–7434, Office Hours: 8:00 AM–4:30 PM

Great Plains

Iowa State Office, Federal Building, 210 Walnut Street, Room 239, Des Moines, IA 50309–2155, 515–284–4512, Office Hours: 8:00 AM–4:30 PM

Kansas/Missouri State Office, Gateway Tower II, 400 State Avenue, Kansas City, KS 66101–2406, 913–551–5462, Office Hours: 8:00 AM–4:30 PM

Nebraska State Office, Executive Tower Centre, 10909 Mill Valley Road, Omaha, NE 68154–3955, 402–492–3100, Office Hours: 8:00 AM–4:30 PM

St. Louis Area Office, Robert A. Young Federal Building, 1222 Spruce Street, 3rd Floor, St. Louis, MO 63103–2836, 314–539–6583, Office Hours: 8:00 AM–4:30 PM

Rocky Mountains

Colorado State Office, 633–17th Street, Denver, CO 80202–3607, 303–672–5440, Office Hours: 8:00 AM–4:30 PM

Montana State Office, Federal Office Building, 301 South Park, Room 340, Drawer 10095, Helena, MT 59626–0095, 406–441–1298, Office Hours: 8:00 AM–4:30 PM

North Dakota State Office, Federal Building, P. O. Box 2483, Fargo, ND 58108–2483, 701–239–5136, Office Hours: 8:00 AM–4:30 PM

South Dakota State Office, 2400 West 49th Street, Suite I–201, Sioux Falls, SD 57105–6558, 605–330–4223, Office Hours: 8:00 AM–4:30 PM

Utah State Office, 257 Tower Building, 257 East-200 South, Suite 550, Salt Lake City, UT 84111–2048, 801–524–3323, Office Hours: 8:00 AM–4:30 PM

Wyoming State Office, Federal Office Building, 100 East B Street, Room 4229, Casper, WY 82601–1918, 307–261–6250, Office Hours: 8:00 AM–4:30 PM

Pacific/Hawaii

Arizona State Office, Two Arizona Center, 400 North 5th Street, Suite 1600, Phoenix, AZ 85004, 602–379–4434, Office Hours: 8:00 AM–4:30 PM

California State Office, Philip Burton Federal Building and U.S. Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102–3448, 415–436–6550, Office Hours: 8:15 AM–4:45 PM

Fresno Area Office, 2135 Fresno Street, Suite 100, Fresno, CA 93721–1718, 209–487–5033, Office Hours: 8:00 AM–4:30 PM

Hawaii State Office, Seven Waterfront Plaza, 500 Ala Moana Boulevard, Suite 500, Honolulu, HI 96813–4918, 808–522–8175, Office Hours: 8:00 AM–4:00 PM

Los Angeles Area Office, 611 West 6th Street, Suite 800, Los Angeles, CA 90017–3127, 213–894–8000, Office Hours: 8:00 AM–4:30 PM

Nevada State Office, 333 North Rancho Drive, Suite 700, Las Vegas, NV 89106–3714, 702–388–6525, Office Hours: 8:00 AM–4:30 PM

Reno Area Office, 1575 Delucchi Lane, Suite 114, Reno, NV 89502–6581, 702–784–5356, Office Hours: 8:00 AM–4:30 PM

Sacramento Area Office, 777–12th Street, Suite 200, Sacramento, CA 95814–1997, 916–498–5220, Office Hours: 8:00 AM–4:30 PM

San Diego Area Office, Mission City Corporate Center, 2365 Northside Drive, Suite 300, San Diego, CA 92108–2712, 619–557–5310, Office Hours: 8:00 AM–4:30 PM

Santa Ana Area Office, 3 Hutton Centre Drive, Suite 500, Santa Ana, CA 92707–5764, 714–957–3745, Office Hours: 8:00 AM–4:30 PM

Tucson Area Office, Security Pacific Bank Plaza, 33 North Stone Avenue, Suite 700, Tucson, AZ 85701–1467, 520–670–6237, Office Hours: 8:00 AM–4:30 PM

Northwest/Alaska

Alaska State Office, University Plaza Building, 949 East 36th Avenue, Suite 401, Anchorage, AK 99508–4135, 907–271–4170, Office Hours: 8:00 AM–4:30 PM

Idaho State Office, Plaza IV, 800 Park Boulevard, Suite 220, Boise, ID 83712–7743, 208–334–1990, Office Hours: 8:00 AM–4:30 PM

Oregon State Office, 400 Southwest Sixth Avenue, Suite 700, Portland, OR 97204–1632, 503–326–2561, Office Hours: 8:00 AM–4:30 PM

Spokane Area Office, Farm Credit Bank Building, Eighth Floor East, West 601 First Avenue, Spokane, WA 99204–0317, 509–353–2510, Office Hours: 8:00 AM–4:30 PM

Washington State Office, Seattle Federal Office Building, 909 1st Avenue, Suite 200, Seattle, WA 98104–1000, 206–220–5101, Office Hours: 8:00 AM–4:30 PM

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Part III

Environmental Protection Agency

Final National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges From Construction Activities; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5987–2]

Final National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges From Construction Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final NPDES general permit reissuance for storm water discharges from construction activities.

SUMMARY: Section 405 of the Water Quality Act of 1987 (WQA) added section 402(p) of the Clean Water Act (CWA) which requires the Environmental Protection Agency (EPA) to develop a phased approach to regulating storm water discharges under the National Pollutant Discharge Elimination System (NPDES) program. EPA published a final regulation on November 16, 1990, (55 FR 47990) establishing permit application requirements for storm water discharges associated with industrial activity and for discharges from municipal separate storm sewer systems serving a population of 100,000 or more. In the permit application regulations, EPA defined the term "storm water discharge associated with industrial activity" in a comprehensive manner to cover a wide variety of facilities. This definition greatly expanded the number of industrial facilities subject to the NPDES program. Construction activities that disturb at least five acres of land and have point source discharges to waters of the U.S. are defined as an "industrial activity," 40 CFR 122.26(b)(14)(x).

The following provides notice for a final NPDES general permit, accompanying response to comments, and fact sheets for storm water discharges from construction activities in the following areas of Region 4:

Indian Country Lands within the State of Alabama
The State of Florida
Indian Country Lands within the State of Florida
Indian Country Lands within the State of Mississippi
Indian Country Lands within the State of North Carolina

ADDRESSES: Notices of Intent (NOIs) submitted in accordance with this permit to receive coverage under this permit and Notices of Termination (NOTs) to terminate coverage under this permit must be sent to Storm Water Notice of Intent (4203), 401 M Street, SW, Washington, DC 20460. The complete administrative record is available from the U.S. Environmental Protection Agency, Region 4, Freedom of Information Officer, 61 Forsyth St. SW., Atlanta, GA 30303. A reasonable fee may be charged for copying.

DATES: This general permit shall be effective on April 3, 1998. Deadlines for submittal of NOIs are provided in Part II.A. of today's permit.

FOR FURTHER INFORMATION CONTACT: Mr. Floyd Wellborn, telephone number (404) 562–9296, or Ms. Gina Fonzi, telephone number (404) 562–9301, or at the following address: United States Environmental Protection Agency, Region 4, Water Management Division, Surface Water Permits Section, Atlanta Federal Center, 61 Forsyth Street S.W., Atlanta, GA 30303.

Table of Contents.

I. Introduction

In 1972, the Federal Water Pollution Control Act (also referred to as the Clean Water Act (CWA)) was amended to provide that the discharge of any pollutants to waters of the Untied States from any point source is unlawful, except if the discharge is in compliance with a National Pollutant Discharge Elimination System (NDPES) permit. In 1987, section 402(p) was added to the CWA to establish a comprehensive framework for addressing storm water discharges under the NPDES program. Section 402(p)(4) of the CWA clarifies the requirements for EPA to issue NPDES permits for storm water discharges associated with industrial activity. On November 16, 1990 (55 FR 47990), EPA published final regulations which define the term "storm water discharge associated with industrial activity."

In 1992, EPA issued a general permit for discharges of storm water from construction activities "associated with industrial activity" to reduce the administrative burden of issuing an individual NDPES permit to each construction activity.

II. Quick Answers to Common Questions

In this section, EPA provides answers to some of the more common questions on the construction storm water permitting program. It is intended to help you get started in understanding the permit. Be aware these answers are fairly broad and may not take into account all scenarios possible at construction sites.

How Do I Know If I Need a Permit?

You need a storm water permit if you can be considered an "operator" of the construction activity that would result in the "discharge of storm water associated with construction activity." You must become a permittee if you meet either of the following two criteria:

- You have operational control of construction project plans and specifications, including the ability to make modifications to those plans and specifications; or
- You have day-to-day operational control of those activities at a project which are necessary to ensure compliance with a storm water pollution prevention plan (SWPPP) for the site or other permit conditions (e.g., you are authorized to direct workers at a site to carry out activities required by the SWPPP or comply with other permit conditions).

There may be more than one party at a site performing the tasks relating to "operational control" as defined above. Depending on the site and the relationship between the parties (e.g., owner, developer), there can either be a single party acting as site operator and consequently be responsible for obtaining permit coverage, or there can be two or more operators with all needing permit coverage. The following are three general operator scenarios (variations on any of the three are possible as the number of "owners" and contractors increases):

- Owner as sole permittee. The property owner designs the structures for the site, develops and implements the SWPPP, and serves as general contractor (or has an on-site representative with full authority to direct day-to-day operations). He may be the only party that needs a permit, in which case everyone else on the site may be considered subcontractors and not need permit coverage.
- Contractor as sole permittee. The property owner hires a construction company to design the project, prepare the SWPPP, and supervise implementation of the plan and compliance with the permit (e.g., a "turnkey" project). Here, the contractor

would be the only party needing a permit. It is under this scenario that an individual having a personal residence built for his own use (e.g., not those to be sold for profit or used as rental property) would not be considered an operator. EPA believes that the general contractor, being a professional in the building industry, should be the entity rather than the individual who is better equipped to meet the requirements of both applying for permit coverage and developing and properly implementing a SWPPP. However, individuals would meet the definition of "operator" and require permit coverage in instances where they perform general contracting duties for construction of their personal residences.

• Owner and contractor as co-permittees. The owner retains control over any changes to site plans, SWPPPs, or storm water conveyance or control designs; but the contractor is responsible for overseeing actual earth disturbing activities and daily implementation of SWPPP and other permit conditions. In this case, both parties may need coverage.

However, you are probably not an operator and subsequently do not need permit coverage if:

• You are a subcontractor hired by, and under the supervision of, the owner or a general contractor (i.e., if the contractor directs your activities on-site, you probably are not an operator); or

• your activities on site result in earth disturbance and you are not legally a subcontractor, *but* a SWPPP specifically identifies someone other than you (or your subcontractor) as the party having operational control to address the impacts your activities may have on storm water quality (i.e., another operator has assumed responsibility for the impacts of your construction activities).

In addition, for purposes of this permit and determining who is an operator, "owner" refers to the party that owns the structure being built. Ownership of the land where construction is occurring does not necessarily imply the property owner is an operator (e.g., a landowner whose property is being disturbed by construction of a gas pipeline). Likewise, if the erection of a structure has been contracted for, but possession of the title or lease to the land or structure is not to occur until after construction, the would-be owner may not be considered an operator (e.g., having a house built by a residential homebuilder).

My Project Will Disturb Less Than Five Acres, But It May Be Part of a "Larger Common Plan of Development or Sale." How Can I Tell and What Must I Do?

If your smaller project is part of a larger common plan of development or sale that collectively will disturb five or more acres (e.g., you are building on six half-acre residential lots in a 10-acre development or are putting in a parking lot in a large retail center) you need permit coverage. The "plan" in a common plan of development or sale is broadly defined as any announcement or piece of documentation (including a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, computer design, etc.) or physical demarcation (including boundary signs, lot stakes, surveyor markings, etc.) indicating construction activities may occur on a specific plot. You must still meet the definition of operator in order to be required to get permit coverage, regardless of the acreage you personally disturb. As a subcontractor, it is unlikely you would need a permit.

For some situations where less than five acres of the original common plan of development remain undeveloped, a permit may not be needed for the construction projects "filling in" the last parts of the common plan of development. A case in which a permit would not be needed is where several empty lots totaling less than five acres remain after the rest of the project had been completed, providing stabilization had also been completed for the entire project. However, if the total area of all the undeveloped lots in the original common plan of development was more than five acres, a permit would be needed.

When Can You Consider Future Construction on a Property To Be Part of a Separate Plan of Development or Sale?

In many cases, a common plan of development or sale consists of many small construction projects that collectively add up to five (5) or more acres of total disturbed land. For example, an original common plan of development for a residential subdivision might lay out the streets, house lots, and areas for parks, schools and commercial development that the developer plans to build or sell to others for development. All these areas would remain part of the common plan of development or sale until the intended construction occurs. After this initial plan is completed for a particular parcel, any subsequent development or redevelopment of that parcel would be regarded as a new plan of development, and would then be subject to the five-acre cutoff for storm water permitting.

What Must I Do To Satisfy the Permit Eligibility Requirements Related to Endangered Species?

In order to be eligible for this permit, you must follow the procedures and examples found in Appendix C for the protection of endangered species. You cannot submit your NOI until you are able to certify your eligibility for the permit. Enough lead time should be built into your project schedule to accomplish these procedures. If another operator has certified eligibility for the project (or at least the portion of the project you will be working on) in his NOI, you will usually be able to rely on his certification of project eligibility and not have to repeat the process. EPA created this "coat tail" eligibility option for protection of endangered species to allow the site developer/owner to obtain up-front "clearance" for a project, thereby avoiding duplication of effort by his contractors and unnecessary delays in construction.

What Does the Permit Require Regarding Historic Preservation?

In order to be eligible for this permit, you must not adversely affect a property that is listed or is eligible for listing in the National Historic Register maintained by the Secretary of the Interior. You cannot submit your NOI until you are able to certify your eligibility for the permit. Enough lead time should be built into your project schedule to accomplish these procedures. If another operator has certified eligibility for the project (or at least the portion of the project you will be working on) in his NOI, you will usually be able to rely on his certification of project eligibility and not have to repeat the process. EPA created this "coat tail" eligibility option for protection of historic places to allow the site developer/owner to obtain up-front "clearance" for a project, thereby avoiding duplication of effort by his contractors and unnecessary delays in construction.

How Many Notices of Intent (NOIs) Must I Submit? Where and When Are They Sent?

You only need to submit one NOI to cover all activities on any one common plan of development or sale. The site map you develop for the storm water pollution prevention plan identifies which parts of the overall project are under your control. For example, if you are a homebuilder in a residential development, you need submit only one

NOI to cover all your lots, even if they are on opposite sides of the development.

The NOI must be postmarked two days before you begin work on site. The address for submitting NOIs is found in the instruction portion of the NOI form and in Part II.C. of the Construction General Permit (CGP).

Do I Have Flexibility in Preparing the Storm Water Pollution Prevention Plan (SWPPP) and Selecting Best Management Practices (BMPs) for My Site?

Storm water pollution prevention plan requirements were designed to allow maximum flexibility to develop the needed storm water controls based on the specifics of the site. Some of the factors you might consider include: More stringent local development requirements and/or building codes; precipitation patterns for the area at the time the project will be underway; soil types; slopes; layout of structures for the site; sensitivity of nearby water bodies; safety concerns of the storm water controls (e.g., potential hazards of water in storm water retention ponds to the safety of children; the potential of drawing birds to retention ponds and the hazards they pose to aircraft); and coordination with other site operators.

Must Every Permittee Have His Own Separate SWPPP or Is a Joint Plan Allowed?

The only requirement is that there be at least one SWPPP for a site which incorporates the required elements for all operators, but there can be separate plans if individual permittees so desire. EPA encourages permittees to explore possible cost savings by having a joint SWPPP for several operators. For example, the prime developer could assume the inspection responsibilities for the entire site, while each homebuilder shares in the installation and maintenance of sediment traps serving common areas.

If a Project Will not Be Completed Before This Permit Expires, How Can I Keep Permit Coverage?

If the permit is reissued or replaced with a new one before the current one expires, you will need to comply with whatever conditions the new permit requires in order to transition coverage from the old permit. This usually includes submitting a new NOI. If the permit expires before a replacement permit can be issued, the permit will be administratively "continued." You will be required to submit an NOI for coverage under the continued permit, until the earliest of:

- The permit being reissued or replaced;
- Submittal of a Notice of Termination (NOT);
- Issuance of an individual permit for your activity; or
- The Director issues a formal decision not to reissue the permit, at which time you must seek coverage under an alternative permit.

When Can I Terminate Permit Coverage? Can I Terminate Coverage (i.e., Liability for Permit Compliance) Before the Entire Project Is Finished?

You can submit an NOT for your portion of a site providing: (1) You have achieved final stabilization of the portion of the site for which you are a permittee (including, if applicable, returning agricultural land to its pre-construction agricultural use); (2) another operator/permittee has assumed control according to Part VI.G.2.c. of the permit over all areas of the site that have not been finally stabilized which you were responsible for (for example, a developer can pass permit responsibility for lots in a subdivision to the homebuilder who purchases those lots, providing the homebuilder has filed his own NOI); or (3) for residential construction only, you have completed temporary stabilization and the residence has been transferred to the homeowner.

III. Coverage of General Permit

Section 402(p) of the Clean Water Act (CWA) clarifies that storm water discharges associated with industrial activity to waters of the United States must be authorized by an NPDES permit. On November 16, 1990, EPA published regulations under the NPDES program which defined the term "storm water discharge associated with industrial activity" to include storm water discharges from construction activities (including clearing, grading, and excavation activities) that result in the disturbance of five or more acres of total land area, including areas that are part of a larger common plan of development or sale (40 CFR 122.26(b)(14)(x)) [1]. The term "storm water discharge from construction activities" will be used in this document to refer to storm water discharges from construction sites that meet the definition of a storm water discharge associated with industrial activity.

This general permit may authorize storm water discharges from existing construction sites (facilities where construction activities began before the effective date of this permit, and final stabilization is to occur after the effective date of this permit) and new construction sites. New construction sites are those facilities where disturbances associated construction activities commence after the effective date of this permit. To obtain authorization under today's permit, a discharger must submit a complete NOI and comply with the terms of the permit. The terms of the permit, including the requirements for submitting an NOI, are discussed in more detail below.

The following discharges are not authorized by this final general permit:

- Storm water discharges associated with industrial activity that originate from the site after construction activities have been completed and the site has undergone final stabilization;
- Non-storm water discharges (except certain non-storm water discharges specifically listed in today's general permit). However, today's permit can authorize storm water discharges from construction activities where such discharges are mixed with non-storm water discharges that are authorized by a different NPDES permit;
- Storm water discharges from construction sites that are covered by an existing NPDES individual or general permit. However, storm water discharges associated with industrial activity from a construction site that are authorized by an existing permit may be authorized by today's general permit after the existing permit expires, provided the expired permit did not establish numeric limitations for such discharges;
- Storm water discharges from construction sites that the Director has determined to be or may reasonably be expected to be contributing to a violation of a water quality standard; and
- Storm water discharges from construction sites if the discharges are likely to adversely affect a listed endangered or threatened species or a species that is proposed to be listed as endangered or threatened or its critical habitat.

IV. Summary of Options for Controlling Pollutants

Most controls for construction activities can be categorized into two groups: (1) Sediment and erosion controls; and (2) storm water

[1] On June 4, 1992, the United States Court of Appeals for the Ninth Circuit remanded the exemption for construction sites of less than five acres to the EPA for further rulemaking (*Natural Resources Defense Council* v. *EPA*, Nos. 90–70671 and 91–70200, slip op. at 6217 (9th Cir. June 4, 1992).

management measures. Sediment and erosion controls generally address pollutants in storm water generated from the site during the time when construction activities are occurring. Storm water management measures generally are installed during and before competition of the construction process, but primarily result in reductions of pollutants in storm water discharged from the site after the construction has been completed. Additional measures include housekeeping best management practices.

A. Sediment and Erosion Controls

Erosion controls provide the first line of defense in preventing offsite sediment movement and are designed to prevent erosion through protection and preservation of soils. Sediment controls are designed to remove sediment from runoff before the runoff is discharged from the site. Sediment and erosion controls can be further divided into two major classes of controls: Stabilization practices and structural practices. Major types of sediment and erosion practices are summarized below. A more complete description of these practices is given in "Florida Development Manual: A Guide to Sound Land and Water Management" or in "Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices," U.S. EPA, 1992.

1. Sediment and Erosion Controls: Stabilization Practices

Stabilization, as discussed here, refers to covering or maintaining an existing cover over soils. The cover may be vegetation, such as grass, trees, vines, or shrubs. Stabilization measures can also include nonvegetative controls such as geotextiles, riprap, or gabions (wire mesh boxes filed with rock). Mulches, such as straw or bark, are most effective when used in conjunction with establishing vegetation, but can be used without vegetation. Stabilization of exposed and denuded soils is one of the most important factors in minimizing erosion while construction activities occur. A vegetation cover reduces the erosion potential of a site by absorbing the kinetic energy of raindrops that would otherwise disturb unprotected soil; intercepting water so that it infiltrates into the ground instead of running off the surface; and slowing the velocity of runoff, thereby promoting deposition of sediment in the runoff. Stabilization measures are often the most important measures taken to prevent offsite sediment movement and can provide large reductions suspended sediment levels in discharges and receiving waters.[2] Examples of stabilization measures are summarized below.

a. *Temporary Seeding.* Temporary seeding provides for temporary stabilization by establishing vegetation at areas of the site where activities will temporarily cease until later in the construction project. Without temporary stabilization, soils at these areas are exposed to precipitation for an extended time period, even though work is not occurring on these areas. Temporary seeding practices have been found to be up to 95 percent effective in reducing erosion.[3]

b. *Permanent Seeding.* Permanent seeding involves establishing a sustainable ground cover at a site. Permanent seeding stabilizes the soil to reduce sediment in runoff from the site by controlling erosion and is typically required at most sites for aesthetic reasons.

c. *Mulching.* Mulching is typically conducted as part of permanent and temporary seeding practices. Where temporary and permanent seeding is not feasible, exposed soils can be stabilized by applying plant residues or other suitable materials to the soil surface. Although generally not as effective as seeding practices, mulching by itself, does provide some erosion control. Mulching in conjunction with seeding provides erosion protection prior to the onset of vegetation growth. In addition, mulching protects seeding activities, providing a higher likelihood of successful establishment of vegetation. To maintain optimum effectiveness, mulches must be anchored to resist wind displacement.

d. *Sod Stabilization.* Sod stabilization involves establishing long-term stands of grass with sod on exposed surfaces. When installed and maintained properly, sodding can be more than 99 percent effective in reducing erosion,[4] making it the most effective vegetation practice available. The cost of sod stabilization (relative to other vegetative controls) typically limits its use to exposed soils where a quick vegetative cover is desired and sites which can be maintained with ground equipment. In addition, sod is sensitive to climate and may require intensive watering and fertilization.

e. *Vegetative Buffer Strips.* Vegetative buffer strips are preserved or planted strips of vegetation at the top and bottom of a slope, outlining property boundaries, or adjacent to receiving waters such as streams or wetlands. Vegetative buffer strips can slow runoff flows at critical areas, decreasing erosion and allowing sediment deposition.

f. *Protection of Trees.* This practice involves preserving and protecting selected trees that exist on the site prior to development. Mature trees provide extensive canopy and root systems which help to hold soil in place. Shade trees also keep soil from drying rapidly and becoming susceptible to erosion. Measures taken to protect trees can vary significantly, from simple measures such as installing tree fencing around the drip line and installing tree armoring, to more complex measures such as building retaining walls and tree wells.

2. Sediment and Erosion Controls: Structural Practices

Structural practices involve the installation of devices to divert flow, store flow, or limit runoff. Structural practices have several objectives. First, structural practices can be designed to prevent water from crossing disturbed areas where sediment may be removed. This involves diverting runoff from undisturbed upslope areas through use of earth dikes, temporary swales, perimeter dike/swales, or diversions to stable areas. A second objective of structural practices can be to remove sediment from site runoff before the runoff leaves the site. Approaches to removing sediment from site runoff include diverting flows to a trapping or storage device or filtering diffuse flow through silt fences before it leaves the site. All structural practices require proper maintenance (removal of sediment) to remain functional.

a. *Earth Dike.* Earth dikes are temporary berms or ridges of compacted soil that channel water to a desired location. Earth dikes should be stabilized with vegetation.

b. *Silt Fence.* Silt fences are a barrier of geotextile fabric (filter cloth) used to intercept sediment in diffuse runoff. They must be carefully maintained to ensure structural stability and to remove excess sediment.

c. *Drainage Swales.* A drainage swale is a drainage channel lined with grass, riprap, asphalt, concrete, or other materials. Drainage swales are installed to convey runoff without causing erosion.

[2] "Performance of Current Sediment Control Measures at Maryland Construction Sites", January 1990, Metropolitan Washington Council of Governments.

[3] "Guides for Erosion and Sediment Control in California," USDA, Soil Conservation Service, Davis CA, Revised 1985.

[4] "Guides for Erosion and Sediment Control in California", USDA—Soil Conservation Service, Davis CA, Revised 1985.

d. *Sediment Traps.* Sediment traps can be installed in a drainage way, at a storm drain inlet, or other points of discharge from a disturbed area.

e. *Check Dams.* Check dams are small temporary dams constructed across a swale or drainage ditch to reduce the velocity of runoff flows, thereby reducing erosion of the swale or ditch. Check dams should not be used in a live stream. Check dams reduce the need for more stringent erosion control practices in the swale due to the decreased velocity and energy of runoff.

f. *Level Spreader.* Level spreaders are outlets for dikes and diversions consisting of an excavated depression constructed at zero grade across a slope. Level spreaders convert concentrated runoff into diffuse runoff and release it onto areas stabilized by existing vegetation.

g. *Subsurface Drain.* Subsurface drains transport water to an area where the water can be managed effectively. Drains can be made of tile, pipe, or tubing.

h. *Pipe Slope Drain.* A pipe slope drain is a temporary structure placed from the top of a slope to the bottom of a slope to convey surface runoff down slopes without causing erosion.

i. *Temporary Storm Drain Diversion.* Temporary storm drain diversions are used to re-direct flow in a storm drain to discharge into a sediment trapping device.

j. *Storm Drain Inlet Protection.* Storm drain inlet protection can be provided by a sediment filter or an excavated impounding area around a storm drain inlet. These devices prevent sediment from entering storm drainage systems prior to permanent stabilization of the disturbed area.

k. *Rock Outlet Protection.* Rock protection placed at the outlet end of culverts or channels can reduce the depth, velocity, and energy of water so that the flow will not erode the receiving downstream reach.

l. *Other Controls.* Other controls include temporary sediment basins, sump pits, entrance stabilization measures, waterway crossings, and wind breaks.

B. Storm Water Management Measures

Storm water management measures are installed during and prior to completion of the construction process, but primarily result in reductions of pollutants in storm water discharged from the site after the construction has been completed. Construction activities often result in significant changes in land use. Such changes typically involve an increase in the overall imperviousness of the site, which can result in dramatic changes to the runoff patterns of a site. As the amount within a drainage area increases, the amount of pollutants carried by the runoff increases. In addition, activities such as automobile travel on roads can result in higher pollutant concentrations in runoff compared to preconstruction levels. Traditional storm water management controls attempt to limit the increases in the amount of runoff and the amount of pollutants discharged from a site associated with the change in land use.

Major classes of storm water management measures include infiltration of runoff onsite; flow attenuation by vegetation or natural depressions; outfall velocity dissipation devices; storm water retention structures and artificial wetlands; and storm water detention structures. For many sites, a combination of these controls may be appropriate. A summary of storm water management controls is provided below. A more complete description of storm water management controls is found in "Florida Development Manual: A Guide to Sound Land and Water Management" or in "Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices," U.S. EPA, 1992, and "A Current Assessment of Urban Best Management Practices" Metropolitan Washington Council of Governments, March 1992.

1. Onsite Infiltration

A variety of infiltration technologies, including infiltration trenches and infiltration basins, can reduce the volume and pollutant loadings of storm water discharges from a site. Infiltration devices tend to mitigate changes to predevelopment hydrologic conditions. Properly designed and installed infiltration devices can reduce peak discharges, provide ground water recharge, augment low flow conditions of receiving streams, reduce storm water discharge volumes and pollutant loads, and protect downstream channels from erosion. Infiltration devices are a feasible option where soils are permeable and the water table and bedrock are well below the surface. Infiltration basins can also be used as sediment basins during construction.[5] Infiltration trenches can be more easily placed into under-utilized areas of a development and can be used for small sites and infill developments. However, trenches may require regular maintenance to prevent clogs, particularly where grass inlets or other pollutant removing inlets are not used. In some situations, such as low density areas of parking lots, porous pavement can provide for infiltration.

2. Flow Attenuation by Vegetation or Natural Depressions

Flow attenuation provided by vegetation or natural depressions can provide pollutant removal and infiltration and can lower the erosive potential of flows.[6] In addition, these practices can enhance habitat values and the appearance of a site. Vegetative flow attenuation devices include grass swales and filter strips as well as trees that are either preserved or planted during construction.

Typically the costs of vegetative controls are less than other storm water practices. The use of check dams incorporated into flow paths can provide additional infiltration and flow attenuation.[7] Given the limited capacity to accept large volumes of runoff, and potential erosion problems associated with large concentrated flows, vegetative controls should usually be used in combination with other storm water devices.

Grass swales are typically used in areas such as low or medium density residential development and highway medians as an alternative to curb and gutter drainage systems.[8]

3. Outfall Velocity Dissipation Devices

Outfall velocity dissipation devices include riprap and stone or concrete flow spreaders. Outfall velocity dissipation devices slow the flow of water discharged from a site to lessen erosion caused by the discharge.

4. Water Quality, Detention and Wetland Systems

a. Storm water detention practices include wet detention and wetlands systems. These systems are designed to manage both storm water quantity and quality. They are designed to maintain a permanent pool of water and include a littoral zone vegetated with suitable aquatic plants. They also may include wetland storm water treatment systems as allowed by Florida Statutes and Florida storm water or environmental

[5] "Controlling Urban Runoff: A Practical Manual for Planning and Designing Urban BMPs", July, 1987, Metropolitan Washington Council of Governments.

[6] "Urban Targeting and BMP Selection", United States EPA, Region V, November 1990.

[7] "Standards and Specifications for Infiltration Practices", 1984, Maryland Water Resources Administration.

[8] "Controlling Urban Runoff: A Practical Manual for Planning and Designing Urban BMPs", Metropolitan Washington Council of Governments, July 1987.

resource permitting regulations. Properly designed, constructed, and maintained wet detention systems, wetland storm water systems, and constructed wetlands can achieve a high removal rate of sediments, BOD, organic nutrients and metals. They are most appropriate and cost effective when used to control runoff at sites with high water tables and a minimum drainage area of 8 acres. These practices rely on settling and biological processes to remove pollutants. They can also create wildlife habitat, recreation, and landscape amenities as well as corresponding higher property values.

a. *Retention Structures/Artificial Wetlands.* Retention structures include ponds and artificial wetlands that are designed to maintain a permanent pool of water. Properly installed and maintained retention structures (also known as wet ponds) and artificial wetlands[9] can achieve a high removal rate of sediment, BOD, organic nutrients and metals, and are most cost-effective when used to control runoff from larger, intensively developed sites.[10]

b. *Water Quality Detention Structures.* Storm water detention structures include extended detention ponds, which control the rate at which the pond drains after a storm event. Extended detention ponds are usually designed to completely drain in about 24 to 40 hours, and will remain dry at other times. They can provide pollutant removal efficiencies that are similar to those of retention ponds.[11] Extended detention systems are typically designed to provide both water quality and water quantity (flood control) benefits.[12]

C. Housekeeping BMPs

Pollutants that may enter storm water from construction sites because of poor housekeeping include oils, grease, paints, gasoline, concrete truck washdown, raw materials used in the manufacture of concrete (e.g., sand, aggregate, and cement), solvents, litter, debris, and sanitary wastes. Construction site management plans can address the following to prevent the discharge of these pollutants:

- Designate areas for equipment maintenance and repair;
- Provide waste receptacles at convenient locations and provide regular collection of wastes;
- Locate equipment washdown areas on site, and provide appropriate control of washwaters;
- Provide protected storage areas for chemicals, paints, solvents, fertilizers, and other potentially toxic materials; and
- Provide adequately maintained sanitary facilities.

V. Changes From the April 16, 1997 Proposed Permit (Amended June 27, 1997)

- Facilities located on Indian country lands in South Carolina will not be covered by this permit. Coverage for these facilities can be obtained under a State issued NPDES construction general permit.
- References to the applicability of this permit to utility companies have been deleted from Part I.B.3 of the permit.
- Individuals who intend to obtain coverage under this general permit for storm water discharges from a construction site (where disturbances associated with the construction project commence before the effective date of this permit), including unpaved rural roads, must submit a Notice of Intent (NOI), if they have not already done so, in accordance with the requirements of Part II within 30 days of the effective date of this permit.
- The NOI submission requirements of Part II.E. and Part VII.B. have been changed. Facilities that have submitted an NOI for coverage under the administratively continued previous general permit do not have to submit an NOI for coverage under today's permit. Facilities who will seek coverage under today's permit if it is administratively continued after its expiration, must submit an NOI for coverage during the post expiration continuance.
- Facilities that have submitted an NOI for coverage under the administratively continued general permit or have submitted since the general permit's expiration, will get automatic coverage under today's permit.
- Facilities located on Indian country lands are exempted from obtaining a State storm water or environmental resource permit.
- The currently approved NOI (EPA form 3510–9) published in the March 6, 1998 **Federal Register** (63 FR 11253) is authorized for use.
- Part III.A.2.b. has been changed to clarify what discharges may be authorized under today's permit.
- Part IV.B language has been changed to eliminate references to the Silviculture BMP manual. The language now requires applicable facilities to be consistent with the requirements of the State Water Policy, the applicable State storm water or environmental resource permit, and the guidelines contained in the Florida Development Manual: A Guide to Sound Land and Water Management. In addition, erosion and sediment control performance standards are deleted from the permit.
- Part V language has been changed to limit the application of nutrients to rates necessary to maintain vegetation and not cause water quality standards violations. In additions the language has been updated to ensure that the application, generation and migration of toxic substances is limited and that toxic materials are properly stored and disposed.
- References to arid and semi-arid regions have been eliminated from the permit.
- Facilities terminating coverage must submit the NOT within 14 days of final stabilization.
- NOTs are to be sent to the processing center in Washington, DC. at the address indicated in Part IX of the permit.
- The current endangered and threatened species list is included.
- References are made to the State of Florida environmental resource permits where applicable.

VI. Summary of Permit Conditions

This general permit contain Notice of Intent requirements, a prohibition on discharging sources of non-storm water, requirements for releases of hazardous substances or oil in excess of reporting quantities, requirements for developing and implementing storm water pollution prevention plans, and requirements for site inspections.

A. Notice of Intent Requirements

NPDES general permits for storm water discharges associated with industrial activity require that dischargers submit a Notice of Intent (NOI) to be covered by the permit prior to the authorization of their discharges under such permit (see 40 CFR 122.28(b)(2)). Consistent with these regulatory requirements, today's permit proposes NOI requirements. These requirements are consistent with the previously issued general permit. Dischargers that submit a complete NOI are not required to submit an individual permit application for such discharge, unless the Director specifically notifies the discharger that an individual permit application must be submitted.

[9] See "Wetland basins for Storm Water Treatment: Discussion and Background", Maryland Sediment and Storm water Division, 1987 and "The Value of Wetlands for Non-point Source Control—Literature Summary", Strecker, E., et.al., 1990.

[10] "Controlling Urban Runoff, A Practical Manual for Planning and Designing Urban BMPs", Metropolitan Washington Council of Governments, 1987.

[11] "Urban Targeting and BMP Selection", United States EPA, Region V, November 1990.

[12] "Urban Surface Water Management", Walesh, S.G., Wiley, 1989.

Dischargers who want to obtain coverage under this permit must submit NOIs using the form provided by EPA (or a photocopy thereof). The NOI form referenced in Appendix A of this document and can be photocopied for use in submittals. NOI forms are also available from the EPA Region 4 Office (see the ADDRESSES section of today's document). Completed NOI forms must be submitted to the following address: Storm Water Notices of Intent (4203), 401 M Street, SW., Washington, DC 20460.

Dischargers operating under approved State or local sediment and erosion plans, grading plans, or storm water management plans, must, in addition to filing copies of the NOI with EPA, submit signed copies of the NOI to the State or local agency approving such plans by the deadlines stated below.

1. Deadlines for Submitting NOIs

Deadlines for submittal of NOIs to be authorized to discharge under this permit are as follows:

- Applicants who have submitted a completed NOI for coverage under the administratively continued previous general permit (57 FR 44412) or applicants who have submitted a completed NOI for coverage under the general permit after its expiration shall automatically receive coverage under today's permit. If the applicant cannot certify that they meet all applicable eligibility requirements of Part I.B of today's permit or cannot be covered by, or comply with, the terms and conditions of this permit, then the applicant shall notify the director, in accordance with the requirements of Part IX of this permit, within 90 days of the effective date of this permit.
- On or before the effective date of this permit, for storm water discharges from construction sites where disturbances associated with a construction project occur on or before the effective date of this permit, and final stabilization [13] is completed at the site after the effective date of this permit;
- At least 2 days prior to the commencement of construction activities (e.g., the initial disturbance of soils associated with clearing, grading, excavation activities, or other construction activities), where such activities commence after the effective date of this permit; and
- For storm water discharges from construction sites where the operator changes, (including projects where an operator is selected after an NOI has been submitted), an NOI shall be submitted at least 2 days prior to when the operator commences work at the site.

EPA will accept an NOI at a later date. However, in such instances, EPA may bring appropriate enforcement actions.

2. Authorization

Dischargers who submit a complete NOI in accordance with the requirements of this permit are authorized to discharge storm water from construction sites under the terms and conditions of this permit 2 days after the date that the NOI is postmarked, unless notified by EPA.

EPA may deny coverage under this permit and require submittal of an individual NPDES permit application based on a review of the completeness and/or content of the NOI or other information (e.g., water quality information, compliance history, etc.). Where EPA requires a discharger authorized under the general permit to apply for an individual NPDES permit or an alternative general permit, EPA will notify the discharger in writing that a permit application is required. Coverage under this general permit will automatically terminate if the discharger fails to submit the required permit application in a timely manner. Where the discharger does submit a requested permit application, coverage under this general permit will automatically terminate on the effective date of the issuance or denial of the individual NPDES permit or the alternative general permit as it applies to the individual permittee.

3. Contents of the NOI

A photocopy of the NOI in Appendix A of today's document may be completed and submitted to EPA's central address to obtain authorization to discharge under today's permit. The NOI form requires the following information:

- The mailing address of the construction site for which the notification is submitted. Where a mailing address for the site is not available, the location of the approximate center of the site must be described in terms of the latitude and longitude to the nearest 15 seconds, or the section, township, and range to the nearest quarter;
- The site owner's name, address, and telephone number;
- The name, address, and telephone number of the operator(s) with day-to-day operational control who have been identified at the time of the NOI submittal, and their status as a Federal, State, private, public, or other entity. Where multiple operators have been selected at the time of the initial NOI submittal, NOIs must be attached and submitted in the same envelope. When an additional operator submits an NOI for a site with a preexisting NPDES permit, the NOI of the additional operator must indicate the preexisting NPDES permit number for discharge(s) from the site;
- The name of the receiving water(s), or if the discharge is through a municipal separate storm sewer, the name of the municipal operator of the storm sewer and the ultimate receiving water(s);
- The permit number of any NPDES permit(s) for any other discharge(s) (including any other storm water discharges or any non-storm water discharges) from the site;
- An indication of whether the operator has existing sampling data that describe the concentration of pollutants in storm water discharges. Existing data should not be included as part of the NOI and should not be submitted unless and until requested by EPA; and
- An estimate of project start date and completion dates, estimates of the number of acres of the site on which soil will be disturbed, and a certification that a storm water pollution prevention plan has been prepared for the site in accordance with the permit and that such plan complies with approved State and/or local sediment and erosion plans or permits and/or storm water management plans or permits. A copy of the plans or permits should not be included with the NOI submission, and should not be submitted unless and until requested by EPA.

The NOI must be signed in accordance with the signatory requirements of 40 CFR 122.22. A complete description of these signatory requirements is provided in the instructions accompanying the NOI (see Appendix A).

4. Additional Notification

In addition to submitting the NOI to EPA, facilities operating under approved State or local sediment and erosion plans, grading plans, or storm water management plans are required to submit signed copies of the NOI to the State or local agency approving such plans by the deadlines stated above. Failure to do so constitutes a violation of the permit.

[13] The term "final stabilization" is defined in today's permits and is discussed in more detail in the Notice of Termination section of today's fact sheet.

B. Special Conditions

1. Prohibition on Non-Storm Water Discharges

Today's permit does not authorize non-storm water discharges that are mixed with storm water except for specific classes of non-storm water discharges specified in the permit. Non-storm water discharges that can be authorized under today's permit include discharges from firefighting activities; fire hydrant flushings; waters used to wash vehicles or control dust in accordance with permit requirements; potable water sources including waterline flushings; irrigation drainage; routine external building washdown that does not use detergents; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air conditioning condensate; springs; and foundation or footing drains where flows are not contaminated with process materials such as solvents.[14]

To be authorized under the final issued permit, sources of non-storm water (except flows from firefighting activities) must be specifically identified in the storm water pollution prevention plan prepared for the facility. (Plan requirements are discussed in more detail below). Where such discharges occur, the plan must also identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water components of the discharge. For example, to reduce pollutants in irrigation drainage, a plan could identify low maintenance lawn areas that do not require the use of fertilizers or biocides; for higher maintenance lawn areas, a plan could identify measures such as limiting fertilizer use based on seasonal and agronomic considerations, decreasing biocide use with an integrated pest management program, introducing natural vegetation or more hearty species, and reducing water use (thereby reducing the volume of irrigation drainage).

This permit will not require pollution prevention measures to be identified and implemented for non-storm water flows from firefighting activities since these flows will usually occur as unplanned emergency situations where it is necessary to take immediate action to protect the public.

The general prohibition on non-storm water discharges in today's permit ensures that non-storm water discharges (except for those classes of non-storm water discharges that are conditionally authorized) are not inadvertently authorized by this permit. Where a storm water discharge is mixed with process wastewaters or other sources of non-storm water prior to discharge, and the discharge is currently not authorized by an NPDES permit, the discharge cannot be covered by today's permit and the discharger should (1) submit the appropriate application forms (Forms 1 and 2C) to obtain permit coverage or (2) discontinue the discharge.

2. Releases of Reportable Quantities of Hazardous Substances and Oil

Today's permit provides that the discharge of hazardous substances or oil from a facility must be eliminated or minimized in accordance with the storm water pollution plan developed for the facility. Where a permitted storm water discharge contains a hazardous substance or oil in an amount equal to or in excess of a reporting quantity established under 40 CFR part 110, 40 CFR part 117, or 40 CFR part 302, during a 24-hour period, today's permit requires the following actions:

- The permittee must notify the National Response Center (NRC) (800–424–8802; or in Region 4, 404–562–8702) in accordance with the requirements of 40 CFR part 110, 40 CFR part 117, and 40 CFR part 302, as soon as they have knowledge of the discharge;
- The permittee must modify the storm water pollution prevention plan for the facility within 14 calendar days of knowledge of the release to provide (1) a description of the release, (2) the date of the release and (3) the circumstances leading to the release. In addition, the permittee must modify the plan, as appropriate, to identify measures to prevent the reoccurrence of such releases and to respond to such releases.
- Within 14 calendar days of the knowledge of the release, the permittee must submit to EPA (1) a written description of the release (including the type and estimated amount of material released), (2) the date that such release occurred, (3) the circumstances leading to the release, and (4) any steps to be taken to modify the storm water pollution prevention plan for the facility.

Where a discharge of a hazardous substance or oil in excess of reporting quantities is caused by a non-storm water discharge (e.g., a spill of oil into a separate storm sewer), the spill is not authorized by this permit. The discharger must report the spill as required under 40 CFR part 110. In the event of a spill, the requirements of section 311 of the CWA and otherwise applicable provisions of sections 301 and 402 of the CWA continue to apply.

This approach is consistent with the requirements for reporting releases of hazardous substances and oil-requirements that make a clear distinction between hazardous substances typically found in storm water discharges and those associated with spills that are not considered part of a normal storm water discharge (see 40 CFR 117.12(d)(2)(i)).

C. Unpaved Rural Roads

Part IV of the permit and its conditions are intended to eliminate, prevent or minimize the discharge of pollutants to waters of the U.S. from the construction of unpaved roads. EPA believes that the discharge of storm water runoff from the construction of unpaved roads could be a significant source of pollutants to waters of the United States. Therefore, the discharge of storm water from the construction of unpaved roads greater than five (5) acres is not exempt from the requirements of 40 CFR 122.26(a)(1)(ii) and (b)(14)(x) under the Intermodal Surface Transportation Efficiency Act of 1991. This action is in accordance with section 402(p)(2)(E) of the Clean Water Act (1987, as amended). If five (5) acres equals 217,800 ft^2 and area equals length times width, then the approximate length of road equal to five (5) acres would be 217,800 ft^2 divided by the road width. For example, assuming a road construction area width of 25 feet, five (5) acres of road would be approximately 1.65 miles.

The principle component of the Part IV requirements for facilities in the State of Florida is consistency with the requirements set forth in State Water Policy (Chapter 62-40, FAC), the applicable storm water or environmental resource permitting requirements of the FDEP or appropriate FWMD, and the guidelines contained in the Florida Development Manual: A Guide to Sound Land and Water Management (FDEP, 1988) and any subsequent amendments. All relevant portions of the pollution prevention plan requirements of Part V of the permit shall be applied to discharges of storm water from unpaved roads.

D. Storm Water Pollution Prevention Plan Requirements

The pollution prevention plans required by today's permit focuses on two major tasks: (1) Providing a site description that identifies sources of pollution to storm water discharges

[14] These discharges are consistent with the allowable classes of non-storm water discharges to municipal separate storm sewer systems (40 CFR 122.26(d)(iv)(D)).

associated with industrial activity from the facility and (2) identifying and implementing appropriate measures to reduce pollutants in storm water discharges to ensure compliance with the terms and conditions of this permit.

In developing this permit, the Agency reviewed a significant number of existing State and local sediment and erosion control and storm water management requirements. State and local data were reviewed for a wide range of climates and varying types of construction activities.

1. Contents of the Plan

Storm water pollution prevention plans must include a site description; a description of controls that will be used at the site (e.g., erosion and sediment controls, storm water management measures); a description of maintenance and inspection procedures; and a description of pollution prevention measures for any non-storm water discharges that exist.

a. *Site Description.* Storm water pollution prevention plans must be based on an accurate understanding of the pollution potential of the site. The first part of the plan requires an evaluation of the sources of pollution at a specific construction site. The plan must identify potential sources of pollution that may reasonably be expected to affect the quality of storm water discharges from the construction site. In addition, the source identification components for pollution prevention plans must provide a description of the site and the construction activities. This information is intended to provide a better understanding of site runoff and major pollutant sources. At a minimum, plans must include the following:

- A description of the nature of the construction activity. This would typically include a description of the ultimate use of the project (e.g., low-density residential, shopping mall, highway).
- A description of the intended sequence of major activities that disturb soils for major portions of the site (e.g., grubbing, excavation, grading).
- Estimates of the total area of the site and the total area of the site that is expected to be disturbed by excavation, grading, or other activities. Where the construction activity is to be staged, it may be appropriate to describe areas of the site that will be disturbed at different stages of the construction process.
- Estimates of the runoff coefficient of the site after construction activities are completed as well as existing data describing the quality of any discharge from the site or the soil. The runoff coefficient is defined as the fraction of total rainfall that will appear at the conveyance as runoff. Runoff coefficients can be estimated from site plan maps, which provide estimates of the area of impervious structures planned for the site and estimates of areas where vegetation will be precluded or incorporated. Runoff coefficients are one tool for evaluating the volume of runoff that will occur from a site when construction is completed. These coefficients assist in evaluating pollutant loadings, potential hydraulic impacts to receiving waters, and flooding impacts. They are also used for sizing of post-construction storm water management measures.
- A site map indicating drainage patterns and approximate slopes anticipated after major grading activities, areas of soil disturbance; an outline of areas that will not be disturbed; the location of major structural and nonstructural controls identified in the plan; the location of areas where stabilization practices are expected to occur; the location of surface waters (including wetlands); and locations where storm water is discharged to a surface water. Site maps should also include other major features and potential pollutant sources, such as the location of impervious structures and the location of soil piles during the construction process.
- The name of the receiving water(s), and areal extent of wetland acreage at the site.

b. *Controls to Reduce Pollutants.* The storm water pollution prevention plan must describe and ensure the implementation of practices that will be used to reduce the pollutants in storm water discharges from the site and assure compliance with the terms and conditions of the permit. Permittees are required to develop a description of four classes of controls appropriate for inclusion in the facility's plan, and implement controls identified in the plan in accordance with the plan. The description of controls must address (1) erosion and sediment controls, (2) storm water management, (3) a specified set of other controls, and (4) any applicable procedures and requirements of State and local sediment and erosion plans or storm water management plans.

The pollution prevention plan must clearly describe the intended sequence of major activities and when, in relation to the construction process, the control will be implemented. Good site planning and preservation of mature vegetation are primary control techniques for controlling sediment in storm water discharges during construction activities as well as for developing a strategy for storm water management that controls pollutants in storm water discharges after the completion of construction activities. Properly staging major earth disturbing activities can also dramatically decrease the costs of sediment and erosion controls. The description of the intended sequence of major activities will typically describe the intended staging of activities on different parts of the site.

Permittees must develop and implement four classes of controls in the pollution prevention plan, each of which is discussed below.

i. *Erosion and Sediment Controls.* The requirements for erosion and sediment controls for construction activities in this permit have three goals: (1) To divert upslope water around disturbed areas of the site; (2) to limit the exposure of disturbed areas to the shortest duration possible; and (3) to remove sediment from storm water before it leaves the site. Erosion and sediment controls include both stabilization practices and structural practices.

Stabilization Practices. Pollution prevention plans must include a description of interim and permanent stabilization practices, including site-specific scheduling of the implementation of the practices. The plans should ensure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized as quickly as possible. Stabilization practices are the first line of defense for preventing erosion; they include temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetative buffer strips, and other appropriate measures. Temporary stabilization practices are often cited as the single most important factor in reducing erosion at construction sites.[15]

Stabilization also involves preserving and protecting selected trees that were on the site prior to development. Mature trees have extensive canopy and root systems, which help to hold soil in place. Shade trees also keep soil from drying rapidly and becoming susceptible to erosion. Measures taken to protect trees can vary significantly, from simple measures such as installing tree fencing around the drip line and installing tree armoring, to more complex measures such as building retaining walls and tree wells.

[15] "New York Guidelines for Urban Erosion and Sediment Control", USDA, Soil Conservation Service, March 1988.

Since stabilization practices play such an important role in preventing erosion, it is critical that they are rapidly employed in appropriate areas. This permit provides that, except in three situations, stabilization measures be initiated on disturbed areas as soon as practicable, but no more than 14 days after construction activity on a particular portion of the site has temporarily or permanently ceased. The three exceptions to this requirement are the following:

- Where construction activities will resume on a portion of the site within 21 days from when the construction activities ceased.
- Where the initiation of stabilization measures is precluded by snow cover, in which case, stabilization measures must be initiated as soon as practicable.

Structural Practices. The pollution prevention plan must include a description of structural practices to the degree economically attainable, to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from exposed areas of the site. Structural controls are necessary because vegetative controls cannot be employed at areas of the site that are continually disturbed and because a finite time period is required before vegetative practices are fully effective. Options for such controls include silt fences, earth dikes, drainage swales, check dams, subsurface drains, pipe slope drains, level spreaders, storm drain inlet protection, rock outlet protection, sediment traps, rock outlet protection, reinforced soil retaining systems, gabions, and temporary or permanent sediment basins. Structural measures should be placed on upland soils to the degree possible.

For sites with more than 10 disturbed acres at one time that are served by a common drainage location, a temporary or permanent sediment basin providing 3,600 cubic feet of storage per acre drained, or equivalent control measures (such as suitably sized dry wells or infiltration structures), must be provided where economically attainable until final stabilization of the site has been accomplished. Flows from offsite areas and flows from onsite areas that are either undisturbed or have undergone final stabilization may be diverted around both the sediment basin and the disturbed area. The requirement to provide 3,600 cubic feet of storage area per acre drained does not apply to such diverted flows.

For the drainage locations which serve more than 10 disturbed acres at one time and where a sediment basin providing storage or equivalent controls for 3,600 cubic feet per acre drained is not economically attainable, smaller sediment basins or sediment traps should be used. At a minimum, silt fences, or equivalent sediment controls are required for all sideslope and downslope boundaries of the construction area. Diversion structures should be used on upland boundaries of disturbed areas to prevent runon from entering disturbed areas.

For drainage locations serving 10 or less acres, smaller sediment basins or sediment traps should be used and at a minimum, silt fences, or equivalent sediment controls are required for all sideslope and downslope boundaries of the construction area. Alternatively, the permittee may provide a sediment basin providing storage for 3,600 cubic feet of storage per acre drained. Diversion structures should be used on upland boundaries of disturbed areas to prevent runon from entering disturbed areas.

ii. *Storm Water Management.* The plan must include a description of "storm water management" measures.[16] This permit addresses only the installation of storm water management measures and not the ultimate operation and maintenance of such structures after the construction activities have been completed and the site has undergone final stabilization. Permittees are responsible only for the installation and maintenance of storm water management measures prior to final stabilization of the site and are not responsible for maintenance after storm water discharges associated with construction activities have been eliminated from the site. However, this does not release a facility from responsibilities to operate and maintain storm water management systems in perpetuity after final stabilization in accordance with the requirements set forth by local environmental permitting actions such as the State of Florida storm water or environmental resource permit issued for the site.

Land development can significantly increase storm water discharge volumes and peak velocities where appropriate storm water management measures are not implemented. In addition, storm water discharges will typically contain higher levels of pollutants, including total suspended solids (TSS), heavy metals, nutrients, and oxygen demanding constituents.[17]

Storm water management measures that are installed during the construction process can control the volume of storm water discharged and peak discharge velocities, as well as reduce the amount of pollutants discharged after the construction operations have been completed. Reductions in peak discharge velocities and volumes can also reduce pollutant loads, as well as reduce physical impacts such as stream bank erosion and stream bed scour. Storm water management measures that mitigate changes to predevelopment runoff characteristics assist in protecting and maintaining the physical and biological characteristics of receiving streams and wetlands.

Structural measures should be placed on upland soils to the degree attainable. The installation of such devices may be subject to section 404 of the CWA if the devices are placed in wetlands (or other waters of the United States).

Options for storm water management measures that are to be evaluated in the development of plans include infiltration of runoff on site; flow attenuation by use of open vegetated swales and natural depressions; storm water retention structures and storm water detention structures (including wet ponds); and sequential systems that combine several practices.

The pollution prevention plan must include an explanation of the technical basis used to select the practices to control pollution where flows exceed predevelopment levels. The explanation of the technical basis for selecting practices should address how a number of factors were evaluated, including the pollutant removal efficiencies of the measures, the costs of the measure, site specific factors that will affect the application of the measures, the economic achievability of the measure at a particular site, and other relevant factors.

EPA anticipates that storm water management measures at many sites will be able to provide for the removal of at least 80 percent of total suspended solids (TSS).[18] A number of storm water management measures can be used to achieve this level of control, including properly designed and installed wet ponds, infiltration trenches, infiltration basins, sand filter system, manmade storm water wetlands, and multiple pond systems. The pollutant removal efficiencies of various storm water management measures can be estimated

[16] For the purpose of the special requirements for construction activities, the term "storm water management" measures refers to controls that will primarily reduce the discharge of pollutants in storm water from sites *after* completion of construction activities.

[17] See "Nationwide Urban Runoff Program", EPA, 1984.

[18] TSS can be used as an indicator parameter to characterize the control of other pollutants, including heavy metals, oxygen demanding pollutants, and nutrients, commonly found in storm water discharges.

from a number of sources, including "Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices," U.S. EPA, 1992, and "A Current Assessment of Urban Best Management Practice," prepared for U.S. EPA by Metropolitan Washington Council of Governments, March 1992. Proper selection of a technology depends on site factors and other conditions.

In selecting storm water management measures, the permittee should consider the impacts of each method on other water resources, such as ground water. Although storm water pollution prevention plans primarily focus on storm water management, EPA encourages facilities to avoid creating ground water pollution problems. For example, if the water table is unusually high in an area or soils are especially sandy and porous, an infiltration pond may contaminate a ground water source unless special preventive measures are taken. Under EPA's July 1991 Ground Water Protection Strategy, States are encouraged to develop Comprehensive State Ground Water Protection Programs (CSGWPP). Efforts to control storm water should be compatible with State ground water objectives as reflected in CSGWPPs.

The evaluation of whether the pollutant loadings and the hydrologic conditions (the volume of discharge) of flows exceed predevelopment levels can be based on hydrologic models which consider conditions such as the natural vegetation which is typical for the area.

Increased discharge velocities can greatly accelerate erosion near the outlet of onsite structural measures. To mitigate these effects, this permit requires that velocity dissipation devices be placed at discharge locations and along the length of any outfall channel as necessary to provide a non-erosive velocity flow from the structure to a water course. Velocity dissipation devices maintain and protect the natural physical and biological characteristics and functions of the watercourse, e.g., hydrologic conditions, such as the hydroperiod and hydrodynamics, that were present prior to the initiation of construction activities.

iii. *Other Controls.* Other controls to be addressed in storm water pollution prevention plans for construction activities require that no non-storm water solid materials, including building material wastes shall be discharged at the site, except as authorized by a Section 404 permit.

This final permit requires that offsite vehicle tracking of sediments and the generation of dust be minimized. This can be accomplished by measures such as providing gravel or paving at access entrance and exit drives, parking areas, and unpaved roads on the site carrying significant amounts of traffic (e.g., more than 25 vehicles per day); providing entrance wash racks or stations for trucks; and/or providing street sweeping.

In addition, this permit requires that the plan shall ensure and demonstrate compliance with applicable State and/or local sanitary sewer, septic system, and waste disposal regulations.[19]

iv. *State and Local Controls.* Many municipalities and States have developed sediment and erosion control requirements for construction activities. A significant number of municipalities and States have also developed storm water management controls. This general permit requires that storm water pollution prevention plans for facilities that discharge storm water associated with industrial activity from construction activities include procedures and requirements of State and local sediment and erosion control plans or storm water management plans. Permittees are required to provide a certification that their storm water pollution prevention plan reflects requirements related to protecting water resources that are specified in State or local sediment and erosion plans or storm water management plans.[20] In addition, permittees are required to amend their storm water pollution prevention plans to reflect any change in a sediment and erosion site plan or site permit or storm water management site plan or site permit approved by State or local officials for which the permittee receives written notice. Where such amendments are made, the permittee must provide a recertification that the storm water pollution prevention plan has been modified. This provision does not apply to provisions of master plans, comprehensive plans, nonenforceable guidelines, or technical guidance documents, but rather to site-specific State or local permits or plans.

c. *Maintenance.* Erosion and sediment controls can become ineffective if they are damaged or not properly maintained. Maintenance of controls has been identified as a major part of effective erosion and sediment programs. Plans must contain a description of prompt and timely maintenance and repair procedures addressing all erosion and sediment control measures (e.g., sediment basins, traps, silt fences), vegetation, and other measures identified in the site plan to ensure that such measures are kept in good and effective operating condition.

d. Inspections. Procedures in a plan must provide that specified areas on the site are inspected by qualified personnel provided by the discharger a minimum of once every seven calendar days and within 24 hours after any storm event of greater than 0.25 inches. Areas of the site that must be observed during such inspections include disturbed areas, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site. Where sites have been temporarily or finally stabilized, the inspection must be conducted at least once every month.

Disturbed areas and areas used for storage of materials that are exposed to precipitation must be inspected for evidence of, or the potential for, pollutants entering the runoff from the site. Erosion and sediment control measures identified in the plan must be observed to ensure that they are operating correctly. Observations can be made during wet or dry weather conditions. Where discharge locations or points are accessible, they must be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to receiving waters. This can be done by inspecting receiving waters to see whether any signs of erosion or sediment are associated with the discharge location. Locations where vehicles enter or exit the site must be inspected for evidence of offsite sediment tracking.

Based on the results of the inspection, the site description and the pollution prevention measures identified in the plan must be revised as soon as possible after an inspection that reveals

[19] In rural and suburban areas that are served by septic systems, malfunctioning septic systems can contribute pollutants to storm water discharges. Malfunctioning septic tanks may be a more significant surface runoff pollution problem than a ground water problem. This is because a malfunctioning septic system is less likely to cause ground water contamination where a bacterial mat in the soil retards the downward movement of wastewater. Surface malfunctions are caused by clogged or impermeable soils, or when stopped up or collapsed pipes force untreated wastewater to the surface. Surface malfunctions can vary in degree from occasional damp patches on the surface to constant pooling or runoff of wastewater. These discharges have high bacteria, nitrate, and nutrient levels and can contain a variety of household chemicals. This permit does not establish new criteria for septic systems, but rather addresses existing State or local criteria.

