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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–39–AD; Amendment 39–10384; AD 98–06–07]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, that currently requires a revision to the Airplane Flight Manual (AFM) to include procedures to prohibit use of reverse engine thrust power settings between idle and emergency maximum. This amendment revises the existing AFM revision requirement, and adds a new revision to the AFM to prohibit stabilized engine operation in a certain engine speed range on the ground. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to prevent stabilized engine operation in a certain engine speed range on the ground, which could result in uncontained engine fan blade failure due to high cycle fatigue cracking.

DATES: Effective March 27, 1998.

Comments for inclusion in the Rules Docket must be received on or before April 13, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–39–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

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

SUPPLEMENTARY INFORMATION: On October 15, 1997, the FAA issued AD 97–19–16, amendment 39–10169 (62 FR 54579, October 21, 1997), applicable to certain Fokker Model F28 Mark 0100 series airplanes, to require a revision to the FAA-approved Airplane Flight Manual (AFM) to include procedures to prohibit use of reverse engine thrust power settings between idle and emergency maximum. That AD also requires submission of a report to the airplane manufacturer if the limits are exceeded. That action was prompted by a report that, during preparation for takeoff, an engine fan blade failure occurred, followed by an engine fire. The actions required by that AD are intended to prevent uncontained engine fan blade failure due to high cycle fatigue cracking, which could result in loss of thrust from the affected engine and secondary damage to aircraft and/or fire.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, notified the FAA that new engine operating limitations are necessary to prevent high cycle fatigue cracking of the engine fan blades. The RLD advises that stabilized engine operation in the speed range between 60 and 75 percent low pressure rotational speed (N1) during ground operations in forward or reverse thrust may cause high fan blade stresses and resultant high cycle fatigue cracking. This condition, if not corrected, could result in uncontained engine fan blade failure.

The RLD classified these limitations as mandatory and issued Dutch airworthiness directive 1997–110/2 (A), dated January 30, 1998, in order to assure the continued airworthiness of these airplanes in the Netherlands. The Dutch airworthiness directive adds certain statements to clarify the operating limitation that prohibits use of reverse engine thrust power settings between idle and emergency maximum. In addition, the Dutch airworthiness directive also specifies that inspections of Rolls-Royce Tay 650 series engines are to be accomplished if the operating limits discussed previously have been exceeded.

FAA's Conclusions

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

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD supersedes AD 97–19–16 to continue to require revising the AFM to prohibit use of reverse thrust power settings between idle and emergency maximum. This AD also deletes the reporting requirement contained in AD 97–19–16, since engine inspections have been defined for cases where limits have been exceeded.

This AD adds a requirement to revise the AFM to prohibit stabilized engine operation in the speed range between 60 and 75 percent low pressure rotational speed (N1) during ground operations in forward or reverse thrust.

Differences Between This AD and the Dutch Airworthiness Directive

This AD differs from the parallel Dutch airworthiness directive in that it does not mandate the accomplishment of certain engine inspections for airplanes on which the new engine limits are exceeded. (These inspections also are specified in British airworthiness directive 001–12–97.) The FAA may consider further rulemaking to address the associated engine inspection requirements.

In addition, this AD differs from the parallel Dutch airworthiness directive in that this AD specifically limits the

maximum reverse thrust lever positions to the idle detent position for normal operation. This change is necessary to ensure that the limitations are clearly understood by the flightcrew.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Determination of Rule's Effective Date

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–39–AD." The postcard will be date stamped and returned to the commenter.

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.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10169 (62 FR 54579, October 21, 1997), and by adding a new airworthiness directive (AD), amendment 39–10384, to read as follows:

98–06–07 Fokker: Amendment 39–10384. Docket 98–NM–39–AD. Supersedes AD 97–19–16, amendment 39–10169.

Applicability: Model F28 Mark 0100 series airplanes equipped with Rolls-Royce (RR) Tay 650–15 engines, 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 (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent stabilized engine operation in a certain engine speed range on the ground, which could result in uncontained engine fan blade failure due to high cycle fatigue cracking, accomplish the following:

(a) Within 72 hours after October 27, 1997 (the effective date of AD 97–19–16, amendment 39–10169), revise the Limitations Section, Subsection 2.06.01 "Thrust Reverser," of the FAA-approved Airplane Flight Manual (AFM) to add the following. This may be accomplished by inserting a copy of this AD in the AFM.

"THRUST REVERSER

Thrust reversers are intended for ground use only. Intentional use of reverse thrust in flight is prohibited. After reverse thrust has been initiated, a full stop landing must be made.

Maximum Reverse Thrust Lever Positions

Normal Operation:

—The idle detent position shall not be exceeded in normal operation.

Emergency Operation:

—In case of emergency, the emergency maximum reverse thrust may be used.

—Stabilized operation with the reverse lever in an intermediate position between idle reverse and emergency maximum reverse is prohibited.

—If directional control problems occur, select forward idle.

Exceeding the idle reverse thrust limitations must be reported."

(b) Within 72 hours after the effective date of this AD, remove the revision to the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) required by AD 97–19–16, amendment 39–10169, and revise the Limitations Section of the FAA-approved AFM to add the following. This may be accomplished by inserting a copy of this AD in the AFM.

"LIMITATIONS

POWERPLANT and APU LIMITATIONS

OPERATING LIMITS

• To avoid high fan blade stresses, stabilized operation in the speed range between 60% and 75% Low Pressure Rotational Speed (N1) is not permitted during Ground Operations in Forward or Reverse Thrust, except that passing through this range while increasing or decreasing thrust is permitted.

THRUST REVERSER

Thrust reversers are intended for ground use only. Intentional use of reverse thrust in flight is prohibited. After reverse thrust has been initiated, a full stop landing must be made.

Maximum Reverse Thrust Lever Positions

Normal Operation:

—The idle detent position shall not be exceeded in normal operation.

—Momentarily exceeding the idle detent position, while selecting idle reverse, is acceptable.

Emergency Operation:

—In case of emergency, the emergency maximum reverse thrust may be used.

—If directional control problems occur, reduce to idle reverse or select forward idle.

—Stabilized operation with the reverse lever in an intermediate position between idle reverse and emergency maximum reverse is prohibited, except (where approved) during Power-Back operations."

Note 2: Fokker Services Manual Change Notification—Operational Documentation (MCNO) No. F100–006, dated November 27, 1997, contains information that pertains to this subject. Rolls-Royce PLC Engine Operating Instruction Manual Reference F-TAY–3RR, revised by transmittal letter No. 13 dated October 15, 1997, also pertains to this subject.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

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

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

Note 4: The subject of this AD is addressed in Dutch airworthiness directive 1997–110/2 (A), dated January 30, 1998.

(e) This amendment becomes effective on March 27, 1998.

Issued in Renton, Washington, on March 5, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–6329 Filed 3–11–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–68–AD; Amendment 39–10389; AD 98–05–03]

RIN 2120–AA64

Airworthiness Directives; de Havilland Model DHC–8–102 and –103 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting airworthiness directive (AD) 98–05–03 that was sent previously by individual notices to all known U.S. owners and operators of certain de Havilland Model DHC–8–102 and –103 series airplanes. This AD requires a one-time inspection to detect disbonding of the upper and lower skin panels of the horizontal stabilizer, and repair, if necessary. This action is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent reduced strength capability and consequent failure of the horizontal stabilizer, which can result in loss of controllability of the airplane.

DATES: Effective March 17, 1998, to all persons except those persons to whom it was made immediately effective by emergency AD 98–05–03, issued February 25, 1998, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before April 13, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–68–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The applicable service information may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Serge Napoleon, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7512; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: On February 25, 1998, the FAA issued emergency AD 98–05–03, which is applicable to certain de Havilland Model DHC–8–102 and –103 series airplanes.

Transport Canada Aviation (TCA), which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain de Havilland Model DHC–8–102 and –103 series airplanes. TCA advises that it has received reports of disbonding of the doublers and stringers from the upper and lower skin panels of the horizontal stabilizer. The bonding process of the horizontal stabilizer may have been improperly carried out during production; this bonding process has been discontinued. Such disbonding, if not corrected, could result in reduced strength capability and consequent failure of the horizontal stabilizer, which can result in loss of controllability of the airplane.

TCA issued Canadian airworthiness directive CF–98–01, dated February 19, 1998, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

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

Explanation of the Requirements of the Rule

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, the FAA issued emergency AD 98–05–03 to prevent reduced strength capability and consequent failure of the horizontal stabilizer, which can result in loss of controllability of the airplane. The AD requires a one-time inspection to detect disbonding of the upper and lower skin

panels of the horizontal stabilizer, and repair, if necessary.

This AD also requires that operators report inspection results—positive or negative—to the FAA.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Differences Between This Rule and the Foreign Airworthiness Directive

Operators should note that, although the parallel Canadian airworthiness directive specifies that the manufacturer may be contacted for disposition of certain repair conditions, this rule requires the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual notices issued on February 25, 1998, to all known U.S. owners and operators of certain de Havilland Model DHC–8–102 and –103 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective as to all persons.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–68–AD." The postcard will be date stamped and returned to the commenter.

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.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–05–03 De Havilland Inc.: Amendment 39–10389. Docket 98–NM–68–AD.

Applicability: Model DHC–8–102 and –103 series airplanes, serial numbers 003 through 050 inclusive; certificated in any category.

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

Compliance: Required as indicated.

To prevent reduced strength capability and consequent failure of the horizontal stabilizer, which can result in loss of controllability of the airplane, accomplish the following:

Note 2: Accomplishment of the actions required by paragraph (a) of this AD is not intended to supersede the ongoing requirements of the Airworthiness Limitation identified in the Maintenance Review Board (MRB) report as Task 5500/01.

(a) Perform a one-time ultrasonic bond inspection to detect disbonding of the upper and lower skin panels of the horizontal stabilizer, at the time specified in paragraph (a)(1) or (a)(2), as applicable, of this AD; in accordance with de Havilland Product Support Manual (PSM) 1–8–7A, part 5, section 55–00–01, dated July 15, 1996.

(1) For airplanes having serial numbers 010 through 040 inclusive: Inspect within 20 flight cycles or 7 days after the effective date of this AD, whichever occurs first.

(2) For airplanes having serial numbers 003 through 009 inclusive and 041 through 050 inclusive: Inspect within 60 flight cycles or 7 days after the effective date of this AD, whichever occurs first.

(b) If any disbonding is found during the inspection required by paragraph (a) of this AD: Prior to further flight, accomplish the actions specified by paragraph (b)(1), (b)(2), or (b)(3), as applicable, of this AD.

(1) If the disbonding is below (smaller than) the limits specified in the PSM, no further action is required by this paragraph.

(2) If the disbonding is within the limits specified in the PSM, repair the disbonded area in accordance with the DHC–8 Structural Repair Manual PSM 1–8–3.

(3) If the disbonding exceeds the limits specified in the PSM or if a repair is not provided by the PSM, repair the disbonded area in accordance with a method approved by the Manager, New York Aircraft

Certification Office (ACO), FAA, Engine and Propeller Directorate.

Note 3: Where differences between this AD and the parallel Canadian airworthiness directive exist, this AD prevails.

(c) Within 2 days after performing the inspection required by paragraph (a) of this AD: Submit a report of inspection findings, regardless of the results, to the Manager, New York ACO, FAA, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; fax (516) 568–2716. The report must include the airplane serial number, the stringer number, and the extent (length or surface area) of disbonding. (Operators may follow the guidelines provided in Figure 2 of de Havilland PSM 1–8–7A for reporting requirements.) Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

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

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

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

Note 5: The subject of this AD is addressed in Canadian airworthiness directive CF–98–01, dated February 19, 1998.

(f) This amendment becomes effective on March 17, 1998, to all persons except those persons to whom it was made immediately effective by emergency AD 98–05–03, issued February 25, 1998, which contained the requirements of this amendment.

Issued in Renton, Washington, on March 5, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–6327 Filed 3–11–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASW–18]

Revocation of Class D Airspace; Lubbock Reese AFB, TX, and Revision of Class E Airspace; Lubbock, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action revokes the Class D airspace at Lubbock Reese AFB, TX, and revises the Class E airspace at Lubbock, TX. Reese AFB has closed and the associated NAVAIDS have been decommissioned; therefore, Class D and E airspace designated to provide controlled airspace for terminal instrument operations is no longer required. This action is intended to revoke Class D airspace at Lubbock Reese AFB, TX, and revise Class E airspace for aircraft operating under instrument flight rules (IFR) in the vicinity of Lubbock International Airport, Lubbock, TX.

DATES: *Effective:* 0901 UTC, June 18, 1998.

Comment date: Comments must be received on or before April 27, 1998.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 98–ASW–18, Fort Worth, TX 76193–0520.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR Part 71 revokes the Class D airspace at Lubbock Reese AFB, TX, and revises the Class E airspace at Lubbock, TX. Reese AFB has closed and the associated NAVAIDS have been decommissioned; therefore, Class D and E airspace designated to provide controlled airspace for terminal instrument operations is no longer required. This action is intended to revoke Class D airspace at Lubbock Reese AFB, TX, and revise Class E airspace for aircraft operating under IFR in the vicinity of Lubbock International Airport, Lubbock, TX. This revocation will avoid confusion on the part of the pilots flying near the airport and promote the safe and efficient handling of air traffic in the area. This action will revoke the Class D airspace at Lubbock Reese AFB, TX, and revise the Class E airspace at Lubbock International Airport, Lubbock, TX.

Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document will be published subsequently in the order.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking,

comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the rules docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: Comments to Docket No. 98–ASW–18. The postcard will be date stamped and returned to the commenter.

Agency Findings

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.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a regulatory flexibility analysis because the anticipated impact is minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, *Airspace Designations and Reporting Points*, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 5000: Class D airspace areas

* * * * *

ASW TX D Lubbock Reese AFB, TX [Revoked]

* * * * *

Paragraph 6005: Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW TX E5 Lubbock, TX [Revised]

Lubbock VORTAC
(lat. 33°42′18″N., long. 101°54′51″W.)
Lubbock International Airport, TX
(lat. 33°39′49″N., long. 101°49′22″W.)
Lubbi LOM
(lat. 33°39′46″N., long. 101°43′24″W.)
Lubbock ILS Localizer
(lat. 33°38′49″N., long. 101°49′44″W.)

That airspace extending upward from 700 feet above the surface within a 17.4-mile radius of Lubbock VORTAC and within 8 miles east and 4 miles west of the Lubbock ILS localizer north course extending from the 17.4-mile radius to 21.7 miles north of the airport and within 8 miles north and 4 miles south of the 090° bearing from the Lubbi LOM extending from the 17.4-mile radius to 26 miles east of the Lubbock International Airport and within 8 miles north and 4 miles south of the 111° radial of the Lubbock VORTAC extending from the 17.4-mile radius to 26.8 miles southeast of the Lubbock VORTAC.

* * * * *

Issued in Fort Worth, TX on February 26, 1998.

Albert L. Viselli,
Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–6318 Filed 3–11–98; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–50]

Establishment of Class E Airspace; Cooperstown, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Cooperstown, ND. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway 13 and a GPS SIAP to Runway 31 have been developed for Cooperstown Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) and controlled airspace extending upward from 1,200 feet AGL is needed to contain aircraft executing the approaches. This action creates controlled airspace both at Cooperstown Municipal Airport and previously uncontrolled airspace nearby the airport.

EFFECTIVE DATE: 0901 UTC, June 18, 1998.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, December 22, 1997, the FAA proposed to amend 14 CFR part 71 to establish Class E airspace at Cooperstown, ND (62 FR 66840). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL and upward from 1,200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Cooperstown, ND, to accommodate aircraft executing the GPS Rwy 13 SIAP, the GPS Rwy 31 SIAP, and IFR operations at Cooperstown Municipal Airport by establishing controlled airspace at and nearby the airport. The areas will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or more Above the Surface of the Earth.

* * * * *

AGL ND E5 Cooperstown, ND [New]

Cooperstown Municipal Airport, ND
(Lat. 47° 25′ 22″N, long. 98° 06′ 21″W)
Devils Lake VORTAC
(Lat. 48° 06′ 55″N, long. 98° 54′ 45″W)
Grand Forks Air Force Base, ND
(Lat. 47° 57′ 40″N, long. 97° 24′ 04″W)
Valley City Barnes County Municipal Airport, ND
(Lat. 46° 56′ 28″N, long. 98° 01′ 03″W)
Jamestown VOR/DME
(Lat. 46° 55′ 58″N, long. 98° 40′ 44″W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Cooperstown Municipal Airport and that airspace extending upward from 1,200 feet above the surface within an area bounded on the east by longitude 97° 49′ 30″W, on the south by the 7.9-mile radius of the Valley City Barnes County Municipal Airport and by V2–510, on the southwest by the 16.5-mile radius of the Jamestown VOR–DME, and on the west by V561; that airspace bounded on the northwest by the 34.0-mile arc of the Grand Forks Air Force Base, on the east by V561, on the southwest by the 16.5-mile radius of the Jamestown VOR/DME and V170, and on the west by V55; and that airspace bounded on the north by V430, on the west by the 34.0-mile arc of the Grand Forks Air Force Base, on the south by V55, on the west by V170, and on the northwest by the 22.0-mile radius of the Devils Lake VORTAC.

* * * * *

Issued in Des Plaines, Illinois on February 24, 1998.

Maureen Woods,
Manager, Air Traffic Division

[FR Doc. 98–6408 Filed 3–11–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

14 CFR Part 71

[Airspace Docket No. 97–AGL–51]

Establishment of Class E Airspace; Friendship (Adams), WI; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects two errors in the legal description of a final rule that was published in the **Federal Register** on February 13, 1998 (63 FR 7283), Airspace Docket No. 97–AGL–51. The final rule established Class E airspace at Friendship (Adams), WI.

EFFECTIVE DATE: 0901 UTC, April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018, telephone: (847) 294–7477.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 98–3734, Airspace Docket No. 97–AGL–51, published on February 13, 1998 (63 FR 7283) established the Class E airspace area at Friendship (Adams), WI, and Adams County Legion Field Airport, WI. Two errors were discovered in the legal description for the Adams County Legion Field Airport. This action corrects those errors.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the legal description of the Class E airspace area Adams County Legion Field Airport, WI, as published in the **Federal Register** February 13, 1998 (63 FR 7283), (FR doc. 98–3734), is corrected as follows:

PART 71—[CORRECTED]

§ 71.1 [Corrected]

AGL WI E5 Friendship (Adams), WI [Corrected]

On page 7284, in the Class E airspace designation for Adams County Legion Field Airport incorporated by reference in § 71.1, correct the speling of "Friengship" to "Friendship", and correct the latitute, longitude for Adams County Legion Field Airport from "(lat. 43°57′40″ N, long. 89°47′17″ W)" to "(lat. 43°57′45″ N, long. 89°47′26″ W)".

Issued in Des Plaines, IL on February 24, 1998.

Maureen Woods,
Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 98–6409 Filed 3–11–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–29]

Amendment to Class E Airspace; Alliance, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; withdrawal.

SUMMARY: This action withdraws the Direct Final Rule amending the Class E airspace designations at Alliance, NE. The Direct Final Rule is being withdrawn due to the delay in installation of the Nondirectional Radio Beacon (NDB) to serve the Alliance Municipal Airport, NE.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

The Direct Final Rule

On February 17, 1998, a Direct Final Rule was published in the **Federal Register** to amend the Class E airspace designations at Alliance, NE. The airspace was enlarged to accommodate the proposed NDB Standard Instrument Approach Procedures (SIAPs) to Runway (RWY) 12 and RWY 30. The FAA has encountered a delay in the installation of the new NDB, therefore it is necessary to withdraw the Direct Final Rule until installation of the NDB is complete.

Conclusion

In consideration of the aforementioned installation delay, action is being taken to withdraw the Direct Final Rule until such time the NDB is installed.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Withdrawl of the Direct Final Rule

Accordingly, pursuant to the authority delegated to me, Airspace Docket No. 97–ACE–29, as published in the **Federal Register** on February 17, 1998 (63 FR 7698), is hereby withdrawn.

Issued in Kansas City, MO, on February 25, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–6322 Filed 3–11–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29159; Amdt. No. 1856]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination—

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

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

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

For Purchase—Individual SIAP copies may be obtained from:

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

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

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

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

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

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

The Rule

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

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected

airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which create the need for all these SIAP amendments requires making them effective in less than 30 days.

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

Conclusion

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC, on March 6, 1998.

Tom E. Stuckey,

Acting Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amended to read as follows:

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

* * * *Effective Upon Publication*

FDC Date	State	City	Airport	FDC No.	SIAP
02/19/98	FL	West Palm Beach	Palm Beach Intl	8/1103	ILS Rwy 9L, Amdt 22...
02/19/98	MN	Madison	Madison-Lac Qui Parle County	8/1108	NDB or GPS Rwy 31, Amdt 3...
02/20/98	AK	Nuiqsut	Nuiqsut	8/1126	GPS Rwy 22, Orig...
02/20/98	AK	Nuiqsut	Nuiqsut	8/1127	GPS Rwy 4, Orig...
02/20/98	MI	Detroit	Detroit Metropolitan Wayne County	8/1138	ILS Rwy 27R, Amdt 10A...
02/20/98	WI	Baraboo	Baraboo Wisconsin Dells	8/1140	VOR or GPS–A, Amdt 11...
02/23/98	MO	Sedalia	Sedalia Memorial	8/1192	NDB Rwy 18, Amdt 7B... This Replaces Notan in TL98–06.
02/23/98	NC	Concord	Concord Regional	8/1198	VOR/DME or GPS–A, Amdt 1...
02/23/98	NC	Concord	Concord Regional	8/1199	ILS Rwy 20, Orig...
02/23/98	SD	Spearfish	Black Hills-Clyde Ice Field	8/1178	NDB or GPS–A, Orig–A...
02/23/98	SD	Spearfish	Black Hills-Clyde Ice Field	8/1179	GPS Rwy 12, Orig–A...
02/24/98	LA	Slidell	Slidell	8/1211	GPS Rwy 36, Orig–A...
02/24/98	NE	Kearney	Kearney Muni	8/1227	VOR or GPS Rwy 13, Amdt 1...
02/24/98	NE	Kearney	Kearney Numi	8/1228	VOR or GPS Rwy 18, Amdt 12...
02/24/98	NE	Kearney	Kearney Muni	8/1229	VOR Rwy 36, Amdt 9B...
02/24/98	NE	Kearney	Kearney Muni	8/1230	NDB Rwy 36, Amdt 4A...
02/25/98	GA	Cartersville	Cartersville	8/1263	NDB or GPS Rwy 19, Amdt 3B...
02/25/98	GA	Cartersville	Cartersville	8/1264	VOR/DME or GPS–A, Amdt 1...
02/25/98	LA	Slidell	Slidell	8/1243	NDB Rwy 36, Orig–A...
02/25/98	NC	Albemarle	Stanly County	8/1252	GPS Rwy 4 Orig...
02/25/98	NC	Albemarle	Stanly County	8/1253	LOC Rwy 22 Orig–C...
02/25/98	NC	Albemarle	Stanly County	8/1254	NDB or GPS Rwy 22 Orig...
02/25/98	TN	Memphis	Memphis Intl	8/1265	ILS Rwy 36R (CAT I, II, III), Orig–A...
02/26/98	AR	Forrest City	Forrest City Mumi	8/1340	NDB Rwy 36, Amdt 4A...
02/26/98	FL	Jacksonville	Jacksonville Intl	8/1320	ILS Rwy 25, Orig...
02/26/98	LA	Hammond	Hammond Muni	8/1279	GPS Rwy 31, Orig...
02/26/98	VI	St Thomas	Cyril E. King (Charlotte Amalie)	8/1285	VOR–A Amdt 14B...
02/27/98	AR	Forrest City	Forrest City Mumi	8/1358	GPS Rwy 36, Orig–A...
02/27/98	MO	Boonville	Jesse Viertel Memorial	8/1353	VOR or GPS–A, Amdt 4A...
02/27/98	MO	Boonville	Jesse Viertel Memorial	8/1354	NDB or GPS Rwy 18, Amdt 9...
03/02/98	OH	Youngstown	Youngstown-Warren Regional	8/1399	ILS Rwy 32, Amdt 25...
03/02/98	TX	San Antonio	San Antonio Intl	8/1426	NDB or GPS Rwy 12R, Amdt 20A...
03/03/98	TX	Monahans	Roy Hurd Memorial	8/1443	GPS Rwy 12, Orig...
03/03/98	TX	Monahans	Roy Hurd Memorial	8/1444	GPS Rwy 30, Orig...

[FR Doc. 98–6395 Filed 3–11–98; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29158; Amdt. No. 1855]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination—

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

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

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

For Purchase—Individual SIAP copies may be obtained from:

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

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

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

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

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

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC, on March 6, 1998.

Tom E. Stuckey,

Acting Director, Flight Standards Service.

Adoption of The Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME;

§ 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective April 23, 1998*

Bloomington/Normal, IL, Central IL Regl Arpt at Bloomington-Normal, VOR RWY 21, Amdt 17A, Cancelled
Bloomington/Normal, IL, Central IL Regl Arpt at Bloomington-Normal, VOR/DME RWY 21, Amdt 2A, Cancelled
New Orleans, LA, New Orleans Intl (Moisant Field), VOR/DME RWY 10, Orig
New Orleans, LA, New Orleans Intl (Moisant Field), GPS RWY 28, Orig
Port Sulphur, LA, Port Sulphur Seaplane Base, VOR/DME–A, Amdt 6, Cancelled
Port Sulphur, LA, Port Sulphur Seaplane Base, VOR/DME–B, Amdt 6, Cancelled
Churchville, MD, Harford County, VOR/DME–A, Orig
Salisbury, MD, Salisbury-Ocean City Wicomico Regional, VOR RWY 14, Amdt 1A, Cancelled
Boston, MA, General Edward Lawrence Logan Intl, NDB or GPS RWY 22L, Amdt 11
Boston, MA, General Edward Lawrence Logan Intl, ILS RWY 22L, Amdt 6
Perham, MN, Perham Muni, GPS RWY 30, Orig
Sauk Centre, MN, Sauk Centre Muni, GPS RWY 32, Orig
Brookfield, MO, General John J. Pershing Meml, NDB or GPS RWY 35, Amdt 4
Brookfield, MO, General John J. Pershing Meml, NDB or GPS–A, Amdt 4
Holdrege, NE, Brewster Field, NDB RWY 18, Amdt 7
Holdrege, NE, Brewster Field, GPS RWY 36, Orig
Hobbs, NM, Lea County/Hobbs, GPS RWY 21, Orig
Indiana, PA, Indiana County/Jimmy Stewart Field, GPS RWY 28, Orig
Wisconsin Rapids, WI, Alexander Field South Wood County, GPS RWY 20, Orig

* * * *Effective June 18, 1998*

Anchorage, AK, Anchorage Intl, GPS RWY 14, Amdt 1
Tanana, AK, Ralph M Calhoun Meml, GPS RWY 6, Orig
Greensboro, GA, Greene County Regional, GPS RWY 6, Orig
Greensboro, GA, Greene County Regional, GPS RWY 24, Orig
Grenada, MS, Grenada Muni, GPS RWY 4, Orig
Grenada, MS, Grenada Muni, GPS RWY 13, Orig
Grenada, MS, Grenada Muni, GPS RWY 22, Orig
Grenada, MS, Grenada Muni, GPS RWY 31, Orig.
Tekamah, NE, Tekamah Muni, VOR RWY 32, Amdt 5
Tekamah, NE, Tekamah Muni, GPS RWY 32, Orig
Oklahoma City, OK, Will Rogers World, GPS RWY 17L, Orig
Oklahoma City, OK, Will Rogers World, GPS RWY 17R, Orig
Oklahoma City, OK, Will Rogers World, GPS RWY 35L, Orig
Oklahoma City, OK, Will Rogers World, GPS RWY 35R, Orig

Note: The following Standard Instrument Approach Procedures (SIAPs) published in TL 98–06 effective April 23, 1998, have been rescinded:

Ravenswood, WV, Jackson County, GPS RWY 4, Orig
Ravenswood, WV, Jackson County, GPS RWY 22, Orig

[FR Doc. 98–6394 Filed 3–11–98; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29160; Amdt. No. 1857]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

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

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

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

For Purchase. Individual SIAP copies may be obtained from:

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

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

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

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAP's. The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 14 CFR 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Form 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

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

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAP's contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Approach Procedures

(TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with a Global Positioning System (GPS) and or Flight Management System (FMS) equipment. In consideration of the above, the applicable SIAP's will be altered to include "or GPS or FMS" in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS or FMS procedure is developed, the procedure title will be altered to remove "or GPS or FMS" from these non-localizer, non-precision instrument approach procedure titles.)

The FAA has determined through extensive analysis that current SIAP's intended for use by Area Navigation (RNAV) equipped aircraft can be flown by aircraft utilizing various other types of navigational equipment. In consideration of the above, those SIAP's currently designated as "RNAV" will be redesignated as "VOR/DME RNAV" without otherwise reviewing or modifying the SIAP'S.

Because of the close and immediate relationship between these SIAP's and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are, impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

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

List of Subjects in 14 CFR part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on March 6, 1998.

Tom E. Stuckey,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113–40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

§§ 97.23, 97.27, 97.33, 97.35 [Amended]

2. Amend 97.23, 97.27, 97.33 and 97.35, as appropriate, by adding, revising, or removing the following SIAP's, effective at 0901 UTC on the dates specified:

* * * *Effective April 23, 1998*

Yuma, AZ, Yuma MCAS/Yuma Intl, VOR/DME RWY 17, Orig Cancelled
Yuma, AZ, Yuma MCAS/Yuma Intl, VOR/DME or TACAN–1 RWY 17, Amdt 1
Yuma, AZ, Yuma MCAS/Yuma Intl, VOR/DME RNAV RWY 21R, Amdt 3 Cancelled
Yuma, AZ, Yuma MCAS/Yuma Intl, VOR/DME RNAV RWY 21R, Amdt 4
Petaluma, CA, Petaluma Muni, VOR RWY 29, Orig Cancelled
Moose Lake, MN, Moose Lake Carlton County, NDB or GPS Rwy 4, Amdt 1 Cancelled
Moose Lake, MN, Moose Lake Carlton County, NDB RWY 4, Amdt 1

[FR Doc. 98–6396 Filed 3–11–98; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 133

[T.D. 98–21]

RIN 1515–AB28

Copyright/Trademark/Trade Name Protection; Disclosure of Information

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to allow Customs to provide to intellectual property rights (IPR) owners sample merchandise and to disclose to IPR owners certain information regarding the identity of persons involved with importing merchandise that is detained or seized for infringement of the IPR owner's registered copyright, trademark, or trade name rights. These amendments will assist Customs in making infringement determinations and enable concerned IPR owners to more expeditiously proceed to enforce their property rights by means of instituting appropriate judicial remedies against the parties identified as being involved with infringement of the rights of the IPR owner.

EFFECTIVE DATE: April 13, 1998.

FOR FURTHER INFORMATION CONTACT: The Intellectual Property Rights Branch, Office of Regulations and Rulings, (202) 927–2330.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1993, the Customs Service published a Notice of Proposed Rulemaking in the **Federal Register** (58 FR 44476) regarding the disclosure to intellectual property rights (IPR) owners of sample merchandise and certain identifying information regarding the identity of persons involved with importing merchandise that is either detained or seized for infringing copyright, trademark, or trade name rights. Sixty-five comments were received pursuant to this notice.

Thereafter, the United States, Canada, and Mexico entered into the North American Free-Trade Agreement (NAFTA) and, on December 8, 1994, the President signed the Uruguay Round Agreements Act (URAA) (Pub. L. 103–465, 108 Stat. 4809), both of which contain provisions pertaining to the protection of IPR. The URAA contains the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) (19 U.S.C. 3511) of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT)—now the World Trade Organization (WTO).

On July 14, 1995, Customs published its analysis of the 65 comments in a revised Notice of Proposed Rulemaking (60 FR 36249). The revised Notice, in addition to making changes in response to the comments received, proposed further regulatory changes to make the regulations consistent with certain provisions of the NAFTA and the URAA and to improve the clarity of the proposed regulations. Accordingly, the Background information contained in the revised Notice regarding these agreements remains applicable and is incorporated here by reference.

The comments received in response to the revised Notice of Proposed Rulemaking published on July 14, 1995, and Customs responses to them are set forth below.

Analysis of Comments

Twenty-two comments were received (21 in favor, including 8 with suggested changes to the revised proposal, and 1 against) that raised 7 areas of concern:

(1) Disclosure of confidential business information would violate both the Freedom of Information Act (FOIA) and the Trade Secrets Act;

(2) Disclosure of confidential importer information to the IPR holder is contrary to the intent of both NAFTA and GATT;

(3) The 30-day notification period does not allow the IPR owner to act expeditiously;

(4) Disclosure should include country of origin information;

(5) Disclosure should include the date(s) of importation, the port of entry, and a description of the merchandise;

(6) Disclosure should include the identity of the importer; and

(7) IPR owners should be allowed to retain samples sent for inspection, and Customs should clarify its position regarding the testing of samples, since testing may result in the destruction of a sample.

1. Disclosure of Confidential Business Information Would Violate Both the FOIA and the Trade Secrets Act

Comment: Stating that commercial information is "confidential" and, therefore, not subject to public disclosure, one commenter asserts that the proposed disclosure of information would contravene both the Freedom of Information Act (FOIA) (5 U.S.C. 552) and the Trade Secrets Act (18 U.S.C. 1905). Citing the FOIA as providing that confidential information is not subject to public disclosure if it would cause substantial harm to the competitive position of the source of the information and the Trade Secrets Act as providing that sensitive business information should not be disclosed unless otherwise provided by law, the commenter states that Customs is bound not to disclose such confidential information as the names and addresses of importers, exporters, and manufacturers, and recommends that Customs withdraw its revised notice.

Customs' Response: Customs disagrees with these interpretations of the cited Acts.

Regarding the FOIA, its basic objective is to disclose official information, making available to the public federal agency records (5 U.S.C. 552(a)), except to the extent that such records (or portions thereof) are specifically exempt from disclosure (5 U.S.C. 552(b)). Thus, contrary to the commenter's position, the FOIA does not mandate nondisclosure, but rather seeks to establish workable standards for determining whether particular material may be withheld or must be disclosed.

Regarding the Trade Secrets Act, this Act specifically prohibits the disclosure of confidential information, except as is authorized by law, under penalty of fine and/or imprisonment (*see also*, § 103.34 of the Customs Regulations (19 CFR 103.34)). As explained below, Customs has revised § 133.22(b) so that no trade secret information will be disclosed at the detention stage. However, at the seizure stage, Customs believes that statutory authority exists to provide Customs with the authority to disclose the information specified. Therefore, Customs believes that substantive agency regulations, promulgated pursuant to such statutory authority and published in compliance with the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), are not in conflict with the Trade Secrets Act.

Concerning Customs' statutory authority to disclose certain importation information to IPR holders, numerous provisions in titles 15, 17, and 19 of the U.S. Code authorize the Secretary of the Treasury (the Secretary) to promulgate regulations to enforce their prohibitions against the importation of IPR-infringing merchandise. The Copyright Act of 1976 (17 U.S.C. 602 *et seq.*) (the Copyright Act) prohibits the importation of infringing copies and authorizes the Secretary to prescribe a procedure whereby a person with an interest in the work may be entitled to notification of the importation. Further, section 603 of the Copyright Act authorizes the Secretary to enforce the Copyright Act's provisions by prohibiting such importations, and provides that (1) a court order may be obtained enjoining an importation and (2) a claimant seeking exclusion of an importation may establish proof that an importation would violate section 602. Such order or proof would necessarily entail the availability of certain transaction information to the person claiming an interest in the copyright.

Under the Lanham Trademark Act (15 U.S.C. 1124), the Secretary is authorized to make regulations regarding trademarks and to aid Customs officers in enforcing theprohibitions against importation. Also, sections 526 and 595a(c) of the Tariff Act of 1930, as amended (19 U.S.C. 1526 and 1595a(c)), prohibit the importation or introduction of merchandise with unauthorized trademarks or merchandise or packaging in which copyright, trademark, or trade name protection violations are involved and under the provisions of section 624 of the Tariff Act of 1930, as amended (19 U.S.C. 1624), the Secretary is authorized to promulgate regulations to carry out those provisions. Section 526 of the Tariff Act of 1930, as amended, further provides for the notification of trademark owners when merchandise bearing a counterfeit mark is seized. Customs believes that these statutes may be reasonably interpreted to permit Customs to provide for the disclosure of certain import information, and where the identification of such violative merchandise requires the assistance of IPR owners, relevant information may be made available.

Since the purpose of these disclosure regulations is to further the statutory enforcement scheme by allowing Customs to release certain commercial information so that Customs can more timely and accurately identify legitimate merchandise, pursuant to the regulations promulgated herein, Customs is authorized by law to disclose such information without violating the Trade Secrets Act. Accordingly, since the regulations do not provide for the disclosure of either the manufacturer's or importer's identity at the detention stage, no trade secrets are being divulged. As stated in the revised Notice of Proposed Rulemaking, it is Customs policy to avail itself of any opportunity to gather information quickly and accurately so that decisions concerning imported merchandise can be correctly and timely made. Accordingly, the provisions of §§ 133.22 and 133.43, which pertain to detention, do not provide for the disclosure of any manufacturer or importer information, while the provisions of §§ 133.23a and 133.42, which pertain to seizure, are revised to allow for the disclosure of the name and address information pertaining to the manufacturer and importer.

Further, to make clear when Customs officers will be required to disclose importation information and provide sample merchandise to IPR owners and when Customs officers may, on an *ad hoc* basis, disclose such information, *i.e.*, to solicit an IPR owner's assistance in determining whether a particular importation should be detained in the first instance, the provisions of § 133.22(b) are revised to better reflect Customs detention notice policies. Accordingly, § 133.22(b) has been amended to provide that once a notice of detention is issued, Customs officers are required to disclose the importation information to IPR owners, within the 30-day time limitation imposed by the detention statute, in order to more quickly determine whether the marks are restricted or prohibited. But during the time between presentation of the

goods for Customs examination and issuance of a formal detention notice Customs officers have the authority to disclose such importation information where the circumstances warrant. Customs expects that such disclosure will allow Customs officers, in many cases, to determine immediately whether a formal detention should be initiated or whether the goods should be released, thereby avoiding lengthy delays and demurrage charges.

For the above reasons, Customs will not withdraw its revised notice.

2. Disclosure of Confidential Importer Information to the IPR Holder Is Contrary to the Intent of Both the NAFTA and the GATT

Comment: The same commenter suggested that the proposed disclosure was contrary to the intent of both the NAFTA and the GATT. Citing the NAFTA as providing that it does not affect U.S. law or practice relating to parallel importation of products protected by intellectual property rights and the GATT as stating that measures and procedures to enforce property rights should not themselves become barriers to legitimate trade, the commenter states that the proposed changes cannot be said to be consistent with the stated objectives of these two agreements. The commenter states that Customs' proposal is principally directed at changing established law and practice relating to parallel imports and will inevitably serve as a barrier to legitimate trade. Accordingly, the commenter recommends that Customs withdraw its revised notice.

Customs' Response: Inasmuch as the proposed regulations provide for disclosure as authorized by law, Customs does not believe that such disclosure is inconsistent with either the NAFTA or the GATT TRIPs Agreement. The border enforcement provisions of these Agreements contemplate the prosecution of suspect importations by IPR owners. To that end, each Agreement provides for the disclosure of information to IPR owners sufficient to substantiate claims of infringement. Article 1718 of the NAFTA and Article 57 of the GATT TRIPs Agreement do not, as the commenter suggests, give blanket nondisclosure benefit to the importer. Customs believes that the references in these Agreements to the "protection of confidential information" require only that the disclosure of information comply with the respective signatory party's laws and regulations regarding disclosure. For the reasons discussed above in the previous response, the proposed regulations have been issued pursuant to valid statutory authority.

Accordingly, Customs will not withdraw its revised notice.

3. The 30-day Notification Period Does Not Allow the IPR Owner To Act Expeditiously

Comment: Another commenter urged that the 30-day notification period should be reduced to 10 days so that an IPR owner could be in a position to act more expeditiously, and recommends that Customs change the time period accordingly.

Customs' Response: Aside from the permissive disclosure situation described above, Customs believes that the 30 business day time limit for required disclosure of importation information affords IPR owners sufficient time to act expeditiously. Customs must consider the workload placed on its employees and regulate manageable time frames for their compliance with the relevant disclosure rules.

Accordingly, Customs will not change the time period as proposed in §§ 133.22(b), 133.23(c), 133.42(d), and 133.43(b).

4. Disclosure Should Include Country of Origin Information

Comment: Several comments were received noting that country of origin information should be included in the revision of 19 CFR 133.43, as it was in the other sections revised.

Customs' Response: Customs agrees that the regulations should be consistent and has added country of origin information as information to be disclosed under 19 CFR 133.43.

5. Disclosure Should Include the Date(s) of Importation, the Port of Entry, and a Description of the Merchandise

Comment: In the Background section of the revised Notice of Proposed Rulemaking Customs indicated that certain information, namely dates of importation, port of entry and description of the merchandise, would be included in every notification as a matter of course. One commenter requested that these items be specifically set forth to insure that this information is released.

Customs' Response: Customs agrees and has added this information concerning the dates of importation, port of entry, and a description of the merchandise as information to be disclosed under §§ 133.22(b), 133.23(c), 133.42(d), and 133.43(b).

6. Disclosure Should Include the Identity of the Importer

Comment: Comments were received requesting that the identity of the importer be provided under 19 CFR 133.22 when goods are detained for suspicion of trademark counterfeiting. These commenters argue that such disclosure would then parallel the release of an importer's identity under 19 CFR 133.43 when goods are detained for suspicion of copyright counterfeiting.

Customs' Response: The identity of an importer is provided under the provisions of 19 CFR 133.43 (suspected copyright counterfeiting) because of the broad bonding provisions contained in that section. The bonding requirements applicable to goods detained for suspicion of trademark counterfeiting are much narrower, only providing security for samples. Although the NAFTA and the GATT TRIPs Agreement each provides that the competent authorities may require such a security for all detentions of goods suspected of IPR infringement, Customs has not implemented such a requirement for trademarked goods.

Customs' objective of making timely and accurate determinations on counterfeiting requires that the unauthorized application of a mark be readily ascertained. To that end, Customs has determined that the identity of the manufacturer is important because the mark is typically applied by the manufacturer. Until Customs institutes a similar, broad bonding procedure for suspected counterfeit trademark goods, it has decided that the importer's identity shall not be released at the time of detention.

7. IPR Owners Should Be Allowed To Retain Samples Sent for Inspection, and Customs Should Clarify Its Position Regarding the Testing of Samples, Since Testing May Result in the Destruction of a Sample

Comment: A comment was received suggesting that IPR owners be permitted to retain samples forwarded by Customs for examination. Another comment noted that certain testing may result in the destruction or partial destruction of a sample, and requested clarification of Customs position on the testing of samples.

Customs' Response: Customs recognizes that testing may be required to determine whether a sample bears a counterfeit trademark or constitutes a piratical copy. Customs' intention is to allow for the manipulation of samples provided to IPR owners, including the

destruction of the sample if required during the testing procedure. However, Customs has determined that samples may not be retained by IPR owners, and Customs will require either the return of samples, the remains of tested sample, or assurances to Customs' satisfaction that the article has been destroyed. Accordingly, the regulations as set forth below have been modified to provide that where Customs has provided sample merchandise to an IPR owner for examination, testing, or any other use in pursuit of a related private civil remedy, the IPR owner must return the sample to Customs upon demand or at the conclusion of the examination, testing, or use in pursuit of a related private civil remedy. In the event the sample is damaged, destroyed, or lost while in the custody of the IPR owner, the owner shall certify this fact to Customs. The regulations also require that the IPR owner post a bond conditioned to indemnify the importer and to hold harmless Customs, in the event that the sample is destroyed.

In the August 23, 1993, notice of proposed rulemaking, and the July 14, 1995, revised notice of proposed rulemaking on these regulations, Customs proposed furnishing samples of imported goods bearing trademarks to IPR owners to determine whether infringement has occurred. Customs has determined that in some instances samples may be furnished to IPR owners under the proposed rules where subsequently it is determined that no infringement has occurred. It logically flows that in some of these instances importers may suffer damages as a result of the furnishing of samples to the IPR-owner (for example, samples may be lost or destroyed). To provide protection to importers in this eventuality, Customs has determined to require IPR owners to provide Customs with a bond as a precondition to obtaining samples. Specifically, Customs has revised §§ 133.22(c), 133.23a(d), 133.42(e), and 133.43(b) and (c) to require that a bond be posted by the IPR owner to indemnify the importer and hold-harmless Customs from any loss or damage resulting from Customs furnishing a sample to the IPR owner, in the event that the sample merchandise provided is subsequently determined not to bear an infringing mark.

Conclusion

After analysis of the comments and further consideration of the matter, Customs has decided to adopt the proposed amendments to part 133 of the Customs Regulations with the modifications discussed above in the analysis of comments.

The Regulatory Flexibility Act

Based on the reasons set forth above and because the regulatory burden falls primarily on Customs to notify IPR holders of infringing imported merchandise, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments to the regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12866

This document does not meet the criteria for a "significant regulatory action" as defined in E.O. 12866.

List of Subjects in 19 CFR Part 133

Copyright, Counterfeit goods, Customs duties and inspection, Imports, Reporting and recordkeeping requirements, Restricted merchandise, Seizures and forfeitures, Trademarks, Trade names.

Amendments to the Regulations

For the reasons stated above, part 133 of the Customs Regulations (19 CFR part 133), is amended as set forth below:

PART 133—TRADEMARKS, TRADE NAMES, AND COPYRIGHTS

1. The general authority citation for part 133 is revised to read as follows:

Authority: 17 U.S.C. 101, 601, 602, 603; 19 U.S.C. 66, 1624; 31 U.S.C. 9701.

* * * * *

2. Section 133.22 is amended by revising the section heading; revising the text of paragraph (a); redesignating paragraphs (b) and (c) as paragraphs (d) and (e); adding new paragraphs (b) and (c); and revising the heading of newly redesignated paragraph (d). The additions and revisions are to read as follows:

§ 133.22 Procedure on detention of articles subject to restriction.

(a) *In general.* Articles subject to the restrictions of § 133.21 shall be detained for 30 days from the date on which the merchandise is presented for Customs examination. The importer shall be notified of the decision to detain within 5 days of the decision that such restrictions apply. The importer may, during the 30-day period, establish that any of the circumstances described in § 133.21(c) are applicable. Extensions of the 30-day time period may be freely granted for good cause shown.

(b) *Notice of detention and disclosure of information.* From the time merchandise is presented for Customs examination until the time a notice of detention is issued Customs may disclose to the owner of the trademark or trade name any of the following information in order to obtain assistance in determining whether an imported article bears an infringing trademark or trade name. Customs shall disclose this same information (if available) to the owner of the trademark or trade name within 30 days (excluding weekends and holidays) of the date of detention:

(1) The date of importation;

(2) The port of entry;

(3) A description of the merchandise;

(4) The quantity involved; and

(5) The country of origin of the merchandise.

(c) *Samples available to the trademark or trade name owner.* At any time following presentation of the merchandise for Customs examination but prior to seizure, Customs may provide a sample of the suspect merchandise to the owner of the trademark or trade name for examination or testing to assist in determining whether the article imported bears an infringing trademark or trade name. To obtain a sample under this section, the trademark/trade name owner must furnish Customs a bond in the form and amount specified by the port director, conditioned to hold the United States, its officers and employees, and the importer or owner of the imported article harmless from any loss or damage resulting from the furnishing of a sample by Customs to the trademark owner. Customs may demand the return of the sample at any time. The owner must return the sample to Customs upon demand or at the conclusion of the examination or testing. In the event that the sample is damaged, destroyed, or lost while in the possession of the trademark or trade name owner, the owner shall, in lieu of return of the sample, certify to Customs that: "The sample described as [insert description] and provided pursuant to 19 CFR 133.22(c) was (damaged/destroyed/lost) during examination or testing for trademark infringement."

(d) *Form of notice.* * * *

* * * * *

3. Section 133.23a is amended by redesignating paragraph (c) as paragraph (e); adding new paragraphs (c) and (d); and revising the heading and removing the first sentence of newly designated paragraph (e). The additions and revisions are to read as follows:

§ 133.23a Articles bearing counterfeit trademarks.

* * * * *

(c) *Notice to trademark owner.* When merchandise is seized under this section, Customs shall disclose to the owner of the trademark the following information, if available, within 30 days, excluding weekends and holidays, of the date of the notice of seizure:

(1) The date of importation;
(2) The port of entry;
(3) A description of the merchandise;
(4) The quantity involved;
(5) The name and address of the manufacturer;
(6) The country of origin of the merchandise;
(7) The name and address of the exporter; and
(8) The name and address of the importer.

(d) *Samples available to the trademark owner.* At any time following seizure of the merchandise, Customs may provide a sample of the suspect merchandise to the owner of the trademark for examination, testing, or other use in pursuit of a related private civil remedy for trademark infringement. To obtain a sample under this section, the trademark/trade name owner must furnish Customs a bond in the form and amount specified by the port director, conditioned to hold the United States, its officers and employees, and the importer or owner of the imported article harmless from any loss or damage resulting from the furnishing of a sample by Customs to the trademark owner. Customs may demand the return of the sample at any time. The owner must return the sample to Customs upon demand or at the conclusion of the examination, testing, or other use in pursuit of a related private civil remedy for trademark infringement. In the event that the sample is damaged, destroyed, or lost while in the possession of the trademark owner, the owner shall, in lieu of return of the sample, certify to Customs that: "The sample described as [insert description] and provided pursuant to 19 CFR 133.23a(d) was (damaged/destroyed/lost) during examination, testing, or other use."

(e) *Failure to make appropriate disposition.* * * *

4. Section 133.42 is amended by redesignating paragraph (d) as paragraph (f) and adding new paragraphs (d) and (e) to read as follows:

§ 133.42 Infringing copies or phonorecords.

* * * * *

(d) *Disclosure.* When merchandise is seized under this section, Customs shall disclose to the owner of the copyright the following information, if available, within 30 days, excluding weekends and holidays, of the date of the notice of seizure:

(1) The date of importation;
(2) The port of entry;
(3) A description of the merchandise;
(4) The quantity involved;
(5) The name and address of the manufacturer;
(6) The country of origin of the merchandise;
(7) The name and address of the exporter; and
(8) The name and address of the importer.

(e) *Samples available to the copyright owner.* At any time following seizure of the merchandise, Customs may provide a sample of the suspect merchandise to the owner of the copyright for examination, testing, or any other use in pursuit of a related private civil remedy for copyright infringement. To obtain a sample under this section, the copyright owner must furnish to Customs a bond in the form and amount specified by the port director, conditioned to hold the United States, its officers and employees, and the importer or owner of the imported article harmless from any loss or damage resulting from the furnishing of a sample by Customs to the copyright owner. Customs may demand the return of the sample at any time. The owner must return the sample to Customs upon demand or at the conclusion of the examination, testing, or other use in pursuit of a related private civil remedy for copyright infringement. In the event that the sample is damaged, destroyed, or lost while in the possession of the copyright owner, the owner shall, in lieu of return of the sample, certify to Customs that: "The sample described as [insert description] provided pursuant to 19 CFR 133.42(e) was (damaged/destroyed/lost) during examination, testing, or other use."

* * * * *

5. In § 133.43, paragraphs (c) and (d) are redesignated as paragraphs (d) and (e), and paragraph (b) is revised and a new paragraph (c) is added to read as follows:

§ 133.43 Procedure on suspicion of infringing copies.

* * * * *

(b) *Notice to copyright owner.* If the importer of suspected infringing copies or phonorecords files a denial as provided in paragraph (a) of this section, the port director shall furnish to the copyright owner the following information, if available, within 30 days, excluding weekends and holidays, of the receipt of the importer's denial:

(1) The date of importation;
(2) The port of entry;
(3) A description of the merchandise;
(4) The quantity involved;
(5) The country of origin of the merchandise; and
(6) Notice that the imported article will be released to the importer unless, within 30 days from the date of the notice, the copyright owner files with the port director a written demand for the exclusion from entry of the detained imported articles.

(c) *Samples available to the copyright owner.* At any time following presentation of the merchandise for Customs examination but prior to seizure, Customs may provide a sample of the suspect merchandise to the owner of the copyright for examination or testing to assist in determining whether the article imported is a piratical copy. To obtain a sample under this section, the copyright owner must furnish Customs a bond in the form and amount specified by the port director, conditioned to hold the United States, its officers and employees, and the importer or owner of the imported article harmless from any loss or damage resulting from Customs detention or seizure, or the furnishing of a sample by Customs to the trademark owner, in the event that the Commissioner of Customs, or his designee, or a federal court determines that the article does not bear an infringing mark. Customs may demand the return of the sample at any time. The owner must return the sample to Customs upon demand or at the conclusion of the examination or testing. In the event that the sample is damaged, destroyed, or lost while in the possession of the copyright owner, the owner shall, in lieu of return of the sample, certify to Customs that: "The sample described as [insert description] provided pursuant to 19 CFR 133.43(c) was (damaged/destroyed/lost) during examination or testing for copyright infringement."

* * * * *

Samuel H. Banks,
Acting Commissioner of Customs.

Approved: February 17, 1998.

John P. Simpson,
Deputy Assistant Secretary of the Treasury.

[FR Doc. 98–6183 Filed 3–11–98; 8:45 am]
BILLING CODE 4820–02–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AH23

Loan Guaranty: VA-Guaranteed Loans on the Automatic Basis, Withdrawal of Automatic Processing Authority, Record Retention Requirements, and Elimination of Late Reporting Waivers

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) loan guaranty regulations in the areas of automatic processing authority, late reporting, and record retention requirements.

First, the criteria used to approve non-supervised lenders to process VA-guaranteed loans on the automatic basis are revised to reduce the experience requirements for lenders and their underwriters, thereby making it easier for them to qualify for automatic processing authority. High underwriting standards will be maintained by requiring that all VA-approved underwriters receive training in VA credit underwriting procedures.

Second, the regulation provides that if a lender does not report the loan within 60 days following full disbursement, its report must be accompanied by a signed statement certifying that the loan is current and offering an explanation for the late reporting. This simplifies the prior procedure under which a lender had to formally request a waiver of the 60-day reporting requirement. VA will continue to guarantee the loan even if it is reported late. This will have no impact on whether or not VA guarantees the loan but would help VA determine whether action should be taken against a lender.

Third, lenders are now required to retain all loan origination records for at least two years from the date of loan closing. The previous requirement was one year. This will improve VA's ability to monitor lender performance and conduct underwriting reviews.

DATES: *Effective Date:* April 13, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Judith Caden, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–7368.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on July 15, 1997 (62 FR 37824), VA proposed to amend its loan guaranty regulations concerning automatic processing authority, late reporting, and record retention requirements. Based on the rationale set forth in the proposed rule and this document, the changes are adopted as originally proposed.

Please refer to the July 15, 1997, **Federal Register** for a complete discussion of the proposed amendments. Interested persons were given 60 days to submit comments. The comment period ended September 15, 1997. VA received two comments regarding the proposed changes.

The first commenter, an association which represents mortgage lenders, supported adoption of the proposed rule.

The second commenter, a lender who actively participates in the VA Guaranteed Home Loan Program, expressed support for the proposed elimination of the waiver requirement for late reporting. However, they noted that there was no meaningful reduction in compliance burden for lenders, since the requirement to provide an explanation for the late reporting is retained. The commenter is correct. The purpose of the amendment was to reduce the burden currently placed on VA field stations of having to process formal waiver requests. This VA burden is reduced, while no new burdens are placed on lenders. However, it is still important for lenders to report loans to VA in a timely manner, and we are retaining the requirement that lenders explain why the loan was reported late. As stated in the proposal, "the statement of the reasons for late reporting [must] continue to be submitted to VA so that these reasons for late reporting * * * could be considered in deciding if the lenders' personnel might need additional training or whether automatic lending authority should be withdrawn". By generally reporting loans to VA within 60 days of disbursement, a lender can avoid the necessity of explaining the delay.

The commenter also noted that the increase in the length of time a lender must retain loan origination records from one year to two years was potentially burdensome on lenders and served no valid purpose. We disagree. As noted in the preamble to the proposed regulations published in the **Federal Register** on July 15, 1997 (62 FR 37824), the purpose of this amendment was to enable VA monitoring unit audit teams to review loan records for as many lenders as necessary to properly administer the VA loan guaranty program. A two-year period provides a more realistic time in which to plan and complete these loan audits. Moreover, industry standards, including Federal Housing Administration (FHA) regulations and the Equal Credit Opportunity Act (ECOA), require that lenders keep loan origination records for at least 24 months. This amendment conforms VA's record retention requirement to industry standards. This will improve VA's ability to monitor loan performance and to identify lenders who may be having particular trouble underwriting loans.

Paperwork Reduction Act

Information collection and recordkeeping requirements in 36.4303 (a), (c), (d), (e), (f), (g), (i) and (l), and in 36.4330 (a) and (b); and in 38 CFR 36.4348 (b), (c) and (d) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and have been assigned OMB control number 2900–0574. The information collection subject to this rulemaking concerns the information to be submitted for approval as a lender with automatic processing authority and contains material that further explains the quality of the information needed for approval.

OMB assigns a control number for each collection of information it approves. VA 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 valid OMB control number assigned to the collection of information in this final rule is displayed at the end of the affected section of the regulations.

Interested persons were invited to submit comments on the collection of information. All comments received are discussed above.

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Industry norms for other lending programs already require lenders to comply with most of the standards set forth in this final rule. Further, activities concerning loans subject to the VA Loan Guaranty Program do not constitute a significant portion of activities of 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 §§ 603 and 604.

The Catalog of Federal Domestic Assistance Program numbers are 64.106, 64.114, 64.118 and 64.119.

List of Subjects in 38 CFR Part 36

Condominiums, Housing, Individuals with disabilities, Loan programs—housing and community development, Reporting and recordkeeping requirements, Veterans.

Approved: February 24, 1998.

Togo D. West, Jr.,

Acting Secretary.

For the reasons set out in the preamble, 38 CFR part 36 is amended as set forth below:

PART 36—LOAN GUARANTY

1. The authority citation for part 36, §§ 36.4300 through 36.4375 continues to read as follows:

Authority: Sections 36.4300 through 36.4375 issued under 38 U.S.C. §§ 101, 501, 3701–3704, 3710, 3712–3714, 3720, 3729, 3732, unless otherwise noted.

2. Section 36.4303 is revised to read follows:

§ 36.4303 Reporting requirements.

(a) With respect to loans automatically guaranteed under 38 U.S.C. 3703(a)(1), evidence of the guaranty will be issuable to a lender of a class described under 38 U.S.C. 3702(d) if the loan is reported to the Secretary within 60 days following full disbursement and upon the certification of the lender that:

(1) No default exists thereunder that has continued for more than 30 days;

(2) Except for acquisition and improvement loans as defined in § 36.4301, any construction, repairs, alterations, or improvements effected subsequent to the appraisal of reasonable value, and paid for out of the proceeds of the loan, which have not been inspected and approved upon completion by a compliance inspector designated by the Secretary, have been completed properly in full accordance with the plans and specifications upon which the original appraisal was based; and any deviations or changes of identity in said property have been approved as required in § 36.4304 concerning guaranty or insurance of loans to veterans;

(3) The loan conforms otherwise with the applicable provisions of 38 U.S.C. Chapter 37 and of the regulations concerning guaranty or insurance of loans to veterans.

(Authority: 38 U.S.C. 3703(c)(1))

(b) Loans made pursuant to 38 U.S.C. 3703(a), although not entitled to automatic insurance thereunder, may, when made by a lender of a class described in 38 U.S.C. 3702(d)(1), be reported for issuance of an insurance credit.

(Authority: 38 U.S.C. 3702(d), 3703(a)(2))

(c) Each loan proposed to be made to an eligible veteran by a lender not within a class described in 38 U.S.C. 3702(d) shall be submitted to the Secretary for approval prior to closing. Lenders described in 38 U.S.C. 3702(d) shall have the optional right to submit any loan for such prior approval. The Secretary, upon determining any loan so submitted to be eligible for a guaranty, or for insurance, will issue a certificate of commitment with respect thereto.

(d) A certificate of commitment shall entitle the holder to the issuance of the evidence of guaranty or insurance upon the ultimate actual payment of the full proceeds of the loan for the purposes described in the original report and upon the submission within 60 days thereafter of a supplemental report showing that fact and:

(1) The identity of any property purchased therewith,

(2) That all property purchased or acquired with the proceeds of the loan has been encumbered as required by the regulations concerning guaranty or insurance of loans to veterans,

(3) Except for acquisition and improvement loans as defined in § 36.4301(c), any construction, repairs, alterations, or improvements paid for out of the proceeds of the loan, which have not been inspected and approved subsequent to completion by a compliance inspector designated by the Secretary, have been completed properly in full accordance with the plans and specifications upon which the original appraisal was based; and that any deviations or changes of identity in said property have been approved as required by § 36.4304, and

(4) That the loan conforms otherwise with the applicable provisions of 38 U.S.C. Chapter 37 and the regulations concerning guaranty or insurance of loans to veterans.

(Authority: 38 U.S.C. 3703(c)(1))

(e) Upon the failure of the lender to report in accordance with the provisions of paragraph (d) of this section, the certificate of commitment shall have no further effect, or the amount of guaranty or insurance shall be reduced pro rata, as may be appropriate under the facts of the case: Provided, nevertheless, that if the loan otherwise meets the requirements of this section, said certificate of commitment may be given effect by the Secretary, notwithstanding the report is received after the date otherwise required.

(f) For loans not reported within 60 days, evidence of guaranty will be issued only if the loan report is accompanied by a statement signed by a corporate officer of the lending institution which explains why the loan was reported late. The statement must identify the case or cases in issue and must set forth the specific reason or reasons why the loan was not submitted on time. Upon receipt of such a statement evidence of guaranty will be issued. A pattern of late reporting and the reasons therefore will be considered by VA in taking action under § 36.4349.

(g) Evidence of a guaranty will be issued by the Secretary by appropriate endorsement on the note or other instrument evidencing the obligation, or by a separate certificate at the option of the lender. Notice of credit to an insurance account will be given to the lender. Unused certificates of eligibility issued prior to March 1, 1946, are void. No certificate of commitment shall be issued and no loan shall be guaranteed or insured unless the lender, the veteran, and the loan are shown to be eligible. Evidence of guaranty or insurance will not be issued on any loan for the purchase or construction of residential property unless the veteran, or the veteran's spouse in the case of a veteran who cannot occupy the property because of active duty status with the Armed Forces, certifies in such form as the Secretary shall prescribe that the veteran, or spouse of the active duty veteran, intends to occupy the property as his or her home. Guaranty or insurance evidence will not be issued on any loan for the alteration, improvement, or repair of any residential property or on a refinancing loan unless the veteran, or spouse of an active duty servicemember, certifies that he or she presently occupies the property as his or her home. An exception to this is if the home improvement or refinancing loan is for extensive changes to the property that will prevent the veteran or the spouse of the active duty veteran from occupying the property while the work is being completed. In such a case the veteran or spouse of the active duty veteran must certify that he or she intends to occupy or reoccupy the property as his or her home upon completion of the substantial improvements or repairs. All of the mentioned certifications must take place at the time of loan application and closing except in the case of loans automatically guaranteed, in which case veterans or, in the case of an active duty veteran, the veterans' spouse shall make the required certification only at the time the loan is closed.

(Authority: 38 U.S.C. 3704(c))

(h) Subject to compliance with the regulations concerning guaranty or

insurance of loans to veterans, the certificate of guaranty or the evidence of insurance credit will be issuable within the available entitlement of the veteran on the basis of the loan stated in the final loan report or certification of loan disbursement, except for refinancing loans for interest rate reductions. The available entitlement of a veteran will be determined by the Secretary as of the date of receipt of an application for guaranty or insurance of a loan or of a loan report. Such date of receipt shall be the date the application or loan report is date-stamped into VA. Eligibility derived from the most recent period of service:

(1) Shall cancel any unused entitlement derived from any earlier period of service, and

(2) Shall be reduced by the amount by which entitlement from service during any earlier period has been used to obtain a direct, guaranteed, or insured loan.

(i) On property which the veteran owns at the time of application, or

(ii) As to which the Secretary has incurred actual liability or loss, unless in the event of loss or the incurrence and payment of such liability by the Secretary, the resulting indebtedness of the veteran to the United States has been paid in full. *Provided,* That if the Secretary issues or has issued a certificate of commitment covering the loan described in the application for guaranty or insurance or in the loan report, the amount and percentage of guaranty or the amount of the insurance credit contemplated by the certificate of commitment shall not be subject to reduction if the loan has been or is closed on a date that is not later than the expiration date of the certificate of commitment, notwithstanding that the Secretary in the meantime and prior to the issuance of the evidence of guaranty or insurance shall have incurred actual liability or loss on a direct, guaranteed, or insured loan previously obtained by the borrower. For the purposes of this paragraph, the Secretary will be deemed to have incurred actual loss on a guaranteed or insured loan if the Secretary has paid a guaranty or insurance claim thereon and the veteran's resultant indebtedness to the Government has not been paid in full, and to have incurred actual liability on a guaranteed or insured loan if the Secretary is in receipt of a claim on the guaranty or insurance or is in receipt of a notice of default. In the case of a direct loan, the Secretary will be deemed to have incurred an actual loss if the loan is in default. A loan, the proceeds of which are to be disbursed progressively or at intervals, will be deemed to have been closed for the purposes of this paragraph if the loan has been completed in all respects excepting the actual "payout" of the entire loan proceeds.

(Authority: 38 U.S.C. 3702(a), 3710(c))

(i) Any amounts that are disbursed for an ineligible purpose shall be excluded in computing the amount of guaranty or insurance credit.

(j) Notwithstanding the lender has erroneously, but without intent to misrepresent, made certification with respect to paragraph (a)(1) of this section, the guaranty or insurance will become effective upon the curing of such default and its continuing current for a period of not less than 60 days thereafter. For the purpose of this paragraph a loan will be deemed current so long as the installment is received within 30 days after its due date.

(k) No guaranty or insurance commitment or evidence of guaranty or insurance will be issuable in respect to any loan to finance a contract that:

(1) Is for the purchase, construction, repair, alteration, or improvement of a dwelling or farm residence;

(2) Is dated on or after June 4, 1969;

(3) Provides for a purchase price or cost to the veteran in excess of the reasonable value established by the Secretary; and

(4) Was signed by the veteran prior to the veteran's receipt of notice of such reasonable value; unless such contract includes, or is amended to include, a provision substantially as follows:

It is expressly agreed that, notwithstanding any other provisions of this contract, the purchaser shall not incur any penalty by forfeiture of earnest money or otherwise or be obligated to complete the purchase of the property described herein, if the contract purchase price or cost exceeds the reasonable value of the property established by the Department of Veterans Affairs. The purchaser shall, however, have the privilege and option of proceeding with the consummation of this contract without regard to the amount of the reasonable value established by the Department of Veterans Affairs.

(Authority: 38 U.S.C. 501, 3703(c)(1))

(l) With respect to any loan for which a commitment was made on or after March 1, 1988, the Secretary must be notified whenever the holder receives knowledge of disposition of the residential property securing a VA-guaranteed loan.

(1) If the seller applies for prior approval of the assumption of the loan, then:

(i) A holder (or its authorized servicing agent) who is an automatic lender must examine the creditworthiness of the purchaser and determine compliance with the provisions of 38 U.S.C. 3714. The creditworthiness review must be performed by the party that has automatic authority. If both the holder and its servicing agent are automatic lenders, then they must decide between themselves which one will make the determination of creditworthiness, whether the loan is current and whether there is a contractual obligation to assume the loan, as required by 38 U.S.C. 3714. If the actual loan holder does not have automatic authority and its servicing agent is an automatic lender, then the servicing agent must make the determinations required by 38 U.S.C. 3714 on behalf of the holder. The actual holder will remain ultimately responsible for any failure of its servicing agent to comply with the applicable law and VA regulations.

(A) If the assumption is approved and the transfer of the security is completed, then the notice required by this paragraph shall consist of the credit package (unless previously provided in accordance with paragraph (k)(1)(i)(B) of this section) and a copy of the executed deed and/or assumption agreement as required by VA office of jurisdiction. The notice shall be submitted to the Department with VA receipt for the funding fee provided for in § 36.4312(e)(3) of this part.

(B) If the application for assumption is disapproved, the holder shall notify the seller and the purchaser that the decision may be appealed to the VA office of jurisdiction within 30 days. The holder shall make available to that VA office all items used by the holder in making the holder's decision in case the decision is appealed to VA. If the application remains disapproved after 60 days (to allow time for appeal to and review by VA), then the holder must refund $50 of any fee previously collected under the provisions of § 36.4312(d)(8) of this part. If the application is subsequently approved and the sale is completed, then the holder (or its authorized servicing agent) shall provide the notice described in paragraph (k)(1)(i)(A) of this section.

(C) In performing the requirements of paragraphs (k)(1)(i)(A) or (k)(1)(i)(B) of this section, the holder must complete its examination of the creditworthiness of the prospective purchaser and advise the seller no later than 45 days after the date of receipt by the holder of a complete application package for the approval of the assumption. The 45-day period may be extended by an interval not to exceed the time caused by delays in processing of the application that are documented as beyond the control of the holder, such as employers or

depositories not responding to requests for verifications, which were timely forwarded, or follow-ups on those requests.

(ii) If neither the holder nor its authorized servicing agent is an automatic lender, the notice to VA shall include:

(A) Advice regarding whether the loan is current or in default;

(B) A copy of the purchase contract; and

(C) A complete credit package developed by the holder which the Secretary may use for determining the creditworthiness of the purchaser.

(D) The notice and documents required by this section must be submitted to the VA office of jurisdiction no later than 35 days after the date of receipt by the holder of a complete application package for the approval of the assumption, subject to the same extensions as provided in paragraph (k)(l)(i) of this section. If the assumption is not automatically approved by the holder or its authorized agent, pursuant to the automatic authority provisions, $50 of any fee collected in accordance with § 36.4312(d)(8) of this part must be refunded. If the Department of Veterans Affairs does not approve the assumption, the holder will be notified and an additional $50 of any fee collected under § 36.4312(d)(8) of this section must be refunded following the expiration of the 30-day appeal period set out in paragraph (k)(l)(i)(B) of this section. If such an appeal is made to the Department of Veterans Affairs, then the review will be conducted at the Department of Veterans Affairs office of jurisdiction by an individual who was not involved in the original disapproval decision. If the application for assumption is approved and the transfer of security is completed, then the holder (or its authorized servicing agent) shall provide the notice required in paragraph (k)(l)(i)(A) of this section.

(2) If the seller fails to notify the holder before disposing of property securing the loan, the holder shall notify the Secretary within 60 days after learning of the transfer. Such notice shall advise whether or not the holder intends to exercise its option to immediately accelerate the loan and whether or not an opportunity will be extended to the transferor and transferee to apply for retroactive approval of the assumption under the terms of this paragraph.

(Authority: 38 U.S.C. 3714)

(The Information collection requirements in this section have been approved by the Office of Management and Budget under control number 2900–0516)

3. Section 36.4330 is revised to read as follows:

§ 36.4330 Maintenance of records.

(a) The holder shall maintain a record of the amounts of payments received on the obligation and disbursements chargeable thereto and the dates thereof. This record shall be maintained until the Secretary ceases to be liable as guarantor or insurer of the loan. For the purpose of any accounting with the Secretary or computation of a claim, any holder who fails to maintain such record shall be presumed to have received on the dates due all sums which by the terms of the contract are payable prior to date of claim for default, and the burden of going forward with evidence and of ultimate proof of the contrary shall be on such holder.

(b) The lender shall retain copies of all loan origination records on a VA-guaranteed loan for at least two years from the date of loan closing. Loan origination records include the loan application, including any preliminary application, verifications of employment and deposit, all credit reports, including preliminary credit reports, copies of each sales contract and addendums, letters of explanation for adverse credit items, discrepancies and the like, direct references from creditors, correspondence with employers, appraisal and compliance inspection reports, reports on termite and other inspections of the property, builder change orders, and all closing papers and documents.

(Authority: 38 U.S.C. 501, 3703(c)(1))

(c) The Secretary has the right to inspect, examine, or audit, at a reasonable time and place, the records or accounts of a lender or holder pertaining to loans guaranteed or insured by the Secretary.

(The information collection requirements in this section have been approved by the Office of Management and Budget under control number 2900–0515)

§ 36.4335 [Amended]

4. In § 36.4335, paragraphs (a) and (b) are removed; and paragraphs (c), (d), (e), (f), (g), and (h) are redesignated as paragraphs (a), (b), (c), (d), (e), and (f), respectively. In addition, the authority citation after the newly redesignated paragraph (e) is removed.

5. In 36.4348, paragraphs (d), (e), and (f) are redesignated as paragraphs (e), (f), and (g), respectively; paragraphs (b), (c), and newly redesignated (e) are revised and a new paragraph (d) is added to read as follows:

§ 36.4348 Authority to close loans on the automatic basis.

* * * * *

(b) Non-supervised lenders of the class described in 38 U.S.C. 3702(d)(3) must apply to the Secretary for authority to process loans on the automatic basis. Each of the minimum requirements listed below must be met by applicant lenders.

(1) *Experience.* The firm must meet one of the following experience requirements:

(i) The firm must have been actively engaged in originating VA loans for at least two years, have a VA Lender ID number and have originated and closed a minimum of ten VA loans within the past two years, excluding interest rate reduction refinance loans (IRRRLs), that have been properly documented and submitted in compliance with VA requirements and procedures; or

(ii) The firm must have a VA ID number and, if active for less than two years, have originated and closed at least 25 VA loans, excluding IRRRLs, that have been properly documented and submitted in compliance with VA requirements and procedures; or

(iii) Each principal officer of the firm, who is actively involved in managing origination functions, must have a minimum of two recent years' management experience in the origination of VA loans. This experience may be with the current or prior employer. For the purposes of this requirement, principal officer is defined as president or vice president; or

(iv) If the firm has been operating as an agent for a non-supervised automatic lender (sponsoring lender), the firm must submit documentation confirming that it has a VA Lender ID number and has originated a minimum of ten VA loans, excluding IRRRLs, over the past two years. If active for less than two years, the agent must have originated at least 25 VA loans. The required documentation is a copy of the VA letter approving the firm as an agent for the sponsoring lender; a copy of the corporate resolution, describing the functions the agent was to perform, submitted to VA by the sponsoring lender; and a letter from a senior officer of the sponsoring lender indicating the number of VA loans submitted by the agent each year and that the loans have been properly documented and submitted in compliance with VA requirements and procedures.

(2) *Underwriter.* A senior officer of the firm must nominate a full-time qualified employee(s) to act in the firm's behalf as underwriter(s) to personally review and make underwriting decisions on VA loans to be closed on the automatic basis.

(i) Nominees for underwriter must have a minimum of three years

experience in processing, pre-underwriting or underwriting mortgage loans. At least one recent year of this experience must have included making underwriting decisions on VA loans. (Recent is defined as within the past three years.) A VA nomination and current resume, outlining the underwriter's specific experience with VA loans, must be submitted for each underwriter nominee.