[20] Operators of storm water discharges from construction activities which, based on an evaluation of site specific conditions, believe that State and local plans do not adequately represent BAT and BCT requirements for the facility may request to be excluded from the coverage of the general permit by submitting to the Director an individual application with a detailed explanation of the reasons supporting the request, including any supporting documentation showing that certain permit conditions are not appropriate.

inadequacies. The inspection and plan review process must provide for timely implementation of any changes to the plan within 7 calendar days following the inspection.

An inspection report that summarizes the scope of the inspection, name(s) and qualifications of personnel conducting the inspection, the dates of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken must be retained as part of the storm water pollution prevention plan for at least three years after the date of inspection. The report must be signed in accordance with the signatory requirements in the Standard Conditions section of this permit.

Diligent inspections are necessary to ensure adequate implementation of onsite sediment and erosion controls, particularly in the later stages of construction when the volume of runoff is greatest and the storage capacity of the sediment basins has been reduced.[21]

e. Non-Storm Water Discharges. The final issued permit may authorize storm water discharges from construction activities that are mixed with discharges from firefighting activities, fire hydrant flushings, waters used to wash vehicles or control dust in accordance with efforts to minimize offsite sediment tracking, potable water sources including waterline flushings, irrigation drainage from watering vegetation, routine exterior building washdown that does not use detergents, pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used, air conditioning condensate, springs, and foundation or footing drains where flows are not contaminated with process materials such as solvents, provided the non-storm water component of the discharge is specifically identified in the pollution prevention plan. In addition, the plan must identify and ensure the implementation of appropriate pollution prevention measures for each of the non-storm water component(s) of the discharge.[22]

EPA believes that where these classes of non-storm water discharges are identified in a pollution prevention plan and where appropriate pollution prevention measures are evaluated, identified, and implemented, they generally pose low risks to the environment. The Agency also notes that it can request individual permit applications for such discharges where appropriate. The Agency is not requiring that flows from fire-fighting activities be identified in plans because of the emergency nature of such discharges coupled with their low probability and the unpredictability of their occurrence.

2. Deadlines for Plan Preparation and Compliance

The final issued permit will establish the following deadlines for storm water pollution prevention plan development and compliance:

- The plan must be completed prior to the submittal of an NOI to be covered under this permit and updated as appropriate.
- For construction activities that have begun on or before the effective date of this permit, except the plan shall provide for compliance with the terms and schedule of the plan beginning on the effective date of this permit.
- For construction activities that have begun after the effective date of this permit, the plan must provide for compliance with the terms and schedule of the plan beginning with the initiation of construction activities.

3. Signature and Plan Review

Signature and plan review requirements are as follows:

- The plan must be signed by all permittees for a site in accordance with the signatory requirements in the Standard Permit Conditions section of the permit, and must be retained on site at the facility that generates the storm water discharge.
- The permittee must make plans available, upon request, to EPA, and State or local agency approved sediment and erosion plans, grading plans, or storm water management plans. In the case of a storm water discharge associated with industrial activity that discharges through a municipal separate storm sewer system with an NPDES permit, permittees must make plans available to the municipal operator of the system upon request.
- EPA may notify the permittee at any time that the plan does not meet one or more of the minimum requirements. Within 7 days of such notification from EPA (or as otherwise requested by EPA), the permittee must make the required changes to the plan and submit to EPA a written certification that the requested changes have been made.

4. Keeping Plans Current

The permittee must amend the plan whenever there is a change in design, construction, operation, or maintenance, that has a significant effect on the potential for the discharge of pollutants to waters of the United States or to municipal separate storm sewer systems. The plan must also be amended if it proves to be ineffective in eliminating or significantly minimizing pollutants in the storm water discharges from the construction activity. In addition, the plan shall be amended to identify any new contractor and/or subcontractor that will implement a measure of the storm water pollution prevention plan. Amendments to the plan will be reviewed by EPA as described above.

5. Additional Requirements

This permit authorizes a storm water discharge associated with industrial activity from a construction site that is mixed with a storm water discharge from an industrial source other than construction, only under the following conditions:

- The industrial source other than construction is located on the same site as the construction activity; and
- Storm water discharges from where the construction activities are occurring are in compliance with the terms of this permit.

6. Contractors

The storm water pollution prevention plan must clearly identify for each measure identified in the plan, the contractor(s) and/or subcontractor(s) that will implement the measure. All contractors and subcontractors identified in the plan must sign a copy of the certification statement presented below before conducting any professional service at the site identified in the pollution prevention plan:

"I certify under penalty of law that I understand the terms and conditions of the general National Pollutant Discharge Elimination System (NPDES) permit that authorizes the storm water discharges associated with industrial activity from the construction site identified as part of this certification."

All certifications must be included in the storm water pollution prevention plan.

E. Retention of Records

The permittee is required to retain records or copies of all reports required by this permit, including storm water pollution prevention plans and records of all data used to complete the NOI to be covered by the permit, for a period of at least three years from the date of

[21] "Performance of Current Sediment Control Measures at Maryland Construction Sites", January 1990, Metropolitan Washington Council of Governments.

[22] This is consistent with the allowable types of non-storm water discharges to municipal separate storm sewer systems (40 CFR 122.26(d)(2)(iv)(A)).

final stabilization. This period may be extended by request of the Director.

F. Notice of Termination

A discharger may submit a Notice of Termination (NOT) to EPA in two sets of circumstances: (1) After a site has undergone final stabilization and the facility no longer discharges storm water associated with industrial activity from a construction site and (2) when the permittee has transferred operational control to another permittee and is no longer an operator for the site. NOTs must be submitted using the form provided by the Director (or a photocopy thereof). A copy of the NOT form is in Appendix B and can be photocopied for use. NOTs will assist EPA in tracking the status of the discharger.

Today's permit define final stabilization for the purpose of submitting an NOT as occurring when all soil disturbing activities are completed and a uniform perennial vegetative cover with a density of 70 percent for the unpaved areas and areas not covered by permanent structures has been established or equivalent stabilization measures have been employed. Equivalent stabilization measures include permanent measures other than establishing vegetation, such as the use of rip-rap, gabions, and/or geotextiles.

A copy of the NOT, and instructions for completing the NOT, are provided in Appendix B of today's document. The NOT form requires the following information:

- The mailing address of the construction site for which the notification is submitted. Where a mailing address for the site is not available, the location of the approximate center of the site must be described in terms of the latitude and longitude to the nearest 15 seconds, or the section, township, and range to the nearest quarter.
- The site owner's name, address, and telephone number.
- The name, address, and telephone number of the operator addressed by the NOT, and operator status as a Federal, State, private, public, or other entity.
- The NPDES permit for the storm water discharge identified by the NOT.
- The following certification:

"I certify under penalty of law that disturbed soils at the identified facility have been finally stabilized and temporary erosion and sediment control measures have been removed or will be removed at an appropriate time, or that all storm water discharges associated with construction activities from the identified site that are authorized by an NPDES general permit have been eliminated or that I am no longer the operator of the construction activity. I understand that by submitting this notice of termination, that I am no longer authorized to discharge storm water by the general permit, and that discharging pollutants in storm water associated with industrial activity to waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by a NPDES permit."

Notices of Termination are to be sent to the following address: Storm Water Notice of Termination (4203), 401 M Street, S.W., Washington, DC 20460.

The NOT must be signed by the appropriate individual in accordance with the signatory requirements of 40 CFR 122.22. A description of these signatory requirements is provided in the instructions accompanying the NOT (see Appendix B).

Submittal of a NOT, by itself, does not relieve permittees from the obligations of the permit, such as the requirement to stabilize the site. Appropriate enforcement actions may still be taken for permit violations where a permittee submits a NOT but the permittee has not transferred operational control to another permittee or the site has not undergone final stabilization.

G. Regional Offices

Notices of Intent to be authorized to discharge under this permit should be sent to: Storm Water Notice of Intent (4203), 401 M Street, SW., Washington, DC 20460.

Other submittals of information required under this permit or individual permit applications should be sent to the appropriate EPA Regional Office: United States EPA, Region IV, Water Management Division, (SWPFB–15), Surface Water Permits Section, 100 Alabama Street, S.W., Atlanta, GA 30303–3104, Contact: Floyd Wellborn, (404) 562–9296.

H. Special Conditions in Specified States

Section 401 of the CWA provides that no Federal license or permit, including NPDES permits, to conduct any activity that may result in any discharge into navigable waters shall be granted until the State in which the discharge originates certifies that the discharge will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of the CWA.

VII. Cost Estimates

The two major costs associated with pollution prevention plans for construction activities include the costs of sediment and erosion controls (see Table 1) and the costs of storm water management measures (see Table 2). Today's permit provide flexibility in developing controls for construction activities. Typically, most construction sites will employ several types of sediment and erosion controls and storm water management controls, but not all the controls listed in Tables 1 and 2. In general, sites that disturb a large area will incur higher pollution prevention costs.

TABLE 1.—SEDIMENT AND EROSION CONTROL COSTS

Temporary seeding	$1.00 per square foot.
Permanent seeding	1.00 per square foot.
Mulching	1.25 per square foot.
Sod stabilization	4.00 per square foot.
Vegetative buffer strips	1.00 per square foot.
Protection of trees	30.00 to $200.00 per tree set.
Earth dikes	5.50 per linear foot.
Silt fences	6.00 per linear foot.
Drainage swales-grass	3.00 per square yard.
Drainage swales-sod	4.00 per square yard.
Drainage swales-asphalt	35.00 per square yard.
Drainage swales-concrete	65.00 per square yard.
Check dams-rock	100 per dam.
Check dams-covered straw bales	50 per dam.
Level spreader-earthen	4.00 per square yard.
Level spreader-concrete	65.00 per square yard.
Subsurface drain	2.25 per linear foot.

TABLE 1.—SEDIMENT AND EROSION CONTROL COSTS—Continued

Pipe slope drain	5.00 per linear foot.
Temporary storm drain diversion	variable.
Storm drain inlet protection	300 per inlet.
Rock outlet protection	45 per square yard.
Sediment traps	500 to $7,000 per trap.
Temporary sediment basins	5,000 to $50,000 per basin.
Sump pit	500 to $7,000.
Entrance stabilization	1,500 to $5,000 per entrance.
Entrance wash rack	2,000 per rack.
Temporary waterway crossing	500 to $1,500.
Wind breaks	2.50 per linear foot.

Practices such as sod stabilization and tree protection increase property values and satisfy consumer aesthetic needs.
Sources: "Means Site Work Cost Data," 9th edition, 1990, R.S. Means Company. "Sediment and Erosion Control, An Inventory of Current Practices," prepared by Kamber Engineering for U.S. EPA, April 1990.

TABLE 2.—ANNUALIZED COSTS OF SEVERAL STORM WATER MANAGEMENT OPTIONS FOR CONSTRUCTION SITES

Option	Annualized cost for 9-acre developed area	Annualized cost for 20-acre developed area
Wet Ponds	$5,872	$9,820
Dry Ponds	3,240	5,907
Dry Ponds with Extended Detention	3,110	5,413
Infiltration Trenches	4,134	6,359

Estimates based on methodology presented in "Cost of Urban Runoff Quality Controls," Wiegand, C., Schueler, T., Chittenden, W., and Jellick, D., Urban Runoff Quality-Impact and Quality Enhancement Technology, Proceedings of an Engineering Foundation Conference, ASCE, 1986, edited by B. Urbonas and L.A. Roesner.

Costs are presented in 1992 dollars and were reviewed by the Office of Management and Budget during the previous issuance of this permit, September 25, 1992. Annualized costs are based on a 10 year period and 10 percent discount rate. Estimates include a contingency cost of 25 percent of the construction cost and operation and maintenance costs of 5 percent of the construction cost. Land costs are not included.

VIII. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under UMRA section 202, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, UMRA section 205 generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of UMRA section 205 do not apply when they are inconsistent with applicable law. Moreover, UMRA section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes an explanation with the final rule why the alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under UMRA section 203 a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating and advising small governments on compliance with the regulatory requirements.

A. UMRA Section 202 and the Construction General Permit

UMRA section 202 requires a written statement containing certain assessments, estimates and analyses prior to the promulgation of certain general notices of proposed rulemaking (2 U.S.C. 1532). UMRA section 421(10) defines "rule" based on the definition of rule in the Regulatory Flexibility Act. Section 601 of the Regulatory Flexibility Act defines "rule" to mean any rule for which an agency publishes a general notice of proposed rulemaking pursuant to section 553 of the Administrative Procedure Act. EPA does not propose to issue NPDES general permits based on APA section 553. Instead, EPA relies on publication of general permits in the **Federal Register** in order to provide "an opportunity for a hearing" under CWA section 402(a), 33 U.S.C. 1342(a). Nonetheless, EPA has evaluated permitting alternatives for regulation of storm water discharges associated with construction activity. The general permit that EPA proposes to re-issue would be virtually the same NPDES general permit for construction that many construction operators have used over the past five years. Furthermore, general permits provide a more cost and time efficient alternative for the regulated community to obtain NPDES permit coverage than that provided through individually drafted permits.

B. UMRA Section 203 and the Construction General Permit

Agencies are required to prepare small government agency plans under UMRA section 203 prior to establishing any regulatory requirement that might significantly or uniquely affect small governments. "Regulatory requirements" might, for example, include the requirements of this NPDES general permit for discharges associated with construction activity, especially if

a municipality sought coverage under one of the general permit. EPA envisions that some municipalities—those with municipal separate storm sewer systems serving a population over 100,000—may elect to seek coverage under this general permit. For many municipalities, however, a permit application is not required until August 7, 2001, for a storm water discharge associated with construction activity where the construction site is owned or operated by a municipality with a population of less than 100,000. (See 40 CFR 122.26(e)(1)(ii)&(g)).

In any event, any such permit requirements would not significantly affect small governments because most State laws already provide for the control of sedimentation and erosion in a similar manner as today's general permit. Permit requirements also would not uniquely affect small governments because compliance with the permit's conditions affects small governments in the same manner as any other entity seeking coverage under the permit. Thus, UMRA section 203 would not apply.

IX. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities in this final general permit under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* EPA did not prepare an Information Collection Request (ICR) document for today's permit because the information collection requirements in this permit have already been approved by the Office of Management and Budget (OMB) in submissions made for the NPDES permit program under the provisions of the Clean Water Act.

X. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, U.S.C. 601 et. seq., EPA is required to prepare a Regulatory Flexibility Analysis to assess the impact of rules on small entities. No Regulatory Flexibility Analysis is required, however, where the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Today's permit provides small entities with an application option that is less burdensome than individual applications or participating in a group application. The other requirements have been designed to minimize significant economic impacts of the rule on small entities and does not have a significant impact on industry. In addition, the permit reduces significant administrative burdens on regulated sources. Accordingly, I hereby certify pursuant to the provisions of the Regulatory Flexibility Act, that this permit will not have a significant impact on a substantial number of small entities.

XI. Responses to Comments

The following is a summary of the issues identified by EPA that were raised regarding the general permit for storm water from construction activities and EPA's response to those issues.

Comments were submitted wanting language added to the permit to require applicants to conduct a cultural resource assessment to determine if permitted activities will impact areas which have been previously undisturbed other than by agriculture. EPA believes that it would not be feasible to review all applications for an assessment due to the volume of applicants and the short time requirement, prior to construction, that a facility must submit a Notice of Intent (NOI) to receive coverage under the general permit. Under the previous permit, there were 2844 NOIs submitted and the permit only requires an NOI to be submitted two (2) days prior to construction beginning. However; EPA maintains a database tracking system of all NOI submittals. Copies of this database are available upon request. One could then screen the database based on the location of the facility in relation to an area of concern. The permit only allows coverage under the general permit for facilities which do not affect property that is listed or proposed to be listed in the National Historic Register. Should screening of the database identify a facility that is not eligible for coverage under the general permit in accordance with Part I.B.3.g., EPA would require the facility to apply for an individual permit.

Comments were submitted requesting that the requirements for utility companies to apply for general permit coverage be taken out of Parts I.B.3. and II.B of the permit. The references to utility companies have been deleted from Part I.B.3. in today's permit. Although utility companies in Region 4 will not be required to obtain coverage under the above referenced permit by virtue of the fact that they are a utility company, it should be noted that if the utility company has day to day operational control of the construction site. They would be required to submit an NOI under the provisions of Part II.B.2.

One Indian tribe submitted comments requesting deletion of the requirement for facilities to obtain a Florida Department of Environmental Protection (FDEP) or a Florida Water Management District (FWMD) permit (see Part II.A.2.). Since the tribes are not under the jurisdiction of either the FDEP nor the FWMD, this provision is not applicable. Today's permit exempts facilities on Indian country lands from that permit requirement.

One commenter requested the name, number and address of the Historic Preservation Officer for the State of Florida. The name, address and phone number of the State Historic Preservation Officer (SHPO) for the State of Florida is the Director, Division of Historical Resources, Florida Department of State, R. A. Gray Building, 500 South Bronough Street, Tallahassee, FL 32399–0250, 850/487–2333.

One commenter suggested that EPA's requirement to consider impacts to threatened resources is overly broad and ambiguous. The commenter expressed a concern over being responsible for an entire watershed. A facility discharging to a watershed with many contributors of pollution would not be solely responsible for impacts downstream from the discharge point where the other sources have contributed to the impact. However, the facility would be held responsible for their particular contribution to a downstream impact. In the case of the Endangered Species Act, the permit does specifically limit the consideration of impact on species to the immediate area or vicinity of the discharge authorized by the permit and the Best Management Practices (BMPs) required by the permit (see Appendix C, step 2). The flexibility of "immediate area or vicinity" is intentional. Any more specific definition of the area of effects would be inappropriate due to the variation and complexity of conditions (e.g. size, slope, soil, etc.) from site to site. This language is intended to encourage coordination with local resource protection agencies and not to provide a cutoff distance beyond which a facility is absolved from responsibility. In the case of the National Historic Preservation Act, the language reflects the Act itself. EPA believes that an addition to this language in this case would compromise the intent of NHPA consultation requirements of the permit.

One commenter said that EPA, Region 4, has created a burden since they are issuing a separate permit from HQ therefore requiring a single company with multiple facilities in different states to potentially keep up with many different permits. A concern was also expressed regarding burdens on facilities which potentially adversely affect protected resources since consultants will have to be hired and potential changes to industrial processes

will have to be made. As in the previous national permit, different requirements for facilities in different states will be incorporated in a reissued national permit due to the Clean Water Act section 401 certification of the permit by each state. Therefore, consolidation of the Region 4 permit into the national permit will not eliminate the differences in permit requirements on a state by state basis. The requirements to consult on the potential adverse effects on protected resources comes from the ESA and the NHPA requirement for consistency with the Acts in all federal actions, such as a permit. The NPDES permit simply makes the permittee aware that the NPDES permit cannot and does not authorize or require an activity that would violate the ESA or the NHPA. A facility adversely affecting a protected resource would only be ineligible for coverage under the general permit. An individual permit would still be an option and the specific requirements would have to be determined at that time.

XII. Section 401 Certification

Certification of the proposed permit was requested from the State of Florida by letter dated June 23, 1997. The Florida Department of Environmental Protection (FDEP) issued certification of the proposed permit with conditions via a letter dated August 18, 1997. Certification of the proposed permit was requested from the Miccosukee Tribe of Indians of Florida by letter dated June 23, 1997. Certification of the proposed permit is deemed waived in accordance with the provisions of 40 CFR 124.53(c). Certification of the proposed permit was requested from the Seminole Tribe of Florida by letter dated June 23, 1997. The Seminole Tribe of Florida provided certification of the proposed permit via a letter dated December 18, 1997.

XIII. Official Signatures

Accordingly, I hereby certify pursuant to the provisions of the Regulatory Flexibility Act, that this permit will not have a significant impact on a substantial number of small entities.

Authority: Clean Water Act, 33 USC 1251 *et seq.*

Dated: February 17, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Appendix A

From the effective date of this permit, applicants are to use the existing Notice of Intent form (EPA 3510–9, published in the March 6, 1998 **Federal Register**, 63 FR 11253) referenced in this Addendum to obtain permit coverage. According to the provisions in Part II.B. of this permit, applicants are reminded that they are certifying that they meet all eligibility requirements of Part I.B. of this permit and are informing the Director of their intent to be covered by, and comply with, those terms and conditions. These conditions include certifications that the applicant's storm water discharges and storm water-related discharge activities will not adversely affect listed endangered or threatened species, their critical habitat, or places either listed or eligible for listing on the National Register of Historic Places.

Appendix B

From the effective date of this permit, permittees are to use the existing Notice of Termination form (EPA Form 3510–7) contained in this Addendum until they are instructed by the Director (EPA) to use a revised version. Permittees are to complete, sign and submit the form in accordance with Part VII.G of the permit when terminating permit coverage at a construction project when one or more of the conditions contained in Part IX have been met.

Appendix C—Endangered Species Guidance

I. Instructions

A list of species that EPA has determined may be affected by the activities covered by the construction general permit will be included in the final issued permit. These species will be listed by county. In order to get construction general permit coverage, applicants must:

- Indicate in box provided on the NOI whether any species listed in this Appendix are in proximity to the facility, and
- Certify pursuant to Section I.B.3.e. of the construction general permit that their storm water discharges, and BMPs constructed to control storm water runoff, are not likely, and will not be likely to adversely affect species identified in Addendum H of this permit.

To do this, please follow steps 1 through 4 below.

Step 1: Review the County Species List Below To Determine if Any Species Are Located in the Discharging Facility County

If the facility is within one (1) mile of the county line, a review of the bordering county's list must be made as well to determine the presence of species. If no species are listed in a facility's county, or adjacent county as mentioned in the previous sentence, or if a facility's county is not found on the list, an applicant is eligible for construction general permit coverage and may indicate in the NOI that no species are found in proximity and provide the necessary certification. If species are located in the county, or in the adjacent county as mentioned above, follow step 2 below. Where a facility is located in more than one county, the lists for all counties should be reviewed.

Step 2: Determine if Any Species May Be Found "In Proximity" to the Facility

A species is in proximity to a facility's storm water discharge when the species is:

- Located in the path or immediate area through which or over which contaminated point source storm water flows from industrial activities to the point of discharge into the receiving water.
- Located in the immediate vicinity of, or nearby, the point of discharge into receiving waters.
- Located in the area of a site where storm water BMPs are planned or are to be constructed.

The area in proximity to be searched/surveyed for listed species will vary with the size of the facility, the nature and quantity of the storm water discharges, and the type of receiving waters. Given the number of facilities potentially covered by the construction general permit, no specific method to determine whether species are in proximity is required for permit coverage under the construction general permit. Instead, applicants should use the method or methods which best allow them to determine to the best of their knowledge whether species are in proximity to their particular facility. These methods may include:

- *Conducting visual inspections:* This method may be particularly suitable for facilities that are smaller in size, facilities located in non-natural settings such as highly urbanized areas or industrial parks where there is little or no nature habitat; and facilities that discharge directly into municipal storm water collection systems. For other facilities, a visual survey of the facility site and storm water drainage areas may be insufficient to determine whether species are likely to be located in proximity to the discharge.
- *Contacting the nearest State Wildlife Agency or U.S. Fish and Wildlife Service (FWS) or National Marine Fisheries Service (NMFS) offices.* Many endangered and threatened species are found in well-defined areas or habitats. That information is frequently known to state or federal wildlife agencies. FWS has offices in every state. NMFS has regional offices in: Gloucester, Massachusetts; St. Petersburg, Florida; Long Beach, California; Portland, Oregon; and Juneau, Alaska.
- *Contacting local/regional conservation groups.* These groups inventory species and their locations and maintain lists of sightings and habitats.
- *Conducting a formal biological survey.* Larger facilities with extensive storm water discharges may choose to conduct biological surveys as the most effective way to assess whether species are located in proximity and whether there are likely adverse effects.

If no species are in proximity, an applicant is eligible for construction general permit coverage and may indicate that in the NOI and provide the necessary certification. If listed species are found in proximity to a facility, applicants must follow step 3 below.

Step 3: Determine if Species Could Be Adversely Affected by the Facility's Storm Water Discharges or by BMPS To Control Those Discharges

Scope of Adverse Effects: Potential adverse effects from storm water include:

- *Hydrological.* Storm water may cause siltation, sedimentation or induce other changes in the receiving waters such as temperature, salinity or pH. These effects will vary with the amount of storm water discharged and the volume and condition of the receiving water. Where a storm water discharge constitutes a minute portion of the

total volume of the receiving water, adverse hydrological effects are less likely.

• *Habitat.* Storm water may drain or inundate listed species habitat.

• *Toxicity.* In some cases, pollutants in storm water may have toxic effects on listed species.

The scope of effects to consider will vary with each site. Applicants must also consider the likelihood of adverse effects on species from any BMPs to control storm water. Most adverse impacts from BMPs are likely to occur from the construction activities.

Using earlier ESA authorizations for construction general permit eligibility: In some cases, a facility may be eligible for construction general permit coverage because actual or potential adverse affects were addressed or discounted through an earlier ESA authorization. Examples of such authorization include:

• An earlier ESA section 7 consultation for that facility.

• A section 10(a) permit issued for the facility.

• An area-wide Habitat Conservation Plan applicable to that facility.

• A clearance letter from the Services (which discounts the possibility of an adverse impacts from the facility).

In order for applicants to use an earlier ESA authorization to meet eligibility requirements: (1) The authorization must adequately address impacts for storm water discharges and BMPs from the facility on endangered and threatened species, (2) it must be current because there have been no subsequent changes in facility operations or circumstances which might impact species in ways not considered in the earlier authorization, and (3) the applicant must comply with any requirements from those authorizations to avoid or mitigate adverse effects to species. Applicants who wish to pursue this approach should carefully review documentation for those authorizations ensure that the above conditions are met.

If adverse effects are not likely, an applicant is eligible for construction general permit coverage and may indicate in the NOI that species are found in proximity and provide the necessary certification. If adverse effects are likely, follow step 4 below.

Step 4: Determine if Measures Can Be Implemented To Avoid Any Adverse Effects

If an applicant determines that adverse effects are likely, it can receive coverage if appropriate measures are undertaken to avoid or eliminate any actual or potential adverse affects prior to applying for permit coverage. These measures may involve relatively simple changes to facility operations such as re-routing a storm water discharge to bypass an area where species are located.

At this stage, applicants may wish to contact the FWS and/or NMFS to see what appropriate measures might be suitable to avoid or eliminate adverse impacts to species.

If applicants adopt these measures, they must continue to abide by them during the course of permit coverage.

If appropriate measures are not available, the applicant is not eligible at that time for coverage under the construction general permit. Applicants should contact the appropriate EPA regional office about either:

• Entering into Section 7 consultation in order to obtain construction general permit coverage, or

• Obtaining an individual NPDES storm water permit.

Federally Listed Threatened and Endangered Species and Candidates for Federal Listing

Scientific name	Common name	Status
ALABAMA		
Escambia County		
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T
Pseudemys alabamensis	Turtle, Alabama redbelly	E
Birds:		
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Fish:		
Acipenser oxyrinchus desotoi	Gulf sturgeon	T
FLORIDA		
Alachua County		
Mammals:		
Ursus americanus floridanus	Bear, Florida Black	C
Birds:		
Haliaeetus leucocephalus	Eagle, Bald	T
Aphelocoma coerulescens	Scrub-jay, Florida	T
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T
Crustaceans:		
Palaemonetes cummingi	Shrimp, Squirrel Chimney Cave (or Florida Cave)	T
Baker County		
Mammals:		
Myotis grisescens	Bat, Gray	E
Ursus americanus floridanus	Bear, Florida Black	C
Birds:		
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T
Bay County		
Fish:		
Acipenser oxyrinchus desotoi	Gulf sturgeon	T
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Caretta caretta caretta	Loggerhead turtle	T
Chelonia mydas mydas	Green turtle	E
Dermochelys coriacea	Leatherback turtle	E
Drymarchon corais couperi	Eastern indigo snake	T

FEDERALLY LISTED THREATENED AND ENDANGERED SPECIES AND CANDIDATES FOR FEDERAL LISTING—Continued

Scientific name	Common name	Status
Eretmochelys imbricata	Hawksbill turtle	E
Lepidochelys kempi	Atlantic ridley	E
Birds:		
Charadrius melodus	Piping plover	T
Falco peregrinus tundrius	Arctic peregrine falcon	E(S/A)
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Picoides borealis	Red-cockaded woodpecker	E
Mammals:		
Peromyscus polionotus allophrys (critical habitat in this County).	Choctawhatchee beach mouse	E
Peromyscus polionotus peninsularis	St. Andrew beach mouse	C
Trichechus manatus latirostris	West Indian manatee	E
Ursus americanus floridanus	Florida black bear	C
Plants:		
Euphorbia telephioides	Telephus spurge	T
Macbridea alba	White birds-in-a-nest	T
Paronychia chartacea	Papery whitlow-wort	T
Pinguicula ionantha	Godfrey's (violet) butterwort	T
Bradford County		
Birds:		
Haliaeetus leucocephalus	Eagle, Bald	T
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T
Brevard County		
Mammals:		
Ursus americanus floridanus	Bear, Florida Black	C
Trichechus manatus latirostris	Manatee, West Indian	E/CH
Peromyscus polionotus niveiventris	Mouse, Southeastern Beach	T
Birds:		
Haliaeetus leucocephalus	Eagle, Bald	T
Charadrius melodus	Plover, Piping	T
Aphelocoma coerulescens	Scrub-jay, Florida	T
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Nerodia clarkii (=fasciata) taeniata	Snake, Atlantic Salt Marsh	T
Drymarchon corais couperi	Snake, Eastern Indigo	T
Chelonia mydas	Turtle, Green Sea	E
Eretmochelys imbricata	Turtle, Hawksbill Sea	E
Dermochelys coriacea	Turtle, Leatherback Sea	E
Caretta caretta	Turtle, Loggerhead Sea	T
Plants:		
Warea carteri	Carter's Mustard	E
Dicerandra cornutissima	Mint, Longspurred	E
Broward County		
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Caretta caretta	Loggerhead sea turtle	T
Chelonia mydas	Green sea turtle	E
Dermochelys coriacea	Leatherback sea turtle	E
Drymarchon corais couperi	Eastern indigo snake	T
Eretmochelys imbricata	Hawksbill sea turtle	E
Lepidochelys kempii	Kemp's (=Atlantic) ridley sea turtle	E
Birds:		
Ammodramus maritima	Cape Sable seaside sparrow	E
Campephilus principalis principalis	Ivory-billed woodpecker	E
Charadrius melodus	Piping plover	T
Dendroica kirtlandii	Kirtland's warbler	E
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Picoides borealis	Red-cockaded woodpecker	E
Polyborus (=Caracara) plancus audubonii	Audubon's crested caracara	T
Rostrhamus sociabilis plumbeus	Everglade snail kite	E/CH
Sterna dougallii	Roseate tern	T
Vermivora bachmanii	Bachman's warbler	E
Mammals:		
Felis concolor	Mountain lion	T(S/A)
Felis concolor coryi	Florida panther	E

FEDERALLY LISTED THREATENED AND ENDANGERED SPECIES AND CANDIDATES FOR FEDERAL LISTING—Continued

Scientific name	Common name	Status
Trichechus manatus latirostris	West Indian manatee	E
Ursus americanus floridanus	Florida black bear	C
Plants:		
Family Arecaceae		
Jacquemontia reclinata	Beach jacquemontia	E
Calhoun County		
Fish:		
Acipenser oxyrinchus desotoi	Gulf sturgeon	T
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Drymarchon corais couperi	Eastern indigo snake	T
Birds:		
Falco peregrinus tundrius	Arctic peregrine falcon	E(S/A)
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Picoides borealis	Red-cockaded woodpecker	E
Mammals:		
Ursus americanus floridanus	Florida black bear	C
Plants:		
Spigelia gentianoides	Gentian pinkroot	E
Charlotte County		
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Caretta caretta	Loggerhead sea turtle	T
Chelonia mydas	Green sea turtle	E
Dermochelys coriacea	Leatherback sea turtle	E
Drymarchon corais couperi	Eastern indigo snake	T
Eretmochelys imbricata	Hawksbill sea turtle	E
Lepidochelys kempii	Kemp's (=Atlantic) ridley sea turtle	E
Birds:		
Aphelocoma coerulescens coerulescens	Florida scrub jay	T
Campephilus principalis principalis	Ivory-billed woodpecker	E
Charadrius melodus	Piping plover	T
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Picoides borealis	Red-cockaded woodpecker	E
Polyborus (=Caracara) plancus audubonii	Audubon's crested caracara	T
Vermivora bachmanii	Bachman's warbler	E
Mammals:		
Trichechus manatus latirostris	West Indian manatee	E/CH
Ursus americanus floridanus	Florida black bear	C
Plants:		
Family Anonaceae		
Deeringothamnus pulchellus	Beautiful pawpaw	E
Family Convolvulaceae		
Bonamia grandiflora	Florida bonamia	T
Citrus County		
Mammals:		
Ursus americanus floridanus	Bear, Florida Black	C
Trichechus manatus latirostris	Manatee, West Indian	E/CH
Birds:		
Haliaeetus leucocephalus	Eagle, Bald	T
Rostrhamus sociabilis plumbeus	Kite, Everglade Snail	E/CH
Aphelocoma coerulescens	Scrub-jay, Florida	T
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T
Chelonia mydas	Turtle, Green Sea	E
Dermochelys coriacea	Turtle, Leatherback	E
Caretta caretta	Turtle, Loggerhead Sea	T
Fish:		
Acipenser oxyrhynchus desotoi	Sturgeon, Gulf	T
Plants:		
Verbena tampensis	Vervain, Tampa	C
Clay County		
Mammals:		
Ursus americanus floridanus	Bear, Florida Black	C
Trichechus manatus latirostris	Manatee, West Indian	E/CH
Birds:		
Haliaeetus leucocephalus	Eagle, Bald	T

FEDERALLY LISTED THREATENED AND ENDANGERED SPECIES AND CANDIDATES FOR FEDERAL LISTING—Continued

Scientific name	Common name	Status
Aphelocoma coerulescens	Scrub-jay, Florida	T
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T
Fish:		
Acipenser brevirostrum	Sturgeon, Shortnose	E
Plants:		
Rhododendron chapmanii	Rhododendron, Chapman's	E
Collier County		
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Caretta caretta	Loggerhead sea turtle	T
Chelonia mydas	Green sea turtle	E
Crocodylus acutus	American crocodile	E
Dermochelys coriacea	Leatherback sea turtle	E
Drymarchon corais couperi	Eastern indigo snake	T
Eretmochelys imbricata	Hawksbill sea turtle	E
Lepidochelys kempii	Kemp's (=Atlantic) ridley sea turtle	E
Birds:		
Ammodramus maritima	Cape Sable seaside sparrow	E/CH
Aphelocoma coerulescens coerulescens	Florida scrub jay	T
Campephilus principalis principalis	Ivory-billed woodpecker	E
Charadrius melodus	Piping plover	T
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Picoides borealis	Red-cockaded woodpecker	E
Polyborus (=Caracara) plancus audubonii	Audubon's crested caracara	T
Rostrhamus sociabilis plumbeus	Everglade snail kite	E
Vermivora bachmanii	Bachman's warbler	E
Mammals:		
Felis concolor	Mountain lion	T(S/A)
Felis concolor coryi	Florida panther	E
Trichechus manatus latirostris	West Indian manatee	E/CH
Ursus americanus floridanus	Florida black bear	C
Plants:		
Family Apiaceae:		
Eryngium cuneifolium	Snakeroot	E
Columbia County:		
Mammals:		
Ursus americanus floridanus	Florida black bear	C
Birds:		
Haliaeetus leucocephalus	Eagle, Bald	T
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T
Fish:		
Acipenser oxyrhynchus desotoi	Sturgeon, Gulf	T
Dade County		
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Caretta caretta	Loggerhead sea turtle	T
Chelonia mydas	Green sea turtle	E
Crocodylus acutus	American crocodile	E/CH
Dermochelys coriacea	Leatherback sea turtle	E
Drymarchon corais couperi	Eastern indigo snake	T
Eretmochelys imbricata	Hawksbill sea turtle	E
Lepidochelys kempii	Kemp's (=Atlantic) ridley sea turtle	E
Birds:		
Ammodramus maritima	Cape Sable seaside sparrow	E/CH
Campephilus principalis principalis	Ivory-billed woodpecker	E
Charadrius melodus	Piping plover	T
Dendroica kirtlandii	Kirtland's warbler	E
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Rostrhamus sociabilis plumbeus	Everglade snail kite	E/CH
Sterna dougallii	Roseate tern	T
Vermivora bachmanii	Bachman's warbler	E
Mammals:		

FEDERALLY LISTED THREATENED AND ENDANGERED SPECIES AND CANDIDATES FOR FEDERAL LISTING—Continued

Scientific name	Common name	Status
Eumops glaucinus floridanus	Florida Mastiff bat	C
Felis concolor	Mountain lion	T(S/A)
Felis concolor coryi	Florida panther	E
Trichechus manatus latirostris	West Indian manatee	E/CH
Ursus americanus floridanus	Florida black bear	C
Plants:		
Family Convolvulaceae		
Jacquemontia reclinata	Beach jacquemontia	E
Family Euphorbiaceae		
Euphorbia deltoidea var. deltoidea	Deltoid spurge	E
Euphorbia garberi	Garber's spurge	T
Family Fabaceae		
Amorpha crenulata	Crenulate lead plant	E
Galactia smallii	Small's milkpea	E
Family Polygalaceae		
Polygala smallii	Tiny polygala	E
Desoto County		
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Drymarchon corais couperi	Eastern indigo snake	T
Birds:		
Ammodramus savannarum floridanus	Florida grasshopper sparrow	E
Aphelocoma coerulescens coerulescens	Florida scrub jay	T
Campephilus principalis principalis	Ivory-billed woodpecker	E
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Picoides borealis	Red-cockaded woodpecker	E
Polyborus (=Caracara) plancus audubonii	Audubon's crested caracara	T
Vermivora bachmanii	Bachman's warbler	E
Mammals:		
Felis concolor	Mountain lion	T(S/A)
Felis concolor coryi	Florida panther	E
Trichechus manatus latirostrus	West Indian manatee	E/CH
Ursus americanus floridanus	Florida black bear	C
Dixie County		
Mammals:		
Ursus americanus floridanus	Florida black bear	C
Trichechus manatus latirostris	Manatee, West Indian	E/CH
Birds:		
Haliaeetus leucocephalus	Eagle, Bald	T
Aphelocoma coerulescens	Scrub-jay, Florida	T
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T
Chelonia mydas	Turtle, Green Sea	E
Dermochelys coriacea	Turtle, Leatherback Sea	E
Caretta caretta	Turtle, Loggerhead Sea	T
Fish:		
Acipenser oxyrhynchus desotoi	Sturgeon, Gulf	T
Duval County		
Mammals:		
Ursus americanus floridanus	Bear, Florida Black	C
Trichechus manatus latirostris	Manatee, West Indian	E/CH
Birds:		
Haliaeetus leucocephalus	Eagle, Bald	T
Charadrius melodus	Plover, Piping	T
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T
Chelonia mydas	Turtle, Green Sea	E
Eretmochelys imbricata	Turtle, Hawksbill Sea	E
Dermochelys coriacea	Turtle, Leatherback Sea	E
Caretta caretta	Turtle, Loggerhead Sea	T
Fish:		
Acipenser brevirostrum	Sturgeon, Shortnose	E
Escambia County		
Fish:		
Acipenser oxyrinchus desotoi	Gulf sturgeon	T
Amphibians and Reptiles:		

FEDERALLY LISTED THREATENED AND ENDANGERED SPECIES AND CANDIDATES FOR FEDERAL LISTING—Continued

Scientific name	Common name	Status
Alligator mississippiensis	American alligator	T(S/A)
Caretta caretta caretta	Loggerhead turtle	T
Chelonia mydas mydas	Green turtle	E
Dermochelys coriacea	Leatherback turtle	E
Drymarchon corais couperi	Eastern indigo snake	T
Eretmochelys imbricata	Hawksbill turtle	E
Lepidochelys kempi	Atlantic ridley	E
Birds:		
Charadrius melodus	Piping plover	T
Falco peregrinus tundrius	Arctic peregrine falcon	E(S/A)
Mycteria americana	Wood stork	E
Picoides borealis	Red-cockaded woodpecker	E
Mammals:		
Peromyscus polionotus trissyllepsis	Perdido Key beach mouse	E/CH
Trichechus manatus latirostris	West Indian manatee	E
Ursus americanus floridanus	Florida black bear	C
Flagler County		
Mammals:		
Ursus americanus floridanus	Florida black bear	C
Trichechus manatus latirostris	Manatee, West Indian	E/CH
Birds:		
Haliaeetus leucocephalus	Eagle, Bald	T
Aphelocoma coerulescens	Scrub-jay, Florida	T
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Birds:		
Aphelocoma coerulescens	Scrub-jay, Florida	T
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T
Chelonia mydas	Turtle, Green Sea	E
Eretmochelys imbricata	Turtle, Hawksbill Sea	E
Dermochelys coriacea	Turtle, Leatherback Sea	E
Caretta caretta	Turtle, Loggerhead Sea	T
Franklin County		
Fish:		
Acipenser oxyrinchus desotoi	Gulf sturgeon	T
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Caretta caretta caretta	Loggerhead turtle	T
Chelonia mydas mydas	Green turtle	E
Dermochelys coriacea	Leatherback turtle	E
Drymarchon corais couperi	Eastern indigo snake	T
Eretmochelys imbricata	Hawksbill turtle	E
Lepidochelys kempi	Atlantic ridley	E
Birds:		
Charadrius melodus	Piping plover	T
Falco peregrinus tundrius	Arctic peregrine falcon	E(S/A)
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Picoides borealis	Red-cockaded woodpecker	E
Mammals:		
Trichechus manatus latirostris	West Indian manatee	E
Ursus americanus floridanus	Florida black bear	C
Plants:		
Euphorbia telephioides	Telephus spurge	T
Harperocallis flava	Harper's beauty	E
Macbridea alba	White birds-in-a-nest	T
Pinguicula ionantha	Godfrey's (violet) butterwort	T
Scutellaria floridana	Florida skullcap	T
Gadsden County		
Fish:		
Acipenser oxyrinchus desotoi	Gulf sturgeon	T
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Drymarchon corais couperi	Eastern indigo snake	T
Birds:		
Falco peregrinus tundrius	Arctic peregrine falcon	E(S/A)
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E

FEDERALLY LISTED THREATENED AND ENDANGERED SPECIES AND CANDIDATES FOR FEDERAL LISTING—Continued

Scientific name	Common name	Status
Mammals:		
Ursus americanus floridanus	Florida black bear	C
Plants		
Rhododendron chapmanii	Chapman's rhododendron	E
Schwalbea americana	American chaffseed	E
Silene polypetala	Fringed campion	E
Spigelia gentianoides	Gentian pinkroot	E
Torreya taxifolia	Florida torreya	E
Gilchrist County		
Fish:		
Acipenser oxyrhynchus desotoi	Sturgeon, Gulf	T
Glades County		
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Drymarchon corais couperi	Eastern indigo snake	T
Birds:		
Ammodramus savannarum floridanus	Florida grasshopper sparrow	E
Aphelocoma coerulescens coerulescens	Florida scrub jay	T
Campephilus principalis principalis	Ivory-billed woodpecker	E
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Picoides borealis	Red-cockaded woodpecker	E
Polyborus (=Caracara) plancus audubonii	Audubon's crested caracara	T
Rostrhamus sociabilis plumbeus	Everglade snail kite	E/CH
Vermivora bachmanii	Bachman's warbler	E
Mammals:		
Felis concolor	Mountain lion	T(S/A)
Felis concolor coryi	Florida panther	E
Trichechus manatus latirostris	West Indian manatee	E
Ursus americanus floridanus	Florida black bear	C
Plants:		
Family Arecaceae		
Cucurbita okeechobeensis ssp. okeechobeensis	Okeechobee gourd	E
Gulf County		
Fish:		
Acipenser oxyrinchus desotoi	Gulf sturgeon	T
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Caretta caretta caretta	Loggerhead turtle	T
Chelonia mydas mydas	Green turtle	E
Dermochelys coriacea	Leatherback turtle	E
Drymarchon corais couperi	Eastern indigo snake	T
Eretmochelys imbricata	Hawksbill turtle	E
Lepidochelys kempi	Atlantic ridley	E
Birds:		
Charadrius melodus	Piping plover	T
Falco peregrinus tundrius	Arctic peregrine falcon	E(S/A)
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Picoides borealis	Red-cockaded woodpecker	E
Mammals:		
Peromyscus polionotus peninsularis	St. Andrew beach mouse	C
Trichechus manatus latirostris	West Indian manatee	E
Ursus americanus floridanus	Florida black bear	C
Plants:		
Euphorbia telephioides	Telephus spurge	T
Macbridea alba	White birds-in-a-nest	T
Pinguicula ionantha	Godfrey's (violet) butterwort	T
Rhododendron chapmanii	Chapman's rhododendron	E
Scutellaria floridana	Florida skullcap	T
Hamilton County		
Mammals;		
Ursus americanus floridanus	Florida black bear	C
Birds:		
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T
Fish:		
Acipenser oxyrhynchus desotoi	Sturgeon, Gulf	T

FEDERALLY LISTED THREATENED AND ENDANGERED SPECIES AND CANDIDATES FOR FEDERAL LISTING—Continued

Scientific name	Common name	Status
Hardee County		
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Drymarchon corais couperi	Eastern indigo snake	T
Birds:		
Aphelocoma coerulescens coerulescens	Florida scrub jay	T
Campephilus principalis principalis	Ivory-billed woodpecker	E
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Picoides borealis	Red-cockaded woodpecker	E
Polyborus (=Caracara) plancus audubonii	Audubon's crested caracara	T
Vermivora bachmanii	Bachman's warbler	E
Mammals:		
Felis concolor	Mountain lion	T(S/A)
Felis concolor coryi	Florida panther	E
Ursus americanus floridanus	Florida black bear	C
Plants:		
Family Convolvulaceae		
Bonamia grandiflora	Florida bonamia	T
Family Rosaceae		
Prunus geniculata	Scrub plum	E
Hendry County		
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Drymarchon corais couperi	Eastern indigo snake	T
Birds:		
Aphelocoma coerulescens coerulescens	Florida scrub jay	T
Campephilus principalis principalis	Ivory-billed woodpecker	E
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Picoides borealis	Red-cockaded woodpecker	E
Polyborus (=Caracara) plancus audubonii	Audubon's crested caracara	T
Rostrhamus sociabilis plumbeus	Everglade snail kite	E/CH
Vermivora bachmanii	Bachman's warbler	E
Mammals:		
Felis concolor	Mountain lion	T(S/A)
Felis concolor coryi	Florida panther	E
Trichechus manatus latirostris	West Indian manatee	E
Ursus americanus floridanus	Florida black bear	C
Hernando County		
Mammals:		
Ursus americanus floridanus	Florida black bear	C
Trichechus manatus latirostris	Manatee, West Indian	E/CH
Birds:		
Haliaeetus leucocephalus	Eagle, Bald	T
Aphelocoma coerulescens	Scrub-jay, Florida	T
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T
Chelonia mydas	Turtle, Green Sea	E
Dermochelys coriacea	Turtle, Leatherback Sea	E
Caretta caretta	Turtle, Loggerhead Sea	T
Fish:		
Acipenser oxyrhynchus desotoi	Sturgeon, Gulf	T
Plants:		
Nolina brittoniana	Beargrass, Britton's	E
Campanula robinsiae	Bellflower, Brooksville	E
Justicia cooleyi	Water-willow, Cooley's	E
Highlands County		
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Drymarchon corais couperi	Eastern indigo snake	T
Eumeces egregius lividus	Blue-tailed mole skink	T
Neoseps reynoldsi	Sand skink	T
Birds:		
Ammodramus savannarum floridanus	Florida grasshopper sparrow	E
Aphelocoma coerulescens coerulescens	Florida scrub jay	T
Campephilus principalis principalis	Ivory-billed woodpecker	E
Haliaeetus leucocephalus	Bald eagle	T

FEDERALLY LISTED THREATENED AND ENDANGERED SPECIES AND CANDIDATES FOR FEDERAL LISTING—Continued

Scientific name	Common name	Status
Mycteria americana	Wood stork	E
Picoides borealis	Red-cockaded woodpecker	E
Polyborus (=Caracara) plancus audubonii	Audubon's crested caracara	T
Vermivora bachmanii	Bachman's warbler	E
Mammals:		
Felis concolor	Mountain lion	T(S/A)
Felis concolor coryi	Florida panther	E
Ursus americanus floridanus	Florida black bear	C
Plants:		
Family Agavaceae		
Nolina brittoniana	Britton's beargrass	E
Family Apiaceae		
Eryngium cuneifolium	Snakeroot	E
Family Asteraceae		
Chrysopsis floridana	Florida golden aster	E
Liatris ohlingerae	Scrub blazing star	E
Family Brassicaceae		
Warea carteri	Carter's mustard	E
Family Caryophyllaceae		
Paronychia chartacea	Papery whitlow-wort	T
Family Convolvulaceae		
Bonamia grandiflora	Florida bonamia	T
Family Fabaceae		
Clitoria fragrans	Pigeon wing	T
Crotalaria avonensis	Avon Park harebells	E
Family Hypericaceae		
Hypericum cumulicola	Highlands scrub hypericum	E
Family Lamiaceae		
Conradina brevifolia	Short-leaved rosemary	E
Dicerandra frutescens	Scrub mint	E
Dicerandra christmanii	Garrett's mint	E
Family Oleaceae		
Chionanthus pygmaeus	Pygmy fringetree	E
Family Polygalacea		
Polygala lewtonii	Lewton's polygala	E
Family Polygonaceae		
Eriogonum longifolium var. gnaphalifolium	Scrub buckwheat	T
Polygonella basiramia	Wireweed	E
Polygonella myriophylla	Sandlace	E
Family Rhamnaceae		
Ziziphus celata	Florida ziziphus	E
Family Rosaceae		
Prunus geniculata	Scrub plum	E
Cladonia perforata	Florida perforate cladonia (Deer moss)	E
Hillsborough County		
Mammals:		
Trichechus manatus latirostris	Manatee, West Indian	E/CH
Birds:		
Haliaeetus leucocephalus	Eagle, Bald	E
Charadrius melodus	Plover, Piping	E
Aphelocoma coerulescens	Scrub-jay, Florida	T
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T
Chelonia mydas	Turtle, Green Sea	E
Dermochelys coriacea	Turtle, Leatherback	E
Caretta caretta	Turtle, Loggerhead Sea	T
Fish:		
Acipenser oxyrhynchus desotoi	Sturgeon, Gulf	T
Plants:		
Chrysopsis floridana = Heterotheca	Aster, Florida Golden	E
Holmes County		
Fish:		
Acipenser oxyrinchus desotoi	Gulf sturgeon	T
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Drymarchon corais couperi	Eastern indigo snake	T
Birds:		
Falco peregrinus tundrius	Arctic peregrine falcon	E(S/A)
Mycteria americana	Wood stork	E

FEDERALLY LISTED THREATENED AND ENDANGERED SPECIES AND CANDIDATES FOR FEDERAL LISTING—Continued

Scientific name	Common name	Status
Picoides borealis	Red-cockaded woodpecker	E
Mammals:		
Myotis grisescens	Gray bat	E
Ursus americanus floridanus	Florida black bear	C
Indian River County		
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Caretta caretta	Loggerhead sea turtle	T
Chelonia mydas	Green sea turtle	E
Dermochelys coriacea	Leatherback sea turtle	E
Drymarchon corais couperi	Eastern indigo snake	T
Eretmochelys imbricata	Hawksbill sea turtle	E
Lepidochelys kempii	Kemp's (=Atlantic) ridley sea turtle	E
Nerodia fasciata taeniata	Atlantic salt marsh snake	T
Birds:		
Aphelocoma coerulescens coerulescens	Florida scrub jay	T
Campephilus principalis principalis	Ivory-billed woodpecker	E
Charadrius melodus	Piping plover	T
Dendroica kirtlandii	Kirtland's warbler	E
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Polyborus (=Caracara) plancus audubonii	Audubon's crested caracara	T
Rostrhamus sociabilis plumbeus	Everglade snail kite	E/CH
Sterna dougalli dougalli	Roseate tern	T
Vermivora bachmanii	Bachman's warbler	E
Mammals:		
Peromyscus polionotus niveiventris	Southeastern beach mouse	T
Trichechus manatus latirostris	West Indian manatee	E/CH
Ursus americanus floridanus	Florida black bear	C
Plants:		
Family Cactaceae		
Cereus eriophorus var. fragrans	Fragrant wool-bearing cereus	E
Family Lamiaceae		
Dicerandra immaculata	Lakela's mint	E
Jackson County		
Fish:		
Acipenser oxyrinchus desotoi	Gulf sturgeon	T
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Drymarchon corais couperi	Eastern indigo snake	T
Birds		
Falco peregrinus tundrius	Arctic peregrine falcon	E(S/A)
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Picoides borealis	Red-cockaded woodpecker	E
Mammals:		
Myotis grisescens	Gray bat	E
Myotis sodalis	Indiana bat	E
Plants:		
Silene polypetala	Fringed campion	E
Spigelia gentianoides	Gentian pinkroot	E
Torreya taxifolia	Florida torreya	E
Jefferson County		
Fish:		
Acipenser oxyrinchus desotoi	Gulf sturgeon	T
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Caretta caretta caretta	Loggerhead turtle	T
Chelonia mydas mydas	Green turtle	E
Dermochelys coriacea	Leatherback turtle	E
Drymarchon corais couperi	Eastern indigo snake	T
Eretmochelys imbricata	Hawksbill turtle	E
Lepidochelys kempi	Atlantic ridley	E
Birds:		
Charadrius melodus	Piping plover	T
Falco peregrinus tundrius	Arctic peregrine falcon	E(S/A)
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Picoides borealis	Red-cockaded woodpecker	E
Mammals:		
Trichechus manatus latirostris	West Indian manatee	E

FEDERALLY LISTED THREATENED AND ENDANGERED SPECIES AND CANDIDATES FOR FEDERAL LISTING—Continued

Scientific name	Common name	Status
Ursus americanus floridanus	Florida black bear	C
Plants:		
Ribes echinellum	Miccosukee gooseberry	T
Layfayette County		
Birds:		
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T
Fish:		
Acipenser oxyrhynchus desotoi	Sturgeon, Gulf	T
Lake County		
Mammals:		
Ursus americanus floridanus	Bear, Florida Black	C
Trichechus manatus latirostris	Manatee, West Indian	E/CH
Birds:		
Haliaeetus leucocephalus	Eagle, Bald	T
Rostrhamus sociabilis plumbeus	Kite, Everglade Snail	E
Aphelocoma coerulescens	Scrub-jay, Florida	T
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Neoseps reynoldsi	Skink, Sand	T
Drymarchon corais couperi	Snake, Eastern Indigo	T
Plants:		
Nolina brittoniana	Beargrass, Britton's	E
Bonamia grandiflora	Bonamia, Florida	T
Chionanthus pygmaeus	Fringetree, Pygmy	E
Prunus geniculata	Plum, Scrub	E
Polygala lewtonii	Polygala, Lewton's	E
Warea amplexifolia	Warea, Wide-leaf	E
Paronychia chartacea = Nyachia pulvinata	Whitlow-wort, Papery	T
Eriogonum longifolium var. g. = Eriogonum floridanum	Wild Buckwheat, Scrub	T
Clitoria fragrans	Wings, Pigeon	T
Lee County		
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Caretta caretta	Loggerhead sea turtle	T
Chelonia mydas	Green sea turtle	E
Crocodylus acutus	American crocodile	E
Dermochelys coriacea	Leatherback sea turtle	E
Drymarchon corais couperi	Eastern indigo snake	T
Eretmochelys imbricata	Hawksbill sea turtle	E
Lepidochelys kempii	Kemp's (=Atlantic) ridley sea turtle	E
Birds:		
Aphelocoma coerulescens coerulescens	Florida scrub jay	T
Campephilus principalis principalis	Ivory-billed woodpecker	E
Charadrius melodus	Piping plover	T
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Picoides borealis	Red-cockaded woodpecker	E
Polyborus (=Caracara) plancus audubonii	Audubon's crested caracara	E
Rostrhamus sociabilis plumbeus	Everglade snail kite	E
Vermivora bachmanii	Bachman's warbler	E
Mammals:		
Felis concolor	Mountain lion	T(S/A)
Felis concolor coryi	Florida panther	E
Trichechus manatus latirostris	West Indian manatee	E/CH
Ursus americanus floridanus	Florida black bear	C
Plants:		
Family Anonaceae		
Deeringothamnus pulchellus	Beautiful pawpaw	E
Leon County		
Fish:		
Acipenser oxyrinchus desotoi	Gulf sturgeon	T
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Drymarchon corais couperi	Eastern indigo snake	T
Birds:		
Falco peregrinus tundrius	Arctic peregrine falcon	E(S/A)
Haliaeetus leucocephalus	Bald eagle	T

FEDERALLY LISTED THREATENED AND ENDANGERED SPECIES AND CANDIDATES FOR FEDERAL LISTING—Continued

Scientific name	Common name	Status
Mycteria americana	Wood stork	E
Picoides borealis	Red-cockaded woodpecker	E
Mammals:		
Myotis grisescens	Gray bat	E
Ursus americanus floridanus	Florida black bear	C
Plants:		
Schwalbea americana	American chaffseed	E
Levy County		
Mammals:		
Ursus americanus floridanus	Bear, Florida Black	C
Trichechus manatus latirostris	Manatee, West Indian	ECH
Microtus pennsylvanicus dukecampbelli	Vole, Florida Salt Marsh	E
Birds:		
Haliaeetus leucocephalus	Eagle, Bald	T
Aphelocoma coerulescens	Scrub-jay, Florida	T
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T
Chelonia mydas	Turtle, Green Sea	E
Dermochelys coriacea	Turtle, Leatherback Sea	E
Caretta caretta	Turtle, Loggerhead Sea	T
Fish:		
Acipenser oxyrhynchus desotoi	Sturgeon, Gulf	T
Liberty County		
Fish:		
Acipenser oxyrinchus desotoi	Gulf sturgeon	T
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Drymarchon corais couperi	Eastern indigo snake	T
Birds:		
Falco peregrinus tundrius	Arctic peregrine falcon	E(S/A)
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Picoides borealis	Red-cockaded woodpecker	E
Mammals:		
Ursus americanus floridanus	Florida black bear	C
Plants:		
Conradina glabra	Apalachicola rosemary	E
Harperocallis flava	Harper's beauty	E
Macbridea alba	White birds-in-a-nest	T
Pinguicula ionantha	Godfrey's (violet) butterwort	T
Rhododendron chapmanii	Chapman's rhododendron	E
Scutellaria floridana	Florida skullcap	T
Spigelia gentianoides	Gentian pinkroot	E
Torreya taxifolia	Florida torreya	E
Madison County		
Mammals:		
Ursus americanus floridanus	Bear, Florida Black	C
Birds:		
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T
Fish:		
Acipenser oxyrhynchus desotoi	Sturgeon, Gulf	T
Manatee County		
Mammals:		
Ursus americanus floridanus	Bear, Florida Black	C
Trichechus manatus latirostris	Manatee, West Indian	E/CH
Birds:		
Polyborus plancu audubonii	Caracara, Audubon's Crested	T
Haliaeetus leucocephalus	Eagle, Bald	T
Charadrius melodus	Plover, Piping	T
Aphelocoma coerulescens	Scub-jay, Florida	T
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T
Chelonia mydas	Turtle, Green Sea	E
Dermochelys coriacea	Turtle, Leatherback Sea	E