(ii) Alternatively, if an underwriter does not have the experience outlined above, the underwriter must submit documentation verifying that he or she is a current Accredited Residential Underwriter (ARU) as designated by the Mortgage Bankers Association (MBA).

(iii) If an underwriter is not located in the lender's corporate office, then a senior officer must certify that the underwriter reports to and is supervised by an individual who is not a branch manager or other person with production responsibilities.

(iv) All VA-approved underwriters must attend a 1-day (eight-hour) training course on underwriter responsibilities, VA underwriting requirements, and VA administrative requirements, including the usage of VA forms, within 90 days of approval (if VA is unable to make such training available within 90 days, the underwriter must attend the first available training). Immediately upon approval of a VA underwriter, the office of jurisdiction will contact the underwriter to schedule this training at a VA regional office (VARO) of the underwriter's choice. This training is required for all newly approved VA underwriters, including those who qualified for approval based on an ARU designation, as well as VA-approved underwriters who have not underwritten VA-guaranteed loans in the past 24 months. Furthermore, and at the discretion of any VARO in whose jurisdiction the lender is originating VA loans, VA-approved underwriters who consistently approve loans that do not meet VA credit standards may be required to retake this training.

(3) *Underwriter Certification.* The lender must certify that all underwriting decisions as to whether to accept or reject a VA loan will be made by a VA-approved underwriter. In addition each VA-approved underwriter will be required to certify on each VA loan that he or she approves that the loan has been personally reviewed and approved by the underwriter.

(4) *Financial Requirements.* Each application must include the most recent annual financial statement audited and certified by a certified public accountant (CPA). If the date of the annual financial statement precedes that of the application by more than six months, the lender must also attach a copy of its latest internal financial statement. Lenders are required to meet either the working capital or the minimum net worth financial requirement as defined below.

(i) *Working Capital.* A minimum of $50,000 in working capital must be demonstrated.

(A) Working capital is a measure of a firm's liquidity, or the ability to pay its short-term debts. Working capital is defined as the excess of current assets over current liabilities. Current assets are defined as cash or other liquid assets convertible into cash within a 1-year period. Current liabilities are defined as debts that must be paid within the same 1-year time frame.

(B) The VA determination of whether a lender has the required minimum working capital is based on the balance sheet of the lender's annual audited financial statement. Therefore, either the balance sheet must be classified to distinguish between current and fixed assets and between current and long-term liabilities or the information must be provided in a footnote to the statement.

(ii) *Net Worth.* Lenders must show evidence of a minimum of $250,000 in adjusted net worth. Net worth is a measure of a firm's solvency, or its ability to exist in the long run, quantified by the payment of long-term debts. Net worth as defined by generally accepted accounting principles (GAAP) is total assets minus total liabilities. Adjusted net worth for VA purposes is the same as the adjusted net worth required by the Department of Housing and Urban Development (HUD), net worth less certain unacceptable assets including:

(A) Any assets of the lender pledged to secure obligations of another person or entity.

(B) Any asset due from either officers or stockholders of the lender or related entities, in which the lender's officers or stockholders have a personal interest, unrelated to their position as an officer or stockholder.

(C) Any investment in related entities in which the lender's officers or stockholders have a personal interest unrelated to their position as an officer or stockholder.

(D) That portion of an investment in joint ventures, subsidiaries, affiliates and/or other related entities which is carried at a value greater than equity, as adjusted. "Equity as adjusted" means the book value of the related entity reduced by the amount of unacceptable assets carried by the related entity.

(E) All intangibles, such as goodwill, covenants not to compete, franchisee fees, organization costs, etc., except unamortized servicing costs carried at a value established by an arm's-length transaction and presented in accordance with generally accepted accounting principles.

(F) That portion of an asset not readily marketable and for which appraised values are very subjective, carried at a value in excess of a substantially discounted appraised value. Assets such as antiques, art work and gemstones are subject to this provision and should be carried at the lower of cost or market.

(G) Any asset that is principally used for the personal enjoyment of an officer or stockholder and not for normal business purposes. Adjusted net worth must be calculated by a CPA using an audited and certified balance sheet from the lender's latest financial statements. "Personal interest" as used in this section indicates a relationship between the lender and a person or entity in which that specified person (e.g., spouse, parent, grandparent, child, brother, sister, aunt, uncle or in-law) has a financial interest in or is employed in a management position by the lender.

(5) *Lines of credit.* The lender applicant must have one or more lines of credit aggregating at least $1 million. The identity of the source(s) of warehouse lines of credit must be submitted to VA and the applicant must agree that VA may contact the named source(s) for the purpose of verifying the information. A line of credit must be unrestricted, that is, funds are available upon demand to close loans and are not dependent on prior investor approval. A letter from the company(ies) verifying the unrestricted line(s) of credit must be submitted with the application for automatic authority.

(6) *Permanent investors.* If the lender customarily sells loans it originates, it must have a minimum of two permanent investors. The names, addresses and telephone numbers of the permanent investors must be submitted with the application.

(7) *Liaison.* The lender applicant must designate an employee and an alternate to be the primary liaison with VA. The liaison officers should be thoroughly familiar with the lender's entire operation and be able to respond to any query from VA concerning a particular VA loan or the firm's automatic authority.

(8) *Other considerations.* All applications will also be reviewed in light of the following considerations:

(i) There must be no factors that indicate that the firm would not exercise the care and diligence required

of a lender originating and closing VA loans on the automatic basis; and

(ii) In the event the firm, any member of the board of directors, or any principal officer has ever been debarred or suspended by any Federal agency or department, or any of its directors or officers has been a director or officer of any other lender or corporation that was so debarred or suspended, or if the lender applicant ever had a servicing contract with an investor terminated for cause, a statement of the facts must be submitted with the application for automatic authority.

(9) *Quality Control System*. In order to be approved as a non-supervised lender for automatic-processing authority, the lender must implement a written quality control system which ensures compliance with VA requirements. The lender must agree to furnish findings under its systems to VA on demand. The elements of the quality control system must include the following:

(i) *Underwriting policies*. Each office of the lender shall maintain copies of VA credit standards and all available VA underwriting guidelines.

(ii) *Corrective measures*. The system should ensure that effective corrective measures are taken promptly when deficiencies in loan origination's are identified by either the lender or VA. Any cases involving major discrepancies which are discovered under the system must be reported to VA.

(iii) *System integrity*. The quality control system should be independent of the mortgage loan production function.

(iv) *Scope*. The review of underwriting decisions and certifications must include compliance with VA underwriting requirements, sufficiency of documentation and soundness of underwriting judgments.

(v) *Appraisal quality*. For lenders approved for the Lender Appraisal Processing Program (LAPP), the quality control system must specifically contain provisions concerning the adequacy and quality of real property appraisals. While the lender's quality control personnel need not be appraisers, they should have basic familiarity with appraisal theory and techniques so that they can select appropriate cases for review if discretionary sampling is used, and prescribe appropriate corrective action(s) in the appraisal review process when discrepancies or problems are identified. Copies of the lender's quality control plan or self-policing system evidencing appraisal related matters must be provided to the VA office of jurisdiction.

(10) *Courtesy closing*. The lender-applicant must certify to VA that it will not close loans on an automatic basis as a courtesy or accommodation for other mortgage lenders, whether or not such lenders are themselves approved to close on an automatic basis without the express approval of VA. However, a lender with automatic authority may close loans for which information and supporting credit data have been developed on its behalf by a duly authorized agent.

(11) *Probation*. Lenders meeting these requirements will be approved to close VA loans on an automatic basis for a 1-year period. At the end of this period, the lender's quality of underwriting, the completeness of loan submissions, compliance with VA requirements and procedures, and the delinquency and foreclosure rates will be reviewed.

(12) *Extensions of Automatic Authority*. When a lender wants its automatic authority extended to another State, the request must be submitted, with the fee designated in paragraph (e)(5) of this section, to the VA regional office having jurisdiction in the State where the lender's corporate office is located.

(i) When a lender wants its automatic authority to include loans involving a real estate brokerage and/or a residential builder or developer in which it has a financial interest, owns, is owned by, or with which it is affiliated, the following documentation must be submitted:

(A) A corporate resolution from the lender and each affiliate indicating that they are separate entities operating independently of each other. The lender's corporate resolution must indicate that it will not give more favorable underwriting consideration to its affiliate's loans, and the affiliate's corporate resolution must indicate that it will not seek to influence the lender to give their loans more favorable underwriting consideration.

(B) Letters from permanent investors indicating the percentage of all VA loans based on the affiliate's production originated by the lender over a 1-year period that are past due 90 days or more. This delinquency ratio must be no higher than the national average for the same period for all mortgage loans.

(ii) When a lender wants its automatic authority extended to additional States, the lender must indicate how it plans to originate VA loans in those States. Unless a lender proposes a telemarketing plan, VA requires that a lender have a presence in the State, that is, a branch office, an agent relationship, or that it is a reasonable distance from one of its offices in an adjacent State, i.e., 50 miles. If the request is based on an agency relationship, the documentation outlined in paragraph (b)(13) must be submitted with the request for extension.

(13) *Use of Agents*. A lender using an agent to perform a portion of the work involved in originating and closing a VA-guaranteed loan on an automatic basis must take full responsibility by certification for all acts, errors and omissions of the agent or other entity and its employees for the work performed. Any such acts, errors or omissions will be treated as those of the lender and appropriate sanctions may be imposed against the lender and its agent. Lenders requesting an agent must submit the following documentation to the VA regional office having jurisdiction for the lender's corporate office:

(i) A corporate resolution certifying that the lender takes full responsibility for all acts, errors and omissions of the agent that it is requesting. The corporate resolution must also identify the agent's name and address, and the geographic area in which the agent will be originating and/or closing VA loans; whether the agent is authorized to issue interest rate lock-in agreements on behalf of the lender; and outline the functions the agent is to perform. Alternatively, the lender may submit a blanket corporate resolution which sets forth the functions of any and all agents and identifies individual agents by name, address, and geographic area in separate letters which refer to the blanket resolution.

(ii) When the VA regional office having jurisdiction for the lender's corporate office acknowledges receipt of the lender's request in writing, the agent is thereby authorized to originate VA loans on the lender's behalf.

(Authority: 38 U.S.C. 501(a), 3702(d))

(c) A lender approved to close loans on the automatic basis who subsequently fails to meet the requirements of this section must report to VA the circumstances surrounding the deficiency and the remedial action to be taken to cure it. Failure to advise VA in a timely manner could result in a lender's loss of its approval to close VA loans on the automatic basis.

(Authority: 38 U.S.C. 501(a), 3702(d))

(d) *Annual recertification*. Non-supervised lenders of the class described in 38 U.S.C. 3702(d)(3) must be recertified annually for authority to process loans on the automatic basis. The following minimum annual recertification requirements must be met by each lender approved for automatic authority:

(1) *Financial requirements.* A lender must submit, within 120 days following the end of its fiscal year, an audited and certified financial statement with a classified balance sheet or a separate footnote for adjusted net worth to VA Central Office (264) for review. The same minimum financial requirements described in § 36.4348(b)(5) must be maintained and verified annually in order to be recertified for automatic authority.

(2) *Processing annual lender data.* The VA regional office having jurisdiction for the lender's corporate office will mail an annual notice to the lender requesting current information on the lender's personnel and operation. The lender is required to complete the form and return it with the appropriate annual renewal fees to the VA regional office.

(Authority: 38 U.S.C. 501(a), 3702(d))

(e) *Lender fees.* To participate as a VA automatic lender, non-supervised lenders of the class described in 38 U.S.C. 3702(d)(3) shall pay fees as follows:

(1) $500 for new applications;

(2) $200 for reinstatement of lapsed or terminated automatic authority;

(3) $100 for each underwriter approval;

(4) $100 for each agent approval;

(5) A minimum fee of $100 for any other VA administrative action pertaining to a lender's status as an automatic lender;

(6) $200 annually for certification of home offices; and

(7) $100 annually for each agent renewal.

* * * * *

5. In § 36.4349, paragraph (a)(2) is revised and a parenthetical is added at the end of the section to read as follows:

§ 36.4349 Withdrawal of authority to close loans on the automatic basis.

(a)(l) * * *

(2) Automatic-processing authority may be withdrawn at any time for failure to meet basic qualifying and/or annual recertification criteria.

(i) *Non-supervised lenders.* (A) Automatic authority may be withdrawn for lack of a VA-approved underwriter, failure to maintain $50,000 in working capital or $250,000 in adjusted net worth, or failure to file required financial information.

(B) During the 1-year probationary period for newly approved lenders, automatic authority may be temporarily or permanently withdrawn for any of the reasons set forth in this section regardless of whether deficiencies previously have been brought to the attention of the probationary lender.

(ii) *Supervised lenders.* Automatic authority will be withdrawn for loss of status as an entity subject to examination and supervision by a Federal or State supervisory agency as required by 38 U.S.C. 3702(d).

(Authority: 38 U.S.C. 501(a), 3702(d))

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[WA 54–7127; FRL–5975–8]

Clean Air Act Reclassification; Spokane, Washington Nonattainment Area, Carbon Monoxide

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: In this document, EPA is making a final determination that the Spokane, Washington carbon monoxide (CO) nonattainment area has not attained the CO national ambient air quality standard (NAAQS) under the Clean Air Act (the Act). This finding is based on EPA's review of monitored air quality data for compliance with the CO NAAQS. As a result of this finding, the Spokane, Washington nonattainment area is reclassified as a serious CO nonattainment area by operation of law. The result of the reclassification is to establish a period of 18 months from the effective date of this action for the State of Washington to submit a new State Implementation Plan (SIP) demonstrating attainment of the CO NAAQS as expeditiously as practical but no later than December 31, 2000, the attainment date for serious areas under the Act.

EFFECTIVE DATE: This action is effective on April 13, 1998.

FOR FURTHER INFORMATION CONTACT: William M. Hedgebeth, Environmental Protection Agency, Region 10, 1200 Sixth Avenue, M/S OAQ–107, Seattle, Washington 98101, telephone (206) 553–7369.

SUPPLEMENTARY INFORMATION:

I. Background

A. CAA Requirements and EPA Actions Concerning Designations and Classifications

The Clean Air Act Amendments of 1990 (CAAA) were enacted on November 15, 1990. Under Section 107(d)(1)(C) of the CAAA, each CO area designated nonattainment prior to enactment of the CAAA, such as the Spokane, Washington area, was designated nonattainment by operation of law upon enactment of the CAAA. Under Section 186(a) of the Act, each CO area designated nonattainment under Section 107(d) was also classified by operation of law as either "moderate" or "serious" depending on the severity of the area's air quality problem. CO areas with design values between 9.1 and 16.4 parts per million (ppm), such as the Spokane area, were classified as moderate. These nonattainment designations and classifications were codified in 40 CFR Part 81. See 56 FR 56694 (November 6, 1991).

States containing areas that were classified as moderate nonattainment by operation of law under Section 107(d) were required to submit SIPs designed to attain the CO NAAQS as expeditiously as practicable but no later than December 31, 1995.[1] Moderate areas failing to attain the CO NAAQS by that deadline are reclassified to serious, by operation of law.

B. Effect of Reclassification

CO nonattainment areas reclassified as serious are required to submit, within 18 months of the area's reclassification, SIP revisions providing for attainment of the CO NAAQS as expeditiously as practicable but no later than December 31, 2000. In addition, the State must submit a SIP revision that includes: (1) a forecast of vehicle miles traveled (VMT) for each year before the attainment year and provisions for annual updates of these forecasts; (2) adopted contingency measures; and (3) adopted transportation control measures and strategies to offset any growth in CO emissions from growth in VMT or number of vehicle trips. See Sections 187(a)(7), 187(a)(2)(A), 187(a)(3), 187(b)(2), and 187(b)(1) of the Act. Finally, upon the effective date of this reclassification, contingency measures in the moderate area plan for the Spokane nonattainment area must be implemented.

[1] The moderate area SIP requirements are set forth in Section 187(a) of the Act and differ depending on whether the area's design value is below or above 12.7 ppm. The Spokane area has a design value below 12.7 ppm. 40 CFR 81.348.

C. Proposed Finding of Failure To Attain

On July 1, 1996, EPA proposed to find that the Spokane, Washington CO nonattainment area had failed to attain the CO NAAQS by the applicable attainment date. 61 FR 33879. This proposed finding was based on CO monitoring data collected at the 3rd and Washington monitoring site in downtown Spokane during the years 1994 and 1995. These data demonstrate violations of the CO NAAQS in 1995. For the specific data considered by EPA in making this proposed finding, see 61 FR 33879, July 1, 1996.

D. Reclassification to a Serious Nonattainment Area

EPA has the responsibility, pursuant to Sections 179(c) and 186(b)(2) of the Act, of determining whether the Spokane area has attained the CO NAAQS. Under Section 186(b)(2)(A), if EPA finds that the area has not attained the CO NAAQS, it is reclassified as serious by operation of law. Pursuant to Section 186(b)(2)(B) of the Act, EPA must publish a document in the **Federal Register** identifying areas which failed to attain the standard and therefore must be reclassified as serious by operation of law.

EPA makes attainment determinations for CO nonattainment areas based upon whether an area has two years (or eight consecutive quarters) of clean air quality data.[2] Section 179(c)(1) of the Act states that the attainment determination must be based upon an area's "air quality as of the attainment date." Consequently, EPA determines whether an area's air quality has met the CO NAAQS by the required date based upon the most recent two years of air quality data.

EPA determines a CO nonattainment area's air quality status in accordance with 40 CFR 50.8 and EPA policy.[3] EPA has promulgated two NAAQS for CO: an 8-hour average concentration and a 1-hour average concentration. Because there were no violations of the 1-hour standard in the Spokane area, this document addresses only the air quality status of the Spokane area with respect to the 8-hour standard. The 8-hour CO NAAQS requires that not more than one non-overlapping 8-hour average in any year per monitoring site can exceed 9.0 ppm (values below 9.5 are rounded down to 9.0 and they are not considered exceedances). The second exceedance of the 8-hour CO NAAQS at a given monitoring site within the same year constitutes a violation of the CO NAAQS. In the case of Spokane, EPA finds there were four violations of the CO NAAQS recorded in 1995. Based on EPA's review of all of the information assembled to evaluate the monitor location and other information, EPA finds that the recorded violations show that the area failed to attain the CO NAAQS by December 31, 1995.

II. Response to Comments on Proposed Finding

In response to its July 1, 1996, proposal, EPA received a number of comments from the state and local governments, industry and local businesses, public interest organizations, and private citizens from the Spokane area. Below is EPA's response to all substantive comments received, and detailed response to each comment is included in the docket for this rulemaking.

1. A number of commenters had concerns that the location of the monitor which recorded the violations of the CO NAAQS produced unusual results, and that the conditions contributing to higher CO concentrations at the 3rd and Washington site are significantly different from those causing CO concentrations at other monitoring sites. One commenter noted that CO concentrations drop significantly in all directions moving away from the monitoring station, even at those intersections with higher traffic and poorer levels of service. A commenter stated that the lack of higher CO concentrations as traffic moves eastward would indicate vehicle congestion on Third Avenue, while a contributor to background concentrations, is not causing the higher readings recorded at the monitor. Another commenter believed it was necessary to conduct a microinventory emissions inventory to see if other sources in the area of the monitor at 3rd and Washington could be contributing to exceedances. A commenter wrote that EPA's recent technical audit of the monitor having the violations in 1995 failed to provide information related to the causes of the violation. A commenter believes that, without an accurate inventory of Btu output during these conditions it would be premature to determine the cause of violations or begin developing SIP control strategies in the event of reclassification.

Response: It is generally recognized that carbon monoxide monitors, especially those measuring street canyons, will be strongly influenced by local conditions. So it is not unusual or unexpected for different locations in a CO nonattainment area to have different recorded CO levels because of conditions specific to those locations. It is the nature of carbon monoxide that levels at one monitor do not necessarily represent general levels within the entire city, and that locations within any specific large (city-size) geographic area may have widely differing concentrations. EPA has long recognized that "the diversity of measured concentrations and the diversity of land use suggest that there may be no one station that is representative of the entire city. Therefore, stations should probably be chosen to represent various aspects of the city's CO concentration distribution."[4] EPA further recognized that ". . . concentrations at 3 meters above a downtown street can change by several parts per million (or a factor of nearly 2) over distances of only a few tens of meters."[5] A Spokane County Air Pollution Control Authority survey of stationary sources in the downtown area around the 3rd/Washington monitor indicated minimal CO contribution from businesses, schools, and apartments in that area.

EPA agrees that understanding the causes of the CO violations is an important step in planning how to address CO in Spokane. However, the CAAA does not authorize EPA to delay a finding of failure to attain the NAAQS until after the exact causes of the violations have been identified.

EPA has been part of a cooperative effort to understand the causes of the violations and plan control strategies. EPA entered into a four-agency Memorandum of Agreement (the others being the the Spokane Regional Transportation Council, Spokane County Air Pollution Control Authority, and the Washington Department of Ecology), which is included in the docket for this rulemaking. The primary purpose of the Agreement was to coordinate additional studies to clarify why the 3rd and Washington monitor was recording high CO levels. The

[2] See generally memorandum from Sally L. Shaver, Director, Air Quality Strategies and Standards Division, EPA, to Regional Air Office Directors, entitled "Criteria for Granting Attainment Date Extensions, Making Attainment Determinations, and Determinations of Failure to Attain the NAAQS for Moderate CO Nonattainment Areas," October 23, 1995.

[3] See memorandum from William G. Laxton, Director, Technical Support Division, entitled "Ozone and Carbon Monoxide Design Value Calculations," June 18, 1990. See also Shaver memorandum.

[4] EPA Document EPA 450/3–75–077, Selecting Sites for Carbon Monoxide Monitoring, September 1975, I.A., Introduction, Monitoring Site Standards.

[5] EPA Document EPA 450/3–75–077, Selecting Sites for Carbon Monoxide Monitoring, September 1975, I.C., Introduction, Special Characteristics of Carbon Monoxide That Affect Monitoring Site Selection.

results of the work done since the proposed finding of failure to attain has increased EPA's confidence that the recorded violations were valid and provide the basis for making redesignation decisions.

2. Several commenters wrote that the CO Ambient Air Monitoring Station at 3rd and Washington in Spokane is not sited properly in accordance with applicable EPA guidelines. The following are EPA responses to specific points that were made in comments.

a. A commenter stated that the inlet is not located at a mid-block location as recommended by EPA guidance documents, but instead is located at a car dealership's service area entrance two thirds of the way down the block.

Response: EPA is satisfied that the inlet was located appropriately and consistent with EPA's regulations and guidance. The microscale inlet probes must be located at least 10 meters from an intersection (the probe was located at a measured 19.2 meters from intersection of 3rd and Washington). Mid block location for microscale sites is not mandatory. The sample probe location in relationship to its location within the block is within EPA's "Appendix E" guidelines, which can be found in the docket for this rulemaking.

b. Commenter stated that "EPA siting criteria require an unrestricted airflow of at least 180 degrees around a sample probe located on the side of a building. There is an awning overhanging the service entrance to the car dealership and immediately adjacent (about one meter) to the probe. This awning will cause micro-scale eddies disturbing the airflow at the sample inlet."

Response: EPA does not consider the awning an obstruction since the probe is located 1.1 meters below its underside. EPA believes that the unrestricted airflow requirements are being met, and that the inlet airflow is not unduly restricted.

c. Commenter wrote that "EPA siting criteria also require placing probes to avoid introducing bias to the sample. With the sample probe inlet located immediately adjacent to the service area entrance and vehicle drop off zone, the sample is very likely affected by nearby CO emissions from the service area, the existing awning on the building and the building parking area overhang wake effect."

Response: No evidence has been provided that placement of the probe immediately adjacent to the service area entrance and vehicle drop off zone has unduly biased the monitor results. In addition, the exceedances at this monitor have occurred in the afternoon to early evening, when it would be much less likely for cars to be queuing up to enter the service center.

d. A commenter noted that while 3rd Street is a high volume arterial, the intersection being monitored is not among the City's 40 most congested intersections according to the Spokane Regional Transportation Council.

Response: The location of this monitor was selected by the State of Washington Department of Ecology based primarily on the results of a 1988–1989 saturation study which is included in the docket for this rule. While this intersection may not be the most congested intersection in the City, this does not negate the fact that exceedances have been registered at this monitor location, supporting the conclusion that other factors, combined with traffic congestion, have played a part in the resulting exceedances.

e. A commenter stated that "the historical rationale for the site location appears to be a special purpose monitor, rather than a middle-scale street canyon monitor. This affects both the appropriate siting criteria and the use of the data in nonattainment decision and area boundaries."

Response: The Washington Department of Ecology has designated this monitor as a special purpose monitor. That Agency has quality-assured the data from the monitor and entered the data from 1995 into EPA's Aerometric Information Retrieval System (AIRS) and has verified that the monitor meets the SLAMS (State and Local Air Monitoring Station) criteria of 40 CFR 58.13 and 58.22, and Appendices A and E of 40 CFR Part 58. The monitor is specifically identified in the State Implementation Plan approved by EPA as part of the Spokane carbon monoxide monitoring network. As noted above, EPA has determined that the monitor is properly sited for a microscale monitor and EPA has determined that the data is valid and appropriate for use in determining whether or not the Spokane CO nonattainment area attained the CO standard by December 31, 1995. See the response below on use of data from a special purpose monitor for attainment decisions.

f. One commenter wrote that "what is apparent is an inordinate difference between average highs of CO in December 1995 and the highest CO measured during those days in December 1995 when CO standard exceedances were measured. For example, both December 11 and 12, 1995, had hourly highs between 19 and 22 ppm, while the average highs for the months of December were 6.5 and 7 ppm. This large disparity indicates abnormal or anomalous CO readings or sources rather than an exceedance of the CO standard from ordinary CO sources and meteorological conditions."

Response: Since CO exceedances typically happen in times of inversions combined with periods of heavy traffic, the differences cited do not seem unusual. In times of unstable weather, when there is good air circulation, and especially when temperatures are above freezing, it would be expected that CO levels would be much lower because CO under such circumstances would tend to disperse fairly quickly. EPA does not agree with the commenter's conclusion that the disparity of readings over the month indicates a problem with the data.

g. A commenter stated that CH2M Hill, under contract to the Spokane Area Chamber of Commerce, concluded that the Third Avenue monitor may not be sited according to EPA's CO monitor location standards and CO probe placement criteria. Commenter further stated that CH2M Hill concluded that the configuration of and activities at one building at Third and Washington significantly contributed to high CO readings at the Third Avenue monitor.

Response: With regard to the proper citing of the monitor, as previously indicated, EPA has concluded that it was properly sited. With regard to the effect of one building at Third and Washington significantly contributing to high CO readings at the Third Avenue monitor, EPA agrees that such an effect is possible. The building, although only three stories tall, is the tallest building in that area of 3rd Avenue along the north side of Interstate 90. However, this does not affect the validity of the data registered at the monitor on 3rd Avenue during 1995. Rather, it is an issue which needs to be considered when identifying possible additional control measures to address the CO problem at this location.

3. Several commenters wrote that data from a special purpose monitor should not be used for designation or redesignation decisions. A commenter believes that "after reviewing the audit report and sections of 40 CFR part 58, there is a legitimate question as to the appropriateness of using a microscale special purpose monitor for the purpose of making attainment/nonattainment decisions." Another commenter wrote that EPA's regulations at "40 CFR 58.14(a) implies that the official State and Local Air Monitoring Sites (SLAMS) are more appropriately used for demonstration of attainment or nonattainment." Another commenter wrote that "arguably, a case could be made that the 3rd and Washington

monitor meets the minimum criteria for a SLAMS site, but the language of 40 CFR 58.14(a) suggests that it is up to the discretion of the state (not EPA) to decide whether or not to use this special purpose monitoring data as the basis for such a significant decision as the status of attainment." Finally, a commenter stated that Spokane is the only CO nonattainment area facing imminent reclassification to "serious" on the basis of microscale special purpose monitoring data and that all of the other nonattainment areas facing imminent reclassification are doing so on the basis of NAMS or SLAMS data.

Response: EPA has considered data from microscale monitors or special purpose monitors for the purpose of making attainment/nonattainment decisions, and has not established any limitations on the use of data from properly sited monitors that has been validated. On the contrary, EPA has long indicated that "air quality standards must be met on all scales* * *"[6] In addition, as indicated in a previous response, EPA has held that "[i]n any large city there will be locations with widely differing concentrations, many of which are not representative of the city's general air quality. In fact, the diversity of measured concentrations and the diversity of land use suggest that there may be no one station that is representative of the entire city. Therefore, stations should probably be chosen to represent various aspects of the city's CO concentration distribution."[7] EPA has further acknowledged that "[t]he area presumed to be represented by a measurement may be relatively small, such as one side of a downtown street canyon* * *"[8] The CO NAAQS, 8-hour standard, requires that no place in the designated area exceed the standard. It cannot be determined if the area meets that standard unless it is determined that the standard is met on all scales.

The issue of the appropriateness of using special purpose monitors for making attainment/nonattainment determinations has been addressed by EPA previously, and recently EPA issued guidance on this subject. In a memo dated August 22, 1997, entitled "Agency Policy on the Use of Special Purpose Monitoring Data," which is included in the docket for this rulemaking, by John S. Seitz, Director of EPA's Office of Air Quality Planning and Standards, EPA wrote that "[t]he Agency policy on the use of all special purpose monitoring data for any regulatory purpose, with the exception of fine particulate matter data (PM–2.5), is that all quality-assured and valid data meeting 40 CFR part 58 requirements must be considered within the regulatory process. This policy applies to all ozone, carbon monoxide, sulfur dioxide, nitrogen dioxide, lead and particulate matter (PM–10) special purpose monitors, whether the data are reported into the AIRS database or available through other means."

EPA does not agree that 40 CFR 58.14(a) establishes that data for determining attainment must be measures at SLAMS or PSD stations. In this case, EPA is basing its determination on validated data from a special purpose monitor that has been set up as part of the State's monitoring network and specifically approved by EPA in the SIP. This section of EPA's regulations clearly anticipates the potential use of data other than that from SLAMS or PSD stations, and identifies the standards that the data must meet if used. Specifically, it states that "[a]ny ambient air quality monitoring station other than a SLAMS or PSD station from which the State intends to use the data as part of a demonstration of attainment or nonattainment or in computing a design value for control purposes of the National Ambient Air Quality Standards (NAAQS) must meet the requirements for SLAMS described in § 58.22 and, after January 1, 1983, must also meet the requirements for SLAMS as described in § 58.13 and appendices A and E to this part." The State of Washington Department of Ecology has certified that the monitor which recorded the four CO exceedances during 1995 met those requirements. EPA has already noted that the State of Washington specifically included this monitor in the approved SIP as an official part of the monitoring network for this nonattainment area.

EPA does not agree that 40 CFR 58.14(a) authorizes State or Local agencies to decide whether to EPA may use data from a special purpose monitor that has been set up and specifically approved by EPA in the SIP for attainment determinations. Congress has authorized EPA, pursuant to Section 186(b)(2)(A) of the Clean Act, to make that determination based on valid data. As noted above, EPA recently clarified its policy on this subject in the Seitz memo issued on August 22, 1997, entitled "Agency Policy on the Use of Special Purpose Monitoring Data." That memo clarifies that "all special purpose monitoring data for any regulatory purpose, with the exception of fine particulate matter data (PM–2.5), [with] quality-assured and valid data meeting 40 CFR part 58 requirements must be considered within the regulatory process."

4. Commenters were concerned that a reclassification is unnecessary and potentially counterproductive to the community's efforts to achieve long term attainment. One commenter asserted that reclassification is not necessary for Spokane to achieve long-term air quality goals. Another commenter was concerned that reclassification carries consequences which may be unintended but which severely limit the City's ability to attract new business and meet demands for public services. One commenter believed that reclassification will distract members of the general public, business community, local government and regulatory agencies when our efforts should be more focused on implementing measures we all agree can and should be implemented.

Response: Congress established in Section 186(b)(2) of the Act that the Administrator of EPA is to make a determination whether the CO nonattainment area attained the CO NAAQS by December 31, 1995. That determination is based on available, verified data. If a determination is made that the area did not attain the CO NAAQS, the reclassification is made as a matter of law. The Act offers no flexibility for this requirement. The intent of the law is to ensure that the community achieve long term maintenance of this health-based standard. Congress also established in the Act certain SIP requirements for serious CO nonattainment areas and a schedule for submittal of the SIP after EPA makes the determination that the area failed to attain the CO standard.

EPA supports the efforts already made by the Washington Department of Ecology, Spokane County Air Pollution Control Authority, and the Spokane Regional Transportation Council, and the commitments made by those agencies, with the expectation that the efforts already underway or in the planning stages will result in attainment and maintenance of the CO NAAQS in the future. EPA acknowledges the commenter's concern that reclassification to serious will be counterproductive to the community's efforts to achieve long term maintenance of the CO NAAQS. However, the planning and implementation of control

[6] EPA Document EPA 450/3–75–077, Selecting Sites for Carbon Monoxide Monitoring, September 1975, II.C., Deciding the Type of CO Measurements That Are To Be Made, Relative Importance of the Different Scales of Measurement.

[7] EPA Document EPA 450/3–75–077, Selecting Sites for Carbon Monoxide Monitoring, September 1975, I.A., Introduction, Monitoring Site Standards.

[8] EPA Document EPA 450/3–75–077, Selecting Sites for Carbon Monoxide Monitoring, September 1975, I.B., Introduction, Philosophy of Approach.

strategies resulting from the reclassification will incorporate control measures developed by representatives of the community to supplement those measures already in place and working to decrease the level of CO emissions in the nonattainment area. The process prescribed by state and federal law provides that the general public, business community, local government and regulatory agencies will work together to identify measures they agree can and should be implemented. This is already occurring, as evidenced by the Technical Advisory Committee convened by the Spokane County Air Pollution Control Authority to develop recommended transportation control measures to address the remaining CO problems in Spokane. As previously indicated, most of the control measures needed for the Spokane area to meet the national CO standard are already in place.

5. A commenter wrote that "EPA is required to respond to Executive Order 12866 determining whether regulatory action is significant. It is also required to respond to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, assessing the impact of any proposed or final rule on small entities. Finally, EPA is required by the Unfunded Mandates Act of 1995 to assess whether various actions undertaken in association with proposed or final rule making include a federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State and local governments in the aggregate." The commenter further stated that "EPA's findings regarding these requirements are based upon a remarkably narrow construction of the language and violate the intent of the EO and respective statues. There will almost certainly be adverse economic impacts due to a reclassification. From recruiting new business to the area, to business retention and enhancing the vitality of our downtown core, the stigma of a serious designation will affect our ability to compete."

Response: A finding of failure to attain (and consequent reclassification by operation of law of the nonattainment area) under section 186(b)(2) of the Act, and the establishment of a SIP submittal schedule for a reclassified area, do not, in and of themselves, directly impose any new requirements on small entities. Congress established in the Act certain requirements that become effective once EPA makes findings of failure to attain based upon air quality considerations. Under section 182(b)(2), once EPA determines that air quality data shows a CO nonattainment area failed to meet the NAAQS, reclassification of the area to "serious" must occur by operation of law. As discussed more fully below in the section on Administrative Requirements, EPA believes that the reclassification action complies with the requirements cited by the commenter. This rulemaking simply makes a factual determination, and merely establishes a schedule for submittal of certain SIP requirements established by Congress in the Act that are automatically triggered. Therefore, the findings of failure to attain and reclassification, or the establishment of a new SIP submittal schedule, cannot be said to impose a materially adverse impact on State, local, or tribal governments or communities as identified by E.O. 12866. Similarly, this rulemaking simply makes a factual determination and establishes a SIP submission schedule, and does not directly regulate any entity. Therefore, this action will not have a significant impact on a substantial number of small entities within the meaning of the those terms for the RFA. As for the Unfunded Mandates Reform Act, the discussion below explains why the UMRA does not apply to this action.

6. A commenter stated that Spokane should be classified "serious." Real change is needed. The basic issue is public health.

Response: EPA agrees with the commenter that the data supports the reclassification of the area to "serious." The CO NAAQS is health-based, and the CAAA mandates attainment of that standard by specific dates. EPA's decision is based data showing that the standard was not met by December 31, 1995.

III. Today's Action

EPA is today taking final action to find that the Spokane CO nonattainment area did not attain the CO NAAQS by December 31, 1995, the attainment date for moderate CO nonattainment areas identified in the Act. This finding is based upon air quality data showing exceedances of the CO NAAQS during 1994 and 1995, resulting in a violation of the NAAQS during 1995. As a result of this finding, the Spokane CO nonattainment area is reclassified by operation of law as a serious CO nonattainment area as of the effective date of this document. This reclassification establishes that the State has eighteen months from the date of this notice to submit SIP revisions, and that the State must implement the CO contingency measures in the approved SIP.

IV. Executive Order (EO) 12866

Under E.O. 12866, 58 FR 51735 (October 4, 1993), EPA is required to determine whether regulatory actions are significant and therefore should be subject to OMB review, economic analysis, and the requirements of the Executive Order. The Executive Order defines a "significant regulatory action" as one that is likely to result in a rule that may meet at least one of the four criteria identified in section 3(f), including, under paragraph (1), that the rule may "have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities".

The Agency has determined that the finding of failure to attain finalized today would result in none of the effects identified in section 3(f). Under section 186(b)(2) of the CAA, findings of failure to attain and reclassification of nonattainment areas are based upon air quality considerations and must occur by operation of law in light of certain air quality conditions. They do not, in and of themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, findings of failure to attain and reclassification cannot be said to impose a materially adverse impact on State, local, or tribal governments or communities.

V. 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.

As discussed above, a finding of failure to attain (and consequent reclassification by operation of law) of the nonattainment area under section 186(b)(2) of the CAA, and the establishment of a SIP submittal schedule for a reclassified area do not in-and-of-themselves create any new requirements on small entities. Instead,

this rulemaking simply makes a factual determination and establishes a schedule to require States to submit SIP revisions, and does not directly regulate any entities. Therefore, pursuant to 5 U.S.C. 605(b), EPA reaffirms its certification made in the proposal that today's action does not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

VI. Unfunded Mandates Act

Title II of the Unfunded Mandates Reform Act of 1995 ("UMRA"), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, when EPA promulgates "any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditures by State, local or tribal governments, in the aggregate, or by the private sector, of $100 million or more" in any 1 year. A "Federal mandate" is defined under section 101 of the UMRA as a provision that "would impose an enforceable duty" upon the private sector, or State, local or tribal governments, with certain exceptions not here relevant. Under section 203 of UMRA, EPA must develop a small government agency plan before EPA "establish[es] any regulatory requirements that might significantly or uniquely affect small governments." Under section 204 of the UMRA, EPA is required to develop a process to facilitate input by elected officers of State, local, and tribal governments for EPA's "regulatory proposals" that contain significant Federal intergovernmental mandates. Under section 205 of the UMRA, before EPA promulgates "any rule for which a written statement is required under [UMRA sec.] 202," EPA must identify and consider a reasonable number of regulatory alternatives and either adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, or explain why a different alternative was selected.

Generally, EPA has determined that the provisions of sections 202 and 205 of UMRA do not apply to this decision. Under section 202 of UMRA, EPA is to prepare a written statement that is to contain assessments and estimates of the costs and benefits of a rule containing a Federal Mandate "unless otherwise prohibited by law." Congress clarified that "unless otherwise prohibited by law" referred to whether an agency was prohibited from considering the information in the rulemaking process, not to whether an agency was prohibited from collecting the information. The Conference Report on UMRA states: "This section [202] does not require the preparation of any estimate or analysis if the agency is prohibited by law from considering the estimate or analysis in adopting the rule." 141 Cong. Rec. H3063 (Daily ed. March 13, 1995). Because the Clean Air Act prohibits, when determining whether an area attained the NAAQS, from considering the types of estimates and assessments described in section 202, UMRA does not require EPA to prepare a written statement under section 202. Although the establishment of a SIP submission schedule may impose a Federal mandate, this mandate would not create costs of $100 million or more, and therefore, no analysis is required under section 202. The requirements in section 205 do not apply because those requirements are for rules "for which a written statement is required under section 202. * * *"

With respect to the outreach described in UMRA section 204, EPA discussed with State officials EPA's proposed and final action in advance of the publication.

Finally, section 203 of the UMRA does not apply to today's action because the regulatory requirements finalized today—the SIP submittal schedule—affect only the State of Washington, which is not a small government under UNRA.

VII. 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).

VIII. 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 May 11, 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 81

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations.

Chuck Clarke,

Regional Administrator, Region 10.

PART 81—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.348, the table for "Washington-Carbon Monoxide" is amended by revising the entry for the Spokane Area to read as follows:

§ 81.348 Washington.

* * * * *

WASHINGTON—CARBON MONOXIDE

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
*	*	*	*	*
Spokane Area:				

WASHINGTON—CARBON MONOXIDE—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Spokane County (part)				
Spokane urban area (as defined by the Washington Department of Transportation urban area maps).	....	Nonattainment	4–13–98	Serious.
*	*	*	*	*

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

* * * * *

[FR Doc. 98–5978 Filed 3–11–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[CS Docket No. 97–151; FCC 98–20]

Pole Attachments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Report and Order describes rules and policies concerning a methodology for just, reasonable and nondiscriminatory rates for pole attachments, conduits and rights-of-way for telecommunications carriers. The Report and Order amends our regulations to reflect the provisions regarding rates for telecommunications carriers in the Telecommunications Act of 1996 (the "1996 Act"). The Report and Order fulfills Congress' mandate in the 1996 Act and will provide guidance to pole owners, cable operators and telecommunications carriers.

DATES: Effective April 13, 1998, except §§ 1.1403, 1.1404, 1.1409, 1.1417 and 1.1418 which contain information collection requirements that are not effective until approved by the Office of Management and Budget. Sections 1.1403, 1.1404, 1.1409, 1.1417 and 1.1418 of the Commission's rules will become effective July 30, 1998, unless the Commission publishes a notice before that date stating that the Office of Management and Budget ("OMB") has not approved the information collection requirements contained in the rules. Written comments by the public on the new and/or modified information collection requirements should be submitted on or before May 11, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: A copy of any comments on the information collection requirements contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information concerning the information collection requirements contained herein, contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, CS Docket 97–151, adopted and released February 6, 1998. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, NW, Washington, D.C. 20036.

The requirements adopted in this Report and Order have been analyzed with respect to the Paperwork Reduction Act of 1995 ("1995 Act") and found to impose new and modified information collection requirements on the public. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in this Report and Order, as required by the 1995 Act. Public comments are due May 11, 1998. Comments should address: (a) Whether the 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 estimates; (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.

OMB Approval Number: 3060–0392.

Title: 47 CFR 1 Subpart J—Pole Attachment Complaint Procedures.

Type of Review: Revision of a currently approved collection.

Respondents: Business and other for-profit entities; State, local and tribal governments.

Number of Respondents: 1,381 calculated to account for the following activities: 256 notices regarding removal or termination of facilities, 10 petitions for stay and 10 responses to petitions for stay, 1,000 notices that telecommunications services are offered, 50 complaints and 50 responses to complaints, and 5 state certifications.

Estimated Time Per Response: .5–35 hours.

Frequency of Response: On occasion.

Total Annual Burden to Respondents: 3,047 hours, calculated to account for the following activities: Section 1.1403(c)(1) and (2) Notices regarding removal of facilities or termination of any service and notices regarding any increase in pole attachment rates. The Commission estimates that there are an average of 64 pole attachment contracts per state. 18 states are certified to regulate the rates, terms and conditions for pole attachments, while the Commission maintains jurisdiction in the remaining 32 states. 64 contracts per state × 32 states = 2,048 estimated contracts. We estimate that these contracts expire on a 7 to 8 year basis, thus requiring an average of 256 notices to be issued per year. Utilities will undergo an average burden of 2 hours per notice. 256 notices × 2 hours per notice = 512 hours.

Section 1.1403(d) Petitions for Stay. To account for burden hours associated with this collection of information, we estimate that 10 petitions of stay may be filed with the Commission within the next year with an average burden of 4 hours for each petitioner and 4 hours for each respondent. The burden estimates account for all aspects of the petition procedure. 10 petitions × 2 parties × 4 hours per party = 80 hours.

Section 1.1403(e) Cable operator notifications to pole owners upon offering telecommunications services. We estimate that 1,000 such notices will annually be made by cable operators who will undergo a burden of .5 hours per notice. 1,000 notices × .5 hours = 500 hours.

Section 1.1404 Complaints, Section 1.1407 Responses and Replies. We increase our estimates of both the annual number of complaints that may be filed with the Commission and the burden associated with the complaint procedure. We estimate that there may be as many as 50 complaint cases annually filed with the Commission. Parties in complaint cases are now estimated to undergo an average burden of 35 hours for all aspects of the complaint process, including the filing of responses and replies. Our estimate also accounts for the burden for parties to calculate rate formulas and to determine presumptive average numbers of attachments to poles. The Commission estimates that 50% of parties that undergo the complaint process will use the services of outside legal counsel. Parties that use outside legal counsel are estimated to undergo an average burden of 4 hours to coordinate information with outside legal counsel. 50 complaint cases; 100 parties. 50 parties (50% of 100) using their own legal staff × 35 hours = 1,750 hours. 50 parties (50% of 40) coordinating information with outside counsel × 4 hours = 200 hours.

Section 1.1414 State certification. We estimate that 5 states may file certifications with the Commission each year with an average burden of 1 hour per certification. 5 × 1 hour = 5 hours.

Total Annual Cost to Respondents: $267,122 calculated to account for the following activities: Section 1.1403(c) (1) and (2) Notices regarding removal or termination of facilities. Postage and stationery costs are estimated to be $2 for each notice. 256 notices × $2 = $512.

Section 1.1403(d) Petitions for Stay. Filings expenses (postage, stationery, etc.) for these petitions are estimated to be $5 per party. 10 petitions × 2 parties × $5 = $100.

Section 1.1403(e) Cable operator notifications to pole owners upon offering telecommunications services. Postage and stationery expenses are estimated to be $2 for each notice. 1,000 notices × $2 = $2,000.

Section 1.1404 Complaints, Section 1.1407 Responses and Replies. Filings expenses (postage, stationery, etc.) for these complaints are estimated to be $20 per party. 50 complaints × 2 parties × $20 = $2,000. In addition, we estimate that 50% of parties that undergo the complaint process will use the services of outside legal counsel paid at a rate of $150 per hour. 50 entities (50% of 100) paying outside legal counsel $150 per hour × 35 hours = $262,500.

Section 1.1414 State certification. Postage and stationery expenses for state certifications filed with the Commission are estimated to be $2 per certification. 5 certifications × $2 = $10.

Needs and Uses: Information collection requirements regarding pole attachment provisions are used by the Commission to hear and resolve petitions for stay and complaints as mandated by Section 224. Information filed has been used to determine the merits of the petitions and complaints. Additionally, the state certifications are used to make public notice of the state's authority to regulate the rates, terms and conditions for pole attachments.

Summary of Report and Order

I. Introduction

1. In this *Report and Order* ("*Order*"), the Commission adopts rules implementing section 703 of the Telecommunications Act of 1996 ("1996 Act") relating to pole attachments. Section 703 amended Section 224 of the Communications Act and requires the Commission to prescribe regulations to govern the charges for pole attachments used by telecommunications carriers to provide telecommunications services. Section 703 also requires that the Commission's regulations ensure that a utility charges just, reasonable, and nondiscriminatory rates for pole attachments.

II. Background

2. The 1996 Act amended Section 224 in several important respects. While previously the protections of Section 224 had applied only to cable operators, the 1996 Act extended those protections to telecommunications carriers as well. Further, the 1996 Act gave cable operators and telecommunications carriers a mandatory right of access to utility poles, in addition to maintaining a scheme of rate regulation governing such attachments. In the *First Report and Order*, CC Docket No. 96–98, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (61 FR 45476, August 29, 1996), 11 FCC Rcd 15499, 16058–107, paras. 1119–1240 (1996) ("*Local Competition Order*"), we adopted a number of rules implementing the new access provisions of Section 224.

3. The rules we adopt in this *Order* implement the plain language of Section 224(e). That section provides that the regulations promulgated will apply "when the parties fail to resolve a dispute over such charges." Accordingly, and as discussed below, we encourage parties to negotiate the rates, terms, and conditions of pole attachment agreements. Although the Commission's rules will serve as a backdrop to such negotiations, we intend the Commission's enforcement mechanisms to be utilized only when good faith negotiations fail. Based on the Commission's history of successful implementation and enforcement of rules governing attachments used to provide cable service, we believe that the new rules will foster competition in the provision of telecommunications services while guaranteeing fair compensation for the utilities that own the infrastructure upon which such competition depends.

III. Preference for Negotiated Agreements and Complaint Resolution Procedures

4. Our rules for complaint resolution will only apply when the parties are unable to arrive at a negotiated agreement. We affirm our belief that the existing methodology for determining a presumptive maximum pole attachment rate, as modified in this *Order*, facilitates negotiation because the parties can predict an anticipated range for the pole attachment rate. We further conclude that the current complaint procedures are adequate to establish just and reasonable rates, terms, and conditions for pole attachments. An uncomplicated complaint process and a clear formula for rate determination are essential to promote the use of negotiations for pole attachment rates, terms, and conditions. We are committed to an environment where attaching entities have enforceable rights, where the interests of pole owners are recognized, and where both parties can negotiate for pole attachment rates, allowing the availability of telecommunications services to expand.

IV. Charges for Attaching

A. Poles

i. Formula Presumptions

5. In determining a just and reasonable rate, two elements of the pole are examined: usable space and other than usable space. The costs relating to these elements are allocated to those using the pole. To avoid a pole by pole rate calculation, the Commission previously adopted rebuttable presumptions of an average pole height of 37.5 feet, an average amount of usable space of 13.5 feet, and an average amount of 24 feet of

unusable space on a pole. The Commission also established a rebuttable presumption of one foot as the amount of space a cable television attachment occupies. These presumptions serve as the premise for calculating pole attachment rates under the current formula. Until resolution of the *Pole Attachment Fee Notice* proceeding CS Docket No. 97–98, we will apply our presumptions as they presently exist and proceed with the implementation under the 1996 Act of a methodology to calculate a rate for pole attachments used in the provision of telecommunications services by telecommunications carriers and cable operators.

ii. Restrictions on Services Provided Over Pole Attachments

6. In the *Notice*, we sought comment on whether we disagree with the utility pole owners that assert that the Commission's decision in *Heritage Cablevision Associates of Dallas, L.P.* v. *Texas Utilities Electric Company* ("*Heritage*") has been "overruled" by the passage of the 1996 Act insofar as it held that a cable system is entitled to a Commission-regulated rate for pole attachments that the cable system uses to provide commingled data and video. The definition of "pole attachment" does not turn on what type of service the attachment is used to provide. Rather, a "pole attachment" is defined to include any attachment by a "cable television system." Thus, the rates, terms and conditions for all pole attachments by a cable television system are subject to the Pole Attachment Act. Under Section 224(b)(1), the Commission has a duty to ensure that such rates, terms, and conditions are just and reasonable. We see nothing on the face of Section 224 to support the contention that pole owners may charge any fee they wish for Internet and traditional cable services commingled on one transmission facility.

7. Having decided that cable operators are entitled to the benefits of Section 224 when providing commingled Internet and traditional cable services, we next turn to the appropriate rate to be applied. We conclude, pursuant to Section 224(b)(1), that the just and reasonable rate for commingled cable and Internet service is the Section 224(d)(3) rate. In specifying this rate, we intend to encourage cable operators to make Internet services available to their customers. We believe that specifying a higher rate might deter an operator from providing non-traditional services. Such a result would not serve the public interest. Rather, we believe that specifying the Section 224(d)(3) rate will encourage greater competition in the provision of Internet service and greater benefits to consumers.

8. We also disagree with utility pole owners that submit that all cable operators should be "presumed to be telecommunications carriers" and therefore charged at the higher rate unless the cable operator certifies to the Commission that it is not "offering" telecommunications services. We think that a certification process would add a burden that manifests no benefit. We believe the need for the pole owner to be notified is met by requiring the cable operator to provide notice to the pole owner when it begins providing telecommunication services. The rule we adopt in this *Order* will reflect this required notification. We also reject the suggestions of utility pole owners that the Commission should be responsible for monitoring and enforcing a certification of cable operators regarding their status. The record does not demonstrate that cable operators will not meet their responsibilities. If a dispute arises, the Commission's complaint processes can be invoked.

iii. Wireless Attachments

9. Wireless carriers are entitled to the benefits and protection of Section 224. Section 224(e)(1) plainly states: "The Commission shall * * * prescribe regulations to govern the charges for pole attachments used by telecommunications carriers to provide telecommunications services." This language encompasses wireless attachments.

10. Statutory definitions and amendments by the 1996 Act demonstrate Congress' intent to expand the pole attachment provisions beyond their 1978 origins. Section 224(a)(4) previously defined a pole attachment as "any attachment by a cable television system," but now states that a pole attachment is "any attachment by a cable television system or provider of telecommunications service." Moreover, in Section 224(d)(3), Congress applied the current pole attachment rules as interim rules for "any telecommunications carrier * * * to provide any telecommunications service." In both sections, the use of the word "any" precludes a position that Congress intended to distinguish between wire and wireless attachments. Section 224(e)(1) contains three terms whose definitions support this conclusion. Section 3(44) defines telecommunications carrier as "any provider of telecommunications services." Section 3(46) states that telecommunications services is the "offering of telecommunications for a fee directly to the public * * * regardless of the facilities used," and Section 3(43) specifies telecommunications to be "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." The use of "any" in Section 3(44) precludes limiting telecommunications carriers only to wireline providers. Wireless companies meet the definitions in Sections 3(43) and 3(46). In fact, the Commission has already recognized that cellular telephone, mobile radio, and PCS are telecommunications services.

11. There is no clear indication that our rules cannot accommodate wireless attachers' use of poles when negotiations fail. When an attachment requires more than the presumptive one-foot of usable space on the pole, or otherwise imposes unusual costs on a pole owner, the one-foot presumption can be rebutted. In addition, when wireless devices do not need to use every pole in a utility's inventory, the parties can agree on some reasonable percentage of poles for developing a presumptive number of attaching entities. If parties cannot modify or adjust the formula to deal with unique attachments, and the parties are unable to reach agreement through good faith negotiations, the Commission will examine the issues on a case-by-case basis.

iv. Allocating the Cost of Other Than Usable Space

a. *Method of Allocation.* 12. To determine the rate that a telecommunications carrier must pay for pole attachments, Section 224(e)(2) provides that:

> A utility shall apportion the cost of providing space on a pole, duct, conduit, or right-of-way other than the usable space among entities so that such apportionment equals two-thirds of the costs of providing space other than the usable space that would be allocated to such entity under an equal apportionment of such costs among all attaching entities.

This statutory language requires an equal apportionment of two-thirds of the costs of providing other than usable ("unusable") space among all attaching entities. The Commission proposed a methodology to apportion these costs which translates to the following formula:

$$\text{Unusable Space Factor} = \frac{2}{3} \times \frac{\text{Unusable Space}}{\text{Pole Height}} \times \frac{\text{Net Cost of a Bare Pole}}{\text{Number of Attachers}} \times \text{Carrying Charge Rate}$$

13. We adopt our proposed methodology to apportion the cost of unusable space. We believe this formula most accurately determines the apportionment of cost of unusable space. As mandated by Congress, it equally apportions two-thirds of the costs of unusable space among attaching entities.

b. *Counting Attaching Entities. (1) Telecommunications Carriers, Cable Operators and Non-Incumbent LECs.* 14. We will count as separate entities any telecommunications carrier, any cable operator, and any non-incumbent local exchange carrier ("LEC"). This approach is consistent with the language of the statute and comports with Congress' intent to count all attaching entities when allocating the costs of unusable space. The statute uses the term "entities" not "telecommunications carriers" when indicating how the costs of unusable space should be allocated. We interpret this use to indicate the inclusion of cable operators as well as telecommunications carriers when allocating the cost of unusable space.

(2) Pole Owners Providing Telecommunications Services and Incumbent LECs. 15. We affirm our tentative conclusion that any pole owner providing telecommunications services, including an incumbent local exchange carrier ("ILEC"), should be counted as an attaching entity for the purposes of allocating the costs of unusable space under Section 224(e)(2). This includes pole owners that use only a part of their physical plant capacity to provide these services and is consistent with our recognition that pole attachments are defined in terms of attachments by a "provider of telecommunication service." Section 224(e)(2) states that the costs of unusable space shall be allocated on the basis of "all attaching entities." There is no indication from the statutory language or legislative history that any particular attaching entity should not be counted.

16. We also believe this conclusion is supported by Section 224(g) which requires that a utility providing telecommunications services impute to its costs of providing service an amount equal to the rate for which it would be liable under Section 224. This section reflects Congress' recognition that as a provider of telecommunications services, a pole owner uses and benefits from the unusable space in the same way as the other attaching entities. Section 224(g) also directs the utility to impute the costs relating to these services to the appropriate affiliate, making clear that another entity is using the facility and should be counted as an attaching entity. We will count any pole owner providing telecommunications services, including an ILEC, as an attaching entity for the purpose of allocating costs of unusable space.

(3) Government Attachments. 17. To the extent that government agencies provide cable or telecommunications service, we affirm our proposal that they be included in the count of attaching entities for purposes of allocating the cost of unusable space. We will not include government agencies in the count as a separate entity if they only provide certain attachments for public use, such as traffic signals, festoon lighting, and specific pedestrian lighting. We conclude that, where a government agency's attachment is used to provide cable or telecommunications service, the government attachment can accurately be described as a "pole attachment" within the meaning of Section 224(a)(4) of the 1996 Act. Like a private pole attachment, it benefits equally from the unusable space on the pole and the costs for this benefit are properly placed on the government entity or the pole owner. Since the government attacher and the pole owner have a relationship that benefits both parties, we are not persuaded that the pole owner is unfairly absorbing the cost of the government's telecommunications attachments to the extent the pole owner's franchise so provides. We will not include a government agency with an attachment that does not provide cable or telecommunications service as an entity in the count when apportioning the costs of unusable space because such an attachment is not a "pole attachment" within the meaning of Section 224(a)(4).

(4) Space Occupied on Pole. 18. In suggesting the alternative approach that entities using more than one foot be counted as a separate entity for each foot or increment thereof, we sought to ensure that entities be allocated the costs of the unusable space through a means reflecting their relative use. The record does not indicate whether use of more than one foot by an entity will be a pervasive or occasional circumstance. We agree with those parties that state that allocating space in such a manner will add a level of complexity, and not necessarily produce a fairer allocation of the cost of unusable space. We are also convinced that the alternative proposal is inconsistent with the plain meaning of Section 224(e) which apportions the cost of unusable space "under an equal apportionment of such costs among all attaching entities."

19. As another alternative method to apportioning cost equally, MCI argues that the apportionment of two-thirds of the costs of unusable space should be based on the number of attachments rather than the number of attaching entities. Allocating costs by the number of entities, it argues, would not allocate any unusable space to overlashings and will result in an incentive for "speculative" overlashing by existing attachers. We also will not adopt MCI's proposal to count attachments instead of attaching entities. The record does not demonstrate that overlashing leads to distortion of the allocation of the costs of the pole.

c. *Overlashing.* (a) *Overlashing One's Own Pole Attachment.* 20. We have been presented with no persuasive reason to change the Commission's policy that encourages overlashing, and we agree with representatives of the cable and telecommunications industries that, to the extent that it does not significantly increase the burden on the pole, overlashing one's own pole attachment should be permitted without additional charge. To the extent that the overlashing does create an additional burden on the pole, any concerns should be satisfied by compliance with generally accepted engineering practices. We note that we have deferred decision on the issue of the effect any increased burden may have on the rate the utility pole owner may charge the host attacher. We believe that the *Pole Attachment Fee Notice* rulemaking is a more appropriate forum for resolution of this issue. As stated above, we affirm our current presumptions for the time being. We also do not believe that overlashing is an expansion of a pole owners' obligation. Overlashing has been in practice for many years. We believe utility pole owners' concerns are addressed by Section 224's assurance that pole owners receive a just and reasonable rate and that pole attachments may be denied for reasons

of safety, reliability, and generally applicable engineering purposes.

(b) Third Party Overlashing. 21. The record does not indicate that third party overlashing adds any more burden to the pole than overlashing one's own pole attachment. We do not believe that third party overlashing disadvantages pole owners in either receiving fair compensation or in being able to ensure the integrity of the pole. Facilitating access to the pole is a tangible demonstration of enhancing competitive opportunities in communications. Allowing third party overlashing will also reduce construction disruption (and the expense associated therewith) which would otherwise likely take place by third parties installing new poles and separate attachments. Accordingly, we will allow third party overlashing subject to the same safety, reliability, and engineering constraints that apply to overlashing one's own pole attachment. Concerns that third party overlashing will increase the burden on the pole can be addressed by compliance with generally accepted engineering practices.

22. We believe that when a host attaching entity allows an overlashing attachment to be installed to its own pole attachment by a third party for the purposes of that third party offering and providing cable or telecommunications services to the public, that third party overlashing entity should be classified as a separate attaching entity for purposes of allocating costs of unusable space because Congress indicated that the unusable space was of equal benefit to all attaching entities. In order to implement the allocation of unusable space, the third party overlasher will necessarily need to have some understanding or agreement with the pole owner, and an agreement with the host attaching entity. Commenters assert that overlashing under these circumstances should be classified as a separate attachment. We agree.

(c) Lease and Use of Excess Capacity/Dark Fiber. 23. There is general consensus among cable operators and telecommunications carriers that the leasing and use of dark fiber by third parties places no additional spatial or physical requirements on the utility pole. Cable operators, telecommunications carriers, and utility pole owners all contend that the use of dark fiber is a pro-competitive, environmentally sound and economical use of existing facilities. We agree and conclude that the leasing of dark fiber by a third party is not an individual pole attachment separate from the host attachment. Such use will not require payment to the pole owner separate from the payment by the host attaching entity. We also agree with cable operators, telecommunications carriers, and utility pole owners that, if an attachment previously used for providing solely cable services would, as a result of the leasing of dark fiber, also be used for providing telecommunications services, the rate for the attachment would be determined under Section 224(e), consistent with our discussion regarding restrictions on services provided over pole attachments.

(d) Presumptive Average Number of Attaching Entities. 24. We believe that the most efficient and expeditious manner to calculate a presumptive number of attaching entities is for each utility to develop its own presumptive average number of attaching entities. Utilities not only possess this information but have familiarity and expertise to structure it properly. Based on the record, we think the alternative of the Commission undertaking a survey is too cumbersome and would not necessarily enhance accuracy. We do not believe that the *Fiber Deployment Update* is an appropriate resource from which to develop the presumptive average. *The Fiber Deployment Update* presents data about fiber optic facilities and capacity built or used by interexchange carriers, Bell operating companies, and other LECs and competitive access providers. These data are inadequate for the purposes of creating a presumptive average number of attaching entities because it does not include data pertaining to cable operators. Our decision providing that the utility will establish a presumptive number of attaching entities is also premised on the information developed reflecting where the service is being provided, instead of a broad national average. We think there will be a range of presumptive averages depending on rural, urban, or urbanized areas. To ensure that rates are appropriately representative, each utility shall determine a presumptive average for its rural, urban and urbanized service areas as defined by the United States Census Bureau.

25. We will require each utility to develop, through the information it possesses, a presumptive average number of attaching entities on its poles based on location (urban, rural, urbanized) and based upon our discussion herein regarding the counting of attaching entities for allocating the costs of unusable space. A utility shall, upon request, provide all attaching entities and all entities seeking access the methodology and information by which a utility's presumption was determined. We expect a good faith effort by a utility in establishing its presumption and updating it when a change is necessitated. For example, when a new attaching entity has a substantial impact on the number of attaching entities, the utility's presumptive average should be modified. This method should be consistent with present practice, as we understand most pole attachment agreements "provide for periodic field surveys, generally once every three to seven years, to determine which entities have attached what facilities to whose poles."

26. Challenges to the presumptive average number of attaching entities by the telecommunications carrier or cable operator may be made in the same manner as challenges presently are undertaken. The challenging party will initially be required to identify and calculate the number of attachments on the poles and submit to the utility what it believes to be an appropriate average. Where the number of poles is large, and complete inspection impractical, a statistically sound survey should be submitted. The pole owner will be afforded an opportunity to justify the presumption. Where a presumption is successfully challenged, the resulting figure will be deemed to be the number of attaching entities.

v. Allocating the Cost of Usable Space

27. Section 224(e)(3) provides that a utility shall apportion the cost of providing usable space among all entities according to the percentage of usable space required for each entity. The Commission has defined usable space as the space on the utility pole above the minimum grade level that is usable for the attachment of wires, cable, and related equipment. In the *Second Report and Order*, 72 FCC 2d 59, the Commission considered comment regarding the amount of usable space for various size poles in different service areas. The Commission subsequently adopted a rebuttable presumption that a pole contains 13.5 feet of usable space. The usable space presumption has been contested in complaint proceedings before the Commission. In 1986, the Commission revisited the usable space issue and upheld the presumption. In 1997, the Commission sought comment on the presumptive amount of usable space in the *Pole Attachment Fee Notice*. In the *Notice*, we sought comment on the usable space presumption to establish a full record for attachments made by telecommunications carriers under the 1996 Act. The Commission also proposed to modify the current

methodology to reflect only the cost associated with usable space to arrive at a factor for apportioning the costs of usable space for telecommunications carriers under Section 224(e)(3). For allocating the costs of usable space to telecommunications carriers, the following basic formula was proposed:

$$\text{Usable Space Factor} = \frac{\text{Space Occupied by Attachment}}{\text{Total Usable Space}} \times \frac{\text{Total Usable Space}}{\text{Pole Height}} \times \text{Net Cost of Bare Pole} \times \text{Carrying Charge Rate}$$

(1) Applying the 13.5 Foot Presumption and the One Foot Presumption to Telecommunications Carriers. 28. We believe that the information we received in this proceeding regarding calculation of usable space is more appropriately addressed in the *Pole Attachment Fee Notice* proceeding and we will thus reserve our decision on the total amount of usable space issue until the resolution of that proceeding. For the present time, the presumption that a pole contains 13.5 feet of usable space will remain applicable. We adopt our proposed methodology to apportion the cost of the usable space. We believe this formula most accurately determines the apportionment of the cost of usable space. As mandated by Congress, it incorporates the principle of apportioning the cost of such space according to the percentage of space required for each entity.

29. The Commission's one foot presumption has been in place since 1979. Neither the 1996 Act's amendments to Section 224 nor the record in this proceeding suggest that a different presumption should be applicable to telecommunications carriers. Circumstances that are unique or that clearly warrant a departure from the formula may be used to rebut the presumption.

(2) Overlashing and Dark Fiber. 30. Consistent with our above discussion regarding overlashing, we find that the one foot presumption shall continue to apply where an attaching entity has overlashed its own pole attachments. We also determine that facilities overlashed by third parties onto existing pole attachments are presumed to share the presumptive one foot of usable space of the host attachment. To the extent that the overlashing creates an additional burden on the pole, any concerns should be satisfied by compliance with generally accepted engineering practices. We again note that we have deferred decision to the *Pole Attachment Fee Notice* proceeding on the issue of the effect any increased burden may have on the rate the utility pole owner may charge the host attacher. As stated above, we believe that that proceeding is a more appropriate forum for resolution of this issue. As also stated above, we affirm our current presumptions for the time being.

B. Application of Pole Attachment Formula to Telecommunications Carriers

31. We agree with cable operators and telecommunications carriers that the continued use of a clear formula for the Commission's rate determination is an essential element when parties negotiate for pole attachment rates, terms and conditions. We think that a formula encompassing these statutory directives of how pole owners should be compensated adds certainty and clarity to negotiations as well as assists the Commission when it addresses complaints. We conclude that the addition of the unusable and usable space factors, developed to implement Sections 224(e)(2) and (e)(3), is consistent with a just, reasonable, and nondiscriminatory pole attachment rate for telecommunications carriers. We affirm the following formula, to be used to determine the maximum just and reasonable pole attachment rate for telecommunications carriers, including cable operators providing telecommunications services, effective February 8, 2001, encompassing the elements enumerated in the law:

$$\text{Maximum Rate} = \text{Unusable Space Factor} + \text{Usable Space Factor}$$

C. Application of Pole Attachment Formula to Conduits

32. Section 224(e)(2) requires that two-thirds of the cost of the unusable space be apportioned equally among all attaching entities. In the *Notice*, the Commission proposed a methodology to apportion the costs of unusable space among attaching entities. The following formula was proposed as the methodology to determine costs of unusable space in a conduit:

$$\text{Conduit Unusable Space Factor} = \frac{2}{3} \times \frac{\text{Net Linear Cost of Unusable Conduit Space}}{\text{Number of Attachers}} \times \text{Carrying Charge Rate}$$

In the *Notice*, the Commission also sought comment on what portions of duct or conduit are "unusable" within the terms of the 1996 Act. The Commission proposed that a presumptive ratio of usable ducts to maintenance ducts be adopted to establish the amount of unusable space.

33. Section 224(e)(3) states that the cost of providing usable space shall be apportioned according to the percentage of usable space required for the entity using the conduit. Usable space is based on the number of ducts and the diameter of the ducts contained in a conduit. In the *Pole Attachment Fee Notice*, the Commission sought comment on a proposed conduit methodology for use in determining a pole attachment rate for conduit under Section 224(d)(3). In the *Notice*, the Commission sought comment on a proposed half-duct methodology for use in a proposed formula to determine a conduit usable space factor. The proposed usable space formula under Section 224(e)(3) for pole attachments in conduits is as follows:

$$\text{Conduit Usable Space Factor} = \frac{1}{2} \times \frac{\text{1 Duct}}{\text{Average Number of Ducts, less Adjustments for maintenance ducts}} \times \text{Net Linear Cost of Usable Conduit Space} \times \text{Carrying Charge Rate}$$

In the *Notice*, the Commission sought comment on the half-duct presumption's applicability to determine usable space and to allocate costs of providing usable space to the telecommunications carrier. The Commission also sought comment on how its proposed conduit methodology impacts determining an appropriate ratio of usable to unusable space within a duct or conduit.

a. Counting Attaching Entities for Purposes of Allocating Cost of Other than Usable Space. 34. For the purpose of allocating the cost of unusable space in a conduit system, we agree that each party that actually installs one or more wires in a duct or duct bank should be counted as a single attaching entity, regardless of the number of cables installed or the amount of duct space occupied. The statutory preference for clarity is preeminent and we perceive no generally applicable method that does not involve complexity and confusion other than counting each entity within the conduit system as a separate attaching entity.

b. *Unusable Space in a Conduit System.* 35. We disagree that no unusable space exists in a conduit system. There appear to be two aspects to the unusable space within conduit systems. First, there is that space involved in the construction of the system, without which there would be no usable space. Second, there is that space within the system which may be unusable after the system is constructed. We believe that the costs for the construction of the system, which allow the creation of the usable space, should be part of the unusable space allocated among attaching entities. We also believe that maintenance ducts reserved for the benefit and use of all attaching entities should be considered unusable space.

36. With regard to space in a conduit that is deteriorated, the record is less clear. We are reluctant to require that the costs of space that cannot be used by, and provide no benefit to, an existing attaching entity should be allocated beyond the utility conduit owner. In contrast, unusable space on a pole is largely attributed to safety and engineering concerns, adherence to which benefits the pole owner and attaching entities. Space in a conduit that has deteriorated serves no benefit to the existing rate-paying attaching entities. Deteriorated duct creates space that has been rendered unused by the utility. If such space could, with reasonable effort and expense, be made available, the space is usable and not unusable.

c. *Half-Duct Presumption for Determining Usable Conduit Space.* 37. We adopt our proposed rebuttable presumption that a cable or telecommunications attacher occupies a half-duct of space in order to determine a reasonable conduit attachment rate. We note that the National Electric Safety Code rule relied on by the electric utilities does not prohibit the sharing of space between electric and communications. Rather, the rule conditions the sharing of such space on the maintenance and operation being performed by the utility. We continue to believe that the half-duct methodology is the simplest and most reasonable approximation of the actual space occupied by an attacher. This method, patterned after the one used by the Massachusetts Department of Public Utilities ("MDPU"), allows for determining the cost per foot of one duct and then dividing by two instead of actually measuring the duct space occupied. The MDPU finds, and we agree, that this method is reasonable because an attacher's use of a duct does not preclude the use of the other half of the duct so the attacher should not have to pay for the entire duct. In situations where the formula is inappropriate because it has been demonstrated that there are more than two users in the conduit or that one particular attachment occupies the entire duct, so as to preclude another from using the duct, our half-duct presumption can be rebutted. If a new entity is installing an attachment in a previously unoccupied duct, we believe that such entity should be encouraged to place inner-duct prior to placing its wires in the duct.

d. *Conduit Pole Attachment Formula.* 38. We believe that a formula encompassing statutory directives of how utilities should be compensated for the use of conduit adds certainty and clarity to negotiations as well as assists the Commission when it addresses complaints. We conclude that the addition of the conduit unusable and conduit usable space factors, developed to implement Section 224(e)(2) and Section 224(e)(3), is consistent with a just, reasonable, and nondiscriminatory pole attachment rate for telecommunications carriers in conduit. We adopt the following formula to be used to determine the maximum just and reasonable pole attachment rate for telecommunications carriers in a conduit system, effective February 8, 2001, encompasses the elements enumerated in the law:

$$\text{Maximum Conduit Rate Per Net Linear Foot} = \text{Conduit Unusable Space Factor} + \text{Conduit Usable Space Factor}$$

D. Rights-of-Way

39. The information submitted in this proceeding is not sufficient to enable us to adopt detailed standards that would govern all right-of-way situations. We thus believe it prudent for the Commission to gain experience through case-by-case adjudication to determine whether additional "guiding principles" or presumptions are necessary or appropriate. Therefore, we will address complaints about just, reasonable, and nondiscriminatory pole attachments to a utility's right-of-way on a case-by-case basis.

V. Cost Elements of the Formula for Poles and Conduit

40. In regulating pole attachment rates, the Commission has implemented a cost methodology premised on historical or embedded costs. These are costs that a firm has incurred in the past for providing a good or service and are recorded for accounting purposes as past operating expenses and depreciation. Many parties in this proceeding, as well as in the *Pole Attachment Fee Notice* proceeding, advocate extension of historical costs, while a number of parties advocate that the Commission adopt a forward-looking economic cost-pricing ("FLEC") methodology for pole attachments. Forward-looking cost methodologies seek to consider the costs that an entity would incur if it were to construct facilities now to provide the good or service at issue.

41. We did not raise the issue of forward looking costs in the *Notice* in this proceeding. While we do not prejudge the arguments raised by the commenters, we decline to address at this time proposals to shift to a forward

looking cost methodology. Accordingly, we will continue the use of historical costs in our pole attachment rate methodology, specifically as it is applied to telecommunications carriers and cable operators providing telecommunications services.

VI. Implementation and Effective Date of Rules

42. We conclude that the statutory language is explicit in requiring that any increase in the rates for pole attachments shall be phased-in over five years in equal annual increments beginning on the effective date of such regulations. We clarify that the statutory language "beginning on the effective date of such regulations" refers to February 8, 2001, or five years after the enactment of the 1996 Act. We affirm that the five-year phase-in is to apply to rate increases only and that the amount of the increase or the difference between the Section 224(d) rate and the 224(e) rate shall be applied annually until the full amount of the increase is absorbed within five years of February 8, 2001. Rate reductions are not subject to the phase-in and are to be implemented immediately.