FEDERALLY LISTED THREATENED AND ENDANGERED SPECIES AND CANDIDATES FOR FEDERAL LISTING—Continued

Scientific name	Common name	Status
Caretta carretta	Turtle, Loggerhead Sea	T
Fish:		
Acipenser oxyrhynchus desotoi	Sturgeon, Gulf	T
Marion County		
Mammals:		
Ursus americanus floridanus	Bear, Florida Black	C
Trichechus manatus latirostris	Manatee, West Indian	E/CH
Birds:		
Haliaeetus leucocephalus	Eagle, Bald	T
Rostrhamus sociabilis plumbeus	Kite, Everglade Snail	E
Aphelocoma coerulescens	Scrub-jay, Florida	T
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Neoseps reynoldsi	Skink, Sand	T
Drymarchon corais couperi	Snake, Eastern Indigo	T
Plants:		
Bonamia grandiflora	Bonamia, Florida	T
Dicerandra cornutissima	Mint, Longspurred	E
Polygala lewtonii	Polygala, Lewton's	E
Eriogonum longifolium var. g. = Eriogonum floridanum	Wild Buckwheat, Scrub	T
Martin County		
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Caretta caretta	Loggerhead sea turtle	T
Chelonia mydas	Green sea turtle	E
Dermochelys coriacea	Leatherback sea turtle	E
Drymarchon corais couperi	Eastern indigo snake	T
Eretmochelys imbricata	Hawksbill sea turtle	E
Lepidochelys kempii	Kemp's (=Atlantic) ridley sea turtle	E
Birds:		
Aphelocoma coerulescens coerulescens	Florida scrub jay	T
Campephilus principalis principalis	Ivory-billed woodpecker	E
Charadrius melodus	Piping plover	T
Dendroica kirtlandii	Kirtland's warbler	E
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Picoides borealis	Red-cockaded woodpecker	E
Polyborus (=Caracara) plancus audubonii	Audubon's crested caracara	T
Rostrhamus sociabilis plumbeus	Everglade snail kite	E
Sterna dougalli dougalli	Roseate tern	T
Vermivora bachmanii	Bachman's warbler	E
Mammals:		
Trichechus manatus latirostris	West Indian manatee	E/CH
Ursus americanus floridanus	Florida black bear	C
Plants:		
Family Anonaceae		
Asimina tetramera	Four-petal pawpaw	E
Family Cladoniaceae		
Cladonia perforata	Florida perforate cladonia	E
Family Convolvulaceae		
Jacquemontia reclinata	Beach jacquemontia	E
Monroe County		
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Caretta caretta	Loggerhead sea turtle	T
Chelonia mydas	Green sea turtle	E
Crocodylus acutus	American crocodile	E/CH
Dermochelys coriacea	Leatherback sea turtle	E
Drymarchon corais couperi	Eastern indigo snake	T
Eretmochelys imbricata	Hawksbill sea turtle	E
Lepidochelys kempii	Kemp's (=Atlantic) ridley sea turtle	E
Nerodia fasciata taeniata	Atlantic salt marsh snake	T
Birds:		
Ammodramus maritima	Cape Sable seaside sparrow	E/CH
Campephilus principalis principalis	Ivory-billed woodpecker	E
Charadrius melodus	Piping plover	T
Dendroica kirtlandii	Kirtland's warbler	E
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Polyborus (=Caracara) plancus audubonii	Audubon's crested caracara	T

FEDERALLY LISTED THREATENED AND ENDANGERED SPECIES AND CANDIDATES FOR FEDERAL LISTING—Continued

Scientific name	Common name	Status
Rostrhamus sociabilis plumbeus	Everglade snail kite	E
Sterna dougallii	Roseate tern	T
Vermivora bachmanii	Bachman's warbler	E
Mammals:		
Felis concolor	Mountain lion	T(S/A)
Felis concolor coryi	Florida panther	E
Neotoma floridana smalli	Key Largo woodrat	E
Odocoileus virginianus clavium	Key deer	E
Oryzomys argentatus	Silver rice rat	E/CH
Peromyscus gossypinus allapaticola	Key Largo cotton mouse	E
Sylvilagus palustris hefneri	Lower keys marsh rabbit	E
Trichechus manatus latirostris	West Indian manatee	E/CH
Ursus americanus floridanus	Florida black bear	C
Invertebrates:		
Orthalicus reses	Stock Island tree snail	T
Heraclides (=Papilio) aristodemus ponceanus	Schaus swallowtail butterfly	E
Plants:		
Family Cactaceae		
Pilosocereus robinii	Key tree-cactus	E
Family Euphorbiaceae		
Euphorbia garberi	Garber's spurge	T
Nassau County		
Mammals:		
Ursus americanus floridanus	Florida black bear	C
Trichechus manatus latirostris	Manatee, West Indian	E/CH
Birds:		
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T
Chelonia mydas	Turtle, Green Sea	E
Eretmochelys imbricata	Turtle, Hawksbill Sea	E
Dermochelys coriacea	Turtle, Leatherback Sea	E
Caretta caretta	Turtle, Loggerhead Sea	T
Okaloosa County		
Fish:		
Acipenser oxyrinchus desotoi	Gulf sturgeon	T
Etheostoma okaloosae	Okaloosa darter	E
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Caretta caretta caretta	Loggerhead turtle	T
Chelonia mydas mydas	Green turtle	E
Dermochelys coriacea	Leatherback turtle	E
Drymarchon corais couperi	Eastern indigo snake	T
Eretmochelys imbricata	Hawksbill turtle	E
Lepidochelys kempi	Atlantic ridley	E
Birds:		
Charadrius melodus	Piping plover	T
Falco peregrinus tundrius	Arctic peregrine falcon	E(S/A)
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Picoides borealis	Red-cockaded woodpecker	E
Mammals:		
Trichechus manatus latirostris	West Indian manatee	E
Ursus americanus floridanus	Florida black bear	C
Plants:		
Cladonia perforata	Perforate reindeer lichen	E
Okeechobee County		
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Drymarchon corais couperi	Eastern indigo snake	T
Birds:		
Ammodramus savannarum floridanus	Florida grasshopper sparrow	E
Aphelocoma coerulescens coerulescens	Florida scrub jay	T
Campephilus principalis principalis	Ivory-billed woodpecker	E
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Polyborus (=Caracara) plancus audubonii	Audubon's crested caracara	T
Vermivora bachmanii	Bachman's warbler	E
Mammals:		
Trichechus manatus latirostris	West Indian manatee	E

FEDERALLY LISTED THREATENED AND ENDANGERED SPECIES AND CANDIDATES FOR FEDERAL LISTING—Continued

Scientific name	Common name	Status
Ursus americanus floridanus	Florida black bear	C
Plants:		
Family Convolvulaceae		
Bonamia grandiflora	Florida bonamia	T
Family Cucurbitaceae		
Cucurbita okeechobeensis	Okeechobee gourd	E
Family Polygonaceae		
Eriogonum longifolium var. gnaphalifolium	Scrub buckwheat	T
Orange County		
Mammals:		
Ursus americanus floridanus	Florida black bear	C
Birds:		
Polyborus plancus audubonii	Caracara, Audubon's Crested	T
Haliaeetus leucocephalus	Eagle, Bald	T
Rostrhamus sociabilis plumbeus	Kite, Everglade Snail	E
Aphelocoma coerulescens	Scrub-jay, Florida	T
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Neoseps reynoldsi	Skink, Sand	T
Drymarchon corais couperi	Snake, Eastern Indigo	T
Plants:		
Nolina brittoniana	Bear-grass, Britton's	E
Bonamia grandiflora	Bonamia, Florida	T
Lupinus aridorum	Lupine, Scrub	E
Deeringothamnus pulchellus	Pawpaw, Beautiful	E
Polygonella myriophylla	Sandlace	E
Paronychia chartacea = Nyachia pulvinata	Whitlow-wort, Papery	T
Eriogonum longifolium var. g. = Eriogonum floridanum	Wild Buckwheat, Scrub	T
Osceola County		
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Drymarchon corais couperi	Eastern indigo snake	T
Birds:		
Ammodramus savannarum floridanus	Florida grasshopper sparrow	E
Aphelocoma coerulescens coerulescens	Florida scrub jay	T
Campephilus principalis principalis	Ivory-billed woodpecker	E
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Picoides borealis	Red-cockaded woodpecker	E
Polyborus (=Caracara) plancus audubonii	Audubon's crested caracara	T
Vermivora bachmanii	Bachman's warbler	E
Mammals:		
Ursus americanus floridanus	Florida black bear	C
Plants:		
Family Agavaceae		
Nolina brittoniana	Scrub beargrass	E
Family Convolvulaceae		
Bonamia grandiflora	Florida bonamia	T
Family Fabaceae		
Clitoria fragrans	Pigeon wing	T
Family Oleaceae		
Chionanthus pygmaeus	Pygmy fringetree	E
Family Polygalaceae		
Polygala lewtonii	Lewton's polygala	E
Family Polygonaceae		
Eriogonum longifolium var. gnaphalifolium	Scrub buckwheat	T
Polygonella myriophylla	Sandlace	E
Palm Beach County		
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Caretta caretta	Loggerhead sea turtle	T
Chelonia mydas	Green sea turtle	E
Dermochelys coriacea	Leatherback sea turtle	E
Drymarchon corais couperi	Eastern indigo snake	T
Eretmochelys imbricata	Hawksbill sea turtle	E
Lepidochelys kempii	Kemp's (=Atlantic) ridley sea turtle	E
Nerodia fasciata taeniata	Atlantic salt marsh snake	T
Birds:		
Aphelocoma coerulescens coerulescens	Florida scrub jay	T
Campephilus principalis principalis	Ivory-billed woodpecker	E

FEDERALLY LISTED THREATENED AND ENDANGERED SPECIES AND CANDIDATES FOR FEDERAL LISTING—Continued

Scientific name	Common name	Status
Charadrius melodus	Piping plover	T
Dendroica kirtlandii	Kirtland's warbler	E
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Picoides borealis	Red-cockaded woodpecker	E
Polyborus (=Caracara) plancus audubonii	Audubon's crested caracara	T
Rostrhamus sociabilis plumbeus	Everglade snail kite	E/CH
Sterna dougallii	Roseate tern	T
Vermivora bachmanii	Bachman's warbler	E
Mammals:		
Felis concolor	Mountain lion	T(S/A)
Felis concolor coryi	Florida panther	E
Trichechus manatus latirostris	West Indian manatee	E/CH
Ursus americanus floridanus	Florida black bear	C
Plants:		
Family Anonaceae		
Asimina tetramera	Four-petal pawpaw	E
Family Convolvulaceae		
Jacquemontia reclinata	Beach jacquemontia	E
Family Cucurbitaceae		
Cucurbita okeechobeensis	Okeechobee gourd	E
Pasco County		
Mammals:		
Ursus americanus floridanus	Florida black bear	C
Trichechus manatus latirostris	Manatee, West Indian	E/CH
Birds:		
Haliaeetus leucocephalus	Eagle, Bald	T
Charadrius melodus	Plover, Piping	T
Aphelocoma coerulescens	Scrub-jay, Florida	T
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T
Chelonia mydas	Turtle, Green Sea	E
Eretmochelys imbricata	Turtle, Hawksbill Sea	E
Lepidochelys kempii	Turtle, Kemp's Ridley Sea	E
Dermochelys coriacea	Turtle, Leatherback Sea	E
Caretta caretta	Turtle, Loggerhead Sea	T
Fish:		
Acipenser oxyrhynchus desotoi	Sturgeon, Gulf	T
Pinellas County		
Mammals:		
Trichechus manatus latirostris	Manatee, West Indian	E/CH
Birds:		
Haliaeetus leucocephalus	Eagle, Bald	T
Charadrius melodus	Plover, Piping	T
Aphelocoma coerulescens	Scrub-jay, Florida	T
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T
Chelonia mydas	Turtle, Green Sea	E
Lepidochelys kempii	Turtle, Kemp's Ridley Sea	E
Dermochelys coriacea	Turtle, Leatherback Sea	E
Caretta caretta	Turtle, Loggerhead Sea	T
Fish:		
Acipenser oxyrhynchus desotoi	Sturgeon, Gulf	T
Plants:		
Chrysopsis floridana=Heterotheca floridana	Aster, Florida Golden	E
Polk County		
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Drymarchon corais couperi	Eastern indigo snake	T
Eumeces egregius lividus	Blue-tailed mole skink	T
Neoseps reynoldsi	Sand skink	T
Birds:		
Ammodramus savannarum floridanus	Florida grasshopper sparrow	E
Aphelocoma coerulescens coerulescens	Florida scrub jay	T
Campephilus principalis principalis	Ivory-billed woodpecker	E
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E

FEDERALLY LISTED THREATENED AND ENDANGERED SPECIES AND CANDIDATES FOR FEDERAL LISTING—Continued

Scientific name	Common name	Status
Picoides borealis	Red-cockaded woodpecker	E
Polyborus (=Caracara) plancus audubonii	Audubon's crested caracara	T
Vermivora bachmanii	Bachman's warbler	E
Mammals:		
Ursus americanus floridanus	Florida black bear	C
Plants:		
Family Agavaceae		
Nolina brittoniana	Britton's beargrass	E
Family Asteraceae		
Liatris ohlingerae	Scrub blazing star	E
Family Brassicaceae		
Warea amplexifolia	Clasping warea	E
Warea carteri	Carter's mustard	E
Family Caryophyllaceae		
Paronychia chartacea	Papery whitlow-wort	T
Family Convolvulaceae		
Bonamia grandiflora	Florida bonamia	T
Family Fabaceae		
Clitoria fragrans	Pigeon wing	T
Crotalaria avonensis	Avon Park harebells	E
Lupinus aridorum	Scrub lupine	E
Family Hypericaceae		
Hypericum cumulicola	Highlands scrub hypericum	E
Family Lamiaceae		
Conradina brevifolia	Short-leaved rosemary	E
Family Oleaceae		
Chionanthus pygmaeus	Pygmy fringetree	E
Family Polygalaceae		
Polygala lewtonii	Lewton's polygala	E
Family Polygonaceae		
Eriogonum longifolium var. *gnaphalifolium*	Scrub buckwheat	T
Polygonella basiramia	Wireweed	E
Polygonella myriophylla	Sandlace	E
Family Rhamnaceae		
Ziziphus celata	Florida ziziphus	E
Family Rosaceae		
Prunus geniculata	Scrub plum	E
Cladonia perforata	Florida perforate cladonia (Deer moss)	E
Putnam County		
Mammals:		
Ursus americanus floridanus	Florida black bear	C
Trichechus manatus latirostris	Manatee, West Indian	E/CH
Birds:		
Haliaeetus leucocephalus	Eagle, Bald	T
Aphelocoma coerulescens	Scrub-jay, Florida	T
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T
Plants:		
Conradina etonia	Rosemary, Etonia	E
Fish:		
Acipenser brevirostrum	Sturgeon, Shortnose	E
Sarasota County		
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Caretta caretta	Loggerhead sea turtle	T
Chelonia mydas	Green sea turtle	E
Dermochelys coriacea	Leatherback sea turtle	E
Drymarchon corais couperi	Eastern indigo snake	T
Eretmochelys imbricata	Hawksbill sea turtle	E
Lepidochelys kempii	Kemp's (=Atlantic) ridley sea turtle	E
Birds:		
Aphelocoma coerulescens coerulescens	Florida scrub jay	T
Campephilus principalis principalis	Ivory-billed woodpecker	E
Charadrius melodus	Piping plover	T
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Vermivora bachmanii	Bachman's warbler	E
Mammals:		
Trichechus manatus latirostris	West Indian manatee	E/CH

FEDERALLY LISTED THREATENED AND ENDANGERED SPECIES AND CANDIDATES FOR FEDERAL LISTING—Continued

Scientific name	Common name	Status
Ursus americanus floridanus	Florida black bear	C
Santa Rosa County		
Fish:		
Acipenser oxyrinchus desotoi	Gulf sturgeon	T
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Caretta caretta caretta	Loggerhead turtle	T
Chelonia mydas mydas	Green turtle	E
Dermochelys coriacea	Leatherback turtle	E
Drymarchon corais couperi	Eastern indigo snake	T
Eretmochelys imbricata	Hawksbill turtle	E
Lepidochelys kempi	Atlantic ridley	E
Birds:		
Charadrius melodus	Piping plover	T
Falco peregrinus tundrius	Arctic peregrine falcon	E(S/A)
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Picoides borealis	Red-cockaded woodpecker	E
Mammals:		
Trichechus manatus latirostris	West Indian manatee	E
Ursus americanus floridanus	Florida black bear	C
Seminole County		
Mammals:		
Ursus americanus floridanus	Florida black bear	C
Trichechus manatus latirostris	Manatee, West Indian	E/CH
Birds:		
Haliaeetus leucocephalus	Eagle, Bald	T
Aphelocoma coerulescens	Scrub-jay, Florida	T
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T
St. Johns County		
Mammals:		
Ursus americanus floridanus	Florida black bear	C
Trichechus manatus latirostris	Manatee, West Indian	E/CH
Peromyscus polionotus phasma	Mouse, Anastasia Island Beach	E
Birds:		
Haliaeetus leucocephalus	Eagle, Bald	T
Charadrius melodus	Plover, Piping	T
Aphelocoma coerulescens	Scrub-jay, Florida	T
Mycteria americana	Stork, Wood	E
Mycteria americana	Stork, Wood	E
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T
Chelonia mydas	Turtle, Green Sea	E
Eretmochelys imbricata	Turtle, Hawksbill Sea	E
Dermochelys coriacea	Turtle, Leatherback Sea	E
Caretta caretta	Turtle, Loggerhead Sea	T
Mycteria americana	Stork, Wood	E
St. Lucie County		
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Caretta caretta	Loggerhead sea turtle	T
Chelonia mydas	Green sea turtle	E
Dermochelys coriacea	Leatherback sea turtle	E
Drymarchon corais couperi	Eastern indigo snake	T
Eretmochelys imbricata	Hawksbill sea turtle	E
Lepidochelys kempii	Kemp's (=Atlantic) ridley sea turtle	E
Birds:		
Aphelocoma coerulescens coerulescens	Florida scrub jay	T
Campephilus principalis principalis	Ivory-billed woodpecker	E
Charadrius melodus	Piping plover	T
Dendroica kirtlandii	Kirtland's warbler	E
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Picoides borealis	Red-cockaded woodpecker	E
Polyborus (=Caracara) plancus audubonii	Audubon's crested caracara	T
Rostrhamus sociabilis plumbeus	Everglade snail kite	E/CH
Sterna dougalli dougalli	Roseate tern	T

FEDERALLY LISTED THREATENED AND ENDANGERED SPECIES AND CANDIDATES FOR FEDERAL LISTING—Continued

Scientific name	Common name	Status
Vermivora bachmanii	Bachman's warbler	E
Mammals:		
Peromyscus polionotus niveiventris	Southeastern beach mouse	T
Trichechus manatus latirostris	West Indian manatee	E/CH
Ursus americanus floridanus	Florida black bear	C
Plants:		
Family Anonaceae:		
Asimina tetramera	Four-petal pawpaw	E
Family Cactaceae:		
Cereus eriophorus var. *fragrans*	Fragrant prickly-apple	E
Family Lamiaceae:		
Dicerandra frutescens	Scrub mint	E
Dicerandra immaculata	Lakela's mint	E
Sumter County		
Mammals:		
Ursus americanus floridanus	Florida black bear	C
Birds:		
Haliaeetus leucocephalus	Eagle, Bald	T
Rostrhamus sociabilis plumbeus	Kite, Everglade Snail	E
Aphelocoma coerulescens	Scrub-jay, Florida	T
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T
Suwanee County		
Mammals:		
Ursus americanus floridanus	Florida black bear	C
Birds:		
Haliaeetus leucocephalus	Eagle, Bald	T
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T
Fish:		
Acipenser oxyrhynchus desotoi	Sturgeon, Gulf	T
Taylor County		
Mammals:		
Ursus americanus floridanus	Florida black bear	C
Trichechus manatus latirostris	Manatee, West Indian E/CH.	
Birds:		
Haliaeetus leucocephalus	Eagle, Bald	T
Charadrius melodus	Plover, Piping	T
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T
Chelonia mydas	Turtle, Green Sea	E
Dermochelys coriacea	Turtle, Leatherback Sea	E
Caretta caretta	Turtle, Loggerhead Sea	T
Fish:		
Acipenser oxyrhynchus desotoi	Sturgeon, Gulf	T
Union County		
Mammals:		
Ursus americanus floridanus	Florida black bear	C
Birds:		
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T
Volusia County		
Mammals:		
Ursus americanus floridanus	Florida black bear	C
Trichechus manatus latirostris	Manatee, West Indian	E/CH
Birds:		
Haliaeetus leucocephalus	Eagle, Bald	T
Rostrhamus sociabilis plumbeus	Kite, Everglade Snail	E
Charadrius melodus	Plover, Piping	T
Aphelocoma coerulescens	Scrub-jay, Florida	T
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T

FEDERALLY LISTED THREATENED AND ENDANGERED SPECIES AND CANDIDATES FOR FEDERAL LISTING—Continued

Scientific name	Common name	Status
Chelonia mydas	Turtle, Green Sea	E
Eretmochelys imbricata	Turtle, Hawksbill Sea	E
Dermochelys coriacea	Turtle, Leatherback Sea	E
Caretta caretta	Turtle, Loggerhead Sea	T
Plants:		
Deeringothamus rugelii	Pawpaw, Rugel's	E
Wakulla County		
Fish:		
Acipenser oxyrinchus desotoi	Gulf sturgeon	T
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Caretta caretta caretta	Loggerhead turtle	T
Chelonia mydas mydas	Green turtle	E
Dermochelys coriacea	Leatherback turtle	E
Drymarchon corais couperi	Eastern indigo snake	T
Eretmochelys imbricata	Hawksbill turtle	E
Lepidochelys kempi	Atlantic ridley	E
Birds:		
Charadrius melodus	Piping plover	T
Falco peregrinus tundrius	Arctic peregrine falcon	E(S/A)
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Picoides borealis	Red-cockaded woodpecker	E
Mammals:		
Trichechus manatus latirostris	West Indian manatee	E
Ursus americanus floridanus	Florida black bear	C
Walton County		
Fish:		
Acipenser oxyrinchus desotoi	Gulf sturgeon	T
Etheostoma okaloosae	Okaloosa darter	E
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Caretta caretta caretta	Loggerhead turtle	T
Chelonia mydas mydas	Green turtle	E
Dermochelys coriacea	Leatherback turtle	E
Drymarchon corais couperi	Eastern indigo snake	T
Eretmochelys imbricata	Hawksbill turtle	E
Lepidochelys kempi	Atlantic ridley	E
Birds:		
Charadrius melodus	Piping plover	T
Falco peregrinus tundrius	Arctic peregrine falcon	E(S/A)
Mycteria americana	Wood stork	E
Picoides borealis	Red-cockaded woodpecker	E
Mammals:		
Peromyscus polionotus allophrys	Choctawhatchee beach mouse	E/CH
Trichechus manatus latirostris	West Indian manatee	E
Ursus americanus floridanus	Florida black bear	C
Plants:		
Thalictrum cooleyi	Cooley's meadowrue	E
Washington County		
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Drymarchon corais couperi	Eastern indigo snake	T
Birds:		
Falco peregrinus tundrius	Arctic peregrine falcon	E(S/A)
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Picoides borealis	Red-cockaded woodpecker	E
Mammals:		
Myotis grisescens	Gray bat	E
Ursus americanus floridanus	Florida black bear	C
Plants:		
Paronychia chartacea	Papery whitlow-wort	T
Spigelia gentianoides	Gentian pinkroot	E
MISSISSIPPI		
Statewide on potential habitat		
Potamilus carpax	Fat pocketbook	E
Birds:		
Haliaeetus leucocephalus	Bald eagle	T
Fish:		
Acipenser oxyrinchus desotoi	Gulf sturgeon	T

FEDERALLY LISTED THREATENED AND ENDANGERED SPECIES AND CANDIDATES FOR FEDERAL LISTING—Continued

Scientific name	Common name	Status
Scaphirhynchus albus	Pallid sturgeon	E
Plants:		
Isoetes louisianensis	Louisiana quillwort	DE
Attala County		
Mammals:		
Ursus americanus luteolus	Louisiana black bear	T
Jackson County		
Birds:		
Picoides borealis	Red-cockaded woodpecker	E
Pelecanus occidentalis	Brown Pelican	E
Grus canadensis pulla	Mississippi sandhill crane	E
Charadrius melodus	Piping plover	T
Reptiles:		
Drymarchon corais couperi	Eastern indigo snake	T
Gopherus polyphemus	Gopher tortoise	T
Graptemys flavimaculata	Yellow-blotched map turtle	T
Caretta caretta	Loggerhead turtle	T
Lepidochelys kempii	Kemp's (=Atlantic) ridley sea turtle	E
Mammals:		
Ursus americanus luteolus	Louisiana black bear	T
Jones County		
Reptiles:		
Gopherus polyphemus	Gopher tortoise	T
Graptemys flavimaculata	Yellow-blotched map turtle	T
Drymarchon corais couperi	Eastern indigo snake	T
Birds:		
Picoides borealis	Red-cockaded woodpecker	E
Mammals:		
Ursus americanus luteolus	Louisiana black bear	T
Leake County		
Mammals:		
Ursus americanus luteolus	Louisiana black bear	T
Reptiles:		
Graptemys oculifera	Ringed map turtle	T
Neshobo County		
Mammals:		
Ursus americanus luteolus	Louisiana black bear	T
Reptiles:		
Graptemys oculifera	Ringed map turtle	T
Newton County		
Mammals:		
Ursus americanus luteolus	Louisiana black bear	T
Winston County		
Birds:		
Picoides borealis	Red-cockaded woodpecker	E
NORTH CAROLINA		
Graham County		
Mammals:		
Glaucomys sabrinus coloratus	Carolina nothern flying squirrel	E
Plants:		
Spiraea virginiana	Virginia spiraea	T
Gymnoderma lineare	Rock gnome lichen	E
Mollusk:		
Alasmidonta raveneliana	Appalachian elktoe	E
Jackson County		
Birds:		
Falco peregrinus	Peregrine falcon	E
Mammals:		
Glaucomys sabrinus coloratus	Carolina nothern flying squirrel	E
Myotis sodalis	Indiana bat	E
Plants:		
Helonias bullata	Swamp pink	T
Gymnoderma lineare	Rock gnome lichen	E
Isotria medeoloides	Small-whorled pogonia	T
Mollusk:		
Alasmidonta raveneliana	Appalachian elktoe	E
Swain County		
Mammals:		
Glaucomys sabrinus coloratus	Carolina nothern flying squirrel	E

FEDERALLY LISTED THREATENED AND ENDANGERED SPECIES AND CANDIDATES FOR FEDERAL LISTING—Continued

Scientific name	Common name	Status
Myotis sodalis	Indiana bat	E
Felis concolor couguar	Eastern cougar	E
Plants:		
Gymnoderma lineare	Rock gnome lichen	E
Fish:		
Cyprinella monacha	Spotfin chub	T
Mollusk:		
Mesodon clarki nantahala	Noonday snail	T
Pegias fabula	Little-wing pearlymussel	E
Alasmidonta raveneliana	Appalachian elktoe	E
Spiders:		
Microhexura montivaga	Spruce-fir moss spider	E

*E=Endangered—T=Threatened—C=Candidate—CH=Critical Habitat—(S/A)=due to similar appearance.

Final NPDES General Permit for Storm Water Discharges From Construction Activities

Table of Contents

Preface

The Clean Water Act (CWA) provides that storm water discharges associated with industrial activity from a point source (including discharges through a municipal separate storm sewer system) to waters of the United States are unlawful, unless authorized by a National Pollutant Discharge Elimination System (NPDES) permit. The terms "storm water discharge associated with industrial activity", "point source" and "waters of the United States" are critical to determining whether a facility is subject to this requirement. Complete definitions of these terms are found in the definition section (Part X) of this permit.

Part I. Coverage Under This Permit

A. Permit Area

The permit, except the parts listed below, covers all areas administered by EPA, Region 4:

All Indian Country Lands within the State of Alabama, except Part IV and Part V.D.2.a.(1), NPDES Permit No. ALR10*##I

State of Florida, excluding Indian lands, NPDES Permit No. FLR10*###

All Indian Country Lands within the State of Florida, except Part IV and Part V.D.2.a.(1), NPDES Permit No. FLR10*##I

All Indian Country Lands within the State of Mississippi, except Part IV and Part V.D.2.a.(1), NPDES Permit No. MSR10*##I

All Indian Country Lands within the State of North Carolina, except Part IV and Part V.D.2.a.(1), NPDES Permit No. NCR10*##I

B. Eligibility

1. This permit may authorize all discharges identified in the pollution prevention plan of storm water associated with industrial activity from construction sites, (those sites or common plans of development or sale, including unpaved roads, that will result in the disturbance of five or more acres total land area or less than five acres if the Director designates the site),[23] (henceforth referred to as storm water discharges from construction activities) occurring after the effective date of this permit (including discharges occurring after the effective date of this permit where the construction activity was initiated before the effective date of this permit), except for discharges identified under paragraph I.B.3.

2. This permit may authorize storm water discharges from construction sites that are mixed with storm water discharges associated with industrial activity from industrial sources other than construction, where:

a. the industrial source other than construction is located on the same site as the construction activity;

b. storm water discharges associated with industrial activity from the areas of the site where construction activities are occurring are in compliance with the terms of this permit; and

c. storm water discharges associated with industrial activity from the areas of the site where industrial activity other than construction are occurring (including storm water discharges from dedicated asphalt plants and dedicated concrete plants at the construction site)

[23] On June 4, 1992, the United State Court of Appeals for the Ninth Circuit remanded the exemption for construction sites of less than five acres to the EPA for further rulemaking. (Nos. 90–70671 and 91–70200). Section 402(p)(2)(E) of the Clean Water Act shall be used as a bases for any designations.

are in compliance with the terms, including applicable NOI or application requirements, of a different NPDES general permit or individual permit authorizing such discharges.

3. *Limitations on Coverage.* The following storm water discharges from construction sites are not authorized by this permit:

a. storm water discharges associated with industrial activity that originate from the site after construction activities have been completed and the site has undergone final stabilization;

b. discharges that are mixed with sources of non-storm water, other than discharges identified in Part III.A of this permit which are in compliance with Part V.D.5 (non-storm water discharges) of this permit;

c. storm water discharges associated with construction activity that are subject to an existing NPDES individual or general permit or which are issued a permit in accordance with paragraph VII.N (requiring an individual permit or an alternative general permit) of this permit. Such discharges may be authorized under this permit after an existing permit expires, provided the existing permit did not establish numeric limitations for such discharges;

d. storm water discharges from construction sites that the Director (EPA) has determined to be or may reasonably be expected to be causing or contributing to a violation of a water quality standard;

e. storm water discharges from construction sites if the discharges may adversely affect a listed or proposed to be listed endangered or threatened species or its critical habitat;

(1) a discharge of storm water associated with construction activity may be covered under this permit only if the applicant certifies that they meet at least one of the following criteria. Failure to continue to meet one of these criteria during the term of the permit will result in the storm water discharges associated with construction ineligible for coverage under this permit.

(a) the storm water discharge(s), and the construction and implementation of Best Management Practices (BMPs) to control storm water runoff, are not likely to adversely affect species identified in Appendix C of this permit or critical habitat for a listed species; or

(b) the applicant's activity has received previous authorization under Section 7 or section 10 of the Endangered Species Act and that authorization addressed storm water discharges and/or BMPS to control storm water runoff (e.g., developer included impact of entire project in consultation over a wetlands dredge and fill permit under Section 7 of the Endangered Species Act); or

(c) the applicant's activity was considered as part of a larger, more comprehensive assessment of impacts on endangered species under Section 7 or Section 10 of the Endangered Species Act that which accounts for storm water discharges and BMPs to control storm water runoff (e.g., where an area-wide habitat conservation plan and Section 10 permit is issued which addresses impacts from construction activities including those from storm water, or a National Environmental Policy Act (NEPA) review is conducted which incorporates ESA Section 7 procedures); or

(d) consultation under Section 7 of the Endangered Species Act is conducted for the applicant's activity which results in either a no jeopardy opinion or a written concurrence on a finding of not likely to adversely affect; or

(e) the applicant's activity was considered as part of a larger, more comprehensive site-specific assessment of impacts on endangered species by the owner or other operator of the site and that permittee certified eligibility under item (a), (b), (c), or (d) above (e.g. owner was able to certify no adverse impacts for the project as a whole under item (a), so the contractor can then certify under item (e)).

(2) All applicants must follow the procedures provided at Appendix C of this permit when applying for permit coverage.

(3) The applicant must comply with any terms and conditions imposed under the eligibility requirements of paragraphs (1)(a), (b), (c), (d), or (e) above to ensure that storm water discharges or BMPs to control storm water runoff are protective of listed endangered and threatened species and/or critical habitat. Such terms and conditions must be incorporated in the applicant's storm water pollution prevention plan.

(4) For the purposes of conducting consultation to meet the eligibility requirements of paragraph (1)(d) above, applicants are designated as non-Federal representatives. See 50 CFR 402.08. However, applicants who choose to conduct consultation as a non-Federal representative must notify EPA and the appropriate Office of the Fish and Wildlife Service office in writing of that decision.

(5) This permit does not authorize any "taking" (as defined under Section 9 of the Endangered Species Act) of endangered or threatened species.

(6) This permit does not authorize any storm water discharges, nor require any BMPs to control storm water runoff, that are likely to jeopardize the continued existence of any species that are listed as endangered or threatened under the Endangered Species Act or result in the adverse modification or destruction of habitat that is designated as critical under the Endangered Species Act.

f. discharges of storm water associated with industrial activity from construction sites not specifically identified in the pollution prevention plan in accordance with Part V of this permit. Such discharges not identified in the plan are subject to the upset and bypass rules in Part VII of this permit.

g. storm water discharges that would affect a property that is listed or is eligible for listing in the National Historic Register maintained by the Secretary of Interior may be in violation of the National Historic Preservation Act. A discharge of storm water associated with construction activity may be covered under this permit only if the applicant certifies that either:

(1) the storm water discharge(s), and the construction and implementation of BMPs to control storm water runoff, do not affect a property that is listed or is eligible for listing in the National Historic Register maintained by the Secretary of Interior; or,

(2) the applicant consults with the State Historic Preservation Officer (SHPO) or the Tribal Historic Preservation Officer (THPO) on the potential for adverse effects which results in a no effect finding; or

(3) the applicant has obtained and is in compliance with a written agreement between the applicant and the SHPO or THPO that outlines all measures to be undertaken by the applicant to mitigate or prevent adverse effects to the historic property; or

(4) the applicant agrees to implement and comply with the terms of a written agreement between another owner/operator (e.g., subdivision developer, property owner, etc.) and the SHPO or THPO that outlines all measures to be undertaken by operators on the site to mitigate or prevent adverse effects to the historic property; or

(5) the applicant's activity was considered as part of a larger, more comprehensive site-specific assessment of effects on historic properties by the owner or other operator of the site and that permittee certified eligibility under item (1), (2), (3), or (4) above.

C. Authorization

1. A discharger must submit a Notice of Intent (NOI) in accordance with the requirements of Part II of this permit, using an NOI form provided by the Director (or a photocopy thereof), in

order for storm water discharges from construction sites to be authorized to discharge under this general permit.[24]

2. Where a new operator is selected after the submittal of an NOI under Part II, a new NOI must be submitted by the operator in accordance with Part II, using an NOI form provided by the Director (or a photocopy thereof).

3. Unless notified by the Director to the contrary, dischargers who submit an NOI in accordance with the requirements of this permit are authorized to discharge storm water from construction sites under the terms and conditions of this permit 2 days after the date that the NOI is postmarked. The Director may deny coverage under this permit and require submittal of an application for an individual NPDES permit based on a review of the NOI or other information (see Part VII.L of this permit).

Part II. Notice of Intent Requirements

A. Deadlines for Notification.

1. Except as provided in paragraphs II.A.2, II.A.3, II.A.4, and II.A.5. individuals who intend to obtain coverage under this general permit for storm water discharges from a construction site (where disturbances associated with the construction project commence before the effective date of this permit), including unpaved rural roads, shall submit a Notice of Intent (NOI) in accordance with the requirements of this Part within 30 days of the effective date of this permit;

2. Individuals who intend to obtain coverage under this general permit for storm water discharges from a construction site, including unpaved rural roads, where disturbances associated with the construction project commence after April 3, 1998, shall submit an NOI in accordance with the requirements of this Part, at least 2 days prior to the commencement of construction activities (e.g. the initial disturbance of soils associated with clearing, grading, excavation activities, or other construction activities). Prior to submitting this NOI, except for owners of facilities located within Indian country, as defined in 18 USC 1151, the owner of a storm water management system must receive a State of Florida storm water or environmental resource permit from either the Florida Department of Environmental Protection (FDEP) or a Florida Water Management District (FWMD);

3. For storm water discharges from construction sites, including unpaved rural roads, where the operator changes (including projects where an operator is selected after an NOI has been submitted under Parts II.A.1 or II.A.2), an NOI in accordance with the requirements of this Part shall be submitted at least 2 days prior to when the operator commences work at the site; and

4. EPA will accept an NOI in accordance with the requirements of this Part after the dates provided in Parts II.A.1, 2 or 3 of this permit. EPA shall, in such instances, use its discretion in initiating any appropriate enforcement actions.

5. Applicants who have submitted a completed NOI for coverage under the administratively continued previous general permit, issued September 25, 1992 (57 FR 44412), or applicants who have submitted a completed NOI for coverage under the general permit after its expiration shall automatically receive coverage under today's permit. If the applicant cannot certify that they meet all applicable eligibility requirements of Part I.B of today's permit or cannot be covered by, or comply with, the terms and conditions of this permit, then the applicant shall notify the Director, in accordance with the requirements of Part IX of this permit, within 90 days of the effective date of this permit.

B. Contents of Notice of Intent.

Operators must use EPA's current NOI form [EPA Form 3510–9 which replaces EPA Form 3510–6] to apply for permit coverage. (Note: the revised NOI form was published in the March 6, 1998 **Federal Register**, 63 FR 11253). By completing and signing the current NOI form to obtain permit coverage, operators are certifying that they meet all applicable eligibility requirements of Part I.B of today's permit and are informing the Director of their intent to be covered by, and comply with, the terms and conditions of this permit. The Notice of Intent shall be signed in accordance with Part VII.G of this permit by all of the entities identified in Part II.B.2. The NOI shall include the following information:

1. The mailing address, and location (including the county) of the construction site for which the notification is submitted. Where a mailing address for the site is not available, the location of the approximate center of the site must be described in terms of the latitude and longitude to the nearest 15 seconds, or the section, township and range to the nearest quarter section;

2. The name, address and telephone number of the operator(s) with day to day operational control that have been identified at the time of the NOI submittal, and operator status as a Federal, State, private, public or other entity. Where multiple operators have been selected at the time of the initial NOI submittal, NOIs must be attached and submitted in the same envelope. When an additional operator submits an NOI for a site with a existing NPDES permit, the NOI for the additional operators must indicate the number for the existing NPDES permit;

3. The location of the first outfall in latitude and longitude to the nearest 15 seconds and the name of the receiving water(s) into which that outfall discharges, or if the discharge is through a municipal separate storm sewer, the name of the municipal operator of the storm sewer and the ultimate receiving water(s). (All other outfalls must be listed in the pollution prevention plan as required by Part V.);

4. The permit number of any NPDES permit(s) for any discharge(s) (including any storm water discharges or non-storm water discharges) from the site;

5. An indication of whether the owner or operator has existing quantitative data which describes the concentration of pollutants in storm water discharges (existing data should not be included as part of the NOI); and

6. An estimate of project start date and completion dates, estimates of the number of acres of the site on which soil will be disturbed, and a certification that a storm water pollution prevention plan has been prepared for the site in accordance with Part V of this permit. (A copy of the plans or permits should not be included with the NOI submission). For activities located in the State of Florida, the applicant shall submit a narrative statement certifying that the storm water pollution prevention plan for the facility provides compliance with approved State of Florida issued permits, erosion and sediment control plans and storm water management plans. The applicant shall also submit a copy of the cover page of the State permit issued by FDEP or a FWMD to the facility for the storm water discharges associated with construction activity.

7. A certification that a storm water pollution prevention plan, including both construction and post-construction controls, has been prepared for the site in accordance with Part IV of this permit, and such plan provides compliance with approved State/Tribal and/or local sediment and erosion plans or permits and/or storm water management plans or permits in accordance with Part IV.D.2.d of this permit. (A copy of the plans or permits should not be included with the NOI

[24] A copy of the approved NOI form is provided in Appendix A of this notice.

submission). The applicant shall also submit a copy of the cover page of the State permit issued by FDEP or a FWMD to the facility for the storm water discharges associated with construction activity.

8. Whether, based on the instructions in Appendix C, any species identified in Appendix C are in proximity to the storm water discharges covered by this permit or the BMPs to be used to comply with permit conditions.

9. Under which section(s) of Part I.B.3.e.(1)(Endangered Species) and Part I.B.3.f. (Historical Preservation) the applicant is certifying eligibility.

10. The following certifications shall be signed in accordance with Part VI.G.

"I certify under penalty of law that I have read and understand the Part I.B. eligibility requirements for coverage under the general permit for storm water discharges from construction activities, including those requirements relating to the protection of endangered species identified in Appendix C."

"To the best of my knowledge the discharges covered under this permit, and the construction and operation of BMPs to control storm water runoff, are not likely to adversely affect any species identified in Appendix C of this permit, or are otherwise eligible for coverage under this permit, in accordance with Part I.B.3.e of the permit, due to previous authorization under the Endangered Species Act, or agreement to implement protective measures required by the Director as a condition of eligibility."

"I further certify, to the best of my knowledge, that such discharges, and construction of BMPs to control storm water runoff, do not have an effect on properties listed or eligible for listing on the National Register of Historic Places under the National Historic Preservation Act, or are otherwise eligible for coverage , in accordance with Part I.B.3.f. of the permit, due to a previous agreement under the National Historic Preservation Act."

"I understand that continued coverage under this storm water general permit is contingent upon maintaining eligibility as provided for in Part I.B."

C. Where to Submit.

1. Facilities which discharge storm water associated with industrial activity must use an NOI form provided by the Director (or photocopy thereof). Currently, applicants may use the NOI form published in the September 29, 1995 **Federal Register** (60 FR 51265). The final version of the NOI form proposed in the June 2, 1997 **Federal Register** (62 FR 29785) shall be used when published in the **Federal Register**. Forms are also available by calling (404)562–9296. NOIs must be signed in accordance with Part VII.G of this permit. NOIs are to be submitted to the Director of the NPDES program in care of the following address: Storm Water Notice of Intent (4203) 401 M Street, S.W. Washington, DC 20460

2. A copy of the NOI or other indication that storm water discharges from the site are covered under an NPDES permit, and a brief description of the project shall be posted at the construction site in a prominent place for public viewing (such as alongside a building permit).

D. Additional Notification

Facilities which are operating under approved State or local sediment and erosion plans, grading plans, or storm water management plans shall also submit signed copies of the Notice of Intent to the State or local agency approving such plans in accordance with the deadlines in Part II.A of this permit (or sooner where required by State or local rules). Facilities which discharge storm water associated with construction activities to a municipal separate storm water system within Broward, Dade, Duval, Escambia, Hillsborough, Lee, Leon, Manatee, Orange, Palm Beach, Pasco, Pinellas, Polk, Sarasota or Seminole Counties shall submit a copy of the NOI to the operator of the municipal separate storm sewer system. Included within these counties, the Florida Department of Transportation (FDOT), incorporated municipalities, and Chapter 298 Special Districts shall also be notified where they own or operate a municipal separate storm sewer system receiving storm water discharges associated with construction activity covered by this permit.

E. Permit Renewal

If this general permit is not reissued prior to its expiration date, all facilities desiring to retain continued coverage shall submit another NOI form prior to the expiration of this permit. This submittal shall also satisfy the notification requirement to be covered under the reissued permit.

Part III. Special Conditions, Management Practices, and Other Non-Numeric Limitations

A. Prohibition on Non-storm Water Discharges

1. Except as provided in paragraph I.B.2 and III.A.2, all discharges covered by this permit shall be composed entirely of storm water.

2. a. Except as provided in paragraph III.A.2.(b), discharges of material other than storm water must be in compliance with a NPDES permit (other than this permit) issued for the discharge.

b. The following non-storm water discharges may be authorized by this permit provided the non-storm water component of the discharge is in compliance with paragraph V.D.5 and the storm water management system is designed to accept these discharges and provide treatment of the non-storm water component sufficient to meet Florida water quality standards: discharges from fire fighting activities; fire hydrant flushings; waters used to spray off loose solids from vehicles (waste waters from a more thorough cleaning, including the use of detergents or other cleaners is not authorized by this part) or control dust in accordance with Part V.D.2.c.(2); potable water sources including waterline flushings; irrigation drainage; routine external building washdown which does not use detergents; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air conditioning condensate; springs; and foundation or footing drains where flows are not contaminated with process materials such as solvents. Discharges resulting from ground water dewatering activities at construction sites are not covered by this permit. Applicants in the State of Florida seeking coverage for these discharges must contact the Florida Department of Environmental Protection.

B. Releases in Excess of Reportable Quantities.

1. The discharge of hazardous substances or oil in the storm water discharge(s) from a facility shall be prevented or minimized in accordance with the applicable storm water pollution prevention plan for the facility. This permit does not relieve the permittee of the reporting requirements of 40 CFR part 117 and 40 CFR part 302. Where a release containing a hazardous substance in an amount equal to or in excess of a reporting quantity established under either 40 CFR 117 or 40 CFR 302, occurs during a 24 hour period:

a. The permittee is required to notify the National Response Center (NRC) (800–424–8802 or for Region 4, 404–562–8702) in accordance with the requirements of 40 CFR 117 and 40 CFR 302 as soon as he or she has knowledge of the discharge;

b. The permittee shall submit within 14 calendar days of knowledge of the release a written description of: the release (including the type and estimate of the amount of material released), the date that such release occurred, the circumstances leading to the release, and steps to be taken in accordance with Part III.B.3 of this permit to EPA Region

4 Office at the address provided in Part VI.C (addresses) of this permit; and

c. The storm water pollution prevention plan required under Part V of this permit must be modified within 14 calendar days of knowledge of the release to: provide a description of the release, the circumstances leading to the release, and the date of the release. In addition, the plan must be reviewed to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and the plan must be modified where appropriate.

2. *Spills.* This permit does not authorize the discharge of hazardous substances or oil resulting from an on-site spill.

Part IV. Unpaved Rural Roads

A. Applicability

The provisions of this part are applicable to the construction of roads, except roads constructed and associated with silviculture and agricultural activities as defined by 40 CFR Part 122, that disturb five (5) acres or more and will remain unpaved after construction is complete.

B. Construction

In the State of Florida, construction of unpaved rural roads where the possibility of a point source discharge to surface waters exists, must all erosion and sediment controls and storm water management practices as needed to be consistent with the requirements set forth in State Water Policy (Chapter 62–40, FAC), the applicable storm water or environmental resource permitting requirements of the FDEP or appropriate FWMD, and the guidelines contained in the Florida Development Manual: A Guide to Sound Land and Water Management (FDEP, 1988) and any subsequent amendments.

C. Notice of Termination

Where a site has been finally stabilized and all storm water discharges from construction activities that are authorized by this permit are eliminated (see Part IX.A.5. for the definition of eliminated), or where the operator of all storm water discharges at a facility changes, the operator of the facility may submit a Notice of Termination that is signed in accordance with Part VII.G of this permit.

Part V. Storm Water Pollution Prevention Plans

A storm water pollution prevention plan shall be developed for each construction site covered by this permit. Storm water pollution prevention plans shall be prepared in accordance with good engineering practices. The plan shall identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges from the construction site. In addition, the plan shall describe and ensure the implementation of practices which will be used to reduce the pollutants in storm water discharges associated with industrial activity at the construction site and to assure compliance with the terms and conditions of this permit. Facilities must implement the provisions of the storm water pollution prevention plan required under this part as a condition of this permit.

A. Deadlines for Plan Preparation and Compliance

The plan shall:

1. Be completed (including certifications required under Part V.E) prior to the submittal of an NOI to be covered under this permit and updated as appropriate;

2. The plan shall provide for compliance with the terms and schedule of the plan beginning with the initiation of construction activities.

B. Signature and Plan Review

1. The plan shall be signed in accordance with Part VII.G, and be retained on-site at the facility which generates the storm water discharge in accordance with Part V (retention of records) of this permit.

2. The permittee shall submit plans to the State agency which issued the storm water or environmental resource permit referenced in Part II.B.6. and shall make plans available upon request to the Director; a State or local agency approving sediment and erosion plans, grading plans, or storm water management plans; or in the case of a storm water discharge associated with industrial activity which discharges through a municipal separate storm sewer system with an NPDES permit, to the municipal operator of the system.

3. The Director may notify the permittee at any time that the plan does not meet one or more of the minimum requirements of this Part. Such notification shall identify those provisions of the permit which are not being met by the plan, and identify which provisions of the plan requires modifications in order to meet the minimum requirements of this Part. Within 7 days of such notification from the Director, (or as otherwise provided by the Director), or authorized representative, the permittee shall make the required changes to the plan and shall submit to the Director a written certification that the requested changes have been made.

C. Keeping Plans Current

The permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the waters of the United States, including the addition of or change in location of storm water discharge points, and which has not otherwise been addressed in the plan or if the storm water pollution prevention plan proves to be ineffective in eliminating or significantly minimizing pollutants from sources identified under Part V.D.2 of this permit, or in otherwise achieving the general objectives of controlling pollutants in storm water discharges associated with construction activity. In addition, the plan shall be amended to identify any new contractor and/or subcontractor that will implement a measure of the storm water pollution prevention plan (see Part V.E). Amendments to the plan shall be prepared, dated, and kept as separate documents from the original plan. The amendments to the plan may be reviewed by EPA in the same manner as Part V.B above. Amendments to the plan must be submitted to the State agency which issued the State storm water or environmental resource permit.

D. Contents of Plan

The storm water pollution prevention plan shall include the following items:

1. *Site Description.* Each plan shall provide a description of pollutant sources and other information as indicated:

a. A description of the nature of the construction activity;

b. A description of the intended sequence of major activities which disturb soils for major portions of the site (e.g. grubbing, excavation, grading);

c. Estimates of the total area of the site and the total area of the site that is expected to be disturbed by excavation, grading, or other activities;

d. An estimate of the runoff coefficient of the site before, during and after construction activities are completed using "C" from the Rational Method, and existing data describing the soil or the quality of any discharge from the site and an estimate of the size of the drainage area for each outfall;

e. A site map indicating drainage patterns and approximate slopes anticipated after major grading activities, areas of soil disturbance, an outline of areas which may not be disturbed, the location of major structural and nonstructural controls

identified in the plan, the location of areas where stabilization practices are expected to occur, surface waters (including wetlands), and locations where storm water is discharged to a surface water; and,

f. The location in terms of latitude and longitude, to the nearest 15 seconds, of each outfall, the name of the receiving water(s) for each outfall and the amount of any wetland acreage at the site.

2. *Controls.* Each plan shall include a description of appropriate controls and measures that will be implemented at the construction site. The plan will clearly describe for each major activity identified in Part V.D.1.b appropriate control measures and the timing during the construction process that the measures will be implemented. (For example, perimeter controls for one portion of the site will be installed after the clearing and grubbing necessary for installation of the measure, but before the clearing and grubbing for the remaining portions of the site. Perimeter controls will be actively maintained until final stabilization of those portions of the site upward of the perimeter control. Temporary perimeter controls will be removed after final stabilization). All controls shall be consistent with the requirements set forth in the State Water Policy of Florida (Chapter 62–40, Florida Administrative Code), the applicable storm water or environmental resource permitting requirements of the FDEP or appropriate FWMD, and the guidelines contained in the Florida Development Manual: A Guide to Sound Land and Water Management (FDEP, 1988) and any subsequent amendments. The description and implementation of controls shall address the following minimum components:

a. Erosion and Sediment Controls. (1) Stabilization Practices. A description of interim and permanent stabilization practices, including site-specific scheduling of the implementation of the practices. Site plans should ensure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized. Stabilization practices may include: temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetation, and other appropriate measures. A record of the dates when major grading activities occur, when construction activities temporarily or permanently cease on a portion of the site and when stabilization measures are initiated shall be included in the plan. Stabilization measures shall be initiated as soon as practicable, but in no case more than 14 days, in portions of the site where construction activities have temporarily or permanently ceased.

(2) Structural Practices. A description of structural practices, to divert flows from exposed soils, store flows or otherwise limit runoff and the discharge of pollutants from exposed areas of the site; and in the State of Florida, in accordance with the requirements set forth in Section 62–40, 420, FAC, and the applicable storm water or environmental resource regulations of the FDEP or appropriate FWMD. Such practices may include silt fences, earth dikes, drainage swales, sediment traps, check dams, subsurface drains, pipe slope drains, level spreaders, storm drain inlet protection, rock outlet protection, reinforced soil retaining systems, gabions, and temporary or permanent sediment basins. Structural practices should be placed on upland soils unless a State of Florida wetland resource management permit or environmental resource permit issued pursuant to Chapters 373 or 403, FS, and applicable regulations of the FDEP or FWMD authorize otherwise. The installation of these devices may be subject to Section 404 of the CWA.

(a) For common drainage locations that serve an area with more than 10 disturbed acres at one time, a temporary (or permanent) sediment basin providing 3,600 cubic feet of storage per acre drained, or equivalent control measures, shall be provided where attainable until final stabilization of the site. The 3,600 cubic feet of storage area per acre drained does not apply to flows from offsite areas and flows from onsite areas that are either undisturbed or have undergone final stabilization where such flows are diverted around both the disturbed area and the sediment basin. For drainage locations which serve more than 10 disturbed acres at one time and where a temporary sediment basin providing 3,600 cubic feet of storage per acre drained, or equivalent controls is not attainable, smaller sediment basins and/or sediment traps should be used. At a minimum, silt fences, or equivalent sediment controls are required for all sideslope and downslope boundaries of the construction area.

(b) For drainage locations serving less than 10 acres, sediment basins and/or sediment traps should be used. At a minimum, silt fences or equivalent sediment controls are required for all sideslope and downslope boundaries of the construction area unless a sediment basin providing storage for 3,600 cubic feet of storage per acre drained is provided.

b. Storm Water Management. A description of measures that will be installed during the construction process to control pollutants in storm water discharges that will occur after construction operations have been completed. In the State of Florida, the description of controls shall be consistent with the requirements set forth in the State Water Policy of Florida (Chapter 62–40, FAC), the applicable storm water or environmental resource permitting regulations of the guidelines contained in the Florida Development Manual: A Guide to Sound Land and Water Management (FDEP, 1988), and any subsequent amendments. Structural measures should be placed on upland soils unless a State of Florida wetland resource management permit or environmental resource permit issued pursuant to Chapters 373 or 403, FS, and applicable regulations of the FDEP or FWMD authorize otherwise. The installation of these devices may be subject to Section 404 of the CWA. This NPDES permit only addresses the installation of storm water management measures, and not the ultimate operation and maintenance of such structures after the construction activities have been completed and the site has undergone final stabilization. Permittees are only responsible for the installation and maintenance of storm water management measures prior to final stabilization of the site, and are not responsible for maintenance after storm water discharges associated with industrial activity have been eliminated from the site. However, all storm water management systems shall be operated and maintained in perpetuity after final stabilization in accordance with requirements set forth in the State of Florida storm water or environmental resource permit issued for the site.

(1) Such practices may include: storm water detention structures (including wet ponds); storm water retention structures; flow attenuation by use of open vegetated swales and natural depressions; infiltration of runoff onsite; and sequential systems (which combine several practices). In the State of Florida, pursuant to the requirements of section 62–40.432, FAC, the storm water management system shall be designed to remove at least 80 percent of the average annual load of pollutants which cause or contribute to violations of water quality standards (95 percent if the system discharges to an Outstanding Florida Water). The pollution prevention plan shall include an explanation of the technical basis used to select the practices to control

pollution where flows exceed predevelopment levels.

(2) Velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel for the purpose of providing a non-erosive velocity flow from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected (e.g., no significant changes in the hydrological regime of the receiving water). Equalization of the predevelopment and post-development storm water peak discharge rate and volume shall be a goal in the design of the post-development storm water management system.

c. *Other Controls.* (1). *Waste Disposal.* No solid materials, including building materials, shall be discharged to waters of the United States, except as authorized by a Section 404 permit and by a State of Florida wetland resource management permit or environmental resource permit issued pursuant to chapters 373 or 403, FS, and the applicable regulations of the FDEP or FWMD.

(2) Off-site vehicle tracking of sediments and the generation of dust shall be minimized.

(3) The plan shall ensure and demonstrate compliance with applicable State and/or local waste disposal, sanitary sewer or septic system regulations.

(4) The plan shall address the proper application rates and methods for the use of fertilizers and pesticides at the construction site and set forth how these procedures will be implemented and enforced. Nutrients will be applied only at rates necessary to establish and maintain vegetation such that discharges will not cause or contribute to violations of State surface or ground water quality standards.

(5) The plan shall ensure that the application, generation, and migration of toxic substances is limited and that toxic materials are properly stored and disposed.

d. *Approved State or Local Plans.* (1) Facilities which discharge storm water associated with construction activity must include in their storm water pollution prevention plan procedures and requirements specified in applicable sediment and erosion site plans or site permits, or storm water management site plans or site permits approved by State, Tribal or local officials. Permittees shall provide a certification in their storm water pollution prevention plan that their storm water pollution prevention plan reflects requirements applicable to protecting surface water resources in sediment and erosion site plans or site permits, or storm water management site plans or site permits approved by State, Tribal or local officials. Permittees shall comply with any such requirements during the term of the permit. This provision does not apply to provisions of master plans, comprehensive plans, non-enforceable guidelines or technical guidance documents that are not identified in a specific plan or permit that is issued for the construction site.

(2) Storm water pollution prevention plans must be amended to reflect any change applicable to protecting surface water resources in sediment and erosion site plans or site permits, or storm water management site plans or site permits approved by State or local officials for which the permittee receives written notice. Where the permittee receives such written notice of a change, the permittee shall provide a recertification in the storm water pollution plan that the storm water pollution prevention plan has been modified to address such changes.

(3) Dischargers seeking alternative permit requirements shall submit an individual permit application in accordance with Part VII.L of the permit at the address indicated in Part V.C of this permit for the appropriate Regional Office, along with a description of why requirements in approved State or local plans or permits, or changes to such plans or permits should not be applicable as a condition of an NPDES permit.

3. Maintenance. A description of procedures to ensure the timely maintenance of vegetation, erosion and sediment control measures and other protective measures identified in the site plan in good and effective operating conditions.

4. Inspections. Qualified personnel (provided by the discharger) shall inspect all points of discharge into waters of the United States or to a municipal separate storm sewer system and all disturbed areas of the construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measures, structural control measures, and locations where vehicles enter or exit the site at least once every seven calendar days and within 24 hours of the end of a storm that is 0.25 inches or greater. Where sites have been finally stabilized; such inspection shall be conducted at least once every month.

a. Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of, or the potential for, pollutants entering the storm water system. The storm water management system and erosion and sediment control measures identified in the plan shall be observed to ensure that they are operating correctly. In the State of Florida, where discharge locations or points are accessible, they shall be inspected to ascertain whether erosion control measures are effective in meeting the performance standards set forth in State Water Policy (chapter 62–40, FAC) and the applicable storm water or environmental resource permitting regulations of the FDEP or appropriate FWMD. Locations where vehicles enter or exit the site shall be inspected for evidence of offsite sediment tracking.

b. Based on the results of the inspection, the site description identified in the plan in accordance with paragraph V.D.1 of this permit and pollution prevention measures identified in the plan in accordance with paragraph V.D.2 of this permit shall be revised as appropriate, but in no case later than 7 calendar days following the inspection. Such modifications shall provide for timely implementation of any changes to the plan within 7 calendar days following the inspection.

c. A report summarizing the scope of the inspection, name(s) and qualifications of personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with paragraph V.D.4.b of the permit shall be made and retained as part of the storm water pollution prevention plan for at least three years from the date that the site is finally stabilized. Such reports shall identify any incidents of non-compliance. Where a report does not identify any incidents of non-compliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with Part VII.G of this permit.

5. Non-Storm Water Discharges— Except for flows from fire fighting activities, sources of non-storm water listed in Part III.A.2 of this permit that are combined with storm water discharges associated with construction activity must be identified in the plan. The plan shall identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

E. Contractors

1. The storm water pollution prevention plan must clearly identify for each measure identified in the plan, the contractor(s) and/or subcontractor(s) that will implement the measure. All contractors and subcontractors identified in the plan must sign a copy of the certification statement in Part V.E.2 of this permit in accordance with Part VII.G of this permit. All certifications must be included in the storm water pollution prevention plan.

2. Certification Statement. All contractors and subcontractors identified in a storm water pollution prevention plan in accordance with Part V.E.1 of this permit shall sign a copy of the following certification statement before conducting any professional service identified in the storm water pollution prevention plan:

I certify under penalty of law that I understand the terms and conditions of the general National Pollutant Discharge Elimination System (NPDES) permit that authorizes the storm water discharges associated with industrial activity from the construction site identified as part of this certification.

The certification must include the name and title of the person providing the signature in accordance with Part VII.G of this permit; the name, address and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.

Part VI. Retention of Records

A. The permittee shall retain copies of storm water pollution prevention plans and all reports required by this permit, and records of all data used to complete the Notice of Intent to be covered by this permit, for a period of at least three years from the date that the site is finally stabilized. This period may be extended by request of the Director at any time.

B. The permittee shall retain a copy of the storm water pollution prevention plan required by this permit at the construction site from the date of project initiation to the date of final stabilization.