Final Regulatory Flexibility Analysis

43. As required by the Regulatory Flexibility Act ("RFA"), an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the *Notice*. The Commission sought written public comment on the proposals in the *Notice* including comment on the IRFA. The comments received are discussed below. This present Final Regulatory Flexibility Analysis ("FRFA") conforms to the RFA.

A. Need for, and Objectives of, the Order

44. Section 703 of the 1996 Act requires the Commission to prescribe regulations to govern the charges for pole attachments used by telecommunications carriers to provide telecommunications services. The objectives of the rules adopted herein are, consistent with the 1996 Act, to promote competition and the expansion of telecommunications services and to reduce barriers to entry into the telecommunications market by ensuring that charges for pole attachments are just, reasonable and nondiscriminatory.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

45. No comments submitted in response to the *Notice* were specifically identified by the commenters as being in response to the IRFA contained in the *Notice*. Small Cable Business Association ("SCBA") filed comments in response to the IRFA contained in the *Pole Attachment Fee Notice*, and, to the extent they are relevant to the issues in this proceeding, we incorporate them herein by reference. SCBA claims in its IRFA comments that, because of the statutory exclusion of cooperatives from the definition of utility, Section 224 does not minimize market entry barriers for small cable operators. According to SCBA, the IRFA in the *Pole Attachment Fee Notice* fails to consider this issue.

C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

46. The RFA generally defines a "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term small business concern under the Small Business Act. A "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA"). For many of the entities described below, the SBA has defined small business categories through Standard Industrial Classification ("SIC") codes.

a. Utilities

47. Many of the decisions and rules adopted herein may have a significant effect on a substantial number of utility companies. Section 224 defines a "utility" as "any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications. Such term does not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State." The SBA has provided the Commission with a list of utility firms which may be affected by this rulemaking. Based upon the SBA's list, the Commission concludes that all of the following types of utility firms may be affected by the Commission's implementation of Section 224.

(1) Electric Utilities (SIC 4911, 4931 & 4939). 48. Electric Services (SIC 4911). The SBA has developed a definition for small electric utility firms. The Census Bureau reports that a total of 1379 electric utilities were in operation for at least one year at the end of 1992. According to SBA, a small electric utility is an entity whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reports that 447 of the 1379 firms listed had total revenues below five million dollars.

49. *Electric and Other Services Combined (SIC 4931).* The SBA has classified this entity as a utility whose business is less than 95% electric in combination with some other type of service. The Census Bureau reports that a total of 135 such firms were in operation for at least one year at the end of 1992. The SBA's definition of a small electric and other services combined utility is a firm whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reported that 45 of the 135 firms listed had total revenues below five million dollars.

50. *Combination Utilities, Not Elsewhere Classified (SIC 4939).* The SBA defines this utility as providing a combination of electric, gas, and other services which are not otherwise classified. The Census Bureau reports that a total of 79 such utilities were in operation for at least one year at the end of 1992. According to SBA's definition, a small combination utility is a firm whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reported that 63 of the 79 firms listed had total revenues below five million dollars.

(2) Gas Production and Distribution (SIC 4922, 4923, 4924, 4925 & 4932). 51. Natural Gas Transmission (SIC 4922). The SBA's definition of a natural gas transmitter is an entity that is engaged in the transmission and storage of natural gas. The Census Bureau reports that a total of 144 such firms were in operation for at least one year at the end of 1992. According to SBA's definition, a small natural gas transmitter is an entity whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reported that 70 of the 144 firms listed had total revenues below five million dollars.

52. *Natural Gas Transmission and Distribution (SIC 4923).* The SBA has classified this entity as a utility that transmits and distributes natural gas for sale. The Census Bureau reports that a total of 126 such entities were in operation for at least one year at the end of 1992. The SBA's definition of a small natural gas transmitter and distributor is a firm whose gross revenues did not exceed five million dollars. The Census Bureau reported that 43 of the 126 firms listed had total revenues below five million dollars.

53. *Natural Gas Distribution (SIC 4924).* The SBA defines a natural gas distributor as an entity that distributes natural gas for sale. The Census Bureau

reports that a total of 478 such firms were in operation for at least one year at the end of 1992. According to the SBA, a small natural gas distributor is an entity whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reported that 267 of the 478 firms listed had total revenues below five million dollars.

54. *Mixed, Manufactured, or Liquefied Petroleum Gas Production and/or Distribution (SIC 4925).* The SBA has classified this entity as a utility that engages in the manufacturing and/or distribution of the sale of gas. These mixtures may include natural gas. The Census Bureau reports that a total of 43 such firms were in operation for at least one year at the end of 1992. The SBA's definition of a small mixed, manufactured or liquefied petroleum gas producer or distributor is a firm whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reported that 31 of the 43 firms listed had total revenues below five million dollars.

55. *Gas and Other Services Combined (SIC 4932).* The SBA has classified this entity as a gas company whose business is less than 95% gas, in combination with other services. The Census Bureau reports that a total of 43 such firms were in operation for at least one year at the end of 1992. According to the SBA, a small gas and other services combined utility is a firm whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reported that 24 of the 43 firms listed had total revenues below five million dollars.

(3) Water Supply (SIC 4941). 56. The SBA defines a water utility as a firm who distributes and sells water for domestic, commercial and industrial use. The Census Bureau reports that a total of 3,169 water utilities were in operation for at least one year at the end of 1992. According to SBA's definition, a small water utility is a firm whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reported that 3065 of the 3169 firms listed had total revenues below five million dollars.

(4) Sanitary Systems (SIC 4952, 4953 & 4959). 57. Sewerage Systems (SIC 4952). The SBA defines a sewage firm as a utility whose business is the collection and disposal of waste using sewage systems. The Census Bureau reports that a total of 410 such firms were in operation for at least one year at the end of 1992. According to SBA's definition, a small sewerage system is a firm whose gross revenues did not exceed five million dollars. The Census Bureau reported that 369 of the 410 firms listed had total revenues below five million dollars.

58. *Refuse Systems (SIC 4953).* The SBA defines a firm in the business of refuse as an establishment whose business is the collection and disposal of refuse "by processing or destruction or in the operation of incinerators, waste treatment plants, landfills, or other sites for disposal of such materials." The Census Bureau reports that a total of 2287 such firms were in operation for at least one year at the end of 1992. According to SBA's definition, a small refuse system is a firm whose gross revenues did not exceed six million dollars. The Census Bureau reported that 1908 of the 2287 firms listed had total revenues below six million dollars.

59. *Sanitary Services, Not Elsewhere Classified (SIC 4959).* The SBA defines these firms as engaged in sanitary services. The Census Bureau reports that a total of 1214 such firms were in operation for at least one year at the end of 1992. According to SBA's definition, a small sanitary service firms gross revenues did not exceed five million dollars. The Census Bureau reported that 1173 of the 1214 firms listed had total revenues below five million dollars.

(5) Steam and Air Conditioning Supply (SIC 4961). 60. The SBA defines a steam and air conditioning supply utility as a firm who produces and/or sells steam and heated or cooled air. The Census Bureau reports that a total of 55 such firms were in operation for at least one year at the end of 1992. According to SBA's definition, a steam and air conditioning supply utility is a firm whose gross revenues did not exceed nine million dollars. The Census Bureau reported that 30 of the 55 firms listed had total revenues below nine million dollars.

(6) Irrigation Systems (SIC 4971). 61. The SBA defines irrigation systems as firms who operate water supply systems for the purpose of irrigation. The Census Bureau reports that a total of 297 firms were in operation for at least one year at the end of 1992. According to SBA's definition, a small irrigation service is a firm whose gross revenues did not exceed five million dollars. The Census Bureau reported that 286 of the 297 firms listed had total revenues below five million dollars.

b. *Telephone Companies (SIC 4813).* 62. Many of the decisions and rules adopted herein may have a significant effect on a substantial number of small telephone companies. The SBA has defined a small business for SIC code 4813 (Telephone Communications, except Radiotelephone) to be a small entity when it has no more than 1500 employees. The Census Bureau reports that, at the end of 1992, there were 3497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers ("LECs"), interexchange carriers ("IXCs"), competitive access providers ("CAPs"), cellular carriers, mobile service carriers, operator service providers, pay telephone operators, personal communications service ("PCS") providers, covered SMR providers and resellers. Some of those 3497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated." We therefore conclude that fewer than 3497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by this *Order*. Below, we estimate the potential number of small entity telephone service firms or small incumbent LEC's that may be affected by the rules adopted herein in this service category.

(1) Wireline Carriers and Service Providers. 63. The SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. The Census Bureau reports that, there were 2321 such telephone companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1500 persons. Of the 2321 non-radiotelephone companies listed by the Census Bureau, 2295 were reported to have fewer than 1000 employees. Thus, at least 2295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs, or small entities based on these employment statistics. Although some of these carriers are likely not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions or rules adopted in this *Order*.

(2) Local Exchange Carriers. 64. Neither the Commission nor SBA has developed a definition of small providers of local exchange services. The closest applicable definition under SBA rules is for telephone

communications companies other than radiotelephone (wireless) companies (SIC 4813). The most reliable source of information regarding the number of LECs nationwide appears to be the data that the Commission publishes annually in its *Telecommunications Industry Revenue* report, regarding the Telecommunications Relay Service ("TRS"). According to "*TRS Worksheet*" data released in November 1997, there are 1371 companies reporting that they categorize themselves as LECs. Although some of these carriers are likely not independently owned and operated, or have more than 1500 employees, we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1371 small incumbent LECs that may be affected by the rules adopted herein.

(*3*) *Interexchange Carriers*. 65. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of interexchange services. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4813). The most reliable source of information regarding the number of IXCs nationwide of which we are aware appears to be the data that we collect annually in connection with TRS. According to our most recent data, 143 companies reported that they were engaged in the provision of interexchange services. Although some of these carriers are likely not independently owned and operated, or have more than 1500 employees, we are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 143 small entity IXCs that may be affected by the decisions and rules adopted in this *Order*.

(*4*) *Competitive Access Providers*. 66. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of competitive access services. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4813). The most reliable source of information regarding the number of CAPs nationwide of which we are aware appears to be the data that we collect annually in connection with the *TRS Worksheet*. According to our most recent data, 109 companies reported that they were engaged in the provision of competitive access services. Although some of these carriers are likely not independently owned and operated, or have more than 1500 employees, we are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 109 small entity CAPs that may be affected by the decisions and rules adopted herein.

(*5*) *Cellular Service Carriers*. 67. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of cellular services. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4812). The most reliable source of information regarding the number of cellular service carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the *TRS Worksheet*. The *TRS Worksheet* places cellular licensees and Personal Communications Service ("PCS") licensees in one group. According to the most recent data, there are 804 carriers reporting that they categorize themselves as either PCS or cellular carriers. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1500 employees, we are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 804 small entity cellular service carriers that may be affected by the decisions and rules adopted in this *Order*.

(*6*) *Mobile Service Carriers*. 68. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4813). The most reliable source of information regarding the number of mobile service carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the *TRS Worksheet*. According to our most recent data, 172 companies reported that they were engaged in the provision of mobile services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1500 employees, we are unable at this time to estimate with greater precision the number of mobile service carriers that would qualify under SBA's definition. Consequently, we estimate that there are fewer than 172 small entity mobile service carriers that may be affected by the decisions and rules adopted in this *Order*.

(*7*) *Broadband Personal Communications Services ("PCS") Licensees*. 69. The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining "small entity" in the context of broadband PCS auctions has been approved by the SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auction. A total of 93 small and very small business bidders won approximately 40% of the 1479 licenses for Blocks D, E, and F. However, licenses for blocks C through F have not been awarded fully, therefore there are few, if any, small businesses currently providing PCS services. Based on this information, we conclude that the number of broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small PCS providers as defined by the SBA and the Commission's auction rules. We note that the *TRS Worksheet* data track PCS licensees in the reporting category "Cellular or Personal Communications Service Carrier." As noted *supra* in the paragraph regarding cellular carriers, according to the most recent data, there are 804 carriers reporting that they place themselves in this category.

(*8*) *Specialized Mobile Radio ("SMR") Licensees*. 70. Pursuant to 47 CFR 90.814(b)(1) and 90.912(b)(1), the Commission has defined small entity in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than $15 million in the three previous calendar years. This definition of a small entity in the context of 800 MHz and 900 MHz SMR has been approved by the SBA. The rules adopted in this *Order* may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area

licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than $15 million. We assume, for purposes of this FRFA, that all of the extended implementation authorizations may be held by small entities which may be affected by the decisions and rules adopted in this *Order*. We note that the *TRS Worksheet* data track SMR licensees in the reporting category "Paging and Other Mobile Carriers." According to the most recent data, there are 172 carriers, including SMR carriers, reporting that they place themselves in this category.

71. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders that qualified as small entities in the 900 MHz auction. Based on this information, we conclude that the number of 900 MHz geographic area SMR licensees affected by the rules adopted in this *Order* includes these 60 small entities. The Commission also recently held auctions for the 525 licenses for the upper 200 channels in the 800 MHz SMR band. There were 10 winning bidders that qualified as small entities in that auction. Based on this information, we conclude that the number of geographic area SMR licensees that may be affected by the rules adopted in this *Order* also includes these 10 small entities. However, the Commission has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis, moreover, on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1000 employees and that no reliable estimate of the number of prospective 800 MHz licensees for the lower 230 channels can be made, we assume, for purposes of this FRFA, that all of the licenses may be awarded to small entities that may be affected by the decisions and rules adopted in this *Order*.

(*9*) *Resellers*. 72. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable definition under SBA rules is for all telephone communications companies (SIC 4812 and 4813). The most reliable source of information regarding the number of resellers nationwide of which we are aware appears to be the data that we collect annually in connection with the *TRS Worksheet*. According to our most recent data, 339 companies reported that they were engaged in the resale of telephone services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1500 employees, we are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 339 small entity resellers that may be affected by the decisions and rules adopted in this *Order*.

c. Wireless (Radiotelephone) Carriers (SIC 4812)

73. Although wireless carriers have not historically affixed their equipment to utility poles, pursuant to the terms of the 1996 Act, such entities are entitled to do so with rates consistent with the Commission's rules discussed herein. SBA has developed a definition of small entities for radiotelephone (wireless) companies. The Census Bureau reports that there were 1176 such companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business radiotelephone company is one employing no more than 1500 persons. The Census Bureau also reported that 1164 of those radiotelephone companies had fewer than 1000 employees. Thus, even if all of the remaining 12 companies had more than 1500 employees, there would still be 1164 radiotelephone companies that might qualify as small entities if they are independently owned and operated. Although some of these carriers are likely not independently owned and operated, we are unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1164 small entity radiotelephone companies that may be affected by the rules adopted herein.

d. Cable System Operators (SIC 4841)

74. The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating less than $11 million in revenue annually. This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau, there were 1423 such cable and other pay television services generating less than $11 million in revenue.

75. The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company," is one serving fewer than 400,000 subscribers nationwide. Based on our most recent information, we estimate that there were 1439 cable systems that qualified as small cable system operators at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable systems. Consequently, we estimate that there are fewer than 1439 small entity cable system operators that may be affected by the decisions and rules adopted in this *Order*.

76. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable systems serving 617,000 subscribers or less totals 1450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable systems under the definition in the Communications Act.

e. Municipalities

77. The term "small governmental jurisdiction" is defined as "governments of * * * districts, with a population of less than 50,000." There are 85,006 governmental entities in the United States. This number includes such entities as states, counties, cities, utility districts and school districts. We note that Section 224 specifically excludes any utility which is cooperatively organized, or any person owned by the Federal Government or any State. For this reason, we believe that Section 224 will have minimal if any affect upon

small municipalities. Further, there are 18 states and the District of Columbia that regulate pole attachments pursuant to Section 224(c)(1). Of the 85,006 governmental entities, 38,978 are counties, cities and towns. The remainder are primarily utility districts, school districts, and states. Of the 38,978 counties, cities and towns, 37,566 or 96%, have populations of fewer than 50,000.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

78. The rules adopted in this *Order* will require a change in certain recordkeeping requirements. A utility pole owner will now have to maintain specific records relating to the number of attachers for purposes of determining and updating its presumptive average number of attachers for computing the unusable space calculation for the telecommunications carrier rate formula. The utility pole owner may also require the services of an accountant to determine the new telecommunications rate. In addition, our rules adopted herein will require cable operators to notify the pole owner(s) if and when the cable operator begins providing telecommunications services. We sought comment in the *Notice* on whether small entities may be required to hire additional staff and expend additional time and money to comply with the proposals set forth in the *Notice*. In addition, we sought comment as to whether there will be a disproportionate burden placed on small entities in complying with the proposals set forth in this *Order*.

79. We did not receive any comments asserting that small entities will be required to hire additional staff and expend additional time and money to determine the appropriate rate for telecommunications carriers under our new rules. SCBA was the only commenter to claim that there will be a disproportionate burden placed on small entities. SCBA claims that small cable systems will be particularly hurt by the statutory exemption of cooperatives from the definition of utility because small cable systems often operate in rural areas and therefore necessarily attach their plant to rural telephone and electric cooperatives. We note that SBCA does not appear to be claiming that our rules will disproportionately burden small cable systems, but that where our rules do not apply, small cable system operators will be disproportionately harmed. Because the exemption for cooperatives was set forth by Congress clearly in Section 224(a)(1), the Commission is unable to address SBCA's concerns in this regard. We conclude that our rules will not disproportionately burden small entities.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

80. The 1996 Act requires the Commission to adopt a telecommunications carrier methodology within two years of the enactment of the 1996 Act. We sought comment in the Notice on various alternative ways of implementing the statutory requirements and any other potential impact of these proposals on small business entities. We sought comment on the implementation of a methodology to ensure just, reasonable and nondiscriminatory pole attachment and conduit rates for telecommunications carriers. We also sought comment on how to develop a rights-of-way rate methodology for telecommunications carriers.

81. In accordance with the RFA, the Commission has endeavored to minimize significant impact on small entities. With regard to our pole attachments complaint process, we rejected a proposal that we establish an amount in controversy as a minimum threshold for filing a complaint because, among other things, it might preclude small entities from obtaining relief from unjust, unreasonable or discriminatory pole attachment rates. We also rejected as too burdensome the suggestion that cable operators be required to certify annually as to whether they are providing telecommunications services. To minimize the burden on utility pole owners, including those that qualify as small entities, and to promote certainty and efficiency in determining the pole attachment rate for telecommunications carriers, we have maintained our formula presumptions, including our one-foot presumption of usable space. We also determined that, as an alternative to requiring utility pole owners to conduct potentially expensive pole-by-pole inventories for the number of attachers on each pole, we would require pole owners to develop, through information it possesses, a presumptive average number of attachers, based on location (i.e., urban, rural and urbanized).

82. Report to Congress: The Commission will send a copy of the *Order*, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. § 801(a)(1)(A).

IX. Ordering clauses

83. *It is Ordered* that, pursuant to Sections 1, 4(i) and 224 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i) and 224, the Commission's rules are hereby amended.

84. *It is further Ordered* that § 1.1402 of the Commission's rules will become effective April 13, 1998, and that §§ 1.1403, 1.1404, 1.1409, 1.1417 and 1.1418 of the Commission's rules will become effective July 30, 1998, unless the Commission publishes a notice before that date stating that the Office of Management and Budget ("OMB") has not approved the information collection requirements contained in the rules.

85. *It is further Ordered* that the Commission's Office of Public Affairs, Reference Operations Division, *shall send* a copy of this *Report and Order*, including the Final Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 1

Practice and procedure.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rules Changes

For the reasons stated in the preamble, the Federal Communications Commission amends 47 CFR Part 1 as set forth below:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154, 303, and 309(j) unless otherwise noted.

2. Section 1.1402 is amended by revising paragraph (c) and by adding new paragraphs (i), (j), (k), (l) and (m) to read as follows:

§ 1.1402 Definitions.

* * * * *

(c) With respect to poles, the term usable space means the space on a utility pole above the minimum grade level which can be used for the attachment of wires, cables, and associated equipment. With respect to conduit, the term usable space means space within a conduit system which is available, or which could, with reasonable effort and expense, be made available, for the purpose of installing wires, cable and associated equipment for telecommunications services.

* * * * *

(i) The term conduit means a pipe placed in the ground in which cables and/or wires may be installed.

(j) The term conduit system means structures that provide physical protection for cable and/or wires that allow new cables to be added along a route.

(k) The term duct means a single enclosed raceway for conductors, cable and/or wire.

(l) With respect to poles, the term unusable space means the space on a utility pole below the usable space, including the amount required to set the depth of the pole. With respect to conduit, the term unusable space means space involved in the construction of a conduit system, without which there would be no usable space, and maintenance ducts reserved for the benefit of all conduit users.

(m) The term attaching entity includes cable operators, telecommunications carriers, incumbent local exchange carriers, utilities and governmental entities providing cable or telecommunications services.

3. Section 1.1403 is amended by revising the section heading and adding new paragraph (e) to read as follows:

§ 1.1403 Duty to provide access; modifications; notice of removal, increase or modification; petition for temporary stay; and cable operator notice.

* * * * *

(e) Cable operators must notify pole owners upon offering telecommunications services.

4. Section 1.1404 is by amended by redesignating paragraphs (g)(12), (h), (i), (j) and (k) as (g)(13), (k), (l), (m) and (n), and adding new paragraphs (g)(12), (h), (i) and (j) to read as follows:

§ 1.1404 Complaint.

* * * * *

(g) * * *

(12) The average amount of unusable space per pole for those poles used for pole attachments (a 24 foot presumption may be used in lieu of actual measurement, but the presumption may be rebutted); and

* * * * *

(h) With respect to attachments within a duct or conduit system, where it is claimed that either a rate is unjust or unreasonable, or a term or condition is unjust or unreasonable and examination of such term or condition requires review of the associated rate, the complaint shall provide data and information in support of said claim. The data and information shall include, where applicable, equivalent information as specified in paragraph (g) of this section.

(i) With respect to rights-of-way, where it is claimed that either a rate is unjust or unreasonable, or a term or condition is unjust or unreasonable and examination of such term or condition requires review of the associated rate, the complaint shall provide data and information in support of said claim. The data and information shall include, where applicable, equivalent information as specified in paragraph (g) of this section.

(j) If any of the information and data required in paragraphs (g), (h) and (i) of this section is not provided to the cable television operator or telecommunications carrier by the utility upon reasonable request, the cable television operator or telecommunications carrier shall include a statement indicating the steps taken to obtain the information from the utility, including the dates of all requests. No complaint filed by a cable television operator or telecommunications carrier shall be dismissed where the utility has failed to provide the information required under paragraphs (g), (h) or (i) of this section, as applicable, after such reasonable request. A utility must supply a cable television operator or telecommunications carrier the information required in paragraph (g), (h) or (i) of this section, as applicable, along with the supporting pages from its FERC Form 1, FCC Form M, or other report to a regulatory body, within 30 days of the request by the cable television operator or telecommunications carrier. The cable television operator or telecommunications carrier, in turn, shall submit these pages with its complaint. If the utility did not supply these pages to the cable television operator or telecommunications carrier in response to the information request, the utility shall supply this information in its response to the complaint.

* * * * *

5. Section 1.1409 is amended by revising paragraph (e) and adding a new paragraph (f) to read as follows:

Sec. 1.1409 Commission consideration of the complaint.

* * * * *

(e) When parties fail to resolve a dispute regarding charges for pole attachments and the Commission's complaint procedures under Section 1.1404 are invoked, the Commission will apply the following formulas for determining a maximum just and reasonable rate:

(1) The following formula shall apply to attachments by cable operators providing cable services. This formula shall also apply to attachments by any telecommunications carrier (to the extent such carrier is not a party to a pole attachment agreement) or cable operator providing telecommunications services until February 8, 2001:

$$\text{Maximum Rate} = \frac{\text{Space Occupied by Attachment}}{\text{Total Usable Space}} \times \text{Net Cost of Bare Pole} \times \text{Carrying Charge Rate}$$

(2) Subject to paragraph (f) the following formula shall apply to pole attachments on a pole by any telecommunications carrier (to the extent such carrier is not a party to a pole attachment agreement) or cable operator providing telecommunications services beginning on February 8, 2001:

Maximum Pole Rate = Unusable Space Factor + Usable Space Factor

For purposes of this formula, the unusable space factor, as defined under Section 1.1417(b), and the usable space factor, as defined under Section 1.1418(b), shall apply per pole.

(3) Subject to paragraph (f) the following formula shall apply to pole attachments within a conduit system beginning on February 8, 2001:

Maximum Conduit Rate = Conduit Unusable Space Factor + Conduit Usable Space Factor

For purposes of this formula, the conduit unusable space factor, as defined under Section 1.1417(c), and the conduit usable space factor, as defined under Section 1.1418(c), shall apply to each linear foot occupied.

(f) Paragraphs (e)(2) and (e)(3) of this section shall become effective February 8, 2001 (i.e., five years after the effective date of the Telecommunications Act of 1996). Any increase in the rates for pole attachments that result from the adoption of such regulations shall be phased in over a period of five years beginning on the effective date of such regulations in equal annual increments. The five-year phase-in is to apply to rate increases only. Rate reductions are to be

implemented immediately. The determination of any rate increase shall be based on data currently available at the time of the calculation of the rate increase.

6. Section 1.1417 is added to read as follows:

§ 1.1417 Allocation of Unusable Space Costs.

(a) A utility shall apportion the cost of providing unusable space on a pole, duct, conduit, or right-of-way so that such apportionment equals two-thirds of the costs of providing unusable space that would be allocated to such entity under an equal apportionment of such costs among all entities.

(b) With respect to poles, the following formula shall be used to establish the allocation of unusable space costs on a pole for telecommunications carriers and cable operators providing telecommunications services:

$$\text{Pole Unusable Space Factor} = \frac{2}{3} \times \frac{\text{Unusable Space}}{\text{Pole Height}} \times \frac{\text{Net Cost of Bare Pole}}{\text{Number of Attachers}} \times \text{Carrying Charge Rate}$$

All attaching entities shall be counted as separate attaching entities for purposes of apportioning the costs of unusable space.

(c) With respect to conduit, the following formula shall be used to establish the allocation of unusable space costs for telecommunications carriers and cable operators providing telecommunications services within a conduit:

$$\text{Conduit Unusable Space Factor} = \frac{2}{3} \times \frac{\text{Net Linear Cost of Unusable Conduit Space}}{\text{Number of Attachers}} \times \text{Carrying Charge Rate}$$

All attaching entities with lines occupying any portion of a conduit system shall be counted as separate attaching entities for purposes of apportioning the costs of unusable space.

(d) Each utility shall establish a presumptive average number of attachers for each of its rural, urban, and urbanized service areas (as defined by the Bureau of Census of the Department of Commerce).

(1) Each utility shall, upon request, provide all attaching entities and all entities seeking access the methodology and information upon which the utilities presumptive average number of attachers is based.

(2) Each utility is required to exercise good faith in establishing and updating its presumptive average number of attachers.

(3) The presumptive average number of attachers may be challenged by an attaching entity by submitting information demonstrating why the utility's presumptive average is incorrect. The attaching entity should also submit what it believes should be the presumptive average and the methodology used. Where a complete inspection is impractical, a statistically sound survey may be submitted.

(4) Upon successful challenge of the existing presumptive average number of attachers, the resulting data determined shall be used by the utility as the presumptive number of attachers within the rate formula.

7. Section 1.1418 is added to read as follows:

§ 1.1418 Allocation of Usable Space Costs.

(a) A utility shall apportion the amount of usable space among all entities according to the percentage of usable space required by each entity.

(b) With respect to poles, the following formula shall be used to establish the allocation of usable space costs on a pole for telecommunications carriers and cable operators providing telecommunications services:

$$\text{Pole Usable Space Factor} = \frac{\text{Space Occupied by Attachment}}{\text{Total Usable Space}} \times \frac{\text{Total Usable Space}}{\text{Pole Height}} \times \text{Net Cost of Bare Pole} \times \text{Carrying Charge Rate}$$

The presumptive 13.5 feet of usable space may be used in lieu of the actual measurement of the total amount of usable space. The presumptive 37.5 feet of pole height may be used in lieu of the actual measurement of each pole. The presumptive one foot of space occupied by attachment is applicable to both cable operators and telecommunications carriers.

(c) With respect to conduit, the following formula shall be used to establish the allocation of usable space costs within a conduit system:

$$\text{Conduit Usable Space Factor} = \frac{1}{2} \times \frac{\text{1 Duct}}{\text{Average Number of Ducts less adjustments for maintenance ducts}} \times \text{Linear Cost of Usable Conduit Space} \times \text{Carrying Charge Rate}$$

With respect to conduit, an attacher is presumed to occupy one half-duct of usable space.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208297–8054–02; I.D. 112097A]

Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; Final 1998 Harvest Specifications for Groundfish

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

ACTION: Final 1998 harvest specifications for groundfish and associated management measures.

SUMMARY: NMFS announces final 1998 harvest specifications for Gulf of Alaska (GOA) groundfish and associated management measures. This action is necessary to establish harvest limits and associated management measures for groundfish during the 1998 fishing year. These measures are intended to carry out management objectives contained in the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP).

DATES: The final 1998 harvest specifications are effective at noon on March 9, 1998 through 2400 hrs, Alaska local time (A.l.t.), December 31, 1998.

ADDRESSES: Copies of the Environmental Assessment (EA) for 1998 Groundfish Total Allowable Catch (TAC) Specifications, dated January 1998, may be obtained from the NMFS, Alaska Region, Sustainable Fisheries Division, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel, or by calling 907–586–7228. The Final Stock Assessment and Fishery Evaluation Report (SAFE report), dated November 1997, is available from the North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501–2252, or by calling 907–271–2809.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–486–6919.

SUPPLEMENTARY INFORMATION:

Background

Groundfish fisheries in the exclusive economic zone of the GOA are managed by NMFS according to the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. The FMP is implemented by regulations at 50 CFR part 679. General regulations that also pertain to the U.S. fisheries appear at 50 CFR part 600.

NMFS announces the following for the 1998 fishing year: (1) Specifications of TAC amounts for each groundfish species category in the GOA, and reserves; (2) apportionments of reserves; (3) allocations of the sablefish TAC to vessels using hook-and-line and trawl gear; (4) apportionments of pollock TAC among regulatory areas, seasons, and allocations for processing between inshore and offshore components; (5) allocations for processing of Pacific cod TAC between inshore and offshore components; (6) Pacific halibut prohibited species catch (PSC) limits; and (7) fishery and seasonal apportionments of the Pacific halibut PSC limits. A discussion of each of these measures follows.

The process of determining TACs for groundfish species in the GOA is established in regulations implementing the FMP. Pursuant to § 679.20(a)(2), the sum of the TACs for all species must fall within the combined optimum yield (OY) range of 116,000–800,000 metric tons (mt) established for these species at § 679.20(a)(1)(ii).

The Council met from September 22 through 29, 1997, and developed recommendations for proposed 1998 TAC specifications for each species category of groundfish on the basis of the best available scientific information. The Council also recommended other management measures pertaining to the 1998 fishing year. Under § 679.20(c)(1)(ii), the proposed GOA groundfish specifications and specifications for prohibited species bycatch allowances for the groundfish fishery of the GOA were published in the **Federal Register** on December 15, 1997 (62 FR 65644). Comments were invited through January 14, 1998. Interim TAC and PSC amounts equal to one-fourth of the proposed amounts were published in the **Federal Register** on December 15, 1997 (62 FR 65622). The final 1998 initial groundfish harvest specifications and prohibited species bycatch allowances implemented under this action supersede the interim 1998 specifications.

The Council met December 9 through 12, 1997, to review the best available scientific information concerning groundfish stocks, and to consider public testimony regarding 1998 groundfish fisheries. The best available scientific information is contained in the current SAFE report, which includes the most recent information concerning the status of groundfish stocks based on the most recent catch data, survey data, and biomass projections using different modeling approaches or assumptions. The SAFE report was prepared by the GOA Plan Team and presented to the Council and the Council's Scientific and Statistical Committee (SSC) and Advisory Panel (AP) at the December 1997 Council meeting.

For establishment of the acceptable biological catches (ABCs) and TACs, the Council considered information in the SAFE report, recommendations from its SSC and AP, as well as public testimony. The SSC adopted the overfishing level (OFL) recommendations from the Plan Team, which were provided in the SAFE report, for all groundfish species categories. The SSC also adopted the ABC recommendations from the Plan Team, which were provided in the SAFE report, for all of the groundfish species categories, except pollock in the GOA.

The SSC did not adopt the Plan Team's recommendation of ABC for pollock in the GOA. The Plan Team's recommendation was to exclude pollock harvested in the State of Alaska (State) managed pollock fishery in Prince William Sound (PWS) from the ABC specified for the GOA. The SSC did not concur, and believed that insufficient information exists to conclude that pollock in PWS constituted a stock separate from the GOA. The SSC recommended that the State's guideline harvest level (GHL) of 1,800 mt in the PWS pollock fishery be deducted from the total GOA ABC of 131,800 mt, reducing the ABC to 130,000 mt, and that the 130,000 mt ABC be apportioned among GOA regulatory areas based on the biomass distribution throughout the GOA. The Council accepted the SSC's recommendation.

The GOA Plan Team, the SSC, and the Council recommended that total removals of Pacific cod from the GOA not exceed the ABC recommendations for those areas. The Council recommended that the TACs be adjusted downward from the ABCs by amounts that were equal to the state's anticipated GHLs. At its February 9–12 meeting, the Alaska Board of Fisheries set GHLs for the state-managed Pacific cod fishery at 1997 rates in all areas for the 1998 fishing year. Therefore, in order to utilize more fully the Pacific cod resource in the GOA, NMFS is adjusting the Council's recommended Pacific cod TACs upwards in the Central and

Western GOA to levels that account for the reduced state GHLs.

The Council adopted the SSC's ABC recommendations for each species category, including the recommendations that the GOA wide ABC for thornyhead rockfish be divided into the Western, Central, and Eastern regulatory areas and that deepsea sole be included in the deep-water flatfish species assemblage. The Council recommended that a single ABC be adopted for sablefish in the Eastern GOA. In previous years, the Council has recommended that the sablefish ABC in the Eastern GOA be subdivided between the West Yakutat and the Southeast Outside Districts. The Council's recommended ABCs, listed in Table 1, reflect harvest amounts that are less than the specified overfishing amounts (Table 1). The sum of 1998 the ABCs for all groundfish is 548,770 mt, which is larger than the 1997 ABC total of 493,050 mt.

Response to Comments

Five letters of comment raising three issues were received on the 1998 specifications and the EA for the 1998 specifications. These comments are summarized and responded to here or in this section.

Comment 1. The draft EA prepared for the 1998 specifications provides an inadequate basis for a Finding of No Significant Impact. The environmental impact statement (EIS) prepared for the GOA groundfish fishery was drafted 20 years ago. Since that time, the conduct of the fisheries has changed, new information regarding the affected groundfish species exists, and substantial and unanalyzed questions exist regarding the impact of the groundfish fisheries on the GOA ecosystem. NMFS should prepare a supplement to the EIS that fully evaluates the potential impacts of the groundfish TACs on the GOA ecosystem.

Response. NMFS acknowledges that the final EIS prepared for the GOA groundfish fishery is 20 years old. A supplement to the EIS is being prepared and a public review draft is scheduled for release in April 1998. However, NMFS believes that the final EA prepared for the 1998 GOA groundfish specifications, as well as the documents incorporated by reference into the EA, adequately support a Finding of No Significant Impact.

Comment 2. The draft EA does not adequately assess the impact of proposed 1998 fishing levels on endangered Steller sea lions, or on the unlisted species also suffering population declines. The draft EA also neglects to address dramatic increases in catches of pollock in areas designated as critical foraging habitat for Steller sea lions, the increasing effort directed on spawning pollock in the winter months, and the geographic and temporal concentration of fishing in the areas of the GOA where the greatest declines of sea lion, other marine mammals and seabirds have occurred. The EA fails to consider a viable range of alternatives, such as reducing TACs for ecosystem based reasons and time/area restrictions for fisheries.

Response. The issues of concern identified in Comment 2 are addressed within the scope of the final EA, as well as in the documents incorporated by reference into the final EA. Efforts to identify relationships between the Alaska groundfish fisheries and Steller sea lions are ongoing, but any potential linkages remain unclear. Overlaps between Steller sea lion prey and harvested species have been identified, particularly with reference to pollock and Atka mackerel stocks. However, participants in the Alaskan groundfish fisheries are not expected to significantly alter their fishing practices, either spatially or temporally, as a result of the 1998 groundfish specifications, nor operate in any manner that would predictably pose obvious impacts to Steller sea lions.

Comment 3. NMFS needs to more fully incorporate ecosystem level concerns into the TAC setting process. Harvest levels are based on single-species models that fail to adequately consider inter-species linkages and the impact of fish removal on other ecosystem components. The EA does not discuss or analyze the changing community structure of the groundfish complex resulting from disproportionate fishing pressure on a small set of commercially targeted species.

Response. NMFS acknowledges the importance of ecosystem based management for groundfish stocks. The Council's ecosystem Committee, established in 1996, met during the December Council meeting to review the status of groundfish stocks and make recommendations to the Council. Based on ecosystem concerns, the Council has taken a precautionary approach to setting groundfish TACs. The final EA, as well as the documents incorporated by reference into the final EA (especially the Ecosystem Committee's chapter of the 1998 SAFE report), extensively examine ecosystem level impacts of the groundfish fisheries.

1998 Harvest Specifications

1. Specifications of TAC and Reserves

The Council recommended TACs equal to ABCs for pollock in the Central and Western GOA, deep-water flatfish, rex sole, sablefish, northern rockfish, shortraker/rougheye rockfish, pelagic shelf rockfish including the split in the assemblage in the Central GOA between nearshore and offshore species, demersal shelf rockfish, Atka mackerel, and thornyhead rockfish. The Council recommended TACs less than the ABC for pollock in the Eastern GOA, Pacific cod, flathead sole, shallow-water flatfish, arrowtooth, other slope rockfish, and Pacific ocean perch (POP) (Table 1).

The TAC for pollock has increased in the Central and Western GOA from 74,400 mt in 1997 to 119,150 mt in 1998 and remained the same in the Eastern GOA at 5,580 mt. The apportionment of TAC in the Central and Western GOA reflects the current biomass distribution. The Council reduced the AP's recommendation for the 1998 pollock TAC in the Eastern GOA of 10,850 mt to 5,580 mt (equal to the 1997 TAC) in consideration of the large assessment of small sized pollock in the Eastern GOA, reduced assessment of pollock biomass in the West Yakutat district, and projected weak recruitment in future years.

The Council's recommended 1998 TAC for pollock in the combined Western and Central (W/C) Regulatory Areas of the GOA (119,150 mt) is a 60 percent increase from 1997 (74,400 mt). The Council received testimony from the public and the scientific community expressing concern that a substantially higher pollock TAC could lead to localized depletions of pollock stocks, especially during the September 1 season, which may have adverse impacts on Steller sea lion foraging activity. At its February 3 through 7, 1998, meeting, the Council approved a regulatory amendment to the FMP to shift 10 percent of the pollock TAC in the Central and Western Regulatory Areas of the GOA from September 1 to June 1. NMFS is proceeding with rulemaking to shift 10 percent of the pollock TAC in the combined W/C Regulatory Area from the September 1 season to the June 1 season. The objective of this action is to reapportion the pollock TACs so that the projected increases in pollock catches during the September 1 season are reduced relative to what would occur under the current seasonal TAC split. This action will amend the seasonal TACs for pollock TAC displayed in Table 3 to apportion 25 percent to the January 1 season, 35

percent to the June 1 season, and 40 percent to the September 1 season.

The 1998 Pacific cod TAC is affected by the State's developing fishery for Pacific cod in state waters in the Central and Western GOA, as well as PWS. The SSC, AP, and Council recommended that the sum of all Pacific cod removals should not exceed the ABC. The Council recommended that the TAC for the Eastern GOA be lower than the ABC by 390 mt, the amount of the State's proposed GHL for PWS. Anticipating increases in the State's GHLs to 17.5 percent and 20 percent of the ABCs for the Central and Western GOA, the Council recommended that TACs be lowered by 8,590 mt and 5,450 mt respectively. At its February 9 through 12 meeting, the Alaska Board of Fisheries did not approve raising GHLs for the 1998 fishing year above 15 percent of the ABC for the Central and Western GOA. Therefore, in order to more fully utilize the Pacific cod fishery in the Central and Western GOA, NMFS is lowering the TACs for the Central and Western GOA from ABC levels by 7,360 mt and 4,090 mt respectively, the amount of the State's GHLs for these areas.

The Council accepted the AP recommendation that the TACs for flathead sole, shallow-water flatfish, and arrowtooth flounder be set at 1997 TAC levels, which are lower than their respective 1998 ABC specifications. The Council recommended that NMFS reduce the "other rockfish" TAC in the Eastern Regulatory Area from the level recommended by the AP to a level that would provide for bycatch in other groundfish fisheries. NMFS has reviewed bycatch needs for "other rockfish" and has set TACs equal to 1997 levels, which will provide enough for bycatch needs.

The Council reduced the AP's recommendation for the POP TAC in the Eastern GOA from the 1998 ABC of 4,410 mt to the 1997 TAC level of 2,366 mt to reduce the bycatch of shortraker and rougheye rockfish in the POP fishery.

The Council recommended that there be a single TAC for the trawl allocation of sablefish in the Eastern GOA and that the hook-and-line allocation of sablefish TAC in the Eastern GOA continue to be apportioned between the West Yakutat and Southeast Outside Districts. The Council made this recommendation to accommodate the existing trawl gear allocation of sablefish, as well as the expectation that trawl gear will be prohibited in 1998 in the Southeast Outside District under Amendment 41 to the FMP. The Council accepted the AP's recommendation that 1998 TACs for the remaining groundfish fisheries be set at 1998 ABC levels.

On February 3, 1998, NMFS approved amendment 46 to the FMP which removes black rockfish and blue rockfish from the FMP. The purpose of amendment 46 is to allow more localized management of these species by the State. Because amendment 46 has been approved by NMFS, black rockfish and blue rockfish have been removed from the 1998 specifications and the State will manage these species under GHLs established in State regulations. The removal of black rockfish and blue rockfish from the pelagic shelf rockfish assemblage eliminates the nearshore component of this species assemblage in the final specifications. Therefore, the OFL, ABC, and TAC for pelagic shelf rockfish in the GOA have been adjusted accordingly.

The FMP specifies that amounts for the "other species" category are calculated as 5 percent of the combined TAC amounts for target species. The GOA-wide "other species" TAC is 15,580 mt, which is 5 percent of the sum of the combined TAC amounts for the target species. The sum of the TACs for all GOA groundfish is 327,176 mt, which is within the OY range specified by the FMP. The sum of the TACs is higher than the 1997 TAC sum of 282,815 mt.

On February 6, 1998, NMFS approved amendment 39 to the FMP which establishes a new species category for forage fish species. Amendment 39 removes capelin, eulachon, and smelt from the "other species" category in the FMP and moves these species to the new forage fish species category. While this action changes the list of species in the "other species" category, it does not affect the formula for specifying a TAC for the "other species" category which remains 5 percent of the combined TAC amounts for target species. Under amendment 39, ABC and TAC amounts are not specified for forage fish species. Instead, directed fishing for forage fish species will be prohibited and these species will be placed on permanent bycatch status with a maximum retainable bycatch of 2 percent.

NMFS has reviewed the Council's recommended TAC specifications and apportionments and hereby approves these specifications under § 679.20(c)(3)(ii). The 1998 ABCs, TACs, and overfishing levels are shown in Table 1.

TABLE 1.—1998 ABCS, TACS, INITIAL TACS (PACIFIC COD ONLY) AND OVERFISHING LEVELS OF GROUNDFISH FOR THE WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULF-WIDE (GW) DISTRICTS OF THE GULF OF ALASKA

Species	Area [1]	ABC	TAC	Initial TAC (mt)	Overfishing
Pollock [2]					
Shumagin	(610)	29,790	29,790		
Chirikof	(620)	50,045	50,045		
Kodiak	(630)	39,315	39,315		
Subtotal	W/C	119,150	119,150		170,500
	E	10,850	5,580		15,600
Total		130,000	124,730		186,100
Pacific cod [3]	W	27,260	23,170	18,536	
	C	49,080	41,720	33,374	
	E	1,560	1,170	936	
Total		77,900	66,060	52,846	141,000
Flatfish [4] (deep-water)	W	340	340		
	C	3,690	3,690		
	E	3,140	3,140		
Total		7,170	7,170		9,440

TABLE 1.—1998 ABCS, TACS, INITIAL TACS (PACIFIC COD ONLY) AND OVERFISHING LEVELS OF GROUNDFISH FOR THE WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULF-WIDE (GW) DISTRICTS OF THE GULF OF ALASKA—Continued

Species	Area [1]	ABC	TAC	Initial TAC (mt)	Overfishing
Rex sole [4]	W	1,190	1,190		
	C	5,490	5,490		
	E	2,470	2,470		
Total		9,150	9,150		11,920
Flathead sole	W	8,440	2,000		
	C	15,630	5,000		
	E	2,040	2,040		
Total		26,110	9,040		34,010
Flatfish [5] (shallow-water)	W	22,570	4,500		
	C	19,260	12,950		
	E	1,320	1,180		
Total		43,150	18,630		59,540
Arrowtooth flounder	W	33,010	5,000		
	C	149,640	25,000		
	E	25,690	5,000		
Total		208,340	35,000		295,970
Sablefish [6]	W	1,840	1,840		
	C	6,320	6,320		
	E	5,960	298	(Trawl only)	
	WYK		2,175	(H&L only)	
	SEO		3,487	(H&L only)	
Total		14,120	14,120		23,450
Pacific [7] ocean perch	W	1,810	1,810		2,550
	C	6,600	6,600		9,320
	E	4,410	2,366		6,220
Total		12,820	10,776		18,090
Short raker/rougheye [8]	W	160	160		
	C	970	970		
	E	460	460		
Total		1,590	1,590		2,740
Other rock fish [9] [10] [11]	W	20	20		
	C	650	650		
	E	4,590	1,500		
Total		5,260	2,170		7,560
Northern Rockfish [11]	W	840	840		
	C	4,150	4,150		
	E	10	10		
Total		5,000	5,000		9,420
Pelagic shelf rockfish [12]	W	620	620		
	C	3,260	3,260		
	E	1,000	1,000		
Total		4,880	4,880		8,040
Thornyhead rockfish	W	250	250		
	C	710	710		
	E	1,040	1,040		
Total		2,000	2,000		2,840
Demersal shelf rockfish [13]	SEO	560	560		950
Atka mackerel	GW	600	600		6,200
Other [14] species	GW	[15] N/A	15,570		
Total [16]		548,650	327,046		817,270

[1] Regulatory areas and districts are defined at § 679.2.
[2] Pollock is apportioned to three statistical areas in the combined Western/Central Regulatory Area (Table 3), each of which is further divided into three seasonal allowances. In the Eastern Regulatory Area, pollock is not divided into seasonal allowances.
[3] Pacific cod is allocated 90 percent for processing by the inshore component and 10 percent for processing by the offshore component. Component allocations are shown in Table 4.
[4] "Deep water flatfish" means Dover sole, Greenland turbot, and deepsea sole.

[5] "Shallow water flatfish" means flatfish not including "deep water flatfish," flathead sole, rex sole, or arrowtooth flounder.
[6] Sablefish is allocated to trawl and hook-and-line gears (Table 2).
[7] "Pacific ocean perch" means *Sebastes alutus*.
[8] "Shortraker/rougheye rockfish" means *Sebastes borealis* (shortraker) and *S. aleutianus* (rougheye).
[9] "Other rockfish" in the Western and Central Regulatory Areas and in the West Yakutat District means slope rockfish and demersal shelf rockfish. The category "other rockfish" in the Southeast Outside District means Slope rockfish.
[10] "Slope rockfish" means *Sebastes aurora* (aurora), *S. melanostomus* (blackgill), *S. paucispinis* (bocaccio), S. *goodei* (chilipepper), *S. crameri* (darkblotch), *S. elongatus* (greenstriped), *S. variegates* (harlequin), *S. wilsoni* (pygmy), *S. babcocki* (redbanded), S. *proriger* (redstripe), *S. zacentrus* (sharpchin), S. *jordani* (shortbelly), *S. brevispinis* (silvergrey), S. *diploproa* (splitnose), *S. saxicola* (stripetail), *S. miniatus* (vermilion), and S. *reedi* (yellowmouth).
[11] "Northern rockfish" means *Sebastes polyspinis*.
[12] "Pelagic shelf rockfish" means *Sebastes ciliatus* (dusky), *S. entomelas* (widow), and *S. flavidus* (yellowtail).
[13] "Demersal shelf rockfish" means *Sebastes pinniger* (canary), *S. nebulosus* (china), *S. caurinus* (copper), *S. maliger* (quillback), *S.* helvomaculatus (rosethorn), *S. nigrocinctus* (tiger), and *S. ruberrimus* (yelloweye).
[14] "Other species" means sculpins, sharks, skates, squid, and octopus. The TAC for "other species" equals 5 percent of the TACs of target species.
[15] N/A means not applicable.
[16] The total ABC is the sum of the ABCs for target species.

2. Apportionments of Reserves

Regulations implementing the FMP require 20 percent of each TAC for pollock, Pacific cod, flatfish, and the "other species" category be set aside in reserves for possible apportionment at a later date (§ 679.20(b)(2)). For the preceding 10 years, including 1997, NMFS has reapportioned all of the reserves in the final harvest specifications except for Pacific cod in 1997. Except for Pacific cod, NMFS proposed reapportionment of all reserves for 1998 in the proposed GOA groundfish specifications published in the **Federal Register** on December 15, 1997 (62 FR 65644). NMFS received no public comments on the proposed reapportionments. For 1998, NMFS has reapportioned all of the reserves for pollock, flatfish, and "other species". NMFS is retaining the Pacific cod reserves at this time to provide for a management buffer to account for excessive fishing effort and/or incomplete or late catch reporting. In recent years, unpredictable increases in fishing effort and harvests, uncertainty of bycatch needs in other directed fisheries throughout the year, and untimely submission and revision of weekly processing reports have resulted in early and late closures of the Pacific cod fishery. NMFS believes that the retention of Pacific cod reserve amounts to provide for TAC management difficulties later in the year is a conservative approach that will lead to a more orderly fishery and provide greater assurance that Pacific cod bycatch may be retained throughout the year. Specifications of TAC shown in Table 1 reflect apportionment of reserve amounts for pollock, flatfish species, and "other species." Table 1 also lists the initial TACs for Pacific cod, which reflect the withholding of the Pacific cod TAC reserves as follows: 4,634 mt in the Western GOA, 8,346 mt in the Central GOA, and 234 mt in the Eastern GOA.

3. Allocations of the Sablefish TACs to Vessels Using Hook-and-Line and Trawl Gear

Under § 679.20(a)(4)(i) and (ii), sablefish TACs for each of the regulatory areas and districts are allocated to hook-and-line and trawl gear. In the Western and Central Regulatory Areas, 80 percent of each TAC is allocated to hook-and-line gear and 20 percent to trawl gear. In the Eastern Regulatory Area, 95 percent of the TAC is allocated to hook-and-line gear and 5 percent is allocated to trawl gear. The trawl gear allocation in the Eastern Regulatory Area may only be used as bycatch to support directed fisheries for other target species. Sablefish caught in the GOA with gear other than hook-and-line or trawl gear must be treated as prohibited species and may not be retained. In previous years the Council has recommended the trawl allocation of sablefish TAC be subdivided between the West Yakutat and Southeast Outside Districts. However, the Council expects that part of the License Limitation Program (amendment 41 to the FMP) implementing a no trawl zone East of 140° W. long. (the Southeast Outside District) will become effective during the 1998 fishing year. As a result, a single trawl allocation for the Eastern Regulatory Area is established with the expectation that all trawl harvest of sablefish will occur in the West Yakutat District once the Southeast Outside District trawl closure becomes effective. The 1998 management of the Eastern Regulatory Area allocation of sablefish to trawl gear will have no effect on the amount of sablefish allocated to vessels using hook-and-line gear in either the West Yakutat or the Southeast Outside Regulatory Districts. Table 2 shows the allocations of the 1998 sablefish TACs between hook-and-line and trawl gear. In the Eastern Regulatory Area the trawl allocation is not apportioned by district while the hook-and-line allocation is apportioned into the West Yakutat and Southeast Outside Districts.

TABLE 2.—1998 SABLEFISH TAC SPECIFICATIONS IN THE GULF OF ALASKA AND ALLOCATIONS THEREOF TO HOOK-AND-LINE AND TRAWL GEAR

Area/District	TAC	Hook-and-Line apportionment (mt)	Trawl apportionment
Western	1,840	1,472	368
Central	6,320	5,056	1,264
Eastern	5,960	....	298
West Yakutat	....	2,175	....
Southeast Outside	....	3,487	....
Total	14,120	12,190	1,930

4. Apportionments of Pollock TAC Among Regulatory Areas and Seasons, and Allocations for Processing by Inshore and Offshore Components

In the GOA, pollock is apportioned by area and season, and is further allocated for processing by inshore and offshore components. Regulations at § 679.20(a)(5)(ii)(A) require that the TAC for pollock in the combined Western and Central GOA be apportioned in proportion to the distribution of pollock biomass as determined by the most recent NMFS surveys among the Shumagin (610), Chirikof (620), and Kodiak (630) statistical areas. This measure was intended to provide spatial distribution of the pollock harvest as a sea lion protection measure. Each statistical area apportionment is further apportioned into three seasonal allowances of 25, 25, and 50 percent, respectively (§ 679.20(a)(5)(ii)(B)). As established under § 679.23(d)(2), the first, second, and third seasonal allowances are available on January 1, June 1, and September 1, respectively. Within any fishing year, any unharvested amount of any seasonal allowance of pollock TAC is added in equal proportions to all subsequent seasonal allowances, resulting in a sum for each allowance not to exceed 150 percent of the initial seasonal allowance. Similarly, harvests in excess of a seasonal allowance of TAC are deducted in equal proportions from the remaining seasonal allowances of that fishing year. The Eastern Regulatory Area pollock TAC of 5,580 mt is not allocated among smaller areas, or seasons. As mentioned above, at its February 1998 meeting, the Council approved a regulatory amendment to shift 10 percent of the pollock TAC in the Western and Central Regulatory Areas of the GOA from September 1 to June 1. This shift will result in seasonal apportionments of 25 percent of the pollock TAC to the January 1 season, 35 percent to the June 1 season, and 40 percent to the September 1 season. This change was identified during the section 7 consultation on the final 1998 harvest specifications as a reasonable and prudent measure to limit the potential impacts of pollock fishing on sea lions during the critical fall and winter months. NMFS is proceeding with rulemaking to make the regulatory changes, which, if approved, could become effective by the June 1, 1998, fishing season.

Regulations at § 679.20(a)(6)(ii) require that the pollock TAC in all regulatory areas and all seasonal allowances thereof be allocated for processing by the inshore and offshore components. One hundred percent of the pollock TAC in each regulatory area is allocated to vessels catching pollock for processing by the inshore component after subtraction of amounts that are projected by the Administrator, Alaska Region, NMFS (Regional Administrator) to be caught by, or delivered to, the offshore component incidental to directed fishing for other groundfish species. The amount of pollock available for harvest by vessels harvesting pollock for processing by the offshore component is that amount actually taken as bycatch during directed fishing for groundfish species other than pollock, up to the maximum retainable bycatch amounts allowed under regulations at § 679.20(e) and (f). At this time, these bycatch amounts are unknown and will be determined during the fishing year. The distribution of pollock within the combined Western and Central Regulatory Areas is shown in Table 3, except that allocations of pollock for processing by the inshore and offshore component are not shown.

TABLE 3.—DISTRIBUTION OF POLLOCK IN THE WESTERN AND CENTRAL REGULATORY AREAS OF THE GULF OF ALASKA (W/C GOA); BIOMASS DISTRIBUTION, AREA APPORTIONMENTS, AND SEASONAL ALLOWANCES. ABC FOR THE W/C GOA IS 119,150 METRIC TONS (MT). BIOMASS DISTRIBUTION IS BASED ON 1996 SURVEY DATA. TACS ARE EQUAL TO ABC. INSHORE AND OFFSHORE ALLOCATIONS OF POLLOCK ARE NOT SHOWN. ABCS AND TACS ARE ROUNDED TO THE NEAREST 5 MT

Statistical area	Biomass percent	1998 ABC = TAC	Seasonal allowances		
			First	Second (mt)	Third
Shumagin (610)	25	29,790	7,450	7,450	14,890
Chirikof (620)	42	50,045	12,510	12,510	25,025
Kodiak (630)	33	39,315	9,830	9,830	19,655
Total	100	119,150	29,790	29,790	59,570

5. Allocations for Processing of Pacific Cod TAC Between Inshore and Offshore Components

Regulations at § 679.20(a)(6)(iii) require that the TAC apportionment of Pacific cod in all regulatory areas be allocated to vessels catching Pacific cod for processing by the inshore and offshore components. Ninety percent of the Pacific cod TAC in each regulatory area is allocated to vessels catching Pacific cod for processing by the inshore component. The remaining 10 percent of the TAC is allocated to vessels catching Pacific cod for processing by the offshore component. These allocations of the Pacific cod initial TAC for 1998 are shown in Table 4. The Pacific cod reserves are not included in the table.

TABLE 4.—1998 ALLOCATION OF PACIFIC COD INITIAL TAC AMOUNTS IN THE GULF OF ALASKA; ALLOCATIONS FOR PROCESSING BY THE INSHORE AND OFFSHORE COMPONENTS

Regulatory area	Initial TAC	Component allocation	
		Inshore (90%) (mt)	Offshore (10%)
Western	18,536	16,682	1,854
Central	33,374	30,037	3,337
Eastern	936	842	94

TABLE 4.—1998 ALLOCATION OF PACIFIC COD INITIAL TAC AMOUNTS IN THE GULF OF ALASKA; ALLOCATIONS FOR PROCESSING BY THE INSHORE AND OFFSHORE COMPONENTS—Continued

Regulatory area	Initial TAC	Component allocation	
		Inshore (90%) (mt)	Offshore (10%)
Total	52,846	47,561	5,285

6. Pacific Halibut PSC Mortality Limits

Under § 679.21(d), annual Pacific halibut PSC limits are established and apportioned to trawl and hook-and-line gear and may be established for pot gear.

As in 1997, the Council recommended that pot gear, jig gear, and the hook-and-line sablefish fishery be exempted from the non-trawl halibut limit for 1998. The Council recommended these exemptions because of the low halibut bycatch mortality experienced in the pot gear fisheries (14 mt in 1997), the jig gear fisheries (not estimated in 1997), and because of the 1995 implementation of the sablefish and halibut Individual Fishing Quota program, which allows legal-sized halibut to be retained in the sablefish fishery.

As in 1997, the Council recommended a hook-and-line halibut PSC mortality limit of 300 mt. Ten mt of this limit are apportioned to the demersal shelf rockfish fishery. The remainder is seasonally apportioned among the non-sablefish hook-and-line fisheries as shown in Table 5.

The Council continued to recommend a trawl halibut PSC mortality limit of 2,000 mt. The PSC limit has remained unchanged since 1989. Regulations at § 679.21(d)(3)(iii) authorize separate apportionments of the trawl halibut PSC limit between trawl fisheries for deep-water and shallow-water species. Regulations at § 679.21(d)(5) authorize seasonal apportionments of halibut PSC limits.

NMFS concurs with the Council's recommendations. The following types of information as presented in, and summarized from, the current SAFE report, or as otherwise available from NMFS, Alaska Department of Fish and Game, the International Pacific Halibut Commission (IPHC) or public testimony were considered:

(A) Estimated Halibut Bycatch in Prior Years

The best available information on estimated halibut bycatch is based on 1997 observed halibut bycatch rates and NMFS's estimates of groundfish catch. The calculated halibut bycatch mortality by trawl, hook-and-line, and pot gear through December 31, 1997, is 2,011 mt, 217 mt, and 14 mt, respectively, for a total of 2,242 mt.

Halibut bycatch restrictions seasonally constrained trawl gear fisheries throughout 1997. Trawling for the deep-water fishery complex was closed during the first quarter on March 15 (62 FR 13352, March 20, 1997), for the second quarter on April 14 (62 FR 18725, April 17, 1997) and for the third quarter on July 20 (62 FR 39782, July 24, 1997). The shallow-water complex was closed in the second quarter on May 6 (62 FR 25138, May 8, 1997) and in the third quarter on August 11 (62 FR 43485, August 14, 1997). All trawling was closed in the fourth quarter on November 26 (62 FR 63887, December 3, 1997).

The amount of groundfish that trawl gear might have harvested if halibut had not been seasonally limiting in 1997, is unknown.

(B) Expected Changes in Groundfish Stocks

At its December 1997 meeting, the Council adopted higher ABCs for pollock, arrowtooth, pelagic shelf rockfish, and thornyhead rockfish than those established for 1997. The Council adopted lower ABCs for Pacific cod, sablefish, POP, demersal shelf rockfish, and Atka mackerel than those established for 1997. More information on these changes is included in the Final SAFE report and in the Council and SSC minutes.

(C) Expected Changes in Groundfish Catch

The total of the 1998 TACs for the GOA is 327,176 mt, an increase of 15 percent from the 1997 TAC total of 282,815 mt. Those fisheries for which the 1998 TACs are lower than in 1997 are Pacific cod (decreased to 66,060 mt from 69,115 mt), sablefish (decreased to 14,120 mt from 14,520 mt), pelagic shelf rockfish (decreased to 5,000 mt from 5,140 mt), demersal shelf rockfish (decreased to 560 mt from 950 mt), and Atka mackerel (decreased to 600 mt from 1,000 mt). Those species for which the 1998 TACs are higher than in 1997 are pollock (increased to 124,730 mt from 79,980 mt), POP (increased to 10,776 mt from 9,190 mt), thornyhead rockfish (increased to 2,000 mt from 1,700 mt), and other species (increased to 15,450 mt from 13,470 mt).

(D) Current Estimates of Halibut Biomass and Stock Condition

The stock assessment for 1997 conducted by the IPHC indicates that the total exploitable biomass of Pacific halibut in the BSAI and GOA management areas together was 289,216 mt.

In previous years, stock assessments used a catch-age model, which did not take into account that Pacific halibut have undergone a rapid reduction in body growth in recent years, with average weight-at-age now half of what it was 20 years ago. To address problems with the previous stock assessment model, an alternative assessment model was developed which accounts for possible changes in fishing selectivity with age that result from changes in size at age. Exploitable biomass estimates have increased under the new stock assessment. The increase in the estimates is principally due to: (1) selectivity of the different age classes is now better represented; (2) bycatch mortality, along with other removals, is now included directly in the assessment; and (3) information from IPHC hook-and-line surveys is now explicitly incorporated into the assessment. Under previous assessment methods the recruitment trend estimates were in severe decline. Some decline is still predicted; however, the decline is not severe and the strength of more recent year classes is better represented in the assessment model. The IPHC has also reduced the target exploitation rate from 0.3 to 0.2, based on analysis that demonstrated that harvest rates in the range of 0.2–0.25 may achieve close to maximum yields under different recruitment scenarios while having a high probability that the stock level stays within the range of historical abundance. Additional information on the Pacific halibut stock assessment may be found in the SAFE report.

(E) Other Factors

Potential impacts of expected fishing for groundfish on halibut stocks, as well as methods available for, and costs of,

reducing halibut bycatch in the groundfish fisheries were discussed in the proposed 1998 specifications (62 FR 65644, December 15, 1997). That discussion is not repeated here.

7. Fishery and Seasonal Apportionments of the Halibut PSC Limits

Under § 679.21(d)(5), NMFS seasonally apportions the halibut PSC limits based on recommendations from the Council. The FMP requires that the following information be considered by the Council in recommending seasonal apportionments of halibut PSC limits: a. Seasonal distribution of halibut, b. seasonal distribution of target groundfish species relative to halibut distribution, c. expected halibut bycatch needs on a seasonal basis relative to changes in halibut biomass and expected catches of target groundfish species, d. expected bycatch rates on a seasonal basis, e. expected changes in directed groundfish fishing seasons, f. expected actual start of fishing effort, and g. economic effects of establishing seasonal halibut allocations on segments of the target groundfish industry.

The publication of the final 1997 groundfish and PSC specifications (62 FR 8179, February 24, 1997) summarizes Council findings with respect to each of the FMP considerations set forth above. At this time, the Council's findings are unchanged from those set forth for 1997. Pacific halibut PSC limits, and apportionments thereof, are presented in Table 5. Regulations specify that any overages or shortfalls in a seasonal apportionment of a PSC limit will be deducted from or added to the next respective seasonal apportionment within the 1998 season.

TABLE 5.—FINAL 1998 PACIFIC HALIBUT PSC LIMITS, ALLOWANCES, AND APPORTIONMENTS. THE PACIFIC HALIBUT PSC LIMIT FOR HOOK-AND-LINE GEAR IS ALLOCATED TO THE DEMERSAL SHELF ROCKFISH (DSR) FISHERY AND FISHERIES OTHER THAN DSR

Trawl gear		Hook-and-line gear					
		Other than DSR			DSR		
Dates	Amount	Dates	Amount (mt)	Amount (%)	Dates	Amount (mt)	Amount (%)
Jan 1–Mar 31	600 (30%)	Jan 1–May 17	250	(86)	Jan 1–Dec 31	10	(100)
Apr 1–Jun 30	400 (20%)	May 18–Aug 31	15	(5)			
Jul 1–Sep 30	600 (30%)	Sep 1–Dec 31	25	(9)			
Oct 1–Dec 31	400 (20%)						
Total	2,000 (100%)		290	(100)		10	(100)

Regulations at § 679.21(d)(3)(iii) authorize apportionments of the trawl halibut PSC limit to a deep-water species complex, comprised of sablefish, rockfish, deep-water flatfish, rex sole and arrowtooth flounder; and a shallow-water species complex, comprised of pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and other species. The apportionment for these two fishery complexes is presented in Table 6.

TABLE 6.—FINAL 1998 APPORTIONMENT OF PACIFIC HALIBUT PSC TRAWL LIMITS BETWEEN THE DEEP-WATER SPECIES COMPLEX AND THE SHALLOW-WATER SPECIES COMPLEX

Season	Shallow-water	Deep-water (mt)	Total
Jan. 20–Mar. 31	500	100	600
Apr. 1–Jun. 30	100	300	400
Jul. 1–Sep. 30	200	400	600
Jan. 20–Sep. 30	800	800	1,600
Oct. 1–Dec. 31			400
Total			2,000

No apportionment between shallow-water and deep-water fishery complexes during the 4th quarter.

The Council recommended that the revised halibut discard mortality rates recommended by the IPHC be adopted for purposes of monitoring halibut bycatch mortality limits established for the 1998 groundfish fisheries. NMFS concurs with the Council's recommendation. Most of the IPHC's assumed halibut mortality rates were based on an average of mortality rates determined from NMFS observer data collected during 1995 and 1996. For fisheries where a steady trend from 1993 to 1996 towards increasing or decreasing mortality rates was observed, the IPHC recommended using the most recent year's observed rate. Rates for 1995 and 1996 were lacking for some fisheries, so rates from the most recent years were used. For fisheries where insufficient mortality data are available the mortality rate for Pacific cod for that gear type was recommended as a default rate. Most of the assumed mortality rates recommended for 1998 differ slightly from those used in 1997. The recommended rates for hook-and-line targeted fisheries range from 9 to 24 percent. The recommended rates for most trawl targeted fisheries are higher and range from 57 to 73 percent. The recommended rate for all pot targeted fisheries is lower at 14 percent. The 1998 assumed halibut mortality rates are listed in Table 7.

TABLE 7.—1998 ASSUMED PACIFIC HALIBUT MORTALITY RATES FOR VESSELS FISHING IN THE GULF OF ALASKA. LISTED VALUES ARE PERCENT OF HALIBUT BYCATCH ASSUMED TO BE DEAD

Gear and target	Mortality rate (%)
Hook-and-Line:	
Sablefish	24
Pacific cod	12
Rockfish	9
Other species	12
Trawl:	
Midwater pollock	66
Rockfish	68
Shallow-water flatfish	71
Pacific cod	67
Deep-water flatfish	64
Flathead sole	67
Rex sole	69
Bottom pollock	73
Atka mackerel	57
Sablefish	67
Other species	67
Pot	
Pacific cod	14
Other species	14

Classification

This action is authorized under 50 CFR 679.20 and is exempt from review under E.O. 12866.

This action adopts final 1998 harvest specifications for the GOA, and revises associated management measures. Generally, this action does not significantly revise management measures in a manner that would require time to plan or prepare for those revisions. The immediate effectiveness of this action is required to provide consistent management and conservation of fishery resources. Accordingly, the Assistant Administrator for Fisheries, NOAA finds there is good cause to waive the 30-day delayed effectiveness period under 5 U.S.C. 553(d)(3) with respect to such provisions and to the apportionment discussed above. In some cases, the interim specifications in effect would be insufficient to allow directed fisheries to operate during a 30-day delayed effectiveness period, which would result in unnecessary closures and disruption within the fishing industry. In many of these cases, the final specifications will allow the fisheries to continue, thus relieving a restriction. Provisions of a rule relieving a restriction under 5 U.S.C. 553(d)(1) are not subject to a delay in effective date.

A formal section 7 consultation under the Endangered Species Act was initiated for the final 1998 GOA specifications. In a biological opinion dated March 2, 1998, the Assistant Administrator determined that fishing activities conducted under final 1998 GOA specifications are not likely to jeopardize the continued existence of the western population of Steller sea lions and is not likely to destroy or adversely modify designated critical habitat for the species in Alaska. The biological opinion also determined that NMFS must implement reasonable and prudent measures to protect Steller sea lions:

1. NMFS will reapportion 10 percent of the 1998 pollock TAC in the combined W/C Regulatory Area from the September 1 season to the June 1 season. This will result in a 25 percent, 35 percent, and 40 percent distribution of pollock TAC among the January 1, June 1, and September 1 seasons, respectively.

2. Reapportionment will take place before the beginning of the June 1 season.

NMFS prepared an environmental assessment (EA) on the 1998 TAC specifications. The total harvest levels examined in the EA do not exceed the OY. The models used to derive catch levels are both conservative and based on the best scientific information available. The Assistant Administrator concluded that no significant impact on the environment will result from implementation of the 1998 specifications. A copy of the EA is available (see **ADDRESSES**).

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for the Advocacy of the Small Business Administration (SBA) that this final specification will not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. Consequently, no regulatory flexibility analysis has been prepared.

Authority: 16 U.S.C. 773 *et seq.* 16 U.S.C. 1801 *et seq.*, and 3631 *et seq.*

Dated: March 9, 1998.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

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Proposed Rules

Federal Register
Vol. 63, No. 48
Thursday, March 12, 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

Animal and Plant Health Inspection Service

9 CFR Part 145

[Docket No. 97–043–1]

National Poultry Improvement Plan; Special Provisions for Ostrich Breeding Flocks and Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the National Poultry Improvement Plan (the Plan) to provide for the participation of ostrich breeding flocks in the provisions of the Plan. The proposed addition of provisions for ostrich breeding flocks to the Plan was voted on and approved by the voting delegates at the Plan's 1996 National Plan Conference. Adding provisions for ostriches to the Plan would make it possible for the owners of ostrich flocks to voluntarily participate in the Plan's programs for the prevention and control of egg-transmitted, hatchery-disseminated poultry diseases.

DATES: Consideration will be given only to comments received on or before May 11, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–043–1, 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. 97–043–1. 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: Mr. Andrew R. Rhorer, Senior Coordinator, Poultry Improvement Staff, National Poultry Improvement Plan, Veterinary Services, APHIS, USDA, 1498 Klondike Road, Suite 200, Conyers, GA 30094–5104; (770) 922–3496; E-mail: arhorer@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The National Poultry Improvement Plan (referred to below as "the Plan") is a cooperative Federal-State-industry mechanism for controlling certain poultry diseases. The Plan consists of a variety of programs intended to prevent and control egg-transmitted, hatchery-disseminated poultry diseases. Participation in all Plan programs is voluntary, but flocks, hatcheries, and dealers must qualify as U.S. Pullorum-Typhoid Clean before participating in any other Plan program. Also, the regulations in 9 CFR part 82, subpart C, which provide for certain testing, restrictions on movement, and other restrictions on certain chickens, eggs, and other articles due to the presence of *Salmonella enteritidis,* require that no hatching eggs or newly hatched chicks from egg-type chicken breeding flocks may be moved interstate unless they are classified U.S. S. Enteritidis Monitored under the Plan, or they meet the requirements of a State classification plan that the Administrator of the Animal and Plant Health Inspection Service (APHIS) has determined to be equivalent to the Plan, in accordance with 9 CFR 145.23(d).

The Plan identifies States, flocks, hatcheries, and dealers that meet certain disease control standards specified in the Plan's various programs. As a result, customers can buy poultry that has tested clean of certain diseases or that has been produced under disease-prevention conditions.

The regulations in 9 CFR part 145 (referred to below as the regulations) contain the general provisions of the Plan (subpart A, §§ 145.1 through 145.14) and special provisions regarding the participation of breeding flocks of egg-type chickens (subpart B, §§ 145.21 through 145.24), meat-type chickens (subpart C, §§ 145.31 through 145.34), turkeys (subpart D, §§ 145.41 through 145.44), and waterfowl, exhibition poultry, and game birds (subpart E, §§ 145.51 through 145.54). APHIS amends these provisions from time to time to incorporate new scientific information and technologies into the Plan.

In this document, we are proposing to amend the regulations to add a new subpart F to provide for the participation of ostrich breeding flocks and their products. This proposed amendment is consistent with the recommendations approved by the voting delegates to the National Plan Conference that was held from June 30 to July 2, 1996. Participants in the 1996 National Plan Conference represented flockowners, breeders, hatcherymen, and Official State Agencies from all cooperating States. This proposed action is discussed in greater detail below.

Proposed Changes to Existing Regulations

Our proposed addition of ostriches to the provisions of the Plan would entail changes to subpart A of the regulations, "General Provisions," in order to accommodate the inclusion of ostriches and reflect the addition of a new subpart containing special provisions for ostrich breeding flocks and products.

First, we would add ostriches to the definition of *poultry* in § 145.1 to ensure that the general provisions of the regulations would apply, where applicable, to ostriches as well as to the types of poultry already covered by the Plan. With the proposed addition of ostriches, the definition of *poultry* would read: "Domesticated fowl, including chickens, turkeys, ostriches, waterfowl, and game birds, except doves and pigeons, which are bred for the primary purpose of producing eggs or meat."

Under § 145.3(c), "Participation," a Plan participant in any State must participate with all of his poultry hatching egg supply flocks and hatchery operations in that State. To demonstrate compliance with that requirement, the Plan participant must submit a report of each of his breeding flocks within the State to the Official State Agency before the birds in a breeding flock reach 24 weeks of age. Under the provisions of this proposed rule, those participation requirements would also apply to ostrich hatching egg supply flocks and hatchery operations, but with one difference. Because ostriches mature at a slower rate than other poultry, ostrich breeding flocks would have to be reported to the Official State Agency before the birds in the flock reach 20

months of age, rather than 24 weeks of age as required for other poultry.