C. Addresses. Except for the submittal of NOIs (Part II.C) and NOTs (Part IX), all written correspondence directed to the U.S. Environmental Protection Agency concerning discharges in the State of Florida or an Indian lands located in Region 4, and subject to coverage under this permit, including the submittal of individual permit applications, shall be sent to the address listed below:

U.S. EPA, Region 4, Surface Water Permits Section, Water Management Division, Atlanta Federal Center, 61 Forsyth St., SW., Atlanta, GA 30303

Part VII. Standard Permit Conditions

A. Duty To Comply

1. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the CWA and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

2. Penalties for Violations of Permit Conditions.

a. Criminal. (1) Negligent Violations. The CWA provides that any person who negligently violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or both.

(2) Knowing Violations. The CWA provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both.

(3) Knowing Endangerment. The CWA provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act and who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than $250,000, or by imprisonment for not more than 15 years, or both.

(4). False Statement. The CWA provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than 2 years, or by both. If a conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or by both. (See Section 309.c.4 of the Clean Water Act).

b. Civil Penalties—The CWA provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed $25,000 per day for each violation.

c. Administrative Penalties—The CWA provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to an administrative penalty, as follows:

(1) Class I penalty. Not to exceed $10,000 per violation nor shall the maximum amount exceed $25,000.

(2) Class II penalty. Not to exceed $10,000 per day for each day during which the violation continues nor shall the maximum amount exceed $125,000.

B. Continuation of the Expired General Permit

This permit expires at midnight 5 years from April 3, 1998. If this general permit is not reissued prior to its expiration date, all facilities desiring to retain continued coverage shall submit another NOI form prior to the expiration of this permit. This submittal shall also satisfy the notification requirement to be covered under the reissued permit. Facilities that have not obtained coverage under this permit by the expiration date of this permit cannot become authorized to discharge under the continued permit.

The authorization to discharge under the continued previous general permit, issued on September 25, 1992 (57 FR 44412), expires 90 days from April 3, 1998.

C. Need To Halt or Reduce Activity Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

D. Duty To Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. Duty To Provide Information

The permittee shall furnish within a reasonable time to the Director; an authorized representative of the Director; a State or local agency approving sediment and erosion plans, grading plans, or storm water management plans; or in the case of a

storm water discharge associated with industrial activity which discharges through a municipal separate storm sewer system with an NPDES permit, to the municipal operator of the system, any information which is requested to determine compliance with this permit or other information.

F. Other Information

When the permittee becomes aware that he or she failed to submit any relevant facts or submitted incorrect information in the Notice of Intent or in any other report to the Director, he or she shall promptly submit such facts or information.

G. Signatory Requirements

All Notices of Intent, storm water pollution prevention plans, reports, certifications or information either submitted to the Director or the operator of a large or medium municipal separate storm sewer system, or that this permit requires be maintained by the permittee, shall be signed as follows:

1. All Notices of Intent shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (1) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or (2) the manager of one or more manufacturing, production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25,000,000 (in second-quarter 1980 dollars) if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes (1) the chief executive officer of the agency, or (2) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

2. All reports required by the permit and other information requested by the Director or authorized representative of the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described above and submitted to the Director.

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of manager, operator, superintendent, or position of equivalent responsibility or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position).

c. Changes to authorization. If an authorization under paragraph II.B.3. is no longer accurate because a different operator has responsibility for the overall operation of the construction site, a new notice of intent satisfying the requirements of paragraph II.B. must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

d. Certification. Any person signing documents under paragraph VI.G shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

H. Penalties for Falsification of Reports

Section 309(c)(4) of the Clean Water Act provides that any person who knowingly makes any false material statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or by both.

I. Penalties for Falsification of Monitoring Systems

The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or both.

J. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the CWA or section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

K. Property Rights

The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges, nor does it authorize any injury to private property nor any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

L. Severability

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit shall not be affected thereby.

M. Transfers

Coverage under this permit is not transferable to any person except after notice to the Director. The Director may require termination of permit coverage by the current permittee in accordance with Part IX of this permit; and the subsequent submission a Notice of Intent to receive coverage under the permit by the new applicant in accordance with Part II of this permit.

N. Requiring an Individual Permit or an Alternative General Permit

1. The Director may require any person authorized by this permit to apply for and/or obtain either an individual NPDES permit or an alternative NPDES general permit. Any interested person may petition the Director to take action under this paragraph. Where the Director requires a discharger authorized to discharge under this permit to apply for an individual NPDES permit, the Director shall notify the discharger in writing that a permit application is required. This notification shall include a brief

statement of the reasons for this decision, an application form, a statement setting a deadline for the discharger to file the application, and a statement that on the effective date of issuance or denial of the individual NPDES permit or the alternative general permit as it applies to the individual permittee, coverage under this general permit shall automatically terminate. Applications shall be submitted to the appropriate Regional Office indicated in Part V.C of this permit. The Director may grant additional time to submit the application upon request of the applicant. If a discharger fails to submit in a timely manner an individual NPDES permit application as required by the Director under this paragraph, then the applicability of this permit to the individual NPDES permittee is automatically terminated at the end of the day specified by the Director for application submittal.

2. Any discharger authorized by this permit may request to be excluded from the coverage of this permit by applying for an individual permit. In such cases, the permittee shall submit an individual application in accordance with the requirements of 40 CFR 122.26(c)(1)(ii), with reasons supporting the request, to the Director at the address for the appropriate Regional Office indicated in Part V.C of this permit. The request may be granted by issuance of any individual permit or an alternative general permit if the reasons cited by the permittee are adequate to support the request.

3. When an individual NPDES permit is issued to a discharger otherwise subject to this permit, or the discharger is authorized to discharge under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the effective date of the individual permit or the date of authorization of coverage under the alternative general permit, whichever the case may be. When an individual NPDES permit is denied to an owner or operator otherwise subject to this permit, or the owner or operator is denied for coverage under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the date of such denial, unless otherwise specified by the Director.

O. State/Environmental Laws

1. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by section 510 of the Act.

2. No condition of this permit shall release the permittee from any responsibility or requirements under other environmental statutes or regulations.

P. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit and with the requirements of storm water pollution prevention plans. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. Proper operation and maintenance requires the operation of backup or auxiliary facilities or similar systems, installed by a permittee only when necessary to achieve compliance with the conditions of the permit.

Q. Inspection and Entry

The permittee shall allow the Director or an authorized representative of EPA, the State, or, in the case of a construction site which discharges through a municipal separate storm sewer, an authorized representative of the municipal operator or the separate storm sewer receiving the discharge, upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;

2. Have access to and copy at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities or equipment (including monitoring and control equipment); and

4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the CWA, any substances or parameter at any location on the site.

R. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

S. Planned Changes

The permittee shall amend the pollution prevention plan as soon as possible identifying any planned physical alterations or additions to the permitted facility.

T. Twenty-Four Hour Reporting

(1) the permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause: the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

U. Bypass

(1) Definitions.

(i) Bypass means the intentional diversion of waste streams from any portion of a treatment facility.

(ii) Severe property damage means substantial physical damage to property which causes them to become inoperable or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(2) Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs S(3) and S(4).

(3) Notice.

(i) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

(ii) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in paragraph R. of this section (24-hour notice).

(4) Prohibition of bypass.

(i) Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:

(A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgement to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(C) the permittee submitted notices as required under paragraph S(3) of this section.

(ii) The Director may approve an anticipated bypass after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in paragraph S(4)(i) of this section.

Part VIII. Reopener Clause

A. If there is evidence indicating potential or realized impacts on water quality due to any storm water discharge associated with industrial activity covered by this permit, the discharger may be required to obtain individual permit or an alternative general permit in accordance with Part I.C of this permit or the permit may be modified to include different limitations and/or requirements.

B. Permit modification or revocation will be conducted according to 40 CFR 122.62, 122.63, 122.64 and 124.5.

C. This permit may be modified, or alternatively, revoked and reissued, to comply with any applicable provisions of the Phase II storm water regulations once they are issued.

Part IX. Termination of Coverage

A. Notice of Termination. Where a site has been finally stabilized and all storm water discharges from construction sites that are authorized by this permit are eliminated (see Part IX.A.5. for the definition of eliminated), or where the operator of all storm water discharges at a facility changes, the operator of the facility may submit a Notice of Termination that is signed in accordance with Part VII.G of this permit within 14 days of final stabilization of the site. The Notice of Termination shall include the following information:

1. The mailing address, and location of the construction site for which the notification is submitted. Where a mailing address for the site is not available, the location can be described in terms of the latitude and longitude of the approximate center of the facility to the nearest 15 seconds, or the section, township and range to the nearest quarter section;

2. The name, address, and telephone number of the operator seeking termination of permit coverage;

3. The NPDES permit number for the storm water discharge identified by this Notice of Termination;

4. An identification of whether the storm water discharges associated with industrial activity have been eliminated or the operator of the discharges has changed; and

5. The following certification signed in accordance with Part VII.G (signatory requirements) of this permit:

> I certify under penalty of law that all storm water discharges associated with industrial activity from the identified facility that are authorized by a NPDES general permit have otherwise been eliminated or that I am no longer the operator of the facility or construction site. I understand that by submitting this notice of termination, that I am no longer authorized to discharge storm water associated with industrial activity by the general permit, and that discharging pollutants in storm water associated with industrial activity to waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by a NPDES permit. I also understand that the submittal of this notice of termination does not release an operator from liability for any violations of this permit or the Clean Water Act.

For the purposes of this certification, elimination of storm water discharges associated with construction activity means that all disturbed soils at the identified facility have been finally stabilized and temporary erosion and sediment control measures have been removed or will be removed at an appropriate time, or that all storm water discharges associated with construction activities from the identified site that are authorized by a NPDES general permit have otherwise been eliminated.

B. Where to Submit. Currently, applicants may use the NOT form published in the September 29, 1995 Federal Register (60 FR 51265). The final version of the NOT form proposed in the June 2, 1997 Federal Register (62 FR 29785) shall be used when published in the Federal Register. All Notices of Termination are to be sent, using the form provided by the Director (or a photocopy thereof) [25], to the following address: Storm Water Notice of Termination (4203), 401 M Street, SW, Washington, DC 20460.

C. Additional Notification. A copy of the Notice of Termination shall be sent to the State agency which issued the State storm water or environmental resource permit for the site and, if the storm water management system discharges to a municipal separate storm sewer system within Broward, Dade, Duval, Escambia, Hillsborough, Lee, Leon, Manatee, Orange, Palm Beach, Pasco, Pinellas, Polk, Sarasota or Seminole Counties, to the owner of that system. Included within these counties, the Florida Department of Transportation (FDOT), incorporated municipalities, and chapter 298 Special Districts also shall be notified where they own or operate a municipal separate storm sewer system receiving storm water discharges associated with construction activity covered by this permit.

Part X. Definitions

Best Management Practices (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Commencement of Construction—The initial disturbance of soils associated with clearing, grading, or excavating activities or other construction activities.

CWA means Clean Water Act or the Federal Water Pollution Control Act.

Dedicated portable asphalt plant—A portable asphalt plant that is located on or contiguous to a construction site and that provides asphalt only to the construction site that the plant is located on or adjacent to. The term dedicated portable asphalt plant does not include facilities that are subject to the asphalt emulsion effluent limitation guideline at 40 CFR Part 443.

Dedicated portable concrete plant—A portable concrete plant that is located on or contiguous to a construction site and that provides concrete only to the construction site that the plant is located on or adjacent to.

Director means the Regional Administrator of the Environmental Protection Agency or an authorized representative.

Final Stabilization means that all soil disturbing activities at the site have been completed, and that a uniform perennial vegetative cover with a density of 70% of the cover for unpaved areas and areas not covered by permanent structures has been established or equivalent permanent

[25] A copy of the approved NOT form is provided in Appendix A of this notice.

stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.

Flow-weighted composite sample means a composite sample consisting of a mixture of aliquots collected at a constant time interval, where the volume of each aliquot is proportional to the flow rate of the discharge.

Large and Medium municipal separate storm sewer system means all municipal separate storm sewers that are either: (i) Located in an incorporated place (city) with a population of 100,000 or more as determined by the latest Decennial Census by the Bureau of Census (these cities are listed in Appendices F and G of 40 CFR Part 122); or (ii) located in the counties with unincorporated urbanized populations of 100,000 or more, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties (these counties are listed in Appendices H and I of 40 CFR Part 122); or (iii) owned or operated by a municipality other than those described in paragraph (i) or (ii) and that are designated by the Director as part of the large or medium municipal separate storm sewer system.

NOI means notice of intent to be covered by this permit (see Part II of this permit).

NOT means notice of termination (see Part IX of this permit).

Operator means any party associated with the construction project that meets either of the following 2 criteria: (1) The party has operational control over project specifications (including the ability to make modifications in specifications), or (2) the party has day-to-day operational control of those activities at a project site which are necessary to ensure compliance with the storm water pollution prevention plan or other permit conditions (e.g., they are authorized to direct workers at the site to carry out activities identified in the storm water pollution prevention plan or comply with other permit conditions).

Point Source means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharges. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

Runoff coefficient means the fraction of total rainfall that will appear at the conveyance as runoff.

Storm Water means storm water runoff, snow melt runoff, and surface runoff and drainage.

Storm Water Associated with Industrial Activity means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program. For the categories of industries identified in paragraphs (i) through (x) of this definition, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined at 40 CFR 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the categories of industries identified in paragraph (xi) of this definition, the term includes only storm water discharges from all areas (except access roads and rail lines) listed in the previous sentence where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water. For the purposes of this paragraph, material handling activities include the: storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are Federally or municipally owned or operated that meet the description of the facilities listed in this paragraph (i)–(xi) of this definition) include those facilities designated under 122.26(a)(1)(v). The following categories of facilities are considered to be engaging in "industrial activity" for purposes of this subsection:

(i) Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR Subchapter N (except facilities with toxic pollutant effluent standards which are exempted under category (xi) of this definition);

(ii) Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, 373;

(iii) Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(l) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations which have been released from applicable State or Federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations; inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator;

(iv) Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of RCRA;

(v) Landfills, land application sites, and open dumps that have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under Subtitle D of RCRA;

(vi) Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;

(vii) Steam electric power generating facilities, including coal handling sites;

(viii) Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221–25), 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment

cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (i)–(vii) or (ix)–(xi) of this subsection are associated with industrial activity;

(ix) Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program under 40 CFR 403. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with 40 CFR 503;

(x) Construction activity including clearing, grading and excavation activities except: operations that result in the disturbance of less than five acres of total land area which are not part of a larger common plan of development or sale;

(xi) Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221–25, (and which are not otherwise included within categories (i)–(x)).[26]

Waters of the United States means:

(a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(b) All interstate waters, including interstate "wetlands";

(c) All other waters such as interstate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(1) Which are or could be used by interstate or foreign travelers for recreational or other purposes;

(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(3) Which are used or could be used for industrial purposes by industries in interstate commerce;

(d) All impoundments of waters otherwise defined as waters of the United States under this definition;

(e) Tributaries of waters identified in paragraphs (a) through (d) of this definition;

(f) The territorial sea; and

(g) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA are not waters of the United States.

[26] On June 4, 1992, the United States Court of Appeals for the Ninth Circuit remanded the exclusion for manufacturing facilities in category (xi) which do not have materials or activities exposed to storm water to the EPA for further rulemaking. (Nos. 90–70671 and 91–70200).

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federal register

Tuesday
March 31, 1998

Part IV

Environmental Protection Agency

40 CFR Parts 141 and 142
National Primary Drinking Water Regulations: Disinfectants and Disinfection Byproducts Notice of Data Availability; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[WH–FRL–5988–7]

National Primary Drinking Water Regulations: Disinfectants and Disinfection Byproducts Notice of Data Availability

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Notice of data availability; request for comments.

SUMMARY: In 1994 USEPA proposed a Stage 1 Disinfectants/Disinfection Byproducts Rule (D/DBP) to reduce the level of exposure from disinfectants and disinfection byproducts (DBPs) in drinking water (USEPA, 1994a). This Notice of Data Availability summarizes the 1994 proposal and a subsequent Notice of Data Availability in 1997 (USEPA, 1997a); describes new data that the Agency has obtained and analyses that have been completed since the 1997 Notice of Data Availability; requests comments on the regulatory implications that flow from the new data and analyses; and requests comments on several issues related to the simultaneous compliance with the Stage 1 DBP Rule and the Lead and Copper Rule. USEPA solicits comment on all aspects of this Notice and the supporting record. The Agency also solicits additional data and information that may be relevant to the issues discussed in the Notice.

The Stage 1 D/DBP rule would apply to community water systems and nontransient noncommunity water systems that treat their water with a chemical disinfectant for either primary or residual treatment. In addition, certain requirements for chlorine dioxide would apply to transient noncommunity water systems because of the short-term health effects from high levels of chlorine dioxide.

Key issues related to the Stage 1 D/DBP rule that are addressed in this Notice include the establishment of Maximum Contaminant Level Goals for chloroform, dichloroacetic acid, chlorite, and bromate and the Maximum Residual Disinfectant Level Goal for chlorine dioxide.

DATES: Comments should be postmarked or delivered by hand on or before April 30, 1998. Comments must be received or post-marked by midnight April 30, 1998.

ADDRESSES: Send written comments to DBP NODA Docket Clerk, Water Docket (MC–4101); U.S. Environmental Protection Agency; 401 M Street, SW., Washington, DC 20460. Comments may be hand-delivered to the Water Docket, U.S. Environmental Protection Agency; 401 M Street, SW., East Tower Basement, Washington, DC 20460. Comments may be submitted electronically to owdocket@epamail.epa.gov.

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 Dr. Vicki Dellarco, Office of Science and Technology (MC 4304) or Mike Cox, Office of Ground Water and Drinking Water (MC 4607), U.S. Environmental Protection Agency, 401 M Street SW., Washington DC 20460; telephone (202) 260–7336 (Dellarco) or (202) 260–1445 (Cox).

SUPPLEMENTARY INFORMATION:

Regulated entities. Entities potentially regulated by the Stage 1 D/DBP rule are public water systems that add a disinfectant or oxidant. Regulated categories and entities include:

Category	Examples of regulated entities
Public Water System.	Community and nontransient noncommunity water systems that add a disinfectant or oxidant.
State Governments.	State government offices that regulate drinking water.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether your facility may be regulated by this action, you should carefully examine the applicability criteria in § 141.130 of the proposed rule (USEPA, 1994a). If you have questions regarding the applicability of this action to a particular entity, contact one of the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Additional Information for Commenters. Please submit an original and three copies of your comments and enclosures (including references). The Agency requests that commenters follow the following format: Type or print comments in ink, and cite, where possible, the paragraph(s) in this Notice to which each comment refers. Commenters should use a separate paragraph for each method or issue discussed. Electronic comments must be submitted as a WP5.1 or WP6.1 file or as an ASCII file avoiding the use of special characters. Comments and data will also be accepted on disks in WordPerfect in 5.1 or WP6.1 or ASCII file format. Electronic comments on this Notice may be filed online at many Federal Depository Libraries. Commenters who want EPA to acknowledge receipt of their comments should include a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted.

Availability of Record. The record for this Notice, which includes supporting documentation as well as printed, paper versions of electronic comments, is available for inspection from 9 to 4 p.m. (Eastern Time), Monday through Friday, excluding legal holidays, at the Water Docket, U.S. EPA Headquarters, 401 M. St., S.W., East Tower Basement, Washington, D.C. 20460. For access to docket materials, please call 202/260–3027 to schedule an appointment.

Abbreviations Used in This Notice

AWWA: American Water Works Association
AWWARF: AWWA Research Foundation
BAT: Best Available Technology
BDCM: Bromodichloromethane
CMA: Chemical Manufacturers Association
CWS: Community Water System
DBCM: Dibromochloromethane
DBP: Disinfection Byproducts
D/DBP: Disinfectants and Disinfection Byproducts
DCA: Dichloroacetic Acid
ED_{10}: Maximum likelihood estimate on a dose associated with 10% extra risk
EPA: United States Environmental Protection Agency
ESWTR: Enhanced Surface Water Treatment Rule
FACA: Federal Advisory Committee Act
GAC: Granular Activated Carbon
HAA5: Haloacetic Acids (five)
HAN: Haloacetonitrile
ICR: Information Collection Rule
ILSI: International Life Sciences Institute
IESTWR: Interim Enhanced Surface Water Treatment Rule
IRFA: Initial Regulatory Flexibility Analysis
LCR: Lead and Cooper Rule
LED_{10}: Lower 95% confidence limit on a dose associated with 10% extra risk
LMS: Linear Multistage Model
LOAEL: Lowest Observed Adverse Effect Level
LTESTWR: Long-Term Enhanced Surface Water Treatment Rule

MCL: Maximum Contaminant Level
MCLG: Maximum Contaminant Level Goal
M–DBP: Microbial and Disinfectants/ Disinfection Byproducts
mg/L: Milligrams per liter
MoE: Margin of Exposure
MRDL: Maximum Residual Disinfectant Level
MRDLG: Maximum Residual Disinfectant Level Goal
MTD: Maximum Tolerated Dose
NIPDWR: National Interim Primary Drinking Water Regulation
NOAEL: No Observed Adverse Effect Level
NODA: Notice of Data Availability
NPDWR: National Primary Drinking Water Regulation
NTNCWS: Nontransient Noncommunity Water System
NTP: National Toxicology Program
PAR: Population Attributable Risk
PQL: Practical Quantitation Limit
PWS: Public Water System
q1 *: Cancer Potency Factor
RFA: Regulatory Flexibility Act
RfD: Reference Dose
RIA: Regulatory Impact Analysis
RSC: Relative Source Contribution
SAB: Science Advisory Board
SBREFA: Small Business Regulatory Enforcement Fairness Act
SDWA: Safe Drinking Water Act, or the "Act," as amended in 1986 and 1996
SWTR: Surface Water Treatment Rule
TCA: Trichloroacetic Acid
TOC: Total Organic Carbon
TTHM: Total Trihalomethanes
TWG: Technical Working Group

Table of Contents

I. Introduction and Background

A. 1979 Total Trihalomethane MCL

USEPA set an interim maximum contaminant level (MCL) for total trihalomethanes (TTHMs) of 0.10 mg/L as an annual average in November 1979 (USEPA, 1979). There are four trihalomethanes (chloroform, bromodichloromethane, chlorodibromomethane, and bromoform). The interim TTHM standard applies to any PWS (surface water and/or ground water) serving at least 10,000 people that adds a disinfectant to the drinking water during any part of the treatment process. At their discretion, States may extend coverage to smaller PWSs. However, most States have not exercised this option. About 80 percent of the PWSs, serving populations of less than 10,000, are served by ground water that is generally low in THM precursor content (USEPA, 1979) and which would be expected to have low TTHM levels even if they disinfect.

B. Statutory Authority

In 1996, Congress reauthorized the Safe Drinking Water Act. Several of the 1986 provisions were renumbered and augmented with additional language, while other sections mandate new drinking water requirements. As part of the 1996 amendments to the Safe Drinking Water Act, USEPA's general authority to set a Maximum Contaminant Level Goal (MCLG) and a National Primary Drinking Water Regulation (NPDWR) was modified to apply to contaminants that "may have an adverse effect on the health of persons", that are "known to occur or there is a substantial likelihood that the contaminant will occur in public water systems with a frequency and at levels of public health concern", and for which "in the sole judgement of the Administrator, regulation of such contaminant presents a meaningful opportunity for health risk reduction for persons served by public water systems' (1986 SDWA Section 1412 (b)(3)(A) stricken and amended with 1412(b)(1)(A)).

The Act also requires that at the same time USEPA publishes an MCLG, which is a non-enforceable health goal, it also must publish a NPDWR that specifies either a maximum contaminant level (MCL) or treatment technique (Sections 1401(1), 1412(a)(3), and 1412 (b)(4)B)). USEPA is authorized to promulgate a NPDWR "that requires the use of a treatment technique in lieu of establishing a MCL," if the Agency finds that "it is not economically or technologically feasible to ascertain the level of the contaminant" (1412(b)(7)(A)).

The 1996 Amendments also require USEPA to promulgate a Stage 1 disinfectants/disinfection byproducts (D/DBP) rule by November 1998. In

addition, the 1996 Amendments require USEPA to promulgate a Stage 2 D/DBP rule by May 2002 (Section 1412(b)(2)(C)).

C. Regulatory Negotiation Process

In 1992 USEPA initiated a negotiated rulemaking to develop a D/DBP rule. The negotiators included representatives of State and local health and regulatory agencies, public water systems, elected officials, consumer groups and environmental groups. The Committee met from November 1992 through June 1993.

Early in the process, the negotiators agreed that large amounts of information necessary to understand how to optimize the use of disinfectants to concurrently minimize microbial and DBP risk on a plant-specific basis were unavailable. Nevertheless, the Committee agreed that USEPA should propose a D/DBP rule to extend coverage to all community and nontransient noncommunity water systems that use disinfectants. This rule proposed to reduce the current TTHM MCL, regulate additional disinfection byproducts, set limits for the use of disinfectants, and reduce the level of organic compounds from the source water that may react with disinfectants to form byproducts.

One of the major goals addressed by the Committee was to develop an approach that would reduce the level of exposure from disinfectants and DBPs without undermining the control of microbial pathogens. The intention was to ensure that drinking water is microbiologically safe at the limits set for disinfectants and DBPs and that these chemicals do not pose an unacceptable risk at these limits.

Following months of intensive discussions and technical analysis, the Committee recommended the development of three sets of rules: a staged D/DBP Rule (proposal: 59 FR 38668, July 29, 1994), an "interim" Enhanced Surface Water Treatment Rule (IESWTR) (proposal: 59 FR 38832, July 29, 1994), and an Information Collection Rule (final 61 FR 24354, May 14, 1996). The IESWTR would only apply to systems serving 10,000 people or more. The Committee agreed that a "long-term" ESWTR (LTESWTR) would be needed for systems serving fewer than 10,000 people when the results of more research and water quality monitoring became available. The LTESWTR could also include additional refinements for larger systems.

D. Overview of 1994 DBP Proposal

The proposed D/DBP Stage 1 rule addressed a number of complex and interrelated drinking water issues. The proposal attempted to balance the control of health risks from compounds formed during drinking water disinfection against the risks from microbial organisms (such as *Giardia lamblia*, *Cryptosporidium*, bacteria, and viruses) to be controlled by the IESWTR.

The proposed Stage 1 D/DBP rule applied to all community water systems (CWSs) and nontransient noncommunity water systems (NTNCWSs) that treat their water with a chemical disinfectant for either primary or residual treatment. In addition, certain requirements for chlorine dioxide would apply to transient noncommunity water systems because of the short-term health effects from high levels of chlorine dioxide. Following is a summary of key components of the 1994 proposed Stage 1 D/DBP rule.

1. MCLGs/MCLs/MRDLGs/MRDLs

EPA proposed MCLGs of zero for chloroform, bromodichloromethane, bromoform, bromate, and dichloroacetic acid and MCLGs of 0.06 mg/L for dibromochloromethane, 0.3 mg/L for trichloroacetic acid, 0.04 mg/L for chloral hydrate, and 0.08 mg/L for chlorite. In addition, EPA proposed to lower the MCL for TTHMs from 0.10 to 0.080 mg/L and added an MCL for five haloacetic acids (i.e., the sum of the concentrations of mono-, di-, and trichloroacetic acids and mono-and dibromoacetic acids) of 0.060 mg/L. EPA also, for the first time, proposed MCLs for two inorganic DBPs: 0.010 mg/L for bromate and 1.0 mg/L for chlorite.

In addition to proposing MCLGs and MCLs for several DBPs, EPA proposed maximum residual disinfectant level goals (MRDLGs) of 4 mg/L for chlorine and chloramines and 0.3 mg/L for chlorine dioxide. The Agency also proposed maximum residual disinfectant levels (MRDLs) for chlorine and chloramines of 4.0 mg/L, and 0.8 mg/L for chlorine dioxide. MRDLs protect public health by setting limits on the level of residual disinfectants in the distribution system. MRDLs are similar in concept to MCLs—MCLs set limits on contaminants and MRDLs set limits on residual disinfectants in the distribution system. MRDLs, like MCLs, are enforceable, while MRDLGs, like MCLGs, are not enforceable.

2. Best Available Technologies

EPA identified the best available technology (BAT) for achieving compliance with the MCLs for both TTHMs and HAA5 as enhanced coagulation or treatment with granular activated carbon with a ten minute empty bed contact time and 180 day reactivation frequency (GAC10), with chlorine as the primary and residual disinfectant. The BAT for achieving compliance with the MCL for bromate was control of ozone treatment process to reduce formation of bromate. The BAT for achieving compliance with the chlorite MCL was control of precursor removal treatment processes to reduce disinfectant demand, and control of chlorine dioxide treatment processes to reduce disinfectant levels. EPA identified BAT for achieving compliance with the MRDL for chlorine, chloramine, and chlorine dioxide as control of precursor removal treatment processes to reduce disinfectant demand, and control of disinfection treatment processes to reduce disinfectant levels.

3. Treatment Technique

EPA proposed a treatment technique that would require surface water systems and groundwater systems under the direct influence of surface water that use conventional treatment or precipitative softening to remove DBP precursors by enhanced coagulation or enhanced softening. A system would be required to remove a certain percentage of total organic carbon (TOC) (based on raw water quality) prior to the point of continuous disinfection. EPA also proposed a procedure to be used by a PWS not able to meet the percent reduction, to allow them to comply with an alternative minimum TOC removal level. Compliance for systems required to operate with enhanced coagulation or enhanced softening was based on a running annual average, computed quarterly, of normalized monthly TOC percent reductions.

4. Preoxidation (Predisinfection) Credit

The proposed rule did not allow PWSs to take credit for compliance with disinfection requirements in the SWTR/IESWTR prior to removing required levels of precursors unless they met specified criteria. This provision was modified by the 1997 Federal Advisory Committee (see below).

5. Analytical Methods

EPA proposed nine analytical methods (some of which can be used for multiple analyses) to ensure compliance with proposed MRDLs for chlorine, chloramines, and chlorine dioxide. EPA proposed methods for the analysis of TTHMs, HAA5, chlorite, bromate and total organic carbon.

6. Effect on Small Public Water Systems

The Regulatory Flexibility Act (RFA), as amended by the Small Business

Regulatory Enforcement Fairness Act (SBREFA), requires federal agencies, in certain circumstances, to consider the economic effect of proposed regulations on small entities. The agency must assess the economic impact of a proposed rule on small entities if the proposal will have a significant economic impact on a substantial number of small entities. Under the RFA, 5 U.S.C. 601 *et seq.*, an agency must prepare an initial regulatory flexibility analysis (IRFA) describing the economic impact of a rule on small entities unless the agency certifies that the rule will not have a significant impact.

In the 1994 D/DBP and IESWTR proposals, EPA defined small entities as small PWSs—serving 10,000 or fewer persons—for purposes of its regulatory flexibility assessments under the RFA. EPA certified that the IESWTR will not have a significant impact on a substantial number of small entities, and prepared an IRFA for the DBP proposed rule. EPA did not, however, specifically solicit comment on that definition. EPA will use this same definition of small PWSs in preparing the final RFA for the Stage 1 DBP rule. Further, EPA plans to define small entities in the same way in all of its future drinking water rulemakings. The Agency solicited public comment on this definition in the proposed National Primary Drinking Water Regulations: Consumer Confidence Reports, 63 FR 7606, at 7620–21, February 13, 1998.

E. Formation of 1997 Federal Advisory Committee

In May 1996, the Agency initiated a series of public informational meetings to exchange information on issues related to microbial and D/DBP regulations. To help meet the deadlines for the IESWTR and Stage 1 D/DBP rule established by Congress in the 1996 SDWA Amendments and to maximize stakeholder participation, the Agency established the Microbial and Disinfectants/Disinfection Byproducts (M–DBP) Advisory Committee under the Federal Advisory Committee Act (FACA) on February 12, 1997, to collect, share, and analyze new information and data, as well as to build consensus on the regulatory implications of this new information. The Committee consists of 17 members representing USEPA, State and local public health and regulatory agencies, local elected officials, drinking water suppliers, chemical and equipment manufacturers, and public interest groups.

The Committee met five times, in March through July 1997, to discuss issues related to the IESWTR and Stage 1 D/DBP rule. Technical support for these discussions was provided by a Technical Work Group (TWG) established by the Committee at its first meeting in March 1997. The Committee's activities resulted in the collection, development, evaluation, and presentation of substantial new data and information related to key elements of both proposed rules. The Committee reached agreement on the following major issues that were discussed in the 1997 NODA (USEPA, 1997a): (1) Maintaining the proposed MCLs for TTHMs, HAA5 and bromate; (2) modifying the enhanced coagulation requirements as part of DBP control; (3) including a microbial bench marking/profiling to provide a methodology and process by which a PWS and the State, working together, assure that there will be no significant reduction in microbial protection as the result of modifying disinfection practices in order to meet MCLs for TTHM and HAA5; (4) credit for compliance with applicable disinfection requirements should continue to be allowed for disinfection applied at any point prior to the first customer, consistent with the existing Surface Water Treatment Rule; (5) modification of the turbidity performance requirements and requirements for individual filters; (6) issues related to the MCLG for *Cryptosporidium*; (7) requirements for removal of *Cryptosporidium*; and (8) provision for conducting sanitary surveys.

II. Significant New Epidemiology Information for the Stage 1 Disinfectant and Disinfection Byproducts Rule

The preamble to the 1994 proposed rule provided a summary of the health criteria documents for the following DBPs: Bromate; chloramines; haloacetic acids and chloral hydrate; chlorine; chlorine dioxide, chlorite, and chlorate; and trihalomethanes (USEPA, 1994a). The information presented in 1994 was used to establish MCLGs and MRDLGs. On November 3, 1997, the EPA published a Notice of Data Availability (NODA) summarizing new information that the Agency has obtained since the 1994 proposed rule (USEPA, 1997a). The following sections briefly discuss additional information received and analyzed since the November 1997 NODA. This new information concerns the following: (1) Recently published epidemiology studies examining the relationship between exposure to contaminants in chlorinated surface water and adverse health outcomes; (2) an assessment of the Morris et. al. (1992) meta-analysis of the epidemiology studies published prior to 1996; (3) recommendations made by an International Life Science Institute (ILSI) expert panel on the application of the USEPA Proposed Guidelines for Carcinogen Assessment (USEPA, 1996b) to data sets for chloroform and dichloroacetic acid; and (4) new laboratory animal studies on bromate and chlorite (also applicable to chlorine dioxide risk). This Notice presents the conclusions of these supplemental analyses as well as their implications for MCLGs, MCLs, MRDLGs, and MRDLs. The new documents are included in the Docket for this action.

As a result of this new information, the EPA requests comment on the following: (1) Revisions to estimates of potential cancer cases that can be attributed to exposure from DBPs in chlorinated surface water (USEPA, 1998a); (2) revisions to the noncancer assessment for chlorite and chlorine dioxide (USEPA, 1998b); (3) revisions to the cancer quantitative risks for chloroform (USEPA, 1998c); (4) updates on the cancer assessment for bromate (USEPA, 1998d); and (5) updates on the hazard characterization for dichloroacetic acid (USEPA, 1998e).

As in 1994, the assessment of public health risks from chlorination of drinking water currently relies on inherently difficult and incomplete empirical analysis. On one hand, epidemiologic studies of the general population are hampered by difficulties of design, scope, and sensitivity. On the other hand, uncertainty is involved in using the results of high dose animal toxicological studies of a few of the numerous byproducts that occur in disinfected drinking water to estimate the risk to humans from chronic exposure to low doses of these and other byproducts. In addition, such studies of individual byproducts cannot characterize the entire mixture of disinfection byproducts in drinking water. Nevertheless, while recognizing the uncertainties of basing quantitative risk estimates on less than comprehensive information regarding overall hazard, EPA believes that the weight-of-evidence represented by the available epidemiological and toxicological studies on DBPs and chlorinated surface water continues to support a hazard concern and a protective public health approach to regulation.

A. Epidemiologic Associations Between Exposure to DBPs in Chlorinated Water and Cancer

The preamble to the 1994 proposed rule discussed several cancer epidemiology studies that had been conducted over the past 20 years to

examine the association between exposure to chlorinated water and cancer (USEPA, 1994a). At the time of the 1994 proposed rule, there was disagreement among the members of the Negotiating Committee on the conclusions that could be drawn from these studies. Some members of the Committee felt that the cancer epidemiology data, taken in conjunction with the results from toxicological studies, provided ample and sufficient weight of evidence to conclude that exposure to DBPs in drinking water could result in increased cancer risk at levels encountered in some public water supplies. Other members of the Committee concluded that the cancer epidemiology studies on the consumption of chlorinated drinking water to date were insufficient to provide definitive information for the regulation. As a response, EPA agreed to pursue additional research to reduce the uncertainties associated with these data and to better characterize and project the potential human cancer risks associated with the exposure to chlorinated water. To implement this commitment, EPA sponsored an expert panel to review the state of cancer epidemiology research (USEPA, 1994b). As discussed in the 1997 NODA, EPA has implemented several of the panel's recommendations for short-and long-term research to improve the assessment of risks, using the results from cancer epidemiology studies.

The 1994 proposed rule also presented the results of a meta-analysis that pooled the relative risks from ten cancer epidemiology studies in which there was a presumed exposure to chlorinated water and its byproducts (Morris *et al.*, 1992). A conclusion of this meta-analysis was a calculated upper bound estimate of approximately 10,000 cases of rectal and bladder cancer cases per year that could be associated with exposure to chlorinated water and its byproducts in the United States. The ten studies included in the meta-analysis had methodological issues and significant design differences. There was considerable debate among the members of the Negotiating Committee on the extent to which the results of this meta-analysis should be considered in developing benefit estimates associated with the proposed rule. Negotiators agreed that the range of possible risks attributed to chlorinated water should consider both toxicological data and epidemiological data, including the Morris *et al.* (1992) estimates. No consensus, however, could be reached on a single likely risk estimate.

For purposes of estimating the potential benefits from the proposed rule, EPA used a range of estimated cancer cases that could be attributed to exposure to chlorinated waters of less than 1 cancer case per year up to 10,000 cases per year. The less than 1 cancer case per year was based on toxicology (the maximum likelihood cancer risk estimate calculated from animal assay data for THMs). The 10,000 cases per year was based on epidemiology (estimates from the Morris *et al.* (1992) meta-analysis).

1. Assessment of the Morris et al. (1992) Meta-Analysis

Based on the recommendations from the 1994 expert panel on cancer epidemiology, EPA completed an assessment of the Morris *et al.* (1992) meta-analysis which comprises three reports: (1) A Report completed for EPA which evaluated the Morris *et al.* (1992) meta-analysis (Poole, 1997); (2) EPA's assessment of the Poole report (USEPA, 1998f); and (3) a peer review of the Poole report and EPA's assessment of the Poole report (USEPA, 1998g). Each of these documents is briefly discussed below. The full reports together with Dr. Morris's comments on the Poole Review (Morris, 1997) can be found in the docket for this Notice.

a. Poole Report. A report was prepared for EPA which made recommendations regarding whether the data used by Morris *et al.* (1992) should be aggregated into a single summary estimate of risk. The report also commented on the utility of the aggregated estimates for risk assessment purposes (Poole, 1997). This report was limited to the studies available to Morris *et al.* (1992) plus four additional studies that EPA requested to be included (Ijsselmuiden *et al.*, 1992; McGeehin *et al.*, 1993; Vena *et al.*, 1993; and King and Marrett, 1996). Poole observed that there was considerable heterogeneity among the data and that there was evidence of publication bias within the body of literature. When there is significant heterogeneity among studies, aggregation of the results into a single summary estimate may not be appropriate. Publication bias refers to the situation where the literature search and inclusion criteria for studies used for the meta-analysis indicate that the sample of studies used is not representative of all the research (published and unpublished) that has been done on a topic. In addition, Poole found that the aggregate estimates reported by Morris *et al.* (1992) were sensitive to small changes in the analysis (e.g., addition or deletion of a single study). Based on these observations, Poole recommended that the cancer epidemiology data considered in his evaluation should not be combined into a single summary estimate and that the data had limited utility for risk assessment purposes. Many of the reasons cited by Poole for why it was not appropriate to combine the studies into a single point estimate of risk were noted in the 1994 proposal (Farland and Gibb, 1993; Murphy, 1993; and Craun, 1993).

b. EPA's Evaluation of Poole Report. EPA reviewed the conclusions from the Poole report and generally concurred with Poole's recommendations (USEPA, 1998f). EPA concluded that Poole presented reasonable and supportable evidence to suggest that the work of Morris *et al.* (1992) should not be used for risk assessment purposes without further study and review because of the sensitivity of the results to analytical choices and to the addition or deletion of a single study. EPA agreed that the studies were highly heterogeneous, thus undermining the ability to combine the data into a single summary estimate of risk.

c. Peer Review of Poole Report and EPA's Evaluation. The Poole report and EPA's evaluation were reviewed by five epidemiologic experts from academia, government, and industry (EPA, 1998g). Overall, these reviewers agreed that the Poole report was of high quality and that he had used defensible assumptions and techniques during his analysis. Most of the reviewers concluded that the report was correct in its assessment that these data should not be combined into a single summary estimate of risk.

2. New Cancer Epidemiology Studies

Several cancer epidemiological studies examining the association between exposure to chlorinated surface water and cancer have been published subsequent to the 1994 proposed rule and the Morris *et al.* (1992) meta-analysis (McGeehin *et al.*, 1993; Vena *et al.* 1993; King and Marrett, 1996; Doyle *et al.*, 1997; Freedman *et al.*, 1997; Cantor *et al*, 1998; and Hildesheim *et al.*, 1998). These studies, with the exception of Freedman *et al.* (1997), were described in the "Summaries of New Health Effects Data" (USEPA, 1997b) that was included in the docket for the 1997 NODA.

In general, the new studies cited above are better designed than the studies published prior to the 1994 proposal. The newer studies generally include incidence cases of disease, interviews with the study subjects and better exposure assessments. Based on the entire cancer epidemiology database, bladder cancer studies provide

better evidence than other types of cancer for an association between exposure to chlorinated surface water and cancer. EPA believes the association between exposure to chlorinated surface water and colon and rectal cancer cannot be determined at this time because of the limited data available for these cancer sites (USEPA, 1998a).

3. Quantitative Risk Estimation for Cancers From Exposure to Chlorinated Water

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must conduct a regulatory impact analysis (RIA). In the 1994 proposal, EPA used the Morris *et al.* (1992) meta-analysis in the RIA to provide an upper-bound estimate of 10,000 possible cancer cases per year that could be attributed to exposure to chlorinated water and its associated byproducts. EPA also estimated that an upper bound of 1200–3300 of these cancer cases per year could be avoided if the requirements for the Stage 1 DBP rule were implemented (USEPA, 1994a). EPA acknowledged the uncertainty in these estimates, but believed they were the best that could be developed at the time.

Based on the evaluations cited above, EPA does not believe it is appropriate to use the Morris *et al.* (1992) study as the basis for estimating the potential cancer cases that could be attributed to exposure to DBPs in chlorinated surface water. Instead, EPA is providing for comment an analysis based on a more traditional approach for estimating the potential cancer risks from exposure to DBPs in chlorinated surface water that does not rely on pooling or aggregating the epidemiologic data into a single summary estimate. Based on a narrower set of improved studies, this approach utilizes the population attributable risk (PAR) concept and presents a range of potential risks and not a single point estimate. As discussed below, there are a number of uncertainties associated with the use of this approach for estimating potential risks. Therefore, EPA requests comments on both the PAR methodology as well as on the assumptions upon which it is based.

Epidemiologists use PAR to quantify the fraction of the disease burden in a population (e.g., cancer) that could be eliminated if the exposure was absent (e.g., DBPs in chlorinated water) (Rockhill, *et al.*, 1998). PARs provide a perspective on the potential magnitude of risk associated with various exposures. The concept of PAR is known by many names (e.g, attributable fraction, attributable proportion, etiologic fraction). For this Notice, the term PAR will be used to avoid confusion. A range of PARs better captures the heterogeneity of the risk estimates than a single point estimate.

In the PAR analysis of the cancer epidemiology data and the development of the range of potential cancer cases attributable to exposure to DBPs in chlorinated surface water, EPA recognizes that a causal relationship between chlorinated surface water and bladder cancer has not yet been demonstrated by epidemiology studies. However, several studies have suggested a weak association in various subgroups. EPA presents potential cancer case estimates as upper bounds of suggested risk as part of the Agency's analysis of potential costs and benefits associated with this rule. EPA focused its current evaluation on bladder cancer because the number of quality studies that are available for other cancer sites such as colon and rectal cancers are very limited.

EPA estimated PARs for the best bladder cancer studies that provided enough information to calculate a PAR (USEPA, 1998a). In addition, EPA selected studies for inclusion in the quantitative analysis if they met all three of the following criteria: (1) The study was a population based case-control or cohort study conducted to evaluate the relationship between exposure to chlorinated drinking water and incidence cancer cases, based on personal interviews (no cohort studies were found that met all 3 criteria); (2) the study was of high quality and well designed (e.g., good sample size, high response rate, and adjusted for confounding factors); and (3) the study had adequate exposure assessments (e.g., residential histories, actual THM data). Based on the above selection criteria, five bladder cancer studies were selected for estimating PARs: Cantor *et al.*, 1985; McGeehin *et al.* 1993; King and Marrett, 1996; Freedman *et al.*, 1997; and Cantor *et al.*, 1998. PARs were derived for two exposure categories: years of exposure to chlorinated surface water; and THM levels and years of chlorinated surface water exposure.

The PARs from the five bladder cancer studies for the two exposure categories ranged from 2–17%. The uncertainties associated with these PAR estimates are large as expected, due to the common prevalence of both the disease (bladder cancer) and exposure (chlorinated drinking water). Based on 54,500 expected new bladder cancer cases in the U.S., as projected by NCI (1998) for 1997, the upper bound estimate of the number of potential bladder cancer cases per year potentially associated with exposure to DBPs in chlorinated surface water was estimated to be 1100–9300.

EPA made several important assumptions when evaluating the application of the PAR range of estimated bladder cancer cases from these studies to the U.S. population. They include the following: (i) The study population selected for each of the cancer epidemiology studies are reflective of the entire U.S. population that develops bladder cancer; (ii) the percentage of bladder cancer cases exposed to DBPs in the reported studies are reflective of the bladder cancer cases exposed to DBPs in the U.S. population; (iii) the levels of DBP exposure in the bladder studies are reflective of the DBP exposure in the U.S. population; and (iv) the possible relationship between exposure to DBPs in chlorinated surface water and bladder cancer is causal.

EPA believes that these assumptions would not be appropriate for estimating the potential upper bound cancer risk for the U.S. population based on a single study. However, the Agency believes that these assumptions are appropriate given the number of studies used in the PAR analysis and for gaining a perspective on the range of possible upper bound risks that can be used in establishing a framework for further cost-benefit analysis. In addition, EPA believes these assumptions are appropriate given the SDWA mandate that "drinking water regulations be established if the contaminant may have an adverse effect on the health of persons" (SDWA—Section 1412(b)(1)A). Because of this mandate, EPA believes that when the scientific data indicates there may be causality, such an analytical approach is appropriate. EPA believes the assumption of a potential causal relationship is supported by the weight-of-evidence from toxicology and epidemiology. Toxicology studies have shown several individual DBPs to be carcinogenic and mutagenic, while the epidemiology data have shown weak associations between several cancer sites and exposure to chlorinated surface water.

EPA notes and requests comment on the following additional issues associated with basing an estimate of the potential bladder cancer cases that can be attributed to DBPs in chlorinated surface water from the five studies selected for this analysis. The results generally showed weak statistical significance and were not always consistent among the studies. For example, some reviewers believe that two studies showed statistically significant effects only for male smokers, while two other studies showed higher effects for non-smokers.

One study showed a significant association with exposure to chlorinated surface water but not chlorinated ground water, while another showed the opposite result. Furthermore, two studies which examined the effects of exposure to higher levels of THMs failed to find a significant association between level of THMs and cancer. The Agency notes that it is not necessary that statistical significance be shown in order to conduct a PAR analysis as was stated by peer-reviewers of this analysis.

4. Peer-Review of Quantitative Risk Estimates

The quantitative cancer risks estimated from the five epidemiology studies derived through the calculation of individual PARs has undergone external peer review by three expert epidemiologists (USEPA, 1998a). Two peer reviewers concurred with the decision to derive a PAR range. This approach was deemed more appropriate than the selection of a single study or aggregation of study results. One reviewer indicated significant reservations with this approach based not on the method, but the inconclusivity of the epidemiology database and stated that it was premature to perform a PAR analysis because it would suggest that the epidemiological information is more consistent and complete than it actually is. To better present the degree of variability, this reviewer suggested an alternative approach that involves a graphical presentation of the individual odds ratios and their corresponding confidence intervals. Two reviewers agreed that there is not enough information to present an estimate of the PAR for colon and rectal cancer.

EPA understands the issues raised regarding the use of PARs and recognizes there may be controversy on using this approach with the available epidemiology data. However, as stated above, EPA believes the PAR approach is a useful tool for estimating the potential upper bound risk for use in developing the regulatory impact analysis. EPA agrees with two of the reviewers that there is not enough information to present an estimate of colon and rectal risk at this time using a PAR approach.

5. Summary of Key Observations

The 1994 proposal included a meta-analysis of 10 cancer epidemiology studies that provided an estimate of the number of bladder and rectal cancer cases per year that could be attributed to consumption of chlorinated water and its associated byproducts (Morris *et al.*, 1992). Based on the evaluations previously described, EPA does not believe it is appropriate to use the Morris *et al.* (1992) study as the basis for estimating the potential cancer cases that could be attributed to exposure to DBPs in chlorinated surface water. Instead, EPA has focused on a smaller set of higher quality studies and performed a PAR analysis to estimate the potential cancer risks from exposure to DBPs in chlorinated surface water that does not rely on pooling or aggregating the data into a single summary estimate, as was done by Morris *et al.* (1992). EPA focused the current evaluation on bladder cancer because there are more appropriate studies of higher quality available upon which to base this assessment than for other cancer sites. It was decided to present the potential number of cancer cases as a range instead of a single point estimate because this would better represent the uncertainties in the risk estimates. The number of potential bladder cancer cases per year that could be associated with exposure to DBPs in chlorinated surface water is estimated to be an upper bound range of 1100–9300 per year.

In the PAR analysis of the cancer epidemiology data and the development of the range of potential cancer cases attributable to exposure to DBPs in chlorinated surface water, EPA presents the estimates as upper bounds of any suggested risk. As was debated during the 1992–1993 M/DBP Regulatory Negotiation process, EPA believes that there are insufficient data to conclusively demonstrate a causal association between exposure to DBPs in chlorinated surface water and cancer. EPA recognizes the uncertainties of basing quantitative estimates using the current health database on chlorinated surface waters and has identified a number of issues that must be considered in interpreting the results of this analysis. Nonetheless, the Agency believes that the overall weight-of-evidence from available epidemiologic and toxicologic studies on DBPs and chlorinated surface water continues to support a hazard concern and thus, a prudent public health protective approach for regulation.

6. Requests for Comments

EPA is not considering any changes to the recommended regulatory approach contained in the 1994 proposal, and discussed further in the 1997 NODA, based on the upper bound risk analysis issues discussed above. Nonetheless, EPA requests comments on the conclusions from the Poole report (Poole, 1997), EPA's assessment of the Poole report (EPA, 1998f), the peer-review of the Poole report and EPA's assessment of the Poole report (EPA, 1998g); and Dr. Morris comments on the Poole review (Morris, 1997). EPA also requests comments on its quantitative analysis (PAR approach) to estimate the upper bound risks from exposure to DBPs in chlorinated surface water, the methodology for estimating the number of cancer cases per year that could be attributed to exposure to DBPs in chlorinated surface water, and any alternative approaches for estimating the upper bound estimates of risk. In particular, EPA requests comment on the extent to which the approach used in the PAR analysis addresses the concerns identified by Poole and others regarding the earlier Morris meta-analysis. EPA also requests comments on the peer review of the PAR analysis.

B. Epidemiologic Associations Between Exposure to DBPs in Chlorinated Water and Adverse Reproductive and Developmental Effects

The 1994 proposed rule discussed several reproductive epidemiology studies. At the time of the proposal, it was concluded that there was no compelling evidence to indicate a reproductive and developmental hazard due to exposure to chlorinated water because the epidemiologic evidence was inadequate and the toxicological data were limited. In 1993, an expert panel of scientists was convened by the International Life Sciences Institute to review the available human studies for developmental and reproductive outcomes and to provide research recommendations (USEPA/ILSI, 1993). The expert panel concluded that the epidemiologic results should be considered preliminary given that the research was at a very early stage (USEPA/ILSI, 1993; Reif *et al.*, 1996). The 1997 NODA and the "Summaries of New Health Effects Data" (USEPA, 1997b) presented several new studies (Savitz *et al.*, 1995; Kanitz *et al.* 1996; and Bove *et al.*, 1996) that had been published since the 1994 proposed rule and the 1993 ILSI panel review. Based on the new studies presented in the 1997 NODA, EPA stated that the results were inconclusive with regard to the association between exposure to chlorinated waters and adverse reproductive and developmental effects (62 FR 59395)

1. EPA Panel Report and Recommendations for Conducting Epidemiological Research on Possible Reproductive and Developmental Effects of Exposure to Disinfected Drinking Water

EPA convened an expert panel in July 1997 to evaluate epidemiologic studies of adverse reproductive or developmental outcomes that may be associated with the consumption of disinfected drinking water published since the 1993 ILSI panel review. A report was prepared entitled "EPA Panel Report and Recommendations for Conducting Epidemiological Research on Possible Reproductive and Developmental Effects of Exposure to Disinfected Drinking Water" (USEPA, 1998h). The 1997 expert panel was also charged to develop an agenda for further epidemiological research. The 1997 panel concluded that the results of several studies suggest that an increased relative risk of certain adverse outcomes may be associated with the type of water source, disinfection practice, or THM levels. The panel emphasized, however, that most relative risks are moderate or small and were found in studies with limitations of their design or conduct. The small magnitude of the relative risk found may be due to one or more sources of bias, as well as to residual confounding (factors not identified and controlled). Additional research is needed to assess whether the observed associations can be confirmed. The panel considers a recent study by Waller *et al.* (1998), discussed below, to provide a strong basis for further research. This study was funded in part by EPA as an element of the research program agreed to as part of the 1992/1993 negotiated M/DBP rulemaking.

2. New Reproductive Epidemiology Studies

Three new reproductive epidemiology studies have been published since the 1997 NODA. The first study (Klotz and Pyrch, 1998) examined the potential association between neural tube defects and certain drinking water contaminants, including some DBPs. In this case-control study, births with neural tube defects reported to New Jersey's Birth Defects Registry in 1993 and 1994 were matched against control births chosen randomly from across the State. Birth certificates were examined for all subjects, as was drinking water data corresponding to the mother's residence in early pregnancy. The authors reported elevated odds ratios (ORs), generally between 1.5 and 2.1, for the association of neural tube defects with TTHMs. However, the only statistically significant results were seen when the analysis was isolated to those subjects with the highest THM exposures (greater than 40 ppb) and limited to those subjects with neural tube defects in which there were no other malformations (odds ratio 2.1; 95% confidence interval 1.1–4.0). Neither HAAs or haloacetonitriles (HANs) showed a clear relationship to neural tube defects but monitoring data on these DBPs were more limited than for THMs. Nitrates were not observed to be associated with neural tube defects. Certain chlorinated solvent contaminants were also studied but occurrence levels were too low to assess any relationship to neural tube defects. This study is available in the docket for this NODA. Although EPA has not completed its review of the study, the Agency is proceeding on the premise that this study will add to the weight-of-evidence concerning the potential adverse reproductive health effects from DBPs, but will not by itself provide sufficient evidence for further regulatory actions.

Two studies looked at early term miscarriage risk factors. The first of these studies (Waller *et al.*, 1998) examined the potential association between early term miscarriage and exposure to THMs. The second study (Swan *et al.*, 1998) examined the potential association between early term miscarriage and tap water consumption. Both studies used the same group of pregnant women (5,144) living in three areas of California. They were recruited from the Santa Clara area, the Fontana area in southern California, or the Walnut Creek area. The women were all members of the Kaiser Permanente Medical Care Program and were offered a chance to participate in the study when they called to arrange their first prenatal visit. In the Waller *et al.* (1998) study, additional water quality information from the women's drinking water utilities were obtained so that THM levels could be determine. The Swan *et al.* (1998) study provided no quantitative measurements of THMs (or DBPs), and thus, provided no additional information on the risk from chlorination byproducts. Because of this, only the Waller *et al.* (1998) study is summarized below.

In the Waller *et al.* (1998) study, utilities that served the women in this study were identified. Utilities' provided THM measurements taken during the time period participants were pregnant. The TTHM level in a participant's home tap water was estimated by averaging water distribution system TTHM measurements taken during a participants first three months of pregnancy. This "first trimester TTHM level" was combined with self reported tap water consumption to create a TTHM exposure level. Exposure levels of the individual THMs (e.g., chloroform, bromoform, etc.) were estimated in the same manner. Actual THM levels in the home tap water were not measured.

Women with high TTHM exposure in home tap water (drinking five or more glasses per day of cold home tap water containing at least 75 ug per liter of TTHM) had an early term miscarriage rate of 15.7%, compared with a rate of 9.5% among women with low TTHM exposure (drinking less than 5 glasses per day of cold home tap water or drinking any amount of tap water containing less than 75 ug per liter of TTHM). An adjusted odds ratio for early term miscarriage of 1.8 (95% confidence interval 1.1–3.0) was determined.

When the four individual trihalomethanes were studied, only high bromodichloromethane (BDCM) exposure, defined as drinking five or more glasses per day of cold home tap water containing ≥18 ug/L bromodichloromethane, was associated with early term miscarriage. An adjusted odds ratio for early term miscarriage of 3.0 (95% confidence interval 1.4–6.6) was determined.

3. Summary of Key Observations

The Waller *et al.* (1998) study reports that consumption of tapwater containing high concentrations of THMs, particularly BDCM, is associated with an increased risk of early term miscarriage. EPA believes that while this study does not prove that exposure to THMs causes early term miscarriages, it does provide important new information that needs to be pursued and that the study adds to the weight-of-evidence which suggests that exposure to DBPs may have an adverse effect on humans.

EPA has an epidemiology and toxicology research program that is examining the relationship between DBPs and adverse reproductive and developmental effects. In addition to conducting scientifically appropriate follow-up studies to see if the observed association in the Waller *et al.* (1998) study can be replicated elsewhere, EPA will be working with the California Department of Health Services to improve estimates of exposure to DBPs in the existing study population. A more complete DBP exposure data base is being developed by asking water utilities in the study area to provide additional information, including levels of other types of DBPs (e.g., haloacetic

acids). These efforts will help further assess the significance of the Waller *et al.* (1998) study, associated concerns, and how further follow-up work can best be implemented. EPA will collaborate with the Centers for Disease Control and Prevention (CDC) in a series of studies to evaluate if there is an association between exposure to DBPs in drinking water and birth defects. The Agency is also involved in a collaborative testing program with the National Toxicology Program (NTP) under which several individual DBPs have been selected for reproductive and developmental screening tests. Finally, EPA is conducting several toxicology studies on DBPs other endpoints of concern including examining the potential effects of BDCM on male reproductive endpoints. This information will be used in developing the Stage 2 DBP rule. In the meantime, the Agency plans to proceed with the 1994 D/DBP proposal for tightening the control for DBPs.

4. Requests for Comments

EPA is not considering any changes to the recommended regulatory approach contained in the 1994 proposal, and discussed further in the 1997 NODA, based on the new reproductive epidemiology studies discussed above. Nonetheless, EPA requests comments on the findings from the Klotz, *et al.* (1998) and Waller *et al.* (1998) study and EPA's conclusions regarding the studies.

III. Significant New Toxicological Information for the Stage 1 Disinfectants and Disinfection Byproducts

The 1997 NODA reviewed new toxicological information that became available for several of the DBPs after the 1994 proposal (USEPA, 1997a and b). In that Notice, it was pointed out that several forthcoming reports were not available in time for consideration during the 1997 FACA process. Reports now available include a two-generation reproductive rat study of sodium chlorite sponsored by the Chemical Manufacturer Association (CMA, 1996); an EPA two-year cancer rodent study of bromate (DeAngelo *et al.*, 1998); and the *International Life Sciences Institute* (ILSI) expert panel report of chloroform and dichloroacetic acid (ILSI, 1997). These reports are discussed below, as well as EPA's analyses and conclusions based on this new information.