Paragraph (c) of § 145.5 refers to flocks qualifying for the U.S. Pullorum-Typhoid Clean classification as prescribed in subpart B, C, D, or E of part 145. Because we are proposing to add a subpart F to the regulations for ostriches, and because that new subpart would contain a U.S. Pullorum-Typhoid Clean classification for ostriches, we would amend § 145.5(c) so that it would refer to flocks qualified for the classification "as prescribed in subparts B, C, D, E, or F." A similar reference to flocks meeting the requirements of subpart B, C, D, or E is found in the introductory text of § 145.10. We would also amend that text so that it includes a reference to subpart F.

Section 145.10 contains illustrative designs or emblems that correspond to the Plan's various classifications. The design for the U.S. Pullorum-Typhoid Clean classification is found in § 145.10(b), which currently reads "*U.S. Pullorum-Typhoid Clean*. (See § 145.23(b), § 145.33(b), § 145.43(b), and § 145.53(b).)" Because we are proposing to establish a U.S. Pullorum-Typhoid Clean classification for ostriches, we would amend § 145.10(b) so that it also refers to § 145.63(a), which is the section in proposed subpart F that would contain the requirements of the U.S. Pullorum-Typhoid Clean classification for ostriches. Similarly, § 145.14(a)(5) refers to provisions of § 145.23, § 145.33, § 145.43, and § 145.53 regarding the U.S. Pullorum-Typhoid Clean classification; we would include a reference to § 145.63 in that paragraph as well.

Finally, we would amend the introductory text of § 145.14 by adding a provision regarding the blood testing of ostriches. That text currently states that poultry must be more than 4 months of age when blood tested for an official classification, except for turkeys, which may be blood tested at 12 weeks of age, and game birds, which may be blood tested when more than 4 months of age or upon reaching sexual maturity, whichever comes first. In providing for the blood testing of ostriches, we are proposing to add a similar exception. Specifically, we would provide that ostriches must be more than 12 months of age to be blood tested for an official classification. We would include that exception because ostriches do not reach sexual maturity until approximately a year after hatching. The immature ostriches are kept in a juvenile rearing facility for that first year, so it would not be necessary to test them for an official classification until such time as they were ready to be integrated into a breeding flock.

Proposed New Regulations

As noted above, we would add a new subpart F, "Special Provisions for Ostrich Breeding Flocks and Products," to the regulations to provide for the participation of ostrich breeding flocks in the Plan. The proposed new subpart, which would consist of §§ 145.61 through 145.63, would have the same format as existing subparts B through E, but would contain only the U.S. Pullorum-Typhoid Clean classification. Other official classifications may be added later through other proposed rules if voting delegates at future National Plan Conferences recommend that new classifications for ostrich flocks and products be established.

The proposed new subpart would begin with § 145.61, "Definitions." With one exception, the terms used in proposed subpart F are terms that are used elsewhere in the regulations and are, therefore, already defined in § 145.1. The only term that we are proposing to define in proposed § 145.61 is *ostrich*, which we would define as: "Birds of the species *Struthio camelus*, including all subspecies and subspecies hybrids." That proposed definition would limit the scope of proposed subpart F to ostrich breeding flocks and products and would exclude flocks and products of other ratites such as rheas, emus, and cassowaries.

Proposed § 145.62, "Participation," would take the same form as the "Participation" sections in subparts B through E (§§ 145.22, 145.32, 145.42, and 145.52). The introductory text of the section would state that participating flocks of ostriches, and the eggs and chicks produced from them, would have to comply with the applicable general provisions of subpart A and the special provisions of subpart F. That statement would be included to explain the location of the regulations that would apply to the participation of ostrich flocks in the Plan.

Paragraph (a) would provide that started poultry (young poultry that have been fed and watered and that are less than 6 months old) would lose their identity under Plan terminology—that is, they would not be considered U.S. Pullorum-Typhoid Clean poultry—if they were not maintained under the conditions prescribed in § 145.5(a). Under § 145.5(a), poultry equipment, poultry houses, and the land in their immediate vicinity must be kept in sanitary condition, and the participating flock, its eggs, and all equipment used in connection with the flock must be kept separated from nonparticipating flocks. The sanitation and segregation described in § 145.5(a) are important factors in maintaining the health of flocks, which is why we would require that those conditions be met in order for started poultry to retain its identity under Plan terminology.

Paragraph (b) of proposed § 145.62 would require that the hatching eggs produced by primary breeding flocks must be fumigated or otherwise sanitized and refers the reader to § 147.22, which contains procedures for the sanitation of hatching eggs. This proposed requirement for the sanitation of hatching eggs would serve to help prevent the transmission of egg-disseminated diseases that could be spread by unsanitized eggs.

Proposed § 145.63, "Terminology and classification; flocks and products," would provide the criteria that would have to be met by ostrich breeding flocks to qualify for Plan classifications. The introductory text of § 145.63 would, therefore, explain that participating flocks, and the eggs and baby poultry produced from them, that had met the respective requirements specified in the section could be designated by the terms denoting each classification (e.g., U.S. Pullorum-Typhoid Clean) and their corresponding designs illustrated in § 145.10. (As noted above, although we are proposing to establish only a U.S. Pullorum-Typhoid Clean classification for ostriches, other classifications for ostrich flocks and products could be added in the future.)

Paragraph (a) of proposed § 145.63 would set forth the qualifying criteria for the U.S. Pullorum-Typhoid Clean classification for ostrich flocks. Ostrich flocks seeking the U.S. Pullorum Typhoid Clean classification would demonstrate their freedom from pullorum and typhoid to the Official State Agency in one of two ways, which are explained below. The two sets of criteria that we would include under proposed § 145.63(a) for ostrich flocks are essentially the same as two of the sets of criteria provided for other poultry flocks seeking the U.S. Pullorum-Clean classification in subparts B through E, and would serve the same purpose.

Because blood testing may be used to demonstrate a flock's freedom from pullorum-typhoid, the introductory text of proposed § 145.63(a) would include a statement indicating that the procedures for pullorum-typhoid blood testing are set out in § 145.14(a). Indeed, under proposed § 145.63(a)(1)—the first of the two proposed sets of criteria—a flock could qualify for the U.S. Pullorum-Typhoid Clean classification solely on the basis of blood testing if the flock had

been blood tested within the last 12 months with no reactors, i.e., none of the ostriches in the flock had tested positive for pullorum or typhoid causal agents (*Salmonella pullorum* and *S. gallinarum*, respectively).

Under proposed § 145.63(a)(2), a multiplier breeding flock or primary breeding flock could qualify for the U.S. Pullorum-Typhoid Clean classification if a sample (all ostriches from flocks of 30 birds or fewer, at least 30 ostriches from flocks up to 300 birds, or 10 percent of the ostriches in flocks of more than 300 birds) had been officially tested for pullorum-typhoid within the past 12 months with no reactors. Proposed § 145.63(a)(2) would provide that a bacteriological examination monitoring program could be used in lieu of annual blood testing if the Official State Agency and APHIS approved the alternative monitoring program. If the flock was a multiplier breeding flock located in a State that had been a U.S. Pullorum-Typhoid Clean State for the past 3 years, with no isolations of pullorum or typhoid traceable to a source in that State during that 3-year period, a serological examination monitoring program could also be used in lieu of annual blood testing with the approval of the Official State Agency and APHIS.

As noted previously, the two sets of criteria for the U.S. Pullorum-Typhoid Clean classification for ostrich flocks described above are, for all practical purposes, the same as two of the sets of criteria provided in §§ 145.23(b), 145.33(b), 145.43(b), and 145.53(b) for the U.S. Pullorum-Typhoid Clean classifications for egg-type chicken flocks, meat-type chicken flocks, turkey flocks, and waterfowl, exhibition poultry, and game bird flocks, respectively. Those criteria for demonstrating the freedom of a flock from pullorum and typhoid have been used, and are currently being used, successfully by Plan participants operating under the existing regulations in subparts B through E, and we believe, with the concurrence of the voting delegates to the 1996 National Plan Conference, that those criteria would be appropriate and effective for use in ostrich flocks.

Executive Order 12866 and Regulatory Flexibility Act

This proposed 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 proposed rule would amend the Plan to provide for the participation of ostrich breeding flocks in the provisions of the Plan. Adding provisions for ostriches to the Plan would make it possible for the ostrich flocks to voluntarily participate in the Plan's programs for the prevention and control of egg-transmitted, hatchery-disseminated poultry diseases. The proposed changes contained in this document are based on the recommendations of representatives of member States, hatcheries, dealers, flockowners, and breeders who took part in the Plan's 1996 National Plan Conference.

The Plan serves as a "seal of approval" for egg and poultry producers in the sense that tests and procedures recommended by the Plan are considered optimal for the industry. In all cases, the changes proposed in this document have been generated by the industry itself with the goal of reducing disease risk and increasing product marketability.

According to industry estimates, there were approximately 350,000 to 500,000 ostriches of all ages in the United States in 1995. There were approximately 371,000 ostrich chicks hatched during the same period. In comparison, within the chicken industry, about 8,324 million chicks (broiler and meat type) were hatched by commercial hatcheries, with a total value to the poultry industry was about $17.2 billion in 1995. Thus, the ostrich industry, in comparison to the rest of the poultry industry, is very small.

Although participation in the Plan is voluntary, 99 percent of poultry breeders and hatcheries are participants in the Plan and benefit from various aspects of the program. There are several economic and other advantages that would accrue to ostrich breeders and hatcheries if they could participate in the Plan as a result of this proposed rule.

If the bulk of ostrich producers were to participate in the Plan, their implementation of the Plan's management practices could be expected to raise, or at least maintain, the level of health of ostriches in the United States. Wide membership would also provide a voice for the ostrich industry with regard to regulatory control of infectious poultry diseases that affect ostriches.

Allowing ostrich flocks to participate in the Plan could validate the ostrich industry in the eyes of the public and of the agricultural industry as whole. Participating flockowners could anticipate some potential advancement in the marketability of ostriches and ostrich products throughout the country. To those interested in acquiring ostriches or their products, it would be reassuring to know that these are from breeders and hatcheries that are participants in the Plan. Similarly, overseas importers may be more at ease knowing the ostriches and products are derived from flocks that are part of the Plan. We believe that it would be advantageous to those who raise ostriches and to the poultry industry as a whole, as well as to APHIS, that as many producers of poultry and poultry products, including ostriches, participate in the Plan and follow the standards developed and practiced by Plan participants.

Because participation in any Plan program is voluntary, individuals are likely to continue in the program only as long as the benefits they receive from the program outweigh the costs of their participation. Tests and procedures recommended by the Plan are considered optimal for the industry. Any increased cost to ostrich breeders and hatcheries for the detection and prevention programs would be minor compared to the losses that each producer would bear in case of undetected disease spread. Furthermore, the number of birds required to be tested is small compared to the size of flocks within the industry. The costs of conducting tests, as well as the cost of specific antigens used to detect specific diseases, are modest. For example, the cost of performing Pullorum-Typhoid plate test averages between $0.04 and $0.08 per bird. The cost of Mycoplasma gallisepticum plate test antigen is $0.10 per plate test, while the cost of antigen for each pullorum-typhoid plate test is $0.08. In many States, pullorum testing is provided for free. Although the cost for the laboratory testing of blood samples from ostriches would not differ significantly from the cost of testing blood samples from other poultry, the process of obtaining blood samples from ostriches may require more resources than for other birds. Applying these costs to the small sizes of the ostrich flocks, and comparing the total potential losses that individual producers could incur as a result of the loss of some or all of their flock due to disease, the cost of testing a small number of birds would be minor.

Because participation in the Plan would not be mandatory, it is not clear how many owners of ostriches would join the program. However, there are about 7,380 flockowners, owning on average between 50 and 70 ostriches each, who could potentially join. The potential entry of the ostrich flocks into the Plan would not be expected to

change the supply and demand conditions in the market for poultry of any type, including ostriches; as a result, changes in prices are not anticipated. Finally, since the additional costs would be minor and could be expected to be balanced out by the benefits, we have concluded that the proposed rule would be unlikely to have any significant impact on producers or consumers. Including ostrich flocks in the Plan would not likely result in any significant change in program operations.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

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 proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 97–043–1. Please send a copy of your comments to: (1) Docket No. 97–043–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

This proposed rule would amend the provisions of the Plan to provide for the participation of ostrich breeding flocks and products. This would make it possible for the owners of ostrich flocks to voluntarily participate in the Plan's programs for the prevention and control of egg-transmitted, hatchery-disseminated poultry diseases.

Expanding the Plan to include ostrich breeding flocks and products would necessitate the use of several forms that would enable us to acquire important information concerning sales of ostrich hatching eggs and chicks, flock testing reports, hatchery records, and other data. This information would allow us to monitor the movements of hatching eggs, chicks, and poults; determine the source of a hatchery-disseminated or egg-transmitted disease, and maintain an up-to-date list of program participants.

We are soliciting comments from the public (as well as affected agencies) concerning these proposed information collection and recordkeeping requirements. We need this outside input to help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions that would be used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the proposed information collection 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, e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Flockowners, breeders, hatchery operators, and State veterinary medical officers.

Estimated annual number of respondents: 1.

Estimated annual number of responses per respondent: 5.

Estimated annual number of responses: 5.

Estimated total annual burden on respondent: 5 hours.

Copies of this information collection can be obtained from Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

List of Subjects in 9 CFR Part 145

Animal diseases, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 145 would be amended as follows:

PART 145—NATIONAL POULTRY IMPROVEMENT PLAN

1. The authority citation for part 145 would continue to read as follows:

Authority: 7 U.S.C. 429; 7 CFR 2.22, 2.80, and 371.2(d).

§ 145.1 [Amended]

2. In § 145.1, the definition of *poultry* would be amended by adding the word "ostriches," immediately after the word "turkeys,".

§ 145.3 [Amended]

3. In § 145.3, in the introductory text of paragraph (c), the second sentence would be amended by adding the words "or, in the case of ostriches, before the birds reach 20 months of age" immediately after the word "age".

§ 145.5 [Amended]

4. In § 145.5, paragraph (c) would be amended by removing the words "or E" and adding the words "E, or F" in their place.

§ 145.10 [Amended]

5. In § 145.10, the introductory text of the section would be amended by removing the words "or E" and adding the words "E, or F" in their place, and paragraph (b) would be amended by removing the words "and § 145.53(b)" and adding the words "§ 145.53(b), and § 145.63(a)" in their place.

§ 145.14 [Amended]

6. In § 145.14, in the introductory text of the section, the first sentence would be amended by adding the words ", and ostriches blood tested under subpart F must be more than 12 months of age" immediately after the word "first".

7. In § 145.14, paragraph (a)(5) would be amended by removing the words "and 145.53" and adding the words ", 145.53, and 145.63" in their place.

8. A new subpart F would be added to read as follows:

Subpart F—Special Provisions for Ostrich Breeding Flocks and Products

145.61 Definitions.
145.62 Participation.
145.63 Terminology and classification; flocks and products.

Subpart F—Special Provisions for Ostrich Breeding Flocks and Products

§ 145.61 Definitions.

Except where the context otherwise requires, for the purposes of this subpart the following terms shall be construed, respectively, to mean:

Ostrich. Birds of the species *Struthio camelus*, including all subspecies and subspecies hybrids.

§ 145.62 Participation.

Participating flocks of ostriches, and the eggs and chicks produced from them, shall comply with the applicable general provisions of subpart A of this part and the special provisions of this subpart.

(a) Started poultry shall lose their identity under Plan terminology when not maintained by Plan participants under the conditions prescribed in § 145.5(a).

(b) Hatching eggs produced by primary breeding flocks shall be fumigated or otherwise sanitized (see § 147.22 of this chapter).

§ 145.63 Terminology and classification; flocks and products.

Participating flocks, and the eggs and baby poultry produced from them, that have met the respective requirements specified in this section may be designated by the following terms and their corresponding designs illustrated in § 145.10.

(a) *U.S. Pullorum-Typhoid Clean*. A flock in which freedom from pullorum and typhoid has been demonstrated to the Official State Agency under the criteria in paragraph (a)(1) or (a)(2) of this section. (See § 145.14(a) relating to the official blood test for pullorum-typhoid where applicable.)

(1) It has been officially blood tested within the past 12 months with no reactors.

(2) It is a multiplier or primary breeding flock in which a sample of each bird in flocks of 30 or fewer birds, a minimum of 30 birds from flocks up to 300 birds, or 10 percent of all birds from flocks exceeding 300 birds has been officially tested for pullorum-typhoid within the past 12 months with no reactors: *Provided*, That a bacteriological examination monitoring program for ostriches acceptable to the Official State Agency and approved by the Service may be used in lieu of annual blood testing: *And provided further*, That when a flock is a multiplier breeding flock located in a State which has been deemed to be a U.S. Pullorum-Typhoid Clean State for the past 3 years, and during which time no isolation of pullorum or typhoid has been made that can be traced to a source in that State, a bacteriological examination monitoring program or a serological examination monitoring program acceptable to the Official State Agency and approved by the Service may be used in lieu of annual blood testing.

(b) [*Reserved*]

Done in Washington, DC, this 9th day of March 1998.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–6374 Filed 3–11–98; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[Docket No. PRM–72–4]

Prairie Island Coalition; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; Notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking filed by the Prairie Island Coalition. The petition has been docketed by the Commission and has been assigned Docket No. PRM–72–4. The petitioner requests that NRC undertake rulemaking to examine certain issues addressed in the petition relating to the potential for thermal shock and corrosion in dry cask storage. The petitioner requests that the NRC amend its regulations that govern independent storage of spent nuclear fuel in dry storage casks to define the parameters of acceptable degradation of spent fuel in dry cask storage. The petitioner also requests an amendment to the regulations to define the parameters of retrievability of spent nuclear fuel in dry cask storage and to require licensees to demonstrate safe cask unloading ability before a cask may be used at an Independent Spent Fuel Storage Installation (ISFSI).

DATES: Submit comments by May 26, 1998. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: *Submit comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, *Attention:* Rulemakings and Adjudications staff.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

For a copy of the petition, write: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905 (e-mail: CAG@nrc.gov).

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. *Telephone:* 301–415–7163 or *Toll Free:* 1–800–368–5642 or *E-mail:* DLM1@NRC.GOV.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Regulatory Commission received a petition for rulemaking submitted by George Crocker on behalf of the Prairie Island Coalition (PIC) in the form of a letter and an attached document addressed to L. Joseph Callan, Executive Director for Operations, NRC, dated August 26, 1997. Most of the issues presented in Mr. Crocker's letter and the attached document pertain to a petition filed under 10 CFR 2.206 regarding dry storage cask regulations that has been reviewed by the NRC Office of Nuclear Reactor Regulation (NRR). See 62 FR 53031. The resolution of these issues is presented in a decision published by the Director, NRR (DD–98–02; 2/11/98). This notice pertains to paragraphs 13, 14, and 15 on page 3 of the document attached to the August 26, 1997, letter from PIC. These paragraphs contain a request for rulemaking under 5 U.S.C. 553(e) of the Administrative Procedure Act (APA).

The NRC has determined that the issues presented in paragraphs 13, 14, and 15 of the PIC document constitute a petition for rulemaking under 10 CFR 2.802. Paragraph 13 requests NRC to solicit and review information regarding thermal shock and corrosion inherent in dry cask storage and usage and to define the parameters of degradation of spent nuclear fuel in dry cask storage acceptable under 10 CFR 72.122(h). Paragraph 14 requests NRC to define the parameters of retrievability required

under 10 CFR 72.122(l). Paragraph 15 requests NRC to require demonstration of a safe cask unloading ability before a cask may be used at an ISFSI. These requests do meet the sufficiency requirements for a petition for rulemaking under 10 CFR 2.802. The petition, consisting of paragraphs 13, 14, and 15, has been docketed as PRM–72–4.

As set forth in the petition, the petitioner is the Prairie Island Coalition (PIC), a consortium of environmental, business, citizen, and religious groups, and tribal and urban Indian organizations. PIC is involved in locating and disseminating information regarding dry cask storage of spent nuclear fuel, and opposes Northern States Power Company's (NSP) plans to construct and operate an ISFSI at the Prairie Island Nuclear Generating Station (PI). PIC has participated in various Minnesota and NRC proceedings that pertain to operational and waste issues at the Prairie Island facility.

The NRC is soliciting public comment on the petition for rulemaking submitted by the Prairie Island Coalition that requests the changes to the regulations in 10 CFR part 72 discussed below.

Discussion of the Petition

The petitioner notes that the regulations in 10 CFR Part 72 establish requirements and criteria for spent fuel dry cask storage and usage. The petitioner has requested a rulemaking proceeding to examine issues regarding degradation, retrieval, and unloading of spent nuclear fuel in dry storage casks.

Degradation of Spent Nuclear Fuel

The petitioner requests an amendment of the regulations in 10 CFR part 72 to define the parameters of spent fuel degradation that are acceptable to the NRC under 10 CFR 72.122(h). Section 72.122(h) provides that spent fuel cladding must be protected during storage against degradation or that the fuel must be configured such that degradation will not pose an operational safety concern. The petitioner is concerned about the potential effect of spent fuel degradation on the ability to safely unload a dry storage cask. The petitioner believes that factors such as thermal shock will cause spent fuel to degrade in the course of unloading and expose onsite personnel and the environment to radioactive emissions. The petitioner states that no procedures have been developed to protect operational safety and to assess worker or offsite radiation exposure in such a situation. The petitioner cites a February 25, 1997, letter from Dr. Gail H. Marcus, NRC, to PIC in support of the petition. PIC asserts, based on the letter, that temperature differences between spent fuel and coolant create the potential for thermal shock and spent fuel degradation.

PIC also believes the TN–40 cask is subject to failed welds and to fuel degradation due to cask seal failure as a result of helium gas release. PIC cites as support for the petition a letter dated April 15, 1997, from Dr. Susan Frant Shankman, NRC, to Sierra Nuclear, and contends that cladding degradation during storage is unacceptable because it could lead to future fuel handling and retrievability problems. The petitioner also cites the Safety Analysis Report submitted by NSP for the ISFSI at the PI facility that requires the licensee to replace cask seals to prevent a helium leak and fuel degradation. Copies of the supporting documents referenced above are attached to the petition.

PIC contends that NRC has not adequately addressed the possibility of damage caused by thermal shock when cool water from a storage pool is placed in a cask that contains spent nuclear fuel. The petitioner also contends that NRC had not adequately addressed degradation of spent nuclear fuel due to the loss of helium from failed seals or due to the passage of time.

Retrievability of Spent Nuclear Fuel

The petitioner also requests an amendment to the regulations in 10 CFR Part 72 that govern storage of spent nuclear fuel in dry storage casks to define the parameters of retrievability of spent fuel required by the NRC under 10 CFR 72.122(l). Section 72.122(l) provides that spent fuel storage systems must be designed to allow ready retrievability of the spent fuel for future processing or disposal.

PIC is concerned that the NRC has not taken into account the potential problems that may be encountered in unloading a cask to retrieve spent fuel. In support of its claim, PIC cites an April 16, 1997, memorandum from Jack Roe, NRC, to Cynthia Pederson, NRC Region III, and asserts that this memorandum is evidence that NRC has not taken into account possible problems with retrieval of spent fuel.

The petitioner also cites a study of the TN–24 cask conducted by the Idaho National Engineering Laboratory (INEL) in 1990, which involved opening TN–24 casks that contained canisters of spent fuel assemblies that had been stored for several years. The petitioner contends that the INEL study found the thermal damage so great that some canisters containing spent nuclear fuel could not be retrieved from the cask. The petitioner believes that the INEL study and the cited NRC memorandum, copies of which are attached to the petition, demonstrate that spent nuclear fuel cannot be reliably retrieved from dry storage casks.

Unloading of Spent Nuclear Fuel

Lastly, the petitioner requests an amendment to the regulations to require licensees to demonstrate the ability to unload spent nuclear fuel safely from a dry storage cask before a cask may be used at an ISFSI. The petitioner contends that if a licensee can demonstrate ability to unload spent nuclear fuel safely from a cask in a pool after long-term storage, then the public will have assurance that a spent fuel storage cask can be unloaded.

PIC contends that a cask may need to be unloaded for various reasons. The petitioner notes that Minnesota law in, *In the Matter of Spent Fuel Storage Installation*, 501 N.W.2d 638 (Minn. Ct. App. 1993), requires a licensee to move casks after eight years of temporary storage. The petitioner believes that the 1990 NRC Waste Confidence Decision also contemplates that casks will need to be unloaded before transport to a Federal interim site or repository.

PIC believes that although NRC regulations do not require a licensee to be able to immediately unload a cask, NRC clearly requires a licensee to be able to unload the spent fuel at some point. The petitioner also believes that because in-pool unloading of spent fuel from a dry storage cask that has contained the fuel for a protracted time period has not been completed, there is sufficient reason to require a licensee to demonstrate the ability to actually unload a dry storage cask underwater. PIC states that it would be satisfied if a licensee can demonstrate the ability to unload spent nuclear fuel from a dry storage cask at some reasonable point in time.

The Petitioner's Conclusions

The petitioner has concluded that NRC regulations in 10 CFR Part 72 that govern independent storage of spent nuclear fuel in dry storage casks must be amended. PIC has concluded that thermal shock and associated degradation of spent nuclear fuel during the unloading of dry storage casks has not been adequately addressed in NRC regulations. The petitioner requests an amendment to the regulations to define the parameters of acceptable degradation of spent nuclear fuel in dry storage under 10 CFR 72.122(h).

The petitioner has also concluded that NRC regulations do not adequately

address issues related to the retrieval of spent nuclear fuel from dry storage casks. The petitioner requests an amendment to the regulations to define the parameters of retrievability of spent fuel from dry storage casks required under 10 CFR 72.122(l).

Lastly, the petitioner has concluded that NRC regulations do not adequately address issues pertaining to unloading of spent nuclear fuel from dry storage casks. The petitioner requests an amendment to the regulations to require licensees to demonstrate the ability to unload spent nuclear fuel safely from a dry storage cask before the cask may be used at an ISFSI.

Dated at Rockville, Maryland, this 6th day of March, 1998.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 98–6390 Filed 3–11–98; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–54–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 series airplanes. This proposal would require modification of the aft avionic fan. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of the aft avionic fan due to inadequate cooling airflow through the fan housing, which could result in failure of the avionics equipment.

DATES: Comments must be received by April 13, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–54–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–54–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–54–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on certain Dornier Model 328–100 series airplanes. The LBA advises that it received several reports of failure of the aft avionic fan due to inadequate cooling airflow through the fan housing. This condition, if not corrected, could result in failure of avionics equipment.

Explanation of Relevant Service Information

The manufacturer has issued Dornier Service Bulletin SB–328–21–215, Revision 1, dated June 12, 1997, which describes procedures for modification of the aft avionic fan. Accomplishment of the modification will improve cooling airflow through the fan housing. The LBA classified this service bulletin as mandatory and issued German airworthiness directive 97–158, dated June 19, 1997, in order to assure the airworthiness of these airplanes in Germany.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 50 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 9 work hours per airplane to accomplish the proposed modification, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the modification proposed by this AD on

U.S. operators is estimated to be $27,000, or $540 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Dornier Luftfahrt GMBH: Docket 98–NM–54–AD.

Applicability: Model 328–100 series airplanes, as listed in Dornier Service Bulletin SB–328–21–215, Revision 1, dated June 12, 1997; 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 failure of the aft avionics fan due to inadequate cooling airflow through the fan housing, which could result in failure of the avionics equipment, accomplish the following:

(a) Within 3 months after the effective date of this AD, modify the aft avionic fan in accordance with Dornier Service Bulletin SB–328–21–215, Revision 1, dated June 12, 1997.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

Note 3: The subject of this AD is addressed in German airworthiness directive 97–158, dated June 19, 1997.

Issued in Renton, Washington, on March 5, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–6328 Filed 3–11–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AWP–9]

Proposed Modification of Class D Airspace; Mountain View, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify the Class D surface area at Mountain View, CA, by revising the vertical limit within its current geographic boundary up to, but not including 2,500 feet MSL, excluding the San Jose (SJC) Class C surface area. A review of airspace classification has made this action necessary in order to achieve compliance with criteria stated in FAA Order 7400.2D. The intended effect of this proposal is to ensure that the Class D surface area at Mountain View, CA will be of sufficient size to allow for and contain the safe and efficient handling of operations at Moffett Federal Airfield (NUQ).

DATES: Comments must be received on or before April 13, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 98–AWP–9, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California, 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California, 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Jeri Carson, Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, CA, 90261, telephone (310) 725–6611.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions

presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Individuals wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AWP–9." The postcard will be date/time stamped and returned to the individual. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Airspace Branch, Air Traffic Division, at 1500 Aviation Boulevard, Lawndale, California 90261, both before and Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify the Class D airspace area at Mountain View, CA by revising the vertical limit within its current geographic boundary up to, but not including 2,500 feet MSL, excluding the San Jose (SJC) Class C surface area. A review of airspace classification has made this action necessary in order to achieve compliance with criteria stated in FAA Order 7400.2D. The intended effect of this proposal is to ensure that the Class D surface area at Mountain View, CA will be of sufficient size to allow for and contain the safe and efficient handling of operations at Moffett Federal Airfield (NUQ). Class D airspace designations for airspace areas designated as surface areas for airports are published in Paragraph 5000 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document would be published subsequently in that Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 5000: Class D airspace areas.

* * * * *

AWP CA D—Mountain View, CA [Revised]

Moffett Federal Airfield, CA
(Lat. 37°24′55″ N, long. 122°02′54″ W)
San Jose International airport, CA
(Lat. 37°21′42″ N, long. 121°55′43″ W)
Palo Alto of Santa Clara County Airport, CA
(Lat. 37°27′40″ N, long. 122°06′54″ W)

That airspace extending upward from the surface to but not including 2,500 feet MSL within a 4.3-mile radius of Moffett Federal Airfield, excluding that airspace within the San Jose, CA, Class C airspace area, and excluding the portion within the Palo Alto of Santa Clara County Airport, CA, Class D airspace area during the specific dates and times it is effective. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California, on February 26, 1998.

John G. Clancy,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 98–5923 Filed 3–11–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–62]

Proposed Establishment of Class E Airspace; Martin, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Martin, SD. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 32, has been developed for Martin Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to create controlled airspace with a 6.7-mile radius for Martin Municipal Airport.

DATES: Comments must be received on or before April 24, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 97–AGL–62, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation

Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–AGL–62." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at Martin, SD, to accommodate aircraft executing the proposed GPS Rwy 32 SIAP, at Martin Municipal Airport by creating controlled airspace for the airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL SD E5 Martin, SD [New]

Martin Municipal Airport, SD
(Lat 43°09′56″ N., Long 101°42′46″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7 mile radius of the Martin Municipal Airport.

* * * * *

Issued in Des Plaines, Illinois on February 24, 1998.

Maureen Woods,
Manager, Air Traffic Division.

[FR Doc. 98–6410 Filed 3–11–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–5]

Proposed Modification of Class E Airspace; Milwaukee, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Milwaukee, WI. A VHF Omnidirectional Range (VOR) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 32, has been developed for John H. Batten Field: Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. In addition, a review of the Class E airspace at Milwaukee, WI, determined a modification was required to accommodate rising terrain for diverse departures at General Mitchell International Airport, Waukesha County

Airport, and Lawrence J. Timmerman Airport. This action proposes to increase the radii of the existing controlled airspace for these airports.

DATES: Comments must be received on or before April 24, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–5, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AGL–5." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Milwaukee, WI, to accommodate aircraft executing the proposed VOR Rwy 32 SIAP, at John H. Batten Field by increasing the radius of the existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. In addition, the FAA is considering increasing the radii of the controlled airspace for General Mitchell International Airport, Waukesha County Airport, and Lawrence J. Timmerman Airport because of an airspace review conducted for these airports. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect all traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL WI E5 Milwaukee, WI [Revised]

General Mitchell International Airport, WI
(Lat. 42°56′49″ N., long. 87°53′49″ W.)
John H. Batten Field, WI
(Lat. 42°45′40″ N., long. 87°48′50″ W.)
Waukesha County Airport, WI
(Lat. 43°02′28″ N., long. 88°14′13″ W.)
Lawrence J. Timmerman Airport, WI
(Lat. 43°06′39″ N., long. 88°02′04″ W.)

That airspace extending upward from 700 feet above the surface within an 8.4-mile radius of the General Mitchell International Airport, and within an 8.1-mile radius of John H. Batten Field, and within a 7.5-mile radius of the Waukesha County Airport, and within an 8.9-mile radius of the Lawrence J. Timmerman Airport.

* * * * *

Issued in Des Plaines, Illinois on February 24, 1998.

Maureen Woods,
Manager, Air Traffic Division.

[FR Doc. 98–6407 Filed 3–11–98; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–6]

Proposed Establishment of Class E Airspace; Fergus Falls, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Fergus Falls, MN. Fergus Falls Municipal Airport-Einar Mickelson Field will be served by Federal Aviation Regulations Part 121 (14 CFR Part 121) air carrier operations. Controlled airspace extending upward from the surface is needed to allow the FAA to provide air traffic control services for aircraft executing instrument approach procedures. The airport meets the minimum communications and weather observation and reporting requirements for controlled airspace extending upward from the surface.

DATES: Comments must be received on or before April 24, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–6, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AGL–6." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at Fergus Falls, MN, to accommodate aircraft executing instrument approach procedures at Fergus Falls Municipal Airport-Einar Michelson Field. The proposed introduction of FAR Part 121 (14 CFR Part 121) air carrier operations necessitates creation of this controlled airspace. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas designated as a surface area for an airport are published in paragraph 6002, and Class E airspace areas designated as an extension to a Class D or Class E surface area are published in paragraph 6004, of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

AGL MN E2 Fergus Falls, MN [New]

Fergus Falls Municipal Airport-Einar Mickelson Field, MN

(Lat. 46° 17′ 04″ N., long. 96° 09′ 24″ W.)

Within a 4.1-mile radius of the Fergus Falls Municipal Airport-Einar Mickelson Field.

* * * * *

Paragraph 6004 Class E airspace areas designated as an extension to a Class D or Class E surface area.

* * * * *

AGL MN E4 Fergus Falls, MN [New]

Fergus Falls Municipal Airport-Einar Mickelson Field, MN
(Lat. 46° 17′ 04″ N., long. 96° 09′ 24″ W.)
Fergus Falls VOR/DME
(Lat. 46° 17′ 22″ N., long. 96° 09′ 24″ W.)

That airspace extending upward from the surface within 2.4 miles each side of the Fergus Falls VOR/DME 300° radial extending from the 4.1-mile radius of the Fergus Falls Municipal Airport-Einar Mickelson Field to 7.0 miles northwest of the Fergus Falls VOR/DME, and within 2.4 miles each side of the Fergus Falls VOR/DME 185° radial extending from the 4.1-mile radius of the Fergus Falls Municipal Airport-Einar Mickelson Field to 7.0 miles south of the Fergus Falls VOR/DME.

* * * * *

Issued in Des Plaines, Illinois on February 24, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–6406 Filed 3–11–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–7]

Proposed Establishment of Class E Airspace; Wautoma, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Wautoma, WI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 31, has been developed for Wautoma Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to create controlled airspace with a radius of 8.3 miles for the Wautoma Municipal Airport.

DATES: Comments must be received on or before April 24, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–7, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AGL–7." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at Wautoma, WI, to accommodate aircraft executing the proposed GPS Rwy 31 SIAP, at Wautoma Municipal Airport by creating controlled airspace at the airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal

Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9596, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL WI E5—Wautoma, WI [New]

Wautoma Municipal Airport, WI

(Lat. 44° 02′ 30″ N., long. 89° 18′ 16P W.)

That airspace extending upward from 700 feet above the surface within a 8.3-mile radius of the Wautoma Municipal Airport.

* * * * *

Issued in Des Plaines, Illinois on February 24, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–6405 Filed 3–11–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–8]

Proposed Modification of Class E Airspace; Portland, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Portland, IN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 27, has been developed for Portland Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to add an extension to the east for the existing controlled airspace Portland Municipal Airport.

DATES: Comments must be received on or before April 24, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–8, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AGL–8." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Portland, IN, to accommodate aircraft executing the proposed GPS Rwy 27 SIAP, at Portland Municipal Airport by adding an eastern extension to the existing controlled airspace at the airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and affective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a 'significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposed to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL IN E5 Portland, IN [Revised]

Portland Municipal Airport, IN
(Lat 40° 27′ 03″ N., long. 84° 59′ 24″ W.)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of the Portland Municipal Airport; and within 4.0 miles either side of the 092° bearing from the airport, extending from their 7.0-mile radius to 10.5 miles east of the airport.

* * * * *

Issued in Des Plaines, Illinois on February 24, 1998.

Maureen Woods,
Manager, Air Traffic Division.

[FR Doc. 98–6404 Filed 3–11–98; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–9]

Proposed Modification of Class E Airspace; Millersburg, OH

AGENCY: Federal Aviation Administration (FAA); DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Millersburg, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 27, has been developed for Holmes County Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to increase the radius of the existing controlled airspace Holmes County Airport.

DATES: Comments must be received on or before April 24, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–9, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AGL–9." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (MPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Millersburg, OH, to accommodate aircraft executing the proposed GPS Rwy 27 SIAP, at Holmes County Airport by increasing the radius of the existing controlled airspace at the airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated

impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Millersburg, OH [Revised]

Holmes County Airport, OH

(Lat. 40° 32′ 14″ N., long. 81° 57′ 16″ W.)

That Airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Holmes County Airport; and within 2.7 miles either side of the 085° bearing from the airport, extending from the 6.7-mile radius to 10.5 miles east of the airport, and within 1.8 miles either side of the 236° bearing from the airport, extending from the 6.7-mile radius to 8.0 miles southwest of the airport.

* * * * *

Issued in Des Plaines, Illinois on February 24, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–6403 Filed 3–11–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–10]

Proposed Modification of Class E Airspace; Casey, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Casey, IL. A Nondirectional Beacon (NDB) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 4, Amendment 7, has been developed for Casey Municipal Airport. Controlled airspace extending upward from 700 to 1,200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to increase the radius of the existing controlled airspace.

DATES: Comments must be received on or before April 24, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–10, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AGL–10." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Casey, IL, to accommodate aircraft executing the proposed NDB Rwy 4 SIAP, Amendment 7, at Casey Municipal Airport by increasing the radius of the existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace

designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Calss E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL IL E5 Casey, IL [Revised]

Casey Municipal Airport, IL

(Lat. 39° 18′ 08″ N., long. 88° 00′ 12″ W.)

That airspace extending upward from 700 feet above the surface within a 8.5-mile radius of the Casey Municipal Airport.

* * * * *

Issued in Des Plaines, Illinois on February 24, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–6402 Filed 3–11–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–11]

Proposed Modification of Class E Airspace; Chicago, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Chicago, IL. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 08, has been developed for Lake In the Hills Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to increase the area of the existing controlled airspace for Lake In the Hills Airport.

DATES: Comments must be received on or before April 24, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–11, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AGL–11." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Chicago, IL, to accommodate aircraft executing the proposed GPS Rwy 08 SIAP, at Lake In The Hills Airport by increasing the area of the existing controlled airspace for the airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical

charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL IL E5 Chicago, IL [Revised]

That airspace extending upward from 700 feet above the surface within an area bounded by a line beginning at lat. 42°29′00″ N, long. 88°30′00″ W, to lat. 42°29′00″ N, long. 88°03′00″ W, to lat. 42°40′00″ N, long. 88°03′00″ W, to lat. 42°43′00″ N, long. 87°57′00″ W, to lat. 42°30′00″ N, long. 87°35′00″ W, to lat. 41°55′00″ N, long. 87°19′00″ W, lat. 41°38′00″ N, long. 87°19′00″ W, to lat. 41°33′00″ N, long. 87°10′00″ W, to lat. 41°28′00″ N, long. 87°14′00″ W, to lat. 41°22′00″ N, long. 87°40′00″ W, to lat. 41°22′00″ N, long. 88°30′00″ W, to lat. 41°4′00″ N, long. 88°30′00″ W, to lat. 41°53′00″ N, long. 88°50′00″ W, to lat. 42°01′00″ N, long. 88°50′00″ W, to lat. 42°01′00″ N, long. 88°40′00″ W, to lat. 42°15′00″ N, long. 88°40′00″ W, to lat. 42°15′00″ N, long. 88°30′00″ W, to lat. 42°21′00″ N, long. 88°30′00″ W, to the point of beginning.

* * * * *

Issued in Des Plaines, Illinois on February 24, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–6401 Filed 3–11–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–12]

Proposed Establishment of Class E Airspace; Nauvoo, IL

AGENCY: Federal Aviation Administration

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Nauvoo, IL. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 27, has been developed for Cedar Ridge Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to create controlled airspace with a 6.3-mile radius for Cedar Ridge Airport.

DATES: Comments must be received on or before April 24, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–12, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, view, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AGL–12." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591,

or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at Nauvoo, IL, to accommodate aircraft executing the proposed GPS Rwy 27 SIAP, at Cedar Ridge Airport by creating controlled airspace for the airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 24 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routing matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL IL E5 Nauvoo, IL [New]

Cedar Ridge Airport, IL
(Lat. 40°32′33″ N., long. 91°19′59″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Cedar Ridge Airport, excluding the airspace within the Keokuk, IA, Class E airspace area, and excluding the airspace within the airspace with the Fort Madison, IA, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on February 24, 1998.

Maureen Woods,
Manager, Air Traffic Division.

[FR Doc. 98–6400 Filed 3–11–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–14]

Proposed Establishment of Class E Airspace; Lakeview, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Lakeview, MI. A VHF Omnidirectional Range (VOR) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 09, has been developed for Lakeview Airport-Griffith Field. Controlled airspace extending upward from 700 to 1200 feet above the ground level (AGL) is needed to contain aircraft executing the approach. The action proposes to create controlled airspace with a 7.6-mile radius for this airport.

DATES: Comments must be received on or before April 24, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–14, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AGL–14." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois,

both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at Lakeview, MI, to accommodate aircraft executing the proposed VOR Rwy 09 SIAP, at Lakeview Airport-Griffith Field by creating controlled airspace. Controlled airspace extending upward form 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the Earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in that Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., P. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the Earth.

* * * * *

AGL MI E5 Lakeview, MI [New]

Lakeview Airport-Griffith Field, MI
(Lat. 43° 27′ 08″N., long. 85° 16′ 00″W.)

That airspace extending upward from 700 feet above the surface within an 7.6-mile radius of the Lakeview Airport-Griffith Field.

* * * * *

Issued in Des Plaines, Illinois on February 24, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–6399 Filed 3–11–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–15]

Proposed Establishment of Class E Airspace; Watford City, ND, and Proposed Modification of Class E Airspace; Williston, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Watford City, ND, and modify Class E airspace at Williston, ND. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 30, has been developed for Watford City Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL), and controlled airspace extending upward from 1200 AGL, is needed to contain aircraft executing the approach. This action proposes to create controlled airspace with a radius of 7.4 miles for the Watford City Airport, and enlarge the controlled airspace at Williston, ND, to the southeast to accommodate the approach.

DATES: Comments must be received on or before April 24, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–15, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AGL–15." The postcard will be date/

time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at Watford City, ND, and to modify Class E airspace at Williston, ND, to accommodate aircraft executing the proposed GPS Rwy 30 SIAP, at Watford City Municipal Airport by creating controlled airspace at the airport and modifying controlled airspace nearby the airport. Controlled airspace extending upward from 700 to 1200 feet AGL, and controlled airspace extending upward from 1200 feet AGL, is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 72—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL ND E5 Watford City, ND [New]

Watford City Airport, ND
(Lat. 47° 47′ 45″ N., long. 103° 15′ 13″ W.)

That airspace extending upward form 700 feet above the surface within a 7.4-mile radius of the Watford City Airport.

* * * * *

AGL ND E5 Williston, ND [Revised]

Williston, Sloulin Field International Airport, ND
(Lat 48° 10′ 41″ N., long. 103° 38′ 33″ W.)
Williston VORTAC
(Lat. 48° 15′ 12″ N., long. 103° 45′ 02″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Sloulin Field International Airport, and within 4.0 miles each side of the Williston VORTAC 317° radial, extending from the 6.6-mile radius to 12.7 miles northwest of the airport, and within 4.0 miles each side of the 124° bearing from the airport, extending from the 6.6-mile radius to 13.4 miles southeast of the airport, and within 3.8 miles each side of the Williston VORTAC 135° radial extending from the 6.6-mile radius to 12.3 miles southeast of the airport; and that airspace extending upward from 1,200 feet above the surface within a 21.8-mile radius of the Williston VORTAC extending from the Williston VORTAC 172° radial clockwise to V–430, and within 39.2 miles of the Williston VORTAC extending from V–430 clockwise to V–71, and within a 60.0-mile radius of the Williston VORTAC extending from V–71 clockwise to the 172° radial of the Williston VORTAC, excluding those portions within Federal Airways.

* * * * *

Issued in Des Plaines, Illinois on February 24, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–6398 Filed 3–11–98; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–39724; IC–23059; IA–1704; File No. S7–7–98]

RIN 3235–AH36

Reports To Be Made by Certain Brokers and Dealers

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is soliciting comment on temporary rule amendments to Rule 17a–5 under the Securities Exchange Act of 1934 ("Exchange Act") that would require certain broker-dealers to file with the Commission and their designated examining authority two reports regarding Year 2000 compliance. The reports would enable the Commission staff to report to Congress in 1998 and 1999 regarding the industry's preparedness; supplement the Commission's examination module for Year 2000 issues; help the Commission coordinate self-regulatory organizations on industry-wide testing, implementation, and contingency planning; and help increase broker-dealer awareness that they should be taking specific steps now to prepare for the Year 2000. Additionally, the Commission is issuing an advisory notice on its books and records rules relating to the Year 2000.

DATES: The comment period will expire on April 13, 1998.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments also may be submitted electronically at the following E-mail address: rulecomments@sec.gov. Comment letters should refer to File No. S7–7–98; this file number should be included on the subject line if E-mail is used. All comments received will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Associate Director, 202/942–0132; Peter R. Geraghty, Assistant Director, 202/942–0177; Lester Shapiro, Senior Accountant, 202/942–0757; or Christopher M. Salter, Staff Attorney, 202/942–0148, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 2–2, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

At midnight on December 31, 1999, unless the proper modifications have been made, the program logic in the vast majority of the world's computer systems will start to produce erroneous results because, among other things, the systems will incorrectly read the date "01/01/00" as being the year 1900 or another incorrect date. In addition, systems may fail to detect that the Year 2000 is a leap year. Problems can also arise earlier than January 1, 2000 as dates in the next millennium are entered into non-Year 2000 compliant programs. For example, broker-dealers operating in the U.S. securities industry could experience, among other things: (1) Computer programs not accepting settlement dates in the year 2000; (2) various computational models, such as those used for risk analysis, hedging, and derivatives pricing and trading, being inaccurate or unworkable; and (3) difficulty calculating interest payments and maturity dates for debt instruments that mature after the Year 2000. Problems also may occur due to certain software programs recognizing dates in the Year 1999 or thereafter as something other than the correct date. These problems and other software problems directly or indirectly related to the next millennium are referred to in this release as Year 2000 Problems. Year 2000 Problems could have negative repercussions throughout the world's financial systems because of the extensive interrelationship and information sharing between U.S. broker-dealers and foreign financial firms and markets.[1] Because accurate output from computer programs is vital to a broker-dealer's recordkeeping and operations, broker-dealers currently should be taking steps to avoid Year 2000 Problems.

Accordingly, the Commission is evaluating the ability of participants in the U.S. securities industry to manage and prevent Year 2000 Problems. The Commission has identified six stages involved in the preparation for Year 2000: (1) Awareness of potential Year 2000 Problems; (2) assessment of what steps the broker-dealer must take to avoid Year 2000 Problems; (3) implementation of the steps needed to avoid Year 2000 Problems; (4) internal testing of software designed to avoid Year 2000 Problems; (5) integrated or industry-wide testing of software designed to avoid Year 2000 Problems (including testing with other broker-dealers, other financial institutions, and customers); and (6) implementation of tested software that will avoid Year 2000 Problems. The internal and integrated testing phases are the most difficult phases and ordinarily will require the most resources. At the time of the Commission staff's June 1997 "Year 2000 Report" to Congress, most members of the securities industry were engaged in the assessment and remediation phases of the Year 2000 effort.[2] Additionally, beginning in the third quarter of 1996, the Commission's Office of Compliance Inspections and Examinations has included a Year 2000 examination module in its examinations of broker-dealers that hold or receive customer funds or securities.

[1] International Organization of Securities Commissions, *Statement of the IOSCO Technical Committee on Year 2000* (1997), available at http://www.iosco.org.

[2] At the request of Congressman Dingell, in June 1997, the Commission staff prepared a comprehensive report describing, in part, the extent to which the securities industry is preparing to avoid Year 2000 Problems. The Commission staff will prepare similar reports in 1998 and 1999. *See* Report to the Congress on the Readiness of the United States Securities Industry and Public Companies to Meet the Information Processing Challenges of the Year 2000 (June 1997), available at http://www.sec.gov/news/studies/yr2000.htm. *See also* Testimony of Arthur Levitt, Chairman, U.S. Securities and Exchange Commission, Concerning the Readiness of the United States Securities Industry and Public Companies to Meet the Information Processing Challenges of the Year 2000 Before the Subcomm. on Financial Services and Technology of the Senate Comm. on Banking, Housing, and Urban Affairs (July 30, 1997).

II. Proposed Changes

Rule 17a–5 under the Exchange Act, among other things, sets forth the reports that a registered broker-dealer is required to prepare and file with the Commission.[3] To monitor the steps broker-dealers are taking to manage and avoid Year 2000 Problems, the Commission is proposing temporary amendments to Rule 17a–5. The amendments would require certain registered broker-dealers to file with the Commission and their designated examining authority ("DEA") two reports regarding the broker-dealer's readiness for the Year 2000. The reports will also (1) enable the Commission staff to report to Congress in 1998 and 1999 regarding the industry's preparedness, (2) supplement the Commission's examination module for Year 2000 issues, (3) help the Commission coordinate self-regulatory organizations on industry-wide testing, implementation, and contingency planning, and (4) help increase broker-dealer awareness that they should be taking specific steps now to prepare for the Year 2000.

A. Broker-Dealer's First Report

A temporary paragraph (5) would be added to subparagraph (e) of Rule 17a-5 that would require each registered broker-dealer with a minimum net capital requirement of $100,000 or more[4] as of December 31, 1997 to file with the Commission and its DEA a report describing the broker-dealer's preparation for the Year 2000 and the steps the broker-dealer is taking to avoid Year 2000 Problems ("First Report"). This report would evaluate the broker-dealer's actions regarding the Year 2000 as of December 31, 1997. The Commission is establishing a $100,000 minimum net capital threshold because broker-dealers subject to this minimum net capital level likely have substantial financial exposure to the market and to customers. The $100,000 minimum net capital threshold will require all market makers, dealers, and clearing firms to file a First Report. The Commission also is establishing a $100,000 minimum net capital threshold because broker-dealers below this level likely rely on broker-dealers with minimum capital levels above $100,000 to facilitate their

[3] 17 CFR 240.17a–5.

[4] The Commission estimates that approximately 2,200 of the approximately 7,800 registered broker-dealers would be required to file First and Second Reports because their net capital requirement is $100,000 or greater.

business operations (*i.e.*, clearing functions).

The First Report would be required to be filed no later than 45 days after the Commission adopts the rule amendment. This report would review the broker-dealer's plans and preparations for the Year 2000, including, but not limited to, the areas discussed in paragraph II.C. below.

B. Broker-Dealer's Second Report

Temporary paragraph (e)(5) of Rule 17a-5 also would require each registered broker-dealer with a minimum net capital requirement of $100,000 or more as of its fiscal year-end 1998 to file with the Commission and its DEA a report, as of the date of the broker-dealer's 1998 fiscal year-end financial statements, describing the broker-dealer's progress in addressing Year 2000 Problems ("Second Report"). In addition, each broker-dealer required to file the First Report would be required to file the Second Report regardless of its minimum net capital requirement as of its 1998 fiscal year-end. This is to ensure that the Commission can continue to monitor the progress of broker-dealers who filed the First Report but whose minimum capital requirement may have changed since December 31, 1997. As previously mentioned, the Commission is establishing a $100,000 minimum net capital threshold because broker-dealers subject to this minimum net capital level likely have substantial financial exposure to the market and to customers. The $100,000 minimum net capital threshold will require all market makers, dealers, and clearing firms to file a Second Report.

A broker-dealer would file the Second Report with the Commission and its DEA within 90 days after the date of the broker-dealer's 1998 fiscal year-end financial statements. The Second Report would include, but not be limited to, the areas discussed in paragraph II.C. below.

C. Areas Addressed in First and Second Reports

The First and Second Reports would be required to discuss the following areas:

(1) Whether the board of directors (or similar body) of the broker-dealer has approved and funded plans for preparing and testing the broker-dealer's computer systems for potential computer problems caused by Year 2000 Problems;

(2) Whether the broker-dealer's plans exist in writing and address all of a broker-dealer's major computer systems wherever located throughout the world;

(3) Whether the broker-dealer has assigned existing employees, hired new employees, or engaged third parties to provide assistance in avoiding Year 2000 Problems; and if so, the work that these individuals have performed as of the date of each report;

(4) What is the broker-dealer's current progress on each stage of preparation for potential computer problems caused by Year 2000 Problems. These stages are: (i) awareness of potential Year 2000 Problems; (ii) assessment of what steps the broker-dealer must take to avoid Year 2000 Problems;[5] (iii) implementation of the steps needed to avoid Year 2000 Problems;[6] (iv) internal testing of software designed to avoid Year 2000 Problems, including the number and the nature of the exceptions resulting from such testing; (v) integrated or industry-wide testing of software designed to avoid Year 2000 Problems (including testing with other broker-dealers, other financial institutions, customers, and vendors), including the number and the nature of the exceptions resulting from such testing; and (vi) implementation of tested software that will avoid Year 2000 Problems;

(5) Whether the broker-dealer has written contingency plans in the event that, after December 31, 1999, it has computer problems caused by Year 2000 Problems;[7] and

(6) Identify what levels of the broker-dealer's management are responsible for addressing potential computer problems caused by Year 2000 Problems, including a description of these individuals' responsibilities regarding the Year 2000 and an estimate of the percentage of time that each individual has spent on Year 2000 issues during the preceding twelve month period; in each report, the broker-dealer shall identify a contact person regarding Year 2000 matters.

The list above is the minimum criteria that should be addressed in the First Report. The Second Report should address the above criteria as well as make certain specific assertions described in paragraph II.D. below. A broker-dealer should include any additional material information concerning its management of Year 2000 Problems that will help the Commission and DEAs assess the broker-dealer's readiness for the Year 2000.

D. Independent Public Accountant's Attestation To Be Attached to the Second Report

Broker-dealers would have to file with the Second Report an attestation from an independent public accountant ("Attestation"). The Attestation would take the form of a letter that would give the independent public accountant's opinion whether there is a reasonable basis for the broker-dealer's assertions in the Second Report regarding the areas specified in proposed Rule 17a–5(e)(5)(v)(A) through (G). Specifically, the Second Report would have to include assertions by the broker-dealer responding to the following and the independent public accountant would have to attest to the following:[8]

(1) Whether the broker-dealer has developed written plans for preparing and testing the broker-dealer's computer systems for potential Year 2000 Problems;

(2) Whether the board of directors (or similar body) of the broker-dealer has approved the plans described in (1) above;

(3) Whether a member of the broker-dealer's board of directors (or similar body) is responsible for the execution of the plans described in (1) above:

(4) Whether the broker-dealer's plans described in (1) above address the broker-dealer's domestic and international operations, including the activities of each of the firm's subsidiaries, affiliates, and divisions. (These provisions do not apply to subsidiaries, affiliates, and divisions of the broker-dealer that are regulated by U.S. or foreign regulators other than the Commission);

(5) Whether the broker-dealer has assigned existing employees, hired new

[5] In addition to assessing what steps it should take to make its computer systems Year 2000 compliant, the broker-dealer must communicate with its vendors and significant customers about their Year 2000 readiness.

[6] Broker-dealers should have plans to have all their hardware and software changes in place by December 1998 so that they can conduct testing, including industry-wide testing, during 1999.

[7] Contingency planning should provide for adequate protections to ensure the success of critical systems if interfaces fail or unexpected problems are experienced with operating systems and infrastructure software. In addition, the broker-dealer's contingency plan should provide for the failure of external systems that interact with the broker-dealer's computer systems. For example, the broker-dealer's plan should anticipate the failure of a vendor that services mission critical applications and should provide for the potential that a significant customer experiences difficulty due to Year 2000.

[8] The Commission notes that some of the areas that the broker-dealer would be required to respond to in subsection (v) of the proposed rule overlap with the areas set forth in subsection (iv). The areas addressed in subsection (iv) ask for additional information from the broker-dealer for which the Commission is not seeking an independent public accountant's attestation. The overlap exists because the Commission wants to narrowly tailor the specific assertions on which the independent public accountant must report in the attestation attached to the Second Report.

employees, or engaged third parties to implement the broker-dealer's plans described in (1) above;

(6) Whether the broker-dealer or third party has conducted internal testing, whether such testing is on schedule in accordance with the plan described in paragraph (1) above, and whether the broker-dealer has determined as a result of the internal testing that the firm has modified its software to correct Year 2000 Problems; and

(7) Whether the broker-dealer has conducted external or industry-wide testing, whether such testing is on schedule in accordance with the plan described in paragraph (1) above, and whether the broker-dealer has determined as a result of the external or industry-wide testing that the firm has modified its software to correct Year 2000 Problems.

The Attestation only pertains to the areas discussed above. The Commission does not expect the Attestation to address assertions in the First and Second Report that are not pertinent to proposed Rule 17a–5(e)(5)(v)(A) through (G). The Attestation would be required to be filed with the Second Report.

III. Notice Regarding Current Books and Records Requirements

Rule 17a–3 under the Exchange Act, among other things, requires registered broker-dealers to make and keep current certain books and records relating to the broker-dealer's business.[9] Current books and records are an integral part of the Commission's regulatory program. Among other things, these records help the Commission to assess the financial stability of a broker-dealer and to protect investors. Any broker-dealer whose computer systems have not been modified to address Year 2000 Problems may have records that are inaccurate or not current.

Consequently, the Commission advises broker-dealers that a broker-dealer with computer systems that have Year 2000 Problems may be deemed not to have accurate and current records and be in violation of Rule 17a–3. Accurate and current books and records are essential for a broker-dealer to operate in a safe manner. The Commission also reminds broker-dealers that Rule 17a–11 under the Exchange Act requires every broker-dealer to promptly notify the Commission of its failure to make and keep current books and records.[10]

[9] 17 CFR 240.17a–3.

[10] 17 CFR 240.17a–11(d).

IV. Request for Comments

The Commission solicits commenters' views on any aspect of the proposed temporary amendments to Rule 17a–5. Initially, the Commission seeks comment on whether the term "Year 2000 Problems" should be modified to account for any other specific potential computer problems that may occur directly or indirectly due to the Year 2000. The Commission also seeks comment on the $100,000 net capital threshold, and whether that amount is the appropriate threshold to meet the Commission's objectives as stated in this release. The Commission also seeks comments on the areas that will be addressed in the two reports. For example, should the reports include any additional material information specific to an individual broker-dealer's management of Year 2000 Problems? What additional material information could be included? For example, should broker-dealers report whether their Year 2000 plans are on schedule and, if not, the reasons for the delay? With regard to broker-dealers having to report the number and the nature of the exceptions resulting from internal and integrated or industry-wide testing, should the Commission establish a materiality threshold for determining whether an exception needs to be reported? If so, how should the Commission determine such a threshold? Regarding management responsibility for Year 2000 plans, should a particular officer of the broker-dealer be required to sign the reports?

The Commission believes that the Attestation could be rendered in accordance with the accounting profession's Statements on Standards for Attestation Engagements.[11] The Commission seeks commenters' views on that issue, and on any alternative means that would provide the Commission with an independent assessment of the status and adequacy of a broker-dealer's preparation for possible Year 2000 Problems. Specifically, the Commission seeks commenters' views on whether the Commission's desire to receive an independent public accountant's attestation of a broker-dealer's preparation for possible Year 2000 Problems can be combined with, or would already be part of, independent public accountants' responsibilities, in accordance with Generally Accepted Accounting Principles, to opine on whether a broker-dealer can continue as a going concern.

[11] AICPA Professional Standards, Vol. 1, 2491–2800.

The Commission also seeks comment on whether the Attestation should be prepared by the same independent public accountant who prepares the annual audit of the broker-dealer's 1998 fiscal year-end financial statements. As proposed, the First and Second Reports would be publicly available. The Commission seeks comment on whether certain sections of these reports, or the entire reports, should not be publicly available. Further, the Commission is seeking comment as to whether broker-dealers should be required to file an additional report in 1999 regarding the results of its participation in integrated or industry-wide testing for Year 2000 Problems. Finally, do the concerns discussed in this release apply to other financial institutions over which the Commission has regulatory responsibilities? Should the Commission, for example, require registered investment advisers and investment companies to file reports to the Commission regarding Year 2000 compliance?

V. Costs and Benefits of the Proposed Amendment and Its Effect on Competition

The Commission requests that commenters provide analyses and data relating to costs and benefits associated with the proposal herein. This information will assist the Commission in its evaluation of the costs and benefits that may result from the proposed temporary rule amendment. The Commission understands that the two reports regarding the broker-dealer's readiness for the Year 2000 would impose some costs on broker-dealers.[12] The Commission, however, believes that these costs are necessary and justified in light of the Commission's responsibilities under the federal securities laws. Year 2000 Problems could harm investors. The required reports will inform the Commission of the preparations broker-dealers subject to the temporary rule are taking to avoid Year 2000 Problems. The reporting requirements also may help broker-dealers understand that they should be taking steps now to avoid Year 2000 Problems.

In addition, Section 23(a)(2) of the Exchange Act requires the Commission, in amending rules under the Exchange Act, to consider the anti-competitive effects of such amendments, if any.[13] The Commission has considered the proposed temporary amendment in light

[12] *See infra* Section VII for the Commission's estimate of the costs that the proposed temporary amendment to Rule 17a–5 will impose on affected broker-dealers.

[13] *See* 15 U.S.C. 78w(a)(2).

of the standards cited in Section 23(a)(2), and believes preliminarily that, if adopted, they would not likely impose any significant burden on competition not necessary or appropriate in furtherance of the Exchange Act. Indeed, the Commission believes that the proposed temporary rule amendment is necessary to enable the Commission to monitor the steps broker-dealers are taking to manage and avoid Year 2000 Problems. The Commission solicits commenters' views regarding the effects of the proposed temporary rule amendment on competition, efficiency, and capital formation. The Commission also seeks comments on the proposed temporary rule amendment's impact on the economy on an annual basis, including any empirical data.

VI. Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA"), in accordance with the provisions of the Regulatory Flexibility Act,[14] regarding the rules contained in the proposed temporary amendment to Rule 17a–5 under the Exchange Act. As discussed more fully in the analysis, some of the broker-dealers that the proposed temporary amendment would affect are small entities, as defined by the Commission's rules. The IRFA states that the purpose of the proposed temporary rule is for the Commission to ascertain what steps broker-dealers are taking to avoid Year 2000 Problems.

The IRFA sets forth the statutory authority for the proposed temporary rule. The IRFA also discusses the effect of the proposed rule on broker-dealers that are small entities pursuant to Rule 240.0–10 under the Exchange Act. For purposes of the proposed temporary rule, a small entity is a broker or dealer that: (1) Had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to section 240.17a–5(d) or, if not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated liabilities) of $500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter); and (2) is not affiliated with any person (other than a natural person) that is not a small business or small organization.[15] Based on FOCUS reports filed for the fourth quarter of 1996, there are approximately 7,800 registered broker-dealers, of which approximately 5,300 are small entities. Based on FOCUS data for the fourth quarter of 1996, only about 600 broker-dealers that are small entities would be required to file the two reports on Year 2000 compliance. Thus, by limiting the coverage of the temporary rule amendment to firms with minimum net capital requirements of $100,000 or more, the Commission is exempting over 88% of small entities potentially subject to the temporary rule amendment.

The IRFA states that the proposed temporary rule would impose new reporting requirements because certain broker-dealers would have to file with the Commission and their DEA two reports regarding the broker-dealer's readiness for the Year 2000. The Commission estimates that, on average, a respondent would devote approximately 50 employee hours of preparation time to each report and 20 employee hours of discussion time with the independent public accountant who prepares the Attestation. Additionally, the Commission estimates that, on average, a respondent would pay approximately $25,000 to the independent public accountant for the preparation of the Attestation. The IRFA also states that the proposed temporary rule would not impose any other reporting, recordkeeping, or compliance requirements, and that the Commission believes that there are no rules that duplicate, overlap, or conflict with the proposed temporary rule.

The analysis discusses the various alternatives considered by the Commission in connection with the proposed temporary rule that might minimize the effect on small entities, including: (a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources of small entities; (b) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed temporary rule for small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the rule or any part thereof, for small entities. As noted above, the Commission proposes to exempt over 88% of small entities subject to the temporary rule amendment. The Commission has determined that it is not feasible to further clarify, consolidate, or simplify the proposed temporary rule for small entities. The Commission also believes that it would be inconsistent with the purpose of the rule proposal to exempt additional small entities from the proposed temporary rule or to use performance standards to specify different requirements for small entities. As discussed in the IRFA, small broker-dealers with a minimum net capital requirement of $100,000 or more would be required to file the two reports because they likely are market makers, dealers, or clearing firms with substantial financial exposure to the market and customers.

In the IRFA, the Commission encourages the submission of written comments with respect to any aspect of the IRFA. In particular, the Commission is interested in comments that specify costs of compliance with the proposed temporary rule, and suggest alternatives that would accomplish the objective of proposed temporary rule. A copy of the IRFA may be obtained by contacting Christopher M. Salter, The Office of Risk Management and Control, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 5–1, Washington, D.C. 20549, (202) 942–0772.

VII. Paperwork Reduction Act

The proposed temporary amendment to Rule 17a–5 contains "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995,[16] and the Commission has submitted them to the Office of Management and Budget for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information is: "Proposed Temporary Amendment to Rule 17a–5."

The proposed temporary amendment would require information collection because certain broker-dealers would have to file two reports with the Commission and their DEA. The first report would need to be filed no later than 45 days after the Commission adopts the rule amendments and the second report would need to be filed within 90 days after the date of the broker-dealer's 1998 fiscal year-end financial statements. These reports are necessary for the Commission to monitor the steps broker-dealers are taking to manage and avoid Year 2000 Problems. Based on FOCUS reports filed for the fourth quarter of 1996, there are approximately 7,800 registered broker-dealers, of which approximately 2,200 would be subject to the proposed temporary amendment. The Commission believes that for business reasons prudent broker-dealers should already have developed plans for potential computer problems caused by Year 2000 Problems. Therefore, the Commission believes that broker-dealers subject to the proposed temporary

[14] 5 U.S.C. 603.

[15] 17 CFR 240.0–10(c)(1–2).

[16] 44 U.S.C. 3501 *et seq.*

amendment would incur only those costs necessary to prepare the two reports required by the temporary amendment. While the amount of time needed to comply with the temporary rule amendment would vary from a minimum of 8 hours to a maximum of 100 hours, the Commission estimates that, on average, a respondent would devote approximately 50 employee hours of preparation time to each report and 20 employee hours of discussion time with the independent public accountant who prepares the Attestation. Additionally, a broker-dealer would have to pay additional fees, above the fees it will have to pay for its annual audit, to an independent public accountant for preparation of the Attestation. While the Commission estimates that the amount of additional accounting fees to comply with the temporary rule amendment would vary from a minimum of $5,000 to a maximum of $200,000, the Commission estimates that, on average, a respondent would spend approximately $25,000 for the preparation of the Attestation. It is important to note that these costs would only be incurred once. The temporary rule amendment would not impose a continuing requirement.

A broker-dealer with a minimum net capital requirement of $100,000 or greater as of December 31, 1997 and the date of its 1998 fiscal year-end financial statements would be required to file the reports described in the proposed temporary amendment.[17] As proposed, all reports received by the Commission pursuant to the proposed temporary amendment would not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(ii) Evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms for information technology.

Persons desiring to submit comments on the collection of information requirements should direct them to the following persons: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503; and Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, and refer to File No. S7–7–98. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release in the **Federal Register**, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of this publication.

VIII. Statutory Basis

Pursuant to the Securities Exchange Act of 1934 and particularly Sections 17(a) and 23(a) thereof, 15 U.S.C. 78o(c)(3) and 78w, the Commission proposes to amend § 240.17a–5 of Title 17 of the Code of Federal Regulation in the manner set forth below.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements; Securities.

Text of Proposed Rule Amendment

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

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

1. The general authority citation for Part 240 is revised to read in part as follows:

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

* * * * *

2. By amending § 240.17a–5 by adding paragraph (e)(5) to read as follows:

§ 240.17a–5 Reports to be made by certain brokers and dealers.

* * * * *

(e) *Nature and form of reports.* * * *

(5)(i) For purposes of this section, the term *Year 2000 Problem* shall include any erroneous result caused by:

(A) Computer software incorrectly reading the date "01/01/00" as being the year 1900 or another incorrect year;

(B) Computer software incorrectly identifying a date in the Year 1999 or any year thereafter;

(C) Computer software failing to detect that the Year 2000 is a leap year; or

(D) Any other computer software error that is directly or indirectly caused by paragraph (e)(5)(i)(A), (B), or (C) of this section.

(ii) A broker or dealer with a minimum net capital requirement of $100,000 or greater as of December 31, 1997 shall file a report on the broker-dealer's preparation for Year 2000 Problems. The report shall address each topic in paragraph (e)(5)(iv) of this section. The report shall be filed no later than 45 days after the Commission adopts the rule amendments.

(iii) A broker or dealer with a minimum net capital requirement of $100,000 or greater as of the date of its 1998 fiscal year-end financial statements shall file a report on the broker-dealer's preparation for Year 2000 Problems. In addition, each broker or dealer subject to paragraph (e)(5)(ii) of this section shall file a report pursuant to this paragraph (iii) regardless of its minimum net capital requirement as of the date of its 1998 fiscal year-end financial statements. The report shall address each topic in paragraphs (e)(5)(iv) and (v) of this section. The report shall be filed within 90 days after the date of the broker or dealer's 1998 fiscal year-end financial statements.

(iv) The reports prepared pursuant to paragraphs (e)(5)(ii) and (iii) of this section shall include a discussion of the following: A broker-dealer should include any additional material information in both reports concerning its management of Year 2000 Problems that will help the Commission and the designated examining authorities assess the broker-dealer's readiness for the Year 2000:

(A) Whether the board of directors (or similar body) of the broker-dealer has approved and funded plans for preparing and testing the broker-dealer's computer systems for potential computer problems caused by Year 2000 Problems;

(B) Whether the broker-dealer's plans exist in writing and address all of a broker-dealer's major computer systems wherever located throughout the world;

(C) Whether the broker-dealer has assigned existing employees, hired new

[17] Due to a change in its business, it is possible that a broker-dealer would only have to file one of the reports required by the temporary rule amendment. For example, a firm that has a minimum net capital requirement of $5,000 as of December 31, 1997 and $100,000 as of the date of its 1998 fiscal year financial statements would not have to file the First Report, but it would have to file the Second Report.

employees, or engaged third parties to provide assistance in avoiding Year 2000 Problems; and if so, describe the work that these individuals have performed as of the date of each report;

(D) What is the broker-dealer's current progress on each stage of preparation for potential computer problems caused by Year 2000 Problems. These stages are:

(*1*) Awareness of potential Year 2000 Problems;

(*2*) Assessment of what steps the broker-dealer must take to avoid Year 2000 Problems;

(*3*) Implementation of the steps needed to avoid Year 2000 Problems;

(*4*) Internal testing of software designed to avoid Year 2000 Problems, including the number and the nature of the exceptions resulting from such testing;

(*5*) Integrated or industry-wide testing of software designed to avoid Year 2000 Problems (including testing with other broker-dealers, other financial institutions, and customers), including the number and the nature of the exceptions resulting from such testing; and

(*6*) Implementation of tested software that will avoid Year 2000 Problems;

(E) Whether the broker-dealer has written contingency plans in the event, that after December 31, 1999, it has computer problems caused by Year 2000 Problems; and

(F) Identify what levels of the broker-dealer's management are responsible for addressing potential computer problems caused by Year 2000 Problems, including a description of these individual's responsibilities regarding the Year 2000 and an estimate of the percentage of time that each individual has spent on Year 2000 issues during the preceding twelve month period; in each report, the broker-dealer shall identify a contact person regarding Year 2000 matters.

(v) The report prepared pursuant to paragraph (e)(5)(iii) of this section shall also include assertions in response to the following and an opinion by an independent public accountant attesting to whether there is a reasonable basis for the broker or dealer's assertions in response to the following:

(A) Whether the broker-dealer has developed written plans for preparing and testing the broker-dealer's computer systems for potential Year 2000 Problems;

(B) Whether the board of directors (or similar body) of the broker-dealer has approved the plans described in paragraph (e)(5)(v)(A) of this section;

(C) Whether a member of the broker-dealer's board of directors (or similar body) is responsible for the execution of the plans described in paragraph (e)(5)(v)(A) of this section;

(D) Whether the broker-dealer's plans described in paragraph (e)(5)(v)(A) of this section address the broker-dealer's domestic and international operations, including the activities of each of the firm's subsidiaries, affiliates, and divisions. (Subsidiaries, affiliates, and divisions that are regulated by U.S. or foreign regulators other than the Commission are exempted from these provisions;)

(E) Whether the broker-dealer has assigned existing employees, hired new employees, or engaged third parties to implement the broker-dealer's plans described in paragraph (e)(5)(v)(A) of this section;

(F) Whether the broker-dealer or third party has conducted internal testing, whether such testing is on schedule in accordance with the broker-dealers' plan described in paragraph (e)(5)(v)(A) of this section, and whether the broker-dealer has determined as a result of the internal testing that the firm has modified its software to correct Year 2000 Problems; and

(G) Whether the broker-dealer has conducted external or industry-wide testing, whether such testing is on schedule in accordance with the broker-dealers' plan described in paragraph (e)(5)(v)(A) of this section, and whether the broker-dealer has determined as a result of the external or industry-wide testing that the firm has modified its software to correct Year 2000 Problems.

(vi) The broker or dealer shall file two copies of each report prepared pursuant to paragraphs (e)(5)(ii) and (e)(5)(iii) of this section with the Commission's principal office in Washington, D.C. and one copy of each report with the broker-dealer's designated examining authority. The reports required by paragraphs (e)(5)(ii) and (e)(5)(iii) of this section will be publicly available.