A. Chlorite and Chlorine Dioxide

The 1994 proposal included an MCLG of 0.08 mg/L and an MCL of 1.0 mg/L for chlorite. The proposed MCLG was based on an RfD of 3 mg/kg/d estimated from a lowest-observed-adverse-effect-level (LOAEL) for neurodevelopmental effects identified in a rat study by Mobley *et al.* (1990). This determination was based on a weight of evidence evaluation of all the available data at that time (USEPA, 1994a). An uncertainty factor of 1000 was used to account for inter- and intra-species differences in response to toxicity (a factor of 100) and a factor of 10 for use of a LOAEL. The EPA proposed rule also included an MRDLG of 0.3 mg/L and an MRDL of 0.8 mg/L for chlorine dioxide. The proposed MRDLG was based on a RfD of 3 mg/kg/d estimated from a no-observed-adverse-effect-level (NOAEL) for developmental neurotoxicity identified from a rat study (Orme *et al.*, 1985; see USEPA, 1994a). This determination was based on a weight of evidence evaluation of all the available data at that time (USEPA, 1994a). An uncertainty factor of 300 was applied that was composed of a factor of 100 to account for inter- and intra-species differences in response to toxicity and a factor of 3 for lack of a two-generation reproductive study necessary to evaluate potential toxicity associated with lifetime exposure. To fill this important data gap, the Chemical Manufacturers Associations (CMA) agreed to conduct a two-generation reproductive study in rats. Sodium chlorite was used as the test compound. It should be noted that data on chlorite are relevant to assessing the risks of chlorine dioxide because chlorine dioxide rapidly disassociates to chlorite (and chloride) (USEPA, 1998b). Therefore, the new CMA two-generation reproductive chlorite study will be considered in assessing the risks for both chlorite and chlorine dioxide.

Since the 1994 proposal, CMA has completed the two-generation reproductive rat study (CMA, 1996). EPA has reviewed the CMA study and has completed an external peer review of the study (EPA, 1997c). In addition, EPA has reassessed the noncancer health risk for chlorite and chlorine dioxide considering the new CMA study (USEPA, 1998b). This reassessment has been peer reviewed (USEPA, 1998b). Based on this reassessment, EPA is considering changing the proposed MCLG for chlorite from 0.08 mg/L to 0.8 mg/L based on the NOAEL identified from the new CMA study. Since data on chlorite are considered relevant to chlorine dioxide risks and the two generation reproduction data gap has been filled, EPA is also considering changing the proposed MRDLG for chlorine dioxide from 0.3 mg/L to 0.8 mg/L. The basis for these changes are discussed below.

1. 1997 CMA Two-Generation Reproduction Rat Study

The CMA two-generation reproductive rat study was designed to evaluate the effects of chlorite (sodium salt) on reproduction and pre- and post-natal development when administered orally via drinking water for two successive generations (CMA, 1996). Developmental neurotoxicity, hematological, and clinical effects were also evaluated in this study.

Sodium chlorite was administered at 0, 35, 70, and 300 ppm in drinking water to male and female Sprague Dawley rats (F_0 generation) for ten weeks prior to mating. Dosing continued during the mating period, pregnancy and lactation. Reproduction, fertility, clinical signs, and histopathology were evaluated in F_0 and F_1 (offspring from the first generation of mating) males and females. F_1 and F_2 (offspring from the second generation of mating) pups were evaluated for growth and development, clinical signs, and histopathology. In addition, F_1 animals from each dose group were assessed for neurotoxicity (e.g., neurohistopathology, motor activity, learning ability and memory retention, functional observations, auditory startle response). Limited neurotoxicological evaluations were conducted on F_2 pups.

The CMA report concluded that there were no treatment related effects at any dose level for systemic, reproductive/developmental, and developmental neurological end points. The report indicates that there were small statistically significant decreases in the maximum response to auditory startle response in the F_1 animals at the mid and high dose (70 and 300 ppm); this neurological effect was not considered to be toxicologically significant. A reduction in pup weight and decreased body weight gain through lactation in the F_1 and F_2 animals and a decrease in body weight gain in the F_2 males at 300 ppm were noted. Decreases in liver weight in F_0 and F_1 animals, as well as reductions in red blood cell indices in F_1 animals at 300 ppm and 70 ppm were noted. Minor hematological effects were found in F_1 females at 35 ppm. CMA concluded that the effects noted above were not clinically or toxicologically significant. A NOAEL of 300 ppm was identified in the CMA report for reproductive toxicity and for developmental neurotoxic effects, and a NOAEL of 70 ppm for hematological effects. EPA disagrees with the CMA conclusions regarding the NOAEL of 300 ppm for the reproductive and

developmental neurological effects for this study as discussed below.

2. External Peer Review of the CMA Study

EPA has evaluated the CMA 2-generation reproductive study and concluded that the study design was consistent with EPA testing guidelines (USEPA, 1992). Additionally, an expert peer review of the CMA study was conducted and indicated that the study design and analyses were adequate (USEPA, 1997c). Although the study design was considered adequate and consistent with EPA guidelines, the peer review pointed out some limitations in the study (USEPA, 1997c). For example, developmental neurotoxicity evaluations were conducted after exposure ended at weaning. This is consistent with EPA testing guidelines and should potentially detect effects on the developing central nervous system. Nevertheless, the opportunity to detect neurological effects due to continuous or lifetime exposure may be reduced. The peer review generally questioned the CMA conclusions regarding the NOAELs for this study and indicated that the NOAEL should be lower than 300 ppm. The majority of peer reviews recommended that the NOAEL for reproductive/developmental toxicity be reduced to 70 ppm given the treatment related effects found at 300 ppm, and that the NOAEL for neurotoxicity be reduced to 35 ppm based on significant changes in the maximum responses in startle amplitude and absolute brain weight at 70 and 300 ppm. The reviewers indicated that a NOAEL was not observed for hematological effects and noted that the CMA conclusion for selecting the 70 ppm NOAEL for the hematology variables needs to be explained further.

3. MCLG for Chlorite: EPA's Reassessment of the Noncancer Risk

EPA has determined that the NOAEL for chlorite should be 35 ppm (3 mg/kg/d chlorite ion, rounded) based on a weight of evidence approach. The data considered to support this NOAEL are summarized in USEPA (1998b) and included the CMA study as well as previous reports on developmental neurotoxicity (USEPA, 1998b). The NOAEL of 35 ppm (3 mg/kg/d chlorite ion) is based on the following effects observed in the CMA study at 70 and 300 ppm chlorite: Decreases in absolute brain and liver weight, and lowered auditory startle amplitude. Decreases in pup weight were found at the 300 ppm and thus a NOAEL of 70 ppm for reproductive effects is considered appropriate (USEPA, 1998b). Although 70 ppm appears to be the NOAEL for hemolytic effects, the NOAEL and LOAEL are difficult to discern for this endpoint given that minor changes were reported at 70 and 35 ppm. EPA considers the basis of the NOAELs to be consistent with EPA risk assessment guidelines (USEPA, 1991, 1998i, 1996a). Furthermore, a NOAEL of 35 ppm is supported by effects (particularly neurodevelopmental effects) found in previously conducted studies of chlorite and chlorine dioxide (USEPA, 1998b).

An RfD of 0.03 mg/kg/d is estimated using a NOAEL of 3 mg/kg/d and an uncertainty factor of 100 to account for inter- and intra-species differences. The revised MCLG for chlorite is calculated to be 0.8 mg/L by assuming an adult tap water consumption of 2 L per day for a 70 kg adult and using a relative source contribution of 80% (because most exposure to chlorite is likely to come from drinking water):

$$\text{MCLG for chlorite} = \frac{0.03\ \text{mg/kg/d} \times 70\ \text{kg} \times 0.8}{2\text{L/day}} = 0.84\ \text{mg/L}$$

MCLG for chlorite = 0.8 mg/L (Rounded)

Therefore, EPA is considering an increase in the proposed MCLG for chlorite from 0.08 mg/L to 0.8 mg/L. A more detailed discussion of this assessment is included in the docket for this Notice (USEPA, 1998b).

4. MRDLG for Chlorine Dioxide: EPA's Reassessment of the Noncancer Risk

EPA believes that data on chlorite are relevant to assessing the risk of chlorine dioxide because chlorine dioxide rapidly disassociates to chlorite (and chloride) (USEPA, 1998b). Therefore, the findings from the 1997 CMA two-generation reproductive study on sodium chlorite should be considered in a weight of evidence approach for establishing the MRDLG for chlorine dioxide. Based on all the available data, including the CMA study, a dose of 3 mg/kg/d remains as the NOAEL for chlorine dioxide (USEPA, 1998b). The MRDLG for chlorine dioxide is increased 3 fold from the 1994 proposal since the CMA 1997 study was a two-generation reproduction study. Using a NOAEL of 3 mg/kg/d and applying an uncertainty factor of 100 to account for inter- and intra-species differences in response to toxicity, the revised MRDLG for chlorine dioxide is calculated to be 0.8 mg/L. This MRDLG takes into account an adult tap water consumption of 2 L per day for a 70 kg adult and applies a relative source contribution of 80% (because most exposure to chlorine dioxide is likely to come from drinking water):

$$\text{MRDLG for Chlorine dioxide} = \frac{0.03\ \text{mg/kg/d} \times 70\ \text{kg} \times 0.8}{2\text{L/day}} = 0.84\ \text{mg/L}$$

MRDLG for Chlorine dioxide = 0.8 mg/L (Rounded)

EPA is considering revising the MRDLG for chlorine dioxide from 0.3 mg/L to 0.8 mg/L. A more detailed discussion of this assessment can be found in the docket for this Notice (USEPA, 1998b).

5. External Peer Review of EPA's Reassessment

Three external experts have reviewed the EPA reassessment for chlorite and chlorine dioxide (see USEPA, 1998b). Two of the three reviewers generally agreed with EPA conclusions regarding the identified NOAEL of 35 ppm for neurodevelopmental toxicity. The other reviewer indicated that the developmental neurological results from the CMA study were transient, too inconsistent, and equivocal to identify a NOAEL. EPA believes that although different responses were found for startle response (as indicated by measures of amplitude, latency, and habituation), this is not unexpected given that these measures examine different aspects of the nervous system, and thus can be differentially affected. Although no neuropathology was observed in the CMA study, neurofunctional (or neurochemical)

changes such as startle responses can indicate potential neurotoxicity without neuropathological effects. Furthermore, transient effects are considered an important indicator of neurotoxicity as indicated in EPA guidelines (USEPA, 1998i). EPA maintains that the NOAEL is 35 ppm (3 mg/kg/d) from the CMA chlorite study based on neurodevelopmental effects as well as changes in brain and liver weight. This conclusion is supported by previous studies on chlorite and chlorine dioxide (USEPA, 1998b). Other comments raised by the peer reviewers concerning improved clarity and completeness of the assessment were considered by EPA in revising the assessment document on chlorite and chlorine dioxide.

6. Summary of Key Observations

EPA continues to believe that chlorite and chlorine dioxide may have an adverse effect on the public health. EPA identified a NOAEL of 35 ppm for chlorite based on neurodevelopmental effects from the 1997 CMA two-generation reproductive study, which is supported by previous studies on chlorite and chlorine dioxide. In addition, EPA identified a NOAEL of 70 ppm for reproductive/developmental effects and hemolytic effects. EPA considers this study relevant to assessing the risk to chlorine dioxide. Based on the EPA reassessment, EPA is considering adjusting the MCLG for chlorite from 0.08 mg/L to 0.8 mg/L. Because data on chlorite are considered relevant to chlorine dioxide risks, EPA is considering adjusting the MRDLG for chlorine dioxide from 0.3 mg/L to 0.8 mg/L. The MRDL for chlorine dioxide would remain at 0.8 mg/L. The MCL for chlorite would remain at 1.0 mg/L because as noted in the 1994 proposal, 1.0 mg/L for chlorite is the lowest level achievable by typical systems using chlorine dioxide and taking into consideration the monitoring requirements to determine compliance. In addition, given the margin of safety that is factored into the estimation of the MCLG, EPA believes that 1.0 mg/L will be protective of public health. It should be noted that the MCLG and MRDLG presented for chlorite and chlorine dioxide are considered to be protective of susceptible groups, including children given that the RfD is based on a NOAEL derived from developmental testing, which includes a two-generation reproductive study. A two-generation reproductive study evaluates the effects of chemicals on the entire developmental and reproductive life of the organism. Additionally, current methods for developing RfDs are designed to be protective for sensitive populations. In the case of chlorite and chlorine dioxide a factor of 10 was used to account for variability between the average human response and the response of more sensitive individuals.

7. Requests for Comments

Based on the recent two-generation reproductive rat study for chlorite (CMA, 1996), EPA is considering revising the MCLG for chlorite from 0.08 mg/L to 0.8 mg/L and the MRDLG for chlorine dioxide from 0.3 mg/L to 0.8 mg/L. EPA requests comments on these possible changes in the MCLGs and on EPA's assessment of the CMA report.

B. Trihalomethanes

The 1994 proposed rule included an MCL for TTHM of 0.08 mg/L. MCLGs of zero for chloroform, BDCM and bromoform were based on sufficient evidence of carcinogenicity in animals. The MCLG of 0.06 mg/L for dibromochloromethane (DBCM) was based on observed liver toxicity from a subchronic study and limited animal evidence for carcinogenicity. As stated in the 1997 NODA, several new studies have been published on bromoform, BDCM, and chloroform since the 1994 proposal. The 1997 NODA concluded that the new studies on THMs contribute to the weight-of-evidence conclusions reached in the 1994 proposed rule, and that the new studies are not anticipated to change the proposed MCLGs for BDCM, DBCM, and bromoform. Since the 1997 NODA, the EPA has evaluated the significance of an ILSI panel report on the cancer risk assessment for chloroform. EPA has conducted a reassessment of chloroform (USEPA, 1998c), considering the ILSI report. The EPA reassessment of chloroform has been peer reviewed (USEPA, 1998c). Based on EPA's reassessment, the Agency is considering changing the proposed MCLG for chloroform from zero to 0.3 mg/L.

1. 1997 International Life Sciences Institute Expert Panel Conclusions for Chloroform

In 1996, EPA co-sponsored an ILSI project in which an expert panel was convened and charged with the following objectives: (i) Review the available database relevant to the carcinogenicity of chloroform and DCA, excluding exposure and epidemiology data; (ii) consider how end points related to the mode of carcinogenic action can be applied in the hazard and dose-response assessment; (iii) use guidance provided by the 1996 EPA Proposed Guidelines for Carcinogen Assessment to develop recommendations for appropriate approaches for risk assessment; and (iv) provide a critique of the risk assessment process and comment on issues encountered in applying the proposed EPA Guidelines (ILSI, 1997). The panel was made up of 10 expert scientists from academia, industry, government, and the private sector. It should be emphasized that the ILSI report does not represent a risk assessment, per se, for chloroform (or DCA) but, rather, provides recommendations on how to proceed with a risk assessment for these two chemicals.

To facilitate an understanding of the ILSI panel recommendations for the dose-response characterization of chloroform, the EPA 1996 Proposed Guidelines for Carcinogen Risk Assessment must be briefly described. For a more detail discussion of these guidelines, refer to USEPA (1996b).

The EPA 1996 Proposed Guidelines for Carcinogen Risk Assessment describes a two-step process to quantifying cancer risk (USEPA, 1996b). The first step involves modeling response data in the empirical range of observation to derive a point of departure. The second step is to extrapolate from this point of departure to lower levels that are within the range of human exposure. A standard point of departure was proposed as the lower 95% confidence limit on a dose associated with 10% extra risk (LED_{10}). Based on comments from the public and the EPA's Science Advisory Board, the central or maximum likelihood estimate (i.e., ED_{10}) is also being considered as a point of departure. Once the point of departure is identified, a straight-line extrapolation to the origin (i.e., zero dose, zero extra risk) is conducted as the linear default approach. The linear default approach would be considered for chemicals in which the mode of carcinogenic action understanding is consistent with low dose linearity or as a science policy choice for those chemicals for which the mode of action is not understood.

The EPA 1996 Proposed Guidelines for Carcinogen Risk Assessment are different from the 1986 guidelines approach that applied the linearized multi-stage model (LMS) to extrapolate low dose risk. The LMS approach under the 1986 guidelines was the only default for low dose extrapolation. Under the 1996 proposed guidelines both linear and nonlinear default approaches are available. The nonlinear approach applies a margin of exposure (MoE) analysis rather than estimating the probability of effects at low doses. In order to use the nonlinear default, the agent's mode of action in causing tumors must be reasonably understood.

The MoE analysis is used to compare the point of departure with the human exposure levels of interest (i.e., MoE = point of departure divided by the environmental exposure of interest). The key objective of the MoE analysis is to describe for the risk manager how rapidly responses may decline with dose. A shallow slope suggests less risk reduction at decreasing exposure than does a steep one. Information on factors such as the nature of response being used for the point of departure (i.e., tumor data or a more sensitive precursor response) and biopersistence of the agent are important considerations in the MoE analysis. A numerical default factor of no less than 10-fold each may be used to account for human variability and for interspecies differences in sensitivity when humans may be more sensitive than animals.

The ILSI expert panel considered a wide range of information on chloroform including rodent tumor data, metabolism/toxicokinetic information, cytotoxicity, genotoxicity, and cell proliferation data. Based on its analysis of the data, the panel concluded that the weight of evidence for the mode of action understanding indicated that chloroform was not acting through a direct DNA reactive mechanism. The evidence suggested, instead, that exposure to chloroform resulted in recurrent or sustained toxicity as a consequence of oxidative generation of highly tissue reactive and toxic metabolites (i.e., phosgene and hydrochloric acid (HCl)), which in turn would lead to regenerative cell proliferation. Oxidative metabolism was considered by the panel to be the predominant pathway of metabolism for chloroform. This mode of action was considered to be the key influence of chloroform on the carcinogenic process. The ILSI report noted that the weight-of-evidence for the mode of action was stronger for the mouse kidney and liver responses and more limited, but still supportive, for the rat kidney tumor responses.

The panel viewed chloroform as a likely carcinogen to humans above a certain dose range, but considered it unlikely to be carcinogenic below a certain dose range. The panel indicated that "This mechanism is expected to involve a dose-response relationship which is nonlinear and probably exhibits an exposure threshold." The panel, therefore, recommended the nonlinear default or margin of exposure approach as the appropriate one for quantifying the cancer risk associated with exposure to chloroform.

2. MCLG for Chloroform: EPA's Reassessment of the Cancer Risk

In the 1994 proposed rule, EPA classified chloroform under the 1986 EPA Guidelines for Carcinogen Risk Assessment as a Group B2, probable human carcinogen. This classification was based on sufficient evidence of carcinogenicity in animals. Kidney tumor data in male Osborne-Mendel rats reported by Jorgenson *et al.* (1985) was used to estimate the carcinogenic risk. An MCLG of zero was proposed. Because the mode of carcinogenic action was not understood at that time, EPA used the linearized multistage model and derived an upper bound carcinogenicity potency factor for chloroform of 6×10^{-3} mg/kg/d. The lifetime cancer risk levels of 10^{-6}, 10^{-5}, and 10^{-4} were determined to be associated with concentrations of chloroform in drinking water of 6, 60, and 600 µg/L.

Since the 1994 rule, several new studies have provided insight into the mode of carcinogenic action for chloroform. EPA has reassessed the cancer risk associated with chloroform exposure (USEPA, 1998c) by considering the new information, as well as the 1997 ILSI panel report. This reassessment used the principles of the 1996 EPA Proposed Guidelines for Carcinogen Risk Assessment (USEPA, 1996b), which are considered scientifically consistent with the Agency's 1986 guidelines (USEPA, 1986). Based on the current evidence for the mode of action by which chloroform may cause tumorgenesis, EPA has concluded that a nonlinear approach is more appropriate for extrapolating low dose cancer risk rather than the low dose linear approach used in the 1994 proposed rule. Because tissue toxicity is key to chloroform's mode of action, EPA has also considered noncancer toxicities in determining the basis for the MCLG. After evaluating both cancer risk and noncancer toxicities as the basis for the MCLG, EPA concluded that the RfD for hepatoxicity should be used. Hepatotoxicity, thus, serves as the basis for the MCLG given that this is the primary effect of chloroform and the more sensitive endpoint. Therefore, EPA is considering changing the proposed MCLG for chloroform from zero to 0.3 mg/L based on the RfD for hepatoxicity. The basis for these conclusions are discussed below.

a. Weight of the Evidence and Understanding of Mode of Carcinogenic Action. EPA has fully considered the 1997 ILSI report and the new science that has emerged on chloroform since the 1994 proposed rule. Based on this new information, EPA considers chloroform to be a likely human carcinogen by all routes of exposure (USEPA, 1998c). Chloroform's carcinogenic potential is indicated by animal tumor evidence (liver tumors in mice and renal tumors in both mice and rats) from inhalation and oral exposures, as well as metabolism, toxicity, mutagenicity and cellular proliferation data that contribute to an understanding of mode of carcinogenic action. Although the precise mechanism of chloroform carcinogenicity is not established, EPA agrees with the ILSI panel that a DNA reactive mutagenic mechanism is not likely to be the predominant influence of chloroform on the carcinogenic process. EPA believes that there is a reasonable scientific basis to support a mode of carcinogenic action involving cytotoxicity produced by the oxidative generation of highly reactive metabolites, phosgene and HCl, followed by regenerative cell proliferation as the predominant influence of chloroform on the carcinogenic process (USEPA, 1998c). EPA, therefore, agrees with the ILSI report that the chloroform dose-response should be considered nonlinear.

A recent article by Melnick *et al.* (1998) was published after the 1997 ISLI panel report and concludes that cytotoxicity and regenerative hyperplasia alone are not sufficient to explain the liver carcinogenesis in female B6C3F1 mice exposed to trihalomethanes, including chloroform. Although this article raises some interesting issues, EPA views the results for chloroform supportive of the role that toxicity and compensatory proliferation may play in chloroform carcinogenicity because statistically significant increases ($p<0.05$) in hepatoxicity and cell proliferation are found for chloroform in this study.

b. Dose-Response Assessment. EPA has used several different approaches for estimating the MCLG for chloroform: the LED_{10} for tumor response; the ED_{10} for tumor response; and the RfD for hepatoxicity. Each of these approaches are described below. EPA believes the RfD based on hepatotoxicity serves as the most appropriate basis for the MCLG for the reasons discussed below.

EPA has presented the linear and nonlinear default approaches to estimating the cancer risk associated with drinking water exposure to chloroform (USEPA, 1998c). EPA considered the linear default approach because of remaining uncertainties associated with the understanding of chloroform's mode of carcinogenic action: for example, lack of data on

cytotoxicity and cell proliferation responses in Osborne-Mendel rats, lack of mutagenicity data on chloroform metabolites, and the lack of comparative metabolic data between humans and rodents. Although these data deficiencies raise some uncertainty about how chloroform may influence tumor development at low doses, EPA views the linear dose-response extrapolation approach as overly conservative in estimating low-dose risk.

EPA concludes that the nonlinear default or margin of exposure approach is the preferred approach to quantifying the cancer risk associated with chloroform exposure because the evidence is stronger for a nonlinear mode of carcinogenic action. The tumor kidney response data in Osborne-Mendel rats from Jorgenson *et al.* (1985) are used as the basis for the point of departure (i.e., LED_{10} and ED_{10}) because a relevant route of human exposure (i.e., drinking water) and multiple doses of chloroform (i.e., 5 doses including zero) were used in this study (USEPA, 1998c). The animal data were adjusted to equivalent human doses using body weight raised to the ¾ power as the interspecies scaling factor, as proposed in the 1996 EPA Proposed Guidelines for Carcinogen Risk Assessment. The ED_{10} and LED_{10} were estimated to be 37 and 23 mg/kg/d, respectively.

As part of the margin of exposure analysis, a 100 fold factor was applied to account for the variability and uncertainty associated with intra- and interspecies differences in the absence of data specific to chloroform. An additional factor of 10 was applied to account for the remaining uncertainties associated with the mode of carcinogenic action understanding and the nature of the tumor dose response relationship being relatively shallow. EPA believes 1000 fold represents an adequate margin of exposure that addresses inter- and intra-species differences and uncertainties in the database. Other factors considered in determining the adequacy of the margin of exposure include the size of the human population exposed, duration and magnitude of human exposure, and persistence in the environment. Taking these factors into consideration, a MoE of 1000 is still regarded as adequate. Although a large population is chronically exposed to chlorinated drinking water, chloroform is not biopersistent and humans are exposed to relatively low levels of chloroform in the drinking water (generally under 100 µg/L), which are below exposures needed to induce a cytotoxic response. Furthermore, EPA believes that a MoE of 1000 is protective of susceptible groups, including children. The mode of action understanding for chloroform's cytotoxic and carcinogenic effects involves a generalized mechanism of toxicity that is seen consistently across different species. Furthermore, the activity of the enzyme (i.e., CYP2E1) involved in generating metabolites key to chloroform's mode of action is not greater in children than in adults, and probably less (USEPA, 1998c). Therefore, the ED_{10} of 37 mg/kg-d and the LED_{10} of 23 mg/kg-d is divided by a MoE of 1000 giving dose estimates of 0.037 and 0.023 mg/kg/d for carcinogenicity, respectively. These estimates would translate into MCLGs of 1.0 mg/L and 0.6 mg/L, respectively.

The underlying basis for chloroform's carcinogenic effects involve oxidative generation of reactive and toxic metabolites (phosgene and HCl) and thus are related to its noncancer toxicities (e.g., liver or kidney toxicities). It is important, therefore, to consider noncancer outcomes in the risk assessment (USEPA, 1998c). The electrophilic metabolite phosgene would react with macromolecules such as phosphotidyl inositols or tyrosine kinases which in turn could potentially lead to interference with signal transduction pathways (i.e., chemical messages controlling cell division), thus, leading to carcinogenesis. Likewise, it is also plausible that phosgene reacts with cellular phospholipids, peptides, and proteins resulting in generalized tissue injury. Glutathione, free cysteine, histidine, methionine, and tyrosine are all potential reactants for electrophilic agents. Hepatoxicity is the primary effect observed following chloroform exposure, and among tissues studied for chloroform-oxidative metabolism, the liver was found to be the most active (ILSI, 1997). In the 1994 proposed rule, data from a chronic oral study in dogs (Heywood *et al.*, 1979) were used to derive the RfD of 0.01 mg/kg/d (USEPA, 1994a). This RfD is based on a LOAEL for hepatotoxicity and application of an uncertainty factor of 1000 (100 was used to account for inter-and intra-species differences and a factor of 10 for use of a LOAEL). The MCLG is calculated to be 0.3 mg/L by assuming an adult tap water consumption of 2 L of tap water per day for a 70 kg adult, and by applying a relative source contribution of 80% (EPA assumes most exposure is likely to come from drinking water):

$$\text{MCLG for Chloroform Based on RfD for Hepatoxicity} = \frac{0.01\ \text{mg/kg/d} \times 70\ \text{kg} \times 0.8}{2\text{L/day}} = 0.3\ \text{mg/L (rounded)}$$

Therefore, 0.3 mg/L based on hepatoxicity in dogs (USEPA, 1994a) is being considered as the MCLG because liver toxicity is a more sensitive effect of chloroform than the induction of tumors. Even if low dose linearity is assumed, as it was in the 1994 proposed rule, a MCLG of 0.3 mg/L would be equivalent to a 5×10^{-5} cancer risk level. EPA concludes that an MCLG based on protection against liver toxicity should be protective against carcinogenicity given that the putative mode of action understanding for chloroform involves cytotoxicity as a key event preceding tumor development. Therefore, the recommended MCLG for chloroform is 0.3 mg/L. The assessment that forms the basis for this conclusion can be found in the docket for this Notice (USEPA, 1998c).

3. External Peer Review of EPA's Reassessment

Three external experts reviewed the EPA reassessment of chloroform (USEPA, 1998c). The peer review generally indicated that the nonlinear approach used for estimating the carcinogenic risk associated with exposure to chloroform was reasonable and appropriate and that the role of a direct DNA reactive mechanism unlikely. Other comments concerning improved clarity and completeness of the assessment were considered by EPA in revising the chloroform assessment document.

4. Summary of Key Observations

Based on the available evidence, EPA concludes that a nonlinear approach should be considered for estimating the carcinogenic risk associated with lifetime exposure to chloroform via drinking water. It should be noted that the margin of exposure approach taken for chloroform carcinogenicity is consistent with conclusions reached in a recent report by the World Health

Organization for Chloroform (WHO, 1997). The 1994 proposed MCLG was zero for chloroform. EPA believes it should now be 0.3 mg/L given that hepatic injury is the primary effect following chloroform exposure, which is consistent with the mode of action understanding for chloroform. Thus, the RfD based on hepatoxicity is considered a reasonable basis for the chloroform MCLG. EPA believes that the RfD used for chloroform is protective of sensitive groups, including children. Current methods for developing RfDs are designed to be protective for sensitive populations. In the case of chloroform a factor of 10 was used to account for variability between the average human response and the response of more sensitive individuals. Furthermore, the mode of action understanding for chloroform does not indicate a uniquely sensitive subgroup or an increased sensitivity in children.

EPA continues to conclude that exposure to chloroform may have an adverse effect on the public health. EPA also continues to believe the MCL of 0.080 mg/L for TTHMs is appropriate despite the increase in the MCLG for chloroform. EPA believes that the benefits of the 1994 proposed MCL of 0.080 mg/L for TTHMs will result in reduced exposure to chlorinated DBPs in general, not solely THMs. EPA considers this a reasonable assumption at this time given the uncertainties existing in the current health and exposure databases for DBPs in general. Moreover, the MCLGs for BDCM and bromoform remain at zero and thus, a TTHM MCL of 0.080 mg/L is appropriate to assure that levels of these two THMs are kept as low as possible. In addition, the MCL for TTHMs is used as an indicator for the potential occurrence of other DBPs in high pH waters. The MCL of 0.080 mg/L for TTHMs to control DBPs in high pH waters (in conjunction with the MCL of 0.060 mg/L for HAA5 to control DBPs in lower pH waters) and enhanced coagulation treatment technique remains a reasonable approach at this time for controlling chlorinated DBPs in general and protecting the public health. There is ongoing research being sponsored by the EPA, NTP, and the American Water Works Research Foundation to better characterize the health risks associated with DBPs.

5. Requests for Comments

Based on the information presented above, EPA is considering revising the MCLG for chloroform from zero to 0.30 mg/L. EPA requests comments on this possible change in the MCLG and on EPA's cancer assessment for chloroform based on the results from the ILSI report (1997) and new data.

C. Haloacetic Acids

The 1994 proposed rule included an MCL of 0.060 mg/L for the haloacetic acids (five HAAs-monobromoacetic acid, dibromoacetic acid, monochloroacetic acid, dichloroacetic acid, and trichloroacetic acid). An MCLG of zero was proposed for dichloroacetic acid (DCA) based on sufficient evidence of carcinogenicity in animals, and an MCLG of 0.3 mg/L for trichloroacetic acid (TCA) was based on developmental toxicity and possible carcinogenicity. As pointed out in the 1997 NODA, several toxicological studies have been identified for the haloacetic acids since the 1994 proposal (also see USEPA, 1997b).

Since the 1997 NODA, the EPA has evaluated the significance of the 1997 ILSI panel report on the cancer assessment for DCA. EPA has conducted a reassessment of DCA (USEPA, 1998e) using the principles of the EPA 1996 Guidelines for Carcinogen Risk Assessment (USEPA, 1996b), which are considered scientifically consistent with the Agency's 1986 guidelines (USEPA, 1986). This reassessment has been peer reviewed (USEPA, 1998e). Based on the scope of the ILSI report, EPA's own assessment and comments from peer reviewers, the Agency believes that the MCLG for DCA should remain as proposed at zero. This conclusion is discussed in more detail below.

1. 1997 International Life Sciences Institute Expert Panel Conclusions for Dichloroacetic Acid (DCA)

ILSI convened an expert panel in 1996 (ILSI, 1997) to explore the application of the USEPA's 1996 Proposed Guidelines for Carcinogen Risk Assessment (USEPA, 1996a) to the available data on the potential carcinogenicity of chloroform and dichloroacetic acid (as described under the chloroform section). The panel considered data on DCA which included chronic rodent bioassay data and information on mutagenicity, tissue toxicity, toxicokinetics, and other mode of action information.

The ILSI panel concluded that the tumor dose-response (liver tumors only) observed in rats and mice was nonlinear (ILSI, 1997). The panel noted that the liver was the only tissue consistently examined for histopathology. It further concluded that all the experimental doses that produced tumors in mice also produce hepatoxicity (i.e., most doses used exceeded the maximally tolerated dose). Although the mode of carcinogenic action for DCA was unclear, the ISLI panel concluded that DCA does not directly interact with DNA. It speculated that the hepatocarcinogenicity was related to hepatotoxicity, cell proliferation, and inhibition of program cell death (apoptosis). The panel concluded that the potential human carcinogenicity of DCA "cannot be determined" given the lack of adequate rodent bioassay data, as well as human data. This conclusion is in contrast to the 1994 EPA proposal in which it was concluded that DCA was a Group B_2 probable human carcinogen. In its current reevaluation of DCA carcinogenicity, EPA disagrees with the panel's conclusion that the human carcinogenic potential of DCA can not be determined. EPA's more recent assessment of DCA data includes published information not available at the time of the ILSI panel assessment. Based on the current weight of the evidence EPA concludes that DCA is a likely human carcinogen as it did in the 1994 proposed rule for the reasons discussed below.

2. MCLG for DCA: EPA's Reassessment of the Cancer Hazard

In the 1994 proposed rule, DCA was classified as a Group B2, probable human carcinogen in accordance with the 1986 EPA Guidelines for Carcinogen Risk Assessment (USEPA, 1986). The DCA categorization was based primarily on findings of liver tumors in rats and mice, which was regarded as "sufficient" evidence in animals. No lifetime risk calculation was conducted at that time; EPA proposed an MCLG of zero (USEPA, 1994a).

EPA has prepared a new hazard characterization regarding the potential carcinogenicity of DCA in humans (USEPA, 1998e). The objective of this report was to develop a weight-of-evidence characterization using the principles of the EPA's 1996 Proposed Guidelines for Carcinogen Risk Assessment (USEPA, 1996), as well as to consider the issues raised by the 1997 ILSI panel report. The EPA hazard characterization relies on information available in existing peer-reviewed source documents. Moreover, this hazard characterization considers published information not available to the ILSI panel (e.g., mutagenicity studies). This new characterization addresses issues important to interpretation of rodent cancer bioassay data, in particular, mechanistic information pertinent to the etiology of DCA-induced rodent liver tumors and their relevance to humans.

Based on the hepatocarcinogenic effects of DCA in both rats and mice in multiple studies, and mode of action

related effects (e.g., mutational spectra in oncogenes, elevated serum glucocorticoid levels, alterations in cell replication and death), EPA concludes that DCA should be considered as a "likely" cancer hazard to humans (USEPA, 1998e). This is similar to the 1994 view of a B2, probable human carcinogen, in the proposed rule.

DCA concentrations as low as 0.5 g/L have been observed to cause a tumor incidence in mice of about 80% and in rats of about 20% in a lifetime bioassays, as well as inducing multiple tumors per animal (USEPA, 1998e). Higher doses of DCA are associated with up to 100% tumor incidence and as many as four tumors per animal in a number of studies. Time-to-tumor development in mice is relatively short and decreases with increased dose. The ILSI panel concluded that doses of 1 g/L or greater in mice produced severe hepatotoxicity, and thus exceeded the MTD. They further indicated that there was marked hepatoxicity at 0.5 g/L of DCA, (albeit not as severe as the higher doses). EPA agrees that there was hepatoxicity at all the doses wherein there was a tumor response in mice. It should be noted that the MTD selected for the DeAngelo et al. (1991) mouse study was a dose that results in a 10% inhibition of body weight gain when compared to controls. This is within the limits designated in EPA guidelines (USEPA, 1998e). Furthermore, no hepatoxicity was seen in the rat studies, where DCA induced liver tumors of approximately 20% at the lowest dose, 0.5g/L (USEPA, 1998e). It appears that the ILSI report did not give full consideration to the rat tumor results as part of the overall weight-of-the-evidence for potential human carcinogenicity. EPA agrees with the ILSI panel, that the rodent assay data are not complete for DCA; for example, full histopathology is lacking for both sexes in two rodent species. This deficiency results in uncertainty concerning the potential of DCA to be tumorgenic at lower doses and at tissue sites other than liver. Nevertheless, the finding of increased tumor incidences as well as multiplicity at DCA exposure levels (0.5 g/L) in both rats and mice where minimal hepatotoxicity and no compensatory replication was seen supports the belief that observed tumors are related to chemical treatment.

Although DCA has been found to be mutagenic and clastogenic, responses generally occur at relatively high exposure levels (USEPA, 1998e). EPA acknowledges that a mutagenic mechanism may not be as important influence of DCA on the carcinogenic process at lower exposure levels as it might be at higher exposures. Evidence is still accumulating that suggests a mode of carcinogenic action for DCA through modification of cell signaling systems, with down-regulation of control mechanisms in normal cells giving a growth advantage to altered or initiated cells (USEPA, 1998e). The tumor findings in rodents and the mode of action information contributes to the weight-of-evidence concern for DCA (USEPA, 1998e; ILSI, 1997). EPA considers that a contribution of cytotoxicity and compensatory proliferation at high doses cannot be ruled out at this time; however, these effects were inconsistently observed in mice at lower exposure levels, and not at all in mice at 0.5 g/L, or in rats, at all exposure doses. Although the shape of the tumor dose responses are nonlinear, there is, however, an insufficient basis for understanding the possible mechanisms that might contribute to DCA tumorigenesis at low doses, as well as the shape of the dose response below the observable range of tumor responses.

In summary, EPA considers the mode of action through which DCA induces liver tumors in both rats and mice to be unclear. As discussed above, EPA considers the overall weight of the evidence to support placing DCA in the "likely" group for human carcinogenicity potential. This hazard potential is indicated by tumor findings in mice and rats, and other mode of action data using the 1996 guideline weight-of-evidence process. The remaining uncertainties in the data base include incomplete bioassay studies for full histopathology and information on an understanding of DCA's mode of carcinogenic action. The likelihood of human hazard associated with low levels of DCA usually encountered in the environment or in drinking water is not understood. Although DCA tumor effects are associated with high doses used in the rodent bioassays, reasonable doubt exists that the mode of tumorgenesis is solely through mechanisms that are operative only at high doses. Therefore, as in the 1994 proposed rule, EPA believes that the MCLG for DCA should remain as zero to assure public health protection. NTP is implementing a new two year rodent bioassay that will include full histopathology at lower doses than those previously studied. Additionally, studies on the mode of carcinogenic action are being done by various investigators including the EPA health research laboratory.

3. External Peer Review of EPA's Reassessment

Three external experts reviewed the EPA reassessment of DCA (USEPA, 1998e). The review comments were generally favorable. There was a range of opinion on the issue of whether DCA should be considered a likely human cancer hazard. One reviewer agreed that the current data supported a human cancer concern for DCA, while another reviewer believed that it was premature to judge the human hazard potential. The third reviewer did not specifically agree or disagree with EPA's conclusion of "likely" human hazard. Other issues raised by the peer review concerned the dose response for DCA carcinogenicity. The peer review generally concluded on the one hand that the mode of action was incomplete to support a nonlinear approach, but on the other hand, the mutagenicity data did not support low dose linearity. One reviewer believed that the possibility of a low dose risk could not be dismissed. Other comments concerning improved clarity and completeness of the assessment were considered by EPA in revising the DCA assessment document.

4. Summary of Key Observations

EPA continues to believe that exposure to DCA may have an adverse effect on the public health. Based on the above discussion, EPA considers DCA to be a "likely" cancer hazard to humans. This conclusion is similar to the conclusion reached in the 1994 proposed rule that DCA was a probable human carcinogen (i.e., Group B_2 Carcinogen). EPA considers the DCA data inadequate for dose-response assessment, which was the view in the 1994 proposed rule. EPA, therefore, believes at this time that the MCLG should remain at zero to assure public health protection. The assessment that this conclusion is based on can be found in the docket for this Notice (USEPA, 1998e).

5. Requests for Comments

Based on the information presented above, EPA is considering maintaining the MCLG of zero for DCA. EPA requests comments on maintaining the zero MCLG for DCA and on EPA's cancer assessment for DCA in light of conclusions from the ILSI report (1997) and new data.

D. Bromate

The 1994 proposed rule included an MCL of 0.010 mg/L and an MCLG of zero for bromate. Since the 1994 proposed rule, EPA has completed and analyzed a new chronic cancer study in male rats and mice for bromate

(DeAngelo *et al.*, 1998). EPA has reassessed the cancer risk associated with bromate exposure and had this reassessment peer reviewed (USEPA, 1998d). Based on this reassessment, EPA believes that the MCLG for bromate should remain as zero.

1. 1998 EPA Rodent Cancer Bioassay

In the cancer bioassay by DeAngelo *et al.* (1998), 78 male F344 rats were administered 0, 20, 100, 200, 400 mg/L potassium bromate ($KBrO_3$) in the drinking water, and 78 male B6C3F1 mice were administered 0, 80, 400, 800 mg/L $KBrO_3$. Exposure was continued through week 100. Although a slight increase in kidney tumors was observed in mice, there was not a dose-response trend. In rats, dose-dependent increases in tumors were found at several sites (kidney, testicular mesothelioma, and thyroid). This study confirms the findings of Kurokawa *et al.* (1986a and b) in which potassium bromate was found to be a multi-site carcinogen in rats.

2. MCLG for Bromate: EPA's Reassessment of the Cancer Risk

In the 1994 proposal, EPA concluded that bromate was a probable human carcinogen (Group B2) under the 1986 EPA Guidelines for Carcinogen Risk Assessment weight of evidence classification approach. Combining the incidence of rat kidney tumors reported in two rodent studies by Kurokawa *et al.* (1986a), lifetime risks of 10^{-4} 10^{-5}, and 10^{-6} were determined to be associated with bromate concentrations in water at 5, 0.5, and 0.05 ug/L, respectively.

The new rodent cancer study by DeAngelo *et al.* (1998) contributes to the weight of the evidence for the potential human carcinogenicity of $KBrO_3$ and confirms the study by Kurokawa *et al.* (1986a, b). Under the principles of the 1996 EPA Proposed Guidelines for Carcinogen Risk Assessment weight of evidence approach, bromate is considered to be a likely human carcinogen. This weight of evidence conclusion is based on sufficient experimental findings that include the following: Tumors at multiple sites in rats; tumor responses in both sexes; and evidence for mutagenicity including point mutations and chromosomal aberrations *in vitro*. It has been suggested that bromate causes DNA damage indirectly via lipid peroxidation, which generates oxygen radicals which in turn induce DNA damage. There is insufficient evidence, however, to establish lipid peroxidation and free radical production as key events responsible for the induction of the multiple tumor responses seen in the bromate rodent bioassays. The assumption of low dose linearity is considered to be a reasonable public health protective approach for extrapolating the potential risk for bromate because of limited data on its mode of action.

Cancer risk estimates were derived from the DeAngelo *et al.* (1998) study by applying the one stage Weibull model for the low dose linear extrapolation (EPA, 1998d). The Weibull model, which is a time-to-tumor model, was considered to be the preferred approach to account for the reduction in animals at risk that may be due to the decreased survival observed in the high dose group toward the end of the study. However, mortality did not compromise the results of this study (USEPA, 1998d). The animal doses were adjusted to equivalent human doses using body weight raised to the ¾ power as the interspecies scaling factor as proposed in the 1996 EPA cancer guidelines (USEPA, 1996b). The incidence of kidney, thyroid, and mesotheliomas in rats were modeled separately and then the risk estimates were combined to represent the total potential risk to tumor induction. The upper bound cancer potency (q^{1*}) for bromate ion is estimated to be 0.7 per mg/kg/d (USEPA, 1998d). Assuming a daily water consumption of 2 liters for a 70 kg adult, lifetime risks of 10^{-4}, 10^{-5} and 10^{-6} are associated with bromate concentrations in water of 5, 0.5 and 0.05 ug/L, respectively. This estimate of cancer risk from the DeAngelo *et al.* study is similar with the risk estimate derived from the Kurokawa *et al.* (1986a) study presented in the 1994 proposed rule. The cancer risk estimation presented for bromate is considered to be protective of susceptible groups, including exposures during childhood given that the low dose linear default approach was used as a public health conservative approach.

3. External Peer Review of the EPA's Reassessment

Three external expert reviewers commented on the EPA assessment report for bromate (USEPA, 1998d). The reviewers generally agreed with the key conclusions in the document. The peer review indicated that it is a reasonable default to use the rat tumor data to estimate the potential human cancer risk. The peer review also indicated that the mode of carcinogenic action for bromate is not understood at this time, and thus it is reasonable to use a low dose linear extrapolation as a default. One reviewer indicated that it was not appropriate to combine tumor data from different sites unless it is shown that similar mechanisms are involved. EPA modeled the three tumor sites separately to derive the cancer potencies, and thus did not assume a similar mode of action. The slope factors from the different tumor response were combined in order to express the total potential tumor risk of bromate. Other comments raised by the peer reviewers concerning improved clarity and completeness of the assessment were considered by EPA in revising this document.

4. Summary of Key Observations

EPA continues to believe that exposure to bromate may have an adverse effect on the public health. The DeAngelo *et al.* (1998) study confirms the tumor findings reported in the study by Kurokawa *et al.* (1986a) and contributes to the weight of the carcinogenicity evidence for bromate. EPA believes that the an MCL of 0.010 mg/L and an MCLG of zero should remain for bromate as proposed in 1994. The assessment that this conclusion is based on can be found in the docket for this Notice (USEPA, 1998d).

5. Requests for Comments

Based on the recent two-year cancer bioassay on bromate by DeAngelo *et al.* (1998), EPA is considering maintaining the MCLG of zero for bromate. EPA requests comments on maintaining the zero MCLG for bromate and on EPA's cancer assessment for bromate.

IV. Simultaneous Compliance Considerations: D/DBP Stage 1 Enhanced Coagulation Requirements and the Lead and Copper Rule

EPA received comment on the November 3, 1997 **Federal Register** Stage 1 D/DBP Notice of Data Availability that expressed concern regarding utilities' ability to comply with the Stage 1 D/DBP enhanced coagulation requirements and Lead and Copper Rule (LCR) requirements simultaneously. Commentors stated that enhanced coagulation will lower the pH and alkalinity of the water during treatment. They indicated concern that the lower pH and alkalinity levels may place utilities in noncompliance with the LCR by causing violations of optimal water quality control parameters and/or an exceedence of the lead or copper action levels. EPA is not aware of data that suggests that low pH and alkalinity levels cannot be adjusted upward following enhanced coagulation to meet LCR compliance requirements. However, as discussed below, the Agency solicits further comment and data on this issue.

The LCR separates public water systems into three categories: large

(>50,000), medium (≤50,000 but >3,300) and small (<3,300). Small and medium systems that do not exceed the lead and copper action levels (90th percentile levels of 0.015 mg/L and 1.3 mg/L, respectively) during the required monitoring are deemed to have optimized corrosion control. These systems do not have to operate under optimal water quality control parameters. Optimal water quality control parameters consist of pH, alkalinity, calcium concentration, and phosphate and silicate corrosion inhibitors. They are designated by the State. Small and medium systems exceeding the action limits must operate under State specified optimal water quality parameters. Large systems must operate under optimal water quality parameters specified by the State unless the difference in lead levels between the source and tap water samples is less than the Practical Quantification Limit (PQL) of the prescribed method (0.005 mg/L).

Maintenance of each optimal water quality control parameter mentioned above (except for calcium concentration) is directly related to meeting specified pH and alkalinity levels at the entry point to the distribution system and in tap samples to establish LCR compliance. In treatment trains that EPA is aware of, utilities have the technological capability to raise the pH (by adding caustic—NaOH, $Ca(OH)_2$) and alkalinity (by adding Na_2CO3 or $NaHCO_3$) of the water following enhanced coagulation and before it enters the distribution system. Although certain utilities may need to add chemical feed points to provide chemical adjustment, pH and alkalinity can be maintained at the values used prior to the implementation of enhanced coagulation. Systems that operate with pH and alkalinity optimal water quality control parameters should be able to meet the State-prescribed values by providing pH and alkalinity adjustment prior to entry to the distribution system. Systems that operate without pH and alkalinity optimal water quality control parameters can raise the pH and alkalinity to the levels they were at before enhanced coagulation by providing chemical adjustment prior to distribution system entry.

The goal of calcium carbonate stabilization is to precipitate a layer of $CaCO_3$ scale on the pipe wall to protect it from corrosion. As the pH of a water decreases, the concentration of bicarbonate increases and the concentration of carbonate, which combines with calcium to form the desired $CaCO_3$, decreases. At the lower pH used during enhanced coagulation, it will generally be more difficult to form calcium carbonate. However, post—coagulation pH adjustment will increase the pH and hence the concentration of carbonate available to form calcium carbonate scale. Systems that must meet a specific calcium concentration to remain in compliance with optimal water quality control parameters should not experience an increase in LCR violations due to the practice of enhanced coagulation provided the pH is adjusted prior to distribution system entry and the calcium level in the water prior to and after implementation of enhanced coagulation remains the same.

EPA recognizes that the inorganic composition of the water may change slightly due to enhanced coagulation. For example, small amounts of anions and compounds that can affect corrosion rates ($Cl-$, SO_4^{-2}) may be removed or added to the water. The effect of these constituents is difficult to predict, but EPA believes they should be minimal for the great majority of systems due to the generally modest changes in the water's inorganic composition and because alkalinity and pH levels have a greater influence on corrosion rates. Increases in sulfate concentration due to increased alum addition during enhanced coagulation can actually lower the corrosion rates of lead pipe. EPA requests comment on whether changes in the inorganic matrix can be quantified to allow States to easily assess potential impacts to corrosion control.

EPA requests comment on how lowering the pH and alkalinity during enhanced coagulation may cause LCR compliance problems, given that both pH and alkalinity levels can be adjusted to meet optimal water quality parameters prior to entry to the distribution system. EPA also requests comment on whether decreasing the pH and alkalinity during enhanced coagulation, and then increasing it prior to distribution system entry, may increase exceedences of lead and copper action levels.

EPA is currently developing a simultaneous compliance guidance document working with stakeholders. The document will provide guidance to States and systems on maintaining compliance with other regulatory requirements (including the LCR) during and after the implementation of the Stage 1 D/DBP rule and the Interim Enhanced Surface Water Treatment Rule. EPA requests comment on what issues should be addressed in the guidance to mitigate concerns about simultaneous compliance with enhanced coagulation and LCR requirements. Further, the Agency requests comment on whether the proposed enhanced coagulation requirements and the existing LCR provisions that allow adjustment of corrosion control plans are flexible enough to address simultaneous compliance issues. Is additional regulatory language necessary to address this issue, or is guidance sufficient to mitigate potential compliance problems?

V. Compliance With Current Regulations

EPA reaffirms its commitment to the current Safe Drinking Water Act regulations, including those related to microbial pathogen control and disinfection. Each public water system must continue to comply with the current regulations while new microbial and D/DBP rules are being developed.

VI. Conclusions

This Notice summarizes new health information received and analyzed for DBPs since the November 3, 1997 NODA and requests comments on several issues related to the simultaneous compliance with the Stage 1 D/DBP Rule and the Lead and Copper Rule. Based on this new information, EPA has developed several new documents. EPA is requesting comments on this new information and EPA's evaluation of the information included in the new documents. Based on an assessment of the new toxicology information, EPA believes the MCLs and MRDLs in the 1994 proposal, and confirmed in the 1997 FACA process, will not change. Based on the new information, EPA is considering increasing the proposed MCLG of zero for chloroform to 0.30 mg/L and the proposed MCLG for chlorite from 0.080 mg/L to 0.80 mg/L. EPA is also considering increasing the MRDLG for chlorine dioxide from 0.3 mg/L to 0.8 mg/L.

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National Primary Drinking Water Regulations: Disinfectants and Disinfection Byproducts Notice of Data Availability page 86 of 86.

Dated: March 24, 1998.

Robert Perciasepe,

Assistant Administrator for Office of Water.

[FR Doc. 98–8215 Filed 3–30–98; 8:45 am]

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federal register

Tuesday
March 31, 1998

Part V

Department of Education

34 CFR Part 200
Title I—Helping Disadvantaged Children Meet High Standards; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 200

RIN 1810—AA89

Title I—Helping Disadvantaged Children Meet High Standards

AGENCY: Department of Education.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The U. S. Secretary of Education (Secretary) proposes to amend the regulations implementing programs under Title I of the Elementary and Secondary Education Act (ESEA) of 1965, as amended by the Improving America's Schools Act of 1994. These proposed amendments would provide additional flexibility to local educational agencies (LEAs) operating Title I programs.

DATES: Written comments must be received on or before June 1, 1998.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Mary Jean LeTendre, Director, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 600 Independence Avenue, SW, Portals Building, room 4400, Washington, DC 20202–6132.

Comments may also be sent through the Internet: comments Title I__LEA@ed.gov.

FOR FURTHER INFORMATION CONTACT: Wendy Jo New, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 600 Independence Avenue, SW., Portals Building, room 4400, Washington, DC 20202–6132. Telephone: (202)260–0982. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Services (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: On July 3, 1995, the Secretary published final regulations under Title I of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act. The following are the specific provisions for which the Secretary is proposing regulatory amendments.

Schoolwide Programs and the Individuals With Disabilities Education Act

Under § 1114 of Title I, Title I schoolwide program schools may combine funds from most other Federal education programs in their schoolwide programs. If they do, the schools are exempt from most of the statutory and regulatory provisions of these programs as long as they meet the intent and purposes of the programs. Section 1114 specifically prohibits an exemption for programs under the Individuals with Disabilities Education Act (IDEA). The recent reauthorization of the IDEA, however, provides additional flexibility regarding IDEA funds. It allows a percentage of the Part B IDEA funds received by an LEA to be combined with other Federal, State, and local education funds to carry out any activities in a schoolwide program. However, it does not exempt a schoolwide program school from meeting the other requirements of IDEA. In other words, a schoolwide program school combining IDEA funds must comply with all other requirements of IDEA to the same extent it would if it did not combine IDEA funds in its schoolwide program. In addition, LEAs and SEAs are not relieved of their obligations under IDEA to ensure that children with disabilities in schoolwide program schools have all of the rights they would have if they were in a non-schoolwide school.

No-wide Variance

Under prior legislation and regulations, LEAs had the discretion, in selecting school attendance areas or schools to receive Chapter 1 (Title I's predecessor) funding, to designate as eligible and serve all attendance areas and schools within a grade span grouping or in the entire LEA if all attendance areas and schools fell within a range that was no more than 5 percentage points above and 5 percentage points below the grade span or LEA poverty average. This option, referred to as the "no-wide variance" provision, recognized that in LEAs with a uniform distribution of children from low-income families, making a selection of only those areas or schools above the districtwide average of poverty has a less meaningful distinction than in other LEAs. The Title I statute does not contain this option. However, upon reflection, the Secretary has decided to propose reinstituting this flexibility through regulations because it makes little educational sense to differentiate among areas or schools that fall within a close span of poverty. Therefore, the Secretary proposes to amend § 200.28 to include a "no-wide variance" provision. Under the proposed regulations, an LEA may designate as eligible and serve all areas and schools within a grade span or the entire LEA if the poverty rates of all areas and schools do not vary more than 10 percentage points.

Alteration or Renovation

Section 76.533 of the Education Department General Administrative Regulations prohibits a State or subgrantee from using its grant for construction or acquisition of real property unless specifically permitted by the authorizing statute or implementing regulations for the program. Although construction and acquisition of real property were previously authorized by statute under Chapter 1 of Title I of the ESEA, they are not specifically authorized now, and thus are prohibited under § 76.533. Yet, the Secretary has been made aware of situations where the prohibition against construction, which was defined under previous law to include alteration and remodeling of real property, has constrained LEAs from providing cost effective Title I services. For example, an LEA was offered a building to house a Title I preschool program because existing facilities were inadequate. Because of the renovation necessary to make the donated building meet the architectural guidelines for serving young children and the lack of local funding to make such renovations, the LEA could not accept the donation. A similar situation occurred in another LEA that was donated a building for a Title I parent resource center. The Even Start Family Literacy Program has experienced similar situations, where donated facilities did not meet architectural guidelines for serving young children. The Secretary is proposing to allow, through regulations, the authority to alter or remodel real property if such alteration or remodeling is reasonable and necessary to carry out a Title I program.

Exclusion From Supplement, Not Supplant and Comparability Determinations

The Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104–134) amended section 1120A of Title I to allow a State or LEA to exclude supplemental State and local funds that are expended in any school attendance area or school from both supplement, not supplant and comparability determinations under Parts A and C, as long as the supplemental State and local expenditures are for programs that meet the intent and purposes of Part A.

Section 200.63(c)(1) of these proposed regulations would implement this provision and clarify the characteristics of State and local programs that would enable them to meet the intent and purposes of Part A.

Executive Order 12866

1. Assessment of Costs and Benefits

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order, the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential benefits associated with the proposed regulations are clear. The proposed regulations would provide additional flexibility for SEAs and LEAs to implement their Title I programs. Moreover, the potential costs associated with these proposed regulations would be minimal; they would result from specific statutory requirements or have been determined by the Secretary to be necessary for administering Title I programs effectively and efficiently.

There are no additional burdens specifically associated with information collection requirements that were addressed in the Title I regulations published on July 3, 1995. The Secretary has also determined that this regulatory action does not interfere unduly with State and local governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comments on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the program.

2. Clarity of the Regulations

Executive Order 12866 requires each Federal agency to write regulations that are easy to understand.

The Secretary invites comment on how to make these regulations easier to understand, including answers to the following: (1) Are the requirements in the regulations clearly stated? (2) Do the regulations contain technical terms or other wording that interfere with the clarity? (3) Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example "§ 200.68 Schoolwide program requirements.") (4) Is the description of the proposed regulations in the "Supplementary Information" section of this preamble helpful in understanding the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand? (5) What else could the Department do to make the regulations easier to understand?

A copy of any comments that concern whether these proposed regulations are easy to understand should also be sent to Stanley Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue, SW. (room 5121, FOB–10), Washington, DC 20202–2241.

Paperwork Reduction Act of 1995

These proposed regulations have been examined under the Paperwork Reduction Act of 1995 and have been found to contain no information collection requirements.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these proposed regulations are small LEAs, institutions of higher education, and public or nonprofit private agencies receiving Federal funds under the Title I programs. The proposed regulations would not have a significant economic impact on the small entities affected because the proposed regulations would not impose excessive regulatory burden or require unnecessary Federal supervision. The proposed regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 4400, Portals Building, 1250 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

On request the Department supplies an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking docket for these proposed regulations. An individual with a disability who wants to schedule an appointment for this type of aid may call (202)205–8113 or (202)260–9895. An individual who uses a TDD may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

To assist the Department in complying with the specific requirement of Executive Order 12866 and its overall requirement of reducing regulatory burden, the Secretary invites comments on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

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Note: The official version of this document is the document published in the **Federal Register**.

List of Subjects in 34 CFR Part 200

Administrative practice and procedure, Adult education, Children, Coordination, Education, Education of disadvantaged children, Education of individuals with disabilities, Elementary and secondary education, Eligibility, Family, Family-centered education, Grant programs—education, Indians—education, Institutions of higher education, Interstate coordination, Intrastate coordination, Juvenile delinquency, Local educational agencies, Migratory children, Migratory workers, Neglected, Nonprofit private agencies, Private schools, Public agencies, Reporting and recordkeeping requirements, State-administered programs, State educational agencies, Subgrants.

Dated: March 24, 1998.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: 84:010, Improving Programs Operated by Local Educational Agencies: 84.011, Migrant Education Basic State Formula Grant Programs; 84.013, Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk of Dropping Out; 84.144, Migrant Education Coordination Program; 84.213, Even Start Family Literacy Program)

The Secretary proposes to amend part 200 of Title 34 of the Code of Federal Regulations as follows:

PART 200—TITLE I—HELPING DISADVANTAGED CHILDREN MEET HIGH STANDARDS

2. The authority citation for part 200 continues to read as follows:

Authority: 20 U.S.C. 6301–6514, unless otherwise noted.

3. In § 200.8, paragraph (c)(1) is revised and paragraph (c)(3)(ii)(B)(*3*) is added to read as follows:

§ 200.8 Schoolwide program requirements.

* * * * *

(c) *Availability of other Federal funds.* (1) In addition to funds under this subpart, a school may use in its schoolwide program Federal funds under any program administered by the Secretary that is included in the most recent notice published by the Secretary in the **Federal Register** or is addressed in paragraph (c)(3) (ii)(B)(*3*) of this section.

* * * * *

(3) * * *

(ii) * * *

(B) * * *

(*3*) *Special Education.* (*i*) A school may combine funds received under Part B of the Individuals with Disabilities Education Act (IDEA) in a schoolwide program, except that the amount so used in any schoolwide program may not exceed the amount received by the LEA under Part B of IDEA for that fiscal year; divided by the number of children with disabilities in the jurisdiction of the LEA; and multiplied by the number of children with disabilities participating in the schoolwide program.

(*ii*) A school may also combine funds received under section 8003(d) of the Act (Impact Aid funds for children with disabilities) in a schoolwide program.

(*iii*) A school that combines funds under Part B of IDEA or section 8003(d) of the Act in its schoolwide program may use those funds for any activities under its schoolwide program plan but shall comply with all other requirements of Part B of IDEA to the same extent it would if it did not combine funds under Part B of IDEA or section 8003(d) of the Act in its schoolwide program.

* * * * *

4. Section 200.28 is amended by removing paragraph (a)(2)(iii) and adding a new paragraph (a)(4) to read as follows:

§ 200.28 Allocation of funds to school attendance areas and schools.

(a) * * *

(4) An LEA may designate as eligible and serve all school attendance areas or schools within a grade span grouping or within the entire LEA if within the grade span or LEA, as applicable, the variation between the percentage of children from low-income families in the attendance area or school with the highest concentration of such children and the percentage of children from low-income families in the attendance area or school with the lowest concentration of such children does not exceed 10 percentage points.

* * * * *

5. Section 200.62 is added to read as follows.

§ 200.62 Use of funds for construction of real property.

(a) Title I funds may be used to construct real property if reasonable and necessary to carry out a Title I program.

(b) The term *construction* means the alteration or renovation of a building, structure, or facility, including—

(1) The concurrent installation of equipment; and

(2) The complete or partial replacement of an existing facility, but only if such replacement is less expensive and more cost-effective than alteration, renovation, or repair of the facility.

(Authority: 20 U.S.C. 6511(a))

6. Section 200.63 is revised to read as follows:

§ 200.63 Exclusion of supplemental State and local funds from supplement, not supplant and comparability determinations.

(a) For purposes of determining compliance with the comparability requirement in section 1120A(c) and the supplement, not supplant requirement in section 1120A(b) of the Act, a grantee or subgrantee under parts A or C of Title I may exclude supplemental State and local funds spent in any school attendance area or school for programs that meet the intent and purposes of Title I.

(b) A program meets the intent and purposes of Title I if the program—

(1)(i) Is implemented in a school in which the percentage of children from low-income families is not less than 50 percent;

(ii) Is designed to upgrade the entire educational program in the school to support students in their achievement toward meeting the State's challenging student performance standards;

(iii) Is designed to meet the educational needs of all children in the school, particularly the needs of children who are failing, or most at risk of failing, to meet the State's challenging student performance standards; and

(iv) Uses the State's system of assessment to review the effectiveness of the program; or

(2)(i) Serves only children who are failing, or most at risk of failing, to meet the State's challenging student performance standards;

(ii) Provides supplementary services designed to meet the special educational needs of the children who are participating to support their achievement toward meeting the State's student performance standards that all children are expected to meet; and

(iii) Uses the State's system of assessment to review the effectiveness of the program.

(c) The conditions in paragraph (b) of this section also apply to supplemental State and local funds expended under sections 1113(b)(1)(C) and 1113(c)(2)(B) of the Act.

(Authority: 20 U.S.C. 6322(d))

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March 31, 1998

Part VI

Department of the Interior

Fish and Wildlife Service

50 CFR Part 21

Migratory Bird Special Canada Goose Permit; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

RIN 1018–AE46

Migratory Bird Special Canada Goose Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The United States Fish and Wildlife Service (Service) proposes, in cooperation with State wildlife agencies (States), to establish a Canada goose damage management program. This program is designed to provide a biologically sound and more cost-effective and efficient method for the control of locally-breeding (resident) Canada geese that pose a threat to health and human safety and are responsible for damage to personal and public property.

DATES: The comment period for this proposed rule closes June 1, 1998.

ADDRESSES: Comments should be mailed to Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street NW., Washington, D.C. 20240. The public may inspect comments during normal business hours in room 634—Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Paul R. Schmidt, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Background

Numbers of Canada geese that nest and reside predominantly within the conterminous United States have increased exponentially in recent years (Rusch et al., 1995; Ankney, 1996). These geese are sometimes collectively referred to as "resident" Canada geese. These increasing populations of locally-breeding geese are resulting in increasing numbers of conflicts with human activities, and concerns related to human health and safety are increasing (Ankney, 1996). To date, the Service has attempted to address this growing problem through existing annual hunting season frameworks and issuance of control permits on a case-by-case basis. While this approach has provided relief in some areas, the Service realizes that sport harvest will not completely address the problem and that the current permit-issuance system has become a time-consuming and burdensome process for both applicants and the Service. Therefore, the Service is proposing changes to the way permits for control and management of resident Canada geese that either pose a threat to health and human safety or cause damage to personal and public property are issued under the Migratory Bird Treaty Act by the Service. Presently, the regulations governing the issuance of permits to take, capture, kill, possess, and transport migratory birds are authorized by the Migratory Bird Treaty Act and are promulgated in 50 CFR parts 13 and 21.

The geographic scope of this proposed rule is restricted to the conterminous United States and to the two subspecies of Canada geese (*Branta canadensis*) that nest and reside predominately within the conterminous United States (*B. c. maxima* and *B.c. moffitti*), the "giant" and "western" Canada geese, respectively. Nesting geese within the conterminous United States are considered members of these two subspecies or hybrids between the various subspecies originating in captivity and artificially introduced into numerous areas throughout the conterminous United States. No evidence presently exists documenting breeding between Canada geese nesting within the conterminous United States and those subspecies nesting in northern Canada and Alaska. The geese nesting and residing within the conterminous United States in the months of June, July, and August will be collectively referred to in this proposed rule as "resident" Canada geese.

The remaining 9 subspecies of Canada geese recognized in North America nest, for the most part, in arctic and sub-arctic regions of Canada and Alaska (Lack 1974). These subspecies are encountered in the conterminous United States only during the fall, winter and spring of the year, or as a result of human placement.

Generally, the Service has stressed the need to manage geese on a population basis, guided by cooperatively-developed management plans. However, resident Canada goose populations and the development of a resident Canada goose damage management program present several potential problems with this approach. Because resident goose populations interact and overlap with other Canada goose populations during the fall and winter, these other goose populations could potentially be affected by any management action or program targeted at resident Canada geese during the fall and winter. Therefore, to avoid potential conflicts with existing management plans for other goose populations, the temporal scope of this proposed rule is restricted to the period March 11 through August 31 each year. These dates encompass the period when sport hunting is prohibited throughout the conterminous United States by the Migratory Bird Treaty (1916) and resulting regulations promulgated under the Migratory Bird Treaty Act (1918). Injury/damage complaints occurring during the period September 1 to March 10, the period open to sport hunting, are outside the scope of this proposed rule and will continue to be addressed through either migratory bird hunting regulations or the existing migratory bird permit process.

Population Status/Public Conflicts

In the early 1960's Hanson (1965) rediscovered the giant Canada goose, then believed to be extinct (Delacour 1954). Hanson (1965) estimated there were about 50,000 of this subspecies left in both Canada and the United States at the time of his survey. In recent years, however, the numbers of these Canada geese that nest predominantly within the conterminous United States have increased tremendously. Recent surveys in the Atlantic, Mississippi, and Central Flyways (Nelson and Oetting, 1991; Sheaffer and Malecki, 1991; Wood et al., 1994; Caithamer and Dubovsky, 1997) suggest that the resident breeding population now exceeds 1 million individuals in both the Atlantic and Mississippi Flyways and is increasing exponentially.

Information from the 1997 Waterfowl Status Report (Caithamer and Dubovsky, 1997) shows that in the Atlantic Flyway, the resident population has increased an average of 17 percent per year since 1989 and currently exceeds 1 million geese. In the Mississippi Flyway, the resident population of Canada geese has increased at a rate of about 6 percent per year during the last 10 years and also currently exceeds 1 million birds. In the Central and Pacific Flyways, populations of resident Canada geese have similarly increased over the last few years. In some areas, numbers of resident Canada geese have increased to record high levels. The Service is concerned about the rapid growth rate and large sizes of resident goose populations, especially in parts of the Atlantic and Mississippi Flyways.

Further, in some regions, the management of these large populations of resident canada geese is confounded by the presence of migratory Canada goose populations that are considered to be below management objectives. A case in point is the migratory Atlantic Population (AP) of Canada geese which

nests in northern Quebec and winters in the Atlantic Flyway. The number of breeding pairs of migratory AP geese declined from 118,000 in 1988 to only 29,000 in 1995. While numbers of this migratory population have since increased to 63,000 in 1997, as stated above, Atlantic Flyway resident Canada geese are estimated to have a population now exceeding 1 million. Traditional methods of dealing with the growing resident Canada goose population in the Atlantic Flyway, such as hunting, are not available in areas with migrating and wintering AP geese. The difficulty and challenge faced by the Service and State wildlife management agencies is one of striving to increase the migratory population while simultaneously addressing the problems caused by the growing resident population.

In many areas of the country, these burgeoning populations of resident Canada geese are increasingly coming into conflict with human activities. The urban/suburban populations have a relative abundance of preferred habitat provided by current landscaping techniques (i.e., open areas with short grass adjacent to small bodies of water), and this habitat availability combined with the lack of natural predators, the absence of waterfowl hunting in many of these areas, and free handouts of food by some people has served to increase resident Canada goose populations exponentially. Problem habitat examples include public parks, airports, public beaches and swimming facilities, water-treatment reservoirs, corporate business areas, golf courses, schools, college campuses, private lawns, amusement parks, cemeteries, hospitals, residential subdivisions, and along or between highways. As a consequence, injury complaints related to agricultural damage and other public conflicts are increasing as resident Canada goose populations increase.

To date, the Service has attempted to address injurious resident Canada goose problems through existing hunting seasons, the creation of new special Canada goose seasons designed to target resident populations, and issuance of permits allowing specific control activities.

The overall guidance for all existing and special hunting seasons is provided in a 1975 Environmental Impact Statement and a 1988 Supplemental Environmental Impact Statement (U.S. Department of Interior 1975, 1988). In general, the Service's approach has been to support special seasons, and as experience and information are gained, to allow expansion and simplification consistent with established criteria.

Special seasons targeting resident Canada geese were first initiated in 1977 in the Mississippi Flyway with an experimental late season in Michigan. Following these early experiments in Michigan and several other Midwestern States, the Service gave notice of pending criteria for special Canada goose seasons in the June 6, 1986, **Federal Register** (51 FR 20681). Criteria for special early seasons were finalized in the August 9, 1988, **Federal Register** (53 FR 29905) and later were expanded to include special late seasons in September 26, 1991, **Federal Register** (56 FR 49111). The original intent of these special seasons was to provide additional harvest opportunities on resident Canada geese while minimizing impacts to migrant geese. The criteria were necessary to control harvests of non-target populations and required States to conduct annual evaluations. Initially, all seasons were considered experimental, pending a thorough review of the data gathered by the participating State. Early seasons are generally held during early September, with late seasons occurring only after the regular season, but no later than February 15.

Special seasons for resident Canada geese are presently offered in all four Flyways, with 29 States participating. They are most popular among States when regular Canada goose seasons are restricted to protect migrant populations of Canada geese. Currently restrictive harvest regimes are in place for the Atlantic, Southern James Bay, Dusky, Cackling and Aleutian Canada goose populations.

Harvest of Canada geese during these special seasons has increased substantially over the last 8 years. In the Atlantic Flyway, 16 of 17 States hold special Canada goose seasons, with harvest rising from about 2,300 in 1988 to almost 124,000 in 1995 (MBMO, 1997). In the Mississippi Flyway, 10 of 14 States hold special Canada goose seasons, and harvest has increased from less than 10,000 birds in 1986 to almost 150,000 in 1995. Michigan currently harvests in excess of 50,000 locally-breeding Canada geese per year. While the opportunities are not as significant in the Central and Pacific Flyways, as areas and seasons have expanded, harvest has increased from approximately 1,300 in 1989 to over 20,000 in 1995.

While creation of special harvest opportunities has helped to limit the problem in some areas, many resident Canada geese remain in urban and suburban areas throughout the fall and winter where these areas afford them almost complete protection from sport harvest. The Service realizes that harvest management will never completely address this problem and permits to conduct otherwise prohibited control activities will continue to be necessary to balance human needs with expanding resident Canada goose populations.

Complex Federal and State responsibilities are involved with Canada goose control activities. All State and private activities, except techniques intended to either scare geese out of or preclude them from a specific area, such as harassment, habitat management, or repellents, require a Federal permit, issued by the Service. Additionally, permits to alleviate migratory bird depredations are issued by the Service in coordination with the Wildlife Services (formerly Animal Damage Control) program of the Animal and Plant Health Inspection Service (APHIS/WS). APHIS/WS is the Federal Agency with lead responsibility for dealing with wildlife damage complaints. In most instances, State permits are required as well.

A brief summary of the complaints/requests for control permits placed with APHIS/WS indicates the increasing number of public conflicts. In 1996, the APHIS/WS received 3,265 complaints of injurious goose activity (APHIS/WS, 1996). In response to those complaints, APHIS/WS dispersed 513,585 Canada geese. In addition, those 3,265 complaints resulted in APHIS/WS recommending the Service issue 321 permits. Those recommendations included 93 for take, 5 for capture/relocation, and 238 for egg/nest destruction.

In 1995, APHIS/WS received 2,884 complaints of injurious goose activity which resulted in the dispersal of 525,000 Canada geese (APHIS/WS, 1995). In addition, during that same period, the APHIS/WS program reviewed 2,224 permit requests dealing with the control of injurious Canada geese (APHIS/WS, 1995). Of those 2,224 requests, APHIS/WS recommended the Service issue 250 permits. Those recommendations included 68 for take, 5 for capture/relocation, and 195 for egg/nest destruction.

Comparing these figures with previous years' data shows a steady increase in complaints since 1991. For example, in 1991 APHIS/WS received 1,698 complaints of injurious goose activity (APHIS/WS, 1991). In 1993, there were 2,802 complaints (APHIS/WS, 1993). In response to those complaints, APHIS/WS dispersed 730,692 and 862,809 geese, respectively, and recommended the Service issue 92 and 192 permits, respectively.

Permit issuance by the Service has also increased in recent years as resident Canada goose populations have grown to high levels in some areas. In Region 5 (the Northeastern/New England area), the Service issued 26 site-specific permits to kill resident Canada geese and 54 permits to addle eggs in 1994. In 1995, Region 5 issued 56 site-specific permits to kill resident Canada geese, 2 permits to relocate geese, and 109 permits to addle eggs. These permits resulted in the reported take of 291 geese, the relocation of 0 geese, and the addling of eggs in 833 nests. In 1996, Region 5 issued 70 site-specific permits to kill resident Canada geese, 1 permit to relocate geese, and 151 permits to addle eggs. These permits resulted in the reported take of 807 geese, the relocation of 0 geese, and the addling of eggs in 1,235 nests.

In addition to the site-specific permits, from 1994–96, Region 5 issued 10 statewide permits for the relocation of resident Canada geese to three government agencies: APHIS/WS, Delaware Division of Fisheries and Wildlife, and the Virginia Department of Agriculture (VDA). APHIS/WS and VDA were also authorized to addle eggs under these permits. From all statewide permits combined, in 1994, 2,573 resident Canada geese were relocated and eggs were addled in 24 nests. In 1995, 1,900 geese were relocated and eggs were addled in 45 nests. In 1996, 1,764 resident Canada geese were relocated and eggs were addled in 165 nests.

In the Service's Region 3, the Upper Midwest/Great Lakes area, the number and extent of permits issued to manage and control resident Canada geese has increased significantly in the past few years. In 1994, the Service issued 53 permits to trap and relocate, 84 permits to destroy nests/eggs and 12 permits allowing take of adults. These permits resulted in the relocation of 6,821 resident Canada geese, 176 nests and 1,300 eggs destroyed, and 31 adult geese killed. In 1995, Region 3 authorized 111 permits to either trap and relocate birds, destroy nests/eggs, or allow take of adults in Illinois, Indiana, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. These 111 permits resulted in the relocation of 1,015 resident Canada geese, the destruction of 1,797 nests sites, and the take of 616 adult geese. In addition to the above site-specific permits, Region 3 issued Statewide permits in 1995 to the Michigan Department of Natural Resources, the Minnesota Department of Natural Resources, and the Ohio Department of Natural Resources allowing Statewide trapping and relocation activities. Michigan reported relocating over 4,000 resident Canada geese, Minnesota moved between 5,000 and 7,000 birds, and Ohio conducted goose roundups at approximately 1,000 sites across the state. In 1996, Region 3 issued 226 permits authorizing resident Canada goose control activities. Permit holders, including APHIS/WS, airports, and state wildlife agencies, reported taking 6,922 eggs and 827 geese, and trapped and relocated over 15,300 resident Canada geese. States in which control activities were conducted included Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin.

Since 1995, the Service's Region 3 has also issued permits to the Michigan Department of Natural Resources and the Minnesota Department of Natural Resources (MDNR) authorizing the capture and processing of resident Canada geese as food for local food-shelf programs. Minnesota's permit was a part of the MDNR's Urban Goose Management Program for the Minneapolis-St. Paul Metropolitan Area (initiated in 1982). In 1995, under these permits, Michigan and Minnesota were authorized to take up to 2,000 and 325 geese, respectively. Michigan reported taking 24 birds with Minnesota taking its full allotment of 325 birds. In 1996, Michigan and Minnesota were again authorized to take up to 1,000 and 2,500 resident Canada geese, respectively, for the food-shelf programs. Michigan reported taking 490 birds and Minnesota 1,847. In 1997, the Service again issued Michigan and Minnesota permits authorizing the take up to 1,000 and 2,500 resident Canada geese, respectively, for the food-shelf programs.

In Region 1, the Pacific Northwest/West Coast area, the Service has primarily limited permits for the control of resident Canada geese to the addling of eggs. In 1995, the Region issued permits authorizing the take of 900 eggs in the Puget Sound Area of Washington. In 1996, this number was increased to 2,000 eggs and 200 adult birds. APHIS/WS subsequently reported taking 911 and 1,570 eggs in 1995 and 1996, respectively, and 6 geese in 1996. For 1997, the Region has again authorized the take of 2,000 eggs in the Puget Sound Area and another 500 eggs in the City of Fremont, California.

The Service realizes that APHIS/WS has limited personnel and resources to respond to requests for assistance. Likewise, as the number of complaints continue to increase, greater demand will be placed on the Service and the States to assist in damage-management programs. With the increase in complaints, the current system is becoming time-consuming, cumbersome and inefficient. The Service, with its State and other Federal partners, believe development of an alternative method of issuing permits to control problem resident Canada geese, beyond those presently employed, is needed so that agencies can provide responsible, cost-effective, and efficient assistance. The proposed special Canada goose permit provides the States that opportunity while maintaining protection of our migratory bird resources.

Proposed Special Canada Goose Permit

The Service proposes to add a new permit option available to State conservation agencies specifically for resident Canada goose control and damage management. The special permit would only be available to a State conservation or wildlife management agency responsible for migratory bird management. Under this permit, States and their designated agents could initiate resident goose damage management and control injury problems within the conditions/restrictions of the program. Those States not wishing to obtain this new permit would continue to operate under the current permitting process.

Applications for the special permit would require a detailed statement from the State estimating the size of the resident Canada goose population in the State, requesting the number of resident Canada geese, including eggs and nests, to be taken, and showing that such damage-control action will either provide for human health and safety, protect personal property, or provide compelling justification that the permit is needed to allow resolution of other conflicts between people and resident Canada geese. The permit holder (i.e., State Agency) would also be required to inform all designated agents of the permit conditions that apply to the implementation of resident Canada goose damage management.

The special resident Canada goose damage-management permit would be subject to the following conditions/restrictions:

1. Take of injurious resident Canada geese as a management tool could be utilized only after applicable non-lethal alternative means of eliminating the damage problem have been proven to be unsuccessful or not feasible.

2. No other migratory birds or any species designated under the Endangered Species Act as threatened or endangered may be affected by the action.

3. Actions under the State permit are limited to the period between March 11

and August 31. Permits will be issued annually. In California, Oregon and Washington, in areas where the threatened Aleutian Canada goose (*B. c. leucoperia*) has been present during the previous 10 years, lethal control activities are restricted to the period May 1 through August 31, inclusive. Delisting of this subspecies would result in a review of this provision.

4. Control activities must be conducted clearly as such and cannot be set up so as to be in fact a "hunt."

5. The permit cannot be used to limit or initiate management actions on Federal land within a State without concurrence of the Federal Agency with jurisdiction.

6. Canada geese killed in control programs must be properly disposed of or utilized. Canada geese killed under this permit may be donated to public museums or public scientific and educational institutions for exhibition, scientific, or educational purposes or given to charities for human consumption, or buried or incinerated. This permit does not, however, allow for Canada geese taken pursuant to this section, nor their plumage, to be sold, offered for sale, bartered, or shipped for purpose of sale or barter.

7. Methods of take are at the discretion of the permittee responsible for the control action. Methods may include, but are not limited to, firearms, alpha-chloralose, traps, egg and nest manipulation and other control techniques that are consistent with accepted wildlife-damage management programs.

8. States may designate agents who must operate under the conditions of the permit.

9. Any employee/designated agent authorized by the State to carry out control measures under the special permit must retain in their possession a copy of the State's permit, and designation, in the case of an agent, while carrying out any control activity.

10. Any State agency, when exercising the privileges of this permit, must keep records of all activities, including those of designated agents, carried out under the authority of the special permit. An annual report detailing activities conducted under the permit will be required by the Service prior to any permit renewal.

11. The Service will annually review reports submitted by permit holders and will periodically assess the overall impact of this permit program to ensure compatibility with long-term conservation of this resource.

12. Nothing in the permit should be construed to authorize the killing of Canada geese contrary to any State law or regulation or on any Federal land without written authorization by the appropriate management authority, and none of the privileges granted under the permit shall be exercised without any State permit that may be required for such activities.

13. The Service reserves the authority to immediately suspend or revoke any permit if it finds that the terms and conditions set forth have not been adhered to as specified in 50 CFR 13.27 and 13.28.

Currently, nearly all permits for resident Canada goose control activities are handled, evaluated, and issued on a case-by-case specific basis. However, with the increasing numbers of requests for permits, the permit-issuance process has become time-consuming and lengthy in some instances. Thus, the Service believes that it is likely that some injury to people and property from resident Canada geese are tolerated rather than go through the lengthy permit-issuance process. With the proposed special resident-goose damage-management permit, the Service expects that the use of resident Canada goose control and management activities, particularly lethal control methods such as egg/nest destruction, would increase. Lethal control methods associated with hazing techniques of adult birds would also be expected to initially increase. However, following this initial increase, continual use of hazing methods should become more effective and may result in fewer overall lethal control activities. Such lethal and non-lethal activities would be expected to decrease the number of injurious resident Canada geese in localized areas, especially urban/suburban areas. Regionally, little overall impact on the resident Canada goose population would be expected because many goose populations have demonstrated the ability to sustain harvest rates in excess of 20 percent. The Service anticipates the magnitude of any lethal control activities will be well below 20 percent of any State's resident Canada goose breeding population.

Little impact on sport hunting would be expected under the proposed special permit. Resident Canada goose populations in areas that are targeted for management/control activities are generally those that provide little or no sport hunting opportunities due to restricted access within urban/suburban areas where hunting is either precluded or severely restricted. Areas and resident Canada goose populations already open to sport hunting would be expected to remain open, as special Canada goose season frameworks and guidelines would not change. However, due to the increased availability of control measures, there could be the removal of some open hunting areas due to public use/safety considerations. Further, some potential hunting areas under consideration as open hunting areas might lose some justification and basis for opening hunting.

The Service also expects that this approach would result in more aggressive resident Canada goose-control activities. By allowing injurious resident Canada goose problems to be dealt with on the State/local level, instead of the Service's Regional level, it is expected that control activities would be more responsive and timely to the problem(s) than is currently the case. Consequently, it is expected that with reduced injurious populations and more effective hazing programs, fewer complaints would be likely to occur and less resident Canada goose damage would be likely.

With State fish and wildlife agencies responding to individual resident Canada goose problems within their respective jurisdictions, Service administrative responsibilities for each individual control activity that currently necessitate the determination and/or issuance of a permit would be expected to decrease significantly. Currently, the Service, in most instances, must decide on a case-by-case basis whether a permit should be issued. This new permit would greatly lessen the number of these permits.

Summary of Comments

On September 3, 1996, the Service issued in the **Federal Register** (61 FR 46431) a notice of availability of a Draft Environmental Assessment (DEA) on Permits for Control of Injurious Canada Geese and Request for Comments on Potential Regulations. The notice advised the public that a DEA had been prepared and was available for public comment. The notice also announced the Service's intent to consider regulatory changes to the process for issuance of permits to control injurious resident Canada geese. The Service subsequently extended the public comment period on November 12, 1996 (61 FR 58084).

As a result of this invitation for public comment, the Service received 101 comments including two from Federal agencies, 28 from State wildlife agencies, 24 from private organizations and 47 from private citizens. Comments included a wide range of topics; however, several patterns emerged that indicated key points of concern.

To summarize, the August 1996 DEA offered the following three permit alternatives: first, to continue the

existing permit procedure; second, to provide a special Canada goose permit to APHIS/WS and State wildlife agencies with the added authority of allowing subpermits to be issued by APHIS/WS and the States to others; and thirdly, to develop a more restrictive permit procedure. The DEA identified the second option as the preferred alternative, describing a procedure for issuing special resident Canada goose permits and providing the additional option of subpermitting resident Canada goose damage management activities to designated agents. After consideration of the comments received, the Service has revised the preferred alternative as described below in the discussion of comments. This change will provide the Service with more direct control but does not alter the conclusions or analyses displayed in the EA.

Many commenters expressed support for "cleaning up" the process and making it more responsive to the needs of the public. However, some comments challenged the need for any type of resident Canada goose damage-management activities. For purposes of this proposed rule, the following review combines comments into general categories. The issues and the Service response to each are summarized below:

Issue 1: Several commenters expressed concern that the Service did not have the authority under the Migratory Bird Treaty Act (Act) and subsequent regulations to allow non-Service entities (APHIS/WS, States) to issue permits. This theme was repeated throughout and many saw this as an attempt by the Service to abrogate their goose-management responsibility.

Service Response: With regard to the issues raised by these comments, the Service has decided to utilize a process whereby permits would only be issued to State conservation or wildlife management agencies. The Service proposes a system whereby State employees or designated agents may carry out resident Canada goose damage management and control injurious problems within the conditions/restrictions of the permit program.

Issue 2: Several comments suggested that the special permit be replaced by a depredation order, arguing that this approach would be a more cost-effective/efficient means to manage resident Canada Geese.

Service Response: The Service has included this alternative in the revised EA. However, while the Service agrees that depredation orders in other circumstances have proven to be valuable tools in wildlife damage management, the Service believes that management of resident Canada geese deserves special attention and consideration which can best be provided by the proposed special Canada goose permit. The Service believes that a special Canada goose permit will provide the management flexibility needed to address this serious problem and at the same time simplify the procedures needed to administer this program. A special Canada goose permit will satisfy the need for an efficient/cost-effective program while allowing the Service to maintain management control.

Issue 3: Several comments challenged the notion that there are in fact "injurious" Canada geese and that the entire concept of "resident" Canada geese is invalid.

Service Response: The Service strongly disagrees with both these assertions and has included data in the revised EA that demonstrate the impact of resident Canada goose populations on personal property, agricultural commodities, and health and human safety. In addition, data are available that clearly point out that Canada goose populations do, in fact, nest in parts of the conterminous United States during the spring and summer and that these birds are causing injury to people and property. These data are presented in the revised EA. Furthermore, the Service is not redefining what is or is not a migratory bird under the Treaty. We are using the term "resident" to identify those commonly injurious Canada geese that will be the subject of control activities within the scope of the Treaty.

Issue 4: A number of comments included in the August 1996 DEA addressed the procedures that dealt with the implementation of a resident Canada goose damage-management program. These comments expressed concern that the methods of take were too restrictive, that no mention was made of egg and nest management, that the time period associated with damage control was too restrictive, that the 25 percent population figure was unrealistic and virtually impossible to ascertain, and the directions for disposition of geese were incomplete.

Service Response: The Service carefully considered all these comments and has made modifications in the proposed regulation to address the concerns expressed. Information specific to the applicant State's population of resident geese and the numbers expected to be taken annually will now be required in the application. The Service will utilize this information and other pertinent biological and population-specific data as the basis for determining the premitted take. The Service made major changes to expand the methods of take to include the use of alpha-chloralose when warranted and to allow the on-site biologist more flexibility. The Service also made provisions to include egg-addling and nest destruction as viable damage-management tools. The Service agrees that the 25 percent population figure on which to determine allowable take is nebulous and does not provide a legitimate guideline for identifying a population level.

Issue 5: A large number of commenters indicated that they were philosophically opposed to the killing of Canada geese and any other "inhumane" treatments of these birds. They expressed preferences for non-lethal solutions to all resident Canada goose/human conflicts and pointed out that people need to be more tolerant of wildlife. Some commenters also opposed the removal of geese on the grounds that these management actions were only short-term solutions.

Service Response: The Service is also opposed to the inhumane treatment of any birds, but does not believe the capture and relocation, or processing for human consumption, of resident Canada geese from human conflict areas is by definition "inhumane." Over the past few years, thousands of problem resident Canada geese have been rounded up by wildlife managers and relocated to unoccupied sites. However, few such sites remain. Therefore, the Service believes that humane lethal control of some geese is an appropriate part of an integrated resident Canada goose damage/control management program.

The Service also prefers non-lethal control activities, such as habitat modification, as the first means of eliminating resident Canada goose conflict/damage problems and has specified language to this effect in the proposed regulations. However, habitat modification and other harassment tactics do not always work satisfactorily and lethal methods are sometimes necessary to increase the effectiveness of non-lethal management methods.

There are many situations where resident Canada geese have created injurious situations and damage problems that few people would accept if they had to directly deal with the problem situation. The Service continues to encourage state wildlife management agencies to work with not only the local citizens impacted by the management actions but all citizens.

While it is unlikely that all resident Canada goose/human conflicts can be eliminated in all urban settings, implementation of broad-scale resident Canada goose management activities may result in an overall reduced need for other management actions, such as large-scale goose round-ups and lethal control.

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NEPA Considerations

The Service has prepared an Environmental Assessment (EA), as defined under the authority of the National Environmental Policy Act of 1969, in connection with this proposed regulation. The EA is available for review at the above address.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act (ESA), as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" (and) shall "ensure that any action authorized, funded or carried out ... is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of (critical) habitat ..." Consequently, the Service initiated Section 7 consultation under the ESA for this proposed rulemaking. Completed results of the Service's consultation under Section 7 of the ESA may be inspected by the public in, and will be available to the public from, the Office of Migratory Bird Management at the above address.

Paperwork Reduction Act and Information Collection

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Service is submitting the necessary paperwork to OMB for approval to collect this information. The Service will not collect any information until approved by OMB and a final regulation is published. Additionally, no person may be required to respond to a collection of information unless it displays a currently valid OMB number. The proposed information collection requirement will be used to administer this program and, particularly in the issuance and monitoring of these special Canada goose permits. The information requested will be required to obtain a special Canada goose permit, and to determine if the applicant meets all the permit issuance criteria, and to protect migratory birds.

The applicants will be State wildlife agencies responsible for migratory bird management that wish to initiate a resident Canada goose control and damage management program within the guidelines provided by the Service. The annual number of applicants is estimated to be less than 45. The public reporting burden for this collection of information is estimated to average 8 hours per response, including the time for reviewing instructions, gathering and maintaining data needed, and completing and reviewing the collection of information, yielding an annual burden of 360 hours.

Comments are invited from the public on: (1) Whether the collection of information is necessary for the proper performance of the function of the Service, including whether the information will have practical utility; (2) The accuracy of the Service's burden of the collection of information, including the validity of the methodology and assumptions used; (3) The quality, utility, and clarity of the information to be collected; and (4) How to minimize the burden of the collection of information on those who are to respond, including the use of electronic, mechanical, or other forms of information technology. Comments and suggestions on the requirement should be sent directly to the Office of Information and Regulatory Affairs; Office of Management and Budget; Attention: Interior Desk Officer, Washington, DC 20503; and a copy of the comments should be sent to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, ms 224—ARLSQ, 1849 C Street NW., Washington, DC 20204.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq*) requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities. The Service has determined that this proposed rulemaking would not have a significant effect on a substantial number of small entities, which include small businesses, organizations and small governmental jurisdiction. This proposed rule will only effect State wildlife agencies responsible for migratory bird management that wish to initiate a resident Canada goose control and damage management program within the guidelines provided by the Service. The Service anticipates that the annual number of applicants will be less than

45. Therefore, this proposed rule will have minimal effect on small entities.

Executive Order 12866

The Service has determined that this proposed rule is not significant under the definition in Executive Order 12866. Therefore, this proposed rule was not subject to review by the Office of Management and Budget.

Unfunded Mandates

The Service has determined and certifies in compliance with the requirements of the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this proposed rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Public Comment Invited

The policy of the Department of the Interior is, whenever practical, to afford the public the opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding this proposal to the location identified in the address section above. Comments must be received on or before June 1, 1998. Following review and consideration of the comments, the Service will issue a final rule on these proposed amendments.

The Service is also requesting comments on the proposed information collection requirements. Comments should be submitted to the Service's Information Collection Clearance Officer at the U.S. Fish and Wildlife Service, 1849 C Street, NW., ms 224—ARLSQ, Washington, D.C. 20240; or by calling 703/358–1943.

List of Subjects in 50 CFR Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 21 of subchapter B, chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 21—[AMENDED]

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

AUTHORITY: Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712(2)).

2. Amend § 21.3 by adding alphabetically a definition for "Resident Canada geese."

§ 21.3 Definitions.

* * * * *

Resident Canada geese means Canada geese that nest and reside within the conterminous United States in the months of June, July, and August.

3. Add a new § 21.26 to read as follows:

* * * * *

§ 21.26. Special Canada goose permit.

The Service may issue to State wildlife agencies a special permit authorizing resident Canada goose damage management actions, when issuance of such a permit will contribute to human health and safety, or will protect personal property, or when presented with compelling justification in the permit application that issuance of the permit will allow resolution or prevention of injury to people or property. The privileges granted under this section are intended to relieve or prevent injurious situations only, and shall not be construed by the permittee as opening, reopening, or extending any hunting season contrary to regulations promulgated pursuant to Section 3 of the Migratory Bird Treaty Act.

(a) *Permit requirement.* The Director may, upon receipt of an application from a State wildlife agency, and in accordance with the criteria of this section, issue a permit to any such agency to undertake various methods of control, including lethal control, of injurious resident Canada geese in accordance with the above requirements. Only employees or designated agents of a permitted State wildlife agency may take injurious resident Canada geese in accordance with conditions specified in the permit, conditions set forth in 50 CFR part 13, and as specified in (c) below.

(b) *Application procedures.* A State wildlife agency must submit an application to the appropriate Regional Director (see section 13.11(b) of this subchapter). Each such application must contain the general information and certification required by section 13.12(a) of this subchapter plus the following information:

(1) A detailed statement which makes a sufficient showing that the control action will provide for human health and safety, or will protect personal property, or provides other compelling justification that the permit is needed to allow resolution of other injury to people or property.

(2) An estimate of the size of the resident Canada goose population in the State and the annual number of resident Canada geese, including eggs and nests, for which authorization to take is requested.

(3) A statement that indicates that the permit holder (State Agency) will inform and brief all employees/designated agents of the requirements of these regulations and permit conditions that apply to the implementation of resident Canada goose control measures.

(c) *Additional permit conditions.* In addition to the general conditions set forth in part 13 of this subchapter B and elsewhere in this section and unless otherwise specifically authorized on the permit, the special resident Canada goose permits shall be subject to the following conditions:

(1) *Limitations and methods of take.*

(i) Take of resident Canada geese as a management tool pursuant to this section may be utilized only after applicable non-lethal alternative means of eliminating the damage problem have been proven to be unsuccessful or are not feasible and may not exceed the number authorized by the permit.

(ii) Method of take for the control of resident Canada geese is at the discretion of the permittee responsible for the action. Methods may include, but are not limited to, firearms, alpha-chloralose, traps, egg and nest manipulation and other damage control techniques that are consistent with accepted wildlife damage-management programs.

(2) *Time frame.* Permittees and their employees and agents may take only injurious resident Canada geese pursuant to this section between March 11 and August 31 in any year. In California, Oregon and Washington, in areas where the threatened Aleutian Canada goose (*B. c. leucoperia*) has been present during the previous 10 years, lethal control activities are restricted to the period May 1 through August 31, inclusive.

(3) *Disposal and utilization.* The permittee and its employees and agents may possess, transport, and otherwise dispose of by donation to public museums or public institutions for scientific or educational purposes, injurious resident Canada geese killed pursuant to this section. Additionally, geese taken under authority of a permit issued under this section may be processed for human consumption and distributed free of charge to charitable organizations or buried or incinerated. A permit issued under this section shall not allow for resident Canada geese

taken pursuant to this section, nor their plumage or eggs, to be sold, offered for sale, bartered, or shipped for the purpose of sale or barter.

(4) *State law.* Nothing in this section shall be construed to authorize the killing of injurious resident Canada geese contrary to any State law or regulation, nor on any Federal land without specific authorization by the agency responsible for the management of these lands. None of the privileges granted under this section shall be exercised unless the person possesses any permits as may be required for such activities by any State or by any Federal land manager.

(5) *Inspection.* Any State employee/designated agent authorized to carry out control measures under a permit granted under this section shall retain in their possession a copy of the permit and designation while carrying out any activity under the permit. The permit holder shall require the property owner or occupant on whose premises activities are carried out to allow, at all reasonable times, including during actual operations, any Service special agent, refuge officer or State wildlife or deputy wildlife agent, warden, protector, or other wildlife law enforcement officer free and unrestricted access over the premises on which such operations have been or are being conducted, and shall furnish promptly to such officer whatever information may be required concerning said operations.

(6) *Reporting.* Any State employee or designated agents exercising the privileges granted by this section shall keep records of all activities carried out under the authority of this special-purpose permit, including the number of Canada geese killed pursuant to this section and their disposition. The State must submit an annual report detailing activities conducted under this section, including the time, numbers and location of birds, eggs, and nests taken and non-lethal techniques utilized on or before December 31 of each year. The annual report shall be provided to the appropriate Assistant Regional Director - Refuges and Wildlife (see section 10.22 of this chapter).

(7) *Limitations.* The following limitations shall apply:

(i) Nothing in this section applies to any Federal land within a State's boundaries without written permission of the Federal Agency with jurisdiction.

(ii) No action under any special permit issued under this section may be undertaken if other migratory birds or species designated as endangered or threatened under the authority of the Endangered Species Act are or will be affected by the control activity.

(iii) Permits will only be issued to State wildlife agencies in the conterminous United States.

(iv) States may designate agents who must operate under the conditions of the permit.

(v) Term of permit—a special Canada goose permit issued or renewed under this section expires on the date designated on the face of the permit unless amended or revoked, but the term of the permit shall not exceed three (3) years form the date of issuance or renewal.

(vi) Permit revocation—the Service reserves the right to suspend or revoke any permit, as specified in 50 CFR 13.27 and 13.28.

* * * * *

Dated: March 4, 1998.

Donald Barry,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 98–8151 Filed 3–30–98; 8:45 am]

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federal register

Tuesday
March 31, 1998

Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Part 25

Fatigue Evaluation of Structure; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. 27358; Amdt. No. 25–96]

RIN 2120–AD42

Fatigue Evaluation of Structure

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the fatigue requirements for damage-tolerant structure on transport category airplanes to require a demonstration using sufficient full-scale fatigue test evidence that widespread multiple-site damage will not occur within the design service goal of the airplane; and inspection thresholds for certain types of structure based on crack growth from likely initial defects. This change is needed to ensure the continued airworthiness of structures designed to the current damage tolerance requirements, and to ensure that should serious fatigue damage occur within the design service goal of the airplane, the remaining structure can withstand loads that are likely to occur, without failure, until the damage is detected and repaired.

EFFECTIVE DATE: April 30, 1998.

FOR FURTHER INFORMATION CONTACT: Richard Yarges, FAA, Airframe and Airworthiness Branch (ANM–115), Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton Washington 98055–4056; telephone (425) 227–2143, facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Availability of Final Rules

This document may be downloaded from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: 703–321–3339), the Federal Register's electronic bulletin board service (telephone: 202–512–1661), or the FAA's Aviation rulemaking Advisory Committee Bulletin board service (telephone: 800–322–2722 or 202–267–5948).

Internet users may access the FAA web page at http://www.faa.gov or the Federal Register's web page at http://www.access.gop.gov/su__—docs to download recently published rulemaking documents.

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591 or by calling 202–267–9680. Communications must reference the amendment or docket number of this final rule.

Persons interested in being placed on the mailing list for future Notices of Proposed Rulemaking and Final Rules should request a copy of Advisory Circular (AC) No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to report inquiries from small entities concerning information on, and advice about, compliance with statutes and regulations within the FAA's jurisdiction, including interpretation and application of the law to specific sets of facts supplied by a small entity.

If you are a small entity and have a question, contact your local FAA official. If you do not know how to contact your local FAA official, you may contact Charlene Brown, Program Analyst Staff, Office of rulemaking, ARM–27, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 1–888–551–1594. Internet users can find additional information on SBREFA in the "Quick Jump" section of the FAA's web page at http://www.faa.gov and may send electronic inquiries to the following Internet address: 9–AWA–SBREFA@faa.dot.gov.

Background

This amendment is based on Notice of Proposed Rulemaking (NPRM) 93–9, which was published in the **Federal Register** on July 19, 1993 (58 FR 38642). The notice was issued because of the need: (1) To ensure that widespread, multiple site fatigue cracking will not occur during the period of service for which the airplane is designed to operate; and (2) to prescribe criteria for establishing the thresholds for damage-tolerance based inspections.

In addition three minor changes requested by both U.S. and European manufacturers of transport category airplanes, aimed at harmonizing the U.S. and European certification requirements, were also proposed in this notice.

Section 25.571 of 14 CFR part 25 requires that applicants for an airplane type certificate address the technical issue of structural fatigue (other than sonic fatigue) in one of two ways: (1) A damage-tolerance evaluation of the structure; or (2) a safe-life fatigue evaluation of the structure.

Of the two methods of evaluation, the first is preferred and the second may only be used if the applicant establishes that it is impractical to use a damage-tolerance approach. Even so, several in-service incidents and accidents resulting from structural fatigue failures have demonstrated the need to improve the damage-tolerance evaluation requirements of part 25.

A damage-tolerance evaluation consists of engineering calculations and tests aimed at establishing what kind of inspections are needed, and how often they need to be repeated on an airplane's structure while in service. The inspection frequency is set to assure that, should serious fatigue damage begin to develop before the design service goal of the airplane is reached, it will be found and repaired before it grows to proportions that represent a hazard to the airplane.

This methodology has proven to be successful in many applications and, in fact, is part of the reason for the excellent overall safety record that has been achieved in the U.S. Nevertheless, there are two issues that have been debated within the technical community that are not clearly dealt with by the damage-tolerance methodology:

1. When in an airplane's life should the first inspection in the inspection cycle be conducted (the threshold inspection)?

2. When in an airplane's life can safety no longer be effectively maintained by the damage tolerance inspection program prescribed at the time of certification of the airplane type (the onset of widespread cracking)?

These are complex issues that are discussed at some length in Notice 93–9. This rulemaking attempts to incorporate into part 25 some technical judgments on these issues that offer a high degree of safety to the flying public, without overburdening the air transportation system with unnecessary inspections or tests. To this end, the FAA proposed that § 25.571 of the FAR, "Damage-tolerance and fatigue evaluation of structure," be revised:

1. To require sufficient full-scale fatigue testing to ensure that widespread, multiple-site fatigue damage does not occur within the design service goal of the airplane; and

2. To require that thresholds for inspections be based on anaylses and tests considering the damage-tolerance concept, manufacturing quality, and susceptibility to in-service damage. (The idea of basing the time of the threshold inspection on the time it takes a crack to grow from a manufacturing defect that is likely to escape manufacturing

quality control inspection to the time the crack represents a hazard to the airplane is known as the "rogue flaw" concept for establishing inspection thresholds.)

A revision to companion draft Advisory Circular (AC) 25.571–1A was prepared for the proposed rulemaking, to provide guidance on means that the FAA would accept as showing compliance with the regulation. As with all advisory circulars, this draft was intended only to provide guidance on acceptable means of compliance, without eliminating the flexibility for future applicants to identify other means of compliance with the proposed rule. That draft revision (AC 25.571–1X) was not available at the time that Notice 93–9 was issued and was subsequently made available to the public for comment on October 19, 1993 (58 FR 53987). As a result, the FAA has received two sets of comments from the public, one in response to the draft AC and one in response to the proposed rule. Some of the earlier comments were made without the benefit of the commenter knowing the contents of the draft AC. Because of this, the FAA has considered both sets of comments in preparing the final rule contained herein, and in revising the AC. The announcement of the FAA's issuance of the revised AC will be published in the **Federal Register** once it is available to the public.

Interested persons have been given an opportunity to participate in this rulemaking, and due consideration has been given to all matters presented. Comments received in response to Notice 93–9 are discussed below.

Discussion of Comments

The FAA received many comments in response to Notice 93–9, most of which state support for the added requirement for full-scale fatigue testing of new airplane types. Commenters included airplane manufacturers, the National Transportation Safety Board, the Airline Pilots Association, the Aerospace Industries Association, the General Aviation Manufacturers Association, airplane operators, and others. Only a few commenters state that full-scale fatigue testing should not be required.

One commenter states that full-scale fatigue tests should not be mandated because these tests do not adequately account for actual conditions experienced in service and therefore cannot accurately predict in-service problems. The commenter further states that such tests have never predicted widespread fatigue damage that later became a problem in the fleet. The FAA does not concur with this comment. It is widely recognized in the aviation engineering community that "scatter factors" need to be applied to fatigue test results, because such tests cannot account for the individual construction variations and the individual service experience of each airplane. Nevertheless, important results have been, and will continue to be, obtained from such tests, including the prediction of widespread fatigue damage. The FAA, airplane manufacturers, and others have come to recognize that full-scale fatigue testing provides an indispensable, although admittedly incomplete, source of information about what to expect in service from airframe structures. As was pointed out by another commenter who favors the new requirement, full-scale fatigue test evidence must be coupled with prudent exploratory fleet inspections to ensure continued airworthiness.

The FAA received several comments about the full-scale fatigue testing of derivative or modified type designs. These commenters point out that full-scale fatigue test data generated during the original certification of an airplane type, and other data, can sometimes be used to determine when widespread multiple-site fatigue damage will, or will not, occur on the modified designs. These commenters state that additional full-scale fatigue testing would not be necessary in all cases. The FAA concurs with these comments. The working of § 25.571(b) in the final rule has been changed along the lines of one comment that had been jointly developed by the Aerospace Industries Association, the Association Europeenne des Constructeurs de Materiel Aerospatial, and the FAA's Technical Oversight Group for Aging Airplanes. This change uses the words "sufficient full-scale fatigue test evidence" in place of "sufficient full-scale testing."

The same commenters also state that guidance should be provided in the form of an advisory circular (AC) on the subject of when and how much fatigue testing would be necessary for modification and derivative certification programs. The FAA concurs. In fact, draft AC 25.571–1X does contain some guidance. Based on comments provided to the docket for this rulemaking and in response to the draft AC, the FAA has revised and expanded the guidance regarding the relevant factors in determining whether, and to what extent, fatigue testing may be necessary for derivatives and modifications of type designs. Generally, these factors relate to the applicability and reliability of previously developed test evidence for determining that the airplane will remain free of widespread fatigue damage until its design service goal is reached.

Another commenter points out that two lifetimes of fatigue testing cannot "ensure" that widespread multiple-site damage will not occur within the design lifetime of an airplane (since no fatigue test can duplicate the exact configuration and operating history of each airplane). The commenter states that the requirement of the rule should be to ensure hat widespread multiple-site damage will not "normally" occur. The FAA agrees that two lifetimes of fatigue testing cannot ensure that widespread fatigue damage will not occur within the design lifetime of an airplane; however, guidance on this statistical fact is best addressed in the AC. Therefore, as a result of this comment, the FAA has revised the AC in this regard.

The FAA also received comments that full-scale fatigue testing represents a prohibitive expense for small entities that perform modifications of type designs produced by others and would put them out of business. These commenters note that the FAA has certificated airplane modifications for damage tolerance in the past, relying on analytical methods that are based upon test data and using conservative assumptions, but without full-scale fatigue testing. They state that they are small entities that the FAA did not consider.

As discussed previously, the objective of this rulemaking is to ensure that transport category airplanes will remain free of widespread fatigue damage within their design service goals. For reasons discussed below, the FAA considers that most modifications can be found to meet this objective without additional full-scale testing. However, it is true that in some cases involving extensive structural modification (such as a cargo conversion project) it may be necessary for the FAA to require a modifier to conduct full-scale fatigue testing to demonstrate freedom from widespread fatigue damage within the design service goal of an airplane type. The FAA acknowledges that such testing may be expensive. In these cases, the FAA has determined that the safety interests of the flying public must take precedence over the economic interests of airplane modifiers. This final rule does not preclude modifiers from conducting such projects, but, if they cannot otherwise meet the objectives of this rule, they will need to consider the costs of full-scale fatigue testing along with the other compliance costs when they evaluate the economic viability of a particular modification project.

The FAA does not, however, concur that the overall economic impact of this final rule on these small entities is significant. First, as discussed in the preceding paragraphs, the full-scale fatigue testing requirement of the proposed rule has been revised such that it is not always necessary to conduct one for a modification project, and most modifications would not necessitate one. The companion AC to the rule has been expanded to provide guidance on acceptable means of showing compliance for modifications. This guidance discusses how small, simple design changes, using a design comparable to the original structure, could be analytically determined to be equivalent to the original structure in their propensity for widespread fatigue damage (e.g., modification of the fuselage structure for mounting an antenna using a design that is similar to the original airplane in that area). In addition, the amendment will not impose any additional costs on these small entities on projects for which they have already applied for supplemental type certificates; nor will it impose any additional costs on projects for which they would apply for supplemental type certificates in the near future, since the designs that would be affected by this amendment would probably not enter service until at least 5 to 10 years after its adoption. This is because, in general, in accordance with § 21.101 of 14 CFR part 21, modifiers of type designs need only comply with the regulations that were used to certificate the original model.

One other commenter states that the rule could be interpreted to require full-scale fatigue testing of modifications specified in service bulletins, which would actually impede safety by delaying the issuance of needed service bulletins. The FAA does not concur with this comment. Service bulletin modifications are in the same general category as other modifications, and most would not necessitate full-scale fatigue testing. Further, if circumstances necessitate airworthiness directive (AD) action to mandate a modification specified in a manufacturer's service bulletin before fatigue testing of the modification is complete, there is nothing in the rule that prevents the FAA from doing so.

One commenter also suggested replacing the sentence in current § 25.571(b) that states, "Damage at multiple sites due to prior fatigue exposure must also be included where the design is such that this type of damage is expected to occur," with the following sentence: "Special consideration for WFD must be included where the design is such that this type of damage could occur." Although the commenter provided no explanation of this suggestion, the FAA considers that it has merit. The FAA concurs that requiring "special consideration for WFD" emphasizes that, in addition to demonstrating that WFD will not occur within the design service goal, the applicant for type certificate must also consider ways to prevent or control the effects of WFD that may occur beyond the design service goal. This is necessary to fulfill the objective of § 25.571(a) to avoid catastrophic failure due to fatigue throughout the operational life of the airplane.

Many commenters object to basing all inspection thresholds on the so-called "rogue flaw" concept, as would be required by the proposed amendment to § 25.571(a)(3). These commenters state that indiscriminately applying this approach to all airplane structures would result in an exorbitant increase in airplane inspection costs, because it would necessitate detailed inspections earlier in an airplane's life and would not significantly enhance safety. Although most of these commenters aknowledge the necessity of using the "rogue flaw" concept to establish inspection thresholds for certain types of airframe design details, it was argued that the current industry practice for establishing the inspection thresholds (consisting of predicting the onset of cracking from fatigue testing and service experience) is adequate for most commonly used airframe designs. Some commenters endorsed a proposal that had previously been jointly submitted by the Aerospace Industries Association, the Association Europeene des Constructeurs De Material Aerospatial (AECMA), and the Technical Oversight Group for Aging Airplanes (hereinafter referred to as the AIA/AECMA/TOGAA comment). This group proposed that rogue flaw based inspection thresholds be limited to single load path structure, or other structure where it cannot be demonstrated that load path failure, partial failure, or crack arrest will be detected and repaired prior to failure of the remaining structure. The FAA concurs with these comments. These criteria have been incorporated into the final rule, and will ensure that the rogue flaw method of establishing inspection thresholds is not applied indiscriminately, but will be applied where necessary.

Following close of the comment period, and after the FAA had reviewed these comments and decided to incorporate the language proposed by AIA/AECMA/TOGAA into the final rule, Boeing, which had participated in the development of the AIA/AECMA/TOGAA comment, became aware of the FAA's decision. (This resulted from a series of communications between Boeing and the FAA regarding an ongoing program to determine the appropriate criteria for establishing fatigue inspection thresholds for the Model 757 and 767 airplanes; the communications were otherwise unrelated to this rulemaking.) At Boeing's request, AIA filed an additional comment, objecting to inclusion of this language in the final rule, and recommending instead that it be incorporated into AC 25.571–1X. AIA stated that the FAA's decision was in conflict with the AIA/AECMA/TOGAA comments, which had been based on the commenters' conclusion that the general requirement of § 25.571(a)(3) that inspections be established "as necessary to prevent catastrophic failure" was sufficient to ensure that rogue flaws would be considered appropriately, as described in their proposed revision to the AC.

Although the FAA concurs with the commenter's position that rogue flaws in certain types of structure must be considered, the FAA does not concur that revising the AC alone, and relying on the general language of § 25.571(a)(3), is sufficient to ensure adequate consideration. Advisory circulars are not mandatory and explicitly describe "one means, but not the only means," of complying with the relevant regulations. Therefore, because the FAA considers it essential that rogue flaws be considered, the final rule has been amended, as described previously.

One commenter states that the sentence added to § 25.571(a)(3) should be revised to state that thresholds for inspection should also be based on service experience and fatigue testing, followed by a "tear-down" examination of the test article. Although the FAA agrees that there may be important factors, it is more appropriate to discuss them as acceptable means of compliance in the companion advisory circular, and not in the rule itself. This will provide maximum flexibility for future applicants to identify means of fulfilling the rule's objectives.

One manufacturer asks for confirmation that its particular method of establishing thresholds for inspection be allowed under the current rulemaking. The FAA considers it inappropriate, in the context of this rulemaking, to evaluate any one manufacturer's particular methodology. Such an evaluation would normally be

accomplished during the certification process for an airplane type.

One commenter states that the proposed rule implies that simulated manufacturing defects must be inflicted on the full-scale fatigue test from the start. The FAA disagrees. As proposed, the purpose of the full-scale fatigue test requirement is to establish that the structure will be substantially free from widespread fatigue damage at least until its design service goal is reached. In contrast, the purpose for the consideration of manufacturing defects is to establish thresholds for inspection (or other procedures) for certain types of structure. Although the latter could involve full-scale fatigue testing in which the test article is inflicted with simulated manufacturing defects, and, in fact, the FAA's certification evaluation of a model type design may reveal that this is the necessary way of establishing a threshold in exceptional cases, it is not the FAA's intent to require this in general.

One commenter states that it is not normally possible to complete a full-scale fatigue test prior to issuance of a type certificate. The commenter recommends that AC 25.571–1A be revised to allow completion of the full-scale fatigue test after type certification. The FAA agrees with this comment. As noted by the commenter, taken literally, the proposed rule would have required that the testing be completed prior to issuance of a type certificate. However, as reflected in the preamble of the NPRM, the FAA recognized that this may not be realistic and would have allowed completion of testing after issuance of the type certificate. In light of the comment, the FAA has reconsidered this issue and determined that the rule must be revised to address this potential conflict. As revised, the rule allows testing to be completed after issuance of the type certificate, provided:

1. Before issuance of the type certificate the Administrator has approved a plan for completing the required tests, and

2. The Type Certificate contains an airworthiness limitation in the airworthiness limitations section of the instructions for continued airworthiness required by § 25.1529 that no airplane may be operated beyond a number of cycles equal to one-half the number of cycles accumulated on the fatigue test article, until such testing is completed.

The FAA considers that the first condition is necessary to ensure that, at the time of type certification, the TC holder has at least identified an acceptable method of complying with this rule's requirements. The FAA considers that the second condition is necessary to ensure that, following type certification, the testing proceeds so that the affected airplanes receive the safety benefits that this rule is intended to provide. Although these conditions were not specified in the NPRM, the final rule actually provides relief from the literal requirement of the NPRM to complete testing prior to issuance of a TC. It is also a logical outgrowth of the proposal in that it resolves the conflict between the proposed rule language and the preamble discussion in a way that ensures that the rule's objectives are fulfilled.

Several commenters recommend that the words "within the design lifetime of the airplane," used in the sentence added to § 25.571(b), be changed to "within the design service goal of the airplane." It was pointed out that it is difficult for manufacturers to know at the time an airplane is first certificated exactly how long it will be used. The expected service period is set as a goal for fatigue design at that time; therefore, the words "design service goal" are more appropriate. Furthermore, it was pointed out that the term "lifetime" implies a fixed service period for an airplane, after which it would be retired. These commenters state that this does not represent the intent of the proposed rule. The FAA concurs with this comment, and the words "design service goal" have been substituted for "design lifetime."

Several commenters state that the proposed requirements for operating past the original design service goal are not clear. They note that an industry team, the Structural Audit Evaluation Task Group (SAETG) of the Airworthiness Assurance Working Group (AAWG), conducted an extensive activity to determine possible actions for airplane models that reach that point. (The SAETG and AAWG are subgroups of the Aviation Rulemaking Advisory Committee (ARAC), which submits rulemaking recommendations to the FAA). The commenters state that the recommendations of the SAETG should be addressed concurrently with the present change to § 25.571. The FAA does not agree with this comment. Although the FAA is addressing the recommendations of the SAETG at this time, that action covers only 11 specific models of airplanes whose fleet leaders have already exceeded their design service goal. These recommendations consist of suggested actions on how to implement the guidance material they generated. Although the FAA agrees that additional guidance may be appropriate for airplanes affected by the present rulemaking on the subject considered by the SAETG, the urgency of that action is not great because the design service goal of these airplanes would not be reached for at least another 20 years. Furthermore, one of the SAETG recommendations is that their guidance should not be extended beyond the 11 specific models it covers until it has actually been tried. To attempt to establish guidance for airplanes affected by the present rulemaking based on the SAETG recommendations at this time would only serve to delay the issuance of the present rulemaking. Therefore, the most expeditious manner of obtaining the benefits of the proposed refinement for the damage-tolerance evaluations is to adopt the present rule change and to continue discussions with the ARAC and others on how best to address the SAETG recommendations.

One commenter states support for the new requirement for full-scale testing, provided the companion Advisory Circular (AC 25.571–1X) follows the Certification Maintenance Requirements (CMR) guidelines (AC 25–19 dated 11/28/94). The CMR guidelines referred to by this commenter are guidelines on how inspection programs for airplane systems should be established at the time of certification. The FAA does not agree with this comment. There are presently fundamental differences in methodology between the way inspection programs are established for airplane systems and airplane structures. Attempts at resolving those differences have not been fruitful in the past, and there is no guarantee that they will be any more fruitful in the future. Therefore, evaluation of the appropriateness of using the CMR guidelines to establish structural inspection programs as part of the present rulemaking would result in a delay that the FAA considers unacceptable.

Several commenters state that the rule should specify the size of the initial manufacturing flaw or fatigue scatter factor criteria, either in the rule itself or in the accompanying AC. Although the FAA does not concur that an absolute size should be specified for the initial manufacturing flaw, guidance on acceptable means of compliance has been provided in the revised version of the AC on both subjects.

Regulatory Evaluation

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the

intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this rule: (1) will generate benefits that justify its costs as defined in the Executive Order; (2) is significant as defined in DOT's Regulatory Policies and Procedures; (3) will not have a significant impact on a substantial number of small entities; and (4) could affect international trade. These analyses, available in the docket, are summarized below.

Estimated Costs and Benefits

Based on the opinions of industry and agency experts, the FAA estimates that development and certification costs associated with the requirement for an inspection threshold based on initial manufacturing defects will be negligible. However, this provision could affect operating costs, depending on the degree to which it impinges on the timing of initial inspections. This evaluation conservatively estimates that an additional 500,000 work hours will be required to inspect a fleet of 1,000 airplanes as result of the requirement to base inspection thresholds on assumed manufacturing defects. Assuming a fully burdened compensation rate of $65 per hour, this provision will increase operating costs by approximately $32.5 million over the life of a 1,000 airplane fleet.

The cost of a full-scale fatigue test for a representative transport category airplane design is statistically estimated using a sample of four different airplane models, ranging from a 45-seat airplane to a large widebody transport. In its comments on NPRM 93–9, the Aerospace Industries Association (AIA) notes that certification requirements could double the number of work hours for such testing. To account for this, full-scale fatigue test costs for each airplane model were inflated by multiplying the labor cost component by a factor of two. The relationship between these adjusted fatigue test costs and airplane size—measured by the number of seats—was then estimated using ordinary least squares. This yields a cost estimate of $540,000 for each seat in a proposed model. The cost of a full-scale fatigue test for a 162-seat airplane design, for example, would be approximately 162 times $540,000 or $87.5 million. for a 1,000 airplane fleet, this would equal $87,500 per airplane.