Dated: March 5, 1998.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–6342 Filed 3–12–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–39726; File No. S7–8–98]

RIN 3235–AH42

Year 2000 Readiness Reports To Be Made by Transfer Agents

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is soliciting comment on proposed temporary Rule 17Ad–18 under the Securities Exchange Act of 1934 ("Exchange Act"). The proposed temporary rule would require all non-bank registered transfer agents to file with the Commission at least one report regarding its Year 2000 readiness. The initial report would be due no later than 45 days after the Commission adopts this rule. The follow-up reports would be due on August 31, 1998, and on August 31, 1999. The follow-up reports would include an attestation by an independent public accountant that would give the Independent Public Accountant's opinion whether there is a reasonable basis for the transfer agent's assertions in the reports. Additionally, the Commission is issuing an advisory notice on its transfer agent record retention and recordkeeping requirements relating to the Year 2000.

DATES: The comment period will expire on April 13, 1998.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments also may be submitted electronically at the following E-mail address: rulecomments@sec.gov. Comment letters should refer to File No. S7–8–98 this file number should be included on the subject line if E-mail is used. All comments received will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Jerry W. Carpenter, Assistant Director, 202/942–4187; Thomas C. Etter, Jr., Special Counsel, 202/942–0178; or Jeffrey S. Mooney, Special Counsel, 202/942–4174, Division of Market Regulation, Securities and Exchange Commission,

450 Fifth Street, N.W., Mail Stop 2–2, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

Introduction

At midnight on December 31, 1999, unless the proper modifications have been made, the program logic in the vast majority of the world's computer systems will start to produce erroneous results because, among other things, the systems will incorrectly read the date "01/01/00" as being January 1 of the year 1900 or another incorrect date. In addition, systems may fail to detect that the Year 2000 is a leap year. Problems also can arise earlier than January 1, 2000, as dates in the next millennium are entered into non-Year 2000 compliant programs. Year 2000 Problems could have negative repercussions throughout the world's financial systems because of the extensive interrelationship and information sharing between U.S. and foreign financial firms and markets.[1]

The Commission is evaluating the ability of participants in the U.S. securities industry to manage and prevent Year 2000 Problems. The Commission has identified six stages involved in the preparation for Year 2000: (1) Awareness of potential Year 2000 Problems; (2) assessment of what steps the transfer agent must take to avoid Year 2000 Problems; (3) implementation of the steps needed to avoid Year 2000 Problems; (4) internal testing of software designed to avoid Year 2000 Problems; (5) integrated or industry-wide testing of software designed to avoid Year 2000 Problems (including testing with other financial institutions and customers); and (6) implementation of tested software that will avoid Year 2000 Problems. The internal and integrated testing stages are the most difficult, and likely will require the most resources. At the time of the Commission staff's June 1997 "Year 2000 Report" to Congress, most members of the securities industry were engaged in the assessment and remediation phases of the Year 2000 effort.[2] Additionally, beginning in the third quarter of 1996, the Commission's Office of Compliance Inspections and Examinations has included a Year 2000 examination module in its examinations of broker-dealers and transfer agents.

This release focuses on the readiness of registered transfer agents to address the Year 2000 date change. Because accurate output from computer programs is vital to a transfer agent's operations, every transfer agent currently should be taking steps to avoid Year 2000 Problems. For example, a transfer agent with Year 2000 Problems could experience, among other things, computer programs not accepting securities transfers, and difficulty calculating dividend payment dates for equity securities and interest payment and maturity dates for debt securities.

Transfer agents present special considerations for the Commission because, unlike other entities regulated under the Exchange Act, transfer agents have no self-regulatory organization ("SRO") to assist them and the Commission in achieving Year 2000 objectives.[3] Therefore, information about progress in dealing with Year 2000 Problems must be obtained from the transfer agents. All transfer agents for securities registered pursuant to Section 12 of the Exchange Act must register with the Commission.[4] However, the federal banking agencies are the "appropriate regulatory agency" ("ARA") for registered bank transfer agents.[5] The Commission is coordinating its Year 2000 activities with the banking regulators to achieve complete coverage of transfer agents, but avoid duplication of efforts.

II. Proposed Temporary Rules

To monitor the steps that transfer agents are taking to manage and avoid Year 2000 Problems, the Commission is proposing temporary Exchange Act Rule 17Ad–18.[6] The proposed temporary rule would require registered non-bank transfer agents that do not qualify for an exemption under Rule 17Ad–13 to file with the Commission three reports regarding its Year 2000 readiness. These reports will: (1) Assist the Commission Staff to report to Congress in 1998 and 1999 regarding the industry's preparedness; (2) supplement the Commission's examination module for Year 2000 issues; (3) help the Commission coordinate with SROs on Year 2000 industry-wide testing, implementation, and contingency planning; and (4) increase transfer agent awareness that they should be taking specific steps now to prepare for the Year 2000.

A. Initial Report

Proposed paragraph (a) of temporary Rule 17Ad–18 will require each registered non-bank transfer agent to file with the Commission a report describing the transfer agent's preparations for the Year 2000 and the steps the transfer agent is taking to avoid Year 2000 Problems ("Initial Report"). In this report the transfer agent would evaluate its actions regarding the Year 2000 as of December 31, 1997. This report also would describe the transfer agent's future plans and preparations for the Year 2000, including the areas discussed in paragraph II.C. below. The Initial Report would be required to be filed no later than 45 days after the Commission adopts this rule.

B. Transfer Agent's Follow-Up Reports

Proposed paragraph (b) of temporary Rule 17Ad–18 would require registered transfer agents that do not qualify for an exemption under existing Rule 17Ad–13(d) to file reports with the Commission describing their progress in addressing Year 2000 Problems ("Follow-Up Reports").[7] Generally, Rule 17Ad–13(d) exempts the following transfer agents from the rule's annual reporting requirements: issuer transfer agents; small transfer agents exempt under Rule 17Ad–4(b); and bank transfer agents. Therefore, bank transfer agents would not be required to submit either the Initial Report or the Follow-Up Reports. The Follow-Up Reports would be due on or before August 31, 1998, and on or before August 31, 1999, as of June 30, 1998, and June 30, 1999, respectively. The Follow-Up Reports would include, but not be limited to, the

[1] International Organization of Securities Commissions, *Statement of the IOSCO Technical Committee on Year 2000* (1997), available at http://www.iosco.org.

[2] At the request of Congressman Dingell, in June 1997, the Commission staff prepared a comprehensive report to Congress describing, in part, the extent to which the securities industry is preparing to avoid Year 2000 Problems. *See Report to the Congress on the Readiness of the United States Securities Industry and Public Companies to Meet the Information Processing Challenges of the Year 2000*, (June 1997), available at http://www.sec.gov/news/studies/yr2000.htm. The Commission staff will prepare similar reports in 1998 and 1999. *See also* Testimony of Arthur Levitt, Chairman, U.S. Securities and Exchange Commission, Concerning the Readiness of the United States Securities Industry and Public Companies to Meet the Information Processing Challenges of the Year 2000 Before the Subcomm. on Financial Services and Technology of the Senate Comm. on Banking, Housing, and Urban Affairs (July 30, 1997).

[3] *See* Section 3(a)(26) of the Exchange Act, 15 U.S.C. 78c(a)(26), for the definition of an SRO.

[4] *See* Section 17A(c) of the Exchange Act, 15 U.S.C. 78q–1(c).

[5] *See* Section 3(a)(34)(B) of the Exchange Act, 15 U.S.C. 78c(a)(34)(B), for the definition of ARA. Transfer agents that also are banks have either the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, or the Federal Deposit Insurance Corporation as their ARA. Approximately 1,360 transfer agents are registered with the Commission, and the Commission is the ARA for approximately 740 of them.

[6] Proposed 17 CFR 240.17Ad–18.

[7] 17 CFR 240.17Ad–13(d).

areas discussed in paragraph II.C. below.

Because transfer agents that qualify for the exemption under Rule 17Ad–13(d) are typically small transfer agents or are bank transfer agents subject to the primary supervision of one of the federal banking agencies, the Commission believes that it would be too burdensome to subject these transfer agents to both reporting requirements. The Commission cautions, however, that *all* transfer agents must take necessary and appropriate actions to address Year 2000 Problems.

C. Areas Addressed in Initial and Follow-Up Reports

Both the Initial Report and the Follow-Up Reports would be required to discuss the following areas:

(1) Whether the board of directors (or similar body) of the transfer agent has approved and funded plans for preparing and testing the transfer agent's computer systems for potential computer problems caused by Year 2000 Problems;[8]

(2) Whether the transfer agent's plans exist in writing and address all of the transfer agent's computer systems wherever located throughout the world;

(3) Whether the transfer agent has assigned existing employees, hired new employees, or engaged third parties to provide assistance in avoiding Year 2000 Problems; and if so, the work that these individuals have performed as of the date of each report;

(4) What is the transfer agent's current progress on each stage of preparation for potential computer problems caused by Year 2000 Problems. These stages are: (i) Awareness of potential Year 2000 Problems; (ii) assessment of what steps the transfer agent must take to avoid Year 2000 Problems;[9] (iii) implementation of the steps needed to avoid Year 2000 Problems; (iv) internal testing of software designed to avoid Year 2000 Problems, including the number and the nature of the exceptions resulting from such testing; (v) integrated or industry-wide testing of software designed to avoid Year 2000 Problems (including testing with other transfer agents, other financial institutions, customers, and vendors), including the number and the nature of the exceptions resulting from such testing; and (vi) implementation of tested software that will avoid Year 2000 Problems;[10]

(5) Whether the transfer agent has written contingency plans in the event that, after December 31, 1999, it has computer problems caused by Year 2000 Problems;[11] and

(6) Identify what levels of the transfer agent's management are responsible for addressing potential computer problems caused by Year 2000 Problems, including a description of these individuals' responsibilities regarding the Year 2000 and an estimate of the percentage of time that each individual has spent on Year 2000 issues during the preceding twelve month period; in each report, the transfer agent shall identify a contact person regarding Year 2000 matters.

The list above is the minimum criteria that should be addressed in the Initial Report. The Follow-Up Reports should also address the above criteria as well as make certain specific assertions described in paragraph II.D. below. A transfer agent should include any additional material information concerning its management of Year 2000 Problems that will help the Commission assess the transfer agent's readiness for the Year 2000.

D. Independent Public Accountant's Attestation to be Attached to the Follow-Up Reports

Transfer Agents would have to file with the Follow-Up Reports an attestation from an Independent Public Accountant ("Attestation"). The Attestation would take the form of a letter that would give the Independent Public Accountant's opinion whether there is a reasonable basis for certain of the transfer agent's assertions in the Follow-Up Reports regarding the areas specified in proposed Rule 17Ad–18(d)(1) through (7). Specifically, the Follow-Up Reports will have to include assertions responding to the following and the Independent Public Accountant will have to attest to the following:[12]

(1) Whether the transfer agent has developed written plans for preparing and testing the transfer agent computer systems for potential Year 2000 Problems;

(2) Whether the board of directors (or similar body) of the transfer agent has approved the plans described in (1) above;

(3) Whether a member of the transfer agent's board of directors (or similar body) is responsible for the execution of the plans described in (1) above;

(4) Whether the transfer agent's plans described in (1) above address the transfer agent's domestic and international operations, including the activities of each of the firm's subsidiaries, affiliates, and divisions. (Subsidiaries, affiliates, and divisions that are regulated by U.S. or foreign regulators other than the Commission are exempted from these provisions);

(5) Whether the transfer agent has assigned existing employees, hired new employees, or engaged third parties to implement the transfer agent's plans described in (1) above;

(6) Whether the transfer agent or third party has conducted internal testing, whether such testing is on schedule in accordance with the plan described in paragraph (1) above, and whether the transfer agent has determined as a result of the internal testing that the transfer agent has modified its software to correct Year 2000 Problems; and

(7) Whether the transfer agent has conducted external or industry-wide testing, whether such testing is on schedule in accordance with the plan described in paragraph (1) above, and whether the transfer agent has determined as a result of the external or industry-wide testing that the transfer agent has modified its software to correct Year 2000 Problems.

The Attestation only pertains to the areas discussed above. The Commission does not expect the Attestation to address assertions in the Follow-Up Reports that are not pertinent to proposed Rule 17Ad–18(d)(1) through (7). The Attestation would be required to be filed with the Follow-Up Reports.

III. Notice Regarding Recordkeeping and Record Retention Requirements

Rule 17Ad–6 under the Exchange Act requires every registered transfer agent to make and keep current certain information regarding its operations.[13]

[8] Transfer agents should have all their hardware and software changes in place by December 1998, if not before, so that they can conduct testing, including industry-wide testing, during 1999.

[9] In addition to assessing what steps it should make to its computer systems Year 2000 compliant, the transfer agent must communicate with its vendors and significant customers about their Year 2000 readiness.

[10] In addition, the transfer agent's contingency plan should provide for the failure of external systems that interact with the transfer agent's computer systems. For example, the transfer agent's plan should anticipate the failure of a vendor that services mission critical applications and should provide for the potential that a significant customer experiences difficulty due to Year 2000 Problems.

[11] Contingency planning should provide for adequate protections to ensure the success of critical systems if interfaces fail or unexpected problems are experienced with operating systems and infrastructure software.

[12] The Commission notes that some of the areas that the transfer agent would be required to respond to in subsection (d) of the proposed rule overlap with the areas set forth in subsection (c). The areas addressed in subsection (d) ask for additional information from the transfer agent for which the Commission is not seeking an Independent Public Accountant's attestation. The overlap exists because the Commission wants to narrowly tailor the specific assertions that the Independent Public Accountant must account for in the Attestations attached to the Follow-Up Reports.

[13] 17 CFR 240.17Ad–6.

Exchange Act Rule 17Ad–7 sets forth the time periods for which a transfer agent must retain the records required by Rule 17Ad–6.[14] The required records facilitate the delivery of transfer agent services to issuers and security holders, and are an integral part of the Commission's regulatory program. Among other things, these records help the Commission to assess whether a transfer agent is operating properly. A transfer agent whose computer systems have not been modified to address Year 2000 Problems may have records that as of January 1, 2000, will be inaccurate or not current, and therefore in violation of Rules 17Ad–6 and 17Ad–7. Because a transfer agent essentially is a system of records, a failure to have accurate records could threaten the transfer agent's viability and have serious consequences for issuers and security holders. The Commission advises transfer agents that a failure to adequately prepare for the Year 2000 will not be considered a valid excuse for noncompliance with the requirements of Rules 17Ad–6 and 17Ad–7.[15]

IV. Request for Comments

The Commission solicits commenters' views on any aspect of the proposed temporary Rule 17Ad–18. In particular, the Commission seeks comment on whether the Attestation should be prepared by the same Independent Public Accountant who prepares the annual audit of the transfer agent's 1998 fiscal year-end financial statements. As proposed, the Initial Report and the Follow-Up Reports would be publicly available. The Commission seeks comment on whether certain sections of these reports, or the entire reports, should not be publicly available. The Commission also seeks comment on whether the term "Year 2000 Problems" should be modified to account for any other specific potential computer problems that may occur directly or indirectly due to the Year 2000. Additionally, the Commission seeks comment on the areas that will be addressed in the three reports (*i.e.*, the Initial Report and the two Follow-Up Reports). For example, should the reports include any additional material information specific to an individual transfer agent's management of Year 2000 Problems? If so, what additional material information should be included? For example, should transfer agents report whether their Year 2000 plans are on schedule and, if not, the reasons for the delay? Should the Commission establish a materiality threshold for determining whether the number and the nature of the exceptions resulting from internal and integrated or industry-wide testing needs to be reported? If so, how should the Commission determine such a threshold? Regarding management responsibility for Year 2000 plans, should a particular officer of the transfer agent be required to sign the reports on behalf of the transfer agent?

The Commission believes that the Attestation could be rendered in accordance with the accounting profession's Statements on Standards for Attestation Engagements.[16] The Commission seeks commenters' views on that issue and on any alternative means that would provide the Commission with an independent assessment of the status and adequacy of a transfer agent's preparation for possible Year 2000 Problems. Specifically, the Commission seeks commenters' views on whether the Commission's desire to receive an Independent Public Accountant's attestation of a transfer agent's preparation for possible Year 2000 Problems can be combined with, or would already be part of, the Independent Public Accountants' responsibilities, in accordance with Generally Accepted Accounting Principles, to opine on whether a transfer agent can continue as a going concern.

V. Costs and Benefits of the Proposed Amendment and Its Effect on Competition

The Commission requests that commenters provide analyses and data relating to costs and benefits associated with the proposal herein. This information will assist the Commission in its evaluation of the costs and benefits that may result from the proposed temporary rule. The Commission understands that the reports regarding the transfer agent's readiness for the Year 2000 would impose some costs on transfer agents.[17] Transfer agents are not required to engage additional employees or consultants to prepare the Initial Report. Although transfer agents must engage an accountant to prepare the Attestation to accompany the Follow-Up Reports, the Commission believes that these costs will be significantly outweighed by the benefits the Commission will gain from learning about the preparations transfer agents are taking to avoid Year 2000 Problems. The Commission also believes that reporting requirements will help Transfer agents understand that they should be taking specific steps now to prepare for Year 2000.

In addition, Section 23(a)(2) of the Exchange Act requires the Commission, in amending rules under the Exchange Act, to consider the anti-competitive effects of such rules, if any.[18] The Commission has considered the proposed temporary rule in light of the standards cited in Section 23(a)(2), and believes that, if adopted, they would not likely impose any significant burden on competition not necessary or appropriate in furtherance of the Exchange Act. Indeed, the Commission believes that the proposed temporary rule will enable the Commission to monitor the steps transfer agents are taking to manage and avoid Year 2000 Problems. The Commission solicits commenters' views regarding the effects of the proposed temporary rule on competition, efficiency, and capital formation. The Commission also seeks comments on the proposed rule's potential impact on the economy on an annual basis, including any empirical data.

VI. Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA"), in accordance with the provisions of the Regulatory Flexibility Act,[19] regarding the rules contained in the proposed temporary Rule 17Ad–18 under the Exchange Act. As discussed more fully in the analysis, some of the transfer agents that the proposed temporary rule would affect are small entities, as defined by the Commission's rules.

The IRFA states that the purpose of the proposed temporary rule is for the Commission to monitor that transfer agents are taking proper steps to manage and avoid Year 2000 Problems. Year 2000 Problems could have negative repercussions throughout the world's financial systems because of the extensive interrelationship and information sharing between U.S. and foreign financial firms and markets.[20] For example, a transfer agent with Year 2000 Problems could experience, among other things, computer programs not accepting securities transfers, and

[14] 17 CFR 240.17Ad–7.

[15] *Cf. Lowell H. Listrom*, 50 SEC 883, 887, n.7 (1992).

[16] *American Institute of Certified Public Accountants Professional Standards*, Vol. 1, pp. 2491–2800.

[17] *See infra* Section VII for the Commission's estimate of the costs that proposed temporary Rule 17Ad–18 will impose on affected transfer agents.

[18] *See* 15 U.S.C. § 78w(a)(2).

[19] 5 U.S.C. 603.

[20] International Organization of Securities Commissions, *Statement of the IOSCO Technical Committee on Year 2000* (1997), available at http://www.iosco.org.

difficulty calculating dividend payment dates for equity securities and interest payment and maturity dates for debt securities.

Transfer agents present special consideration for the Commission. This is because transfer agents, unlike other entities regulated under the Exchange Act, have no self-regulatory organization to assist them and the Commission in achieving Year 2000 objectives.[21] Therefore, information about progress in dealing with Year 2000 problems must be obtained from the transfer agents.

The proposed temporary rule would require non-bank registered transfer agents to file with the Commission at least one report regarding its Year 2000 readiness. The initial report would be due no later than 45 days after the Commission adopts this rule. The follow-up reports would be due on August 31, 1998, and on August 31, 1999. The follow-up reports would include an attestation by an Independent Public Accountant that would give the independent public accountant's opinion whether there is a reasonable basis for the transfer agent's assertions in the reports. These reports will: (1) Assist the Commission Staff to report to Congress in 1998 and 1999 regarding the industry's preparedness; (2) supplement the Commission's examination module for Year 2000 issues; (3) help the Commission coordinate with SROs on Year 2000 industry-wide testing, implementation, and contingency planning; and (4) increase transfer agent awareness that they should be taking specific steps now to prepare for the Year 2000.

The IRFA sets forth the statutory authority for the proposed temporary rule. The IRFA also discusses the effect of the proposed rule on transfer agents that are small entities pursuant to Rule 0–10 under the Exchange Act.[22] For purposes of the proposed temporary rule, a small entity is a transfer agent that: (1) Received less than 500 items for transfer and less than 500 items for processing during the preceding six months (or in the time that it has been in business, if shorter); (2) maintained master shareholder files that in the aggregate contained less than 1,000 shareholder accounts or was the named transfer agent for less than 1,000 shareholder accounts at all times during the preceding fiscal year (or in the time that it has been in business, if shorter); and (3) is not affiliated with any person (other than a natural person) that is not a small business or small organization under Rule 0–10. Approximately 413 registered transfer agents qualify as "small entities" for purposes of the RFA and would be subject to the requirements of proposed Rule 17Ad–18.[23]

The IRFA states that the proposed temporary rule would impose new reporting requirements because certain transfer agents would have to file three reports regarding the transfer agents' readiness for the Year 2000 with the Commission. The IRFA also states that the proposed temporary rule would not impose any other reporting, recordkeeping, or compliance requirements and that the Commission believes that no rules duplicate, overlap, or conflict with the proposed temporary rule.

The analysis discusses the various alternatives which were considered by the Commission in connection with the proposed temporary rule, that might minimize the effect on small entities, including: (a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources of small entities; (b) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed temporary rule for small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the rule or any part thereof, for small entities.

Under the proposal, taking into account the burden that would be imposed on small transfer agents, the Commission is proposing that non-bank transfer agents that meet the definition of a small entity be required to submit only the Initial Report, which does not require an Attestation from an Independent Public Accountant. Bank transfer agents, regardless of size, would not be required to submit any reports. Therefore, small entities would be subject to a minimal amount of compliance cost under the proposal. Accordingly, the Commission has determined that it is not feasible to further clarify, consolidate, or simplify the proposed temporary rule for small entities. The Commission also believes that it would be inconsistent with the purpose of the Exchange Act to exempt small entities from the proposed temporary rule any further or to use performance standards to specify different requirements for small entities.

The Commission encourages the submission of written comments with respect to any aspect of the IRFA. Those comments should specify costs of compliance with the proposed temporary rule, and suggest alternatives that would accomplish the objective of proposed temporary rule. A copy of the IRFA may be obtained by contacting Jeffrey S. Mooney, Office of Risk Management and Control, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 5–1, Washington, D.C. 20549, (202) 942–4174.

VII. Paperwork Reduction Act

Proposed temporary Rule 17Ad–18 contains "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995,[24] and the Commission has submitted them to the Office of Management and Budget for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information is: "Proposed Temporary Rule 17Ad–18."

The proposed temporary rule would require information collection because non-bank transfer agents would have to file either one or three reports with the Commission, depending primarily on their size. The initial report would need to be filed no later than 45 days after the Commission adopts this rule. Transfer agents that do not qualify for an exemption under existing Rule 17Ad–13(d) would file follow-up reports with an Independent Public Accountant's attestation and subsequent accountant's reports on or before August 31, 1998, and August 31, 1999, as of June 30, 1998, and June 30, 1999, respectively. Generally, Rule 17Ad–13(d) exempts small transfer agents, issuer transfer agents, and bank transfer agents. Therefore, bank transfer agents would not be required to submit the initial report or the follow-up reports. These reports are necessary for the Commission to monitor the steps transfer agents are taking to manage and avoid Year 2000 Problems. While the amount of time needed to comply with the temporary rule will vary from a minimum of 8 hours to a maximum of 150 hours, the Commission estimates that, on average, each respondent will devote approximately 50 employee hours of preparation time to each report and 30 employees hours of discussion time with the Independent Public Accountant who prepares the Attestation. Additionally, a transfer agent would have to pay additional fees for preparation of the Attestation. While the Commission estimates that the amount of additional accounting fees to comply with the rule amendment would

[21] *See* Section 3(a)(26) of the Exchange Act, 15 U.S.C. § 78c(a)(26), for the definition of an SRO.

[22] 17 CFR 240.0–10.

[23] *See infra* Section VII, the Commission estimates that, on average, small transfer agents will incur 50 hours of employee time to complete the initial report.

[24] 44 U.S.C. § 3501 *et seq.*

vary from a minimum of $5,000 to a maximum of $200,000, the Commission estimates that, on average, a respondent would spend approximately $25,000 for the preparation of each Attestation. Although, there are approximately 1,360 transfer agents registered with the Commission, the Commission is the ARA for approximately 740 of them. All of these non-bank transfer agents would be required to file the initial report described in the proposed temporary rule. However, only non-bank transfer agents that are not (1) Small transfer agents or (2) issuer transfer agents would be required to file the follow-up reports. Therefore, the Commission estimates that approximately 330 transfer agents would be required to submit the follow-up reports.

As proposed, all reports filed under the temporary rule would not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Pursuant to 44 U.S.C. § 3506(c)(2)(B), the Commission solicits comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(ii) Evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms for information technology.

Persons desiring to submit comments on the collection of information requirements should direct them to the following persons: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503; and Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, and refer to File No. S7–8–98. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release in the **Federal Register**, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of this publication.

VIII. Statutory Basis

Pursuant to the Securities Exchange Act of 1934 and particularly Sections 17(a), 17A(d), and 23(a) thereof, 15 U.S.C. 78q(a), 78q–1(d) and 78w(a), the Commission proposes to adopt § 240.17Ad–18 of Title 17 of the Code of Federal Regulation in the manner set forth below.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements; Securities.

Text of Proposed Amendment

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

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

1. The general authority citation for Part 240 is revised to read in part as follows:

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

* * * * *

2. By adding § 240.17Ad–18 to read as follows:

§ 240.17Ad–18 Year 2000 Reports to be made by certain transfer agents.

(a) Each registered transfer agent, except for those transfer agents whose appropriate regulatory agency is the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation, must file a report with the Commission describing the transfer agent's preparation for Year 2000 Problems. The report shall address each topic in paragraph (c) of this section. The report shall be filed no later than 45 days after the Commission adopts this section.

(b) Each registered transfer agent, except for those transfer agents exempt under paragraph (d) of § 240.17Ad–13, must file with the Commission follow-up reports on the transfer agent's preparations for Year 2000. The reports must be filed on or before August 31, 1998, and August 31, 1999, as of June 30, 1998, and June 30, 1999, respectively.

(c) The reports prepared pursuant to paragraphs (a) and (b) of this section shall include a discussion of the following: A transfer agent should include any additional material information in both reports concerning its management of Year 2000 Problems that will help the Commission assess the transfer agent's readiness for the Year 2000.

(1) Whether the board of directors (or similar body) of the transfer agent has approved and funded plans for preparing and testing the transfer agent's computer systems for potential computer problems caused by Year 2000 Problems;

(2) Whether the transfer agent's plans exist in writing and address all of the transfer agent's major computer systems wherever located throughout the world;

(3) Whether the transfer agent has assigned existing employees, hired new employees, or engaged third parties to provide assistance in avoiding Year 2000 Problems; and if so, the work that these individuals have performed as of the date of each report;

(4) What is the transfer agent's current progress on each stage of preparation for potential computer problems caused by Year 2000 Problems. These stages are:

(i) Awareness of potential Year 2000 Problems;

(ii) Assessment of what steps the transfer agent must take to avoid Year 2000 Problems;

(iii) Implementation of the steps needed to avoid Year 2000 Problems;

(iv) Internal testing of software designed to avoid Year 2000 Problems, including the number and the nature of the exceptions resulting from such testing;

(v) Integrated or industry-wide testing of software designed to avoid Year 2000 Problems (including testing with other transfer agents, other financial institutions, and customers), including the number and the nature of the exceptions resulting from such testing; and

(vi) Implementation of tested software that will avoid Year 2000 Problems;

(5) Whether the transfer agent has written contingency plans in the event that, after December 31, 1999, it has computer problems caused by Year 2000 Problems; and

(6) Identify what levels of the transfer agent's management are responsible for addressing potential computer problems caused by Year 2000 Problems, including a description of these individual's responsibilities regarding the Year 2000 and an estimate of the percentage of time that each individual has spent on Year 2000 issues during the preceding twelve month period; in each report, the transfer agent shall identify a contact person regarding Year 2000 matters.

(d) Each report prepared pursuant to paragraph (b) of this section shall also

include assertions in response to the following and an opinion by an independent public accountant attesting to whether there is a reasonable basis for the transfer agent's assertions in response to the following:

(1) Whether the transfer agent has developed written plans for preparing and testing the transfer agent computer systems for potential Year 2000 Problems;

(2) Whether the board of directors (or similar body) of the transfer agent has approved the plans described in paragraph (d)(1) of this section;

(3) Whether a member of the transfer agent's board of directors (or similar body) is responsible for the execution of the plans described in paragraph (d)(1) of this section;

(4) Whether the transfer agent's plans described in paragraph (d)(1) of this section address the transfer agent's domestic and international operations, including the activities of each of the firm's subsidiaries, affiliates, and divisions; (Subsidiaries, affiliates, and divisions that are regulated by U.S. or foreign regulators other than the Commission are exempted from these provisions.)

(5) Whether the transfer agent has assigned existing employees, hired new employees, or engaged third parties to implement the transfer agent's plans described in paragraph (d)(1) of this section;

(6) Whether the transfer agent or third party has conducted internal testing, whether such testing is on schedule in accordance with the plan described in paragraph (d)(1) of this section, and whether the transfer agent has determined as a result of the internal testing that the transfer agent has modified its software to correct Year 2000 Problems; and

(7) Whether the transfer agent has conducted external or industry-wide testing, whether such testing is on schedule in accordance with the plan described in paragraph (d)(1) of this section, and whether the transfer agent has determined as a result of the external or industry-wide testing that the transfer agent has modified its software to correct Year 2000 Problems.

(e) The transfer agent shall file two copies of each report prepared pursuant to paragraphs (a) and (b) of this section with the Commission's principal office in Washington, D.C. The reports required by paragraphs (a) and (b) will be publicly available.

(f) For purposes of this section, the term Year 2000 Problem shall include any erroneous result caused by:

(1) Computer software incorrectly reading the date "01/01/00" as being the year 1900 or another incorrect year;

(2) Computer software incorrectly identifying a date in the Year 1999 or any year thereafter;

(3) Computer software failing to detect that the Year 2000 is a leap year; or

(4) Any other computer software error that is directly or indirectly caused by paragraph (f)(1), (2), or (3) of this section.

Dated: March 5, 1998.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–6341 Filed 3–11–98; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 414

RIN 1006–AA40

Public Meeting on Proposed Rule and Draft Programmatic Environmental Assessment for Offstream Storage of Colorado River Water and Interstate Redemption of Storage Credits in the Lower Division States

AGENCY: Bureau of Reclamation, Interior.

ACTION: Proposed rule; public meeting.

SUMMARY: The Bureau of Reclamation (Reclamation) published a notice of proposed rulemaking on December 31, 1997 (62 FR 68491), which included the text of a proposed rule titled, "Offstream Storage of Colorado River Water and Interstate Redemption of Storage Credits in the Lower Division States." Reclamation also published a notice of availability of a draft programmatic environmental assessment on December 31, 1997 (62 FR 68465).

DATES: The public meeting will be held on March 27, 1998, at 2 p.m., Ontario, California.

ADDRESSES: The public meeting will be held at the Marriott Hotel Airport, 2200 East Holt Boulevard, Ontario, California.

FOR FURTHER INFORMATION CONTACT: Any person with questions concerning the public meeting can contact Mr. Dale Ensminger at telephone (702) 293–8659 or fax (702) 293–8402.

SUPPLEMENTARY INFORMATION: This public meeting will be conducted as an open house where Reclamation will discuss and answer questions from the public on various aspects of its proposed rule and draft programmatic environmental assessment. The meeting will commence at 2 p.m. and will conclude when all persons wishing to speak have had an opportunity to do so or 6 p.m., whichever is earlier. Each individual who wishes to participate will be initially allotted 20 minutes in which to make a statement or ask questions. After all persons wishing to speak have had a chance to be heard, if requested, Reclamation will consider allowing additional time.

Any person, whether or not that individual attends the public meeting or submits oral testimony at the meeting, may submit written comments on the proposed rule and the draft programmatic environmental assessment. There is no limit to the length of written comments. However, written comments should be specific, confined to the issues pertinent to the proposed rule or the draft programmatic environmental assessment, and should explain the reason for any recommended change. Reclamation will accept written comments through April 3, 1998 (63 FR 9992, February 27, 1998 and 63 FR 10039, February 27, 1998), in accordance with the criteria set forth in the notice of proposed rulemaking published in the **Federal Register** on December 31, 1997 (62 FR 68491).

Dated: March 6, 1998.

Steven C. Hvinden,

Water Administration Manager, Boulder Canyon Operations Office.

[FR Doc. 98–6364 Filed 3–11–98; 8:45 am]

BILLING CODE 4310–94–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Parts 1215 and 2507

RIN 3045–AA16

Freedom of Information Act Regulation and Implementation of Electronic Freedom of Information Act Amendments of 1996

AGENCY: Corporation for National and Community Service.

ACTION: Proposed rule.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation") revises its regulations under the Freedom of Information Act (FOIA). The Corporation seeks to redesignate the existing regulations under former ACTION's CFR chapter as updated regulations under the Corporation's CFR chapter. The Corporation expects this proposed rule will promote consistency in its processing of FOIA requests. These

procedures are also intended to facilitate the public's access to Corporation records, and also contain new provisions implementing the Electronic Freedom of Information Act Amendments of 1996.

DATES: Comments must be received by the Corporation no later than April 13, 1998.

ADDRESSES: Comments may be mailed to the Corporation for National and Community Service, Office of General Counsel, Attn: Bill Hudson, Corporation FOIA/Privacy Act Officer, Room 8200, 1201 New York Avenue, NW., Washington D.C., 20525.

FOR FURTHER INFORMATION CONTACT: Bill Hudson, Corporation FOIA/Privacy Act Officer, at (202) 606–5000, ext. 265.

SUPPLEMENTARY INFORMATION: The Corporation is a wholly-owned government corporation created by Congress to administer programs established under the national service laws. The Corporation operates under two statutes, the National and Community Service Trust Act of 1993, 42 U.S.C. 12501 *et seq.*, and the Domestic Volunteer Service Act of 1993, as amended, 42 U.S.C. 4950 *et seq.*

The functions of the ACTION agency, including the VISTA and senior volunteer programs, were transferred to the Corporation on April 4, 1994. This proposed FOIA rule redesignates ACTION's policy at 45 CFR Chapter XII, Part 1215, to be revised as 45 CFR Chapter XXV, Part 2507, and governs the Corporation as a whole.

Regulatory Flexibility Act

The General Counsel, in accordance with the Regulatory Flexibility Act (5 U.S.C. 606(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Under the Freedom of Information Act, agencies may recover only the direct costs for searching for, reviewing, and duplicating the records processed for requesters. Thus, fees accessed by the Corporation are nominal. Further, the "small entities" that make FOIA requests, as compared with individual requesters and other requesters, are relatively few in number.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866. The Office of Management and Budget has reviewed this rule and has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

DISTRIBUTION TABLE

Old 45 CFR Part 1215	New 45 CFR Part 2507
1215.1	2507.1
1215.2	2507.2
1215.3	2507.3
1214.4	2507.4
1215.5	2507.5
1215.6	2507.6
1215.7	2507.7
1215.8	2507.8
1215.9	2507.9
1215.10	2507.10
Appendix 1(A)	Appendix A
Appendix 1(B)	Appendix B

List of Subjects in 45 CFR Parts 1215 and 2507

Confidential business information, Freedom of information.

Accordingly, and under the authority of 42 U.S.C. 12501 et seq., the Corporation proposes to amend 45 CFR chapters XII and XXV as follows:

PART 1215—[REDESIGNATED AS PART 2507]

1. Part 1215 in 45 CFR chapter XII is redesignated as part 2507 in 45 CFR chapter XXV and revised to read as follows:

PART 2507—PROCEDURES FOR DISCLOSURE OF RECORDS UNDER THE FREEDOM OF INFORMATION ACT

Sec.
2507.1 Definitions
2507.2 What is the purpose of this part?
2507.3 What types of records are available for disclosure to the public?
2507.4 How are requests for records made?
2507.5 How does the Corporation process requests for records?
2507.6 Under what circumstances may the Corporation extend the time limits for an initial response?
2507.7 How does a one appeal the Corporation's denial of access to records?
2507.8 How are fees determined?
2507.9 What records will be denied disclosure under this part?
2507.10 What records are specifically exempt from disclosure?
2507.11 What are the procedures for the release of commercial business information?
2507.12 Authority.
Appendix A to Part 2507—Freedom of Information Act Request Letter (Sample)
Appendix B to Part 2507—Freedom of Information Act Appeal for Release of Information (Sample)

Authority: 42 U.S.C. 12501 *et seq.*

§ 2507.1 Definitions

As used in this part, the following definitions shall apply:

(a) *Act* means section 552 of Title 5, United States Code, sometimes referred to as the "Freedom of Information Act", and Pub.L. 104–231, 110 Stat. 3048, sometimes referred to as the "Electronic Freedom of Information Act Amendments of 1996."

(b) *Agency* means any executive department, military department, government corporation, or other establishment in the executive branch of the Federal Government, or any independent regulatory agency. Thus, the Corporation is a Federal agency.

(c) *Commercial use request* means a request from, or on behalf of, a person who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. The use to which the requester will put the records sought will be considered in determining whether the request is a commercial use request.

(d) *Corporation* means the Corporation for National and Community Service.

(e) *Educational institution* means a pre-school, elementary or secondary school, institution of undergraduate or graduate higher education, or institution of professional or vocational education, which operates a program of scholarly research.

(f) *Electronic data* means records and information (including e-mail) which are created, stored, and retrievable by electronic means.

(g) *Freedom of Information Act Officer* (FOIA Officer) means the Corporation official who has been

delegated the authority to make the initial determination on whether to release or withhold records, and to assess, waive, or reduce fees in response to FOIA requests.

(h) *Non-commercial scientific institution* means an institution that is not operated substantially for purposes of furthering its own or someone else's business trade, or profit interests, and that is operated for purposes of conducting scientific research whose results are not intended to promote any particular product or industry.

(i) *Public interest* means the interest in obtaining official information that sheds light on an agency's performance of its statutory duties because the information falls within the statutory purpose of the FOIA to inform citizens about what their government is doing.

(j) *Record* includes books, brochures, electronic mail messages, punch cards, magnetic tapes, cards, discs, paper tapes, audio or video recordings, maps, pamphlets, photographs, slides, microfilm, and motion pictures, or other documentary materials, regardless of physical form or characteristics, made or received by the Corporation pursuant to Federal law or in connection with the transaction of public business and preserved by the Corporation as evidence of the organization, functions, policies, decisions, procedures, operations, programs, or other activities. Record does not include objects or articles such as tangible exhibits, models, equipment, or processing materials; or formulas, designs, drawings, or other items of valuable property. Record does not include books, magazines, pamphlets or other materials acquired solely for reference purposes. Record does not include personal records of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an agency employee, and not distributed to other agency employees for their official use. Record does not include information stored within a computer for which there is no existing computer program for retrieval of the requested information. A record must exist and be in the possession and control of the Corporation at the time of the request to be considered subject to this part and the FOIA. There is no obligation to create, compile, or obtain a record to satisfy a FOIA request. See § 2507.5(d) with respect to creating a record in the electronic environment.

(k) *Representative of the news media* means a person who is actively gathering information for an entity organized to publish, broadcast or otherwise disseminate news to the public. News media entities include television and radio broadcasters, publishers of periodicals who distribute their products to the general public or who make their products available for purchase or subscription by the general public, and entities that may disseminate news through other media (e.g., electronic dissemination of text). Freelance journalists will be treated as representatives of a new media entity if they can show a likelihood of publication through such an entity. A publication contract would be the clearest proof, but the Corporation may also look to the past publication record of a requester in making this determination.

(l) *FOIA request* means a written request for Corporation records, made by any person, including a member of the public (U.S. or foreign citizen), an organization, or a business, but not including a Federal agency, an order from a court, or a fugitive from the law, that either explicitly or implicitly involves the FOIA, or this part. Written requests may be received by postal service or by facsimile.

(m) *Review* means the process of examining records located in response to a request to determine whether any record or portion of a record is permitted to be withheld. It also includes processing records for disclosure (i.e., excising portions not subject to disclosure under the Act and otherwise preparing them for release). Review does not include time spent resolving legal or policy issues regarding the application of exemptions under the Act.

(n) *Search* means looking for records or portions of records responsive to a request. It includes reading and interpreting a request, and also page-by-page and line-by-line examination to identify responsive portions of a document. However, it does not include line-by-line examination where merely duplicating the entire page would be a less expensive and quicker way to comply with the request.

§ 2507.2 What is the purpose of this part?

The purpose of this part is to prescribe rules for the inspection and release of records of the Corporation for National and Community Service pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. 552, as amended. Information customarily furnished to the public in the regular course of the Corporation's official business, whether hard copy or electronic records which are available to the public through an established distribution system, or through the **Federal Register**, the National Technical Information Service, or the Internet, may continue to be furnished without processing under the provisions of the FOIA or complying with this part.

§ 2507.3 What types of records are available for disclosure to the public?

(a)(1) The Corporation will make available to any member of the public who requests them, the following Corporation records:

(i) All publications and other documents provided by the Corporation to the public in the normal course of agency business will continue to be made available upon request to the Corporation;

(ii) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of administrative cases;

(iii) Statements of policy and interpretation adopted by the agency and not published in the **Federal Register**;

(iv) Administrative staff manuals and instructions to the staff that affect a member of the public; and

(v) Copies of all records, regardless of form or format, which, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records.

(2) Copies of a current index of the materials in paragraphs (a)(1)(i) through (v) of this section that are maintained by the Corporation, or any portion thereof, will be furnished or made available for inspection upon request.

(b) To the extent necessary to prevent a clearly unwarranted invasion of personal privacy, the Corporation may delete identifying details from materials furnished under this part.

(c) Brochures, leaflets, and other similar published materials shall be furnished to the public on request to the extent they are available. Copies of any such materials which are out of print shall be furnished to the public at the cost of duplication, provided, however, that, in the event no copy exists, the Corporation shall not be responsible for reprinting the document.

(d) All records of the Corporation which are requested by a member of the public in accordance with the procedures established in this part shall be duplicated for the requester, except to the extent that the Corporation determines that such records are exempt from disclosure under the Act.

(e) The Corporation will not be required to create new records, compile lists of selected items from its files, or provide a requester with statistical or other data (unless such data has been

compiled previously and is available in the form of a record.)

(f) These records will be made available for public inspection and copying in the Corporation's reading room located at the Corporation for National and Community Service, 1201 New York Avenue, NW., Room 8200, Washington, D.C., 20525, during the hours of 9:30 a.m. to 4:00 p.m., Monday through Friday, except on official holidays.

(g) Corporation records will be made available to the public unless it is determined that such records should be withheld from disclosure under subsection 552(b) of the Act and or in accordance with this part.

§ 2507.4 How are requests for records made?

(a) *How made and addressed.* (1) Requests for Corporation records under the Act must be made in writing, and can be mailed, hand-delivered, or received by facsimile, to the FOIA Officer, Corporation for National and Community Service, Office of the General Counsel, 1201 New York Avenue, N.W., Room 8200, Washington, D.C. 20525. (See Appendix A for an example of a FOIA request.) All such requests, and the envelopes in which they are sent, must be plainly marked "FOIA Request". Hand-delivered requests will be received between 9 a.m. and 4 p.m., Monday through Friday, except on official holidays. Although the Corporation maintains offices throughout the continental United States, all FOIA requests must be submitted to the Corporation's Headquarters office in Washington, DC.

(2) Many of the Corporation's records available in the Corporation's reading room will also be made available for public access through the Corporation's "electronic reading room" internet site under "Service Resources". The following address is the Corporation's Internet Web site: http://www.nationalservice.org.

(b) *Request must adequately describe the records sought.* A request must describe the records sought in sufficient detail to enable Corporation personnel to locate the records with reasonable effort, and without unreasonable burden to or disruption of Corporation operations. Among the kinds of identifying information which a requester may provide are the following:

(1) The name of the specific program within the Corporation which may have produced or may have custody of the record (e.g., AmeriCorps*State/National Direct, AmeriCorps*NCCC (National Civilian Community Corps), AmeriCorps*VISTA (Volunteers In Service To America), Learn and Serve America, National Senior Service Corps (NSSC), Retired and Senior Volunteer Program (RSVP), Foster Grandparent Program (FGP), Senior Companion Program (SCP), and HUD Hope VI);

(2) The specific event or action, if any, to which the record pertains;

(3) The date of the record, or an approximate time period to which it refers or relates;

(4) The type of record (e.g. contract, grant or report);

(5) The name(s) of Corporation personnel who may have prepared or been referenced in the record; and

(6) Citation to newspapers or other publications which refer to the record.

(c) *Agreement to pay fees.* The filing of a request under this section shall be deemed to constitute an agreement by the requester to pay all applicable fees, up to $25.00, unless a waiver of fees is sought in the request letter. When filing a request, a requester may agree to pay a greater amount, if applicable. (See § 2507.8 for further information on fees.)

§ 2507.5 How does the Corporation process requests for records?

(a) *Initial processing.* Upon receipt of a request for agency records, the FOIA Officer will make an initial determination as to whether the requester has reasonably described the records being sought with sufficient specificity to determine which Corporation office may have possession of the requested records. The office head or his or her designees shall determine whether the description of the record(s) requested is sufficient to permit a determination as to existence, identification, and location. It is the responsibility of the FOIA Officer to provide guidance and assistance to the Corporation staff regarding all FOIA policies and procedures. All requests for records under the control and jurisdiction of the Office of the Inspector General will be forwarded to the Inspector General, through the FOIA Officer, for the Corporation's initial determination and reply to the requester.

(b) *Insufficiently identified records.* On making a determination that the description contained in the request does not reasonably describe the records being sought, the FOIA Officer shall promptly advise the requester in writing or by telephone if possible. The FOIA Officer shall provide the requester with appropriate assistance to help the requester provide any additional information which would better identify the record. The requester may submit an amended request providing the necessary additional identifying information. Receipt of an amended request shall start a new 20 day period in which the Corporation will respond to the request.

(c) *Furnishing records.* The Corporation is required to furnish only copies of what it has or can retrieve. It is not compelled to create new records or do statistical computations. For example, the Corporation is not required to write a new program so that a computer will print information in a special format. However, if the requested information is maintained in computerized form, and it is possible, without inconvenience or unreasonable burden, to produce the information on paper, the Corporation will do this if this is the only feasible way to respond to a request. The Corporation is not required to perform any research for the requester. The Corporation reserves the right to make a decision to conserve government resources and at the same time supply the records requested by consolidating information from various records rather than duplicating all of them. For example, if it requires less time and expense to provide a computer record as a paper printout rather than in an electronic medium, the Corporation will provide the printout. The Corporation is only required to furnish one copy of a record.

(d) *Format of the disclosure of a record.* The requester, not the Corporation, will be entitled to choose the form of disclosure when multiple forms of a record already exist. Any further request for a record to be disclosed in a new form or format will have to be considered by the Corporation, on a case-by-case basis, to determine whether the records are "readily reproducible" in that form or format with "reasonable efforts" on the part of the Corporation. The Corporation shall make reasonable efforts to maintain its records in forms or formats that are reproducible for purposes of replying to a FOIA request.

(e) *Release of record.* Upon receipt of a request specifically identifying existing Corporation records, the Corporation shall, within 20 days (excepting Saturdays, Sundays, and legal public holidays), either grant or deny the request in whole or in part, as provided in this section. Any notice of denial in whole or in part shall require the FOIA Officer to inform the requester of his/her right to appeal the denial, in accordance with the procedures set forth in § 2507.7. If the FOIA Officer determines that a request describes a requested record sufficiently to permit its identification, he/she shall make it available unless he/she determines, as appropriate, to withhold the record as

being exempt from mandatory disclosure under the Act.

(f) *Form and content of notice granting a request.* The Corporation shall provide written notice of a determination to grant access within 20 days (excepting Saturdays, Sundays, and legal public holidays) of receipt of the request. This will be done either by providing a copy of the record to the requester or by making the record available for inspection at a reasonable time and place. If the record cannot be provided at the time of the initial response, the Corporation shall make such records available promptly. Records disclosed in part shall be marked or annotated to show both the amount and the location of the information deleted wherever practicable.

(g) *Form and content of notice denying request.* The Corporation shall notify the requester in writing of the denial of access within 20 days (excepting Saturdays, Sundays, and legal public holidays), of receipt of the request. Such notice shall include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reason(s) for denial, including the specific exemption(s) under the Act on which the Corporation has relied in denying each document that was requested;

(3) A statement that the denial may be appealed under § 2507.7, and a description of the requirements of that § 2507.7;

(4) An estimate of the volume of records or information withheld, in number of pages or in some other reasonable form of estimation. This estimate does not need to be provided if the volume is otherwise indicated through deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption.

§ 2507.6 Under what circumstances may the Corporation extend the time limits for an initial response?

The time limits specified for the Corporation's initial response in § 2507.5, and for its determination on an appeal in § 2507.7, may be extended by the Corporation upon written notice to the requester which sets forth the reasons for such extension and the date upon which the Corporation will respond to the request. Such extension may be applied at either the initial response stage or the appeal stage, or both, provided the aggregate of such extensions shall not exceed ten working days. Circumstances justifying an extension under this section may include the following:

(a) Time necessary to search for and collect requested records from field offices of the Corporation;

(b) Time necessary to locate, collect and review voluminous records; or

(c) Time necessary for consultation with another agency having an interest in the request; or among two or more offices of the Corporation which have an interest in the request; or with a submitter of business information having an interest in the request.

§ 2507.7 How does one appeal the Corporation's denial of access to records?

(a) *Right of appeal.* A requester has the right to appeal a partial or full denial of a FOIA request. The appeal must be put in writing and sent to the reviewing official identified in the denial letter. The requester must send the appeal within 60 days of the letter denying the appeal.

(b) *Contents of appeal.* The written appeal may include as much or as little information as the requester wishes for the basis of the appeal.

(c) *Review process.* The Chief Operating Officer (COO) is the designated official to act on all FOIA appeals. The COO's determination of an appeal constitutes the Corporation's final action. If the appeal is granted, in whole or in part, the records will be made available for inspection or sent to the requester, promptly, unless a reasonable delay is justified. If the appeal is denied, in whole or in part, the COO will state the reasons for the decision in writing, providing notice of the right to judicial review. A decision will be made on the appeal within 20 days (excepting Saturdays, Sundays, and legal public holidays), from the date the appeal was received by the COO.

(d) *When appeal is required.* If a requester wishes to seek review by a court of an unfavorable determination, an appeal must first be submitted under this section.

§ 2507.8 How are fees determined?

(a) *Policy.* It is the policy of the Corporation to provide the widest possible access to releasable Corporation records at the least possible cost. The purpose of the request is relevant to the fees charged.

(b) *Types of Request.* Fees will be determined by category of requests as follows:

(1) *Commercial use requests.* When a request for records is made for commercial use, charges will be assessed to cover the costs of searching for, reviewing for release, and reproducing the records sought.

(2) *Requests for educational and non-commercial scientific institutions.* When a request for records is made by an educational or non-commercial scientific institution in furtherance of scholarly or scientific research, respectively, charges may be assessed to cover the cost of reproduction alone, excluding charges for reproduction of the first 100 pages. Whenever the total fee calculated is $18.00 or less, no fee shall be charged.

(3) *Requests from representatives of the news media.* When a request for records is made by a representative of the news media for the purpose of news dissemination, charges may be assessed to cover the cost of reproduction alone, excluding the charges for reproduction of the first 100 pages. Whenever the total fee calculated is $18.00 or less, no fee shall be charged.

(4) *Other requests.* When other requests for records are made which do not fit the three preceding categories, charges will be assessed to cover the costs of searching for and reproducing the records sought, excluding charges for the first two hours of search time and for reproduction of the first 100 pages. (However, requests from individuals for records about themselves contained in the Agency's systems of records will be treated under the fee provisions of the Privacy Act of 1974 (5 U.S.C. 552a) which permit the assessment of fees for reproduction costs only, regardless of the requester's characterization of the request). Whenever the total fee calculated is $18.00 or less, no fee shall be charged to the requester.

(c) *Direct costs.* Fees assessed shall provide only for recovery of the Corporation's direct costs of search, review, and reproduction. Review costs shall include only the direct costs incurred during the initial examination of a record for the purposes of determining whether a record must be disclosed under this part and whether any portion of a record is exempt from disclosure under this part. Review costs shall not include any costs incurred in resolving legal or policy issues raised in the course of processing a request or an appeal under this part.

(d) *Charging of fees.* The following charges may be assessed for copies of records provided to a requester:

(1) Copies made by photostat shall be charged at the rate of $0.10 per page.

(2) Searches for requested records performed by clerical/administrative personnel shall be charged at the rate of $4.00 per quarter hour.

(3) Where a search for requested records cannot be performed by clerical administrative personnel (for example, where the tasks of identifying and compiling records responsive to a

request must be performed by a skilled technician or professional), such search shall be charged at the rate of $7.00 per quarter hour.

(4) Where the time of managerial personnel is required, the fee shall be $10.25 for each quarter hour of time spent by such managerial personnel.

(5) Computer searches for requested records shall be charged at a rate commensurate with the combined cost of computer operation and operator's salary attributable to the search.

(6) *Charges for non-release.* Charges may be assessed for search and review time, even if the Corporation fails to locate records responsive to a request or if records located are determined to be exempt from disclosure.

(e) *Consent to pay fees.* In the event that a request for records does not state that the requester will pay all reasonable costs, or costs up to a specified dollar amount, and the FOIA Officer determines that the anticipated assessable costs for search, review and reproduction of requested records will exceed $25.00, or will exceed the limit specified in the request, the requester shall be promptly notified in writing. Such notification shall state the anticipated assessable costs of search, review and reproduction of records requested. The requester shall be afforded an opportunity to amend the request to narrow the scope of the request, or, alternatively, may agree to be responsible for paying the anticipated costs. Such a request shall be deemed to have been received by the Corporation upon the date of receipt of the amended request.

(f) *Advance payment.* (1) Advance payment of assessable fees are not required from a requester unless:

(i) The Corporation estimates or determines that assessable charges are likely to exceed $250.00, and the requester has no history of payment of FOIA fees. (Where the requester has a history of prompt payment of fees, the Corporation shall notify the requester of the likely cost and obtain written assurance of full payment.)

(ii) A requester has previously failed to pay a FOIA fee charged in a timely fashion (i.e., within 30 days of the date of the billing).

(2) When the Corporation acts under paragraphs (g)(1)(i) or (ii) of this section, the administrative time limits prescribed in § 2507.5(a)and (b) will begin to run only after the Corporation has received fee payments or assurances.

(g) *Interest on non-payment.* Interest charges on an unpaid bill may be assessed starting on the 31st day following the day on which the billing was sent. Interest will be assessed at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of the billing. The Corporation may use the authorization of the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749), as amended, and its administrative procedures, including disclosure to consumer reporting agencies and the use of collection agencies, to encourage payment of delinquent fees.

(h) *Aggregating requests.* Where the Corporation reasonably believes that a requester or a group of requesters acting together is attempting to divide a request into a series of requests for the purpose of avoiding fees, the Corporation may aggregate those requests and charge accordingly. The Corporation may presume that multiple requests of this type made within a 30-day period have been made in order to avoid fees. Where requests are separated by a longer period, the Corporation will aggregate them only where there exists a solid basis for determining that aggregation is warranted under the circumstances involved. Multiple requests involving unrelated matters will not be aggregated.

(i) *Making payment.* Payment of fees shall be forwarded to the FOIA Officer by check or money order payable to "Corporation for National and Community Service". A receipt for any fees paid will be provided upon written request.

(j) *Fee processing.* No fee shall be charged if the administrative costs of collection and processing of such fees are equal to or do not exceed the amount of the fee.

(k) *Waiver or reduction of fees.* A requester may, in the original request, or subsequently, apply for a waiver or reduction of document search, review and reproduction fees. Such application shall be in writing, and shall set forth in detail the reason(s) a fee waiver or reduction should be granted. The amount of any reduction requested shall be specified in the request. Upon receipt of such a request, the FOIA Officer will determine whether a fee waiver or reduction should be granted.

(l) A waiver or reduction of fees shall be granted only if release of the requested information to the requester is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Corporation, and it is not primarily in the commercial interest of the requester. The Corporation shall consider the following factors in determining whether a waiver or reduction of fees will be granted:

(i) Does the requested information concern the operations or activities of the Corporation?

(ii) If so, will disclosure of the information be likely to contribute to public understanding of the Corporation's operations and activities?

(iii) If so, would such a contribution be significant?

(iv) Does the requester have a commercial interest that would be furthered by disclosure of the information?

(v) If so, is the magnitude of the identified commercial interest of the requester sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester?

(2) In applying the criteria in paragraph (k)(1) of this section, the Corporation will weigh the requester's commercial interest against any public interest in disclosure. Where there is a public interest in disclosure, and that interest can fairly be regarded as being of greater magnitude than the requester's commercial interest, a fee waiver or reduction may be granted.

(3) When a fee waiver application has been included in a request for records, the request shall not be considered officially received until a determination is made regarding the fee waiver application. Such determination shall be made within five working days from the date any such request is received in writing by the Corporation.

§ 2507.9 What records will be denied disclosure under this part?

Since the policy of the Corporation is to make the maximum amount of information available to the public consistent with its other responsibilities, written requests for a Corporation record made under the provisions of the FOIA may be denied when:

(a) The record is subject to one or more of the exemptions of the FOIA.

(b) The record has not been described clearly enough to enable the Corporation staff to locate it within a reasonable amount of effort by an employee familiar with the files.

(c) The requestor has failed to comply with the procedural requirements, including the agreement to pay any required fee.

(d) For other reasons as required by law, rule, regulation or policy.

§ 2507.10 What records are specifically exempt from disclosure?

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of

portions which are exempt under this section. The following categories are examples of records maintained by the Corporation which, under the provision of 5 U.S.C. 552(b), are exempted from disclosure:

(a) *Records required to be withheld under criteria established by an Executive Order in the interest of national defense and policy and which are in fact properly classified pursuant to any such Executive Order.* Included in this category are records required by Executive Order No. 12958 (3 CFR, 1995 Comp., p. 333), as amended, to be classified in the interest of national defense or foreign policy.

(b) *Records related solely to internal personnel rules and practices.* Included in this category are internal rules and regulations relating to personnel management operations which cannot be disclosed to the public without substantial prejudice to the effective performance of significant functions of the Corporation.

(c) Records specifically exempted from disclosure by statute.

(d) *Information of a commercial or financial nature including trade secrets given in confidence.* Included in this category are records containing commercial or financial information obtained from any person and customarily regarded as privileged and confidential by the person from whom they were obtained.

(e) *Interagency or intra-agency memoranda or letters which would not be available by law to a party other than a party in litigation with the Corporation.* Included in this category are memoranda, letters, inter-agency and intra-agency communications and internal drafts, opinions and interpretations prepared by staff or consultants and records meant to be used as part of deliberations by staff, or ordinarily used in arriving at policy determinations and decisions.

(f) *Personnel, medical and similar files.* Included in this category are personnel and medical information files of staff, individual national service applicants and participants, lists of names and home addresses, and other files or material containing private or personal information, the public disclosure of which would amount to a clearly unwarranted invasion of the privacy of any person to whom the information pertains.

(g) *Investigatory files.* Included in this category are files compiled for the enforcement of all laws, or prepared in connection with government litigation and adjudicative proceedings, provided however, that such records shall be made available to the extent that their production will not:

(1) Interfere with enforcement proceedings;

(2) Deprive a person of a right to a fair trial or an impartial adjudication;

(3) Constitute an unwarranted invasion of personal privacy;

(4) Disclose the identity of a confidential source, and in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful security intelligence investigation, confidential information furnished by confidential source;

(5) Disclose investigative techniques and procedures; or

(6) Endanger the life or physical safety of law enforcement personnel.

§ 2507.11 What are the procedures for the release of commercial business information?

(a) *Notification of business submitter.* The Corporation shall promptly notify a business submitter of any request for Corporation records containing business information. The notice shall either specifically describe the nature of the business information requested or provide copies of the records, or portions thereof containing the business information.

(b) *Business submitter reply.* The Corporation shall afford a business submitter 10 working days to object to disclosure, and to provide the Corporation with a written statement specifying the grounds and arguments why the information should be withheld under Exemption (b)(4) of the Act.

(c) *Considering and balancing respective interests.* (1) The Corporation shall carefully consider and balance the business submitter's objections and specific grounds for nondisclosure against such factors as:

(i) The general custom or usage in the occupation or business to which the information relates that it be held confidential; and

(ii) The number and situation of the individuals who have access to such information; and

(iii) The type and degree of risk of financial injury to be expected if disclosure occurs; and

(iv) The length of time such information should be regarded as retaining the characteristics noted in paragraphs (c)(1) (i) through (iii) of this section in determining whether to release the requested business information.

(2)(i) Whenever the Corporation decides to disclose business information over the objection of a business submitter, the Corporation shall forward to the business submitter a written notice of such decision, which shall include:

(A) The name, and title or position, of the person responsible for denying the submitter's objection;

(B) A statement of the reasons why the business submitter's objection was not sustained;

(C) A description of the business information to be disclosed; and

(D) A specific disclosure date.

(ii) The notice of intent to disclose business information shall be mailed by the Corporation not less than six working days prior to the date upon which disclosure will occur, with a copy of such notice to the requester.

(d) *When notice to business submitter is not required.* The notice to business submitter shall not apply if:

(1) The Corporation determines that the information shall not be disclosed;

(2) The information has previously been published or otherwise lawfully been made available to the public; or

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552).

(e) *Notice of suit for release.* Whenever a requester brings suit to compel disclosure of business information, the Corporation shall promptly notify the business submitter.

§ 2507.12 Authority.

The Corporation receives authority to change its governing regulations from the National and Community Service Act of 1990, as amended (42 U.S.C. 12501 et seq.).

Appendix A to Part 2507—Freedom of Information Act Request Letter (Sample)

Freedom of Information Act Officer ______

Name of Agency ______

Address of Agency ______

City, State, Zip Code ______

Re: Freedom of Information Act Request.

Dear: ______

This is a request under the Freedom of Information Act.

I request that a copy of the following documents [or documents containing the following information] be provided to me: [identify the documents or information as specifically as possible].

[Sample requester descriptions]

—A representative of the news media affiliated with the ______ newspaper (magazine, television station, etc.) and this request is made as part of news gathering and not for commercial use.

—Affiliated with an educational or non-commercial scientific institution, and this request is not for commercial use.

—An individual seeking information for personal use and not for commercial use.

—Affiliated with a private corporation and am seeking information for use in the company's business.

[Optional] I am willing to pay fees for this request up to a maximum of $__________. If you estimate that the fees will exceed this limit, please inform me first.

[Optional] I request a waiver of all fees for this request. Disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in my commercial interest. [Include a specific explanation.]

In order to help you determine my status to assess fees, you should know that I am (insert a suitable description of the requester and the purpose of the request).

Thank you for your consideration of this request.

Sincerely,

Name ______________________________

Address ____________________________

City, State, Zip Code ________________

Telephone Number [Optional] ________

Appendix B to Part 2507—Freedom of Information Act Appeal for Release of Information (Sample)

Appeal Officer ______________________

Name of Agency _____________________

Address of Agency ___________________

City, State, Zip Code ________________

Re: Freedom of Information Act Appeal.

Dear: ______________________________

This is an appeal under the Freedom of Information Act.

On (date), I requested documents under the Freedom of Information Act. My request was assigned the following identification number __________. On (date), I received a response to my request in a letter signed by (name of official). I appeal the denial of my request.

[Optional] The documents that were withheld must be disclosed under the FOIA because * * *.

[Optional] *Respond for waiver of fees.* I appeal the decision to deny my request for a waiver of fees. I believe that I am entitled to a waiver of fees. Disclosure of the documents I requested is in the public interest because the information is likely to contribute significantly to public understanding of the operation or activities of government and is not primarily in my commercial interest. (Provide details)

[Optional] I appeal the decision to require me to pay review costs for this request. I am not seeking the documents for a commercial use. (Provide details)

[Optional] I appeal the decision to require me to pay search charges for this request. I am a reporter seeking information as part of news gathering and not for commercial use.

Thank you for your consideration of this appeal.

Sincerely,

Name ______________________________

Address ____________________________

City, State, Zip Code ________________

Telephone Number [Optional] ________

Dated: March 5, 1998.

Kenneth L. Klothen,

General Counsel.

[FR Doc. 98–6229 Filed 3–11–98; 8:45 am]

BILLING CODE 6050–28–P

Notices

Federal Register
Vol. 63, No. 48
Thursday, March 12, 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

Mill Project Timber Sales, Ochoco National Forest, Crook County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) on a Proposed Action to complete silvicultural treatments, including commercial harvest, precommercial thinning, and prescribed fire, to improve the health and diversity of forest stands in the Mill Creek Watershed. The Mill Creek Watershed is located 12–15 miles northeast of Prineville, Oregon and covers approximately 72 square miles (45,952 acres). Approximately 79% of the watershed is public land. The alternatives will include the proposed action, no action, and any additional alternatives that respond to issues generated during the scoping process. The Proposed Action will require non-significant amendments to the Ochoco National Forest Land and Resource Management Plan (LRMP) to allow activities to occur in allocated old growth and in late and old structure stands.

DATE: Send written comments and suggestions on the issues and management of this area by April 3, 1998.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this Proposed Action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR part 215. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Request for confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be re-submitted with or without name and address within 10 days.

ADDRESSES: Send written comments to Art Currier, District Ranger, Prineville Ranger District, P.O. Box 490, Prineville, OR 97754.

FOR FURTHER INFORMATION CONTACT: Dave Owens, Project Leader, Prineville Ranger District, phone 541–416–6425.

SUPPLEMENTARY INFORMATION: The Forest Service Proposed Action will conduct management activities, including commercial timber harvest, precommercial thinning, and prescribed fire, in the Mill Creek Watershed, which includes portions of two inventoried roadless areas. Based on an analysis of existing vegetation conditions in the Mill Creek Watershed, opportunities were identified to conduct silvicultural treatments to improve the health and diversity of forested stands. Silvicultural treatments and timber harvest include 169 acres of improvement cutting; 5,237 acres of individual tree selection cutting; 351 acres of group selection cutting; 3,758 acres of precommercial thinning; and 1,933 acres of prescribed fire. The Proposed Action also includes construction of 5.4 miles of new roads and surfacing or restoration of 9.65 miles of existing roads. No roads are proposed in inventoried roadless areas. The proposed action does not include any activities in the Mill Creek Wilderness Area, which encompasses approximately 13,000 acres of 28% of the watershed. The expected harvest volume is approximately 25 million board feet. Five potential sale areas have been identified, including two helicopter sales. These sales would be sold over the next 3 years.

The Ochoco National Forest LRMP allocates lands within the project area to various management emphasis areas. These allocations include General Forest, General Forest Winter Range, Old Growth, Steins Pillar recreation Area, Dispersed Recreation, Developed Recreation, Riparian, and Mill Creek Wilderness. The emphasis for each of the management allocations is briefly described below.

MA–F3 Mill Creek Wilderness—Protect wilderness ecosystems. Manage use to maintain a natural setting and preserve solitude.

MA–F6 Old Growth—Habitat will be provided for wildlife species dependent upon old growth stands.

MA–F13 Developed Recreation—Provide safe, healthful, and aesthetic facilities for people to utilize while they are pursuing a variety of recreation experiences within a relatively natural outdoor setting.

MA–F14 Dispersed Recreation—provide and maintain a near-natural setting for people to utilize while pursuing outdoor recreation experiences.

MA–F15 Riparian—Manage streamside vegetation and habitat to maintain or improve water quality. Meet temperature and turbidity levels as required by State standards under the clean Water Act.

MA–F17 Stein's Pillar Recreation Area—maintain a scenic, natural, or natural-appearing setting associated with unique geologic formations, particularly Stein's Pillar. Provide roadless nonmotorized recreation, with various opportunities to enjoy nature.

MA–F21 General Forest Winter Range—The area will be managed for timber production with management activities designed and implemented to recognize big game habitat needs.

MA–F22 General Forest—The area will produce timber and forage while meeting the Forest-wide standards and guidelines for all resources.

In 1997, a watershed analysis was completed for the Mill Creek Watershed. The watershed analysis identified management activities which may improve the health and diversity of forested stands by encouraging late and old structure conditions, reducing competition, reducing stress, and reducing risk of stand replacement fires.

An initial scoping letter was mailed in February 1998.

To date, issues identified include: inventoried roadless area, water quality, late successional stands, and visual quality.

The EIS will analyze the direct, indirect, and cumulative environmental effects of the alternatives. Past, present, and projected activities on both private and National Forest System lands will be considered.

Public participation is important. Comments from the public will be used to:

- Identify, and/or confirm key issues and other potential issues.
- Eliminate minor issues or those which have been covered by a previous environmental analysis, such as the Ochoco LRMP.
- Identify alternatives to the proposed action.
- Identify, and/or confirm potential environmental effects of the proposed action and other alternatives (i.e. direct, indirect, and cumulative effects).
- Determine potential cooperating agencies and task assignments.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in May 1998. The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**. At the same time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, tribes, and members of the public for their review and comment.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978)). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts (*City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering these issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The final EIS is scheduled to be completed in August 1998. In the final EIS, the Forest Service is required to respond to comments received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decisions on this proposal. Thomas Schmidt, Forest Supervisor, is the responsible official. As responsible official he will document the selected alternative for the Mill Project Timber Sales EIS and his rationale in a Record of Decision.

The decision for the Mill Project Timber Sales will be subject to Forest Service Appeal Regulations (36 CFR part 215).

Dated: February 26, 1998.

Thomas A. Schmidt,

Forest Supervisor.

[FR Doc. 98–6367 Filed 3–11–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funding Availability (NOFA) for the Section 515 Rural Rental Housing Program; Correction

AGENCY: Rural Housing Service (RHS), USDA.

ACTION: Correction.

SUMMARY: The Rural Housing Service (RHS) corrects a notice published December 23, 1997 (62 FR 67234). This action is taken to publish the State Office, it's address, telephone number, and contact person which were inadvertently omitted. Accordingly, the notice published December 23, 1997 (62 FR 67234), is corrected as follows:

On page 67234 in the third column the area code for the Puerto Rico State Office should read 787.

On page 67235 in the first column the following State should be added:

Rural Development State Offices With 60-Day Deadlines

Mississippi State Office, Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 965–4325, Mike Ladner.

Since this State was omitted and the delay due to that omission, the deadline for submission of applications for new construction will be 5 p.m. local time, 60 days from publication, of this correction, in the **Federal Register**.

On page 67236, in the first column the deadline should be changed to read March 9, 1998.

Dated: March 5, 1998.

Jan E. Shadburn,

Administrator, Rural Housing Service.

[FR Doc. 98–6300 Filed 3–11–98; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Evaluation of Coastal Zone Management Program and National Estuarine Research Reserves

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice of intent to evaluate.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the Old Woman Creek National Estuarine Research Reserve in Ohio.

This evaluation will be conducted pursuant to section 315 of the Coastal Zone Management Act of 1972 (CZMA), as amended. The CZMA requires a continuing review of the performance of states with respect to estuarine research reserve program implementation. Evaluation of Estuarine Research Reserve Programs requires findings concerning the extent to which a state has met the national objectives, adhered to its final management plan approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA. The evaluations will include a site visit, consideration of public comments, and consultations with interested Federal, State, and local agencies and members of the public. Public meetings are held as part of the site visits.

Notice is hereby given of the date of the site visit for the listed evaluation, and the date, local time, and location of public meeting during the site visit.

Old Woman Creek National Estuarine Research Reserve in Ohio site visit will

be from May 18–22, 1998. One public meeting will be held during the week. This meeting is scheduled for 7 p.m., on Tuesday, May 19, 1998, at the Reserve's Visitor's Center, 2514 Cleveland Road East, Huron, Ohio, 44839.

The State will issue notice of the public meeting in a local newspaper(s) at least 45 days prior to the public meeting, and will issue other timely notices as appropriate.

Copies of the State's most recent performance reports, as well as OCRM's notifications and supplemental request letters to the States, are available upon request from OCRM. Written comments from interested parties regarding this Program are encouraged and will be accepted until 15 days after the public meeting. Please direct written comments to Vickie A. Allin, Chief, Policy Coordination Division (PCD), Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910. When the evaluation is completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

FOR FURTHER INFORMATION CONTACT: Vickie A. Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, (301) 713–3090, ext. 126.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: March 5, 1998.

Nancy Foster,

Assistant Administrator for Ocean Services and Coastal Zone.

[FR Doc. 98–6344 Filed 3–11–98; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

ENVIRONMENTAL PROTECTION AGENCY

Availability of Proposed Administrative Changes to Coastal Nonpoint Pollution Control Program Guidance

AGENCY: National Oceanic and Atmospheric Administration, U.S. Department of Commerce, and the U.S. Environmental Protection Agency.

ACTION: Notice of availability of proposed administrative changes to coastal nonpoint pollution control program guidance.

SUMMARY: Notice is hereby given of the availability of Proposed Administrative Changes to the Coastal Nonpoint Pollution Control Program Guidance (Administrative Changes), developed under section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA), 16 U.S.C. section 1455b. CZARA requires states and territories with coastal zone management programs that have received approval under section 306 of the Coastal Zone Management Act (CSMA) to develop and implement coastal nonpoint pollution control programs. Coastal states and territories were required to submit their coastal nonpoint programs to the National Oceanic and Atmospheric Administration (NOAA) and the U.S. Environmental Protection Agency (EPA) for approval in July 1995.

In response to coastal states' concerns over the ability to target the program. enforceable policies and mechanisms; timeframes; and resources to implement coastal nonpoint programs, NOAA and EPA recently completed a dialogue with the coastal states and other interested parties, resulting in a set of proposed administrative changes.

NOAA and EPA agree that states and territories may focus resources and will need to have sufficient flexibility to prioritize their implementation activities. NOAA and EPA are now in the process of refining the proposed administrative changes and are making them available for public comment prior to producing final guidance.

DATES: Written comments on the proposed Administrative Changes should be made to: Joseph A. Uravitch, Chief, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, by May 11, 1998.

ADDRESSES: Copies of the Proposed Administrative Changes may be obtained upon request from: Joseph P. Flanagan, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, tel. (301) 713–3121, x201.

SUPPLEMENTARY INFORMATION:

Background

Subsequent to enactment of CZARA in 1990, in January 1993, EPA and NOAA published two guidances to guide the development of States' (and Territories') coastal nonpoint pollution control programs: *Guidane Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters* and *Program Development and Approval Guidance*. These provided both technical and programmatic guidance on program development. Subsequently, EPA and NOAA provided further program clarification in a January 6, 1995 letter and a March 16, 1995 document entitled Flexibility for State Coastal Nonpoint Programs. These actions provided greater flexibility to States in prioritizing their activities; extended the implementation period from three years to five years; and clarified the range of enforceable policies and mechanisms that could be used by States to implement their programs. The letters also established the principle that, in recognition of the complexity of the program, States could be granted conditional approval for programs that are not yet fully approval, thereby affording more time for States to fully develop their programs.