Total costs are estimated for a representative type certification using the following assumptions: (1) The hypothetical airplane model is assumed to have 162 seats; (2) 50 percent of testing costs are incurred in the year 2000, one-third of the remaining costs are incurred in each of the years 2001, 2002, and 2003; (3) production commences in the year 2002; (4) 100 airplanes are produced per year for 10 years; (5) the first airplanes enter service in 2002; (6) for each airplane, inspection costs related to the "rogue flaw" requirement are uniformly distributed in the interval bounded by one-fourth and one-half the design service goal (i.e., between the 5th and 9th years of operation); (7) total burdened cost per work hour is $65; (8) the discount rate is 7 percent; and (9) each airplane is retired at the end of its 20-year design service goal.

Under these assumptions, undiscounted fleet certification and operating costs—including the costs of a full-scale fatigue test and the inspection threshold provision—equal $120.0 million or $120,000 per airplane. On a discounted (1997 dollar) basis, fleet costs equal $78.6 million or $78,600 per airplane.

The benefits of the rule depend on the inherent variability of structural fatigue analysis and on the efficacy of actions taken in response to the results of such analysis. For example, the "rogue-flaw" inspection threshold requirement will prevent an accident only if: (1) The threshold occurs before an accident would otherwise occur; and (2) the resulting inspection identifies the damaged structure. Nevertheless, based on the accident history and the likelihood of ancillary benefits, the FAA finds that the benefits of the rule justify its costs.

An examination of the service history identified 39 domestic accidents or incidents involving structural fatigue during the period 1974–1990. The National Transportation Safety Board (NTSB) identified improper maintenance and/or corrosion as important contributing factors in 17 of the events. Of the remaining 22 events, 12 involved the landing gear and 10 involved the wing, fuselage, or other structure.

Although only two of these 10 events resulted in fatalities, several other events had catastrophic potential (in one case a wing spar failed, and in five other cases passenger cabin decompression occurred). In at least one case, the NTSB concluded that the accident was the probable result of a manufacturing defect.

During the same period, air carriers accumulated approximately 148 million flight hours. Thus, between 1974 and 1990, the overall event rate was (10/148)=0.0676 per million flight hours. The historical fatal accident rate was (2/148)=0.014.

Assuming that the average air carrier airplane has 162 seats, 69 percent of which are occupied; the airplane replacement cost is $30 million; and the value of an averted fatality is $2.7 million; then the economic value of one accident in which an airplane is destroyed and there are no survivors is approximately $345.9 million. If the rule prevents one such accident, its undiscounted benefits will exceed its undiscounted costs by a ratio of $345.9 million/$120.0 million or 2.88. Assuming that the probability of an avoided accident is proportional to the size of the complying fleet in any given year, then the expected discounted benefits of such an avoided accident will exceed discounted costs by a ratio of approximately 1.34.

Prevented accidents, however, do not exhaust the benefits of this rule. Full-scale fatigue testing is already industry practice. This reflects, in part, benefits such as timely correction of deficiencies to prevent early cracking, and verification of inspection and maintenance procedures. In addition to obvious safety implications, early identification of premature cracking will allow repairs to be accomplished during scheduled maintenance visits, thus lessening the economic impact of withdrawing an airplane from revenue service. While it is difficult to account for these ancillary benefits, the accident history gives some indication of their potential.

A review of records on accidents that occurred between 1974 and 1989 shows that at least five fleetwide inspections involving approximately 900 airplanes were ordered as a result of accidents involving failure of airplane structure. During these inspections, at least 72 airplanes were found to have fatigue cracks. Cost information specifically related to these inspections is unavailable. However, a review of some recent Airworthiness Directives (AD) and Service Bulletin data indicates that a minimum of 20 work hours (10 hours elapsed time) are necessary to carry out the required inspections. Minimum out-of-service time is 15–20 hours—approximately one day. If the cracking is predicted by full-scale fatigue testing and planned for in normal maintenance, unscheduled downtime may be averted. The number of required work hours (and downtime) would be much greater of the examination reveals extensive

cracking since this finding would necessitate additional inspections and structural repair. If cracking is predicted from a full-scale fatigue test, it can be detected at an earlier stage of development in the operating airplanes, resulting in less costly repairs, requiring less downtime to accomplish.

The cost of the unscheduled downtime for a fleetwide inspection, in which each airplane is withdrawn from revenue service for one day, can be estimated using the same production, operating history, and discount rate assumptions listed above. Assuming that the probability of an unscheduled inspection is uniformly distributed over each airplane's service life and that the revenue lost per airplane per day out of service is $40,000, the FAA estimates that the expected discounted savings from averting an average of one unscheduled inspection/repair day per airplane (over the service life of the fleet) is approximately $12.1 million. Thus, regardless of the number of accidents avoided, if the rule averts an average of 6.5 days of downtime per airplane over the life of the fleet, the expected discounted benefits of the rule will equal the discounted costs.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires agencies to review rules which may have a "significant economic impact on a substantial number of small entities." Entities potentially affected by the rule include manufacturers of transport category airplanes and aircraft modification firms.

While manufacturers of transport category airplanes generally support full scale fatigue testing, some aircraft modifiers—including some small firms—object to this requirement on the grounds that it constitutes and excessive burden. As noted previously, however, the final rule may require full-scale fatigue testing—covering, when applicable, modifications to future transport airplane designs—for four reasons.

First, the rule will not affect existing airplane types. The amendment will not impose additional costs on existing applications for supplemental type certification, nor will it affect applications made in the near future. The airplanes that would be affected by this amendment would not enter service for at least 5 to 10 years after its adoption.

Second, in the case of future type designs, it is difficult to predict whether anyone would seek approval for subsequent modifications, and, if so, how extensive the modifications would be and whether full-scale testing would be necessary for them (based on experience, the FAA concludes that most modifications of future designs will not require full-scale fatigue testing). Thus, it is impossible to conclude that there will be a significant effect on a substantial number of small entities.

Third, even assuming that small entities would propose such modifications, the FAA has determined that the safety interests of the flying public take precedence over the economic interests of airplane modifiers. The FAA finds, that, under the circumstances where existing test evidence is insufficient to meet the objectives of this rule, there are no alternatives to full-scale testing that would enable small entities to meet these objectives.

Fourth, the FAA remains open to considering technical innovations that provide alternatives to full scale testing. Such innovations could form the basis for finding that sufficient full-scale test evidence exists based on testing performed during initial type certification.

International Trade Impact Assessment

The Office of Management and Budget directs Federal Agencies to assess whether or not a rule or regulation will affect any trade-sensitive activity. The FAA has assessed the potential for this rule to affect domestic transport category airplane manufacturers, aircraft modification firms, and air carriers.

The FAA determines that the rule will have little or no effect on trade for either U.S. firms marketing transport category airplanes in foreign markets or foreign firms marketing transport category airplanes in the U.S. This follows since full scale fatigue testing for such airplanes is already industry practice, both domestically and abroad. Also, domestic and foreign manufactured airplanes would both be subject to the inspection threshold provision of the rule if they are certificated in the U.S.

Similarly, the FAA determines that the rule will have little or no effect on foreign firms competing for U.S. aircraft modification work, or U.S. firms competing for foreign aircraft modification work.

The FAA recognizes that the rule could affect the competition for international air travel by imposing more conservative inspection requirements on U.S. carriers. However, it is unlikely that, in validating the FAA's certification of a future airplane design, another civil aviation authority would escalate the inspection threshold required by this rule. Nevertheless, if a foreign civil aviation authority determines that the inspection threshold is too conservative and, thus, chooses not to impose this requirement, U.S. carriers operating future airplane models subject to this rule could incur larger inspection costs relative to foreign carriers operating foreign registered airplanes of the same models. The FAA estimates that the discounted 20-year cost of the inspection threshold provision is approximately $12,000 per airplane. Under the average passenger capacity and load factor assumptions described above, and assuming an average of 1,600 departures per airplane per year, this equals approximately $0.003 per enplaned passenger.

Federalism Implications

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

International Civil Aviation Organization (ICAO) and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with ICAO Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that this rule does not conflict with any international agreement of the United States.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), there are no reporting or recordkeeping requirements associated with this rule.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in Title 14 of the CFR in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such

regulatory distinctions as he or she considers appropriate. Because this final rule applies to the certification of future designs of transport category airplanes and their subsequent operation, it could affect intrastate aviation in Alaska. The Administrator has considered the extent to which Alaska is not served by transportation modes other than aviation, and how the final rule could have been applied differently to intrastate operations in Alaska. However, the Administrator has determined that airplanes operated solely in Alaska would present the same safety concerns as all other affected airplanes; therefore, it would be inappropriate to establish a regulatory distinction for the intrastate operation of affected airplanes in Alaska.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule does not contain a Federal intergovernmental or private sector mandate meeting that criterion, therefore the requirements of the Act do not apply.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration (FAA) amends 14 CFR part 25 of the Federal Aviation Regulations (FAR) as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

2. Section 25.571 is amended by revising the introductory text of paragraph (a), and paragraph (a)(3), the introductory text of paragraph (b), and paragraphs (b)(1), (b)(5)(ii), and (e)(1) to read as follows:

§ 25.571 Damage-tolerance and fatigue evaluation of structure.

(a) *General.* An evaluation of the strength, detail design, and fabrication must show that catastrophic failure due to fatigue, corrosion, manufacturing defects, or accidental damage, will be avoided throughout the operational life of the airplane. This evaluation must be conducted in accordance with the provisions of paragraphs (b) and (e) of this section, except as specified in paragraph (c) of this section, for each part of the structure that could contribute to a catastrophic failure (such as wing, empennage, control surfaces and their systems, the fuselage, engine mounting, landing gear, and their related primary attachments). For turbojet powered airplanes, those parts that could contribute to a catastrophic failure must also be evaluated under paragraph (d) of this section. In addition, the following apply:

* * * * *

(3) Based on the evaluations required by this section, inspections or other procedures must be established, as necessary, to prevent catastrophic failure, and must be included in the Airworthiness Limitations Section of the Instructions for Continued Airworthiness required by § 25.1529. Inspection thresholds for the following types of structure must be established based on crack growth analyses and/or tests, assuming the structure contains an initial flaw of the maximum probable size that could exist as a result of manufacturing or service-induced damage:

(i) Single load path structure, and

(ii) Multiple load path "fail-safe" structure and crack arrest "fail-safe" structure, where it cannot be demonstrated that load path failure, partial failure, or crack arrest will be detected and repaired during normal maintenance, inspection, or operation of an airplane prior to failure of the remaining structure.

(b) *Damage-tolerance evaluation.* The evaluation must include a determination of the probable locations and modes of damage due to fatigue, corrosion, or accidental damage. Repeated load and static analyses supported by test evidence and (if available) service experience must also be incorporated in the evaluation. Special consideration for widespread fatigue damage must be included where the design is such that this type of damage could occur. It must be demonstrated with sufficient full-scale fatigue test evidence that widespread fatigue damage will not occur within the design service goal of the airplane. The type certificate may be issued prior to completion of full-scale fatigue testing, provided the Administrator has approved a plan for competing the required tests, and the airworthiness limitations section of the instructions for continued airworthiness required by § 25.1529 of this part specifies that no airplane may be operated beyond a number of cycles equal to ½ the number of cycles accumulated on the fatigue test article, until such testing is completed. The extent of damage for residual strength evaluation at any time within the operational life of the airplane must be consistent with the initial detectability and subsequent growth under repeated loads. The residual strength evaluation must show that the remaining structure is able to withstand loads (considered as static ultimate loads) corresponding to the following conditions:

(1) The limit symmetrical maneuvering conditions specified in § 25.337 at all speeds up to V_c and in § 25.345.

* * * * *

(5) * * *

(ii) The maximum value of normal operating differential pressure (including the expected external aerodynamic pressures during 1 g level flight) multiplied by a factor of 1.15, omitting other loads.

* * * * *

(e) * * *

(1) Impact with a 4-pound bird when the velocity of the airplane relative to the bird along the airplane's flight path is equal to V_c at sea level or $0.85V_c$ at 8,000 feet, whichever is more critical;

* * * * *

Issued in Washington, D.C. on March 26, 1998.

Jane F. Garvey,

Administrator.

[FR Doc. 98–8379 Filed 3–30–98; 8:45 am]

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Tuesday
March 31, 1998

Part VIII

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 413

Medicare Program; Schedule of Per-Beneficiary Limitations on Home Health Agency Costs for Cost Reporting Periods; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 413

[HCFA–1905–FC]

RIN 0938–AI84

Medicare Program; Schedule of Per-Beneficiary Limitations on Home Health Agency Costs for Cost Reporting Periods Beginning on or After October 1, 1997

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: This final rule with comment period sets forth, in accordance with section 4602 of the Balanced Budget Act of 1997, a new schedule of limitations on home health agency costs that may be paid under the Medicare program for cost reporting periods beginning on or after October 1, 1997. These limitations are in addition to the per-visit limitations that were set forth in our January 2, 1998 notice with comment period.

DATES: *Effective Date:* This rule is effective October 1, 1997.

Applicability Date: The schedule of per-beneficiary limitations is applicable for cost reporting periods beginning on or after October 1, 1997.

Comment Date: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on June 1, 1998.

ADDRESSES: Mail written comments (one original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1905–FC, P.O. Box 7517, Baltimore, Maryland 21207–0517.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, D.C. 20201, or

Room C5–09–26, Central Building, 7500 Security Boulevard, Baltimore, Maryland 21244–1850

Comments may also be submitted electronically to the following E-mail address: HCFA1905FC@hcfa.gov. E-mail comments must include the full name and address of the sender and must be submitted to the referenced address in order to be considered. All comments must be incorporated in the E-mail message because we may not be able to access attachments.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1905–FC.

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 309–G of the Department's offices at 200 Independence Avenue, SW, Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (Phone: (202) 690–7890).

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FOR FURTHER INFORMATION CONTACT: Michael Bussacca, (410) 786–4602.

SUPPLEMENTARY INFORMATION:

I. Background

A. Program History

Section 1861(v)(1)(A) of the Social Security Act (the Act) authorizes the Secretary to establish limitations on allowable costs incurred by a provider of services that may be paid under the Medicare program, based on estimates of the costs necessary for the efficient delivery of needed health services. Under this authority, we have maintained limitations on home health agency (HHA) per-visit costs since 1979. Additional statutory provisions specifically governing the limitations applicable to HHAs are contained at section 1861(v)(1)(L) of the Act. These limits will be replaced by the establishment of a prospective payment system for home health services. However, section 1861(v)(1)(L)(v) of the Act, as added by section 4602(c) of the Balanced Budget Act of 1997 (BBA '97), Pub. L. 105–33, requires the Secretary to establish an interim system of payment limitations prior to implementation of the prospective payment system. Payments by Medicare under this interim system of payment limitations must be the lower of an HHA's actual reasonable allowable costs, per-visit limitations in the aggregate, or a per-beneficiary limitation in the aggregate as described in sections 1861(v)(1)(L)(v)(I) and (v)(1)(L)(vi)(I) of the Act.

Section 1861(v)(1)(L)(v)(I) requires the per-beneficiary annual limitation be a blend of: (1), an agency-specific per-beneficiary limitation based on 75 percent of 98 percent of the reasonable costs (including nonroutine medical supplies) for the agency's 12-month cost reporting period ending during Federal fiscal year (FY) 1994, and (2), a census region division per-beneficiary limitation based on 25 percent of 98 percent of the regional average of such costs for the agency's census division for cost reporting periods ending during FY 1994, standardized by the hospital wage index. The reasonable costs used in the per-beneficiary limitation calculations in 1 and 2 above will be updated by the home health market basket excluding any changes in the home health market basket with respect to cost reporting periods that began on or after July 1, 1994 and before July 1, 1996. This per-beneficiary limitation based on the blend of the agency-specific and census region division per-beneficiary limitations will then be multiplied by the agency's unduplicated census count of beneficiaries (entitled to benefits under Medicare) to calculate the HHA's aggregate per-beneficiary limitation for the cost reporting period subject to the limitation.

For new providers and providers without a 12-month cost reporting period ending in Federal fiscal year 1994, the per-beneficiary limitation will be equal to the median of these limitations applied to other HHAs as determined under section 1861(v)(1)(L)(v) of the Act.

B. Relevant Provisions of the Balanced Budget Act of 1997

The BBA '97 made several changes that affect the amount of costs to be paid under Medicare for services provided by HHAs. The provisions of BBA '97 that we are implementing in this final rule with comment period are as follows.

1. Additions to Cost Limitations

Section 1861(v)(1)(L)(v) was added to the Act by section 4602(c) of BBA '97 and requires the establishment of an interim system of limitations for services furnished by home health agencies.

Payment will not exceed the lesser of reasonable costs or the aggregate effect of the per-visit limitations published on January 2, 1998 (63 FR 89) or if lower, the aggregate per-beneficiary limitation as described in this final rule with comment.

A per-beneficiary limitation for agencies with a 12-month cost reporting period ending during Federal FY 1994 is determined as follows: (1), an agency-specific per-beneficiary limitation based on 75 percent of 98 percent of the reasonable costs (including nonroutine medical supplies) for the agency's 12-month cost reporting period ending during Federal fiscal year (FY) 1994, and (2), a census region division per-beneficiary limitation based on 25 percent of 98 percent of the regional average of such costs for the agency's census division for cost reporting periods ending during FY 1994, standardized by the hospital wage index. The reasonable costs used in the per-beneficiary limitation calculations in 1 and 2 above will be updated by the home health market basket excluding any changes in the home health market basket with respect to cost reporting periods that began on or after July 1, 1994 and before July 1, 1996. This per-beneficiary limitation based on the blend of the agency-specific and census region division per-beneficiary limitations will then be multiplied by the agency's unduplicated census count of beneficiaries (entitled to benefits under Medicare) to calculate the HHA's aggregate per-beneficiary limitation for the cost reporting period subject to the limitation.

How these per-beneficiary limitations are determined is explained further in section V of this document.

2. New Providers and Providers Without a 12-Month Cost Reporting Period Ending in FY 1994

Section 1861(v)(1)(L)(vi) was added to the Act by section 4602(c) of BBA '97 and requires the per-beneficiary limitation for new providers and those providers without a 12-month cost reporting period ending in FY 1994 be equal to the median of the section 1861(v)(1)(L)(v) per-beneficiary limitations applied to other HHAs.

Also, an HHA that had a 12-month cost reporting period ending during Federal FY 1994 and had altered its corporate structure or name will not be considered a new provider for purposes of determining the per-beneficiary limitation. Examples of an HHA that has altered its corporate structure but has kept its operational structure as a freestanding or provider-based HHA would be an agency that has gone from being a non-profit entity to a profit entity or an agency that has gone from being a subchapter S corporation to a proprietary individual. The most common occurrence of an agency changing its name would be a change in ownership whereby the new owners change the name of the agency but continue operating as a freestanding or provider-based HHA. The per-beneficiary limitation that applies to these types of changes will be determined under section 1861(v)(1)(L)(v).

3. Reduction in Market Basket Updates

Section 1861(v)(1)(L)(iv) was added to the Act by section 4601(a) of BBA '97 and requires the Secretary not to take into account any changes in the home health market basket with respect to cost reporting periods which began on or after July 1, 1994 and before July 1, 1996 in establishing the section 1861(v)(1)(L) limitations for cost reporting periods beginning after September 30, 1997. This, in effect, reduces the factors for increasing the costs in the data base used in calculating the per-beneficiary limitations. These factors are set forth in section IV. of this document.

4. Application of the Wage Index Based on Site of Service Rendered

Section 1861(v)(1)(L)(iii) was amended by section 4604(b) of BBA '97 to require that the utilization of the area wage index applicable under section 1886(d)(3)(E) of the Act be determined using the survey of the most recent available wages and wage-related costs of hospitals located in the geographic area in which the home health services are furnished. In effect, the regional component of the per-beneficiary limitation that will apply for the beneficiary receiving services from the HHA will be the appropriate census region per-beneficiary limitation and adjusted by the appropriate wage index for the geographic area where the beneficiary received home health services. A Program Memorandum (Rev. AB–97–18), published in September 1997, outlined the billing changes that are needed to properly implement this provision.

5. Effective Date

Section 1861(v)(1)(L)(vii) of the Act was added by section 4602(c) of BBA '97.

Beginning in FY 1998, the Secretary is required to establish the per-beneficiary limitations by August 1 of each year. However, for cost reporting periods beginning on or after October 1, 1997, the Secretary need only establish those limitations by April 1, 1998. In accordance with section 1861(v)(1)(L)(vii)(I), we are establishing by April 1, 1998, the per-beneficiary limitations for cost reporting periods beginning on or after October 1, 1997.

II. Per-Beneficiary Limitations

The cost report data used to develop the schedule of per-beneficiary limitations set forth in this final rule are for cost reporting periods ending in Federal FY 1994, as required by section 4602(c) of BBA '97. We have updated the per-beneficiary limitations to reflect the expected cost increases occurring between the cost reporting periods for the data contained in the database and September 30, 1998 (excluding, as required by statute, any changes in the home health market basket for cost reporting periods beginning on or after July 1, 1994 and before July 1, 1996).

The interim payment sets limitations according to two different methodologies. For agencies with cost reporting periods ending during Federal FY 1994, the limitation is based on 75 percent of 98 percent of the agencies' own reasonable costs and 25 percent of 98 percent of the average census region division costs. At the end of the agency's cost reporting period subject to the per-beneficiary limitations, the labor component of the census region division per-beneficiary limitation is adjusted by a wage index based on where the home health services are rendered.

For new providers and providers without a cost reporting period ending during Federal FY 1994, the per-beneficiary limitation is based on the standardized national median of the blended agency-specific and census region division per-beneficiary limitations described above. This is done by simply arraying the agencies' per-beneficiary limitations and selecting the median case. This national per-beneficiary limitation is then standardized for the effect of the wage index. The wage index is applied to the

labor component of the national per-beneficiary limitation at the end of the cost reporting period beginning on or after October 1, 1997, and is based on where the home health services are rendered.

The detailed methodologies for calculating the per-beneficiary limitations and how they are applied to agencies' costs for cost reporting periods beginning on or after October 1, 1997 are described below.

A. Agency-Specific Rates

Section 1861(v)(1)(L)(v)(I) of the Act requires that 75 percent of the per-beneficiary limitation be based on 98 percent of the reasonable costs for the agency's 12-month cost reporting period that ended during FY 1994. Reasonable costs are the lesser of the actual Medicare costs of the discipline services or the aggregate discipline limitation, plus nonroutine medical supplies. This amount is multiplied by 98 percent and divided by the HHA's Federal FY 1994 unduplicated census count of beneficiaries to calculate the agency-specific per-beneficiary amount. An intricate and important part of the agency-specific per-beneficiary computation is the use of the Federal FY 1994 unduplicated census count of beneficiaries. After BBA '97 was enacted, many HHAs and their trade association representatives asserted that the unduplicated census counts of beneficiaries, as reported on the Federal FY 1994 Medicare cost report, was frequently an incorrect figure. Even though this number was a statistic required to be reported to Medicare, it was apparently not carefully monitored by HHAs because it did not impact Medicare payments at that time.

Through an analysis of our database to be used in establishing the regional per-beneficiary limitations, which includes the same cost reporting period used in establishing the agency-specific per-beneficiary limitation, we confirmed that the unduplicated census count was not reliable. Based upon this determination, we generated a more accurate unduplicated census count from HCFA's Standard Analytical File (SAF), which is generated from our National Claims History File. The unduplicated census count was created from the SAF by matching all claims to each agency's cost reporting period ending in Federal FY 1994 and identifying individual beneficiaries represented in the claims. Each beneficiary was counted only once for all the claim(s) identified for that cost reporting period for each agency. A list of HHAs and associated unduplicated census counts from the SAF has been disseminated to the intermediaries for calculating the agency-specific per-beneficiary limitations. If the intermediary has an HHA that has a 12-month cost reporting period that ended in Federal FY 1994 and that agency was not on the list for an unduplicated census count from SAF, the intermediary must contact HCFA so that an unduplicated census count can be generated from SAF.

B. Regional Rates by Census Division

Section 1861(v)(1)(L)(v)(I) of the Act requires that 25 percent of the per-beneficiary limitation be based on 98 percent of the standardized regional average of reasonable costs for the agency's census division for cost reporting periods ending during Federal FY 1994. To develop the schedule of per-beneficiary limitations by census region, we extracted the totals of the Medicare allowable costs, the aggregate cost per-visit limitation, and the Medicare nonroutine medical supply costs from settled Medicare cost reports of all HHAs for cost reporting periods ending in Federal FY 1994. How this data was used in calculating the regional rates by census division is explained further in section V.B..

Section 1861(v)(1)(L)(v)(I) requires that the costs used in calculating the per-beneficiary limitations be updated using the home health market basket index. However, section 1861(v)(1)(L)(iv) prohibits the Secretary from taking into account any changes in the home health market basket with respect to cost reporting periods which began on or after July 1, 1994 and before July 1, 1996. Therefore, we adjusted the database used in calculating the regional per-beneficiary limitations by the market basket index excluding any changes in the home health market basket with respect to cost reporting periods which began on or after July 1, 1994 and before July 1, 1996.

C. Wage Index

A wage index is used to adjust the labor-related portion of the standardized regional average per-beneficiary limitation to reflect differing wage levels among areas. In establishing the regional average per-beneficiary limitation, we used the FY 1998 hospital wage index, which is based on 1994 hospital wage data.

Each HHA's labor market area is determined based on the definitions of Metropolitan Statistical Areas (MSAs) issued by the Office of Management and Budget (OMB). Section 1861(v)(1)(L)(iii) of the Act requires us to use the current hospital wage index (that is, the FY 1998 hospital wage index, which was published in the Federal Register on August 29, 1997 (62 FR 46070)) without regard to whether such hospitals have been reclassified to a new geographic area, to establish the HHA cost limitations. Therefore, the schedule of standardized regional average per-beneficiary limitations reflects the MSA definitions that are currently in effect under the hospital prospective payment system.

We are continuing to incorporate exceptions to the MSA classification system for certain New England counties that were identified in the July 1, 1992 notice (57 FR 29410). These exceptions have been recognized in setting hospital cost limitations for cost reporting periods beginning on and after July 1, 1979 (45 FR 41218), and were authorized under section 601(g) of the Social Security Amendments of 1983 (Public Law 98–11). Section 601(g) of Public Law 98–21 requires that any hospital in New England that was classified as being in an urban area under the classification system in effect in 1979 will be considered urban for purposes of the hospital prospective payment system. This provision is intended to ensure equitable treatment under the hospital prospective payment system. Under this authority, the following counties have been deemed to be urban areas for purposes of payment under the inpatient hospital prospective system:

- Litchfield County, CT in the Hartford, CT MSA.
- York County, ME and Sagadahoc County, ME in the Portland, ME MSA.
- Merrimack County, NH in the Boston-Brockton-Nashua, MA–NH MSA
- Newport County, RI in the Providence Fall-Warwick, RI MSA

We are continuing to grant these urban exceptions for the purpose of applying the Medicare hospital wage index to the HHA standardized regional average per-beneficiary limitations. These exceptions result in the same New England County Metropolitan Area definitions for hospitals, skilled nursing facilities, and HHAs. In New England, MSAs are defined on town boundaries rather than on county lines but exclude parts of the four counties cited above that would be considered urban under the MSA definition. Under this notice, these four counties are urban under either definition, New England County Metropolitan Area or MSA.

Section 1861(v)(1)(L)(iii), amended by section 4604(b) of BBA '97, requires the use of the area wage index applicable under section 1886(d)(3)(E) of the Act and determined using the survey of the most recent available wages and wage-related costs of hospitals located in the

geographic area in which the home health service is furnished without regard to whether such hospitals have been reclassified to a new geographic area pursuant to section 1886(d)(8)(B) of the Act. Effective with cost reporting periods beginning on or after October 1, 1997, the wage-index, as applied to the labor portion of the regional per-beneficiary limitation, must be based on the geographic location in which the home health service is actually furnished rather than the physical location of the HHA itself.

III. Determination of Old or New Home Health Agencies

The per-beneficiary limitation determined under section 1861(v)(1)(L)(v)("clause v" HHAs) will apply to all HHAs that have a 12-month cost reporting period ending during FY 1994. There are, however, HHAs that had a 52/53 week cost reporting cycle that ended in Federal FY 1994, or a 13-month cost reporting period that ended during Federal FY 1994 (as allowed in accordance with Medicare principles of reimbursement). For purposes of determining the per-beneficiary limitation, these HHAs will be deemed to be "clause v" HHAs. Also, an HHA that had a 12-month cost reporting period ending in Federal FY 1994 and altered its corporate structure or name is a "clause v" HHA for purposes of determining the per-beneficiary limitation.

Section 1861(v)(1)(L)(vi) of the Act states that for new HHAs and agencies without a 12-month cost reporting that ended in FY 1994 ("clause vi" HHAs), the per-beneficiary limitation is the median of these limitations applied to other HHAs, as determined by the Secretary.

A. Less Than a Twelve-Month Cost Reporting Period During Federal FY 1994

Without exception, all HHAs that did not have a 12-month cost reporting period that ended in Federal FY 1994 will have the national per-beneficiary limitation applied to the agency's unduplicated census count of Medicare beneficiaries for the cost reporting period beginning on and after October 1, 1997. The national per-beneficiary limitation that applies to the unduplicated census count of Medicare beneficiaries for "clause vi" HHAs is in Table 3b.

B. HHAs Entering the Medicare Program After Federal FY 1994

New HHAs that entered the Medicare program after Federal FY 1994 will have the national per-beneficiary limitation applied to the unduplicated census count of Medicare beneficiaries for cost reporting periods beginning on or after October 1, 1997. A new HHA is one that did not have approval to participate in the Medicare program under present or previous ownership prior to October 1, 1993.

C. Other

There are cases in which there could be changes in a "clause v" type HHA's operational structure, after Federal FY 1994, that could have an impact on the determination of the per-beneficiary limitation that is applicable to the HHA for cost reporting periods beginning on or after October 1, 1997. Examples of such changes are mergers, consolidations, and changes in ownership resulting in a change in the operational structure. The policies that apply when there are changes in the operational structure of an HHA after its cost reporting ended after FY 1994 are as follows:

1. Mergers or Consolidations of Like HHAs (Two or More Freestanding or Two or More Provider-Based Agencies) With Cost Reporting Periods Ending in Federal Fiscal Year 1994

There could be cases in which the merger or consolidation of two or more like HHAs (freestanding or provider-based) would not alter the surviving HHA's corporate structure, but applying the surviving HHA's per-beneficiary limitation to the combined operational structure would not be appropriate. Therefore, if two or more like HHAs (two or more freestanding agencies or two or more provider-based agencies) that had cost reporting periods that ended in Federal FY 1994 merge or consolidate after Federal FY 1994, the per-beneficiary limitation will be recalculated based on an average of the agencies' Medicare costs weighted by their unduplicated census counts in Federal FY 1994. If the agencies have different cost reporting period year ends, the costs must be inflated to common year end dates. For example, HHA 1, with a cost reporting period that ended March 31, 1994, merged on December 1, 1996 with HHA 2, with a cost reporting period that ended November 30, 1993. HHA 2's corporate structure did not change, but the operational structure changed with the inclusion of HHA 1. The Medicare allowable reasonable costs, the aggregate per-visit limitation, and the nonroutine medical supply costs of HHA 1 will be updated to November 30, 1996. The Medicare allowable costs, the aggregate per-visit limitation, and the nonroutine medical supply costs of HHA 2 will be updated to November 30, 1996. The lesser of the combined updated Medicare allowable reasonable costs or the combined updated aggregate per-visit limitation, plus the combined updated nonroutine medical supply costs will be divided by the combined unduplicated patient census counts. The weighted average per-beneficiary amount will then be further updated to October 31, 1998 to derive the per-beneficiary limitation that applies to the HHA's cost reporting period which began November 1, 1997. The same procedures would apply if HHA 1 and HHA 2 were subunits in Federal FY 1994.

2. Mergers or Consolidations When Only One of the HHAs Had a Cost Report That Ended in Federal Fiscal 1994

There could be situations in which two or more HHAs merge or consolidate into one after Federal FY 1994 and only one of the HHAs had a cost reporting period ending in Federal FY 1994. The statute is specific as to what per-beneficiary limitation applies to agencies with cost reporting periods ending in Federal FY 1994 and what per-beneficiary limitation applies to agencies that do not have a cost reporting period ending in Federal FY 1994. The two methodologies do not interrelate sufficiently to allow the application of a methodology similar to the methodology described in section III. C.1. above. Because the two methodologies do not interrelate, we have taken a position that we believe is equitable within the constraints of the statute. If HHAs merge or consolidate after Federal FY 1994 and only one of the HHAs had a cost reporting period that ended in Federal FY 1994, the agency will be considered a "clause vi" agency with respect to applying the per-beneficiary limitation. That is, the per-beneficiary limitation will be the national per-beneficiary limitation that applies to new agencies.

3. Complete Changes in the Operational Structure of the HHA

There are situations when the costs of operations of the HHA could change either through a change of ownership or an internal reconfiguration of the operational structure within the same HHA after Federal FY 1994. Examples of this would be a freestanding agency becoming a provider-based agency or vice-versa. Even though this could be construed as an agency which has merely altered its corporate structure, the costs of operations are significantly different between a freestanding agency and a provider-based agency. We do not

believe the statute was intended to advantage or disadvantage different classes of agencies whose means of determining overhead costs are completely different. Generally, a freestanding agency has control over the overhead costs it incurs while a provider-based agency has little, if any, control over the overhead costs it incurs. Therefore, if "clause v" freestanding HHAs become provider-based, and vice versa, through a change in ownership or other means, after Federal FY 1994, these agencies will be considered "clause vi" agencies with respect to applying the per-beneficiary limitation. We also noted that branches within HHAs generally do not have direct overhead costs specifically identified to them on the Medicare cost report. HHAs that have branches report costs on the Medicare cost report as a single agency. As such, the branch does not exist as an independent agency certified by Medicare. The branch is encompassed in the parent agency's certification. Therefore, when branches within HHAs that have a cost reporting period ending in Federal FY 1994 become subunits after Federal fiscal 1994, whereby they are certified under Medicare to operate as a freestanding HHA, these new subunits will be considered "clause vi" agencies with respect to applying the per-beneficiary limitation.

IV. Market Basket

The 1993-based cost categories and weights are listed in Table 1 below.

TABLE 1.—1993-BASED COST CATEGORIES, BASKET WEIGHTS, AND PRICE PROXIES

Cost category	1993-based market basket weight	Price proxy
Compensation, including allocated Contract Services' Labor	77.668	
Wages and Salaries, Including allocated Contract Services' Labor.	64.226	HHA Occupational Wage Index.
Employee benefits, including allocated Contract Services' Labor.	13.442	HHA Occupational Benefits Index.
Operations & Maintenance	0.832	CPI–U Fuel & Other Utilities.
Administrative & General, including allocated Contract Services' Non-Labor	9.569	
Telephone	0.725	CPI–U Telephone.
Paper & Printing	0.529	CPI–U Household Paper, Paper Products & Stationery Supplies.
Postage	0.724	CPI–U Postage.
Other Administrative & General, including Allocated Contract Services Non-Labor.	7.591	CPI–Services.
Transportation	3.405	CPI–U Private Transportation.
Capital-Related	3.204	
Insurance	0.560	CPI–U Household Insurance.
Fixed Capital	1.764	CPI–U Household Insurance.
Movable Capital	0.880	PPI Machinery & Equipment.
Other Expenses, including allocated Contract Services' Non-Labor..	5.322	CPI–U All Items Less Food & Energy.
Total	100.000	

V. Methodology for Determining Per-Beneficiary Limitation

A. Agency-Specific Per-Beneficiary Limitation

Section 1861(v)(1)(L)(v) of the Act, in part, requires that 75 percent of the per-beneficiary limitation be based on 98 percent of the reasonable costs for the agency's 12-month cost reporting period during Federal FY 1994. Reasonable costs are defined as the lesser of the actual Medicare aggregate costs of discipline services or the aggregate discipline per-visit limitation. The Medicare allowable costs of nonroutine supplies is added to this amount and multiplied by 98 percent. The result of this computation is then divided by the HHA's Federal FY 1994 unduplicated census count of Medicare beneficiaries to derive the agency-specific limitation which will be 75 percent of the per-beneficiary limitation.

The computation of the agency-specific per-beneficiary limitation is performed by the HHA's intermediary. For provider-based HHAs, the reasonable costs are the lesser of line 7, columns 8 and 9, or line 14 columns 8 and 9, plus line 15, columns 8 and 9, as reported on Supplemental Worksheet H–5 (Form HCFA–2552–92-H (4/93)), of the Medicare cost report for the cost reporting period ending in Federal fiscal 1994, multiplied by 98 percent. The results are divided by the unduplicated census count of Medicare beneficiaries, as provided by HCFA. For freestanding HHAs, the reasonable costs are the lesser of line 7, column 9, or line 14, column 9, plus line 17, columns 7 and 8, as reported on Worksheet C (Form HCFA–1728–86 (6/76)) of the Medicare cost report for the cost reporting period ending during Federal FY 1994, multiplied by 98 percent. The results are divided by the unduplicated census count for Medicare beneficiaries, as provided by HCFA.

The agency-specific per-beneficiary limitation must also be adjusted using the latest available market basket factors to reflect expected cost increases occurring between the cost reporting period ending during Federal FY 1994 and the cost reporting period ending during FY 1998. The factors for inflating the agency-specific per-beneficiary limitation are provided on Tables 2 and 5 or determined using Table 6.

In establishing the agency-specific per-beneficiary limitation, it is important that the amount determined is an accurate reflection of the home health services provided to Medicare beneficiaries in Federal FY 1994. Because the per-beneficiary limitation required by section 1861(v)(1)(L)(v)(I) of the Act is established, in part, using agency-specific cost report data during Federal FY 1994, and the unduplicated census count of Medicare beneficiaries

as may have been reported on the cost report is not being used in the computation, we are allowing HHAs to request a review of the calculation of the agency-specific limitation which includes the number of unduplicated counts of Medicare beneficiaries used in the computation. HHAs will have 180 days from the notification date of the agency-specific per-beneficiary limitation to request a review from its intermediary that the number of unduplicated census counts of Medicare beneficiaries as provided by HCFA is incorrect or other data from the Federal FY 1994 cost report used in the calculation of the agency-specific amount is/are incorrect. The HHA would bear the burden of proof to document its proffer of the appropriate number of unduplicated census counts of Medicare beneficiaries or the other appropriate data used in the calculation. An unduplicated census count of Medicare beneficiaries is a count of one for each Medicare patient receiving home health services from an HHA during its cost reporting period, regardless of the number of services or the number of different plans of care that the patient may have been under during the HHA's cost reporting period. If the agency can demonstrate to the satisfaction of the intermediary that a change should be made, the intermediary would appropriately recalculate the agency-specific per-beneficiary limitation. The intermediary must provide to the HHA its determination, in writing, whether or not an adjustment is provided.

B. Census Division Standardized Regional Average Per-Beneficiary Limitations

Section 1861(v)(1)(L)(v)(I) of the Act requires, in part, that 25 percent of the per-beneficiary limitation be based on 98 percent of the standardized regional average of such costs for the agency's census division for cost reporting periods ending during Federal FY 1994 and such costs updated by the home health market basket index.

The standardized regional average per-beneficiary limitations by census region were determined by extracting settled actual data from Medicare cost reports ending in Federal FY 1994 for freestanding and provider-based HHAs. The unduplicated census counts in the data file were replaced with the unduplicated census counts of Medicare beneficiaries generated using the SAF. Section 1861(v)(1)(L)(iii) of the Act, as amended by section 4604 of BBA '97, requires that we base the payments for home health services on the location where the services are provided. The file created from the SAF accumulated the number of beneficiaries in each MSA/non-MSA area serviced by each HHA. This file was created by matching all claims to each agency's cost reporting period to determine the unduplicated census counts by MSA/non-MSA area. This file was merged with the cost report file and replaced the unduplicated census counts reported by the HHAs on the Medicare cost report. HHAs were grouped within their appropriate census region based on the HHAs' State and county code. Agencies not located in a census region, e.g. Puerto Rico, were grouped separately rather than arbitrarily assigned to a census region.

In order to account for the statutory requirement that the wage index used in calculating the limitations be based on the location where the home health service was furnished rather than the location of the HHA, it was necessary to develop a wage-index weighted by the number of beneficiaries in each MSA/non-MSA in each census region. The unduplicated census counts of Medicare beneficiaries for each MSA/non-MSA serviced by the HHA were multiplied by the appropriate wage index that applied to that MSA/non-MSA. The product of these computations were totaled for each HHA to yield a wage index adjusted unduplicated census count of Medicare beneficiaries. The lesser of the Medicare reasonable costs or aggregate per-visit limitation plus nonroutine medical supplies for each HHA were totaled for each census region. The total costs in each census region was divided by the total wage index adjusted unduplicated census counts of Medicare beneficiaries in each region to arrive at a standardized average cost per-beneficiary for the labor component. This approximates the same effect as though each HHA in the census region had its average costs per-beneficiary adjusted by its average wage-index for the beneficiaries serviced in its service areas. We then adjusted the average per-beneficiary limitations using the latest available market basket factors to reflect expected cost increases occurring between the cost reporting periods that ended in Federal FY 1994 and September 30, 1998 excluding any changes in the home health market basket with respect to cost reporting periods which began on or after, July 1, 1994 and before July 1, 1996 as shown in Table 2 below.

The statute is silent with respect to the regional per-beneficiary limitation that would apply to Puerto Rico and Guam. Neither of these areas fall within the census divisions referred in the statute. We do not believe it was the intent of Congress to have HHAs in Puerto Rico and Guam subject to a blend of 75 percent agency-specific per beneficiary limitation and 25 percent of zero since they do not fall within the census divisions. Therefore, based on the HHAs in our data base that are located in Puerto Rico and Guam, we have developed regional per-beneficiary limitations specific to Puerto Rico and Guam using the same methodology as we used for the census divisions. These per-beneficiary limitations for which 25 percent of the per-beneficiary limitation will be based can be found on Table 3c.

C. National Per-Beneficiary Limitation

Section 1861(v)(1)(L)(vi)(I) of the Act, as added by section 4602(c) of BBA '97, requires that for new HHAs and HHAs without a 12-month cost reporting period ending in Federal FY 1994, the per-beneficiary limitation will be the median of these limitations applied to other HHAs. This means that we must establish a national per-beneficiary limitation based on "the median of these limits (or the Secretary's best estimates thereof) applied to other HHAs as determined by the Secretary", referring back to the per-beneficiary limitations that apply to HHAs that have a cost reporting period ending in Federal FY 1994. This required us to calculate the per-beneficiary limitation for each HHA in our data base, blending the 75 percent agency-specific per-beneficiary component with the 25 percent census region per-beneficiary component. Because the wage index will be applied to the labor component of the census region per-beneficiary limitation for "clause v" HHAs in determining the aggregate per-beneficiary limitation, we adjusted the census region per-beneficiary limitations for the varying effects of the wage indexes. This adjustment methodology used a beneficiary-weighted wage adjustment factor based on the geographic location of beneficiaries in our data base as described in B. above. We blended the agency-specific per-beneficiary component with the standardized census region per-beneficiary component, arrayed the results, and established the median per-beneficiary amount. This is the "unadjusted median per-beneficiary limitation". In order to apply a wage index adjustment factor to the national per-beneficiary limitation, the median per-beneficiary limitation had to be adjusted to standardize the agency-specific per-beneficiary component in the same fashion as the census region per-beneficiary limitation component so that the final labor component to which the new agencies

would apply their appropriate wage indexes would be uniformly standardized in both its agency-specific per-beneficiary limitation component and its census region per-beneficiary component. To standardize the agency-specific per-beneficiary component of the median per-beneficiary limitation, we calculated an adjustment factor to apply to the median per-beneficiary limitations. The adjustment factor was determined by calculating the ratio of the fully standardized per-beneficiary median (standardized for both the agency specific and the census region amounts) and the unadjusted blended median of the "clause v" agencies. It is the labor component of this adjusted median of the per-beneficiary limitations for the agencies in our data base, standardized in both the 75 percent agency-specific per beneficiary limitation and the 25 percent census region per-beneficiary limitation components to which new agencies will apply their appropriate wage indexes.

In summary, we calculated a national per-beneficiary limitation based on the median of the per-beneficiary limitations that apply to HHAs that have a cost reporting period ending during Federal FY 1994. To establish this national per-beneficiary limitation, we blended 75 percent agency-specific per-beneficiary component with the 25 percent census region division per-beneficiary component for each agency in our data base, arrayed the results and determined the median. The application of this median per-beneficiary limitation requires that we apply a wage index to the labor component of the national per-beneficiary limitation. In calculating the median to be used as the national per-beneficiary limitation for new agencies and agencies without a 12-month cost reporting period ending during Federal FY 1994, we recognized that the agency-specific component was not standardized for the effects of area wage differences. In order to apply a wage index, we determined an appropriate adjustment factor to apply to the national per-beneficiary limitation that effectively took out any differences in area wages for the agency-specific component of the median per-beneficiary limitation. The result is a fully standardized national per-beneficiary limitation.

D. Update of Data Base

The data used to develop the per-beneficiary limitations and the national per-beneficiary limitation was adjusted using the latest available market basket factors to reflect expected cost increases occurring between the cost reporting periods contained in our database and September 30, 1998, excluding any changes in the home health market basket with respect to cost reporting periods which began on or after July 1, 1994 and before July 1, 1996. The following inflation factors were used in calculating the Census region and national per-beneficiary limitations:

TABLE 2.—FACTORS FOR INFLATING DATABASE DOLLARS TO SEPTEMBER 30, 1998

[Inflation adjustment factors [1]]

Fiscal Year End	1993	1994
October 31	1.08619	.....
November 30	1.08349	.....
December 31	1.08080	.....
January 31	.....	1.07813
February 28	.....	1.07550
March 31	.....	1.0729
April 30	.....	1.07046
May 31	.....	1.06800
June 30	.....	1.06565
July 31	.....	1.06354
August 31	.....	1.06165
September 30	.....	1.05993

[1] Source: The Home Health Agency Price Index, produced by HCFA. The forecasts are from Standard and Poor's DRI 3rd QTR 1997; @USSIM/TREND25YR0897@CISSIM/Control973 forecast exercise which has historical data through 1997:2.

Multiplying nominal dollars for a given FY end by their respective inflation adjustment factor will express those dollars in the dollar levels for the FY ending September 30, 1998.

The procedure followed to develop these tables, based on requirements from BBA '97, was to hold the June 1994 level for input price index constant through June 1996. From July 1996 forward, we trended the revised index forward using the percentage gain each month from the HCFA Home Health Agency Input Price Index.

Thus, the monthly trend of the revised index is the same as that of the HCFA market basket for the period from July 1996 forward.

E. Short Period Adjustment Factors for Cost Reporting Periods Consisting of Fewer Than 12 Months

HHAs with cost reporting periods beginning on or after October 1, 1997 may have cost reporting periods that are less than 12 months in length. This may happen, for example, when a new provider enters the Medicare program after its selected FY has already begun, or when a provider experiences a change of ownership before the end of the cost reporting period. As explained in section V. of this preamble, the data used in calculating the census region and the national per-beneficiary limitations were updated to September 30, 1998. Therefore, the cost limitations published in this document are for a 12-month cost reporting period beginning October 1, 1997 and ending September 30, 1998. For 12-month cost reporting periods beginning after October 1, 1997 and before October 1, 1998, cost reporting period adjustment factors are provided in Table 5. However, when a cost reporting period consists of fewer than 12 months, adjustments must be made to the data that have been developed for use with 12-month cost reporting periods. To promote the efficient dissemination of cost limitations to agencies with cost reporting periods of fewer than 12 months, we are publishing an example and tables to enable intermediaries to calculate the applicable adjustment factors.

Cost reporting periods of fewer than 12 months may not necessarily begin on the first of the month or end on the last day of the month. In order to simplify the process in calculating "short

period" adjustment factors, if the short cost reporting period begins before the sixteenth of the month, we will consider the period to have begun on the first of that month. If the start period begins on or after the sixteenth of the month, it will be considered to have begun at the beginning of the next month. Also, if the short period ends before the sixteenth of the month, we will consider the period to have ended at the end of the preceding month; if the short period ends on or after the sixteenth of the month, it will be considered to have ended at the end of that month.

Example

1. After approval by its intermediary, a "clause v" HHA changed its FY end from June 30 to December 31. Therefore, the HHA had a short cost reporting period beginning on July 1, 1998 and ending on December 31, 1998. The cost reporting period ending during Federal FY 1994 would have been the cost reporting period ending on June 30, 1994. The per visit limitation that applies to this short period must be adjusted as follows:

Step 1—From Table 6, sum the index levels for the months of July 1998 through December 1998: 6.63687

Step 2—Divide the results from Step 1 by the number of months in short period: 6.6387 ÷ =1.106145

Step 3—From Table 6, sum the index levels for the months in the common period of October 1997 through September 1998: 13:06926

Step 4—Divide the results in Step 3 by the number of months in the common period: 13.06926 ÷ 12 = 1.089105

Step 5—Divide the results from Step 2 by the results from Step 4. This is the adjustment factor to be applied to the published per-beneficiary limitations: 1.106145 ÷ 1.1089106 = 1.015646

Step 6—Apply the results from Step 5 to the published per-beneficiary limitations in the same manner as shown in the example in VIII.C.

VI. Exceptions or Adjustments to Per-beneficiary Limitation

The Medicare regulations at 42 CFR 413.30 contain the general rules under which HCFA may establish limitations on provider costs, including provisions under which a provider may request a reclassification, exception, or exemption from the cost limitations under that section.

We do not believe that the Congress intended these general rules to apply to the establishment of the per-beneficiary limitations. First, we note that unlike other provisions of the statute that provide specific language for exceptions or exemptions to the limitations on costs, the statute is silent with respect to providing exceptions or exemptions to the per-beneficiary limitations. Section 1861(v)(1)(L)(ii) of the Act, which addresses the application of the per-visit limitations, is very specific that the Secretary may provide exemptions or exceptions to the per-visit limitations that are applied on a discipline basis. There is no similar language under sections 1861(v)(1)(L)(v) and 1861(v)(1)(L)(vi) of the Act, which provides for the establishment of the per-beneficiary limitations. Moreover, it seems unlikely that Congress intended for exceptions or exemptions to apply to the per-beneficiary limitations since in establishing the mid-session budget, there were no monies earmarked from the projected Medicare savings to pay for exemptions or exceptions to the per-beneficiary limitation.

Therefore, we are not allowing agencies to file for exceptions or exemptions to the per-beneficiary limitations.

We are revising section 413.30(a) to recognize the addition of the per-beneficiary cost limitation as a limitation on costs. Also, we are revising section 413.30(c) to state that HHAs may not request a reclassification, an exception, or an exemption from the per-beneficiary cost limitation.

VII. Review of the Agency-Specific Per-Beneficiary Limitation

For HHAs with a cost reporting period ending during Federal FY 1994, 75 percent of the per-beneficiary limitation is based on the Medicare data contained in that cost report.

We recognize that for most HHAs, that cost report has been settled and unless the HHA has an appeal with respect to the cost settlement pending for that FY, the data contained within the agency-specific per-beneficiary calculation has been settled. HHAs that have pending appeals (for example, an outstanding cost limitation exception to the per-visit limitation or appeals of adjustments resulting from Medicare principles of reimbursement) that may impact the cost reporting data used in calculation of the agency-specific portion of the per-beneficiary limitation, will have the agency-specific per-beneficiary limitation recalculated when the appeal is favorably resolved on behalf of the HHA.

There are, however, certain data used from the cost report in calculating the per-beneficiary limitations that do not impact the settlement of the cost report, that is, the use of the number of unduplicated census counts of Medicare beneficiaries whereby a reopening request of the cost report would not be warranted. This is particularly of concern since the unduplicated census counts on the Medicare cost reports have been alleged to be incorrect and HCFA will be providing the unduplicated census counts to be used by the intermediaries in calculating the agency-specific per-beneficiary limitation.

Given the importance of the calculation of the agency-specific per-beneficiary limitation, we are allowing HHAs 180 days after the date of the notice by the intermediary of the HHA's agency-specific per-beneficiary limitation to request a review of the agency-specific per-beneficiary calculation. The request may address the specific data used in calculating the agency-specific per-beneficiary limitation as shown on the Medicare cost report (that is, the lesser of Medicare reasonable costs or the aggregate per-visit limitation), the costs of nonroutine medical supplies, the unduplicated census count provided by HCFA, or the appropriate market basket increases, as provided in this document. This request for review may also address the calculation such as addition, subtraction, multiplication, or division. This request for review is not applicable to those cost report settlement appeals, which may have an impact on the data used in calculating the agency-specific per-beneficiary limitation and are pending under another authority under the Medicare regulations or statute. The agency's request must include sufficient documentation for the intermediary to determine that a recalculation of the agency-specific per-beneficiary limitation is warranted.

After receipt of all the necessary documentation needed to make a sound determination on the agency's request, the intermediary must respond to the request within 90 days of receiving the fully documented request.

VIII. Computing the Per-Beneficiary Limitation

A. Agency-Specific Per-Beneficiary Limitation

To arrive at the agency-specific limitation, which will represent 75 percent of the total per-beneficiary limitation that is to apply to the unduplicated census count of the Medicare beneficiaries for cost reporting periods beginning on or after October 1, 1997, the intermediary will calculate as follows from data on the Medicare cost report for the cost reporting period ending during Federal FY 1994:

For provider-based HHAs, the lesser of line 7, columns 8 and 9, or line 14, columns 8 and 9 plus line 15 columns 8 and 9, as reported on Supplemental Worksheet H–5 (Form HCFA–2552–92–H(4/93) OMB approval number 0938–0050, expiration date 08/31/2000), multiplied by 98 percent and the product divided by the unduplicated census count of Medicare beneficiaries,

as provided by HCFA, times the appropriate market basket increases from Tables 2 and 5; determined using Table 6.

For freestanding HHAs, the lesser of line 7, column 9, or line 14, column 9, plus line 17, columns 7 and 8, as reported on Worksheet C (Form HCFA–1728–86 (6/76)), multiplied by 98 percent and the product divided by the unduplicated census count of Medicare beneficiaries, as provided by HCFA, times the appropriate market basket increases from Tables 2 and 5 or determined using Table 6.

The product of the calculation of the agency-specific limitation is multiplied by 75 percent to arrive at the agency-specific portion of the per-beneficiary limitation.

To arrive at the regional census division per-beneficiary limitation, which will represent 25 percent of the overall per-beneficiary limitation, the HHA's intermediary first determines the adjusted labor-related component by multiplying the labor-related component of the appropriate regional census division per-beneficiary limitation where the beneficiary(s) received HHA services by the appropriate wage index based on where the beneficiary(s) received HHA services. The nonlabor component of the appropriate regional census division per-beneficiary limitation is added to the adjusted labor component and multiplied by 98 percent. The results are then multiplied by 25 percent. The 75 percent agency-specific portion is added to the 25 percent adjusted regional census division portion to arrive at the adjusted per-beneficiary limitation, which will be multiplied by the total unduplicated patient census count of patients for whom services were furnished in that area.

A separate per-beneficiary limitation has to be calculated for each MSA and/or nonMSA serviced by the HHA.

The aggregate limitation for all MSA and/or non-MSA areas for each HHA will be compared to the lower of the Medicare reasonable costs or the aggregate per-visit limitation and the lowest amount after this comparison is the allowable Medicare reasonable costs for payment purposes. The following is an example of how the per-beneficiary limitations are calculated for "clause v" type agencies which provide services to Medicare beneficiaries in more than one MSA area. The aggregate per-beneficiary limitation calculation example is given at section IX.

Example: Calculation of Per-Beneficiary Limitations for an HHA Furnishing Services to Patients Both in Dallas, Texas and Patients in Rural Texas

Blended Per-Beneficiary Limitation for Services in Dallas MSA

Agency-Specific Component

1. Agency-Specific Per-beneficiary Limitation $6,000. (As calculated by the intermediary)
2. Adjusted Agency-Specific Per-beneficiary Limitation (Line 1 × .75)=$4,500.

Census Region Division Component

3. Labor Portion of West South Central Region Per-beneficiary Limitation $4,456.47. (From Table 3a)
4. Dallas, TX Wage Index .9703. (From Table 4a)
5. Adjusted Labor Portion (Line 3 Times Line 4)= $4,324.11.
6. Nonlabor Portion of West South Central Region Per-beneficiary Limitation $1,281.37. (From Table 3a)
7. Adjusted West South Central Region Per-beneficiary Limitation (((Line 5 Plus Line 6)X .98) X .25)= $1,373.34.

Agency-Specific/Census Region Division Blended Per-Beneficiary Limitation

8. Blended Per-beneficiary Limitation for HHA services furnished to Medicare beneficiaries in Dallas, Texas(Line 2 Plus Line 7) = $5,873.34.

Per-Beneficiary Limitation for Services in Rural Texas/Census Region Division Component

9. Labor Portion of West South Central Region Per-beneficiary = $4,456.47. (From Table 3a)
10. Rural Texas Wage Index = .7404. (From Table 4b)
11. Adjusted Labor Portion (Line 9 X Line 10) = $3,299.57.
12. Nonlabor portion of West South Central Region Per-beneficiary Limitation = $1,281.37. (From Table 3a)
13. Adjusted Per-beneficiary Limitation (((Line 11 Plus Line 12)X .98) X.25) = $1,122.33.

Agency-Specific/Census Region Division Blended Per-Beneficiary Limitation

14. Blended Rural Per-beneficiary Limitation for HHA services furnished to Medicare beneficiaries in rural Texas (Line 2 Plus Line 13) = $5,622.33.

The process shown in the above examples would have to be repeated for each MSA and/or non-MSA where the HHA has an unduplicated census count of Medicare beneficiaries which received HHA services.

B. National Per-Beneficiary Limitation

New HHAs, HHAs without a 12-month cost reporting period ending during Federal FY 1994, and certain other HHAs described in section III.C. will be subject to a national per-beneficiary limitation.

As with the census region division per-beneficiary limitations, the national per-beneficiary limitation has a labor-related component and a nonlabor component. To arrive at the adjusted national per-beneficiary limitation, which is to apply to each unduplicated census count of Medicare beneficiary based on where the HHA services were furnished, the intermediary first determines the adjusted labor-related component by multiplying the labor-related component of the national per-beneficiary limitation by the appropriate wage index based on where the beneficiary received the HHA services.

The sum of the adjusted labor-related component and nonlabor component is the adjusted national per-beneficiary limitation applicable to the unduplicated census count of Medicare beneficiaries in the area for which the wage index was used. The following is an example of the calculation of the per-beneficiary limitations for a new HHA providing services to Medicare beneficiaries in more than one MSA area.

Example: Calculation of Adjusted National Per-Beneficiary Limitations for a Provider-Based HHA Providing HHA Services to an Unduplicated Census Count of Medicare Beneficiaries of in Dallas, Texas, and an Unduplicated Census Count of Medicare Beneficiaries in Rural Texas

National Per-Beneficiary Limitation for Dallas, Texas

1. Labor component of national per-beneficiary limitation = $2,607.07. (From Table 3b)
2. Wage-index applicable to Dallas, Texas = .9703 (From Table 4a)
3. Adjusted labor component (Line 1 X Line 2) = $2,529.64.
4. Nonlabor component of national per-beneficiary limitation $749.62. (From Table 4b)
5. Adjusted national per-beneficiary limitation (Line 3 Plus Line 4) X .98 = $3,213.67.

National Per-Beneficiary Limitation for Rural Texas

6. Labor component of national per-beneficiary limitation = $2,607.07. (From Table 4b)
7. Wage index applicable to rural Texas = .7404. (From Table 4b)
8. Adjusted labor component of national per-beneficiary (Line 6 X Line 7) = $1,930.27.
9. Nonlabor component of national per-beneficiary limitation = $749.62. (From Table 3b)
10. Adjusted national per-beneficiary limitation ((Line 8 Plus Line 9) X .98) = $2,626.29.

C. Adjustment Factor for Reporting Year Beginning After October 1, 1997 and Before October 1, 1998

If an HHA has a 12-month cost reporting period beginning on or after November 1, 1997, the adjusted census region division per-beneficiary

limitation or the adjusted national per-beneficiary limitation is again revised by an adjustment factor from Table 5 that corresponds to the month and year in which the cost reporting period begins. Each factor represents the compounded rate of monthly increase derived from the projected annual increase in the market basket index, and is used to account for inflation in costs that will occur after the date on which the per-beneficiary limitations become effective.

In adjusting the agency-specific per-beneficiary limitation for the market basket increases since the end of the cost reporting period ending during Federal year 1994, the intermediary should increase the agency-specific per-beneficiary limitation to September 30, 1998. Thus, when the per-beneficiary limitation needs to be further adjusted for the cost reporting period, the adjusted blended per-beneficiary limitation can be adjusted by the same factor. For example, if the HHAs in the examples above had a cost reporting period beginning January 1, 1998, its per-beneficiary limitations would be further adjusted as follows:

Computation of Revised Per-Beneficiary Limitations Blended per-beneficiary limitation for Dallas MSA = $5,873.34.

Adjustment factor from Table 5. 1.00781

Adjusted blended per-beneficiary limitation for Dallas MSA $5,919.21

National per-beneficiary limitation for Dallas, Texas = 3,213.67

Adjustment factor from Table 5. 1.00781

Adjusted national per-beneficiary limitation = $3,238.77

IX. Schedule of Per-Beneficiary Limitations

The schedule of per-beneficiary limitations set forth below applies to cost reporting periods beginning on or after October 1, 1997. The intermediaries will compute the adjusted per-beneficiary limitations using the wage index(s) published in Tables 4a and 4b of section X. for each MSA and/or non MSA for which the HHA provides services to Medicare beneficiaries. The intermediary will notify each HHA it services of its applicable per-beneficiary limitation(s) for the area(s) where the HHA furnishes HHA services to Medicare beneficiaries. Each HHA's aggregate per-beneficiary limitation cannot be determined prospectively, but depends on each HHA's unduplicated census count of Medicare beneficiaries by location of the HHA services furnished for the cost reporting periods subject to this document.

Section 1861(v)(1)(L)(vi)(II) of the Act as added by section 4602(c) of BBA "97, requires the per-beneficiary limitations to be prorated among HHAs for Medicare beneficiaries who use services furnished by more than one HHA. The per-beneficiary limitation will be prorated based on a ratio of the number of visits furnished to the individual beneficiary by the HHA during its cost reporting period to the total number of visits furnished by all HHAs to that individual beneficiary during the same period.

The proration of the per-beneficiary limitation will be done based on the fraction of services the beneficiary received from the HHA. For example, if an HHA furnished 100 visits to an individual beneficiary during its cost reporting period ending September 30, 1998, and that same individual received a total of 400 visits during that same period, the HHA would count the beneficiary as a .25 unduplicated census count of Medicare patient for the cost reporting period ending September 30, 1998.

The HHA costs that are subject to the per-beneficiary limitations include the costs of nonroutine medical supplies furnished in conjunction with patient care. Durable medical equipment and drugs directly identifiable as services to an individual patient are excluded from the per-beneficiary limitations and are paid without regard to this schedule of per-beneficiary limitations.

The intermediary will determine the aggregate per-beneficiary limitation for each HHA by multiplying the unduplicated census count of Medicare beneficiaries according to the location where the services are furnished by the HHA, by the respective per-beneficiary limitation. The sum of these amounts is compared to the lesser of the HHA's total allowable costs or the aggregate per-visit limitation plus the allowable Medicare costs of nonroutine medical supplies. An example of how the aggregate per-beneficiary limitation is computed for an HHA providing HHA services to Medicare beneficiaries in both Dallas, Texas and rural Texas is as follows:

Example: HHA X, a HHA located in Dallas, TX, has unduplicated census count of 400 Medicare beneficiaries in the Dallas MSA and an unduplicated census count of 200 Medicare beneficiaries in rural Texas during its 12-month cost reporting period ending September 30, 1998. For simplicity, we are using the same blended per-beneficiary limitation that is used in the example under VIII. A above. The aggregate per-beneficiary limitation is calculated as follows:

DETERMINING THE AGGREGATE PER-BENEFICIARY LIMITATION

MSA/non-MSA area	Per beneficiary limitation [1]	Unduplicated census count of Medicare beneficiaries	Total limitation
Dallas, TX	$5,873.34	400	$2,349,336
Rural, TX	5,622.33	200	1,124,466
Aggregate Limitation			3,473,802

[1] Blended per-beneficiary limitation adjusted by the appropriate wage index.

TABLE 3A.—STANDARDIZED PER-BENEFICIARY LIMITATION BY CENSUS REGION DIVISION, LABOR/NONLABOR

Census region division	Labor component	Nonlabor component
New England (CT, ME, MA, NH, RI, VT)	$2,670.73	$ 767.92
Middle Atlantic (NJ, NY, PA)	1,979.21	569.08
South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	2,985.69	858.48
East North Central (IL, IN, MI, OH, WI)	2,421.00	696.11

TABLE 3A.—STANDARDIZED PER-BENEFICIARY LIMITATION BY CENSUS REGION DIVISION, LABOR/NONLABOR—Continued

Census region division	Labor component	Nonlabor component
East South Central (AL, KY, MS, TN)	4,590.61	1,319.94
West North Central (IA, KS, MN, MO, NE, ND, SD)	2,325.36	668.62
West South Central (AR, LA, OK, TX)	4,456.47	1,281.37
Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	2,936.88	844.44
Pacific (AK, CA, HI, OR, WA)	2,275.12	654.17

TABLE 3B.—STANDARDIZED PER-BENEFICIARY LIMITATION FOR NEW AGENCIES AND AGENCIES WITHOUT A 12-MONTH COST REPORT ENDING DURING FEDERAL FY 1994

	Labor component	Nonlabor component
National	$2,607.07	$ 749.62

TABLE 3C.—STANDARDIZED PER-BENEFICIARY LIMITATIONS FOR PUERTO RICO AND GUAM

	Labor component	Nonlabor component
Puerto Rico	$1,940.26	$ 557.88
Guam	$1,873.76	$ 538.76

X. Wage Indexes

TABLE 4A.—WAGE INDEX FOR URBAN AREAS

	Urban area (constituent counties or county equivalents)	Wage index
0040	Abilene, TX; Taylor, TX	0.8287
0060	Aguadilla, PR; Aguada, PR; Aguadilla, PR; Moca, PR	0.4188
0080	Akron, OH; Portage, OH; Summit, OH	0.9772
0120	Albany, GA; Dougherty, GA; Lee, GA	0.7914
0160	Albany-Schenectady-Troy, NY; Albany, NY; Montgomery, NY; Rensselaer, NY; Saratoga, NY; Schenectady, NY; Schoharie, NY.	0.8480
0200	Albuquerque, NM; Bernalillo, NM; Sandoval, NM; Valencia, NM	0.9309
0220	Alexandria, LA; Rapides, LA	0.8162
0240	Allentown-Bethlehem-Easton, PA; Carbon, PA; Lehigh, PA; Northampton, PA	1.0086
0280	Altoona, PA; Blair, PA	0.9137
0320	Amarillo, TX; Potter, TX; Randall, TX	0.9425
0380	AK Anchorage, AK; Anchorage	1.2842
0440	Ann Arbor, MI; Lenawee, MI; Livingston, MI; Washtenaw, MI	1.1785
0450	Anniston, AL; Calhoun, AL	0.8266
0460	Appleton-Oshkosh-Neenah, WI; Calumet, WI; Outagamie, WI; Winnebago, WI	0.8996
0470	Arecibo, PR; Arecibo, PR; Camuy, PR; Hatillo, PR	0.4218
0480	Asheville, NC; Buncombe, NC; Madison, NC	0.9072
0500	Athens, GA; Clarke, GA; Madison, GA; Oconee, GA	0.9087
0520	Atlanta, GA; Barrow, GA; Bartow, GA; Carroll, GA; Cherokee, GA; Clayton, GA; Cobb, GA; Coweta, GA; DeKalb, GA; Douglas, GA; Fayette, GA; Forsyth, GA; Fulton, GA; Gwinnett, GA; Henry, GA; Newton, GA; Paulding, GA; Pickens, GA; Rockdale, GA; Spalding, GA; Walton, GA.	0.9823
0560	Atlantic City-Cape May, NJ; Atlantic City, NJ; Cape May, NJ	1.1155
0600	Augusta-Aiken, GA–SC; Columbia, GA; McDuffie, GA; Richmond, GA; Aiken, SC; Edgefield, SC	0.9333
0640	Austin-San Marcos, TX; Bastrop, TX; Caldwell, TX; Hays, TX; Travis, TX; Williamson, TX	0.9133
0680	Bakersfield, CA; Kern, CA	1.0014
0720	Baltimore, MD; Anne Arundel, MD; Baltimore, MD; Baltimore City, MD; Carroll, MD; Harford, MD; Howard, MD; Queen Anne, MD.	0.9689
0733	Bangor, ME; Penobscot, ME	0.9478
0743	Barnstable-Yarmouth, MA; Barnstable, MA	1.4291
0760	Baton Rouge, LA; Ascension, LA; East Baton Rouge, LA; Livingston, LA; West Baton Rouge, LA	0.8382
0840	Beaumont-Port Arthur, TX; Hardin, TX; Jefferson, TX; Orange, TX	0.8593
0860	Bellingham, WA; Whatcom, WA	1.1221
0870	Benton Harbor, MI; Berrien, MI	0.8634
0875	Bergen-Passaic, NJ; Bergen, NJ; Passaic, NJ	1.2156
0880	Billings, MT; Yellowstone, MT	0.9783
0920	Biloxi-Gulfport-Pascagoula, MS; Hancock, MS; Harrison, MS; Jackson, MS	0.8415
0960	Binghamton, NY; Broome, NY; Tioga, NY	0.8914
1000	Birmingham, AL; Blount, AL; Jefferson, AL; St. Clair, AL; Shelby, AL	0.9005
1010	Bismarck, ND; Burleigh, ND; Morton, ND	0.7695
1020	Bloomington, IN; Monroe, IN	0.9128
1040	Bloomington-Normal, IL; McLean, IL	0.8733

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

	Urban area (constituent counties or county equivalents)	Wage index
1080	Boise City, ID; Ada, ID; Canyon, ID	0.8856
1123	Boston-Worcester Lawrence-Lowell-Brockton, MA–NH; Bristol, MA; Essex, MA; Middlesex, MA; Norfolk, MA; Plymouth, MA; Suffolk, MA; Worcester, MA; Hillsborough, NH; Merrimack, NH; Rockingham, NH; Strafford, NH.	1.1506
1125	Boulder-Longmont, CO; Boulder, CO	1.0015
1145	Brazoria, TX; Brazoria, TX	0.9341
1150	Bremerton, WA; Kitsap, WA	1.0999
1240	Brownsville-Harlingen-San Benito, TX; Cameron, TX	0.8740
1260	Bryan-College Station, TX; Brazos, TX	0.8571
1280	Buffalo-Niagara Falls, NY; Erie, NY; Niagara, NY	0.9272
1303	Burlington, VT; Chittenden, VT; Franklin, VT; Grand Isle, VT;	1.0142
1310	Caguas, PR; Caguas, PR; Cayey, PR; Cidra, PR; Gurabo, PR; San Lorenzo, PR	0.4459
1320	Canton-Massillon, OH; Carroll, OH; Stark, OH	0.8961
1350	Casper, WY; Natrona, WY	0.9013
1360	Cedar Rapids, IA; Linn, IA	0.8529
1400	Champaign-Urbana, IL; Champaign, IL	0.8824
1440	Charleston-North Charleston, SC; Berkeley, SC; Charleston, SC; Dorchester, SC	0.8807
1450	Charleston, WV; Kanawha, WV; Putnam, WV	0.9142
1520	Charlotte-Gastonia-Rock Hill, NC–SC; Cabarrus, NC; Gaston, NC; Lincoln, NC; Mecklenburg, NC; Rowan, NC; Union, NC; York, SC.	0.9710
1540	Charlottesville, VA; Albemarle, VA; Charlottesville City, VA; Fluvanna, VA; Greene, VA	0.9051
1560	Chattanooga, TN–GA; Catoosa, GA; Dade, GA; Walker, GA; Hamilton, TN; Marion, TN	0.8658
1580	Cheyenne, WY; Laramie, WY	0.7555
1600	Chicago, IL; Cook, IL; DeKalb, IL; DuPage, IL; Grundy, IL; Kane, IL; Kendall, IL; Lake, IL; McHenry, IL; Will, IL	1.0860
1620	Chico-Paradise, CA; Butte, CA	1.0429
1640	Cincinnati, OH-KY-IN; Dearborn, IN; Ohio, IN; Boone, KY; Campbell, KY; Gallatin, KY; Grant, KY; Kenton, KY; Pendleton, KY; Brown, OH; Clermont, OH; Hamilton, OH; Warren, OH.	0.9474
1660	Clarksville-Hopkinsville, TN–KY; Christian, KY; Montgomery, TN	0.7852
1680	Cleveland-Lorain-Elyria, OH; Ashtabula, OH; Cuyahoga, OH; Geauga, OH; Lake, OH; Lorain, OH; Medina, OH	0.9804
1720	Colorado Springs, CO; El Paso, CO	0.9316
1740	Columbia, MO; Boone, MO	0.9001
1760	Columbia, SC; Lexington, SC; Richland, SC	0.9192
1800	Columbus, GA-AL; Russell, AL; Chattanoochee, GA; Harris, GA; Muscogee, GA	0.8288
1840	Columbus, OH; Delaware, OH; Fairfield, OH; Franklin, OH; Licking, OH; Madison, OH; Pickaway, OH	0.9793
1880	Corpus Christi, TX; Nueces, TX; San Patricio, TX	0.8945
1900	Cumberland, MD-WV; Allegany, MD; Mineral, WV	0.8822
1920	Dallas, TX; Collin, TX; Dallas, TX; Denton, TX; Ellis, TX; Henderson, TX; Hunt, TX; Kaufman, TX; Rockwall, TX	0.9703
1950	Danville, VA; Danville City, VA; Pittsylvania, VA	0.8146
1960	Davenport-Rock Island-Moline, IA–IL; Scott, IA; Henry, IL; Rock Island, IL	0.8405
2000	Dayton-Springfield, OH; Clark, OH; Greene, OH; Miami, OH; Montgomery, OH	0.9584
2020	Daytona Beach, FL; Flagler, FL; Volusia, FL	0.8375
2030	Decatur, AL; Lawrence, AL; Morgan, AL	0.8286
2040	Decatur, IL; Macon, IL	0.7915
2080	Denver, CO; Adams, CO; Arapahoe, CO; Denver, CO; Douglas, CO; Jefferson, CO	1.0386
2120	Des Moines, IA; Dallas, IA; Polk, IA; Warren, IA	0.8837
2160	Detroit, MI; Lapeer, MI; Macomb, MI; Monroe, MI; Oakland, MI; St. Clair, MI; Wayne, MI	1.0825
2180	Dothan, AL; Dale, AL; Houston, AL	0.8070
2190	Dover, DE; Kent, DE	0.9303
2200	Dubuque, IA; Dubuque, IA	0.8088
2240	Duluth-Superior, MN–WI; St. Louis, MN; Douglas, WI	0.9779
2281	Dutchess County, NY; Dutchess, NY	1.0632
2290	Eau Claire, WI; Chippewa, WI; Eau Claire, WI	0.8764
2320	El Paso, TX; El Paso, TX	1.0123
2330	Elkhart-Goshen, IN; Elkhart, IN	0.9081
2335	Elmira, NY; Chemung, NY	0.8247
2340	Enid, OK; Garfield, OK	0.7962
2360	Erie, PA; Erie, PA	0.8862
2400	Eugene-Springfield, OR; Lane, OR	1.1435
2440	Evansville-Henderson, IN-KY; Posey, IN; Vanderburgh, IN; Warrick, IN; Henderson, KY	0.8641
2520	Fargo-Moorhead, ND-MN; Clay, MN; Cass, ND	0.8837
2560	Fayetteville, NC; Cumberland, NC	0.8734
2580	Fayetteville-Springdale-Rogers, AR; Benton, AR; Washington, AR	0.7461
2620	Flagstaff, AZ-UT; Coconino, AZ; Kane, UT	0.9115
2640	Flint, MI; Genesee, MI	1.1171
2650	Florence, AL; Colbert, AL; Lauderdale, AL	0.7551
2655	Florence, SC; Florence, SC	0.8711
2670	Fort Collins-Loveland, CO; Larimer, CO	1.0248
2680	Ft. Lauderdale, FL; Broward, FL	1.0448
2700	Fort Myers-Cape Coral, FL; Lee, FL	0.8788
2710	Fort Pierce-Port St. Lucie, FL; Martin, FL; St. Lucie, FL	1.0257
2720	Fort Smith, AR–OK; Crawford, AR; Sebastian, AR; Sequoyah, OK	0.7769
2750	Fort Walton Beach, FL; Okaloosa, FL	0.8765
2760	Fort Wayne, IN; Adams, IN; Allen, IN; DeKalb, IN; Huntington, IN; Wells, IN; Whitley, IN	0.8901

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

	Urban area (constituent counties or county equivalents)	Wage index
2800	Forth Worth-Arlington, TX; Hood, TX; Johnson, TX; Parker, TX; Tarrant, TX	0.9979
2840	Fresno, CA; Fresno, CA; Madera, CA	1.0607
2880	Gadsden, AL; Etowah, AL	0.8815
2900	Gainesville, FL; Alachua, FL	0.9616
2920	Galveston-Texas City, TX; Galveston, TX	1.0564
2960	Gary, IN; Lake, IN; Porter, IN	0.9633
2975	Glens Falls, NY; Warren, NY; Washington, NY	0.8386
2980	Goldsboro, NC; Wayne, NC	0.8443
2985	Grand Forks, ND–MN; Polk, MN; Grand Forks, ND	0.8745
2995	Grand Junction, CO; Mesa, CO	0.9090
3000	Grand Rapids-Muskegon-Holland, MI; Allegan, MI; Kent, MI; Muskegon, MI; Ottawa, MI	1.0147
3040	Great Falls, MT; Cascade, MT	0.8803
3060	Greeley, CO; Weld, CO	1.0097
3080	Green Bay, WI; Brown, WI	0.9097
3120	Greensboro-Winston-Salem-High Point, NC; Alamance, NC; Davidson, NC; Davie, NC; Forsyth, NC Guilford, NC; Randolph, NC; Stokes, NC; Yadkin, NC.	0.9351
3150	Greenville, NC; Pitt, NC	0.9064
3160	Greenville-Spartanburg-Anderson, SC; Anderson, SC; Cherokee, SC; Greenville, SC; Pickens, SC; Spartanburg, SC.	0.9059
3180	Hagerstown, MD; Washington, MD	0.9681
3200	Hamilton-Middletown, OH; Butler, OH	0.8767
3240	Harrisburg-Lebanon-Carlisle, PA; Cumberland, PA; Dauphin, PA; Lebanon, PA; Perry, PA	1.0187
3283	Hartford, CT; Hartford, CT; Litchfield, CT; Middlesex, CT; Tolland, CT	1.2562
3285	Hattiesburg, MS; Forrest, MS; Lamar, MS	0.7192
3290	Hickory-Morganton-Lenoir, NC; Alexander, NC; Burke, NC; Caldwell, NC; Catawba, NC	0.8686
3320	Honolulu, HI; Honolulu, HI	1.1816
3350	Houma, LA; Lafourche, LA; Terrebonne, LA	0.7854
3360	Houston, TX; Chambers, TX; Fort Bend, TX; Harris, TX; Liberty, TX; Montgomery, TX; Waller, TX	0.9855
3400	Huntington-Ashland, WV–KY–OH; Boyd, KY; Carter, KY; Greenup, KY; Lawrence, OH; Cabell, WV; Wayne, WV	0.9160
3440	Huntsville, AL; Limestone, AL; Madison, AL	0.8485
3480	Indianapolis, IN; Boone, IN; Hamilton, IN; Hancock, IN; Hendricks, IN; Johnson, IN; Madison, IN; Marion, IN; Morgan, IN; Shelby, IN.	0.9848
3500	Iowa City, IA; Johnson, IA	0.9413
3520	Jackson, MI; Jackson, MI	0.9052
3560	Jackson, MS; Hinds, MS; Madison, MS; Rankin, MS	0.7760
3580	Jackson, TN; Madison, TN; Chester, TN	0.8522
3600	Jacksonville, FL; Clay, FL; Duval, FL; Nassau, FL; St. Johns, FL	0.8969
3605	Jacksonville, NC; Onslow, NC	0.6973
3610	Jamestown, NY; Chautaqua, NY	0.7552
3620	Janesville-Beloit, WI; Rock, WI	0.8824
3640	Jersey City, NJ; Hudson, NJ	1.1412
3660	Johnson City-Kingsport-Bristol, TN–VA; Carter, TN; Hawkins, TN; Sullivan, TN; Unicoi, TN; Washington, TN; Bristol City, VA; Scott, VA; Washington, VA.	0.9114
3680	Johnstown, PA; Cambria, PA; Somerset, PA	0.8378
3700	Jonesboro, AR; Craighead, AR	0.7443
3710	Joplin, MO; Jasper, MO; Newton, MO	0.7510
3720	Kalamazoo-Battlecreek, MI; Calhoun, MI; Kalamazoo, MI; Van Buren, MI	1.0668
3740	Kankakee, IL; Kankakee, IL	0.8653
3760	Kansas City, KS–MO; Johnson, KS; Leavenworth, KS; Miami, KS; Wyandotte, KS; Cass, MO; Clay, MO; Clinton, MO; Jackson, MO; Lafayette, MO; Platte, MO; Ray, MO.	0.9564
3800	Kenosha, WI; Kenosha, WI	0.9196
3810	Killeen-Temple, TX; Bell, TX; Coryell, TX	1.0252
3840	Knoxville, TN; Anderson, TN; Blount, TN; Knox, TN; Loudon, TN; Sevier, TN; Union, TN	0.8831
3850	Kokomo, IN; Howard, IN; Tipton, IN	0.8416
3870	La Crosse, WI–MN; Houston, MN; La Crosse, WI	0.8749
3880	Lafayette, LA; Acadia, LA; Lafayette, LA; St. Landry, LA; St. Martin, LA	0.8206
3920	Lafayette, IN; Clinton, IN; Tippecanoe, IN	0.9174
3960	Lake Charles, LA; Calcasieu, LA	0.7776
3980	Lakeland-Winter Haven, FL; Polk, FL	0.8806
4000	Lancaster, PA; Lancaster, PA	0.9481
4040	Lansing-East Lansing, MI; Clinton, MI; Eaton, MI; Ingham, MI	1.0088
4080	Laredo, TX; Webb, TX	0.7325
4100	Las Cruces, NM; Dona Ana, NM	0.8646
4120	Las Vegas, NV–AZ; Mohave, AZ; Clark, NV; Nye, NV	1.0592
4150	Lawrence, KS; Douglas, KS	0.8608
4200	Lawton, OK; Comanche, OK	0.9045
4243	Lewiston-Auburn, ME; Androscoggin, ME	0.9536
4280	Lexington, KY; Bourbon, KY; Clark, KY; Fayette, KY; Jessamine, KY; Madison, KY; Scott, KY; Woodford, KY	0.8390
4320	Lima, OH; Allen, OH; Auglaize, OH	0.9185
4360	Lincoln, NE; Lancaster, NE	0.9231
4400	Little Rock-North Little Rock, AR; Faulkner, AR; Lonoke, AR; Pulaski, AR; Saline, AR	0.8490
4420	Longview-Marshall, TX; Gregg, TX; Harrison, TX; Upshur, TX	0.8613

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

	Urban area (constituent counties or county equivalents)	Wage index
4480	Los Angeles-Long Beach, CA; Los Angeles, CA	1.2232
4520	Louisville, KY–IN; Clark, IN; Floyd, IN; Harrison, IN; Scott, IN; Bullitt, KY; Jefferson, KY; Oldham, KY	0.9507
4600	Lubbock, TX; Lubbock, TX	0.8400
4640	Lynchburg, VA; Amherst, VA; Bedford, VA; Bedford City, VA; Campbell, VA; Lynchburg City, VA	0.8228
4680	Macon, GA; Bibb, GA; Houston, GA; Jones, GA; Peach, GA; Twiggs, GA	0.9227
4720	Madison, WI; Dane, WI	1.0055
4800	Mansfield, OH; Crawford, OH; Richland, OH	0.8639
4840	Mayaguez, PR; Anasco, PR; Cabo Rojo, PR; Hormigueros, PR; Mayaguez, PR; Sabana Grande, PR; San German, PR.	0.4475
4880	McAllen-Edinburg-Mission, TX; Hidalgo, TX	0.8371
4890	Medford-Ashland, OR; Jackson, OR	1.0354
4900	Melbourne-Titusville-Palm Bay, FL; Brevard, Fl	0.8819
4920	Memphis, TN–AR–MS; Crittenden, AR; DeSoto, MS; Fayette, TN; Shelby, TN; Tipton, TN	0.8589
4940	Merced, CA; Merced, CA	1.0947
5000	Miami, FL; Dade, FL	0.9859
5015	Middlesex-Somerset-Hunterdon, NJ; Hunterdon, NJ; Middlesex, NJ; Somerset, NJ	1.1059
5080	Milwaukee-Waukesha, WI; Milwaukee, WI; Ozaukee, WI; Washington, WI; Waukesha, WI	0.9819
5120	Minneapolis-St. Paul, MN–WI; Anoka, MN; Carver, MN; Chisago, MN; Dakota, MN; Hennepin, MN; Isanti, MN; Ramsey, MN; Scott, MN; Sherburne, MN; Washington, MN; Wright, MN; Pierce, WI; St. Croix, WI.	1.0733
5160	Mobile, AL; Baldwin, AL; Mobile, AL	0.8455
5170	Modesto, CA; Stanislaus, CA	1.0794
5190	Monmouth-Ocean, NJ; Monmouth, NJ; Ocean, NJ	1.0934
5200	Monroe, LA; Ouachita, LA	0.8414
5240	Montgomery, AL; Autauga, AL; Elmore, AL; Montgomery, AL	0.7671
5280	Muncie, IN; Delaware, IN	0.9173
5330	Myrtle Beach, SC; Horry, SC	0.8072
5345	Naples, FL; Collier, FL	1.0109
5360	Nashville, TN; Cheatham, TN; Davidson, TN; Dickson, TN; Robertson, TN; Rutherford TN; Sumner, TN; Williamson, TN; Wilson, TN.	0.9182
5380	Nassau-Suffolk, NY; Nassau, NY; Suffolk, NY	1.3807
5483	New Haven-Bridgeport-Stamford-Danbury-Waterbury, CT; Fairfield, CT; New Haven, CT	1.2618
5523	New London-Norwich, CT; New London, CT	1.2013
5560	New Orleans, LA; Jefferson, LA; Orleans, LA; Plaquemines, LA; St. Bernard, LA; St. Charles, LA; St. James, LA; St. John Baptist, LA; St. Tammany, LA.	0.9566
5600	New York, NY; Bronx, NY; Kings, NY; New York, NY; Putnam, NY; Queens, NY; Richmond, NY; Rockland, NY; Westchester, NY.	1.4449
5640	Newark, NJ; Essex, NJ; Morris, NJ; Sussex, NJ; Union, NJ; Warren, NJ	1.1980
5660	Newburgh, NY–PA; Orange, NY; Pike, PA	1.1283
5720	Norfolk-Virginia Beach-Newport News, VA–NC; Currituck, NC; Chesapeake City, VA; Gloucester, VA; Hampton City, VA; Isle of Wight, VA; James City, VA; Mathews, VA; Newport News City, VA; Norfolk City, VA; Poquoson City, VA; Portsmouth City, VA; Suffolk City, VA; Virginia Beach City VA; Williamsburg City, VA; York, VA.	0.8316
5775	Oakland, CA; Alameda, CA; Contra Costa, CA	1.5068
5790	Ocala, FL; Marion, FL	0.9032
5800	Odessa-Midland, TX; Ector, TX; Midland, TX	0.8660
5880	Oklahoma City, OK; Canadian, OK; Cleveland, OK; Logan, OK; McClain, OK; Oklahoma, OK; Pottawatomie, OK	0.8481
5910	Olympia, WA; Thurston, WA	1.0901
5920	Omaha, NE–IA; Pottawattamie, IA; Cass, NE; Douglas, NE; Sarpy, NE; Washington, NE	0.9421
5945	Orange County, CA; Orange, CA	1.1605
5960	Orlando, FL; Lake, FL; Orange, FL; Osceola, FL; Seminole, FL	0.9397
5990	Owensboro, KY; Daviess, KY	0.7480
6015	Panama City, FL; Bay, FL	0.8337
6020	Parkersburg-Marietta, WV–OH; Washington, OH; Wood, WV	0.8046
6080	Pensacola, FL; Escambia, FL; Santa Rosa, FL	0.8193
6120	Peoria-Pekin, IL; Peoria, IL; Tazewell, IL; Woodford, IL	0.8571
6160	Philadelphia, PA–NJ; Burlington, NJ; Camden, NJ; Gloucester, NJ Salem, NJ; Bucks, PA; Chester, PA; Delaware, PA; Montgomery, PA; Philadelphia, PA.	1.1398
6200	Phoenix-Mesa, AZ; Maricopa, AZ; Pinal, AZ	0.9606
6240	Pine Bluff, AR; Jefferson, AR	0.7826
6280	Pittsburgh, PA; Allegheny, PA; Beaver, PA; Butler, PA; Fayette, PA; Washington, PA; Westmoreland, PA	0.9725
6323	Pittsfield, MA; Berkshire, MA	1.0960
6340	Pocatelo, ID; Bannock ID	0.9586
6360	Ponce, PR; Guayanilla, PR; Juana Diaz, PR; Penuelas, PR; Ponce, PR; Villalba, PR; Yauco, PR	0.4589
6403	Portland, ME; Cumberland, ME; Sagadahoc, ME; York, ME	0.9627
6440	Portland-Vancouver, OR–WA; Clackamas, OR; Columbia, OR; Multnomah, OR; Washington, OR; Yamhill, OR; Clark, WA.	1.1344
6483	Providence-Warwick-Pawtucket, RI; Bristol, RI; Kent, RI; Newport, RI; Providence, RI; Washington, RI; Statewide, RI.	1.1049
6520	Provo-Orem, UT; Utah, UT	1.0073
6560	Pueblo, CO; Pueblo, CO	0.8450
6580	Punta Gorda, FL; Charlotte, FL	0.8725
6600	Racine, WI; Racine, WI	0.8934

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

	Urban area (constituent counties or county equivalents)	Wage index
6640	Raleigh-Durham-Chapel Hill, NC; Chatham, NC; Durham, NC; Franklin, NC; Johnston, NC; Orange, NC; Wake, NC.	0.9818
6660	Rapid City, SD; Pennington, SD	0.8345
6680	Reading, PA; Berks, PA	0.9516
6690	Redding, CA; Shasta, CA	1.1790
6720	Reno, NV; Washoe, NV	1.0768
6740	Richland-Kennewick-Pasco, WA; Benton, WA; Franklin, WA	0.9918
6760	Richmond-Petersburg, VA; Charles City County, VA; Chesterfield, VA; Colonial Heights City, VA; Dinwiddie, VA; Goochland, VA; Hanover, VA; Henrico, VA; Hopewell City, VA; New Kent, VA; Petersburg City, VA; Powhatan, VA; Prince George, VA; Richmond City, VA.	0.9152
6780	Riverside-San Bernardino, CA; Riverside, CA; San Bernardino, CA	1.1307
6800	Roanoke, VA; Botetourt, VA; Roanoke, VA; Roanoke City, VA; Salem City, VA	0.8402
6820	Rochester, MN; Olmsted, MN	1.0502
6840	Rochester, NY; Genesee, NY; Livingston, NY; Monroe, NY; Ontario, NY; Orleans, NY; Wayne, NY	0.9524
6880	Rockford, IL; Boone, IL; Ogle, IL; Winnebago, IL	0.9081
6895	Rocky Mount, NC; Edgecombe, NC; Nash, NC	0.9029
6920	Sacramento, CA; El Dorado, CA; Placer, CA; Sacramento, CA	1.2202
6960	Saginaw-Bay City-Midland, MI; Bay, MI; Midland, MI; Saginaw, MI	0.9564
6980	St. Cloud, MN; Benton, MN; Stearns, MN	0.9544
7000	St. Joseph, MO; Andrews, MO; Buchanan, MO	0.8366
7040	St. Louis, MO–IL; Clinton, IL; Jersey, IL; Madison, IL; Monroe, IL; St. Clair, IL; Franklin, MO; Jefferson, MO; Lincoln, MO; St. Charles, MO; St. Louis, MO; St. Louis City, MO; Warren, MO.	0.9130
7080	Salem, OR; Marion, OR; Polk, OR	0.9935
7120	Salinas, CA; Monterey, CA	1.4513
7160	Salt Lake City-Ogden, UT; Davis, UT; Salt Lake, UT; Weber, UT	0.9857
7200	San Angelo, TX; Tom Green, TX	0.7780
7240	San Antonio, TX; Bexar, TX; Comal, TX; Guadalupe, TX; Wilson, TX	0.8499
7320	San Diego, CA; San Diego, CA	1.2193
7360	San Francisco, CA; Marin, CA; San Francisco, CA; San Mateo, CA	1.4180
7400	San Jose, CA; Santa Clara, CA	1.4332
7440	San Juan-Bayamon, PR; Aguas Buenas, PR; Barceloneta, PR; Bayamon, PR; Canovanas, PR; Carolina, PR; Catano, PR; Ceiba, PR; Comerio, PR; Corozal, PR; Dorado, PR; Fajardo, PR; Florida, PR; Guaynabo, PR; Humacao, PR; Juncos, PR; Los Piedras, PR; Loiza, PR; Luguillo, PR; Manati, PR; Morovis, PR; Naguabo, PR; Naranjito, PR; Rio Grande, PR; San Juan, PR; Toa Alta, PR; Toa Baja, PR; Trujillo Alto, PR; Vega Alta, PR; Vega Baja, PR; Yabucoa, PR.	0.4625
7460	San Luis Obispo-Atascadero-Paso Robles, CA; San Luis Obispo, CA	1.1374
7480	Santa Barbara-Santa Maria-Lompoc, CA; Santa Barbara, CA	1.0688
7485	Santa Cruz-Watsonville, CA; Santa Cruz, CA	1.4187
7490	Santa Fe, NM; Los Alamos, NM; Santa Fe, NM	1.0332
7500	Santa Rosa, CA; Sonoma, CA	1.2815
7510	Sarasota-Bradenton, FL; Manatee, FL; Sarasota, FL	0.9757
7520	Savannah, GA; Bryan, GA; Chatham, GA; Effingham, GA	0.8638
7560	Scranton—Wilkes-Barre—Hazleton, PA; Columbia, PA; Lackawanna, PA; Luzerne, PA; Wyoming, PA	0.8539
7600	Seattle-Bellevue-Everett, WA; Island, WA; King, WA; Snohomish, WA	1.1339
7610	Sharon, PA; Mercer, PA	0.8783
7620	Sheboygan, WI; Sheboygan, WI	0.7862
7640	Sherman-Denison, TX; Grayson, TX	0.8499
7680	Shreveport-Bossier City, LA; Bossier, LA; Caddo, LA; Webster, LA	0.9381
7720	Sioux City, IA–NE; Woodbury, IA; Dakota, NE	0.8031
7760	Sioux Falls, SD; Lincoln, SD; Minnehaha, SD	0.8712
7800	South Bend, IN; St. Joseph, IN	0.9868
7840	Spokane, WA; Spokane, WA	1.0486
7880	Springfield, IL; Menard, IL; Sangamon, IL	0.8713
7920	Springfield, MO; Christian, MO; Greene, MO; Webster, MO	0.7989
8003	Springfield, MA; Hampden, MA; Hampshire, MA	1.0740
8050	State College, PA; Centre, PA	0.9635
8080	Steubenville-Weirton, OH–WV; Jefferson, OH; Brooke, WV; Hancock, WV	0.8645
8120	Stockton-Lodi, CA; San Joaquin, CA	1.1496
8140	Sumter, SC; Sumter, SC	0.7842
8160	Syracuse, NY; Cayuga, NY; Madison, NY; Onondaga, NY; Oswego, NY	0.9464
8200	Tacoma, WA; Pierce, WA	1.1016
8240	Tallahassee, FL; Gadsden, FL; Leon, FL	0.8832
8280	Tampa-St. Petersburg-Clearwater, FL; Hernando, FL; Hillsborough, FL; Pasco, FL; Pinellas, FL	0.9103
8320	Terre Haute, IN; Clay, IN; Vermillion, IN; Vigo, IN	0.8614
8360	Texarkana, AR-Texarkana, TX; Miller, AR; Bowie, TX	0.8664
8400	Toledo, OH; Fulton, OH; Lucas, OH; Wood, OH	1.0390
8440	Topeka, KS; Shawnee, KS	0.9438
8480	Trenton, NJ; Mercer, NJ	1.0380
8520	Tucson, AZ; Pima, AZ	0.9180
8560	Tulsa, OK; Creek, OK; Osage, OK; Rogers, OK; Tulsa, OK; Wagoner, OK	0.8074
8600	Tuscaloosa, AL; Tuscaloosa, AL	0.8187
8640	Tyler, TX; Smith, TX	0.9567

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

	Urban area (constituent counties or county equivalents)	Wage index
8680	Utica-Rome, NY; Herkimer, NY; Oneida, NY	0.8398
8720	Vallejo-Fairfield-Napa, CA; Napa, CA; Solano, CA	1.3754
8735	Ventura, CA; Ventura, CA	1.0946
8750	Victoria, TX; Victoria, TX	0.8474
8760	Vineland-Millville-Bridgeton, NJ; Cumberland, NJ	1.0110
8780	Visalia-Tulare-Porterville, CA; Tulare, CA	0.9924
8800	Waco, TX; McLennan, TX	0.7696
8840	Washington, DC–MD–VA–WV; District of Columbia, DC; Calvert, MD; Charles, MD; Frederick, MD; Montgomery, MD; Prince Georges, MD; Alexandria City, VA; Arlington, VA; Clarke, VA; Culpepper, VA; Fairfax, VA; Fairfax City, VA; Falls Church City, VA; Fauquier, VA; Fredericksburg City, VA; King George, VA; Loudoun, VA; Manassas City, VA; Manassas Park City, VA; Prince William, VA; Spotsylvania, VA; Stafford, VA; Warren, VA; Berkeley, WV; Jefferson, WV.	1.0911
8920	Waterloo-Cedar Falls, IA; Black Hawk, IA	0.8640
8940	Wausau, WI; Marathon, WI	1.0545
8960	West Palm Beach-Boca Raton, FL; Palm Beach, FL	1.0372
9000	Wheeling, OH–WV; Belmont, OH; Marshall, WV; Ohio, WV	0.7707
9040	Wichita, KS; Butler, KS; Harvey, KS; Sedgwick, KS	0.9403
9080	Wichita Falls, TX; Archer, TX; Wichita, TX	0.7646
9140	Williamsport, PA; Lycoming, PA	0.8548
9160	Wilmington-Newark, DE–MD; New Castle, DE; Cecil, MD	1.1538
9200	Wilmington, NC; New Hanover, NC; Brunswick, NC	0.9322
9260	Yakima, WA; Yakima, WA	1.0102
9270	Yolo, CA; Yolo, CA	1.1431
9280	York, PA; York, PA	0.9415
9320	Youngstown-Warren, OH; Columbiana, OH; Mahoning, OH; Trumbull, OH	0.9937
9340	Yuba City, CA; Sutter, CA; Yuba, CA	1.0324
9360	Yuma, AZ; Yuma, AZ	0.9732

TABLE 4B.—WAGE INDEX FOR RURAL AREAS

Nonurban area	Wage Index
Alabama	0.7260
Alaska	1.2302
Arizona	0.7989
Arkansas	0.6995
California	0.9977
Colorado	0.8129
Connecticut	1.2617
Delaware	0.8925
Florida	0.8838
Georgia	0.7761
Hawaii	1.0229
Idaho	0.8221
Illinois	0.7644
Indiana	0.8161
Iowa	0.7391
Kansas	0.7203
Kentucky	0.7772
Louisiana	0.7383
Maine	0.8468
Maryland	0.8617
Massachusetts	1.0718
Michigan	0.8923
Minnesota	0.8179
Mississippi	0.6911
Missouri	0.7205
Montana	0.8302
Nebraska	0.7401
Nevada	0.8914
New Hampshire	0.9717
New Jersey [1]	
New Mexico	0.8070
New York	0.8401
North Carolina	0.7937
North Dakota	0.7360
Ohio	0.8434
Oklahoma	0.7072
Oregon	0.9975

TABLE 4B.—WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage Index
Pennsylvania	0.8421
Puerto Rico	0.3939
Rhode Island [1]	
South Carolina	0.7921
South Dakota	0.6983
Tennessee	0.7353
Texas	0.7404
Utah	0.8926
Vermont	0.9314
Virginia	0.7782
Washington	1.0221
West Virginia	0.7938
Wisconsin	0.8471
Wyoming	0.8247

[1] All counties within the State are classified urban.

TABLE 5.—COST REPORTING YEAR—ADJUSTMENT FACTOR [1]

If the HHA cost reporting period begins	The adjustment factor is
November 1, 1997	1.00260
December 1, 1997	1.00521
January 1, 1998	1.00781
February 1, 1998	1.01042
March 1, 1998	1.01302
April 1, 1998	1.01563
May 1, 1998	1.01823
June 1, 1998	1.02086
July 1, 1998	1.02353
August 1, 1998	1.02626

TABLE 5.—COST REPORTING YEAR—ADJUSTMENT FACTOR [1]—Continued

If the HHA cost reporting period begins	The adjustment factor is
September 1, 1998	1.02901

[1] Based on compounded projected market basket inflation rates.

Source: The Home Health Agency Input Price Index, produced by HCFA for the period between 1983:1 and 2008:4. The forecasts are from Standard and Poor's DRI 3rd QTR 1997: @USSIM/TREND25YR0897@CISSIM/Control973 forecast exercise which has historical data through 1997:2.

TABLE 6.—MONTHLY INDEX LEVELS FOR CALCULATING INFLATION FACTORS TO BE APPLIED TO HOME HEALTH AGENCY

Per-beneficiary limitations—Month	Index level
October 1992	.98566
November 1992	.98800
December 1992	.99099
January 1993	.99399
February 1993	.99700
March 1993	.99933
April 1993	1.00166
May 1993	1.00400
June 1993	1.00666
July 1993	1.00933
August 1993	1.01200
September 1993	1.01400
October 1993	1.01600
November 1993	1.01800
December 1993	1.02099
January 1994	1.02399

TABLE 6.—MONTHLY INDEX LEVELS FOR CALCULATING INFLATION FACTORS TO BE APPLIED TO HOME HEALTH AGENCY—Continued

Per-beneficiary limitations—Month	Index level
February 1994	1.02700
March 1994	1.02866
April 1994	1.03033
May 1994	1.03200
June 1994	1.03499
July 1994	1.03499
August 1994	1.03499
September 1994	1.03499
October 1994	1.03499
November 1994	1.03499
December 1994	1.03499
January 1995	1.03499
February 1995	1.03499
March 1995	1.03499
April 1995	1.03499
May 1995	1.03499
June 1995	1.03499
July 1995	1.03499
August 1995	1.03499
September 1995	1.03499
October 1995	1.03499
November 1995	1.03499
December 1995	1.03499
January 1996	1.03499
February 1996	1.03499
March 1996	1.03499
April 1996	1.03499
May 1996	1.03499
June 1996	1.03499
July 1996	1.03720
August 1996	1.03941
September 1996	1.04162
October 1996	1.04383
November 1996	1.04604
December 1996	1.04856
January 1997	1.05108
February 1997	1.05361
March 1997	1.05582
April 1997	1.05803
May 1997	1.06024
June 1997	1.06276
July 1997	1.06528
August 1997	1.06781
September 1997	1.07064
October 1997	1.07348
November 1997	1.07633

XI. Regulatory Impact Statement

A. Introduction

HCFA has examined the impacts of this final rule with comment period as required by Executive Order 12866, the Regulatory Flexibility Act (RFA) (Pub. L. 96–354), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). The RFA requires agencies to analyze options for regulatory relief for small businesses. For purposes of the RFA, States and individuals are not considered small entities. However, most providers, physicians, and health care suppliers are small entities, either by nonprofit status or by having revenues of 5 million or less annually. Approximately 25 percent of HHAs are identified as Visiting Nurse Associations, combined in government and voluntary, and official health agency, and therefore, are considered small entities. Since the aggregate per-beneficiary limitation will reduce payments by approximately nine percent, we anticipate this rule will have a significant impact on a substantial number of small entities. We have examined the options for lessening the burden on small entities, however, the statute does not allow for any exceptions to the aggregate per-beneficiary limitation based on size of entity. Therefore, we are unable to provide any regulatory relief for small entities.

Section 202 of the Unfunded Mandates Reform Act requires agencies to prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an annual expenditure by State, local, or tribal governments, in the aggregate, or by private sector, of $100 million (adjusted annually for inflation). We believe that the costs associated with this final rule with comment fall below $100 million both in the governmental and private sectors. Therefore, we are not preparing an assessment.

We estimate that the impact of this final rule with comment period will be to decrease payments to home health agencies by approximately $1.06 billion in Federal FY 1998 and $2.14 billion in FY 1999, compared to the payment that would have been made in Federal FY 1998 if BBA '97 had not been enacted. Therefore, this rule is a major rule as defined in Title 5, United States Code, section 804(2) and is a significant rule under Executive Order 12866.

It is clear that the changes being made in this document will affect both a substantial number of small HHAs as well as other classes of HHAs, and the effects on some may be significant. Therefore, the discussion below, in combination with the rest of this final rule with comment period, constitutes a combined regulatory impact analysis and regulatory flexibility analysis. Nevertheless, in some markets new agency limits may be higher than the limit for older agencies as a result of the per-beneficiary limitation methodology required by the statute.

B. Explanation of Aggregate Beneficiary Limit

HHA limits are set forth at sections 1861(v)(1)(A) and 1861(v)(1)(L)of the Act. Section 1861(v)(1)(L)(v), as added to the Act by section 4602 of BBA '97, requires the Secretary to establish an interim system of limits before the implementation of a prospective payment system for home health services. Payments by Medicare under this interim system of limits will be the lower of an HHA's actual reasonable allowable costs, per visit limits in the aggregate, or a per-beneficiary limit as described in sections 1861(v)(1)(L)(v)(I) and 1861(v)(1)(L)(vi)(I) of the Act.

Section 1861(v)(1)(L)(v)(I) requires that the aggregate per-beneficiary annual limit be determined as follows: blend of 75 percent on 98 percent of the reasonable costs (including nonroutine medical supplies) for the agency's 12-month cost reporting period ending during Federal FY 1994, and 25 percent on 98 percent of the standardized regional average of such costs for the agency's census division for cost reporting periods ending during Federal FY 1994 (both updated by the home health market basket excluding any changes in the home health market basket with respect to cost reporting periods which began on or after July 1, 1994 and before July 1, 1996). The results will be multiplied by the agency's unduplicated census count of beneficiaries (entitled to benefits under Medicare) for the cost reporting period subject to the limit. As stated in section II.A. of this preamble, we determined the unduplicated census count as reported on the Medicare cost report by HHA providers was not reliable. As a result, we generated an unduplicated census count from our Standard Analytical File which is generated from our National Claims History File.

In regards to the home health market basket, section 1861(v)(1)(L)(iv) was added to the Act by section 4601(a) of BBA '97, and requires the Secretary not to take into account any changes in the home health market basket with respect to cost reporting periods which began on or after July 1, 1994 and before July 1, 1996 in establishing the limitations for cost reporting periods beginning after September 30, 1997.

In regards to the wage index, the appropriate census region per-beneficiary limitation will be the applicable census region where the beneficiary received services from the HHA and the applicable wage index will be the geographic area where the beneficiary received home health services.

For new providers and providers without a 12-month cost reporting period ending in Federal FY year 1994, the per-beneficiary limitation will be equal to the median of these limits applied to other HHAs as determined in this document.

For Medicare beneficiaries using more than one HHA, the per-beneficiary limitation will be prorated among the agencies.

C. Effect on Home Health Agencies

The following quantitative analysis presents the projected effects of the statutory changes effective for Federal FY 1998. As discussed below, the impact of this final rule with comment period will decrease payments to HHAs by approximately $1.06 billion in Federal FY 1998 compared to payment that would have been made in Federal FY 1998 if BBA '97 had not been enacted. This is a reduction of approximately nine percent. This final rule with comment period is necessary to implement the provisions of section 1861(v)(1)(L) of the Act, as amended by BBA '97.

The settled cost report data that we are using have been adjusted by the most recent market basket factors, excluding market basket increases for cost reporting periods beginning on or after July 1, 1994 and before July 1, 1996, to reflect the expected cost increases occurring between the cost reporting periods for the data contained in the database and September 30, 1998.

The cost limits for HHAs are statutorily driven and the impact of decreases in payments to HHAs have been reflected in the current law baseline of the mid-session review of the President's Federal FY 98 budget.

We are unable to identify the effects of the changes to the cost limits on individual HHAs. However, Table 7 below illustrates the proportion of HHAs that are likely to be affected by the limits. This table is a model of our estimate of the effects of the aggregate per-beneficiary limit. The total number of HHAs in this table—6,414—is based on HHA cost reports with a Federal FY ending in 1994 and for new providers whose cost reports end on either December 31, 1994 or December 31, 1995. For both old and new providers, the length of the cost report is 12 months.

This table takes into account the behaviors that we believe HHAs will engage in order to reduce the adverse effects of section 4602 of BBA '97 on their allowable costs. We believe these behavioral offsets might include an increase in the number of low cost beneficiaries served, a general decrease in the number of visits provided, and earlier discharge of patients who are not eligible for Medicare home health benefits because they no longer need skilled services but have only chronic, custodial care needs. We believe that, on average, these behavioral offsets will result in a 65-percent reduction in the effects these limits might otherwise have on an individual HHA.

Our projected savings of $1.06 billion in Federal FY 1998 and $2.14 billion in Federal FY 1999 are the savings that occur as a result of implementing section 4602 of the BBA including the behavioral offsets noted above. Column one of this table divides HHAs by a number of characteristics including their ownership, whether they are old or new agencies, whether they are located in an urban or rural area, and the census region they are located in.

Column two shows the number of agencies that fall within each characteristic or group of characteristics, for example, there are 1,197 rural freestanding HHAs in our database. Column three shows the percent of HHAs within a group that are projected to exceed the aggregate per-beneficiary limit before the behavioral offsets are taken into account. Column four shows the average percent of costs over the limits for an agency in that cell, including behavioral offsets.

TABLE 7.—HHA LIMITS EFFECTIVE 10/1/97; EFFECTS OF THE PER–BENEFICIARY LIMIT

Area	Number of agencies	Percent exceeding per-beneficiary limit	Average percent of costs exceeding limit
BY: AGENCY TYPE			
ALL AGENCIES	6414	57.9	9.3
FREESTANDING	4308	65.8	10.8
HOSPITAL BASED	2106	41.8	6.2
OLD AGENCIES	5256	60.0	8.9
FREESTANDING	3245	71.3	10.4
HOSPITAL BASED	2011	41.8	6.1
NEW AGENCIES	1158	48.2	12.6
FREESTANDING	1063	48.8	12.8
HOSPITAL BASED	95	41.1	9.4
BY: GEOGRAPHIC AREA			
ALL URBAN	4137	62.3	9.5
FREESTANDING	3111	68.2	10.8
HOSPITAL BASED	1026	44.3	6.2
OLD AGENCIES	3272	65.5	9.1
FREESTANDING	2292	74.6	10.5
HOSPITAL BASED	980	44.4	6.2
NEW AGENCIES	865	49.9	12.4
FREESTANDING	819	50.3	12.6
HOSPITAL BASED	46	43.5	9.4
ALL RURAL	2277	49.9	8.8
FREESTANDING	1197	59.5	10.6
HOSPITAL BASED	1080	39.4	6.0
OLD AGENCIES	1984	51.0	8.3
FREESTANDING	953	63.5	10.1
HOSPITAL BASED	1031	39.4	5.9
NEW AGENCIES	293	43.0	13.3
FREESTANDING	244	43.9	13.6
HOSPITAL BASED	49	38.8	9.5
BY REGION:			

TABLE 7.—HHA LIMITS EFFECTIVE 10/1/97; EFFECTS OF THE PER–BENEFICIARY LIMIT—Continued

Area	Number of agencies	Percent exceeding per-beneficiary limit	Average percent of costs exceeding limit
OLD AGENCIES	5256	60.0	8.9
NEW ENGLAND	291	84.5	12.3
MIDDLE ATLANTIC	443	71.3	9.0
SOUTH ATLANTIC	739	62.7	9.2
EAST NORTH CENTRAL	866	65.4	9.6
EAST SOUTH CENTRAL	431	58.2	8.7
WEST NORTH CENTRAL	728	52.9	8.8
WEST SOUTH CENTRAL	936	54.1	8.2
MOUNTAIN	354	48.3	7.0
PACIFIC	428	52.3	6.9
NEW AGENCIES	1158	48.2	12.6
NEW ENGLAND	44	90.9	15.6
MIDDLE ATLANTIC	51	35.3	4.7
SOUTH ATLANTIC	44	40.9	7.1
EAST NORTH CENTRAL	151	23.2	4.4
EAST SOUTH CENTRAL	25	56.0	14.8
WEST NORTH CENTRAL	117	28.2	10.3
WEST SOUTH CENTRAL	484	60.3	16.6
MOUNTAIN	103	49.5	8.5
PACIFIC	138	41.3	10.4

D. Percent of Costs Exceeding Limit (Column Four)

Results from this column indicate that the average percent of costs exceeding the aggregate per-beneficiary limit for an HHA in the "all agencies" cell is 9.3 percent after the behavioral offset. This should not be surprising since the intent of section 4602 of the BBA is to control the soaring expenditures of the Medicare home health benefit which have been driven largely by increased utilization.

For the old agencies cell (HHAs that filed a 12-month cost report that ended during Federal FY 1994), the average percent of costs exceeding the aggregate per-beneficiary limit is 8.9 percent. For the new agencies cell (HHAs that did not have a 12-month cost reporting period ended in Federal FY 1994 or that entered the Medicare program after Federal FY 1994), the average percent of costs exceeding the aggregate per-beneficiary limit is 12.6 percent. Old agencies will not be affected as much as the new agencies, on average, because the new agencies have, in general, reported higher costs related to higher levels of utilization. Moreover, the statutory provision basing ¾ of old provider limits on their own cost experience would implicitly result in less of an impact than experienced by the new providers whose limits are based on a national median.

For the urban areas HHA cell, the average percent of costs exceeding the aggregate per-beneficiary limit is 9.5 percent, while the rural areas HHA cell is 8.8 percent. For the old agency census division cells the average percent of costs exceeding the aggregate per-beneficiary limit ranges from a low of 6.9 percent in the Pacific census region to a high of 12.3 percent in the New England census region. The other census regions fall between 7.0 percent and 9.2 percent. The differences between census regions reflect the pattern of highly disparate costs that have been reported historically between geographic areas which cannot be explained by differences in patient characteristics but appear related to patterns of HHA practices.

For the new agency census region cells the average percent of costs exceeding the aggregate per-beneficiary limit ranges from a low of 4.4 percent in the East North Central census region to a high of 16.6 percent in the West South Central census region. The other census regions fall between 4.7 percent and 15.6 percent. In general, newer agencies in census regions that have exceptionally high cost histories are more impacted by their being limited to the national median.

Although there is considerable variation in these limits, we believe this is a natural reflection of the wide variation in payments that have been recognized under the present cost reimbursement system. Moreover, we believe the differing impacts of these limits is an inherent result of beginning to draw unexplained variation among providers closer to national norms which existed prior to the rapid increase in home health expenditures of the post '93–'94 period.

Because this rule limits payments to HHAs to the lesser of actual cost, the per-visit limitations, or the aggregate per-beneficiary limitation, we have estimated the combined impact of these limitations. (We note, that these estimates differ from those published on January 2, 1998 in our per-visit limitation notice (63 FR 89) because of the interaction of the two limitations, which we could not calculate until we developed the database used in this rule.)

We estimate that in both 1998 and 1999, 35 percent of the HHAs will be limited by the per-visit limitation and 58 percent of the HHAs will be limited by the per-beneficiary limitation. The estimated combined savings for 1998, however, will be $1.4 billion, of which $370 million is attributable to the per-visit limitation, and $1.06 billion is attributable to the per-beneficiary limitation. The estimated combined savings for 1999 will be $2.9 billion, of which $740 million is attributable to the per-visit limitation, and $2.14 billion is attributable to the per-beneficiary limitation.

For FY 1998, 15 percent of the Medicare savings are attributable to payments to managed care plans and for FY 1999, 20 percent of the savings will be from payments to managed care plans.

The per-beneficiary limitation may impact some State Medicaid programs. However, because of variation in State Medicaid policies and service delivery systems, it is impossible to predict which States will be affected or the magnitude of the impact, if any.

Under the Paperwork Reduction Act of 1995, agencies are required to provide a 60-day notice in the **Federal Register** and solicit public comments before a collection of information requirement is submitted to the Office of Management and Budget for review and approval. We do not believe this final rule has any collection of information issues associated with it. Any collection of information requirements would be associated with modifications to the Home Health Agency Cost Report (HCFA Form 1728–94). These modifications are being handled in a separate collection of information.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

XII. Other Required Information

A. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of the rule take effect. However, pursuant to 5 U.S.C. (United States Code) 553(b)(B) we may waive a notice of proposed rulemaking if we find good cause that notice and comment are impracticable, unnecessary, or contrary to the public interest. For good cause we find that it was impracticable to undertake notice and comment procedures between the date of enactment of the BBA '97 (August 5, 1997) and the statutory deadline for establishing the per-beneficiary limitations (April 1, 1998). The BBA '97 required the per-beneficiary calculations be based on data obtained from HHA Medicare cost reports for cost reporting periods ending during the Federal FY '94. To comply with this statutory requirement we had to perform a special data collection from our fiscal intermediaries to obtain these cost report data.

In addition, the BBA '97 required HCFA to use an unduplicated census count to calculate the aggregate per-beneficiary limitations. The primary source for this count was also the provider cost report for Federal FY 1994. Because the unduplicated census count on the provider cost report was determined to be unreliable, it was necessary to generate an unduplicated census count from the National Claims History Standard Analytical File. In addition, we preformed a special data collection because a significant number of FY 1994 cost reports were not available. The internal calculation of unduplicated beneficiary counts from 17 million records was a time-consuming effort that was necessary to generate the information needed to calculate these limitations. These counts could not be performed prior to the completion of the special data collection effort and verification of the existing database. An extraordinary amount of resources was necessary to construct an entirely new database to compute the new per-beneficiary limitations. Significant programming efforts were necessary to match the individual beneficiaries to their applicable MSA areas. Specific matching efforts were also necessary to eliminate duplicate beneficiaries. These beneficiaries were then matched to the provider cost reports for each agency in the database.

These lengthy procedures could not be completed before February 1, 1998. Therefore, we believe in this instance, it was impracticable to publish a proposed rule and for good cause waive publication of a proposed regulation. We are however, providing a 60-day period for public comment.

B. Waiver of 30-Day Delay in Effective Date

Generally, the Administrative Procedure Act, 5 U.S.C. 553(d), requires us to provide a 30-day delay before effectuation of a final rule, unless we find good cause to dispense with that delay. To the extent this requirement applies to this final rule, for good cause we waive the 30-day delay in effective date.

As noted previously, these per-beneficiary limitations are effective for cost reporting periods beginning on or after October 1, 1997. Section 1861(v)(1)(L)(vii) of the Act requires the Secretary to establish these per-beneficiary limitations by April 1, 1998 and requires that they apply to cost reporting periods beginning on or after October 1, 1997. That statutory requirement is clear. A 30-day delay in implementing these per-beneficiary limitations is impracticable. Therefore, we find that it is impracticable to provide for a 30-day delay in effective date and for good cause we waive the delay in effective date.

C. Effect of the Contract with America Advancement Act, Pub. L. 104–121

Normally, under 5 U.S.C. 801, as added by section 251 of Pub. L. 104–121, the effective date of a major rule is delayed 60 days for Congressional review. This has been determined to be a major rule under 5 U.S.C. 804(2). However, as indicated in section XI.A. of the preamble to this final rule, for good cause, we find that prior notice and comment procedures are impracticable. Pursuant to 5 U.S.C. 808(2), a major rule shall take effect at such time as the Federal agency promulgating the rule determines if for good cause it finds that notice and public procedure is impracticable. Accordingly, under the exemption provided in 5 U.S.C. 808(2), these per-beneficiary limitations are effective for cost reporting periods beginning on or after October 1, 1997.

D. Public Comments

Because of the large number of items of correspondence we normally receive on a rule with comment period, we are not able to acknowledge or respond to them individually. However, we will consider all comments concerning the provisions of this rule that we receive by the date and time specified in the **DATES** section of this rule, and we will respond to those comments in a subsequent document.

List of Subjects in 42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 42 CFR, chapter IV, subchapter B, part 413 is amended as set forth below.

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; OPTIONAL PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

1. The authority citation for part 413 is revised to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 413.30 [Amended]

2. In § 413.30, the following amendments are made:

a. In paragraph (a)(1), in the first sentence, the reference to "section 1861 (v)(1)(A)" is revised to read "sections 1861(v)(1)(A) and (v)(1)(L)".

b. In paragraph (a)(2), in the last sentence, after "may be calculated on a" add "per beneficiary,".

c. In paragraph (c), in the first sentence, revise "A provider" to read "Except for the per-beneficiary limitation that applies to HHAs, a provider".

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance)

Authority: Section 1861(v)(1)(L) of the Social Security Act (42 U.S.C. 1395x(v)(1)(L)); section 4207(d) of Pub. L. 101–508 (42 U.S.C. 1395x (note)).

Dated: March 15, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: March 24, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98–8480 Filed 3–30–98; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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