As of the date of this notice, NOAA and EPA have provided conditional approval to 22 States and are working rapidly to approve or conditionally approve all of the remainder of the 29 coastal States that submitted programs for approval. In April, 1997, NOAA, EPA, the States and other interested parties began discussions regarding the progress made to date in developing and implementing CZARA programs and the significant impediments to further progress. Both the States and Federal agencies recognized that while the goals of the CZARA program remain valid, the program and schedules originally conceived by NOAA and EPA were extremely ambitious, and additional flexibility would be needed to enable the States to successfully implement their programs. Based on this understanding, the parties proceeded to discuss in detail the specific aspects of the program that would require modification while maintaining the overall objective that States implement management measures needed to protect coastal waters.

Based on these discussions, EPA and NOAA have drafted a set of administrative changes that the agencies propose to use to guide future implementation of the CZARA program. After reviewing public comments that are submitted in response to today's notice, NOAA and EPA intend to issue final administrative changes to the program guidance. In some cases, EPA and NOAA will review those findings and conditions and make any necessary adjustments to those findings and conditions (including, where appropriate, elimination of conditions).

On October 18, 1997, the 25th anniversary of the Clean Water Act, Vice President Gore directed the Environmental Protection Agency (EPA)

and Department of Agriculture (USDA) to work with other Federal agencies (including NOAA) to develop a Clean Water Action Plan within 120 days. In a memorandum for Heads of Departments and Agencies, the Vice President specifically requested Federal agencies to "develop a comprehensive Action Plan that builds on the * * * clean water successes over the past five years and addresses three major goals: enhanced protection from public health threats posed by water pollution; more effective control of polluted runoff; and promotion of water quality protection on a watershed basis." The Action Plan is informed by the following principles:

- Agencies will develop cooperative approaches that promote coordination and reduce duplication among Federal, State and local agencies and Tribal governments wherever possible.
- Agencies will ensure participation of community groups and the public to the maximum extent practicable. Such participation will include community and public access to information, to protect the public's right-to-know about water quality issues.
- Agencies will emphasize innovative approaches to pollution control, including, where appropriate, incentives, market-based mechanisms, and cooperative partnerships with landowners and other private parties.

On February 19, 1998, President Clinton announced the Clean Water Action Plan to restore and protect America's waters. NOAA and EPA view these proposed administrative changes as supporting the goals of the President's Clean Water Action Plan to reduce polluted runoff in coastal areas. In particular, these changes respond to the following key action included in the Clean Water Action Plan:

> NOAA and EPA will work with coastal states and territories to ensure that they have developed programs to reduce polluted runoff in coastal areas and that these programs are at least conditionally approved by June 1998 and that all programs are fully approved by December 1999, with appropriate state-enforceable policies and mechanisms.

NOAA and EPA are soliciting comments on the level of detail that should be required of states in describing the process that links the implementing and enforcement agencies, e.g., should states be required to establish clear criteria to determine where voluntary efforts have been unsuccessful and that enforcement actions are necessary?

In keeping with the statutory requirements of section 6217(b)(5) that there be "opportunities for public participation in all aspects of the program," NOAA and EPA reaffirm that public participation is necessary as the states develop changes to their programs. NOAA and EPA also solicit suggestions on how public participation can be effectively accomplished.

Section 6217 does not specifically establish timeframes for program implementation. NOAA and EPA are proposing extending the timeframe for program implementation that has been established administratively to fifteen years from the date of first program approval action, i.e., conditional approval. NOAA and EPA request comments on whether the proposed timeframe of fifteen years is appropriate or whether a shorter timeframe, e.g., twelve years, is feasible.

The proposed Administrative Changes provide guidance to the States on how NOAA and EPA intend to exercise their discretion in implementing the Coastal Nonpoint Pollution Control Program. As such, these proposed Administrative Changes, as well as the previously issued guidance they modify, are not regulations.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: March 6, 1998.

Nancy Foster,

Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

Robert Perciasepe,

Assistant Administrator, Office of Water, Environmental Protection Agency.

[FR Doc. 98–6335 Filed 3–11–98; 8:45 am]

BILLING CODE 3510–12–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 63 FR 10364.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 3:00 p.m., Tuesday, March 10, 1998.

CHANGES IN THE MEETING: The Commodity Futures Trading Commission changed the meeting to discuss adjudicatory matters to March 12, 1998 at 2:00 p.m.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–6510 Filed 3–10–98; 10:31 am]

BILLING CODE 6351–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–25–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 6, 1998.

Take notice that on March 4, 1998, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of April 3, 1998:

Second Revised Sheet No. 391
Second Revised Sheet No. 433

On January 20, 1998, Columbia Gas System, Inc. changed its name to Columbia Energy Group. The instant filing reflects, in Columbia Gas Transmission Corporation's Second Revised Volume No. 1 Tariff, where applicable, the name change from Columbia Gas System, Inc. to Columbia Energy Group.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 285.214 and 385.211 of the Commission's Rules and Regulations. All such motions or 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 proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–6347 Filed 3–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–255–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

March 6, 1998.

Take notice that on March 2, 1998, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030–0146, filed in Docket No. CP98–255–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate a new point of delivery to Columbia Gas of Virginia, Inc. (CGV) in Greenville County, Virginia, under Columbia's blanket certificate issued in Docket No. CP83–76–000 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.

Columbia requests authorization to construct and operate a new point of delivery to provide firm transportation service to CGV in Greenville County, Virginia. Columbia states that it would provide up to 400 Dth per day and 108,000 Dth annually to CGV through the new point of delivery under its Storage Service Transportation Rate Schedule to serve an industrial customer.

Columbia states that the quantities of gas to be provided through the new delivery point will be within Columbia's authorized level of services and, therefore, there is no impact on Columbia's existing design day and annual obligations to the customers as a result of the construction and operation of the new point of delivery for firm transportation service.

Columbia estimates the cost to construct the new point to be $28,400, and states that CGV will reimburse Columbia 100% of the actual cost of the proposed construction.

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. 98–6357 Filed 3–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–26–000]

Columbia Gulf Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

March 6, 1998.

Take notice that on March 4, 1998, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised sheets, bearing a proposed effective date of April 3, 1998:

Second Revised Sheet No. 217
Second Revised Sheet No. 259

Columbia Gulf states that on January 20, 1998, Columbia Gas System, Inc. changed its name to Columbia Energy Group. The instant filing reflects, in Columbia Gulf Transmission Company's Second Revised Volume No. 1 Tariff, where applicable, the name change from Columbia Gas System, Inc. to Columbia Energy Group.

Columbia Gulf states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

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 Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or 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 proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–6348 Filed 3–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR98–7–000]

Cranberry Pipeline Corporation; Notice of Petition for Rate Approval

March 6, 1998.

Take notice that on February 24, 1998, Cranberry Pipeline Corporation (Cranberry), filed a petition for rate approval, pursuant to Section 284.123(b)(2) of the Commission's Regulations, requesting that the Commission approve as fair and equitable a rate of 78.61¢ per MMBtu for Section 311 transportation services performed on Cranberry's West Virginia system and a 5.51¢ per MMBtu rate applicable to Cranberry's Hub Service. Cranberry also requests approval of a proposed $50 per month low-flow meter fee to recovery costs and expenses associated with receipt point meters that average five Mcf or less per day per month.

Pursuant to Section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before March 20, 1998. The petition for rate approval is on file with the Commission and is available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–6353 Filed 3–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA96–165–001]

Delmarva Power & Light Company; Notice of Filing

March 6, 1998.

Take notice that on August 14, 1997, Delmarva Power & Light Company tendered for filing its compliance filing in the above-referenced docket.

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 march 16, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–6377 Filed 3–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–156–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Proposed Changes in FERC Gas Tariff

March 6, 1998.

Take notice that on March 3, 1998, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets proposed to be effective May 1, 1998:

Fifth Revised Sheet No. 1
Original Sheet No. 5A
Fifth Revised Sheet No. 8
Original Revised Sheet No. 8A
Sixth Revised Sheet No. 9
Fourth Revised Sheet No. 10
Third Revised Sheet No. 10A
First Revised Sheet No. 11A
Third Revised Sheet No. 16
First Revised Sheet No. 16A
Third Revised Sheet No. 20
Third Revised Sheet No. 23
Third Revised Sheet No. 27
Second Revised Sheet No. 28
Third Revised Sheet No. 29
Second Revised Sheet No. 51
Second Revised Sheet No. 58
Original Sheet No. 63A
Original Sheet No. 63B
Original Sheet No. 63C
Original Sheet No. 63D
Original Sheet No. 63E
Original Sheet No. 63F
Original Sheet No. 63G
Original Sheet No. 63H
Original Sheet No. 63I
Fourth Revised Sheet No. 64
Fifth Revised Sheet No. 65
Second Revised Sheet No. 66
Third Revised Sheet No. 67
Third Revised Sheet No. 84
Original Sheet No. 86A
Original Sheet No. 86B

Great Lakes states that the purpose of the filing is to implement Market Center Services under Rate Schedule MC. Under this rate schedule Great Lakes will offer Park and Loan Services and a Title Transfer Tracking Service that will provide Great Lakes' shippers with additional flexibility with which to meet the increasing demands of the marketplace. The filing is made in accordance with Section 154.202 of the Commission's Regulations.

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 Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or 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 proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Commission's Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–6355 Filed 3–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–2313–002]

Thomas J. May; Notice of Filing

March 6, 1998.

Take notice that on February 18, 1998, Thomas J. May tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Chairman, President and Chief Executive Officer: Boston Edison Company

Director: Liberty Mutual Insurance Company

Director: Liberty Mutual Fire Insurance Company

Director: Liberty Mutual Financial Companies, Inc.

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 March 18, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–6378 Filed 3–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP98–39–001, RP98–40–002, RP98–42–001, RP98–44–001, RP98–52–002, RP98–53–002, and RP98–54–002 (Not Consolidated)]

Northern Natural Gas Company, Panhandle Eastern Pipe Line Company, ANR Pipeline Company, El Paso Natural Gas Company, Williams Gas Pipelines Central, Inc., Formerly: Williams Natural Gas Company, KN Interstate Gas Transmission Company, and Colorado Interstate Gas Company; Notice of Extension of Time

March 6, 1998.

On February 19, 1998, Atlantic Richfield Company (ARCO), Chevron U.S.A. Inc. (Chevron), Texaco Natural Gas Inc. (Texaco), and Vastar Gas Marketing, Inc. (VGM) (collectively: The Parties) jointly requested rehearing of the Commission's January 28, 1998 Order Clarifying Procedures in Docket No. RP98–39–001 *et al.* (82 FERC ¶ 61,059). The parties' request includes an emergency motion calling for the Commission to, among other things, postpone the March 9, 1998 Kansas ad valorem tax refund deadline to July 9, 1998. In this regard, The Parties note that El Paso Natural Gas Company (El Paso), with less than three weeks before the March 9, 1998 refund deadline, revised VGM's refund amount upward from $53,836.13 to approximately $4.5 million.

Upon consideration, The Parties' request for an extension of the March 9, 1998 refund deadline is granted solely with respect to VGM's refund obligation to El Paso. That deadline is hereby extended to and including July 7, 1998, for VGM to make refunds to El Paso, in compliance with the Commission's September 10 and January 28, orders.

The Parties also request that the Commission either excuse operators from refunding amounts attributable to working and royalty interest owners, or provide a 2-year period, beyond March 9, 1998, for first sellers to recover those amounts from the working and royalty interest owners.

Upon consideration, ARCO, Chevron, Texaco, and VGM are granted a 6-month extension for refunding amounts billed to them by the pipelines that are attributable to royalty interest owners. The Commission's May 19, 1995 Letter Order in Docket No. GP95–6–000 (71 FERC ¶ 61,185), an earlier Kansas ad valorem tax proceeding involving Robert F. White, makes it clear that the Kansas ad valorem tax refund obligation of each first seller is limited to the extent of its working interest, including the royalty interests attributable to its working interest. Thus, no extension is required with respect to an operator's recovery of refunds attributable to working interest owners.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–6354 Filed 3–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2042–007]

Public Utility District No. 1 of Pend Oreille County, WA; Notice of Site Visit For Amendment of License

March 6, 1998.

On February 18, 1997, the Public Utility District No. 1 of Pend Oreille County, Washington, licensee, filed an application with the Commission to amend its license for the existing Box Canyon Hydroelectric Project (project). The proposed amendment would extend the limit of the upstream project boundary from River Mile (RM) 34.4 near Ruby, Washington, to the Corps of Engineers' Albeni Falls Dam at RM 90.1. The acreage added as a consequence of this modification would include approximately 492 acres of federal lands within the Kalispell Indian Reservation.

The Commission staff currently are preparing an environmental assessment of the proposed license amendment; consequently, they plan to conduct a site visit to observe project lands and facilities with representatives of the PUD. The site visit will be held on Tuesday, March 24, 1998, form 9:00 a.m. to 4:00 p.m.

All interested individuals, organizations, and agencies are invited to attend the site visit. Participants will meet at 9:00 a.m. at the PUD office located at 130 North Washington Street in Newport, Washington. The licensee will provide transportation during the site visit. Participants should bring their own lunches for the day-long event.

Persons who plan to attend the site visit are requested to notify Mr. Bob Geddes of the PUD at least 48 hours prior to the site visit so that the licensee can arrange to have sufficient bus/van transportation available. His telephone number is (509) 447–9342.

For further information, please contact Patricia Weslowski at (617) 444–3330; ext. 432.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–6349 Filed 3–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TQ98–3–35–000]

West Texas Gas, Inc.; Notice of Proposed Changes in FERC Gas Tariff

March 6, 1998.

Take notice that on March 3, 1998, West Texas Gas, Inc. (WTG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet, to be effective April 1, 1998:

2nd Rev. Twenty-Fifth Revised Sheet No. 4

WTG states that the tariff sheet and the accompanying explanatory schedules constitute its quarterly PGA filing submitted pursuant to the purchased gas adjustment provisions of Section 19 of the General Terms and Conditions of its tariff. Because the tariff sheet reflects a reduction of $0.1905 in its purchased gas costs, WTG requests the tariff sheet be made effective on less than 30-days notice. WTG states that copies of the filing were served upon its customers and affected state commissions.

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 Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or 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 the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–6356 Filed 3–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–24–000]

Williston Basin Interstate Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

March 6, 1998.

Take notice that on March 3, 1998, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective March 3, 1998:

Second Revised Volume No. 1
Eleventh Revised Sheet No. 776
Thirteenth Revised Sheet No. 777

Williston Basin states that the revised tariff sheets are being filed simply to update its Master Receipt Point List.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–6346 Filed 3–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3189–002, et al.]

Baltimore Gas and Electric Company, et al.; Electric Rate and Corporate Regulation Filings

March 4, 1998.

Take notice that the following filings have been made with the Commission:

1. Baltimore Gas and Electric Company

[Docket No. ER97–3189–002]

Take notice that on March 2, 1998, Baltimore Gas and Electric Company in compliance with the November 25, 1997, Order of the Federal Energy Regulatory Commission in Pennsylvania-New Jersey-Maryland Interconnection, *et al.*, 81 FERC ¶ 61,257, filed clean and redlined versions of a revised Attachment H–2 to the PJM Open Access Transmission Tariff in Docket No. ER97–3189–000.

Copies are being served on the other PJM Regional Transmission Owners, the PJM Interconnection, L.L.C., and other persons on the Restricted Service List in this docket.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Co.

[Docket No. ER97–3189–004]

Take notice that on March 2, 1998, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (collectively d/b/a GPU Energy), submitted for filing revised Attachments H–4, H–5 and H–6 to the PJM Open Access Transmission Tariff in compliance with the Commission's January 29, 1998, Order in Pennsylvania-New Jersey-Maryland Interconnection, 82 FERC ¶ 61,068 (1998).

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Potomac Electric Power Company

[Docket No. ER97–3189–006]

Take notice that on March 2, 1998, Potomac Electric Power Company filed amended Attachment H–9 to the PJM Open Access Transmission Tariff changing the annual demand charge for network service in compliance with the Commission's Order, 81 FERC ¶61,257 (1997), Ordering Paragraph (F), as clarified by order issued January 29, 1998, directing that the annual demand charge for network service in the Pepco Zone and the Fixed Transmission Rights associated with such service be calculated in a consistent manner. Waiver of notice is requested to permit amended Attachment H–9 to become effective on April 1, 1998, concurrently with amended section 34.1 of said Tariff as filed by the PJM ISO pursuant to ordering paragraph (G) of said order.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Pennsylvania-New Jersey-Maryland Interconnection

[Docket No. ER97–3189–007]

Take notice that on March 2, 1998, PP&L, Inc. (PP&L), filed revisions to the PP&L Group Zone network transmission service rates contained in the Pennsylvania-New Jersey-Maryland Interconnection (PJM), Open Access Transmission Tariff.

PP&L states that copies of this filing have been served on the PJM Office of Interconnection, all PJM Regional Transmission Owners and the public utility commissions of all states in the PJM control area.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Public Service Electric and Gas Company

[Docket No. ER97–3189–008]

Take notice that on March 2, 1998, Public Service Electric and Gas Company (PSE&G), tendered for filing a compliance filing revising its transmission service rates, pursuant to the PJM Open Access Transmission Tariff presently on file with the Commission. PSE&G states that the revised rates are in compliance with Ordering Paragraph F of the Commission's November 25, 1997, Order on the Pennsylvania-New Jersey-Maryland Interconnection Restructuring, 81 FERC ¶ 61,257 (1997), as clarified by the Commission's Order on Motion for Clarification, issued January 29, 1998, 82 FERC ¶ 61,068 (1998).

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Wisconsin Power and Light Company

[Docket No. ER98–1209–000]

Take notice that on March 2, 1998, Wisconsin Power and Light Company tendered for filing an amendment to its December 24, 1997, filing in the above referenced docket.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Long Island Lighting Company

[Docket No. ER98–1697–000]

Take notice that on March 2, 1998, Long Island Lighting Company (LILCO), filed an Amendment to the Service Agreement for Firm Point-to-Point Transmission Service between LILCO and the New York Power Authority (Transmission Customer).

The Amendment to the Service Agreement contains an updated Attachment A–1, listing the new entities

selected to receive the Power for Jobs service.

LILCO requests waiver of the Commission's sixty (60) day notice requirements and an effective date of February 18, 1998, for the Amendment to the Service Agreement. LILCO has served copies of the filing on the New York State Public Service Commission and on the Transmission Customer.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Louisville Gas and Electric Company

[Docket No. ER98–1802–000]

Take notice that on March 2, 1998 Louisville Gas and Electric Company (LG&E), tendered for filing a modification in Docket No. ER98–1802–000. The Coordination Transmission Service Agreement dated February 1, 1996, between LG&E and Coastal Electric Services Company should not have been included in the Consent to Assignment form.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Boston Edison Company

[Docket No. ER98–1985–000]

Take notice that on February 24, 1998, Boston Edison Company filed for informational purposes only, a true-up to actual report for Calendar Year 1996, regarding charges to Cambridge Electric Light Company for use of Station 509. Boston Edison's charges are governed by its FERC Rate Schedule No. 101.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Pacific Gas and Electric Company

[Docket No. ER98–2024–000]

Take notice that on February 27, 1998, Pacific Gas and Electric Company (PG&E) tendered for filing; 1) an agreement dated as of February 1, 1998, by and between PG&E and Arizona Public Service Company entitled (Service Agreement for Firm Point-to-Point Transmission Service)(Service Agreement); and 2) a request for termination of this Service Agreement.

The Service Agreement was entered into for the purpose of firm point-to-point transmission service for 10 MW of power delivered to APS at Captain Jack Substation. The effective date of termination is either the requested date shown below or such other date the Commission deems appropriate for termination.

Copies of this filing have been served upon the California Public Utilities Commission and APS.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Ohio Power Company

[Docket No. ER98–2035–000]

Take notice that Ohio Power Company (OPCo), on March 2, 1998, tendered for filing with the Commission proposed modifications to its FERC Rate Schedule No. 18. The modifications are designed to provide off-peak excess demand and surplus power to Wheeling Power Company (WPCo).

OPCo proposes an effective date of May 1, 1998, and states that copies of its filing were served on WPCo and the Public Service Commission of West Virginia.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Wisconsin Power and Light Company

[Docket No. ER98–2036–000]

Take notice that on March 2, 1998, Wisconsin Power and Light Company (WP&L), tendered for filing executed Form Of Service Agreements for Firm and Non-Firm Point-to-Point Transmission Service, establishing Ameren Services Company as a point-to-point transmission customer under the terms of WP&L's transmission tariff.

WP&L requests an effective date of February 1, 1998, and accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Illinois Power Company

[Docket No. ER98–2038–000]

Take notice that on March 2, 1998, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Noram Energy Services, Inc., will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of February 1, 1998.

Copies have been served upon the Illinois Commerce Commission and Noram Energy Services, Inc.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Illinois Power Company

[Docket No. ER98–2039–000]

Take notice that on March 2, 1998, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Tractebel Energy Marketing, Inc., will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of January 1, 1998.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Illinois Power Company

[Docket No. ER98–2040–000]

Take notice that on March 2, 1998, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing an amendment to the existing firm transmission agreements under which Wagner Castings Company is taking transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of February 5, 1998.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. New England Power Pool

[Docket No. ER98–2041–000]

Take notice that on March 2, 1998, the New England Power Pool Executive Committee filed for acceptance a signature page to the New England Power Pool (NEPOOL), Agreement dated September 1, 1971, as amended, signed by Engage Energy US, L.P. (Engage Energy). The NEPOOL Agreement has been designated, NEPOOL FPC No. 2.

The Executive Committee states that the Commission's acceptance of Engage Energy's signature page would permit NEPOOL to expand its membership to include Engage Energy. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Engage Energy a member in NEPOOL. NEPOOL requests an effective date of May 1, 1998, for commencement of participation in NEPOOL by Engage Energy.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Florida Keys Electric Cooperative Association, Inc.

[Docket No. ER98–2042–000]

Take notice that on March 2, 1998, Florida Keys Electric Cooperative Association, Inc., tendered for filing a revised rate for non-firm transmission service provided to the City Electric System, Key West, Florida in accordance with the terms and conditions of the Long-Term Joint Investment Transmission Agreement between the Parties.

A copy of this filing has been served on CES and the Florida Public Service Commissioner.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Virginia Electric and Power

[Docket No. ER98–2043–000]

Take notice that on March 2, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing a Notice of Withdrawal from the GAPP Experiment Participation Agreement (Agreement).

Copies of the filing have been provided to each of the signatories of the Agreement, all parties of record in Docket No. ER97–697–000 and to the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Conectiv Energy Supply, Inc.

[Docket No. ER98–2045–000]

Take notice that on March 2, 1998, Conectiv Energy Supply, Inc. (CES), an affiliate of Delmarva Power & Light Company (Delmarva), and Atlantic City Electric Company (Atlantic), tendered for filing an application to obtain a power marketing certificate to make sales at market-based rates, to resell transmission and ancillary services reserved or obtained by CES for its own use, and to act as a broker for electric capacity and energy sales from assets of Delmarva and Atlantic. Included in the filing are a market-based sales tariff to become effective May 2, 1998, and a code of conduct.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Arizona Public Service Company

[Docket No. ER98–2046–000]

Take notice that on March 2, 1998, Arizona Public Service Company (APS), tendered for filing Service Agreements under APS' FERC Electric Tariff, Original Volume No. 3, with Morgan Stanley Capital Group, Inc.

A copy of this filing has been served on the Arizona Corporation Commission and Morgan Stanley Capital Group, Inc.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. New York State Electric & Gas Corporation

[Docket No. ER98–2047–000]

Take notice that on March 2, 1998, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35.12, as an initial rate schedule, an agreement with New York Municipal Power Agency (NYMPA). The agreement provides for NYSEG's sale to NYMPA and NYMPA's purchase of up to 90 MW of supplemental electric generating capacity and associated energy at the rates, terms, charges, and conditions set forth in the Agreement.

NYMPA has requested that service under the agreement commence on May 1, 1998. Therefore, NYSEG is requesting a May 1, 1998, effective date.

NYSEG served copies of the filing upon the New York State Public Service Commission and NYMPA.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Allegheny Power Service Corp., on behalf of Monongahela Power Co., The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER98–2048–000]

Take notice that on March 2, 1998, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed an amendment to include distribution service for wholesale customers taking service under AP's Pro Forma Open Access Transmission Tariff. Allegheny Power requests an April 27, 1998, effective date for this amendment.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. MidAmerican Energy Company

[Docket No. ER98–2049–000]

Take notice that on March 2, 1998, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50303 submitted for filing with the Commission a Service Agreement dated January 30, 1998, with the City of Eldridge, IA (Eldridge), entered into pursuant to MidAmerican's Rate Schedule for Power Sales, FERC Electric Tariff, Original Volume No. 5 (Tariff), and a Power Sales Agreement dated January 30, 1998, with the City of Eldridge, IA, entered into pursuant to the Service Agreement and the Tariff.

MidAmerican requests an effective date of February 1, 1998, for this Agreement, and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on Eldridge, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Central Hudson Gas & Electric Corporation

[Docket No. ER98–2050–000]

Take notice that on March 2, 1998, Central Hudson Gas & Electric Corporation (CHG&E), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and Eastern Power. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Open Access Schedule, Original Volume 1 (Transmission Tariff) filed in compliance with the Commission's Order No. 888 in Docket No. RM95–8–000 and RM94–7–001 and amended in compliance with Commission Order dated May 28, 1997. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Central Hudson Gas and Electric Corporation

[Docket No. ER98–2051–000]

Take notice that on March 2, 1998, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission), Regulations in 18 CFR a Service Agreement between CHG&E and NUI Energy Brokers, Inc. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume No. 1 (Power Sales

Tariff) accepted by the Commission in Docket No. ER97–890–000. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR Section 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. American Electric Power Service Corporation

[Docket No. ER98–2052–000]

Take notice that on March 2, 1998, the American Electric Power Service Corporation (AEPSC), tendered for filing executed service agreements under the Wholesale Market Tariff of the AEP Operating Companies (Power Sales Tariff). The Power Sales Tariff was accepted for filing effective October 10, 1997, and has been designated AEP Operating Companies' FERC Electric Tariff Original Volume No. 5. AEPSC respectfully requests waiver of notice to permit the service agreements to be made effective for service billed on and after January 29, 1998.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. Louisville Gas and Electric Company

[Docket No. ER98–2053–000]

Take notice that on March 2, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Non-Firm Point-To-Point Transmission Service Agreement between LG&E and Amoco Energy Trading Corporation under LG&E's Open Access Transmission Tariff.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. Wisconsin Electric Power Company

[Docket No. ER98–2054–000]

Take notice that on March 2, 1998, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an electric service agreement under its Coordination Sales Tariff (FERC Electric Tariff, Original Volume No. 2). Wisconsin Electric respectfully requests an effective date March 2, 1998. Wisconsin Electric is authorized to state that SCANA Energy Marketing, Inc., joins in the requested effective date.

Copies of the filing have been served on SCANA Energy Marketing, Inc., the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

29. Madison Gas and Electric Company

[Docket No. ER98–2055–000]

Take notice that on March 2, 1998, Madison Gas and Electric Company (MGE), tendered for filing with the Federal Energy Regulatory Commission the following sheets from its Original Volume No. 2 (Power Sales Tariff):

—Second Revised Sheet No. 4
—Original Sheet No. 25
—Original Sheet No. 26

MGE states that a copy of the filing has been provided to the Public Service Commission of Wisconsin and all customers taking service under the Power Sales Tariff.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

30. Carolina Power & Light Company

[Docket No. ER98–2056–000]

Take notice that on March 2, 1998, Carolina Power & Light Company (CP&L), tendered for filing the Power Purchase and Coordination Agreement between Carolina Power & Light Company and North Carolina Eastern Municipal Power Agency, dated February 27, 1998. The filing was made as a supplement to FERC Rate Schedule No. 121. CP&L has requested waiver of the 60-day notice provision and has requested an effective date of March 1, 1998, for the Agreement.

Copies of the filing were served on the North Carolina Eastern Municipal Power Agency, the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

31. Peco Energy Company

[Docket No. ER98–2057–000]

Take notice that on March 2, 1998, PECO Energy Company (PECO), filed a Service Agreement dated February 23, 1998, with MidAmerican Energy Company (MidAmerican), under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds MidAmerican as a customer under the Tariff.

PECO requests an effective date of February 23, 1998, for the Service Agreement.

PECO states that copies of this filing have been supplied to MidAmerican and to the Pennsylvania Public Utility Commission.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

32. Northeast Utilities Service Company

[Docket No. ER98–2058–000]

Take notice that on March 2, 1998, pursuant to Sections 35.15 and 131.53 of the Commission's Regulations, Northeast Utilities Service Company (NUSCO), on behalf of its operating affiliate, The Connecticut Light and Power Company (CL&P), tendered for filing a Notice of Cancellation of the following Federal Energy Regulatory Commission rate schedules and supplements thereto between CL&P and the Connection Municipal Electric Energy Cooperative:

Rate Schedule FERC No. CL&P 224
Rate Schedule FERC No. CL&P 226
Rate Schedule FERC No. CL&P 227
Rate Schedule FERC No. CL&P 228
Rate Schedule FERC No. CL&P 229
Rate Schedule FERC No. CL&P 231
Rate Schedule FERC No. CL&P 232
Rate Schedule FERC No. CL&P 256

NUSCO requests that such cancellations be made effective for Rate Schedule FERC No. CL&P 228 as of March 3, 1998, for Rate Schedule Nos. CL&P 224, 226, 227, 229, 231, 232, and 256 as of October 31, 1998, or such other date on which the Commission permits said rate schedules to be canceled. NUSCO states that cancellation of these rate schedules as of the requested effective dates is necessary in order to effectuate certain proposed arrangements between the parties.

NUSCO states that copies of its submission have been mailed or delivered to Connecticut Municipal Electric Energy Cooperative and the Connecticut Department of Public Utility Control.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

33. Energy International Power Marketing, Corp.

[Docket No. ER98–2059–000]

Take notice that on March 2, 1998, Energy International Power Marketing Corp. (EIP), petitioned the Commission for acceptance of EIP Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

EIP intends to engage in wholesale electric power and energy purchases and sales as a marketer. EIP is not in the business of generating or transmitting electric power. EIP is a wholly-owned

subsidiary of Energy International Corporation, which primarily exports U.S. manufactured electrical and mechanical equipment.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

34. Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin)

[Docket No. ER98-2060-000]

Take notice that on March 2, 1998, Northern States Power Company (Minnesota), and Northern States Power Company (Wisconsin) (jointly NSP), filed proposed revisions to the NSP Open Access Transmission Tariff to revise the rates and terms and conditions of service for Network Integration Transmission Service (Network Service), on the integrated NSP electric transmission system. NSP presently provides Network Service to five non-jurisdictional electric utilities: the Central Minnesota Municipal Power Agency, Cooperative Power Association, Dairyland Power Cooperative, Southern Minnesota Municipal Power Agency, and United Power Association.

The proposed change increases the NSP Annual Transmission Revenue Requirement for Network Service to $147.3 million based on the 12 month test period ending December 31, 1998. NSP also proposes certain changes to the terms and conditions of the Tariff and Attachment H. Among other changes, NSP incorporates the revision to Tariff Section 29.1 mandated by FERC Order No. 888-B, and also proposes a formula to update costs and loads on an annual basis.

NSP requests an effective date of May 1, 1998, sixty (60) days after filing. NSP states that it served a copy of the filing on affected Network Service customers and the utility commissions in Minnesota, Michigan, North Dakota, South Dakota and Wisconsin.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

35. UtiliCorp United Inc.

[Docket No. ER98-2044-000]

Take notice that on March 2, 1998, UtiliCorp United Inc. (UtiliCorp), filed a service agreement with Platte River Power Authority for service under its non-firm point-to-point open access service tariff for its operating division, WestPlains Energy-Colorado.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

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. 98-6345 Filed 3-11-98; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98-35-000, et al.]

EAL/ERI Cogeneration Partners, L.P., et al.; Electric Rate and Corporate Regulation Filings

March 5, 1998.

Take notice that the following filings have been made with the Commission:

1. EAL/ERI Cogeneration Partners, L.P.

[Docket No. EG98-35-000]

On March 2, 1998, EAL/ERI Cogeneration Partners, L.P. (EECLP), with its address c/o ERI Services, Inc., 255 Main Street, Suite 500, Hartford, CT 06106, filed with the Federal Energy Regulatory Commission (FERC or the Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

EECLP is a Delaware limited partnership that will be engaged directly and exclusively in the business of developing, owning and operating an eligible facility to be located in Jamaica. The eligible facility will consist of an approximately 16 MW diesel-fired electric generation project and related interconnection facilities. The output of the eligible facility will be sold at wholesale and at retail to consumers located outside of the United States.

Comment date: March 26, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. CMS Generation Operating Company II, Inc.

[Docket No. EG98-47-000]

On February 26, 1998, CMS Generation Operating Company II, Inc., 330 Town Center Drive, Suite 1000, Dearborn, Michigan 48126, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

CMS Generation Operating Company II, Inc. is a wholly-owned indirect subsidiary of CMS Generation Co., a Michigan corporation, which is a wholly-owned indirect subsidiary of CMS Energy Corporation, also a Michigan corporation. CMS Generation Operating Company II, Inc., operates, under an operations and maintenance agreement with the owner, a facility with a maximum capacity of approximately 238 MW located in Lakewood Township, New Jersey.

Comment date: March 26, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. PG&E Energy Trading-Power, L.P.

[Docket No. ER95-1625-013]

On March 3, 1998, PG&E Energy Trading-Power, L.P. (PGET) (formerly USGen Power Services, L.P.), 7500 Old Georgetown Road, Bethesda, Maryland 20814, filed a Notification of Change in Status relating to prospective sales at wholesale to entities located within the franchised service territory of PGET's affiliate, Pacific Gas and Electric Company.

Comment date: March 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. TransCanada Energy Ltd.

[Docket Nos. ER95-692-012 and ER97-1417-000]

On March 3, 1998, TransCanada Energy Ltd.(TCE), filed a notification of a change in status to reflect certain departures from the facts the Commission relied upon in granting market-based rate authority.

Comment date: March 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Pennsylvania-New Jersey-Maryland Interconnection

[Docket No. ER97–3189–003]

Take notice that on March 2, 1998, Delmarva Power & Light Company (Delmarva), filed in compliance with the Commission's January 29, 1998 Order, revised network tariff service rates based on the annual peak which the Commission directed the PJM Companies to file consistent with the use of such peaks for the allocation of fixed transmission rights. Delmarva requests that this compliance filing be allowed to become effective on April 1, 1998.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Boston Edison Company

[Docket Nos. ER98–524–001 and ER98–616–001]

Take notice that on February 17, 1998, Boston Edison Company tendered for filing its compliance filing in the above-referenced docket. In addition, on February 20, 1998, Boston Edison tendered for filing supplemental information to its February 17, 1998, filing in the above-referenced dockets.

Comment date: March 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Southwestern Public Service Company

[Docket No. ER98–896–001]

Take notice that on March 3, 1998, Southwestern Public Service Company submitted its compliance filing as required by the January 30, 1998, Order.

Comment date: March 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Atlantic City Electric Company

[Docket No. ER98–1721–000]

Take notice that on February 9, 1998, Atlantic City Electric Company submitted an amended filing in this proceeding.

Comment date: March 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Vermont Electric Power Company, Inc.

[Docket No. ER98–1832–000]

Take notice that on February 24, 1998, Vermont Electric Power Company, Inc., submitted a supplement to its filing in this proceeding, consisting of a fully executed copy of an earlier-filed service agreement with Cinergy Capital & Trading, Inc.

Comment date: March 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. National Gas & Electric, L.P.

[Docket No. ER98–1972–000]

Take notice that on February 18, 1998, National Gas & Electric, L.P. (NG&E), hereby notifies the Commission that it is changing its name to PanCanadian Energy Services, L.P.

Comment date: March 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. LG&E Energy Marketing Inc.

[Docket No. ER98–1981–000]

Take notice that on February 20, 1998, LG&E Energy Marketing Inc. (LEM), submitted for filing, pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's Regulations, an Application for Authorization to Amend Market-Based Rate Schedule.

Comment date: March 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Union Electric Company

[Docket No. ER98–1973–000]

Take notice that on February 19, 1998, Union Electric Company (UE), tendered for filing a Revised Appendix T to the Service Agreement for Market Based Rate Power Sales between UE and the City of Columbia, Missouri. UE asserts that the purpose of the Revised Appendix T is to replace the obsolete transmission rates under the Union Electric Open Access Tariff with the current rates under the Ameren Open Access Tariff.

Comment date: March 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Niagara Mohawk Power Corporation

[Docket No. ER98–1982–000]

Take notice that on February 23, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and American Electric Power Service Corporation (AEPSC). This Transmission Service Agreement specifies that American Electric Power Service Corporation has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and American Electric Power Service Corporation to enter into separately scheduled transactions under which NMPC will provide transmission service for American Electric Power Service Corporation as the parties may mutually agree.

NMPC requests an effective date of February 18, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and American Electric Power Service Corporation.

Comment date: March 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Cinergy Services, Inc.

[Docket No. ER98–1983–000]

Take notice that on February 23, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff), entered into between Cinergy and OGE Energy Resources, Inc., (OGE).

Cinergy and OGE are requesting an effective date of February 15, 1998.

Comment date: March 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Washington Water Power

[Docket No. ER98–1984–000]

Take notice that on February 24, 1998, Washington Water Power, tendered for filing with the Federal Energy Regulatory Commission, pursuant to 18 CFR 35.13, an executed Service Agreement under WWP's FERC Electric Tariff First Revised Volume No. 9, with City of Idaho Falls. WWP requests waiver of the prior notice requirement and requests an effective date of February 1, 1998.

Comment date: March 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. FirstEnergy System

[Docket No. ER98–1986–000]

Take notice that on February 24, 1998, FirstEnergy System filed Service Agreements to provide Non-firm Point-to-Point Transmission Service for Amoco Energy Trading Corporation, Florida Power Corporation, and LG&E Energy Marketing, Incorporated, the Transmission Customers. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000. The proposed effective dates under the Service Agreements is February 1, 1998.

Comment date: March 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. FirstEnergy System

[Docket No. ER98–1987–000]

Take notice that on February 24, 1998, FirstEnergy System filed Service Agreement to provide Firm Point-to-Point Transmission Service for Pennsylvania Power & Light, Incorporated, the Transmission Customer. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000. The proposed effective dates under the Service Agreements is February 1, 1998.

Comment date: March 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. New England Power Company

[Docket No. ER98–1988–000]

Take notice that on February 24, 1998, New England Power Company filed amendments to exhibits and attachments to its Network Integration Transmission Service Agreements for service to Massachusetts Electric Company and Nantucket Electric Company and to The Narragansett Electric Company.

Comment date: March 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. MidAmerican Energy Company

[Docket No. ER98–1989–000]

Take notice that on February 24, 1998, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50303 submitted for filing with the Commission a Service Agreement dated December 19, 1997, with The Cincinnati Gas & Electric Company, PSI Energy, Inc., and Cinergy Services, Inc., entered into pursuant to MidAmerican's Rate Schedule for Power Sales, FERC Electric Tariff, Original Volume No. 5 (Tariff).

MidAmerican requests an effective date of February 1, 1998, for this Agreement, and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on Cinergy Services, Inc., agent for The Cincinnati Gas & Electric Company and PSI Energy, Inc., the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: March 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Ameren Services Company

[Docket No. ER98–1990–000]

Take notice that on February 24, 1998, Ameren Services Company (Ameren Services), tendered for filing a Network Operating Agreement and a Service Agreement for Network Integration Transmission Service between Ameren Services and the City of Centralia, Missouri. Ameren Services asserts that the purpose of the Agreements is to permit Ameren Services to provide transmission service to the City pursuant to Ameren's Open Access Transmission Tariff.

Comment date: March 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Union Electric Company

[Docket No. ER98–1991–000]

Take notice that on February 24, 1998, Union Electric Company (UE), tendered for filing a Service Agreement for Market Based Rate Power Sales between UE and the City of Centralia, Missouri (the City). UE asserts that the purpose of the Agreement is to permit UE to make sales of capacity and energy at market based rates to the City pursuant to UE's Market Based Rate Power Sales Tariff filed in Docket No. ER97–3664–000.

Comment date: March 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Central Illinois Light Company

[Docket No. ER98–1993–000]

Take notice that on February 24, 1998, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission a substitute Index of Customers under its Coordination Sales Tariff and one service agreement for one new customer, Koch Energy Trading, Inc.

CILCO requested an effective date of February 13, 1998.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

Comment date: March 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Carolina Power & Light Company

[Docket No. ER98–1994–000]

Take notice that on February 25, 1998, Carolina Power & Light Company (CP&L), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service executed between CP&L and the Eligible Transmission Customer (Engage Energy US, L.P.). Service to the Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: March 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. UtiliCorp United Inc.

[Docket No. ER98–1995–000]

Take notice that on February 25, 1998, UtiliCorp United Inc., tendered for filing on behalf of its operating division, WestPlains Energy-Kansas, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 12, with Energy Transfer Group, L.L.C. The Service Agreement provides for the sale of capacity and energy by WestPlains Energy-Kansas to Energy Transfer Group, L.L.C., pursuant to the tariff, and for the sale of capacity and energy by Energy Transfer Group, L.L.C., to WestPlains Energy-Kansas pursuant to Energy Transfer Group, L.L.C."s Rate Schedule No. 1.

UtiliCorp also has tendered for filing a Certificate of Concurrence by Energy Transfer Group, L.L.C.

UtiliCorp requests waiver of the Commission's Regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: March 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Allegheny Power Service Corp., et al.

[Docket No. ER98–2043–000]

Take notice that on March 3, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing a revised Notice of Withdrawal from the GAPP Experiment Participation Agreement (Agreement).

Copies of filing have been provided to each of the signatories of the Agreement, all parties of record in Docket No. ER97–697–000 and to the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: March 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. New England Power Pool

[Docket No. ER98–2061–000]

Take notice that on March 3, 1998, the New England Power Pool Executive Committee filed for acceptance a signature page to the New England Power Pool (NEPOOL), Agreement dated September 1, 1971, as amended, signed by Sithe New England Holdings LLC (Sithe). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Executive Committee states that the Commission's acceptance of Sithe's

signature page would permit NEPOOL to expand its membership to include Sithe. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Sithe a member in NEPOOL. NEPOOL requests an effective date for the commencement of Sithe's participation in NEPOOL as of the date of Sithe's acquisition of the generating assets currently owned by Boston Edison, which is anticipated to occur mid-May, 1998.

Comment date: March 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. New Century Services, Inc.

[Docket No. ER98–2062–000]

Take notice that on March 3, 1998, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Firm Point-to-Point Transmission Service between the Companies and Public Service Company of New Mexico.

Comment date: March 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. New Century Services, Inc.

[Docket No. ER98–2063–000]

Take notice that on March 3, 1998, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Non-Firm Point-to-Point Transmission Service between the Companies and Public Service Company of New Mexico.

Comment date: March 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

29. New Century Services, Inc.

[Docket No. ER98–2064–000]

Take notice that on March 3, 1998, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Non-Firm Point-to-Point Transmission Service between the Companies and Engage Energy US, L.P.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

30. UtiliCorp United Inc.

[Docket No. ER98–2065–000]

Take notice that on March 3, 1998, UtiliCorp United Inc. (UtiliCorp), filed service agreements with Otter Tail Power Wholesale Marketing for service under its Short-Term Firm Point-to-Point open access service tariff for its operating divisions, Missouri Public Service and WestPlains Energy-Kansas.

Comment date: March 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

31. UtiliCorp United Inc.

[Docket No. ER98–2066–000]

Take notice that on March 3, 1998, UtiliCorp United Inc. (UtiliCorp), filed service agreements with Otter Tail Power Wholesale Marketing 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: March 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

32. Medical Area Total Energy Plant Inc.

[Docket No. ER98–1992–000]

Take notice that on February 24, 1998, Medical Area Total Energy Plant, Inc. (MATEP), in anticipation of the finalization of its purchase of all of the common stock, tendered for filing pursuant to Section 205 and 207, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting MATEP's market-based rates tariff to be effective April 20, 1998.

MATEP intends to sell its generation at market-based rates pursuant to a wholesale contract. In transactions where MATEP sells electric energy it proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party.

A copy of AES's Petition was served on the Massachusetts Department of Telecommunications and Energy.

Comment date: March 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

33. UtiliCorp United Inc.

[Docket No. ER98–2067–000]

Take notice that on March 3, 1998, UtiliCorp United Inc. (UtiliCorp), filed service agreements with Amoco Energy Trading Corporation for service under its Short-Term Firm Point-to-Point open access service tariff for its operating divisions, Missouri Public Service and WestPlains Energy-Kansas.

Comment date: March 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

34. UtiliCorp United Inc.

[Docket No. ER98–2068–000]

Take notice that on March 3, 1998, UtiliCorp United Inc. (UtiliCorp), filed service agreements with Amoco Energy Trading Corporation 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: March 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

35. UtiliCorp United Inc.

[Docket No. ER98–2069–000]

Take notice that on March 3, 1998, UtiliCorp United Inc. (UtiliCorp), filed service agreements with Cargill-Alliant, L.L.C. for service under its Short-Term Firm Point-to-Point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: March 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

36. UtiliCorp United Inc.

[Docket No. ER98–2070–000]

Take notice that on March 3, 1998, UtiliCorp United Inc. (UtiliCorp), filed service agreements with Cargill-Alliant, L.L.C., for service under its Non-Firm Point-to-Point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: March 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

37. Northern Indiana Public Service Company

[Docket No. ER98–2071–000]

Take notice that on March 3, 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 Tennessee Valley Authority (TVA).

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to TVA 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 1, 1998.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: March 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

38. Ameren Services Company

[Docket No. ER98–2072–000]

Take notice that on March 3, 1998, Ameren Services Company (AS), tendered for filing Service Agreements for Long-Term Firm Point-to-Point Transmission Service between AS and Commonwealth Edison Company (CEC). AS asserts that the purpose of the Agreements is to permit AS to provide transmission service to CEC pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. EC96–7–000 et al.

Comment date: March 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

39. Central Louisiana Electric Company, Inc.

[Docket No. ER98–2073–000]

Take notice that on March 3, 1998, Central Louisiana Electric Company, Inc., (CLECO), tendered for filing an umbrella service agreement under which CLECO will make market based power sales under its MR–1 tariff with Columbia Power Marketing Corporation.

CLECO states that a copy of the filing has been served on Columbia Power Marketing Corporation.

Comment date: March 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

40. Central Louisiana Electric Company, Inc.

[Docket No. ER98–2074–000]

Take notice that on March 3, 1998, Central Louisiana Electric Company, Inc., (CLECO), tendered for filing two service agreements under which CLECO will provide non-firm and short term firm point-to-point transmission services to Columbia Power Marketing Corporation under its point-to-point transmission tariff.

CLECO states that a copy of the filing has been served on Columbia Power Marketing Corporation.

Comment date: March 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

41. CSW Energy Services, Inc.

[Docket No. ER98–2075–000]

Take notice that on March 3, 1998, CSW Energy Services, Inc. (ESI), filed with the Federal Energy Regulatory Commission a Market-Based Rate Power Sales Tariff to sell power at market-based rates, an application for blanket authorizations and for certain waivers of the Commission's Regulations. ESI intends to engage in transactions in which ESI will sell electricity at rates and on terms and conditions that are negotiated with the purchasing party.

ESI has requested expedited action on its filing so that the Commission may accept ESI's rate schedule for filing to become effective as of March 31, 1998.

Comment date: March 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

42. Hawkeye Power Partners, LLC

[Docket No. ER98–2076–000]

Take notice that on March 3, 1998, Hawkeye Power Partners, LLC (Hawkeye Power), petitioned the Commission for acceptance for filing of the power purchase agreement between Hawkeye Power and Interstate Power Company and to accept the rates thereunder as just and reasonable under Section 205(a) of the Federal Power Act, 16 U.S.C. § 824d(a); for the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and for the waiver of certain Commission regulations. Hawkeye Power is a limited liability company that proposes to engage in the wholesale sale of electric power in the state of Iowa and is headquartered in Cerro Gordo County, Iowa.

Comment date: March 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

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. 98–6376 Filed 3–11–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2146–079]

Alabama Power Company; Notice of Availability of Environmental Assessment

March 6, 1998.

An environmental assessment (EA) is available for public review. The EA was prepared for an application filed by the Alabama Power Company on November 19, 1997, requesting the Commission's authorization to permit the Five Star Water Supply District (District) to construct and operate a raw water intake structure on Bouldin Reservoir, and an adjacent water pumping station and water treatment plant. After constructing these facilities, the District would withdraw up to 14 million gallons per day from Bouldin Reservoir for municipal water supply.

The EA evaluates the environmental impacts that would result from: (1) granting an easement to the District for the construction and operation of a raw water pumping station on Bouldin Reservoir, and a 20-inch-diameter, 2,000-foot-long pipeline; (2) conveying fee title to a 12.7-acre parcel of project lands to the District for the construction and operation of a water treatment plant on that site; and (3) implementing an agreement allowing the District to withdraw up to 14 million gallons per day from Bouldin Reservoir for municipal water supply beginning in the year 2000.

The EA finds that approval of the application would not constitute a major federal action significantly affecting the quality of the human environment.

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA can be viewed at the Commission's Reference and Information Center, Room 2A, 888 First Street, NE., Washington, DC 20426. Copies also may be obtained by calling

the EA coordinator, Jim Haimes, at (202) 219–2780.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–6350 Filed 3–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission

March 6, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of application:* New Major License.

b. *Project No.:* 2659–011.

c. *Date Filed:* February 25, 1998.

d. *Applicant:* PacifiCorp.

e. *Name of Project:* Powerdale Hydroelectric Project

f. *Location:* On the Hood River, near the town of Hood River, in Hood River County, Oregon. The project boundary does not occupy any federal lands of the United States.

g. *Filed Pursuant to:* Federal Power Act 16 USC §§ 791(a)—825(r).

h. *Applicant Contact:* Randy Landolt, Director, Hydro Resources, PacifiCorp, 920 SW Sixth Avenue, Portland, Oregon 97204, (503) 464–5339.

i. *FERC Contact:* Bob Easton at (202) 219–2782.

j. *Brief Description of the Project:* The existing project consists of: (1) a 206-foot-long and 10-foot-high diversion dam; (2) 80-foot by 60-foot concrete intake structure; (3) an approximately 16,000-foot-long water conveyance system; (4) an 86-foot-wide by 51-foot-long concrete powerhouse; (5) one turbine generator unit with a rated capacity of 6.0 megawatts; (6) a 135-foot-long rock-lined tailrace; and (7) other appurtenances.

k. With this notice, we are initiating consultation with the *OREGON STATE HISTORIC PRESERVATION OFFICER (SHPO),* as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36, CFR, at 800.4.

l. Under Section 4.32(b)(7) of the Commission's regulations (18 CFR 4.32(b)(7)), if any resource agency, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission, not later than 60 days after the application is filed, and must serve a copy of the request on the applicant.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–6351 Filed 3–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Preliminary Permit

March 6, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11612–000.

c. *Date filed:* January 27, 1998.

d. *Applicant:* Westford Development, Inc.

e. *Name of Project:* Clark Canyon Dam Project.

f. *Location:* On the Beaverhead River, in Beaverhead County, Montana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Mr. Arch Ford, Westford Development, Inc., Rt. 2 Box 65 (Jacks Canyon Road), Lenore, ID 83451.

i. *FERC Contact:* Mr.Robert Bell, (202) 219–2806.

j. *Comment Date:* May 8, 1998.

k. *Description of Project:* The proposed project would consist of: (1) the existing 133-foot-high, 2,000-foot-long Clark Canyon Dam; (2) an existing reservoir having a surface area of 5,240 acres, a storage capacity of 182,000 Acre-feet, and a normal water surface elevation of 5,546.1 feet msl; (3) a proposed powerhouse containing two generating units having a total installed capacity of 3.0 MW; (4) a proposed 1,320-foot-long, 161 kVA transmission line; and (5) appurtenant facilities.

The project would have an annual generation of 542,880 MWH and would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–6352 Filed 3–11–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5976–8]

New Jersey State Prohibition on Marine Discharges of Vessel Sewage; Receipt of Petition and Tentative Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

Notification is hereby given that a petition was received from the State of New Jersey on October 10, 1997, requesting a determination by the Regional Administrator, Environmental Protection Agency , pursuant to section 312(f) of Public Law 92–500, as amended by Public Law 95–217 and Public Law 100–4 (the Clean Water Act), that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters of the Manasquan River, Counties of Monmouth and Ocean, State of New Jersey.

This petition was made by the New Jersey Department of Environmental Protection (NJDEP) in cooperation with the Monmouth-Ocean Alliance to Enhance the Manasquan River. Upon receipt of an affirmative determination in response to this petition, NJDEP would completely prohibit the discharge of sewage, whether treated or not, from any vessel in Manasquan River in accordance with section 312(f)(3) of the Clean Water Act and 40 CFR 140.4(a).

The Manasquan River is located in central New Jersey and runs southeasterly through Monmouth County for more than 23 miles before emptying into the Atlantic Ocean at the Manasquan Inlet. The Manasquan River is classified as a medium river with a drainage area of 81 square miles. The lower 6.5 miles of the river forms the estuary that is bordered by Wall Township, Brielle Borough and Manasquan Borough to the north and Brick Township, Point Pleasant Borough and Point Pleasant Beach borough to the south. The proposed No-Discharge Zone would include all navigable waters in the Manasquan Estuary beginning at Manasquan Inlet and including Stockton Lake, Glimmer Glass, Lake Louise and Point Pleasant Canal up to the Route 88 bridge.

Information submitted by the State of New Jersey and the Monmouth-Ocean Alliance to Enhance the Manasquan River states that there are five existing pump-out facilities available and two portable toilet dump stations to service vessels which use the Manasquan River. Brielle Marine Basin, located at 608 Green Avenue, Brielle, operates a stationary pumpout and a portable pumpout. The pumpouts are available from 8 a.m. to 5 p.m. and are operated by the marina staff. Brielle Yacht Club, located 201 Union Lane, Brielle, operates a stationary pumpout. The pumpout is available from 5 a.m. to 10 p.m. and is operated by the marina staff. Manasquan River Club, located at 217 Riverside Drive, Brick, operates a portable toilet dump station. The dump station is available from 8 a.m. to 5 p.m. and is self-operated. Suburban Boatworks and Marina, located at 1500 Riverside Drive, Brick, operates a stationary pumpout and a portable toilet dump station. The pumpout and dump station are available from 9 a.m. to 5 p.m. and are operated by the marina staff. Crystal Point Yacht Club, located at 4000 River Road, Point Pleasant, operates a stationary pumpout. The pumpout is available from 9 a.m. to 5 p.m. and is self-operated. All marinas charge a $5.00 fee for use of the pumpout/dump facilities. Only one facility, Manasquan Marine Center, has a draft restriction at the pumpout which would exclude boats with a draft 3 feet or greater. Six facilities are proposing to construct seven additional pumpout facilities (one is actually a replacement of an existing pumpout with two sub-stations) and three portable toilet dump stations. These proposed facilities were scheduled to be completed by September 1997. Two other facilities, Manasquan Municipal Marina and Bogan's Deep Sea Fishing Center, have pump-out facilities but their use is not available to the public and were not counted when assessing the adequacy of pumpouts in the proposed area.

Within six nautical miles of the Manasquan River are eight additional pump-out facilities and two portable toilet dump stations. Three facilities are located on the Shark River, three facilities are located on the Metedeconk River and two facilities are on Barnegat Bay.

Vessel waste generated from the pump-out facilities in the Monmouth County is conveyed to the South Monmouth Regional Sewage Authority (NJPDES Permit No. NJ0024520). Vessel waste generated from the pump-out facilities in the Ocean County is conveyed to the Ocean County Utilities Authority—Northern Plant (NJPDES Permit No. NJ0028142). These plants operate under permits issued by the New Jersey Department of Environmental Protection.

According to the State's petition, the maximum daily vessel population for the waters of Manasquan River is approximately 2624 vessels. This estimate is based on (1) vessels docked at marinas and yacht clubs (1940 vessels), (2) vessels docked at non-marina facilities (559 vessels) and (3) transient vessels (125 vessels). The vessel population based on length is 1505 vessels less than 26 feet in length, 885 vessels between 26 feet and 40 feet in length and 234 vessels greater than 40 feet in length. Based on number and size of boats, and using various methods to estimate the number of holding tanks, it is estimated that 3 to 5 pumpouts are needed for the Manasquan River.

The EPA hereby makes a tentative affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the Manasquan River in the counties of Monmouth and Ocean, New Jersey. A final determination on this matter will

be made following the 30 day period for public comment and will result in a New Jersey State prohibition of any sewage discharges from vessels in Manasquan River.

Comments and views regarding this petition and EPA's tentative determination may be filed on or before April 13, 1998. Comments or requests for information or copies of the applicant's petition should be addressed to Walter E. Andrews, U.S. Environmental Protection Agency, Region II, Water Programs Branch, 290 Broadway, 24th Floor, New York, New York, 10007–1866. Telephone: (212) 637-3880.

Dated: February 19, 1998.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 98–6382 Filed 3–11–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5976–7]

New Jersey State Prohibition on Marine Discharges of Vessel Sewage; Receipt of Petition and Tentative Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

Notice is hereby given that a petition was received from the State of New Jersey on September 3, 1997, requesting a determination by the Regional Administrator, Environmental Protection Agency, pursuant to section 312(f) of Public Law 92–500, as amended by Public Law 95–217 and Public Law 100–4 (the Clean Water Act), that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the navigable waters of the Shark River, Monmouth County, State of New Jersey.

This petition was made by the New Jersey Department of Environmental Protection (NJDEP) in cooperation with Monmouth County and the Shark River Roundtable. Upon receipt of an affirmative determination in response to this petition, NJDEP would completely prohibit the discharge of sewage, whether treated or not, from any vessel in the Shark River in accordance with section 312(f)(3) of the Clean Water Act and 40 CFR 140.4(a).

The Shark River, located in central New Jersey, has its headwaters in Tinton Falls and flows into its estuary of approximately 810 acres. The estuary is surrounded by the towns of Avon-by-the-Sea, the Borough of Belmar, Neptune City, Neptune Township and Wall Township. The river empties into the Atlantic Ocean via the Shark River Inlet. The Shark River drains a watershed area of 23 square miles. The proposed No-Discharge Zone would include all navigable waters in the Shark River beginning at the Shark River Inlet.

Information submitted by the State of New Jersey, the Monmouth County, and the Shark River Roundtable states that there are two existing pumpout facilities available and two portable toilet dump stations to service vessels which use the Shark River. Belmar Municipal Marine Basin, located at 900 Marine Avenue, Belmar, operates a stationary pumpout and a dump station for portable toilets. The pumpout and dump station are available at all hours and are operated by the marina staff from 6 a.m. to 6 p.m or by the boater at all other hours. Main One Marina, located at 1 Main Street, Avon, operates a stationary pumpout and a portable toilet dump station. The pumpout and dump station are available from 8 a.m. to 5 p.m. and are operated by marina staff. Total Marine at Seaview, located at 120 Sea Spray Lane, Neptune, operates a stationary pumpout which serves boats docked at the marina only. The pumpout is available on demand. This facility was not included in the assessment of adequacy of pumpouts available to the boating population since 90% of the vessels are excluded from its use.

Four facilities are proposing to construct additional pumpout facilities (one each). Shark River Hills Marina, Shark River Hills Beach and Yacht Club, Shark River Yacht Club and Belmar Municipal Marina have applied for Clean Vessel Act grants to fund the installation of pumpout facilities. All existing and proposed pumpout facilities are located in areas where six feet mean low water depth is avalable. No vessels will be excluded from use of the pumpouts due to draft restrictions.

Vessel waste generated from the pump-out facilities in Wall Township and the Borough of Belmar is conveyed to the South Monmouth Regional Sewage Authority (NJPDES Permit No. NJ0024520). Vessel waste generated from the pump-out facilities in Avon, Neptune City and Neptune Township is conveyed to the Neptune Township Sewage Authority (NJPDES Permit No. NJ0024872). These plants operate under permits issued by the New Jersey Department of Environmental Protection.

According to the State's petition, the maximum daily vessel population for the Shark River is approximately 1183 vessels. This estimate is based on (1) vessels docked at marinas and yacht clubs (882 vessels), (2) vessels docked at non-marina facilities (129 vessels) and (3) transient vessels (172 vessels). The vessel population based on length is 872 vessels less than 26 feet in length, 263 vessels between 26 feet and 40 feet in length and 48 vessels greater than 40 feet in length. Based on number and size of boats, and using various methods to estimate the number of holding tanks, it is estimated that 1 to 2 pumpouts are needed for the Shark River.

The EPA hereby makes a tentative affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the Shark River in the County of Monmouth, New Jersey. A final determination on this matter will be made following the 30 day period for public comment and will result in a New Jersey State prohibition of any sewage discharges from vessels in the Shark River.

Comments and views regarding this petition and EPA's tentative determination may be filed on or before April 13, 1998. Comments or requests for information or copies of the applicant's petition should be addressed to Walter E. Andrews, U.S. Environmental Protection Agency, Region II, Water Programs Branch, 290 Broadway, 24th Floor, New York, New York, 10007–1866. Telephone: (212) 637–3880.

Dated: February 19, 1998.

William J. Musynski,

Acting Regional Administrator.

[FR Doc. 98–6388 Filed 3–11–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5976–6]

EPA Position Statement on Environmental Management Systems and ISO 14001 and a Request for Comments on the Nature of the Data To Be Collected From Environmental Management System/ISO 14001 Pilots

AGENCY: Environmental Protection Agency.

ACTION: Position statement; request for comment on information gathering.

SUMMARY: This document communicates the EPA's position regarding Environmental Management Systems (EMSs), including those based on the International Organization for

Standardization (ISO) 14001 standard. This document also describes the evaluative stage EPA is entering concerning EMSs. Further, it solicits comments on proposed categories of information to be collected from a variety of sources that will provide data for a public policy evaluation of EMSs.

FOR FURTHER INFORMATION CONTACT: Office of Reinvention—EMS, Environmental Protection Agency, 401 M St., SW, mail code 1803, Washington, D.C. 20460, Telephone: (202) 260–4261. E-mail: reinvention@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A diverse group of organizations, associations, private corporations and governments has been developing and implementing various EMS frameworks for the past thirty years. For example, the Chemical Manufacturers Association created its own framework called Responsible Care. In addition, the French, Irish, Dutch, and Spanish governments developed their own voluntary EMS standards.

The possibility that these diverse EMS frameworks could result in barriers to international trade led to a heightened interest in formulating an international voluntary standard for EMSs. To that end, the International Organization for Standardization (ISO), consisting of representatives from industry, government, non-governmental organizations (NGOs), and other entities, finalized the ISO 14001 EMS standard in September 1996. The intent of this standard is to produce a single framework for EMSs, which can accommodate varied applications all over the world. ISO 14001 is unique among the ISO 14000 standards because it can be objectively audited against for internal evaluation purposes or for purposes of self-declaration or third-party certification of the system.

EPA participation in the development of voluntary standards, including the ISO 14000 series of standards, is consistent with the goals reflected in section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. No. 104–113, s. 12(d), 15 U.S.C. 272 note). The NTTAA requires federal agencies to use voluntary consensus standards in certain activities as a means of carrying out policy objectives or other activities determined by the agencies, unless the use of these standards would be inconsistent with applicable law or otherwise impractical. In addition, agencies must participate in the development of voluntary standards when such participation is in the public interest and is compatible with an agency's mission, authority, priority, and budget resources. Agency participation in the development of EMS voluntary standards does not necessarily connote EPA's agreement with, or endorsement of, such voluntary standards.

On December 16, 1997, EPA Deputy Administrator Fred Hansen asked EPA's newly chartered Office of Reinvention "to take lead responsibility for policy coordination of all EMS pilots, programs, and communications." (Full text of memo available at www.epa.gov/reinvent.) This notice initiates the Office of Reinvention's effort to ensure public input in that endeavor.

II. Statement

Implementation of an EMS has the potential to improve an organization's environmental performance and compliance with regulatory requirements. EPA supports and will help promote the development and use of EMSs, including those based on the ISO 14001 standard, that help an organization achieve its environmental obligations and broader environmental performance goals. In doing so, EPA will work closely with all key stakeholders, especially our partners in the States.

EPA encourages the use of EMSs that focus on improved environmental performance and compliance as well as source reduction (pollution prevention) and system performance. EPA supports efforts to develop quality data on the performance of any EMS to determine the extent to which the system can help bring about improvements in these areas. EPA also encourages organizations that develop EMSs to do so through an open and inclusive process with relevant stakeholders, and to maintain accountability for the performance outcomes of their EMSs through measurable objectives and targets. EPA encourages organizations to make information on the actual performance of their environmental management systems available to the public and governmental agencies In addition, through initiatives such as Project XL and the Environmental Leadership Program, EPA is encouraging the testing of EMSs to achieve superior environmental performance. At this time, EPA is not basing any regulatory incentives solely on the use of EMSs, or certification to ISO 14001.

The Commission for Environmental Cooperation (CEC) Council issued on June 12, 1997, a resolution (#97–05) signed by EPA Deputy Administrator Fred Hansen on behalf of the United States concerning "future cooperation regarding environmental management systems and compliance." The CEC Council was formed pursuant to the North American Agreement on Environmental Cooperation, an environmental side agreement to the North American Free Trade Agreement, and is comprised of the environmental ministers for Canada, Mexico and the United States. The declarative and directive paragraphs of the Council's resolution #97–05 read as follows:

The Council * * * Declares That:
Governments must retain the primary role in establishing environmental standards and verifying and enforcing compliance with laws and regulations. Strong and effective governmental programs to enforce environmental laws and regulations are essential to ensure the protection of public health and the environment. Voluntary compliance programs and initiatives developed by governments can supplement strong and effective enforcement of environmental laws and regulations, can encourage mutual trust between regulated entities and government, and can facilitate the achievement of common environmental protection goals; Private voluntary efforts, such as adoption of Environmental Management Systems (EMSs) such as those based on the International Organization on Standardization's Specification Standard 14001 (ISO 14001), may also foster improved environmental compliance and sound environmental management and performance. ISO 14001 is not, however, a performance standard. Adoption of an EMS pursuant to ISO 14001 does not constitute or guarantee compliance with legal requirements and will not in any way prevent the governments from taking enforcement actions where appropriate;

Hereby Directs:
The Working Group to explore (1) the relationship between the ISO 14000 series and other voluntary EMSs to government programs to enforce, verify and promote compliance with environmental laws and regulations, and (2) opportunities to exchange information and develop cooperative positions regarding the role and effect of EMSs on compliance and other environmental performance. The Working Group shall, no later than the 1998 Council Session, report its results to the Council and provide recommendations for future cooperative action in this area. The review and recommendations shall recognize and respect each Party's domestic requirements and sovereignty.

III. Evaluative Phase

EPA is working in partnership with a number of states to explore the utility of EMSs, especially those based substantially on ISO 14001, in public policy innovation. The goal of this partnership is to gather credible and compatible information of known quality adequate to address key public policy issues. The primary mechanism

to generate this information will be pilot projects. Valid, compatible data from other sources will also be used whenever possible. To make efficient use of resources, and to ensure more robust research, EPA and states will work together on the creation of a common data base. The data base will be open and usable, while recognizing the need to insure the appropriate level of confidentiality for participants.

A group of federal and state officials involved in EMS pilot projects have been working together to set up a common national database of information gathered through the pilot projects. As part of that process, EPA and states are developing a series of data protocols which provide instructions and survey instruments to guide the actual collection of data for the data base. That document will be available at http://www.epa.gov/reinvent.

This document will serve to solicit comments on the categories of information to be collected. From the following general categories of information (and possibly others), EPA and participating states will develop the above mentioned protocols.

The following categories are designed to provide a general idea as to the types of information that EPA believes should be collected to evaluate the effectiveness of EMSs from the perspective of regulators. EPA further believes that collection of data in all categories will allow the fullest understanding and evaluation of the benefits of an EMS. The data categories which appear in this document were, to the extent possible, developed around the kinds of data we believe will or could be generated by an ISO 14001 EMS.

1. Environmental Performance

The impact a facility has on the environment is of paramount importance to regulators' assessment of EMSs. Thus, it is critical to measure any change in a facility's environmental performance that might be attributable to implementation of an EMs. Information would be collected as to the types, amounts, and properties of pollutants that are released to air, surface water, groundwater, or the land. Information on these pollutants would need to be normalized to a facility's production levels. Information relating to recycling, reuse, and energy requirements could also be included. This inquiry could include both regulated and non-regulated pollutants.

2. Compliance

Implementation of an EMS has the potential to improve an organization's environmental compliance with regulatory requirements. The goal of collecting compliance information is to be able to measure the relationship between an EMs and compliance with local, state and federal environmental regulations. The types of data to be collected would include: information on whether the facility has a recent history of regulatory violations; the number, and seriousness of the violations; how quickly violations were discovered and corrected; and measurements of any changes in regulatory compliance status.

3. Pollution Prevention

Pollution prevention is a significant goal for both federal and state regulators. Therefore, better understanding the relationship between an organization's overall performance and the role of pollution prevention in the organization's EMs is important to regulators. In the federal context, pollution prevention is defined as "* * * any practice which—(l) reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream, or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal; and (ii) reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants." [1] This definition will likely serve as a basis for helping an organization identify measures that it might have taken towards pollution prevention. Data collected would include a description of the type of pollution prevention and source reduction techniques used, including good operating practices, inventory control, spill and leak prevention, raw material modification/substitution, process modification, and product reformulation or redesign.

4. Environmental Conditions

In order to understand the impact of an EMs on the environment, it is necessary to know something about the status of the ambient environment surrounding the facility prior to implementation of an EMS. An analysis of this nature will not only help regulators evaluate EMs, it should also help facility mangers prioritize their environmental aspects and shape the policies and objectives of their EMSs. Environmental conditions data will assist all parties in determining the sustainability of certain human activities from an environmental, economic and social perspective. It is difficult, of course, to collect accurate and comparable information about environmental conditions. The time and expense needed for a facility to collect and report such data could be prohibitive. Also, the selection of an appropriate geographic focus—local, regional, or global—will be challenging. One way to minimize this burden would be to utilize available governmental or other surveys (e.g., the 1990 U.S. Census, hydrogeologic reports). Nevertheless, to the degree that these obstacles can be overcome, the analysis conducted by federal and state regulators will benefit.

5. Costs/Benefits to Impelementing Facilities

There has been much speculation and assertion about the relative costs and benefits associated with the implementation of an EMS. Data collected in this category should help provide answers to questions concerning possible net financial benefits that might accompany improved compliance and increased environmental performance, or that might result from being able to achieve compliance in less costly ways. The data may also shed light on the costs associated with higher levels of environmental performance. It is important to recognize some of the limitations inherent in traditional approaches to cost/benefit analysis. To address these limitations, organizations could be encouraged to identify intangible costs and benefits associated with the implementation of an EMS, even if they are difficult to quantify. Also, a list of usually "hidden" costs and benefits could be used to help organizations identify and understand costs and benefits that are traditionally overlooked.

6. Stakeholder Participation and Confidence

Community participation has become an increasingly important component of federal and state efforts to increase environmental performance and protect human health. Both federal and state regulators are interested in understanding the involvement of local communities and other stakeholders in the EMS process. Data could be collected to assess the amount and degree of stakeholder participation in both the development and implementation of an organization's EMS, or the effect that such participation has on the public credibility of the facility's EMS implementation.

More information concerning the pilot projects as well as other federal, state and international initiatives relating to

[1] Pollution Prevention Act of 1990 Section 6603, 42 U.S.C. 13102 (1990).

EMSs and ISO 14000 can be found in the ISO 14000 Resource Directory (copies can be obtained through EPA's Pollution Prevention Information Clearinghouse at 202–260–1023, e-mail: ppic@epamail.epa.gov).

Dated: March 6, 1998.

Fred Hansen,

Deputy Administrator.

[FR Doc. 98–6389 Filed 3–11–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00526; FRL–5777–9]

Pesticides and A National Strategy for Health Care Providers; Open Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: A coalition of Federal agencies has initiated a national effort to improve the education and training of health professionals in the prevention and management of health problems associated with pesticide related illness and injury. This initiative is sponsored by EPA, in collaboration with the Department of Health and Human Services, the Department of Agriculture, and the Department of Labor. The first national workshop for this effort will be held on April 23-24, 1998, in Arlington, VA. This notice announces the location and times for the meetings. The meetings are open to the public.

DATES: The meetings will be held on Thursday, April 23, 1998, from 1 p.m. to 5 p.m. and Friday, April 24, 1998, from 8 a.m. to 5 p.m.

ADDRESSES: The meetings will be held at: Sheraton National Hotel, Columbia Pike and Washington Boulevard, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: By mail: Kevin Keaney or Ameesha Mehta, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Telephone number: (703) 305–7666, Fax number: (703) 308–2962, E-mail: mehta.ameesha@epamail.epa.gov.

List of Subjects

Environmental protection.

Dated: March 6, 1998.

Anne E. Lindsay,

Director, Field and External Affairs Division, Office of Pesticide Programs.

[FR Doc. 98–6384 Filed 3–11–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER NUMBER: 5827.

PREVIOUSLY ANNOUNCED DATE AND TIME: Tuesday, March 10, 1998, 10:00 a.m.
Meeting closed to the public.
This meeting was canceled.

DATE & TIME: Tuesday, March 17, 1998 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 98–6477 Filed 3–9–98; 5:01 pm]

BILLING CODE 6715–01–M

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 6, 1998.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *BOC Financial Corp.*, Landis, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of the Carolinas, the proposed successor by charter conversion to Landis Savings Bank, SSB, Landis, North Carolina.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1413:

1. *First Neighborhood Bancshares, Inc., Employee Stock Ownership Plan*, Toledo, Illinois, to become a bank holding company by acquiring 31.19 percent of the voting shares of First Neighborhood Bancshares, Inc., Toledo, Illinois, and Greenup National Corporation, Greenup, Illinois, and thereby indirectly acquire First State Bank of Newman, Newman, Illinois, The First National Bank in Toledo, Toledo, Illinois, and The Greenup National Bank, Greenup, Illinois.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102–2034:

1. *S & C Holdings, Inc.*, Memphis, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Independent Bank (in organization), Memphis, Tennessee.

Board of Governors of the Federal Reserve System, March 9, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–6379 Filed 3–11–98; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Statement of Organization, Functions and Delegation of Authority

Part A (Office of the Secretary), Chapter AE (Office of the Assistant Secretary for Planning and Evaluation (OASPE)), of the Statement of Organization, Functions and Delegation of Authority for the Department of Health and Human Services (most

recently amended at 58 FR 247 on May 8, 1996) is amended as follows:

I. Chapter AE, paragraph C. within "The Office of Health Policy," and paragraph 3, "Division of Health Delivery Systems."

3. The Division of Health Delivery Systems is responsible for policy coordination, longrange planning, formulating budget and legislation, economic analysis, program analysis, review of regulations, evaluation and information dissemination related to health services, and organization and delivery policy. Topics include consumer issues such as quality and consumer protections; private insurance; health care organization and financial issues. Functions include analyzing trends in the private health care sector; studying the interactions of the private and public health care sectors in terms of cost effectiveness, service levels and effects on consumers; analyzing alternative legislative and regulatory proposals; preparing short-term policy analyses and evaluations of existing and potential policies and programs particularly those that cut across the Department's program areas. The Division also coordinates work and plays a liaison role across the Department and with other Departments (including Treasury, Justice and Labor).

Dated: March 5, 1998.

John J. Callahan,

Assistant Secretary for Management & Budget.

[FR Doc. 98–6358 Filed 3–11–98; 8:45 am]

BILLING CODE 4120–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

National Advisory Council for Health Care Policy, Research, and Evaluation: Request for Nominations for Public Members

AGENCY: Agency for Health Care Policy and Research, HHS.

ACTION: Request for nominations for public members.

SUMMARY: 42 U.S.C. 299c, section 921 of the Public Health Service (PHS Act), established a National Advisory Council for Health Care Policy, Research, and Evaluation (the Council). The Council is to advise the Secretary and the Administrator, Agency for Health Care Policy and Research (AHCPR), on matters related to actions of the Agency to enhance the quality, appropriateness, and effectiveness of health care services, and access to such services through scientific research, the promotion of improvements in clinical practice and in the organization, financing, and delivery of health care services.

Four current members' terms will expire in June 1998 and there are three other vacancies to be filled. We are seeking persons who are distinguished in the conduct of health services to research, persons distinguished in the practice of medicine, and persons to represent health care consumers' interests to fill these positions in accordance with the legislated mandate establishing the Council.

DATES: Nominations should be received on or before April 30.

ADDRESSES: Nominations should be sent to Ms. Pat Longus, AHCPR, 2101 East Jefferson Street, Suite 603, Rockville, Maryland 20857. Nominations also may be faxed to (301) 443–0251.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Foster, AHCPR, at (301) 594–1349.

SUPPLEMENTARY INFORMATION: 42 U.S.C. 299c, section 921 of the PHS Act, provides that the National Advisory Council for Health Care Policy, Research, and Evaluation shall consist of 17 appropriately qualified representatives of the public appointed by the Secretary of Health and Human Services and five ex officio representatives from Federal agencies conducting or supporting health care research. The Council meets in the Washington, D.C., metropolitan area approximately three times a year to provide broad guidance to the Secretary and AHCPR's Administrator on the direction and programs for AHCPR.

To assure broad representation, individuals serving on AHCPR's Advisory Council reflects a variety of discipline and perspectives. Of the seven positions for which nominations are being sought, four require individuals distinguished in health services research, two require individuals distinguished in the practice of medicine, and one individual to represent the interests of health care consumers.

Members generally serve 3-year terms. Appointments are staggered to permit an orderly rotation of membership. Individuals selected by the Secretary to serve on the Council will be expected to attend their first meeting in the fall of this year.

Interested persons may nominate one or more qualified persons for membership on the Council. Nominations shall include a copy of the nominee's resume or curriculum vitae, and state that the nominee is willing to serve as a member of the Council. Potential candidates will be asked to provide detailed information concerning their financial interests, consultant positions, and research grants and contracts, to permit evaluation of possible sources of conflict of interest.

The Department is seeking a broad geographic representation and has special interest in assuring that women, minority groups, and the physically handicapped are adequately represented on advisory bodies and, therefore, extends particular encouragement to nominations for appropriately qualified female, minority, and/or physically handicapped candidates.

Dated: March 5, 1998.

John M. Eisenburg,

Administrator.

[FR Doc. 98–6293 Filed 3–11–98; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health

[Announcement Number 98030]

Occupational Radiation and Energy-Related Health Research Grants; Notice of Availability of Funds for Fiscal Year 1998

Introduction

The Centers for Disease Control and Prevention (CDC), National Institute for Occupational Safety and Health (NIOSH), announces the availability of fiscal year (FY) 1998 funds for the acceptance of grant applications for research projects relating to occupational safety and health concerns associated with occupational exposures to radiation and other hazardous agents at nuclear facilities and in other energy-related industries. Studies in the nuclear power industry and deliberate exposure of human subjects in radiation experiments are outside the scope of this announcement.

CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (For ordering a copy of Healthy People 2000, see the section Where to Obtain Additional Information.)

Authority

This program is authorized under the Public Health Service Act, as amended, Section 301(a) [42 U.S.C. 241(a)]; the Occupational Safety and Health Act of 1970, Section 20(a) [29 U.S.C. 669(a)]. The applicable program regulations are in 42 CFR Part 52.

Eligible Applicants

Eligible applicants include domestic and foreign non-profit and for-profit organizations, universities, colleges, research institutions, and other public and private organizations, including State and local governments, and small, minority and/or woman-owned businesses.

Note: Effective January 1, 1996, Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible to receive Federal funds constituting an award, grant (cooperative agreement), contract, loan, or any other form.

Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Availability of Funds

Approximately $500,000 is available in fiscal year (FY) 1998 to fund approximately 3 to 5 research project grants (R01). The amount of funding available is subject to change. Awards will range from $50,000 to $200,000 in total costs (direct and indirect) per year. Awards are expected to begin on or about July 1, 1998. Awards will be made for a 12-month budget period within a project period not to exceed 3 years. Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds.

Use of Funds

Restrictions on Lobbying

Applicants should be aware of restrictions on the use of HHS funds for lobbying of Federal or State legislative bodies. Under the provisions of 31 U.S.C. Section 1352 (which has been in effect since December 23, 1989), recipients (and their subtier contractors) are prohibited from using appropriated Federal funds (other than profits from a Federal contract) for lobbying congress or any Federal agency in connection with the award of a particular contract, grant, cooperative agreement, or loan. This includes grants/cooperative agreements that, in whole or in part, involve conferences for which Federal funds cannot be used directly or indirectly to encourage participants to lobby or to instruct participants on how to lobby.

In addition, the FY 1998 Department of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act (Public Law 105–78) states in Section 503 (a) and (b) that no part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress or any State legislature, except in presentation to the Congress or any State legislature itself. No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

Background

The Secretary, Department of Health and Human Services (HHS) and the Secretary, Department of Energy (DOE) signed a Memorandum of Understanding (MOU) transferring the authority and resources to manage and conduct energy-related analytic epidemiologic research from DOE to HHS. This includes the authority, resources, and responsibility for the design, implementation, analysis, and scientific interpretation of analytic epidemiologic studies of the following populations: workers at DOE facilities; other workers potentially exposed to radiation; and workers exposed to potential hazards resulting from non-nuclear energy production and use.

The Comprehensive Epidemiologic Data Resource (CEDR) was established by DOE to serve as a repository for data from epidemiologic studies they had sponsored prior to transferring this responsibility to CDC. These data are available to investigators who wish to conduct additional analyses on these completed studies in response to this announcement. The CEDR is maintained by DOE and to access the data, an investigator must make an application to the DOE's Office of Environment, Safety and Health.

Purpose

NIOSH will support applied field research projects to identify and investigate the relationships between health outcomes and occupational exposure to radiation and other hazardous agents; epidemiologic methods research relevant to energy-related occupational health research; and research related to assessing occupational exposures.

Programmatic Interest

The focus of grants should reflect the following topical areas, emphasizing field research: (1) Retrospective exposure assessment, (2) radiation measurement issues, (3) non-cancer morbidity and mortality outcomes, (4) meta-analysis and combined analysis methodologies, (5) uncertainty analysis, (6) effects of measurement error on risk estimates, (7) studies of current workers, and (8) risk communication and worker outreach.

(1) Retrospective Exposure Assessment

Epidemiologic studies of occupational cohorts frequently involve, and can generally benefit from, retrospective exposure assessment to provide estimates of exposure or categorize groups of workers by common exposure. Exposure assessment in energy-related occupational epidemiology requires evaluating exposures to various hazards including ionizing and non-ionizing radiation, metals, acids, and solvents. Grant opportunities encompass the fields of industrial hygiene and retrospective exposure assessment of health physics dosimetry. Research areas of general interest include: methods to use limited data to best advantage; how to treat censored data in retrospective exposure assessment; uncertainty analysis techniques for industrial hygiene exposure data and health physics dosimetry; insight to sampling strategy design yielding a representative understanding of exposed groups; decision logic to select/use the most appropriate exposure metric for epidemiologic and risk assessment use; and, development approaches of "Homogeneous Exposed Groupings" and the advantages/limitations for epidemiologic use. Research opportunities of specific interest include: reconstruction and dose adjustment of historic film badges; exposure assessment for acid mists, carcinogenic solvents, exotic metals, and leukemogens; assessment of electromagnetic field exposure; and evaluation of biomarkers of exposure.

(2) Radiation Measurement Issues

This topic will focus on the applicability and utility of radiation dose data in epidemiological research. Examples of such issues include how to use nondetectable values and missing dose data in historical radiation exposure measurements, the accuracy of historical external dosimetry techniques (film and pocket dosimeters), combining external and internal doses into a useful index, historical bioassay, and radiochemistry techniques.

(3) Non-Cancer Morbidity and Mortality Outcomes

The majority of analytical epidemiologic research of health effects of energy-related occupational and environmental exposures has focused historically on the assessment of the association between cancer mortality and exposure to ionizing radiation. Although the importance of this research should not be underestimated, it is essential that other potential adverse health effects, as well as other possible energy-related exposures, be thoroughly evaluated as well. Among these would be the possible effects of radiation on the reproductive, neurologic, and immune systems. Chemical exposures highly prevalent in Department of Energy facilities, such as beryllium and mercury, have also been associated with a variety of disease outcomes, particularly respiratory and neurologic in nature.

(4) Meta-Analysis and Combined Analysis Methodologies

Many of the cohorts at nuclear facilities are not individually large enough to detect statistically significant increases in mortality or incidence for rare cancer types. Methods and/or analyses for combining data across studies, whether in summary form or individual data, are valuable to the research effort involving energy-related health research.

(5) Uncertainty Analysis

Measures of occupational exposure are inherently uncertain. Even when measures of external radiation exposure are generally available, the models used to estimate organ dose, shallow versus deep dose, neutron dose, etc., are subject to error. Measures of dose derived from biological monitoring of urine, feces, blood, etc., are even less precise. Methods for assessing the degree of error in various estimates of exposure to both ionizing radiation as well as other toxic agents (chemicals, EMF, etc.) are desirable.

(6) Effects of Measurement Error on Risk Estimates

Estimation of both bias and imprecision introduced into risk analyses through exposure measurement error have recently received considerable attention. Many of the suggested approaches are very computer intensive. Practical solutions to this problem with regard to the spectrum of epidemiologic designs (cohort, case-control, cross-sectional, etc.) are needed, with particular attention to the nature of exposure measurement in radiation epidemiology.

(7) Studies of Current Workers

Much of the epidemiologic research on nuclear workers conducted at nuclear facilities and other sites has emphasized retrospective studies. More recently new activities involve environmental restoration, waste management and other work that is not related to the design and production of nuclear weapons. Workers are being exposed to radiation and other hazardous agents under conditions and in processes not previously encountered. Exposure assessment, epidemiologic and related studies are needed to evaluate these new conditions and processes and the impact on worker health.

(8) Risk Communication and Worker Outreach

Upon completion of a study, the findings must be presented to the workers at the site where the study was conducted and to people living in the nearby community. The communication of study results must be done in a manner that can be readily understood by all persons who want to know the impact of a given study, and without the use of highly technical terms and scientific jargon. To communicate effectively with workers, educational outreach may be needed to help workers understand the scientific principles and terminology used in the research. Various types of communications may be required to reach out to all workers and the effectiveness of these communication modes must be measured. Methodologies for such evaluations may presently exist or may have to be developed for this purpose. Evaluation studies of communication of study findings and health risk communication attempts which indicate ways to influence worker behavior, demonstrates impact of the research conducted, or provides insight into better ways to communicate to diverse audiences is needed. Attention should focus on a process to work with researchers to ensure that the workers and the public can understand the key research findings and that the effectiveness of the communication can be measured objectively.

Reporting Requirements

Progress reports are required annually as part of the continuation application which is due 75 days prior to the start of the next budget period. The annual progress reports must contain information on accomplishments during the previous budget period and plans for each remaining year of the project. Financial status reports (FSR) are required no later than 90 days after the end of the budget period. The final performance and financial status reports are required 90 days after the end of the project period.

The final performance report should include, at a minimum, a statement of original objectives, a summary of research methodology, a summary of positive and negative findings, and a list of publications resulting from the project. Research papers, project reports, or theses are acceptable items to include in the final report. The final report should stand alone rather than citing the original application. Three copies of reprints of publications prepared under the grant should accompany the report.

On or before the expiration date of the grant, the applicant shall submit study data, with appropriate documentation, to the Comprehensive Epidemiologic Data Resource (CEDR), maintained by the Department of Energy at the Lawrence Berkeley Laboratory. This shall include analysis files and separate analytic files for all relevant study data, including demographic variables, radiation dosimetry, industrial hygiene, work history, and/or medical records data. A written report describing each data set and a code book for each data set shall also be submitted. Information about preparation of CEDR files can be obtained from Barbara Brooks (DOE Headquarters, 301–903–4674) or Mark Durst (Lawrence Berkeley Labs, 510–486–4136).

For studies that involve workers as subjects, the applicant shall also be responsible for presenting the study findings to workers and to DOE and DOE contractor staff at all sites where the study was conducted. In addition, a similar presentation will be done in a public meeting to inform workers and people living near the site(s). NIOSH will be responsible for arranging the times and a facility for these presentations. The presentation can be done in person or by a videotape. In the latter case, the applicant will be

available by telephone to respond to questions from those in attendance.

Evaluation Criteria

Upon receipt, applications will be reviewed by CDC for completeness and responsiveness. Applications determined to be incomplete or unresponsive to this announcement will be returned to the applicant without further consideration. If the proposed project involves organizations or persons other than those affiliated with the applicant organization, letters of support and/or cooperation must be included.

Applications that are complete and responsive to the announcement will be reviewed by an initial review group and will be determined to be competitive or non-competitive, based on the review criteria identified below and relative to other applications received. Applications determined to be non-competitive will be withdrawn from further consideration and the principal investigator/program director and the official signing for the applicant organization will be promptly notified. Applications judged to be competitive will be reviewed for scientific merit and assigned a priority score. Following initial review for scientific merit, the applications will receive a secondary review for programmatic importance.

Review criteria for scientific merit are as follows:

1. Technical significance and originality of proposed project.
2. Appropriateness and adequacy of the study design and methodology proposed to carry out the project.
3. Qualifications and research experience of the Principal Investigator and staff, particularly but not exclusively in the area of the proposed project.
4. Availability of resources necessary to perform the project.
5. Documentation of cooperation from collaborators in the project, where applicable.
6. Adequacy of plans to include both sexes and minorities and their subgroups as appropriate for the scientific goals of the project. (Plans for the recruitment and retention of subjects will also be evaluated.)
7. Appropriateness of budget and period of support.
8. Human Subjects—Procedures adequate for the protection of human subjects must be documented. Recommendations on the adequacy of protections include: (1) protections appear adequate and there are no comments to make or concerns to raise, (2) protections appear adequate, but there are comments regarding the protocol, (3) protections appear inadequate and the Initial Review Group has concerns related to human subjects, or (4) disapproval of the application is recommended because the research risks are sufficiently serious and protection against the risks are inadequate as to make the entire application unacceptable.

Review criteria for programmatic importance are as follows:

1. Magnitude of the problem in terms of numbers of workers affected.
2. Severity of the injury or disease in the population.
3. Usefulness to applied technical knowledge in the identification, evaluation, or control of occupational safety and health hazards on a national or regional basis.

The following will be considered in making funding decisions:

1. Scientific merit of the proposed project as determined by the initial peer review.
2. Programmatic importance of the project as determined by secondary review.
3. Availability of funds.
4. Program balance among priority areas of this announcement.

Executive Order 12372 Review

Applications are not subject to the review requirements of Executive Order 12372.

Public Health System Reporting Requirement

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.262.

Other Requirements

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR part 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit. In addition, the applicant will be responsible for complying with a NIOSH–DOE agreement that assures the research protocol is reviewed by the institutional review committee(s) (if such a committee exists) at each DOE site where the research will be conducted. This process will be coordinated by the NIOSH Human Subjects Review Board after the award of the grant.

Travel

In the application, the applicant should allow for appropriate travel to DOE sites, as established under guidelines developed by NIOSH and DOE. This includes travel for data collection, and worker/community notification of study results, at each site included in the study protocol. The applicant shall include in its proposal the costs of travel to NIOSH in Cincinnati, Ohio, for the annual meeting of energy-related research extramural partners.

Women and Racial and Ethnic Minorities

It is the policy of the CDC to ensure that women and racial and ethnic groups will be included in CDC-supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and Hispanic or Latino. Applicants shall ensure that women and racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is not feasible, this situation must be explained as part of the application. In conducting the review of applications for scientific merit, review groups will evaluate proposed plans for inclusion of minorities and both sexes as part of the scientific assessment and assigned a score. This policy does not apply to research studies when the investigator cannot control the race, ethnicity and/or sex of subjects. Further guidance to this policy is contained in the **Federal Register**, Vol. 60, No. 179, Friday, September 15, 1995, pages 47947–47951.

Application Submission and Deadlines

A. Preapplication Letter of Intent

Although not a prerequisite of application, a non-binding letter of intent-to-apply is requested from potential applicants. The letter should be submitted to the Grants Management Officer (whose address is reflected in section B, "Applications"). It should be postmarked no later than April 24, 1998. The letter should identify the

announcement number, name of principal investigator, and specify the priority area to be addressed by the proposed project. The letter of intent does not influence review or funding decisions, but it will enable CDC to plan the review more efficiently, and will ensure that each applicant receives timely and relevant information prior to application submission.

B. Applications

Applicants should use Form PHS-398 (OMB Number 0925-0001) and adhere to the ERRATA Instruction Sheet for Form PHS-398 contained in the Grant Application Kit. Please submit an original and five copies on or before June 11, 1998 to: Ron Van Duyne, Grants Management Officer, ATTN: Joanne Wojcik, Procurement and Grants Office, Centers for Disease Control and Prevention, (CDC), 255 East Paces Ferry Road, NE., Room 300, MS-E13, Atlanta, GA 30305.

C. Deadlines

1. Applications shall be considered as meeting a deadline if they are either:

A. Received at the above address on or before the deadline date, or

B. Sent on or before the deadline date to the above address, and received in time for the review process. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be accepted as proof of timely mailings.

2. Applications which do not meet the criteria above are considered late applications and will be returned to the applicant.

Where To Obtain Additional Information:

To receive additional written information call 1-888-GRANTS4. You will be asked for your name and address and will need to refer to Announcement 98030. You will receive a complete program description, information on application procedures, and application forms. In addition, this announcement is also available through the CDC Home Page on the Internet. The address for the CDC Home Page is (http://www.cdc.gov).

The following documents may provide useful information: NIOSH Occupational Energy Research Program agenda booklet and/or The DOE Access Handbook: Conducting Health Studies at Department of Energy Sites may be obtained from the business management contact listed below.

If you have questions after reviewing the contents of all the documents, business management information may be obtained from Joanne Wojcik, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., MS E-13, Atlanta, GA 30305, telephone 404-842-6535; fax: 404-842-6513; Internet: jcw6@cdc.gov.

Programmatic technical assistance may be obtained from Roy M. Fleming, Sc.D., Director Research Grants Program, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Building 1, Room 3053, MS-D30, Atlanta, GA 30333, telephone 404-639-3343; fax 404-639-4616; internet: rmf2@cdc.gov.

PLEASE REFER TO ANNOUNCEMENT NUMBER 98030 WHEN REQUESTING INFORMATION AND SUBMITTING AN APPLICATION.

This and other CDC Announcements can be found on the CDC homepage (http://www.cdc.gov) under the "Funding" section, as well as on the NIOSH homepage (http://www.cdc.gov/niosh/homepage.html) under "Funding Opportunities/Extramural Programs." For your convenience, you may be able to retrieve a copy of the PHS Form 398 from (http://www.nih.gov/grants/funding/phs398/phs398.html).

CDC will not send application kits by facsimile or express mail.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report, Stock No. 017-001-00474-0) or "Healthy People 2000" (Summary Report, Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325, telephone (202) 512-1800.

Dated: March 6, 1998.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health Centers for Disease Control and Prevention (CDC).

[FR Doc. 98-6360 Filed 3-11-98; 8:45 am]

BILLING CODE 4163-19-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Subcommittee for Community Affairs and the Advisory Committee for Energy-Related Epidemiologic Research: Meetings

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 subcommittee and committee meetings.

Name: Subcommittee for Community Affairs.

Times and Dates: 8:30 a.m.-5 p.m., March 30, 1998. 1 p.m.-5 p.m., April 1, 1998.

Place: Radisson Hotel Berkeley, 200 Marina Boulevard, Berkeley, California 94710, telephone 510/548-7920, FAX 510/548-7944.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: This subcommittee will advise the Advisory Committee for Energy-Related Epidemiologic Research (ACERER) on matters related to community needs and will report back to the agency through ACERER.

Matters To Be Discussed: This is the initial meeting of the Subcommittee for Community Affairs. Presentations will be made by the staff of the National Center for Environmental Health (NCEH), the National Institute for Occupational Safety and Health (NIOSH), and the Agency for Toxic Substances and Disease Registry (ATSDR) giving updates on the progress of current activities.

Name: Advisory Committee for Energy-Related Epidemiologic Research.

Times and Dates: 8:30 a.m.-5 p.m., March 31, 1998. 8:15 a.m.-12 noon, April 1, 1998.

Place: Radisson Hotel Berkeley, 200 Marina Boulevard, Berkeley, California 94710, telephone 510/548-7920, FAX 510/548-7944.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: This committee is charged with providing advice and recommendations to the Secretary of Health and Human Services and the Assistant Secretary for Health; the Director, CDC, and the Administrator, ATSDR, on the establishment of a research agenda and the conduct of a research program pertaining to energy-related analytic epidemiologic studies.

Matters To Be Discussed: Agenda items will include: presentations from NCEH, NIOSH, and ATSDR updating the progress of current studies; and a report from the Subcommittee for Community Affairs.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Michael J. Sage, Executive Secretary, ACERER, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, M/S F-35, Atlanta, Georgia 30341-3724, telephone 770/488-7040, FAX 770/488-7044.

Dated: March 5, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98-6365 Filed 3-11-98; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

National Mammography Quality Assurance Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: National Mammography Quality Assurance Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on May 4, 1998, 9 a.m. to 6 p.m., and May 5, 1998, 8 a.m. to 5 p.m.

Location: Gaithersburg Hilton Hotel, Salons A and B, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Charles A. Finder, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–3332, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12397. Please call the Information Line for up-to-date information on this meeting.

Agenda: On May 4, 1998, the committee will discuss the proposed Mammography Quality Standards Act (MQSA) inspection procedures under the final regulations. On May 5, 1998, the committee will discuss the issue of collimation of the x-ray field as it relates to mammography and receive updates on the issues of States as certifying bodies under MQSA, Interventional Mammography, and Voluntary Stereotactic Accreditation Programs.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by April 6, 1998. Oral presentations from the public will be scheduled between approximately 9:30 a.m. and 10:30 a.m. on May 4 and 5, 1998. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before April 6, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 5, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–6370 Filed 3–11–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Use of Emergency Departments by HCH Clients—New

—The Health Care for the Homeless (HCH) Program is a Federal grant program authorized by section 330(h) of the Public Health Service Act. The HCH Program seeks to improve access by homeless individuals to primary health care and substance abuse treatment. There are 122 community-based organization grantees which are community and migrant health centers, local health departments and community coalitions. More than 450,000 clients have been served. Specific activities of the HCH program are:

- Providing for primary health care and substance abuse services at accessible locations;
- Providing round-the-clock access to emergency services and referring to hospital inpatient and/or to mental health services as needed;
- Helping homeless persons to establish eligibility for assistance and to obtain services under entitlement programs.

Data will be collected in six East Coast cities in which there are Health Care for the Homeless (HCH) grantees. Between 200–250 single homeless persons will be interviewed at either homeless shelters or soup kitchens in each of the six sites. The objective is a total sample of 1,350.

The main research questions the data collection is intended to answer are:

- Is there a difference in the level of use of hospital emergency departments by HCH program users and HCH program non-users?
- Is there a difference in the inappropriate use of hospital emergency departments by HCH program users and HCH program non-users?
- Is hospital emergency department use by homeless people a reasonable indicator of an HCH program's impact or success?
- Do differences in emergency department utilization among the homeless vary across specific broad classes of medical conditions?
- Do the differences in emergency department utilization among the homeless vary by age, gender, ethnicity, insurance, status or family status?

There will be five categories of questions respondents will be asked: Emergency Room Visits, Impatient Hospital Utilization, Outpatient Health Care Utilization, Health Status and Perceived Need for Health Care, and Demographics.

The estimated respondent burden is as follows:

Type of respondent	Number of respondents	Responses per respondent	Hours per response	Response burden (hours)
Homeless individuals	1350	1	.25	337

Send comments to Patricia Royston, HRSA Reports Clearance Officer, Room 14–36, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: March 2, 1998.

Jane Harrison,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 98–6297 Filed 3–11–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

HRSA Competitive Grants Preview; State Mortality Morbidity Review Support Program Grants

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of extension of deadline date.

SUMMARY: This notice extends the application due date for applications for State Mortality/ Morbidity Review Support Program grants previously published in the **Federal Register** on October 9, 1997, as part of the General Notice: Availability of the HRSA Competitive Grants Preview (62 FR 52894–52914). State Mortality/ Morbidity Review Support Program grants are intended to enable State Maternal and Child Health programs to stimulate, promote, coordinate, and sustain mortality and morbidity review programs at State and local levels.

Correction

In the table on page 52894 and on page 52910 in the second column, the deadline date published in the **Federal Register** has been extended to May 15, 1998, to allow applicants more time to submit meritorious applications.

Dated: February 27, 1998.

Claude Earl Fox,

Acting Administrator.

[FR Doc. 98–6296 Filed 3–11–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of April 1998.

Name: HRSA AIDS Advisory Committee.

Date and Time: 9 a.m.–5 p.m. April 23, 1998; 9 a.m.–5 p.m. April 24, 1998.

Place: The Inn and Conference Center, University of Maryland University College, University Boulevard at Adelphi Road, College Park, MD 20742–1610, Tel. 301 985–7300, FAX. 301 985–7445.

The meeting is open to the public.

Agenda: Drug Adherence, Managed Care, Ryan White Care Act Reauthorization Issues.

For information regarding the committee contact: John Holloway, HIV/AIDS Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 7–13, Rockville, MD 20857.

Agenda items are subject to change as priorities dictate.

Dated: March 5, 1998.

Jane M. Harrison,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 98–6294 Filed 3–11–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of April 1998.

Name: National Advisory Council on Nurse Education and Practice.

Date and Time: 8:30 a.m.–5 p.m., April 23, 1998; 8:30 a.m.–3 p.m., April 24, 1998.

Place: Seneca Room, Silver Spring Holiday Inn, 8777 Georgia Avenue, Silver Spring, MD 20910.

The meeting is open to the public.

Agenda: Updates on and discussion of Agency, Bureau and Division activities, and legislative and budget status of programs; review of clinical nurse specialist workforce trends, implications and options for the future; review of Nursing Education Opportunities for Individuals from Disadvantaged Backgrounds Program grants and update on workforce diversity.

The meeting will be open to the public with the exception of the period from approximately 8:30 a.m. until 9:30 a.m. on April 24, when grant applications will be reviewed.

Anyone interested in obtaining a roster of members, minutes of the meeting, or other relevant information should write or contact Ms. Elaine G. Cohen, Executive Secretary, National Advisory Council on Nurse Education and Practice, Parklawn Building, Room 9–35, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–5786.

Agenda items are subject to change as priorities dictate.

Dated: March 5, 1998.

Jane M. Harrison,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 98–6295 Filed 3–11–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request Dietary Supplements Information Needs Assessment Survey

SUMMARY: Under the provisions of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH), Office of the Director (OD), the Office of Dietary Supplements (ODS) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on January 8, 1998, pages 1115–1116 and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comments. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: Dietary Supplements Information Needs Assessment Survey. *Type of Information Collection Request:* New Collection. *Need and use of Information Collection:* This survey will assess the availability of and need for dietary supplements information services in the United States. The primary objectives are to determine the number and nature of information requests about dietary supplements received by major nutrition, medical, health and botanical organizations in the United States, and to assess their interest in a centralized information center to deal with information requests pertaining to dietary supplements. *Frequency of Response:* One time. *Affected Public:* Business or other for-profit; Not-for-profit institutions, and Federal Government. *Type of Respondents:* Organizations. The annual reporting burden is as follows: *Estimated Number of Respondents:* 180. *Estimated Number of Responses per Respondent:* 1. *Average Burden Hours Per Response:* 25. *Estimated Total Annual Burden Hours Requested:* 45. The annualized cost to respondents is estimated at: $1,800. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points. (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB

Written 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 the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Charles R. MacKay, Project Clearance Officer, Office of Policy for Extramural Research Administration, Office of Extramural Research, Office of the Director, NIH, Rockledge II, 6701 Rockledge Drive, MSC 7730, Room 2196, Bethesda, MD 20892–7730, or call non-toll-free number (301) 435–0978 or E-Mail your request, including your address to: cm13f@nih.gov.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received on or before April 13, 1998.

Dated: March 5, 1998.

Diana Jaeger,

Acting Director, Office of Policy for Extramural Research Administration.

[FR Doc. 98–6317 Filed 3–11–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of Alternative Medicine, Office of the Director; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Alternative Medicine Program Advisory Council on March 23–24, 1998, Doubletree Hotel, 1750 Rockville Pike, Rockville, Maryland 20852.

The two-day meeting will be open to the public from 8:30 a.m. to 5 p.m. on March 23 and 8:30 a.m. to adjournment on March 24. Attendance by the public will be limited to space available. The purpose of the meeting will be to update and review the progress of the Office of Alternative Medicine and obtain Council's advise on research activities. Additional agenda items include: (1) Orientation and introduction of new members; (2) discussion of implementation of the strategic plan; (3) an update on the 1998 OAM budget; and (4) other activities of the Council.

Ms. Mary Plummer, Committee Management Officer, Office of Alternative Medicine, 6100 Executive Boulevard, 6100 Building, Room 5E01, National Institutes of Health, Bethesda, Maryland, 20892–7510, Area Code 301–594–7232, will provide a summary of the meeting and a roster of Council members as well as substantive program information. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Plummer no later than March 16, 1998.

Dated: March 4, 1998.

LaVerne Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 98–6311 Filed 3–11–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Special Programs Emphasis Panel of the Office of the Director; Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the following Special Programs Emphasis Panel of the Office of the Director, National Institutes of Health.

The meeting will be open to the public to provide a forum in which individuals from Government, industry, and voluntary health organizations work together to finalize a report and to make recommendations on steps to coordinate rare disease research programs within existing research funds and resources. This report will be submitted to the Senate Appropriations Committee.

A portion of the meeting on March 30 will be available for public comment. Anyone who would like to provide comments at this meeting should contact Dr. Stephen Groft, (301) 402–4336, Executive Secretary of the Advisory Group of the Coordination of Rare Diseases Research.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below in advance of the meeting.

Name of Panel: Advisory Group of the Coordination of Rare Diseases Research.

Dates of Meeting: March 30, 1998.

Time of Meeting: 8:30 a.m.

Place of Meeting: Wilson Hall, Shannon Building, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

Agenda: To review the Draft Report on the Coordination of Rare Diseases Research and to Discuss Implementation Plans for the Recommendations.

Contact Person: Dr. Stephen C. Groft (Executive Secretary), Director, Office of Rare Diseases, National Institutes of Health, Building 31, Room 1B03, 9000 Rockville Pike, Bethesda, MD 20892–2082, Telephone: (301) 402–4336, Fax: (301) 402–0420.

Dated: March 3, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 98–6302 Filed 3–11–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute on Drug Abuse (NIDA) Special Emphasis Panel meeting.

Purpose/Agenda: To review and evaluate contract proposals.

Name of Committee: NIDA Special Emphasis Panel (Contract Review—"Logistical Support for Special Populations Seminars").

Date: March 12, 1998.

Time: 9 a.m.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Mr. Eric Zatman, Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–42, Telephone (301) 443–1644.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

The meeting will be closed in accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.277, Drug Abuse Research Scientist Development and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs)

Dated: March 5, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 98–6303 Filed 3–11–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel meeting:

Name of SEP: ZDK1 GRB4–M1 S.

Date: March 26–27, 1998.

Time: 8 am.

Place: Holiday Inn BWI Airport, 890 Elkridge Landing Road, Linthicum Maryland 21090

Contact: William Elzinga, Ph.D., Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6as–37A, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: (301) 594–8895.

Purpose/Agenda: To review and evaluate grant applications.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic diseases, Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: March 3, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 98–6304 Filed 3–11–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Amended Notice of Meeting

Notice is hereby given of a change in the notice of the April 2 meeting of the National Institute on Deafness and Other Communication Disorders Communication Disorders Review Committee which was published on February 26, 1998, 63 FR 9848.

The meeting date and time have been changed to April 1, 1998, from 8 a.m. until adjournment.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: March 3, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 98–6305 Filed 3–11–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel.

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: March 30, 1998.

Time: 10:30 a.m.

Place: Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Shirley H. Maltz, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: March 30, 1998.

Time: 3 p.m.

Place: Parklawn, Room 9–101. 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Maureen L. Eister, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: March 31, 1998.

Time: 2 p.m.

Place: Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Shirley H. Maltz, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: April 6–April 7, 1998.

Time: 8:30 a.m.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Donna Ricketts, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

The meetings will be closed in accordance with the provisions set forth in secs.

552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated March 3, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 98–6306 Filed 3–11–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel meeting:

Name of SEP: ZDKI GRB–6 M1 M.
Date: March 10, 1998.
Time: 4 p.m.
Place: Room 6as–37A, Natcher Building, NIH (Telephone Conference Call).
Contact: Neal Musto, Ph.D., Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6as–37A, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: (301) 594–7798.
Purpose/Agenda: To review and evaluate grant applications.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: March 3, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 98–6307 Filed 3–11–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Child Health and Human Development Special Emphasis Panel (SEP) meeting:

Name of SEP: Cellular/Molecular Pathophysiology of Mental Retardation.
Date: March 12–13, 1998.
Time: March 23—7 p.m.—10 p.m.; March 13—8 a.m.—adjournment.
Place: Brigham and Women's Hospital, Boston, Massachusetts 02115.
Contact Person: Norman Chang, Ph.D., Scientific Review Administrator, NICHD, 6100 Executive Boulevard, Room 5E01, Rockville, MD 20852, Telephone: 301–496–1485.
Purpose/Agenda: To evaluate and review a research grant application.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussion of this application could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with this application, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. [93.864, Population Research and No. 93.865, Research for Mothers and Children], National institute of Health, HHS)

Dated: March 3, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 98–6308 Filed 3–11–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 United States Code Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.
Date: April 6, 1998
Time: 8 am to adjournment
Place: Ramada Inn, 8400 Wisconsin Avenue, Bethesda, Maryland 20814
Contact Person: George M. Barnas, Ph.D., Scientific Review Administrator, NIDCD/DEA/SRB, EPS Room 400C, 6120 Executive Boulevard, Bethesda MD 20892–7180, 301–496–8693.
Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, United States Code. The applications and/or proposals and the discussion could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: March 3, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 98–6309 Filed 3–11–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Closed Meeting

Pursuant to Section 19(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel (SEP) meeting.

Name of SEP: Acupuncture.
Date: March 27, 1998.
Time: 9:30 a.m.—adjournment.
Place: Doubletree Hotel, 1750 Rockville Pike, Bethesda, Maryland 20852.

Contact Person: Aftab A. Ansari, Ph.D., Scientific Review Administrator, Natcher Building, 45 Center Drive, Rm 5AS25U, Bethesda, Maryland 20892, Telephone: 301–594–4952.

Purpose/Agenda: To evaluate and review grant applications.

This meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussion of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with these applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. (93.846, Project Grants in Arthritis, Musculoskeletal and Skin Diseases Research), National Institutes of Health, HHS)

Dated: March 5, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 98–6312 Filed 3–11–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: March 18, 1998.

Time: 4 p.m.

Place: Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Jean G. Noronha, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: March 19–March 20, 1998.

Time: 9 a.m.

Place: Bethesda Hyatt Regency, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Michael D. Hirsch, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: March 26, 1998.

Time: 10 a.m.

Place: Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: W. Gregory Zimmerman, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1340.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: March 5, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 98–6313 Filed 3–11–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: March 19, 1998.

Time: 8 a.m.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Salvador H. Cuellar, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–4868.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: March 5, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 98–6314 Filed 3–11–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel meetings:

Name of SEP: ZDK1 GRB–C MI.

Date: April 6–8, 1998.

Time: 7 p.m.

Place: Omni Netherland Plaza, 35 West Fifth Street, Cincinnati, Ohio 45202.

Contact: Dan E. Matsumoto, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6as–37A, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: (301) 594–8894.

Purpose/Agenda: To review and evaluate grant applications.

Name of SEP: ZDK1 GRB–5 M2 P

Date: April 13–15, 1998.

Time: 7:30 p.m.

Place: Holiday Inn Select at University Center, 100 Lytton Avenue, Pittsburg, PA 15213.

Contact: Francisco O. Calvo, Ph.D., Chief, Special Emphasis Panel, Review Branch, DEA, NIDDK, Natcher Building, Room 6as–37A, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: (301) 594–8897.

Purpose/Agenda: To review and evaluate grant applications.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: March 5, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 98–6315 Filed 3–11–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Child Health and Human Development Special Emphasis Panel (SEP) meeting:

Name of SEP: Medical Rehabilitation Clinical Trials Planning Agenda.
Date: April 5–6, 1998.
Time: April 5—7 p.m.–10 p.m.; April 6—8 a.m.–adjournment.
Place: The Bethesda Ramada Inn, 8400 Rockville Pike, Bethesda, Maryland 20814.
Contact Person: Anne Krey, Scientific Review Administrator, NICHD, 6100 Executive Boulevard, Room 5E01, Rockville, MD 20852, Telephone: 301–496–1485.
Purpose/Agenda: To evaluate and review research grant applications.

This meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussion of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with these applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. (93.864, Population Research and No. 93.865, Research for Mothers and Children), National Institutes of Health, HHS)

Dated: March 5, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 98–6316 Filed 3–11–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Center for Scientific Review Special Emphasis Panel (SEP) meetings.

Purpose/Agenda: To review individual grant applications.

Name of SEP: Biological and Physiological Sciences.
Date: March 17, 1998.
Time: 11 a.m.
Place: NIH, Rockledge 2, Room 4144, Telephone Conference.
Contact Person: Dr. Syed Quadri, Scientific Review Administrator, 6701 Rockledge Drive, Room 4144, Bethesda, Maryland 20892, (301) 435–1211.

Name of SEP: Biological and Physiological Sciences.
Date: March 18–19, 1998.
Time: 9 a.m.
Place: Doubletree Hotel, Rockville, MD.
Contact Person: Dr. Anita Miller Sostek, Scientific Review Administrator, 6701 Rockledge Drive, Room 5202, Bethesda, Maryland 20892, (301) 435–1260.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Clinical Sciences.
Date: March 25, 1998.
Time: 3 p.m.
Place: NIH, Rockledge 2, Room 4100, Telephone Conference.
Contact Person: Dr. Paul Strudler, Scientific Review Administrator, 6701 Rockledge Drive, Room 4100, Bethesda, Maryland 20892, (301) 435–1716.

Name of SEP: Clinical Sciences.
Date: March 26, 1998.
Time: 1 p.m.
Place: NIH, Rockledge 2, Room 4100, Telephone Conference.
Contact Person: Dr. Paul Strudler, Scientific Review Administrator, 6701 Rockledge Drive, Room 4100, Bethesda, Maryland 20892, (301) 435–1716.

Name of SEP: Chemistry and Related Sciences.
Date: March 27, 1998.
Time: 12 p.m.
Place: NIH, Rockledge 2, Room 4172, Telephone Conference.
Contact Person: Dr. Donald Schneider, Scientific Review Administrator, 6701 Rockledge Drive, Room 4172, Bethesda, Maryland 20892, (301) 435–1727.

Name of SEP: Chemistry and Related Sciences.
Date: March 30, 1998.
Time: 2 p.m.
Place: NIH, Rockledge 2, Room 4168, Telephone Conference.
Contact Person: Dr. John Bowers, Scientific Review Administrator, 6701 Rockledge Drive, Room 4168, Bethesda, Maryland 20892, (301) 435–1725.

Name of SEP: Microbiological and Immunological Sciences.
Date: April 1, 1998.
Time: 1 p.m.
Place: NIH, Rockledge 2, Room 5110, Telephone Conference.
Contact Person: Dr. Mohindar Poonian, Scientific Review Administrator, 6701 Rockledge Drive, Room 5110, Bethesda, Maryland 20892, (301) 435–1218.

Name of SEP: Chemistry and Related Sciences.
Date: April 2–3, 1998.
Time: 8:30 a.m.
Place: Bethesda Hyatt, Bethesda, MD.
Contact Person: Dr. John Bowers, Scientific Review Administrator, 6701 Rockledge Drive, Room 4168, Bethesda, Maryland 20892, (301) 435–1725.

Name of SEP: Biological and Physiological Sciences.
Date: April 9, 1998.
Time: 8:30 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Michael Micklin, Scientific Review Administrator, 6701 Rockledge Drive, Room 5198, Bethesda, Maryland 20892, (301) 435–1258.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 3, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 98–6310 Filed 3–11–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the SAMHSA Reports Clearance Officer on (301) 443–8005.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have

practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project

Phase II of the National Evaluation of the Comprehensive Community Mental Health Services for Children and Their Families Program; New.

SAMHSA's Center for Mental Health Services (CMHS) will seek OMB approval for Phase II of this five-year national evaluation project. Phase II will collect data on child mental health outcomes, family life, and service system development and performance. Child and family outcomes of interest include the following: child symptomatology and functioning, family functioning and material resources, and caregiver strain. Delivery system variables of interest include the following: maturity of system of care development, adherence to system of care principles, coordination and linkages among agencies, and congruence between family services that were planned with those received. The total annual burden estimate is provided below:

Respondent	Number of respondents	Number of responses per respondent	Average burden/ response (hours)	Total annual burden hours
Caregiver	2325	1.37	2.12	6753
Youth	1395	1.33	.79	1466
Provider/Administrator	480	.43	.18	37
Total	4200			8256

Send comments to Beatrice Rouse, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received on or before May 11, 1998.

Dated: March 5, 1998.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 98–6361 Filed 3–11–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, the SAMHSA Reports Clearance Officer on (301) 443–8005.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project

Positive Activities Campaign (PAC) Evaluation Project; New.

SAMHSA's Center for Substance Abuse Prevention (CSAP) is launching the Positive Activities Campaign, which is an initiative to encourage adults to become more involved in positive, skill-building activities with youth. The ultimate goal of the initiative is to reduce substance abuse among young people. To determine the likely effectiveness of the campaign, CSAP is proposing an evaluation of PAC that consists of both a process and outcomes evaluation. The evaluation will assess change in communities exposed to PAC, including change in adults' involvement with youth. Data for the process evaluation will come primarily from on-site interviews with key personnel; data for the outcomes evaluation will be collected through a baseline and follow up telephone survey of adults. The estimated annual burden hours are as follows:

Data collection instrument	Number of respondents	Hours per response	Total annual response burden
Baseline telephone survey of random sample of adults	2,600	0.2	520 hours.
Followup telephone survey of random sample of adults	2,000	0.2	400 hours.
In-person interviews with local-level staff for process evaluation	280	1.5	420 hours.
Totals			1,340 hours.

Send comments to Beatrice Rouse, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received on or before May 11, 1998.

Dated: March 5, 1998.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 98–6362 Filed 3–11–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the SAMHSA Reports Clearance Officer on (301) 443–8005.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project

Community Mental Health Center Construction (CMHC) Grant Monitoring Program; Extension.

SAMHSA's Center for Mental Health Services (CMHS) will seek extension of OMB approval of the regulations and data collection form for the Community Mental Health Center Construction (CMHC) Grant Monitoring Program. Recipients of Federal CMHC construction funds are obligated to use the constructed facilities to provide mental health services. The CMHC Act was repealed in 1981 except for the provision requiring grantees to continue using the facilities for mental health purposes for a 20-year period. In order for CMHS to monitor compliance of construction grantees, the grantees are required to submit an annual report. A Chceklist will be used which enables grantees to supply the needed information efficiently and with a minimum of burden. The annual burden estimate is as follows:

	Number of respondents	Number of responses per respondent	Average burden per response (hours)	Total burden (hours)
CMHC Construction. Grantee. Checklist. (form SMA–101).	177	1	.33	58

Send comments to Beatrice Rouse, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received on or before May 11, 1998.

Dated: March 15, 1998.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 98–6363 Filed 3–11–98; 8:45 am]

BILLING CODE 4162–20–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Meetings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meetings.

SUMMARY: This notice announces meetings of the Aquatic Nuisance Species Task Force and its Western Regional Panel to be held in conjunction with the Eighth International Zebra Mussel and Aquatic Nuisance Species Conference. Topics to be addressed during the meetings are identified.

DATES: The Western Regional Panel will meet from 1:30 to 5:30 p.m., Wednesday, March 18, 1998, and the Task Force will meet from 1:30 p.m., Thursday, March 19, 1998 through 4:00 p.m. on Friday, March 20, 1998.

ADDRESSES: The Western Regional Panel meeting will be held at the Double Tree Hotel, 2001 Point West Way, Sacramento, California. The Task Force will meet at the Red Lion Sacramento Inn, 1401 Arden Way, Sacramento, California.

FOR FURTHER INFORMATION CONTACT: Linda R. Drees, Coordinator, Western Regional Panel at 913–539–3474, Extension 20, or Bob Peoples, Executive Secretary, Aquatic Nuisance Species Task Force, at 703–358–2025.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces meetings of the Aquatic Nuisance Species Task Force and its Western Regional Panel. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

Full agendas are planned for both meetings. Thursday afternoon, the Task Force will hear presentations reviewing the status of and prospects for controlling and preventing the spread of zebra mussels and a report of Task Force staff activities. In addition, there will be an update on the Administration's alien invasive species initiative, a report of the recent meeting of Task Force principals and progress on the unified budget initiative that was agreed to at that meeting, and presentation on progress developing the Task Force web site. Friday, several Task Force operational issues will be discussed, including membership, regional panel and committee policies, elaboration of the process for submittal and evaluation of aquatic nuisance species control program proposals, and proposed Task Force guidance for State and interstate ANS management plans. The Task Force's regional panels and committees will report on their activities and accomplishments. Information and updates will be provided on a number of topics, including the San Francisco Bay/Inland Delta Public Workshop, the Forum on Ecological Surveys, activities related to green crabs, several ballast water/shipping issues, and Gulf of Mexico initiatives.

The Western Regional Panel will hear from members about nonindigenous species of concern and prevention and control activities, including efforts in the Pacific Northwest, the 100th Meridian Initiative to Prevent Western Spread of Zebra Mussels, and the status of and plans for State and interstate aquatic nuisance species management

plans. A presentation will be made on striking a balance between prevention and control activities. Panel operating procedures and committee work plans will be discussed and approved.

Minutes of both meetings will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 840, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622. Minutes of the Western Regional Panel meeting will also be maintained by the Panel's Coordinator, c/o U.S. Fish and Wildlife Service, 315 Houston Street, Suite E, Manhattan, Kansas 660502. Minutes for the meetings will be available at these locations for public inspection during regular business hours, Monday through Friday, within 30 days following the meetings.

Dated: March 9, 1998.

Gary Edwards,

Co-Chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries.

[FR Doc. 98–6368 Filed 3–11–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Brown Tree Snake Control Committee of the Aquatic Nuisance Species Task Force as part of a Brown Tree Snake Coordination Meeting. Topics to be addressed are identified.

DATES: The Brown Tree Snake Control Committee will meet from 8:30 a.m. to 5:00 p.m., Monday, March 16, 1998, and from 8:30 a.m. to 3:30 p.m., Tuesday, March 17, 1998.

ADDRESSES: The Brown Tree Snake Control Committee meeting will be held at The Ilikai Hotel, 1777 Ala Moana Boulevard, Honolulu, Hawaii.

FOR FURTHER INFORMATION CONTACT: Robert P. Smith, Chair, Brown Tree Snake Control Committee at 800–541–2749 or by E-mail at robert_p_smith@fws.gov or Bob Peoples, Executive Secretary, Aquatic Nuisance Species Task Force, at 703–358–2025 or by E-Mail at robert_peoples@fws.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, this notice announces a meeting of the Brown Tree Snake Control Committee of the Aquatic Nuisance Species Task Force. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

As part of a Brown Tree Snake Coordination meeting, the Brown Tree Snake Control Committee will hear status report on recent activities and current plans of entities involved in implementing the Brown Tree Snake Control Plan, assess the need to modify the actions and priorities of the Plan, review fiscal year 1998 and 1999 funding proposals and priorities, and discuss organizational structures for enhancing coordination on this issue.

Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 840, 4401 North Fairfax Drive, Arlington, Virginia 22203-1622, and the Chair, Brown Tree Snake Control Committee, U.S. Fish and Wildlife Service, Pacific Islands Ecoregion, 300 Ala Moana Boulevard, Room 3-122, Honolulu, Hawaii 96813. Minutes for the meeting will be available at these locations for public inspection during regular business hours, Monday through Friday, within 30 days following the meetings.

Dated: March 9, 1998.

Gary Edwards,

Co-Chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries.

[FR Doc. 98–6369 Filed 3–11–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf, Beaufort Sea, Oil and Gas Lease Sale 170

AGENCY: Minerals Management Service, Interior.

ACTION: Availability of the proposed notice of sale.

Alaska Outer Continental Shelf (OCS); Notice of Availability of the Proposed Notice of Sale for proposed Oil and Gas Lease Sale 170 in the Beaufort Sea. This Notice of Availability is published pursuant to 30 CFR 256.29(c), as a matter of information to the public.

With regard to oil and gas leasing on the OCS, the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, as amended, provides the affected States the opportunity to review the proposed Notice of Sale.

The proposed Notice of Sale for proposed Sale 170 may be obtained by written request to the Public Information Unit, Alaska OCS Region, Minerals Management Service, 949 E. 36th Avenue, Anchorage, Alaska 99508–4302 or by telephone at (907) 271–6010.

The final Notice of Sale will be published in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening is scheduled for August 1998.

Dated: March 5, 1998.

Thomas A. Readinger,

Acting Director, Minerals Management Service.

[FR Doc. 98–6323 Filed 3–11–98; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Pacific Outer Continental Shelf Region

AGENCY: Mineral Management Service, Interior.

ACTION: Notice of the availability of environmental documents prepared for Outer Continental Shelf (OCS) pipeline installation proposal on the Pacific OCS.

SUMMARY: The Minerals Management Service (MMS), in accordance with Federal regulations (40 CFR Section 1501.4 and Section 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of a NEPA-related Environmental Assessment prepared by the MMS for pipeline installation activities proposed on the Pacific OCS. This listing includes the only proposal for which a Finding of No Significant Impact (FONSI) was prepared by the Pacific OCS Office in the 3-month period preceding this Notice.

Proposal

Exxon proposes to install a 12.75 inch outside diameter (OD) gas pipeline which would be approximately 7 miles in length in the Santa Ynez Unit (SYU) from Platform Heritage to Platform Harmony. This proposal is a change from the currently approved 17-mile gas pipeline which was planned to be installed from Platform Heritage to the Las Flores Canyon onshore facility. Compared to the currently approved project, the proposed modification would reduce the length of the pipeline needed to be installed by 10 miles, since the currently-proposed pipeline would not be installed all the way to shore. The proposed pipeline would be placed in the same surveyed area as the currently-installed Platform Heritage to Platform Harmony oil emulsion pipeline and power cables. The proposed gas pipeline would be installed in water depths ranging from 1,090 to 1,350 ft. The pipeline would be used to transport

produced gas from Platform Heritage to Platform Harmony for connection to the existing gas pipeline between Platform Harmony and Platform Hondo. From Platform Hondo, the gas would enter the Pacific Offshore Pipeline Company (POPCO) pipeline for transfer to the onshore POPCO gas processing plant and/or the Exxon gas treating facilities in Las Flores Canyon. The pipeline would not increase peak gas rates above either Exxon's or POPCO's permitted values and would not require any modifications to the POPCO pipeline or gas plant facilities. The proposed gas pipeline capacity is 75 million cubic feet per day (MMCFPD).

Location

Leases

OCS–P0182
OCS–P0183
OCS–P0329

EA Title: OCS Environmental Assessment, Platform Heritage to Platform Harmony Gas Pipeline, Santa Ynez Unit, Exxon Company, U.S.A., December 3, 1997.

FONSI Date: December 3, 1997.

FOR FURTHER INFORMATION CONTACT: Persons interested in reviewing environmental documents for the proposal listed above, or in obtaining information about EA's and FONSI's prepared for activities on the Pacific OCS, are encouraged to contact the Pacific OCS Regional office of MMS. The FONSI and associated EA are available for public inspection between the hours of 7:30 a.m. and 4:30 p.m., Monday through Friday at: Minerals Management Service, Pacific OCS Region, Office of Public Affairs, 770 Paseo Camarillo, Camarillo, California 93010, phone: (805) 389–7533. Request may also be sent to MMS to Ralph Snyder, Minerals Management Service, Pacific OCS Region, 770 Paseo Camarillo, Camarillo, California 93010. This EA has been posted on the Pacific OCS Region's homepage. The homepage address is: http://mmspub/omm/pacific/public/homepg.html.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for proposal which related to exploration and development for oil and gas resources on the Pacific OCS. The EA's examine the potential environmental effects of activities described in the proposal and present MMS conclusions regarding the significance for those effects. The EA is used as a basis for determining whether or not approvals of the proposals constitute major Federal actions that significantly affect the quality of the human environment in the sense for NEPA 102(2) (C). A FONSI is prepared in those instances where MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary of the EA. This Notice constitutes the public Notice of Availability of environmental documents required under the NEPA regulations.

Dated: January 5, 1998.

Peter Tweedt,

Acting Regional Director, Pacific OCS Region, Minerals Management Service.

[FR Doc. 98–6324 Filed 3–11–98; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–383 Sanctions Proceeding]

In the Matter of Certain Hardware Logic Emulation Systems and Components Thereof; Notice of Commission Decision Regarding Appeals of ALJ Order No. 96

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to deny appeals of ALJ Order No. 96 in the above-captioned investigation and to adopt that order with the two exceptions identified below.

FOR FURTHER INFORMATION CONTACT: Jay H. Reiziss, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3116.

SUPPLEMENTARY INFORMATION: This patent-based section 337 investigation was instituted on March 8, 1996, based upon a complaint and motion for temporary relief filed on January 26, 1996, by Quickturn Design Systems, Inc. ("Quickturn"). 61 Fed. Reg. 9486 (March 8, 1996). The respondents are Mentor Graphics Corporation ("Mentor") and Meta Systems ("Meta") (collectively "respondents"). After an 11-day evidentiary hearing, in April and May of 1996, the presiding administrative law judge ("ALJ") issued an initial determination ("TEO ID") granting Quickturn's motion for temporary relief.

On August 5, 1996, the Commission determined not to modify or vacate the TEO ID and issued a temporary limited exclusion order and a temporary cease and desist order against domestic respondent Mentor. The Commission imposed a bond of 43 percent of entered value on respondents' importations and sales of emulation systems and components thereof during the remaining pendency of the investigation. The Commission set complainant's bond at $200,000.

On September 24, 1997, the Commission determined to modify respondents' temporary relief bond in the investigation. Respondents' temporary relief bond remained at 43 percent of the entered value of the subject imported articles if the entered value equals transaction value as defined in applicable U.S. Customs Service regulations. Respondents' temporary relief bond increased to 180 percent of the entered value of the subject imported articles if the entered value does not equal transaction value as defined in applicable U.S. Customs Service regulations.

Beginning on April 7, 1997, the ALJ held a pre-hearing conference and a 14-day evidentiary hearing concerning permanent relief issues and several sanctions-related motions. Closing arguments were held on June 25 and 26, 1997. On July 31, 1997, the ALJ issued an initial determination ("Final ID"), finding that respondents had violated section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), by infringing claims of all five of Quickturn's asserted patents. The ALJ found: (1) There has been importation and sale of the accused products; (2) Quickturn practices the patents in controversy and satisfies the domestic industry requirements of section 337; (3) the claims in issue are valid; (4) the accused products directly infringe the claims in issue; (5) components of the accused products contributorily infringe the claims in issue; and (6) respondents have induced infringement of the claims in issue. Based on these findings, the ALJ concluded there was a violation of section 337. The ALJ recommended issuance of a permanent exclusion order and a cease and desist order.

On October 2, 1997, the Commission determined not to review the Final ID, thereby finding that respondents violated section 337. On December 3, 1997, the Commission issued a limited exclusion order directed to Meta and a cease and desist order against domestic respondent Mentor. The Commission set the bond for the 60-day Presidential review period at 43 percent of the entered value of the subject imported articles if the entered value equals transaction value as defined in applicable U.S. Customs Service regulations and at 180 percent of the entered value of the subject imported articles if the entered value does not

equal transaction value as defined in applicable U.S. Customs Service regulations.

On July 31, 1997, the ALJ also issued Order No. 96 in the investigation finding that respondents and certain of their counsel have engaged in discovery abuses and abuse of process justifying the imposition of evidentiary and monetary sanctions. Pursuant to rule 210.25(d) of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.25(d), the Commission on October 2, 1997, specified the schedule for the filing of petitions appealing Order No. 96 and responses thereto. On August 13, 1997, August 14, 1997, October 2, 1997, and November 6, 1997, respondents filed petitions appealing Order No. 96. Quickturn filed a reply to respondents' petitions on November 14, 1997. The Commission investigative attorneys filed a reply to respondents' petitions on November 17, 1997.

Having examined the record in this investigation, including Order No. 96, the petitions appealing Order No. 96, and the responses thereto, the Commission determined to deny the appeals and to adopt Order No. 96 with the exception of those portions of Order No. 96 granting Motion Docket No. 383–116 and Motion Docket No. 383–124, both of which the Commission did not adopt. The Commission also determined to deny respondents' request for a hearing and their motion for leave to file a reply to Quickturn's and the Commission investigative attorneys' responses to respondents' petitions. In connection with the final disposition of this matter, the Commission has ordered the presiding administrative law judge to issue an initial determination within six months ruling on the precise dollar amount of sanctions to be awarded pursuant to Order No. 96.

A Commission opinion in support of its determination will be issued shortly.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and sections 210.4, 210.25, 210.27, and 210.33 of the Commission's Rules of Practice and Procedure (19 CFR 210.4, 210.25, 210.27, and 210.33).

Copies of the public versions of the Final ID, Order No. 96, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

Issued: March 6, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–6383 Filed 3–11–98; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

President's Advisory Board on Race; Notice of Meetings

SUMMARY: The President's Advisory Board on Race will meet on March 23 and 24, 1998, at Turnhalle, Tivoli Student Union, on the Auraria Campus, 900 Auraria Parkway, Denver, Colorado. On March 23, from 7:00 p.m. until 9:00 p.m., the Advisory Board will host a small-group citizen dialogue on race and stereotypes that is open to the public. The meeting will include an opportunity beginning at approximately 8:30 p.m. for members of the community to contribute to the conversation.

On March 24, the Advisory Board will meet from 9:00 a.m. to 12:00 p.m. and from 2:00 p.m. until 3:00 p.m. The morning session will include a panel discussion addressing the causes and effects of racial stereotyping, the link between stereotypes and prejudice/racism, and strategies for combating stereotypes and their effects. In the afternoon, the Advisory Board will continue the discussion, adjourning at approximately 3:00 p.m.

The public is welcome to attend the meetings on a first-come, first-seated basis. Interested persons are encouraged to attend. Members of the public may also submit to the contact person, any time before or after the meeting, written statements to the Board. Written comments may be submitted by mail, telegram, facsimile, or electronic mail, and should contain the writer's name, address and commercial, government, or organizational affiliation, if any. The address of the President's Initiative on Race is 750 17th Street, N.W., Washington, D.C. 20503. The electronic mail address is http://www.whitehouse.gov/Initiatives/OneAmerica.

FOR FURTHER INFORMATION: Contact our main office number, (202) 395–1010, for the exact time and location of the meetings. Other comments or questions regarding this meeting may be directed to Randy D. Ayers, (202) 395–1010, or via facsimile, (202) 395–1020.

Dated: March 9, 1998.

Randy D. Ayers,

Executive Officer.

[FR Doc. 98–6559 Filed 3–11–98; 8:45 am]

BILLING CODE 4410–AR–M

NUCLEAR REGULATORY COMMISSION

[Docket No.: 040–08980]

Heritage Minerals, Incorporated License Renewal and Opportunity for Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of intent to approve renewal request for the Heritage Minerals, Inc. (HMI), facility located in Manchester Township, New Jersey, and opportunity for hearing.

The U.S. Nuclear Regulatory Commission (NRC) is considering approval of the renewal request for Source Material License No. SMB–1541, issued to Heritage Minerals, Inc. (HMI), to authorize decontamination and decommissioning activities of those areas of the licensee's Manchester Township, New Jersey site which require remediation prior to release for unrestricted use. The proposed licensing action also will authorize temporary storage of licensed material prior to disposition and be issued for a period of five years.

HMI is authorized by the NRC to perform within specific areas of its Manchester Township facility decontamination activities of licensed radioactive materials, and to possess, package, store, and transfer to authorized recipients monazite sands containing natural thorium. Residual radioactive contamination may also be present in some interior areas of the mill facilities on the site. There are no processing activities authorized by the license or by the proposed license renewal. The renewal is to promote timely decommissioning and remediation of the licensed material and associated monazite stockpile by HMI. Due to the lack of progress regarding disposition of the monazite pile from past operations, the NRC added this site to its Site Decommissioning Management Plan (SDMP) in 1990. The NRC established and implemented the SDMP to identify and resolve issues associated with the timely and effective cleanup of the sites on the list.

HMI ceased active operations in 1990 and maintained an active license until it expired on December 31, 1995. The licensee submitted a timely renewal

request to the NRC on November 9, 1995 for an additional license term, followed by submittal of a proposed decommissioning plan and schedule on December 30, 1996, and a Final Status Survey on November 3, 1997. The NRC requires the licensee to remediate those portions of the HMI facility licensed by NRC to meet the NRC guidance criteria for release of facilities for unrestricted use, and to maintain effluents and doses within NRC requirements and as low as reasonably achievable during remediation activities.

The decommissioning plan schedule describes time estimates to complete various elements of the decommissioning process. Included in the schedule are arrangements to obtain governmental approval to export materials, obtain agreements with freight handlers and transporters, complete facility decontamination, and conduct a final NRC survey followed by license termination. The licensee also intends to remediate interior areas of the site in accordance with the NRC guidance criteria. No demolition of site structures was requested, however, the licensee may determine future use of the buildings and equipment after license termination. Open land areas within the site where enhanced natural radioactivity has been detected will not be addressed by this action. NRC final radiation surveys and inspection will not be performed and license termination will not be approved until HMI's decontamination and remediation activities are completed.

Prior to approving the renewal request, NRC will have made findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report.

The NRC hereby provides notice that this is a proceeding on an application for renewal of a license falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings," of NRC's rules and practice for domestic licensing proceedings in 10 CFR part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(c). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** Notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to the Docketing and Service Branch of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738; or

2. By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Service Branch.

In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requestor in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

In accordance with 10 CFR 2.1205(e), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, Heritage Minerals, Inc., Attention: Anthony J. Thompson, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street NW, Washington, DC 20037–1128; and

2. The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738 or by mail, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

For further details with respect to this action, the application for amendment request is available for inspection at the NRC's Public Document Room, 2120 L Street NW., Washington, DC 20555 or at NRC's Region I offices located at 475 Allendale Road, King of Prussia, PA 19406. Persons desiring to review documents at the Region I Office should call Ms. Sheryl Villar at (610) 337–5239 several days in advance to assure that the documents will be readily available for review.

Dated at King of Prussia, Pennsylvania this 27th day of February 1998.

For the Nuclear Regulatory Commission.

A. Randolph Blough,

Director, Division of Nuclear Materials Safety, Region I.

[FR Doc. 98–6391 Filed 3–11–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–9]

Public Service Company of Colorado Notice of Docketing of the Materials License SNM–2504 Amendment Application for the Fort St. Vrain Independent Spent Fuel Storage Installation

By letter dated November 25, 1997, the Public Service Company of Colorado (PSCo) submitted an application to the Nuclear Regulatory Commission (the Commission) in accordance with 10 CFR part 72 requesting the amendment of the Fort St. Vrain (FSV) independent spent fuel storage installation (ISFSI) license (SNM–2504) and the Technical Specifications for the FSV ISFSI located in Weld County, Colorado. PSCo is seeking Commission approval to amend the materials license and the FSV ISFSI Technical Specifications to reflect the recent termination of the FSV 10 CFR part 50 possession only license (DPR–34) by deleting references to programs and provisions that no longer apply and replacing them with references to stand-alone ISFSI programs.

This application was docketed under 10 CFR part 72; the PSCo FSV ISFSI Docket No. is 72–9 and will remain the same for this action. The amendment of an ISFSI license is subject to the Commission's approval.

The Commission will determine if the amendment presents a genuine issue as to whether public health and safety will be significantly affected and may issue either a notice of hearing or a notice of proposed action and opportunity for hearing in accordance with 10 CFR 72.46(b)(1) or take immediate action on the amendment in accordance with 10 CFR 72.46(b)(2).

For further details with respect to this application, see the application dated November 25, 1997, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC 20555.

Dated at Rockville, Maryland, this 3rd day of March 1998.

For the U.S. Nuclear Regulatory Commission.

Charles J. Haughney,

Acting Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–6392 Filed 3–11–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Nuclear Regulatory Commission and Department of Energy; Public Meeting on NRC Regulatory Oversight of DOE Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) and the U.S. Department of Energy (DOE) will hold a public meeting on Tuesday, March 24, 1998, in Oak Ridge, Tennessee, to address issues related to the recently established pilot program for NRC's external regulation of certain DOE facilities.

SUPPLEMENTARY INFORMATION: The Department of Energy and the Nuclear Regulatory Commission will hold a joint public meeting to provide information on this pilot project on Tuesday, March 24, 1998, at 7:00 P.M. at the American Museum of Science and Energy, 300 S. Tulane Avenue, Oak Ridge, Tennessee.

In June 1997, DOE and NRC agreed to pursue NRC external regulation of certain DOE facilities on a pilot program basis. A pilot program of NRC simulated regulation has been established to collect information on the desirability of NRC oversight and on whether to seek legislation to authorize such oversight. The DOE and the NRC expect to evaluate six to ten DOE facilities over the next two years under the pilot program. The Radiochemical Engineering Development Center at Oak Ridge National Laboratory (ORNL) has been chosen as one of the pilot sites.

The major areas of discussion at this meeting will be:

- The overall pilot program and background information.
- The ORNL Work Plan.
- Major issues affecting NRC oversight (generic and site-specific).

One of the main purposes of the meeting is to describe the process through which stakeholders may participate in the pilot program. Stakeholders will be invited to ask questions and submit comments relevant to the objectives of the pilot program and the process by which those objectives are proposed to be addressed at the Radiochemical Engineering Development Center. Issues raised by stakeholders will be addressed in the final report following the pilot evaluation at ORNL.

Since 1994, the Department of Energy (DOE) has been considering whether there are advantages to be gained from external regulation of existing DOE facilities. Two advisory groups recommended that the Nuclear Regulatory Commission (NRC) be considered as the external regulator of nuclear and radiological safety at DOE sites. External regulation by the NRC may improve the efficiency and effectiveness of DOE's radiological safety programs. DOE facilities would be regulated consistent with other facilities of the same type engaged in similar activities, and the NRC could maintain complete independence because it has no responsibility for operating the facilities.

A number of background documents pertaining to the issue of NRC oversight of DOE facilities are available or will be made available prior to the meeting. These include:

- A draft Pilot Program Work Plan for the Radiochemical Engineering Development Center at Oak Ridge National Laboratory.
- A Memorandum of Understanding between NRC and DOE, dated November 21, 1997.
- An NRC Commission Paper entitled, "Status Report of the Nuclear Regulatory Commission Task Force On Oversight of the Department of Energy, In Response to COMSECY -96-053—DSI 2," SECY-97-206, dated September 12, 1997.
- An NRC Commission Paper entitled, "Status Report of the Nuclear Regulatory Commission Task Force On Oversight of the Department of Energy, In Response to COMSECY -96-053—DSI 2 (Report No. 2)," SECY-97-301, dated December 29, 1997.
- NRC Staff Requirements Memorandum: COMSECY-96-053, "Oversight of the Department of Energy (DSI 2)," dated March 28, 1997.
- NRC Direction Setting Issue Paper "Oversight of the Department of Energy" (DSI 2) dated September 16, 1996.
- Report of the DOE Working Group on External Regulation, dated December 1996.
- Report of the DOE Advisory Committee on External Regulation of DOE Nuclear Safety, dated December 1995.

You may view these documents at the DOE Oak Ridge Public Reading Room, American Museum of Science and Energy, 300 S. Tulane Avenue, Oak Ridge, TN 37830, (423) 241-4780. Copies may be obtained by contacting Amy Rothrock at (423) 576-1216. These documents are also available on the joint DOE/NRC Web Site at http://www.nrc.gov/NRC/NMSS/doepilot.html. As documents are completed, they will be added to the web site. If you would like more information about this meeting, or need special accommodations to attend, please contact Walter Perry of the DOE Public Affairs Office at (423) 576-0885.

Dated at Rockville, Maryland, this 6th day of March, 1998.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98-6393 Filed 3-11-98; 8:45 am]

BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 19d-1, SEC File No. 270-242, OMB Control No. 3235-0206
Rule 19d-3, SEC File No. 270-245, OMB Control No. 3235-0204
Rule 19h-1, SEC File No. 270-247, OMB Control No. 3235-0259

Notice is hereby that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. § 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Rule 19d-1 Notices by Self-Regulatory Organizations of Final Disciplinary Actions, Denials, Bars, or Limitations Respecting Membership, Association, Participation, or Access to Services, and Summary Suspension

Rule 19d-1 under the Securities Exchange Act of 1934 (the "Act") prescribes the form and content of notices to be filed with the Commission by self-regulatory organizations ("SROs") for which the Commission is the appropriate regulatory agency concerning the following final SRO actions: (1) disciplinary sanctions (including summary suspensions); (2) denials of membership, participation or association with a member; and (3) prohibitions or limitations on access to SRO services. The rule enables the Commission to obtain reports from the SROs containing information regarding SRO determinations to discipline members or associated persons of members, deny membership or

participation or association with a member, and similar adjudicated findings. The rule requires that such actions be promptly reported to the Commission. The rule also requires that the reports and notices supply sufficient information regarding the background, factual basis and issues involved in the proceeding to enable the Commission (1) to determine whether the matter should be called up for review on the Commission's own motion and (2) to ascertain generally whether the SRO has adequately carried out its responsibilities under the Act.

It is estimated that 10 respondents will utilize this application procedure annually, with a total burden of 2,750 hours, based upon past submissions. The staff estimates that the average number of hours necessary to comply with the requirements of Rule 19d–1 is 2.5 hours. The average cost per hour is approximately $60. Therefore, the total cost of compliance for the respondents is $165,000.

Rule 19d–3 Applications for Review of Final Disciplinary Sanctions, Denials of Membership, Participation or Limitations of Access to Services Imposed by Self-Regulatory Organizations

Rule 19d–3 under the Act prescribes the form and content of applications to the Commission by persons desiring stays of final disciplinary sanctions and summary action of self-regulatory organizations ("SROs") for which the Commission is the appropriate regulatory agency. The Commission uses the information provided in the application filed pursuant to Rule 19d–3 to review final actions taken by SROs including: (1) disciplinary sanctions; (2) denials of membership, participation or association with a member; and (3) prohibitions on or limitations of access to SRO services.

It is estimated that approximately 50 respondents will utilize this application procedure annually, with a total burden of 2,750 hours, based upon past submissions. The staff estimates that the average number of hours necessary to comply with the requirements of Rule 19d–1 is 2.5 hours. The average cost per hour is approximately $60. Therefore, the total cost of compliance for the respondents is $165,000.

Rule 19h–1 Notice by a Self-Regulatory Organization of a Proposed Admission to or Continuance in Membership or Participation or Association With a Member of Any Person Subject to a Statutory Disqualification, and Applications to the Commission for Relief Therefrom

Rule 19h–1 under the Act prescribes the form and content of notices and applications by self-regulatory organizations ("SROs") regarding proposed admissions to, or continuances in, membership, participation or association with a member of any person subject to a statutory disqualification.

The Commission uses the information provided in the submissions filed pursuant to Rule 19h–1 to review decisions of SROs to permit the entry into or continuance in the securities business of persons who have committed serious misconduct. The filings submitted pursuant to the Rule also permit inclusion of an application to the Commission for consent to associate with a member of an SRO notwithstanding a Commission order barring such association.

The Commission reviews filings made pursuant to the rule to ascertain whether it is in the public interest to permit the employment in the securities business of persons subject to statutory disqualification. The filings contain information that is essential to the staff's review and ultimate determination on whether an association or employment is in the public interest and consistent with investor protection.

It is estimated that approximately 5 respondents will make submissions pursuant to this rule annually, with a total burden of 225 hours, based upon past submissions. The staff estimates that the average number of hours necessary to comply with the requirements of Rule 19h–1 is 4.5 hours. The average cost per hour is approximately $60. Therefore, the total cost of compliance for the respondents is $13,500.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing on or before May 11, 1998.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W. Washington, DC 20549.

Dated: March 3, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–6337 Filed 3–11–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:
- Form SE, SEC File No. 270–289, OMB Control No. 3235–0327
- Form ID, SEC File No. 270–291, OMB Control No. 3235–0328
- Form ET, SEC File No. 270–290, OMB Control No. 3235–0329
- Form TH, SEC File No. 270–377, OMB Control No. 3235–0425

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Form SE is used by registrants filing electronically on EDGAR to submit paper copies of exhibits to the Commission in order to identify them. Form SE results in an estimated total annual reporting burden of 200 hours.

Form ID is used by electronic filers to obtain or change an identification number. Form ID results in an estimated total annual reporting burden of 1,050 hours.

Form ET is used by electronic filers to submit a filing to the Commission on magnetic tape or diskette. Form ET results in an estimated total annual reporting burden of 30 hours.

Form TH is used by electronic filers to file electronic documents in paper pursuant to a temporary hardship exemption. Form TH results in an estimated total annual reporting burden of 66 hours.

An agency may not conduct or sponsor, and a person is not required to

respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB on or before April 13, 1998.

Dated: March 3, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–6338 Filed 3–11–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39711; File No. SR–AMEX–98–08]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Continuing Education Requirements of Registered Persons

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on February 6, 1998, the American Stock Exchange, Inc. ("Amex" 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 Commission 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 Amex proposes to amend Exchange Rules 341A to strengthen the Continuing Education Requirements for registered persons.

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 much statements.

A. Self-Regulatory Organization's Statement of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to revise Rule 341A. Exchange Rule 341A 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, sales practice concerns and business ethics.

The Regulatory Element program applies 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 341A 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 be 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 Operational Principal Examination); and the Series 53 (Municipal Securities Principal Qualification Examination).

The proposed amendments also address time-frames at which registered persons must participate in the Regulatory Element computer-based training. Rule 341A 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 341A 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 341A 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 participation 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

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[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 Amex filing. *See* Securities Exchange Act Release No. 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 are discussed in the order approving the other proposals. *See* Securities Exchange Act Release No. 39712 (March 3, 1998).

[3] SROs represented on the Council include the Amex, Chicago Board Options Exchange ("CBOE"), Municipal Securities Rulemaking Board ("MSRB"), National Association of Securities Dealers ("NASD"), New York Stock Exchange ("NYSE"), and Philadelphia Stock Exchange.

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 341A will require 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 established 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 rule 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, 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 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 Amex. All submissions should refer to the file number SR-Amex-98-08 and should be submitted by April 2, 1998.

[4] 15 U.S.C. § 78f(c)(3).

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 standards 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]

[5] 15 U.S.C. § 78f(b)(5).

[6] 15 U.S.C. §§ 78f(c)(3)(B).

The Commission therefore finds good cause for approving the proposed rule change (SR-Amex-98-08) prior to the 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-Amex-98-08) 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]

Jonathan G. Katz,

Secretary.

[FR Doc. 98-6343 Filed 3-11-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39725; File No. SR-CBOE-98-03]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Allocation Procedures

March 5, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4[2] thereunder, notice is hereby given that on January 22, 1998, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE.[3] The

[7] These amendments proposed by the Amex regarding continuing education are also being uniformly adopted by some of the other SRO Council members. The analogous proposals of the CBOE, MSRB, NASD and NYSE were approved by the Commission on March 3, 1998. *See* Securities Exchange Act Release No.

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.3-30(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] On January 23, 1998, the CBOE filed a technical amendment to the filing, clarifying that the Exchange's Board of Directors had approved the proposed rule change in February 1997 (Amendment No. 1). .

On February 12, 1998, the CBOE filed Amendment No. 2 to the proposal, to delete CBOE

Continued

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to adopt a rule to codify the Exchange's process for allocating securities to market-maker trading crowds and designated primary market-makers ("DPMs").

The text of the proposed rule change is available at the Office of Secretary, CBOE 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 Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set for in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange's Board of Directors has delegated to the Exchange's Allocation Committee and Special Product Assignment Committee the authority to allocate the securities traded on the Exchange. Each allocation is made to either a market-maker trading crowd or to a DPM. The purpose of the proposed rule change is to codify the Exchange's allocation process in new CBOE Rule 8.95, "Allocation of Securities and Location of Trading Crowds and DPMs"[4]

CBOE Rule 8.95 is proposed to consist of seven subparagraphs, (a) through (g), and to contain two interpretations.

Proposed CBOE Rule 8.95(a) provides that the Allocation Committee shall be responsible for determining for each equity option class traded on the Exchange (i) Whether the option class should be a trading crowd or to a DPM and (ii) which trading crowd DPM should be allocated the option class. Similarly, proposed CBOE Rule 8.95(a) provides that the Special Product Assignment Committee shall be responsible for determining for each security traded on the Exchange other than an equity option (i) whether the security should be allocated to a trading crowd or to a DPM and (ii) which trading crowd or DPM should be allocated the security. Securities other than equity options that are traded on the Exchange include index options and securities traded pursuant to Chapter XXX of the Exchange's Rules, such as structured products.

Proposed CBOE Rule 8.95(a) further provides that the Allocation Committee shall be responsible for determining the location on the Exchange's trading floor of each trading crowd, each DPM, and each security traded on the Exchange. For example, this provision permits the Allocation Committee to place a large trading crowd or DPM operation in a trading floor location that is large enough to accommodate the crowd or DPM. As another example, if a DPM operated as a DPM at more than one trading station, this provision permits the Allocation Committee to determine the station, and the location within each station, at which the securities allocated to the DPM will trade.

Proposed CBOE Rule 8.95(b) describes the criteria that may be considered by the Allocation Committee and Special Product Assignment Committee in making allocation determinations and by the Allocation Committee in making location determinations. The factors to be considered may include, but are not limited to, any one or more of the following: performance, volume, capacity, market performance commitments, operational factors, efficiency, competitiveness, environment in which the security will be traded, expressed preferences of issuers, and recommendations of other Exchange committees.

The following are some examples of the many ways in which these criteria may be applied. For example, in considering performance, the appropriate Allocation Committee (*i.e.*, the Allocation Committee or Special Product Assignment Committee, as applicable) might look at the market performance ranking of the applicable trading crowds or DPMs, as established by market performance reviews that are conducted by the Exchange's Market Performance Committees and Modified Trading System ("MTS") Appointments Committee.[5] In considering volume, the appropriate Allocation Committee might look at the anticipated trading volume of the security and the trading volume attributable to the applicable trading crowds or DPMs in determining which trading crowds or DPMs would be best able to handle the additional volume. Similarly, in considering capacity, operational factors, and efficiency, the appropriate Allocation Committee might look to criteria such as the number of market-makers or DPM personnel, the ability to process order flow, and the amount of trading crowd or DPM capital in determining which trading crowds or DPMs would be best able to handle additional securities. In considering market performance commitments, the appropriate Allocation Committee might look at the pledges a trading crowd or DPM has made with respect to how narrow its bid-ask spreads will be and the number of contracts for which it will honor its disseminated market quotations beyond what is required by the Exchange's Rules. In considering competitiveness, the appropriate Allocation Committee might look at percentage of volume attributable to a trading crowd or DPM in allocated securities that are traded on more than one exchange. In considering the environment in which the security will be traded, the appropriate Allocation Committee might seek a proportionate distribution of securities between the market-maker system and the DPM system and across individual trading crowds and DPMs. Also, in considering expressed preferences of issuers, the appropriate Allocation Committee might give consideration to the views of the issuer of a security traded pursuant to Chapter XXX with respect to the allocation of that security or to the licenser of an index on which an index option is based with respect to the allocation of that index option. Similarly, the appropriate Allocation Committee might give consideration to the recommendations of other Exchange committees, particularly those that

Rules 8.80(a) and 8.80(b)(7) and to insert an inadvertently omitted part of the Federal Register notice. *See* Letter from Arthur Reinstein, Assistant General Counsel, CBOE, to Joshua Kans, Attorney, Division of Market Regulation ("Division"), Commission, dated February 12, 1998.

On March 4, 1998, the CBOE filed Amendment No. 3 to the proposal, clarifying the basis for deleting CBOE Rule 8.80(b)(7). The amendment also noted that the CBOE is in the process of comprehensively amending CBOE Rule 8.80. *See* Letter from Arthur Reinstein, CBOE, to Joshua Kans, Division, Commission, dated March 4, 1998.

[4] On the effective date of the proposed rule change, the Exchange will delete existing CBOE Rules 8.80(a) and 8.80(b)(7). *See* Amendment Nos. 2 and 3, *supra* note 3.

[5] The Exchange has three committees that perform market performance functions, including the evaluation of market performance. The Exchange's Market Performance Committee performs market performance functions with respect to all trading crowds, market-makers (other than DPMs), and floor brokers that trade in securities other than DJX, NDX, OEX, and SPX index options; the Index Market Performance Committee performs market performance functions with respect to the trading crowds, market-makers (other than DPMs), and floor brokers that trade DJX, NDX, OEX, and SPX index options; and the MTS Appointments Committee performs market performance functions with respect to all DPMs.

evaluate trading crowd and DPM market performance.

Proposed CBOE Rule 8.95(c) provides that that appropriate Allocation Committee may remove an allocation and reallocate the applicable security during the first six months following its allocation to a trading crowd or DPM if the trading crowd or DPM fails to adhere to any market performance commitments made by the trading crowd or DPM in connection with receiving the allocation. The Allocation Committees typically request that trading crowds and DPMs make market performance commitments as part of their applications to receive allocations of particular securities. As described above, these commitments may relate to pledges to keep bid-ask spreads within a particular width or to make disseminated quotations firm for a designated number of contracts beyond what is required by Exchange Rules. Proposed CBOE Rule 8.95(c) permits the appropriate Allocation Committee to remove an allocation if these commitments are not met and gives trading crowds and DPMs incentive to abide by these commitments. Following the initial six months period after an allocation is made, all the responsibility for monitoring market performance with respect to that security is vested in the appropriate Market Performance Committee or MTS Appointments Committee which continually evaluate trading crowd and DPM market performance, as applicable, and are authorized pursuant to CBOE Rule 8.60, CBOE Rule 8.80, and other Exchange rules to take remedial action for failure to satisfy minimum market performance standards.

Proposed CBOE Rule 8.95(c) also provides that the appropriate Allocation Committee may change an allocation determination, and that the appropriate Allocation Committee may change a location determination, if the appropriate Allocation Committee concludes that doing so is in the best interest of the Exchange based on operational factors or efficiency. For example, if due to market conditions the trading volume in a security greatly increased over a very short time frame and the trading crowd or DPM allocated the security could not handle the order flow, it may become necessary for the appropriate Allocation Committee to reallocate the security to a trading crowd or DPM with the capacity to do so. Similarly, if the trading volume at a trading crowd or DPM post greatly increased the number of crowd members or DPM personnel grew along with the increase in volume, it may become necessary for the appropriate Allocation Committee to relocate the trading crowd or DPM to a larger trading post.[6]

Proposed CBOE Rule 8.95(d) provides that prior to taking any action to remove an allocation or to change a location, the appropriate Allocation Committee shall generally give the affected trading crowd or DPM prior notice of the contemplated action and an opportunity to be heard concerning the action. The only exception to this requirement would be in those unusual situations when expeditious action is required due to extreme market volatility or some other situation requiring emergency action. Specifically, except when expeditious action is required, proposed CBOE Rule 8.95(d) requires that prior to taking any action to remove an allocation or to change a location, the appropriate Allocation Committee shall notify the trading crowd or DPM involved of the reasons the committee is considering taking the contemplated action, and shall either convene one or more informal meetings of the committee (or a committee panel) with the trading crowd or DPM to discuss the matter, or provide the trading crowd or DPM with the opportunity to submit a written statement to the committee concerning the matter. Due to the informal nature of the meetings provided for under proposed CBOE Rule 8.95(d) and to encourage constructive communication between the committee and the affected trading crowd or DPM at those meetings, ordinarily neither counsel for the committee nor counsel for the trading crowd or DPM shall be invited to attend these meetings and no verbatim record of the meetings shall be kept.

As with any decision made by the Allocation Committee and the Special Product Assignment Committee, any person adversely affected by a decision made by the appropriate Allocation Committee to remove an allocation or change a location may appeal the decision to the Exchange's Appeals Committee under Chapter XIX of the Exchange's Rules. The appeal procedures in Chapter XIX provide for the right to a formal hearing concerning any such decision and for the right to be accompanied, represented, and advised by counsel at all stages of the proceeding. In addition, any decision of the Appeals Committee may be appealed to the Exchange's Board of Directors pursuant to CBOE Rule 19.5.

Proposed CBOE Rule 8.95(e) provides that the allocation of a security to a trading crowd or DPM and the location of a trading crowd or DPM on the Exchange's trading floor does not convey ownership rights in the allocation or location or in the order flow associated with the allocation or location. Proposed CBOE Rule 8.95(e) is intended to make clear that trading crowds and DPMs may not buy, sell, or otherwise transfer an allocation or location to another party, and that instead, it is the Exchange which has the sole authority to determine allocations and locations on the Exchange's trading floor. It should be noted, however, that notwithstanding proposed CBOE Rule 8.95(e), Exchange rules will continue to permit the transfer of DPM appointments pursuant to CBOE Rule 8.80(b)(3) subject to Exchange approval.

Proposed CBOE Rule 8.95(f) is intended to reflect the current restrictions that are in place with respect to the allocation of securities to DPMs. Proposed CBOE Rule 8.95(f) reiterates the provision currently contained in CBOE Rule 8.80(a) that no option classes opened for trading prior to May 1, 1987, shall be allocated to a DPM, except to the extent authorized by a membership vote.[7] In addition, proposed CBOE Rule 8.95(f) contains a modification to the foregoing provision that was approved pursuant to an Exchange membership vote taken in November 1989. Under this modification, if a trading crowd indicates that it no longer wishes to trade an option class opened for trading prior to May 1, 1987, the option class may be reallocated to another trading crowd or to a DPM giving priority to trading crowd applications over DPM applications, provided that the trading crowd's commitment to market quality is competitive and that operational considerations are satisfied.

Proposed CBOE Rule 8.95(g) provides that in allocating and reallocating

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[6] Once proposed CBOE Rule 8.95(c) has become effective, it will be necessary to delete existing CBOE Rule 8.80(b)(7).

Existing CBOE Rule 8.80(b)(7)(i) states that the MTS Appointments Committee may discontinue the use of a DPM in an option class if the trading activity in that class exceeds a predetermined volume. That provision is now superfluous because the CBOE membership voted in December 1993 to advise the MTS Appointments Committee not to exercise that authority. *See* Amendment 2, *supra* note 3.

Existing CBOE Rule 8.80(b)(7)(ii) permits the MTS Appointments Committee to discontinue use of a DPM in an option class if it determines that trading would be better accommodated by using a market-maker system without a DPM. Proposed CBOE Rule 8.95(c) will give similar authority to the appropriate Allocation Committee. *See* Amendment Nos. 2 and 3, *supra* note 3.

[7] In amendment No. 2, the Exchange proposed to delete CBOE Rule 8.80(a) to eliminate the redundancy between it and proposed CBOE Rule 8.95(f).

securities to trading crowds and DPMs, the appropriate Allocation Committee shall act in accordance with any limitation or restriction on the allocation of securities that is established pursuant to another Exchange rule. For example, the appropriate Market Performance Committee or the MTS Appointments Committee may take remedial action against a trading crowd or DPM pursuant to CBOE Rule 8.60 and CBOE Rule 8.80(b)(10) for failure to satisfy minimum market performance standards, and such action may involve a restriction related to the allocation of securities to that trading crowd or DPM. Similarly, the MTS Appointments Committee may place restrictions on a DPM's ability to receive or retain allocations of securities pursuant to various provisions of CBOE Rule 8.80, including as a condition of appointment as a DPM (CBOE Rule 8.80(b)(3)), due to failure to perform DPM functions (CBOE Rule 8.80(b)(4)(i)), or due to a material financial, operations, or personnel change (CBOE Rule 8.80(b)(4)(ii)). Proposed CBOE Rule 8.95(g) is intended to make clear that the appropriate Allocation Committee must act in accordance with any such restrictions in making allocation and location determinations.

Proposed CBOE Rule 8.95, Interpretation .01 generally provides that it shall be the responsibility of the appropriate Allocation Committee to reallocate a security in the event that the security is removed pursuant to another Exchange rule from the trading crowd of DPM to which the security has been allocated or in the event that for some other reason the trading crowd or DPM to which the security has been allocated no longer retains the allocation. For example, as described above, CBOE Rules 8.60 and 8.80 authorize the Market Performance Committees and the MTS Appointments Committee to take remedial actions against trading crowds and DPMs in specified circumstances, including the removal of an allocation. Proposed CBOE Rule 8.95, Interpretation .01 is intended to make clear that in the event the appropriate Market Performance Committee or the MTS Appointments Committee removes an allocation pursuant to CBOE Rule 8.60 or CBOE Rule 8.80, it is the responsibility of the appropriate Allocation Committee (and not the committee that took the action to remove the allocation) to reallocate the security pursuant to proposed CBOE Rule 8.95. The only exception to this provision is that the MTS Appointments Committee is authorized pursuant to CBOE Rule 8.80(b)(6) to allocate to an interim DPM on a temporary basis a security that is removed from another DPM, until such time as the appropriate Allocation Committee has made a final allocation of the security.

Finally, proposed CBOE Rule 8.95, Interpretation .02 provides that it shall be the responsibility of the Allocation Committee to relocate a trading crowd or DPM in the event that the trading crowd or DPM is required to be relocated pursuant to another Exchange rule. As has been discussed, CBOE Rule 8.60 and CBOE Rule 8.80(b)(10) permit the Market Performance Committees and the MTS Appointments Committee to take remedial actions against trading crowds and DPMs in specified circumstances, including requiring that a trading crowd or DPM be relocated. Like with proposed CBOE Rule 8.95, Interpretation .01 proposed CBOE Rule 8.95, Interpretation .02 is intended to make clear that in the event the appropriate Market Performance Committee or the MTS Appointments Committee requires the relocation of trading crowd or DPM pursuant to CBOE Rule 8.60 or CBOE Rule 8.80(b)(10), it is the responsibility of the Allocation Committee (and not the Committee that took the action to require the relocation) to relocate the trading crowd or DPM.

The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5),[9] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and to protect investors and the public interest by providing for allocation procedures and policies that will ensure that securities traded by the Exchange are allocated in an equitable and fair manner and that all trading crowds and DPMs have a fair opportunity for allocations based on established criteria and procedures.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

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 rule change.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 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 CBOE. All submissions should refer to File No. SR–CBOE–98–03 and should be submitted by April 2, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jonathan G. Katz,

Secretary.

[FR Doc. 98–6336 Filed 3–11–98; 8:45 am]

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[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39723; File No. SR–CHX–97–25]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, and Amendments Nos. 1 and 2 by the Chicago Stock Exchange, Incorporated, Amending the Minor Rule Violation Plan

March 5, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 1, 1997, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change. The Exchange subsequently filed Amendment No. 1 clarifying the statutory basis of the rule change.[2] On February 12, 1998, the Exchange filed Amendment No. 2 to the proposed rule change modifying the recommended fine schedule. The proposed rule change, as amended, is described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organizations Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Article XII, Rule 9, its Minor Rule Violation Plan to include Article XX, Rule 7, interpretation and policy .05, which requires limit orders to be reflected in the specialist's quotation.[3] Proposed new language is italicized.

Article XII

Rule 9.

(h)(ii)(*18*) *Failure to display a limit order in the quotation (Article XX, Rule 7, interpretation and policy .05)*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CHX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CHX 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

On May 30, 1996 the Commission approved a proposed rule change that established a CHX Minor Rule Violation Plan (the "Plan").[4] The Exchange is now proposing to add the failure to display a limit order in the quotation[5] to the section of the Plan relating to Floor Decorum and Minor Trading Rule Violations. The Exchange believes that it is appropriate to add the Limit Order Display Rule to the Plan because violations of the rule are either objective and technical in nature or are easily verifiable. Moreover, the Exchange believes that because the Limit Order Display Rule is built upon a comparable Commission Rule,[6] violations of such rule require sanctions that are more severe than a warning or cautionary letter.

The Exchange is also proposing recommended fines for failure to display a limit order in the quotation (Article XX, Rule 7, interpretation and policy .05) to be $1,000 for the first violation and all subsequent violations. Because of the time and effort expended by the Commission in adopting the Limit Order Display Rule, together with the Commission's and the industry's recent focus on the display of limit orders, the Exchange believes that it is appropriate to adopt the $1000 recommended fine for violations of this rule (rather than the $100 recommended fine for violations of other rules that are part of the minor rule violation plan). The Exchange notes that the minor rule plan violation schedule is merely a recommended fine schedule and that fines of more or less than the recommended fines can be imposed (up to a $2500 maximum) in appropriate circumstances. Moreover, the Exchange may proceed with formal disciplinary action, rather than procedures under the Plan, whenever it finds that a violation of the Limit Order Display rules was more than inadvertent.

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 the requirements of Section 6(b)(1),[7] 6(b)(6),[8] 6(b)(7)[9] and 19(d) of the Act. The proposal is consistent with the Section 6(b)(6) requirement that the rules of an exchange provide appropriate discipline for violations of Commission and Exchange rules. The proposal provides an efficient procedure for appropriate disciplining of the members for rule violations that are objective in nature. Moreover, because CHX Article XII, Rule 9 provides procedural rights to the person fined and permits a disciplined person to request a full hearing on the matter, the proposal provides a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d)(1) of the Act. The proposal provides an alternative means by which to deter violations of CHX rules included in the Plan, thus furthering the purposes of Section 6(b)(1) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose a burden on competition.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory

[1] 15 U.S.C. §78s(b)(1).

[2] *See* Letter from David T. Russof, Foley & Lardner, to Katherine A. England, Division of Market Regulation, Commission, dated October 31, 1998.

[3] *See* Securities Exchange Act Release No. 39540 (January 12, 1998), 63 FR 2708.

[4] Rule 19d–1(c)(2) under the Act authorizes national securities exchanges to adopt minor rule violation plans for the summary discipline and abbreviated reporting of minor rule violations by exchange members and member organizations. *See* Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (approving amendments to paragraph (c)(2) of Rule 19d–1 under the Act). The CHX's Plan was approved by the Commission in 1996. *See* Securities Exchange Act Release No. 37255 (May 30, 1996), 61 FR 28918 (approving File No. SR–CHX–95–25).

[5] CHX Article XX, Rule 7 ("Limit Order Display Rule").

[6] *See* 17 CFR 240.11Ac1–4 ("Limit Order Display Rule").

[7] 15 U.S.C. §78f(b)(1).

[8] 15 U.S.C. §78f(b)(6).

[9] 15 U.S.C. §78f(b)(7).

organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making a written submission 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 will also be available for inspection and copying at the principal office of CHX. All submissions should refer to file number SR–CHX–97–25 and should be submitted by April 2, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jonathan G. Katz,

Secretary.

[FR Doc. 98–6339 Filed 3–11–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39718; File No. SR–NASD–98–17]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 1 to a Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to an Integrated Order Delivery and Execution System

March 4, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that 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") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq.[3] On March 3, 1998, the NASD filed Amendment No. 1 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing new rules and amendments to existing rules of the NASD to establish an integrated order delivery and execution system, featuring a voluntary limit order book and market maker sponsored direct access by non-members. The text of the proposed rule change is contained in an Exhibit attached to this notice.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, Nasdaq 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 in Item IV below. Nasdaq 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

A. General

Nasdaq is proposing a new integrated order delivery and execution system ("System"). The System responds to the demands of investors and NASD members for a marketplace that provides for fast and efficient access to the best prices in the market and effective integration of price discovery, execution, and trade reporting. When combined with a broadly accessible voluntary limit order file featuring order anonymity and full display of limit order interest, Nasdaq's new System will further enhance the satisfaction of a wide range of market participant needs. The System represents a logical evolution of Nasdaq in light of the changes and growth in trading behavior, particularly as a result of the new SEC Order Handling Rules.[5] The System is designed to leverage the benefits of these rules while complementing Nasdaq's competing dealer market structure.

While Nasdaq seeks to incorporate more order-driven features in the Nasdaq environment, Nasdaq will retain the benefits of a competitive dealer network by maintaining incentives for market makers that also contribute significantly to Nasdaq's liquidity. These incentives include a reduction in market maker exposure to unintended multiple executions through Nasdaq's systems, enhanced compliance with the Firm Quote Rule, the ability for certain market makers to sponsor access by institutional customers, and a means of reducing the cost of capital by providing a low cost limit order book sponsored by Nasdaq. Importantly, because the design of the System is based on the ability of market makers to quote their actual size, Nasdaq also believes that a disincentive for some market makers would be removed, thus attracting more liquidity and pricing efficiency in the Nasdaq market.[6]

These incentives and benefits are important, in that Nasdaq continues to

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[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On December 22, 1997, the NASD filed a proposal (SR–NASD–97–93) that was substantially similar to the proposal discussed in this filing. The NASD withdrew that filing when it filed this proposal. *See* letter from Robert E. Aber, Senior Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, dated February 18, 1998. On February 20, 1998, the NASD filed a technical amendment adding certain language regarding handling of non-directed orders. *See* fax from Andrew S. Margolin, Senior Attorney, Office of General Counsel, Nasdaq, to Jeffrey R. Schwartz, Special Counsel, Division of Market Regulation, dated February 20, 1998. This technical amendment is discussed in footnote 42 below

[4] *See* letter from Robert E. Aber, Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, dated March 3, 1998 ("Amendment No. 1"). Amendment No. 1 corrected several technical errors and added language to Section D.3.b. noting that SR–NASD–98–05 changed the manner in which Nasdaq handles SOES orders.

[5] *See* Exchange Act Release No. 37619A (September 6, 1996) 61 FR 48290 (September 12, 1996) ("Adopting Release").

[6] Indeed, the Commission noted in its approval of the Actual Size Rule pilot (discussed further in Section B.3. below) that "the 1000 share minimum quote size represents a barrier to entry for market making. Lowering this barrier to entry could attract more market makers, thereby increasing liquidity and competition across the market." *See* Exchange Act Release No. 38156 (January 10, 1997) 62 FR 2415, at 2425 (January 16, 1997) (order approving certain changes related to implementation of the SEC Order Handling Rules).

believe that market makers represent a key component of Nasdaq's strength, providing necessary liquidity for the market in all Nasdaq securities, but especially for lesser known and start-up issuers. The new System will provide market makers with a tool that allows them efficient and immediate access to the best prices in the market, levels the competitive playing field between market makers and electronic communications networks ("ECNs"), and provides market makers with incentives to risk capital and supply liquidity. In designing this proposed System, Nasdaq also has been mindful that the System also should provide investors and other traders with immediate and automatic executions. The NASD and Nasdaq have attempted to fulfill Nasdaq's mission to provide accessible linkages to providers of liquidity as displayed in a centralized system, thus facilitating a more efficient marketplace. In summary, the System will bring together a broad range of participants into a single, integrated electronic system that will maximize the role of each participant to the ultimate benefit of all participants in the Nasdaq Stock Market as a whole—individual and institutional investors, order-entry broker-dealers, market makers, and ECNs.

B. Integration of Order Delivery and Execution Systems

The new System will combine and enhance the functions of two distinct trading mechanisms that currently form the core of the Nasdaq trading environment: the Small Order Execution Service ("SOES") and SelectNet. As described later in the filing, the new System will eliminate the two separate systems, but preserve in one integrated system the features and functionality of an automatic order execution system, SOES, and the order delivery and negotiation features of SelectNet. The efficiency of this new integrated system should enhance the ability of traders to trade, while minimizing regulatory concerns associated with dual, non-integrated systems that are used to simultaneously access the same quote.

1. Background

SOES was developed in 1984 to provide a simple and efficient means to execute small agency orders at the inside quote, report trades for public dissemination, and send trades to clearing for comparison and settlement.[7] Trading is done automatically and is negotiation-free. In response to the October 1987 market break, SOES was enhanced in several respects to provide individual investors with guaranteed liquidity and assured access to market makers in times of market disruption. In particular, SOES participation was made mandatory for all market makers in Nasdaq National market securities, and minimum quote size requirements were instituted.[8] These minimum quote size requirements, generally for 1,000 shares, continue to exist today except for 150 designated securities for which market makers may quote their "actual size" pursuant to a pilot program approved by the SEC.[9]

SelectNet, originally referred to as the Order Confirmation Transaction Service, was approved by the Commission in January 1988 to provide an alternative to verbal contact among trading desks for negotiating trades.[10] SelectNet also was developed in response to the difficulties experienced in the Nasdaq market during the market break of October 1987.[11]

SelectNet is an electronic, screen-based order routing system allowing market makers and order-entry firms (collectively referred to as "participants") to negotiate securities transaction in Nasdaq securities through computer communications rather than relying on the telephone. Unlike SOES, SelectNet offers the opportunity to negotiate for a price superior to the current inside quote. In addition, SelectNet participants may provide that an order or counter-offer will be in effect for anywhere from 3 to 99 minutes, specify a day order, or indicate whether price or size are negotiable or whether a specific minimum quantity is acceptable. Participants may accept, counter, or decline a SelectNet order. Once agreement is reached, the execution is "locked-in" and reported to the tape for public dissemination and sent to clearing to comparison and settlement.

SelectNet allows subscribers to direct, or "preference" orders to specified market makers or to broadcast orders to all market makers. Although SelectNet is an order delivery service, rather than an order execution service, a preferenced SelectNet order presented to a market maker at its displayed quote generally gives rise to a liability under SEC Rule 11Ac1–1 ("Firm Quote Rule") for the market maker to execute the transaction at that price.[12]

More recently, Nasdaq established SelectNet as the link to ECNs in conjunction with the SEC's Order Handling Rules. Specifically, an amendment to SEC Rule 11Ac1–1 now requires an OTC market maker to make publicly available any superior prices that the market maker privately quotes through an ECN. A market maker may comply with this requirement by changing its quote to reflect the superior price, or in the alternative, may deliver better prices orders to an ECN provided that the ECN disseminates these priced order to the public quotation system and provides broker-dealers equivalent access to these orders ("ECN Display Alternative"). The SelectNet linkage was implemented to facilitate this dissemination and equivalent access.[13]

2. Issues Related to the Current Operation of Nasdaq's Non-Integrated Order Delivery and Execution Systems

While SOES and SelectNet each provide valuable services to market participants for the benefit of investors, there are a number of problems associated with maintaining these two separate systems side-by-side, which are well understood by the SEC, NASD, and market participants. Most troublesome are the problems members have in managing multiple points of execution. This manifests itself most noticeably when a market maker's quote is subject to multiple access virtually simultaneously, through a combination of SOES and SelectNet, from the same or different market participants. Because the Firm Quote Rule obligates a member to execute orders presented to it at its

[7] *See* Exchange Act Release No. 21743 (February 12, 1985) 50 FR 7432 (February 22, 1985) (order approving rule change describing SOES).

[8] *See* Exchange Act Release No. 25791 (June 9, 1988) 53 FR 22594 (June 16, 1988) (order approving amendments to rules governing the operation of SOES).

[9] *See* Section B.3. for discussion of actual size.

[10] *See* Exchange Act Release No. 25263 (January 11, 1988) 53 FR 1430 (January 19, 1988) (order approving SelectNet on a temporary, accelerated basis). *See also*, Exchange Act Release No. 25523 (March 28, 1988) 53 FR 10965 (April 4, 1988) (order extending temporary approval of SelectNet); Exchange Act Release No. 25690 (May 11, 1988) 53 FR 17523 (May 17, 1988) (order granting permanent approval of SelectNet).

[11] The service was enhanced and renamed SelectNet in 1990. *See* Exchange Act Release No. 28636 (November 21, 1990) 55 FR 49732 (November 30, 1990). In 1992, the service was expanded to add pre-opening and after-hours sessions, so that today SelectNet is available for members to negotiate and execute orders from 9:00 a.m. until 5:15 p.m. (ET). *See* Exchange Act Release No. 30581 (April 14, 1992) 57 FR 14596 (April 21, 1992).

[12] There are two exceptions to the Firm Quote Rule: (1) prior to the receipt of the order, the market maker has communicated to its exchange or association a revised quotation size or revised bid or offer; or (2) prior to the receipt of the order, the market maker is in the proeess of effecting a transaction in a security when an order in the same security is presented, and immediately after the completion of such transaction, the market maker communicates to its exchange or association a revised quotation size or revised bid or offer.

[13] *See* Exchange Act Release No. 38156 (January 10, 1997) 62 FR 2415 (January 16, 1997) (order approving certain changes related to implementation of the SEC Order Handling Rules).

displayed quote, a firm may be subject to unintended double liability while trying to effectively manage executions from SOES and liability orders from SelectNet at the same time. This is compounded further when market makers also are handling orders received by phone as well as orders within their own internal execution systems.

The potential for this problem is exacerbated by an exponential increase in the use of SelectNet during the last few years, and in particular during the past several months. For example, for the period of October, 1996 through September, 1997, both the number of transactions and dollar volume executed through SelectNet has increased nearly six-fold.[14] In addition, SelectNet has represented an increasing proportion of Nasdaq's total trades and dollar volume during the same period—from approximately 5% to nearly 15%. This trend may be attributed to several related factors, including: (1) The growing importance of electronic access within the Nasdaq market and a corresponding migration away from the "phone trades" to automated systems; (2) increase in the use of SelectNet by market makers as a vehicle for trading in size without negotiation, given that market makers are prohibited from using SOES for proprietary transactions; (3) implementation of the SEC's Order Handling Rules and the related role SelectNet plays in providing a link between Nasdaq and ECNs,[15] and (4) a heightened awareness of trading obligations by market participants.

As a result, there also has been a corresponding increase in regulatory and compliance burdens for both market participants and staff of NASD Regulation, Inc., ("NASDR"), who are responsible for investigating complaints that may involve "backing away" from published quotes, and enforcing the Firm Quote Rule.[16] Indeed, in a letter from staff of the SEC's Division of Market Regulation responding to a request for interpretive guidance on the Firm Quote Rule in this context, the SEC acknowledged the difficulty in articulating a "bright line" test on what constitutes backing away, and noted that the double execution problem arising from Nasdaq providing two automated order delivery and execution systems could be eliminated by integrating these two systems.[17]

Given these practical and regulatory problems, the NASD and Nasdaq believe that it would be prudent to combine the two systems as soon as practicable. Integration would facilitate the orderly processing of electronic orders through one communications facility while easing associated regulatory and compliance burdens, in addition, to assist market makers in complying with the Firm Quote Rule, Nasdaq is proposing a System feature to provide market makers with a means to indicate to staff of NASDR that the market maker has received an order via the telephone to trade at the market maker's Nasd-displayed quotation and that for a period of time while the System market maker handles the telephone order, the System should not deliver additional orders for execution.[18] This "Firm Quote Compliance Facility" will create an electronically time stamped record that will be critical in NASDR's efforts to reconstruct activity that may involve backing away.[19]

In developing an integrated System, Nasdaq seeks to provide the most equitable and efficient means of access among market participants. A key design requirement of such a system dictates that orders communicated through Nasdaq be delivered in strict time priority, regardless of whether the order is sent to a specific participant (directed) or to any participant at the best available quote (non-directed). This would be impossible in the current environment given the nature of two separate and asynchronous order delivery and execution systems. Most importantly, this also will assist market makers in managing their displayed quotations, further enhancing the efficiency of the market.

3. Relationship of Proposal To Actual Size Rule

It is important to note that the integration of Nasdaq's order delivery and execution infrastructure and the ability of members to enter orders of virtually unlimited size, as set forth in this filing, is based on the ability of market makers to quote their actual size, as opposed to artificial minimum quote size requirements currently in effect for most stocks in SOES today. Under current rules, market makers generally are required to quote a minimum of 1,000 shares on the bid and the offer (for some less active issues, the minimum is 500 or 200 shares).

With the introduction of the SEC Order Handling Rules in January of 1997, market makers are now obligated to display customer limit orders in their quotations. Given the full implementation of these rules, which have altered Nasdaq's structure from a predominantly quote-driven market toward a more order-driven market, Nasdaq believes that the rationale for minimum quote size requirements no longer exists. We believe these changes warranted consideration of eliminating the requirement that market makers quote artificial minimum size of 1,000 shares. On January 20, 1997, therefore, we began a pilot covering 50 Nasdaq securities allowing market makers to quote their actual size, thereby reducing minimum quotation size requirements to a least one normal unit of trading and allowing market makers to quote in accordance with their freely-determined trading interest ("Actual Size Rule").[20] On November 10, 1997, the Actual Size Rule pilot was expanded to include an additional 100 securities.[21] These securities represent a broad range of securities listed on the Nasdaq Stock Market. We are monitoring this pilot and expect to report its effects on the market to the SEC in early 1998.[22]

The changes to Nasdaq systems set forth in this proposal are designed to complement market makers quoting in

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[14] In comparison, average daily volume of Nasdaq during the same period has increased a relatively modest 30 percent.

[15] Growth in SelectNet usage closely tracks expansion in the number of Nasdaq stocks covered by the SEC Order Handling Rules.

[16] The NASD has rules similar to the SEC Firm Quote Rule. *See* NASD Rules 3320 and 4613(b).

[17] *See* letter from Richard R. Lindsey, Director, Market Regulation, To Richard G. Ketchum, Executive Vice President and Chief Operating Officer, NASD, and Mary L. Schapiro, President NASDR, dated July 16, 1997.

[18] *See* Section D.10. below and proposed NASD Rule 4960.

[19] As part of the undertakings pursuant to the Commission's administrative proceeding, the NASD is required to upgrade substantially its capability to enforce the Firm Quote Rule by implementing a process for backing away complaints to be addressed as they are made during trading day do that valid complaints may be satisfied with a contemporaneous trade execution, and taking other appropriate actions. *See* Exchange Act Release No. 37538 (August 8,1996), Administrative Proceeding File No. 3–9056 (Order Instituting Public Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions).

[20] *See* Exchange Act Release No. 38156 (January 10, 1997) 62 FR 2415 (January 16, 1997) (order approving, among other things, Actual Size Rule pilot for first fifty stocks phased in under Order Handling Rules).

[21] *See* Exchange Act Release No. 39285 (October 29, 1997) 62 FR 59932 (order approving an expansion of the Actual Size pilot to 150 stocks and extending the pilot until March 27, 1998).

[22] No other equity market requires minimum quote sizes greater than 100 shares. Empirical analysis thus far has demonstrated that the removal of minimum quote size requirements under the Actual Size Rule pilot has not degraded market quality, and there is no basis to conclude that such requirements are necessary. *See* NASD Economic Research Department, Effects of the Removal of Minimum Sizes for Proprietary Quotes in The Nasdaq Stock Market, Inc. (June 5, 1997).

actual size. To the extent that the Actual Size Rule is not approved for all Nasdaq securities, an alternative proposal is being made to minimize the exposure to market makers at artificial quote sizes. This is particularly necessary given the potential under the new System to access market marker quotes for much larger size than the current SOES tier sizes would otherwise permit. Such alternative provisions are noted in this filing where relevant, and are also identified in the text of the proposed rule change accordingly.[23]

As part of the new System, Nasdaq is proposing to eliminate certain rules that currently are in place for the operation of SOES. As indicated, SOES was designed exclusively for individual retail customers orders restricted to a maximum size. These order sizes correspond to a market maker's minimum quote size requirements. Specifically, NASD Rule 4730(c)(3) permits only agency orders from public customers no larger than the maximum order size[24] to be entered into SOES ("Maximum Order Size Rule"). That rule also prohibits large orders from being divided into smaller parts to be entered into SOES. A related interpretation of this rule prohibits behavior designed to circumvent the order size limits. Specifically, as set forth in Notice to Members 88–61 (August 25, 1988), trades entered within a five minute period are presumed to be part of a "single investment decision" and are aggregated accordingly ("Five Minute Rule"). Because Nasdaq is proposing to replace all the SOES rules, and because the System is based on the ability of market makers to quote actual size, the Maximum Order Rule and its related interpretation (including the Five Minute Rule) become unnecessary, and therefore those rules would be eliminated.

However, if the NASD's proposal to eliminate artificial quote size requirements for all Nasdaq securities is not approved by the time that the new integrated order delivery and execution system is approved, the NASD believes that certain order entry features of the new System would not be appropriate in an artificial quote size environment. Specifically, the NASD proposes in the alternative that all of the existing restrictions on order entry by non-market makers should continue. Thus, in the absence of prior approval of the Actual Size Rule, non-market makers should not be permitted to enter orders larger than 1,000 shares for non-directed orders, and the prohibition on splitting of orders and the Five Minute Rule be retained.[25]

C. Limit Order Book

The System also will feature a voluntary limit order book ("Limit Order File" or "File") for the display and matching of limit orders. Use of the Nasdaq Limit Order File will be completely voluntary on the part of NASD members that have customer limit orders to display or proprietary interest that such members may want to display anonymously. It should be emphasized that the NASD and Nasdaq Boards, in authorizing this rule filing, agreed that the NASD had not intention to create a regulatory environment that would mandate NASD member use of the Limit Order File. Furthermore, the proposal does not require members to protect orders in the Limit Over File beyond the member's best execution obligations. The new Limit Order File will simply be an additional means for members and their customers to display priced orders to the entire market. Thus, the proposed File merely provides another option for displaying orders and is intended to supplement, not supplant, the exiting options, *i.e.*, a market maker's quotation or a linked ECN.

The Limit Order File will facilitate the opportunity to obtain price improvement by allowing member firms to display customer limit orders or their own trading interest between the best dealer or ECN bid and offer, and by facilitating interaction with other orders within the File or with other participants who access the File, resulting in a prompt, cost-effective execution at the best available price. The best priced orders in the Limit Order File will be publicly displayed in Nasdaq's quote montage and in a separate "Top of File" display. When the Limit Order File contains the best priced orders in the market, such prices will be used to calculate the Nasdaq "inside" quote, providing increased transparency and pricing efficiency.

These orders, which can be accessed by other market participants, will be entered and displayed anonymously. That is, the member that enters the order will not have its identifier (its MMID symbol) displayed with the order. Initially, the NASD is proposing that after any resulting execution of a File order, the identity of the party entering the order will be revealed to any counter-parties to the execution in an execution report that is sent immediately after execution to the parties to the trade. The NASD continues to analyze the anonymity feature and, at a future date and subject to a new rule proposal, may provide either anonymity of executions in the File until the end of the trading day or complete anonymity of executions through settlement. However, at this stage, the NASD believes that anonymity up until execution provides sufficient protection to traders from negative market impact costs caused by premature disclosure of trading interest. As explained in more detail later, the NASD believes that it would be useful if commenters specifically addressed the needs of traders and investors with respect to these differing levels of anonymity.

Importantly, the Limit Order File can be used by market makers to satisfy the customer limit order display rule, SEC Rule 11Ac1–4 ("Display Rule"), which would otherwise require a market maker to update its own quote immediately to reflect a customer limit order. Specifically, an exception to the Display Rule applies when limit order are immediately displayed in an NASD-sponsored system that publishes the best priced orders and permits access by other broker-dealers. As indicated, the Top of File of the Nasdaq book is included in the Nasdaq quote montage, and therefore a market maker may, upon receipt of a customer limit order, deliver it to the File immediately to satisfy the requirements of the Display Rule, pursuant to SEC Rule 11Ac1–4(c)(5).

In addition, a market maker may choose to use the File to display orders priced better than its published quote without reflecting the order in its quote as would be required pursuant to recent amendments to SEC Rule 11Ac1–1. Specifically, this is permissible under paragraph (c)(5) of that rule because the best priced orders contained in the Limit Order File are publicly disseminated in Nasdaq and are

[23] *See, e.g.*, proposed rules 4940(b)(3) and 4950(c).

[24] Rule 4710(g) establishes the maximum order size for a Nasdaq National Market security at 200, 500, or 1,000 shares, depending on the trading characteristics of the security, such as the average daily non-block volume, bid price, and number of market makers. The maximum order size for Nasdaq SmallCap securities is 500 shares. The Maximum size for each security is published from time to time by the NADAD.

[25] The only exception to the elimination of the old SOES Rules concepts on limits on order entry is the continuation of the prohibition that registered persons that have access to order entry systems should not be permitted to enter orders for their own accounts. Nasdaq believes that it is appropriate to continue this prohibition because of the time and place advantage that such persons may have over others not similarly situated. As a policy matter, therefore, Nasdaq believes it would be inconsistent with the obligations of member firms and their associated persons to facilitate access that could potentially place the personal interests of registered personnel ahead of their customers. The prohibition, however, would no longer extend to accounts of immediate family members of such registered persons.

available for execution by other broker-dealers.

As indicated, the Limit Order File offers Nasdaq market makers a voluntary mechanism to display customer limit orders when the market maker chooses not to display such orders in its own quote or in an ECN. Because the Limit Order File is completely voluntary, market makers should be able to continue to attract limit orders from investors and other broker-dealers by offering value-added features to customers that a generic file such as that proposed by Nasdaq can not provide.

The Limit Order File also responds to the needs and desires of a significant element of the investor community: the institutional "buy-side" trader. The Institutional Committee of the Security Traders Association (STA) recently completed a survey of such institutional traders, wherein STA found that an overwhelming majority of institutions were aware of Nasdaq's initiative to establish a limit order book accessible to all market participants, and voiced strong support for it.[26] As explained in Sections D.5. and D.6. below, the File will provide investors and others with the ability to anonymously display orders. STA's survey indicated that some level of anonymity was an important feature for institutional investors. By providing anonymity as to the identity of the party entering the order, the File can help to reduce market impact costs that may affect the ability of institutions to obtain low-cost executions. In addition, because the Limit Order File will be fully viewable to all subscribers of Nasdaq's Workstation service and through vendor terminals, Nasdaq will be providing added transparency to the market by displaying the entire supply and demand schedule in the File.

Overall, the NASD believes that the development of a Nasdaq-operated, voluntary limit order file will benefit investors and members and, therefore, is in the best interest of the marketplace. The NASD and Nasdaq note that virtually every other major equity market around the world, including now the London Stock Exchange, provides a market-run limit order facility for the display of limit orders; each of those markets that recently added an electronic limit order book did so to respond to investor needs. For investors, both retail and institutional, the proposed voluntary File creates an additional and efficient mechanism for investors to display priced orders and to potentially trade at reduced spreads without the intermediation of a dealer, a Congressional goal embedded in the Exchange Act. For retail investors, the Limit Order File should promote greater confidence in Nasdaq's market structure because it offers another vehicle for transparency and more efficient execution of limit orders. In addition, the File should work toward reducing the perception among some retail investors that the playing field is tilted in favor of broker-dealers and larger investors.

D. Description of New Rules

1. Overview and Scope

The new System will replace completely the existing SOES and SelectNet systems. The functionality previously contained in these two separate systems will be integrated into a single system, which should alleviate many of the concerns market makers have had with exposure to multiple points of simultaneous execution liabilities. The new System will permit all registered participants to send orders to access either the best market maker quote or ECN order, or orders visible in the Nasdaq Limit Order File, and to obtain immediate or rapid executions of such orders.

As occurs in today's environment, the new System will have three types of registered executing participants: market makers, ECNs and UTP exchange specialists. Quotations provided by these three entities will be displayed on Nasdaq Workstation and disseminated through information venders. Registered NASD members, and certain customers that are sponsored by NASD members, will be able to deliver orders of varying size through the new System to electronically access the displayed quotations. Market maker and ECN display obligations will be the same as today. As provided for in the proposed rules, market makers must maintain two-sided quotations and be firm up to the displayed size of such quotations. The System will provide for market makers an automated quotation update facility similar to that which is provided today.[27]

The NASD and Nasdaq, however, are proposing a slight change to its current operation. After a market maker's quote is exhausted, that is, the System has decreased the displayed size to zero, if the market maker is not using the system-provided automated quotation update facility or the System's supplemental size feature,[28] the market maker's quote (both the bid and the offer sides, regardless of which side was reduced to zero) will be placed in a closed quote state for *three* minutes, instead of the current five minutes. At the end of that time period, if the market maker has not on its own updated its quotation or voluntarily withdrawn its quote from the market, the System will refresh the side of the quotation that was reduced to zero to 1,000 shares at the lowest bid or highest offer (depending on whether the quote is a bid or offer, respectively) currently being displayed in that security and reopen the market maker's quotation. The NASD is proposing to make these two changes to the current approach because its believes that in the proposed electronic environment, five minutes is too long a period to have a quote closed on the Nasdaq screen, and because it believes that restoring the quote at the lowest ranked bid or highest ranked offer price and ensure that market makers maintain continued participation in the market and are available to provide liquidity in a manner consistent with their market making obligations.[29]

2. Order Entry

The rules permit any size order up to 999,999 shares to be entered. As indicated, however, it is important to note that this large size permitted for order entry is based on the ability of market makers to display actual size in their quotations.[30] Thus, in the context of non-directed orders, discussed further in Section D.3.b., the System will permit order delivery for execution to each market maker, ECN or the Nasdaq Limit Order File *only up to the size of the quote or order that is displayed.*[31]

[26] *See* STA Institutional Study (http://securitytraders.org/newslett/news/release1/right.htm), October, 1997. According to STA, the results were based on 154 responses received from buy-side traders out of approximately 800 who were mailed the survey.

[27] The automated quotation update facility will refresh a market maker's quotation at an increment chosen by the market maker. The facility will not permit a refresh at the same price as that being quoted when the quotation size was reduced to zero. When the facility refreshes the quotation, the size of the refresh quotation will be 1,000 shares. If the market maker wishes to quote in a size other than 1,000 shares, the market maker must manually enter that size after the quote has been refreshed.

[28] Supplemental size is discussed further in Sections D.3.a and D.4.a. *See, also,* proposed rules 4950(d)(6), 4950(e)(3)(D), and 4950(f).

[29] Under current NASD Rule 4730, a market maker whose quote is decremented to zero and fails to restore its quote in the allotted time will be deemed to have withdrawn as a market maker ("SOESed out of the Box"). Subject to certain specified exceptions, the market maker is prohibited from re-entering quotations in that security for twenty (20) business days.

[30] *See* Section B.3. for discussion of actual size.

[31] As explained below in Section D.3.a., any order entry firm is permitted to direct an order to a specific market maker, ECN, or UTP Exchange

The minimum life for such orders shall be 10 seconds. The NASD believes that orders in the System should have a minimum life to alleviate potential problems that could occur with fleeting or ephemeral prices that are flashed to the market for brief periods of time and are virtually inaccessible by other market participants.

a. *Customer Orders.* All members may enter orders on behalf of customers. If the Actual Size Rule is approved for all Nasdaq stocks on a permanent basis, Nasdaq would eliminate the current SOES rule prohibiting the splitting of orders and requiring the aggregation of orders within a five minute period, including orders from immediate family members of associated persons, to evade the maximum order size limits found in SOES.[32] However, even in an actual size environment, the NASD plans to maintain the current restriction on the ability of registered representatives that have access to Nasdaq order entry capabilities to enter orders for their own accounts into this system. The NASD believes that maintaining this restriction is important to minimize the time and place advantages that these professionals may continue to have.

If the Actual Size Rule is not approved, however, the NASD proposes, in the alternative, to maintain the existing restrictions and to limit the size of orders entered by non-market makers to 1,000 shares. The NASD believes that this alternative, contingent approach is appropriate to ensure that market makers' risk is minimized and that their capital is not accessed in an essentially unfettered manner in an artificial quote size environment.

b. *Proprietary Orders.* Also contingent on the expansion and approval of the Actual Size Rule for all Nasdaq stocks, the proposed rules permit any NASD member to enter proprietary orders into the System for immediate execution, order delivery, or display in the Limited Order File. The NASD believes that any NASD member, whether it is an order entry firm or a market maker in a particular stock, should be permitted to enter proprietary orders. The rationale for permitting a broad use of proprietary orders is that entry of such orders may provide additional liquidity to the market and that any member is currently able to enter such orders through an ECN. It would be illogical to limit the use of Nasdaq's Limit Order File when the same activity is already permissible through other vehicles. It should be noted, however, that the NASD intends to monitor principal trading activity by NASD members not registered as market makers to determine if it may be necessary to adopt a rule similar to that found in the exchange-listed market environment, where SEC rules require Third Market Makers that effect more than 1% of the volume of a particular stock to register and quote as a Third Market Maker.[33] In any event, without the approval of the Actual Size Rule for all Nasdaq securities, the NASD is proposing an alternative to prohibit the entry of any principal orders by non-market makers.

3. Types of Electronic Access Orders

The System will permit the entry of two types of orders that seek to access displayed prices on the Nasdaq screen: directed and non-directed orders.

a. *Directed Orders.* Directed orders are orders that an order-entry firm chooses to send to a specific market maker, ECN or UTP exchange for delivery and execution.[34] The directed order concept is an attempt to preserve certain features found in SelectNet where firms seek to access a particular market maker's quotation and commence electronic negotiation. During normal market hours,[35] these orders are processed in sequence with all other orders that may be sent to a particular market maker, ECN or UTP exchange. Therefore, a directed order would not enjoy any preferential delivery treatment over other, non-directed orders (discussed below) delivered to the same market maker, ECN or UTP. Directed orders do not interact with orders in the Limit Order File[36] or with other quotes displayed in the Nasdaq quote montage. That is, all orders are time-sequenced without regard to their classification as directed or non-directed, and thus a directed order would not be delivered to, or executed against, a participant until any order previously delivered to that participant was processed first.

Upon order entry, a member that wishes to send an order to a specific market maker, ECN or a UTP exchange would be required to specifically enter the MMID for the quote that it wants to access. The directed order will be entered into the System and placed in a time-sequenced queue with all other orders, both directed and non-directed, that have been entered for that security. Depending on the time sequence of the directed order, the order will be delivered to the particular MMID identified by the order entry firm when the order's turn for delivery arrives. Once delivered to that MMID, the directed order will be handled for execution purposes as described below in the non-directed order context. That is, if the order is 1,000 shares or less and the market maker or ECN quotation is equal to or greater than the size of the order, the System will automatically execute the order and decrease the displayed quote size by the amount executed. If the order is larger than 1,000 shares but less than 5,000 shares, the order will be delivered to the market maker or ECN for action for a period of 17 seconds. If the order is 5,000 shares or greater, it will be delivered to the market maker or ECN for action for a period of 32 seconds. If the recipient of the order has done nothing at the end of the applicable period, the System will execute the order up to the displayed quote size of the recipient. During the

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specialist. The size of such directed orders is not constrained by the executing participant's displayed quote size. However, the executing participant's liability to fill the order under the Firm Quote Rule is limited to the amount of shares publicly displayed in the quotation.

[32] *See* NASD Notice to Members 88–61 (August 25, 1988).

[33] In connection with the approval of the SEC Order Handling Rules, the SEC adopted an amendment to Rule 11Ac1–1 to improve transparency and provide the public with information about significant market participants. The amendment requires OTC market makers and exchange specialists to provide continuous two-sided quotations for any exchange-listed security when they are responsible for more than 1% of aggregated transaction volume in that security. *See* Adopting Release, at 48317. Prior to this amendment, mandatory quotations were only required from OTC market makers and exchange specialists who transacted more than 1% of the volume in a Rule 19c–3 security. In addition, the SEC has proposed a similar rule for Nasdaq securities. *See* Exchange Act Release No. 37620 (August 29, 1996) 61 FR 48333 (September 12, 1996) (proposal to amend SEC Rule 11Ac1–1).

[34] The proposed rules continue to limit the ability of a member to send orders to a UTP Exchange by the directed order mechanism only. In other words, NASD members that uses Nasdaq's system to access the quotation of a UTP Exchange must send that order as a directed order to the Exchange. The NASD plans to discuss with UTP Plan participants participation in the non-directed order handling process.

[35] Outside of normal market hours, *e.g.*, from 9:00 a.m. until 9:30 a.m. and from 4:00 p.m. until 5:15 p.m., the only means to reach a market maker quote or an ECN order through Nasdaq's electronic system will be through the directed order feature. Such orders must be sent to a specific quote with the appropriate MMID identified. Such orders will not have any Firm Quote Rule liability attached to them, unless during the post 4:00 p.m. period, a market maker or ECN intentionally re-opens its quote that is automatically placed in a closed quote state by Nasdaq at 4:00 p.m. A market maker that opens its quote momentarily, however, solely for the purpose of adjusting its quote to reflect the elimination of customer limit orders, will not be subject to Firm Quote Liability. *See* letter from Howard L. Kramer, Senior Associate Director, Market Regulation, to Robert E. Aber, Vice President and General Counsel, Nasdaq, dated August 25, 1997.

[36] Nasdaq will provide a system capability to reach the Limit Order File directly—the takeout facility. A takeout order will be a System-provided feature that permits a member to directly interact with orders displayed in the Limit Order File, but only those orders that were entered by that member, either for itself or its customer.

delivery period, the recipient is permitted to accept, partially execute, or decline the order. Any partial execution or decline must be done in compliance with the Firm Quote Rule; all such actions will be forwarded to NASDR for its review.

Directed orders may be sent to a particular executing participant at a price or size that is not being displayed by that participant. For example, if a market maker is quoting 20 bid for 1,000 shares (with no supplemental size), an order entry firm may choose to direct to that market maker an order for 10,000 shares at 20. The market maker has several options available when that order is received. First, pursuant to the market maker's firm quote obligation, the market maker may immediately choose to accept 1,000 shares and decline the balance. In the alternative, the market maker could choose to accept any additional amount up to 10,000 shares. Under another alternative, the market maker may choose to do nothing, in which case at the end of 32 seconds (because the order sent is 5,000 shares or greater) 1,000 shares will be automatically executed against the market maker at 20 and its quote will be decreased to zero.

Directed orders (as well as non-directed orders) will be able to interact with a market maker's supplemental size. As explained below, market makers will be permitted to enter a supplemental size that will replenish their displayed quote sizes when the System executes an order against the displayed quote.[37] If a directed order larger than a market maker's displayed size is sent to a market maker that is using supplemental size, and the market maker does not respond to that order within the 17 or 32 second period, depending on the size of the order entered, the order will execute against the market maker's displayed size and its supplemental size. For example, if MMA is displaying 20 bid for 1,000 shares with a supplemental size of 10,000 shares, and order entry Firm B sends a directed order to sell 8,000 shares to MMA at 20, and MMA does not respond with an accept, partial or decline response within 32 seconds, the System will execute the entire order against MMA for 8,000 shares.

All directed orders that are delivered for a response (as opposed to being automatically executed), will be designated by the System as "liability" or "non-liability" orders when delivered. A liability order is an order that a broker-dealer is required to respond to consistent with the obligations imposed by the SEC and NASD Firm Quote Rules.[38] For example, if Market Maker A is quoting 20 bid for 1,000 shares, a directed order that is sent to MMA to sell 1,000 shares at 20 is a liability order. In other words, MMA must respond consistent with the Firm Quote Rule. If MMA is quoting 20 bid for 1,000 shares, and the order entry firm directs an order to sell 20,000 shares at 20¹⁄₁₆th to MMA, such an order would be a non-liability order for which MMA has no responsibility to respond. MMA could, however, choose to accept the order at the higher price. MMA also could do nothing with such order and at the end of 32 seconds the order would time out and be returned to the order entry firm. If the directed order sent to MMA were priced to sell at 20 for 20,000 shares, MMA would have Firm Quote Rule liability for 1,000 shares.

b. *Non-Directed Orders.* Non-directed orders are orders that are not sent to a particular market maker or ECN. That is, when the member entering the System does not specify the particular market maker, ECN or UTP exchange it wants to access, the order will be sent to the next available executing participant[39] quoting at the best price displayed in Nasdaq. Non-directed orders may be priced orders or market orders. The first non-directed order in time sequence interacts with the best quote or order in the Nasdaq quote montage (market maker quotes, ECN orders, or Limit Order File orders) in price/time sequence, that is, with the best priced quote or order. If two or more quotes or orders are at the same price, then the non-directed order interacts with the first such quote or order in time sequence.

For example, MMA is quoting a bid of 20 for 1,000 shares; MMB is also quoting a bid of 20 for 1,000 shares, but posted its quote 10 seconds after MMA; and MMC is quoting 19⅞ bid for 1,000 shares. Another member seeks to sell 500 shares at the market in that security and enters a non-directed order for that amount. Upon entry into the System, the order is sent to MMA for execution. As explained below in Section D.4.a. on Order Execution Parameters, this order will automatically execute against MMA, and MMA's quote size will be decreased by the System to 500 shares at 20 bid. If two non-directed orders to sell 1,000 shares each had been entered, the first order entered (as time-stamped by Nasdaq) would be automatically executed against MMA, the second order would be automatically executed against MMB and, assuming that neither market maker was using the supplemental size feature provided by the System, both 20 bid quotes would be decreased to 0 size and MMC at 19⅞ would become the best bid in Nasdaq for this security. If an order entry firm entered a non-directed 2,000 share sell market order, the System will split that order, and send 1,000 shares to MMA and 1,000 shares to MMB at the same time for automatic execution.

The NASD believes that it is appropriate to place all providers of liquidity in the Nasdaq market on the same footing with respect to order executions through Nasdaq's systems. Thus, this proposal contemplates that ECNs, as well as market makers, should be subject to automatic executions of non-directed and directed orders. In the current environment, quotes of linked ECNs that are displayed in Nasdaq are accessible only through Nasdaq's SelectNet system, a system which is not an automatic execution system like SOES.[40] Market makers, however, are accessible through both systems. As proposed, Nasdaq believes that quotes of linked ECNs should also be

[37] The amount of interest entered into supplemental size by a System market maker may be any amount up to 99,000 shares, provided that the facility will refresh quotations in a minimum increment of 1,000 shares. There will not be an ability to maintain unlimited supplemental size (*i.e.*, a "No Dec" feature will not be available).

[38] Market makers that use supplemental size do not have liability under the Firm Quote Rule for the amount of shares contained in the supplemental size facility. However, the System will reach into a market maker's supplemental size to execute directed orders that are larger than displayed size, unless the market maker declines the order prior to the expiration of the 17 or 32 second period normally allotted for directed orders. If the market maker declines any portion of the order when using supplemental size, the System will close the market maker's quote and reduce the supplemental size to zero.

[39] At this time, non-directed orders cannot be sent to UTP Exchanges because Nasdaq and the UTP Participants have not addressed order handling in the context of the proposed System. As noted above, Nasdaq plans to discuss the matter with the other UTP Plan participants to seek a resolution of order delivery and execution in the new System. Until such a resolution is reached, firms seeking to access a UTP Exchange's quote through Nasdaq systems must send a directed order to that exchange.

[40] To facilitate the implementation of the SEC Order Handling Rules at the beginning of 1997, the NASD established, on an interim basis, a linkage to facilitate the operation of the ECN Display Alternative. *See* Exchange Act Release No. 38156 (January 10, 1997) 62 FR 2415 (January 16, 1997). The ECN Display Alternative relieves an exchange specialist or OTC market maker of the requirement to publicly quote any superior prices that it privately displays through an ECN if that ECN: (1) Ensures that the best priced orders entered by market makers and specialists in the ECN are communicated to an exchange or Nasdaq for public dissemination; and (2) provides brokers and dealers access to orders entered by exchange specialists and OTC market makers into the ECN, so that brokers and dealers who do not subscribe to that ECN can trade with those orders. *See* SEC Rule 11Ac1–1.

automatically executed against by other market participants on the same terms as market makers. Without an equivalent execution mechanism, ECNs would have an unfair advantage. Market makers are thus placed at a competitive disadvantage with respect to the display and execution of limit orders. Further, the disparity in executions may provide market makers with an incentive to change their status from market makers to ECNs, at a cost to market liquidity. Customers seeking to obtain executions quickly may be placed at a disadvantage if one customer receives an automatic execution against a market maker, while another customer may have to wait for an ECN to respond.

The current dichotomy between ECNs and market makers in the execution of orders has caused other anomalies with the processing of orders through the SOES system. As indicated, SelectNet was chosen as the linkage through which participants could deliver orders to access orders displayed in the ECN because ECNs were unable to provide automated executions through participation in SOES. As a consequence, Nasdaq had to implement systems changes designed to suspend automated execution in SOES whenever an ECN or UTP Exchange is alone at the inside market.

This suspension of SOES when ECNs are at the inside quote has resulted in an unintended consequence, however, that has caused significant concern. Specifically, while the ECN quote effectively halts executions in SOES for a security, it may also cause SOES orders to be rejected back to the sending firm. Thus, there is the potential for an ECN customer to enter an order to essentially control the inside price, and then create an advantage in SOES for the ECN customer or another order entry firm to then jump ahead of orders that would have been executed in that issue if they had not been returned. This has become problematic because the ECN then changes its quote almost immediately, before it can be accessed through either SelectNet or its own internal system. Once the ephemeral quote disappears and a new dealer inside has been established, a new SOES order enters the system which then executes as the first order against the first market maker at the new inside price. Customer orders of order-entry firms may be disadvantaged, in that orders entered earlier in time would be forced to go to the back of the queue. The NASD notes that it recently implemented a software modification intended to address this situation. Specifically, when an ECN or UTP participant is alone at the inside, orders sent through SOES are now held in queue for up to 90 seconds, instead of being rejected immediately, unless they become executable against a market maker that joins or becomes the inside quote. While this modification preserves the sequence in which customer orders are processed in SOES for a period of time, the NASD does not believe that this is the optimal solution.[41]

The NASD also is concerned about complaints from various SOES system users that, although difficult to verify, nonetheless allege that some traders may be using ECNs to affect the way the system handles automatic executions in that system. The NASD does not want to design a new system with the same potential problems. Consequently, the NASD believes that the fairest approach to delivery and execution of orders in the new System is to treat all participants equally and require that all participants receiving orders through the System be subject to the same obligations, including automatic executions of smaller sizes. In developing the new System and proposing this level playing field, Nasdaq recognizes that every effort must be made to work with ECNs on changing the current approach. Nasdaq will discuss with ECNs ways to avoid the possibility of double executions against an ECN's displayed order and will work closely with each ECN to provide an appropriate mechanism. Finally the NASD and Nasdaq note that there should be sufficient programming lead time provided to ECNs to permit them to properly program their own execution processes so as to coordinate those processes with Nasdaq's new order delivery and execution system.[42]

4. Order Execution Parameters

a. *Execution Parameters For Non-Directed Orders.* Non-directed orders that match against an order in the Limit Order File are executed immediately. Non-directed orders delivered to a market maker or an ECN will be handled in three different ways depending on the size of the order, or portion of the order,[43] delivered and the size of the quote displayed by the market maker or ECN:

- If the order, or portion of an order, is 1,000 shares or less, an order delivered to a market maker or ECN will be executed automatically, up to the displayed quote size. The market maker or ECN will have up to 17 seconds thereafter to adjust its quote.[44]
- If the order is greater than 1,000 shares and less than 5,000 shares, and the quote is equal to or greater than the order size, the order will be presented for 17 seconds for action by the market maker or ECN. The market maker or ECN may accept, decline, or do nothing.[45] if no response is received within that time, the System will default to an execution against the quotation up to the displayed quote size.
- If the order is 5,000 shares or larger and the quote displayed is equal to or greater than the order size, the order will be presented for review for 32 seconds.[46] The market maker or ECN may accept, decline, or do nothing. If there is no response after this time, the system will default to an execution.

These default action features allow market makers and ECNs the ability to act consistently with the Firm Quote Rule and decline large sized orders that are delivered to them while in the process of effecting an execution internally at their displayed quote, but before they have had the chance to

[41] *See* Exchange Act Release No. 39637 (February 10, 1998) 63 FR 8242 (February 19, 1998) (notice of filing and immediate effectiveness of SR–NASD–98–05 relating to modifications to SOES).

[42] When Nasdaq and the ECNs first established the linkage under the Order Handling Rules in early 1997, given the very short time frames for implementation of the new SEC rules, Nasdaq and the ECNs did not have sufficient time to undertake major re-programming efforts. Thus, in late fall 1996, Nasdaq and the ECNs, with SEC approval, agreed to use the existing SelectNet system as the most convenient application to establish a trading link between Nasdaq and the ECNs. *See* Exchange Act Release No. 38156 (January 10, 1997) 62 FR 2415 (January 16, 1997) (order approving certain changes related implementation of the SEC Order Handling Rules).

[43] As discussed below, non-directed orders may be split up and delivered to multiple participants at the best price. Thus, an order that is larger than a participant's displayed quotation may be split such that only a portion of the original order is delivered to that participant, with the balance being delivered to the remaining participants up to their displayed size. The size of this delivered portion is determinative of how the System applies the execution parameters outlined herein. *See* letter from Andrew S. Margolin, Senior Attorney, Office of General Counsel, Nasdaq, to Jeffrey R. Schwartz, Special Counsel, Division of Market Regulation, dated February 20, 1998.

[44] If a market maker or ECN updates its quotation price before 17 seconds has elapsed, it will be eligible immediately thereafter for additional order delivery. Similarly, if the original execution did not eliminate the entire size displayed at that price, the executing participant is eligible within five seconds for additional delivery up to the size of the quote remaining. For example, if MMA displayed a quote of 20 for 1,000 shares, and the System automatically executed 500 shares against that market maker, five seconds after the first execution the System would be able to deliver an execution for the remaining 500 shares.

[45] A market maker may decline the order only to the extent permissible under the Firm Quote Rule. Any declinations are forwarded to NASDR.

[46] The intent here is to provide, in effect, two periods of 15 seconds each. Two additional seconds of communications time must be added to reflect the time necessary for an execution report to be received back from the System.

update that quote.[47] In any event, whether the order is executed immediately or is delivered for review, executing participants will have, depending on the order size, 17 or 32 seconds between orders to be able to adjust their quotes before delivery of an additional order or execution. These time periods provide appropriate windows of time to permit market makers to manage their quote commensurate with the risk and exposure of larger sized orders.

The System will split non-directed orders that are larger than sizes displayed in quotes to quickly execute orders and minimize issues related to queues of non-directed orders. For example, assume that an order entry firm enters a 5,000 share order to buy when five market makers or ECNs are each quoting 1,000 shares at the best offer. When the order is entered, the System will split the order into five 1,000 share lots and automatically execute against each of the market makers and/or ECNs at the inside offer. Each executing participant then has up to 17 seconds to update its quote, although each may do so sooner, in which case additional orders may be delivered more quickly.

A market maker's use of the supplemental size feature affects the way non-directed orders may be executed. If a market maker using supplemental size is alone at the inside price and a non-directed order larger than the market maker's displayed quote size is entered, the order will be delivered up to the size of the market maker's displayed size and supplemental size for a period of 17 or 32 seconds, depending on the size of the order delivered. At the end of the time period, the order will be executed against the market maker, unless prior to the end of the time period, the market maker took other action, such as accepting all or part of the order, or declining the order. For example, if a market maker is alone at the best offer of 20, and is displaying 1,000 shares while its supplemental size is at 5,000 shares, a non-directed order to buy 4,000 shares will be delivered in *toto* to that market maker for 17 seconds. If the market maker does nothing, the order will be executed at the end of 17 seconds for 4,000 shares, and the market maker's quote will be refreshed at 1,000 shares, with 1,000 shares remaining in supplemental size.

Nasdaq plans to make the System flexible to allow participants to adjust execution parameters. Thus, all parameters for order size for delivery and execution that are minimum sizes can be adjusted by executing participants as long as such adjustments exceed the minimum standards established by Nasdaq in this filing. For example, an executing participant can adjust the parameters for automatic executions to allow automated executions for orders larger than 1,000 shares.

b. *Limit Order File Executions.* The matching process between orders displayed in the File is simple. Non-directed orders that match against an order in the Limit Order File are executed immediately. For example, assume the best bid is an ECN showing an order to buy at 20 for 1,000 shares. Subsequently, a member enters a non-directed order to buy 100 shares at 20 1/16. This limit order is displayed anonymously, as described below, in the Nasdaq Limit Order File and sets a new inside bid. Thereafter, another member enters a market order to sell 100 shares. The limit order and the market order will be matched and automatically executed against each other at 20 1/16. If the market order to sell were for 1,000 shares, 100 shares would execute automatically against the limit order and the remaining 900 shares would be executed automatically against the next best bid, the 20 bid of the ECN. The ECN's displayed size would be reduced to 100 shares.[48]

5. Limit Order Display

Nasdaq will display limit orders entered into the Limit Order File in three separate ways. First, Nasdaq will display the Top of File, *i.e.*, the best limit order to buy and the best limit order to sell, in the Nasdaq quote montage, where it will be ranked in price/time sequence with all other quotes and orders entered into Nasdaq, and which will be used to calculate the inside quote. Nasdaq will also display the Top of file in a separate window on the Nasdaq Workstation. Both of these displays will be dynamically updated, *i.e.*, the System will automatically change the prices as orders enter and execute. Finally, Nasdaq will maintain for all Nasdaq Workstation subscribers and vendors a Full File display that will be available on a query/response basis. in other words, the user must enter a key stroke to obtain information regarding all of the orders displayed in the Full File. To obtain new information about the status of orders in the Full File, the subscriber must re-inquire of the System. At the first stage of implementation, Nasdaq, for capacity reasons, will not dynamically update the Full File. All orders displayed in the Limit Order File will be displayed anonymously, *i.e.*, the System will not attach the MMID of the member entering the order to that order for display purposes.

6. Anonymity of Executions in the File

As proposed in this filing, Nasdaq will display all orders in the File on an anonymous basis. Upon execution of any such order, either when another limit order matches it, or when it interacts with a Nasdaq displayed quote, the System will provide to all parties involved in the execution an execution report that identifies the contra-party to the trade. For example, when MMA enters a limit order into the File at 20 bid, it is displayed without an identifier indicating that MMA entered the order. Subsequently, MMB enters a limit order to sell at 20. Because the two limit orders match, they will execute against each other. When the execution occurs, MMA will receive a report from the system identifying MMB as the contra-party and MMB will receive a report indicating that MMA was its contra-party.

Nasdaq is also evaluating whether additional anonymity for executions should be provided in the future. There are two options under consideration: anonymity until the end of the trading day and anonymity throughout the settlement cycle. End of day anonymity would work as follows. When an order that is displayed in the Limit Order File is executed, either by matching against another order entered into it or when a market maker or ECN executes the order, the System will preserve the anonymity of the firm entering the order until the end of the trading day provided that the party entering the order into the File chose to keep its order anonymous following execution. The contra-party would receive the indicator "NSDQ" as the MMID for the other side to the trade. The true identity of the firm entering the order would not be revealed to the contra-party until after trading for the day has ceased. Nasdaq would provide to each party that received an anonymous execution a report after 5:15 p.m. with the identity of the party that entered the order into the File.

For example, assume that the inside market for a security is 19 15/16–20 1/8, 10 x 10. MMA enters a non-directed proprietary limit order to sell 1,000 shares at 20 into the File, and indicates upon order entry that it wants the order to be executed anonymously. The order

[47] *See* SEC Rule 11Ac1–1.

[48] If a market maker or ECN order seeks to quote at a price that would lock or cross the Limit Order File, the market maker or ECN is required by rule to first enter a directed order that would execute against the order in the file.

will be placed on the File at 20 for 1,000 shares; because the limit order is the best sell order in the market, the inside will change to 19 15/16–20, 10 × 10. At this time, order entry firm X ("OEFX") enters a buy market order for 1,000 shares. OEFX's order is automatically executed against the limit order at 20. OEXF receives a report confirming that its market order was executed for 1,000 shares at 20 against NSDQ.

As another example, assume the same facts as above, except that MMD wants to move its bid of 19 15/16 to 20. Under the locked/crossed market rule, it must make an effort to avoid locking the market by attempting to takeout the locking offer, in this case the limit order to sell at 20.[49] When MMD enters a non-directed order to buy 1,000 shares at 20, that order will match against the limit order to sell at 20 and MMD will receive a report indicating that it bought 1,000 shares at 20 from NSDQ. After 5:15, MMD will receive a report that indicated that this sell order was actually executed against MMA.

Under a full anonymity proposal, the NASD could create a structure to keep the contra-parties anonymous as to each other throughout the settlement cycle. The NASD continues to evaluate the means by which such anonymity could be provided. Before either end of day or full anonymity would be offered, the NASD and Nasdaq would have to propose any such approach as a new rule proposal or as an amendment to this filing. The NASD believes at this time that it would be helpful if commenters offered their views generally on the need for particular levels of anonymity in the File.

7. Sponsored Access by Non-Members

A critical component of the new System will permit institutions and other customers of NASD members to obtain direct electronic links to the System through arrangements that are sponsored by an NASD member. Under such an arrangement, a customer and an NASD member will be able to sign an agreement that permits Nasdaq to provide the customer with the electronic capability to enter orders into the System directly from its trading desk. Such orders can be limit or market orders that access prices displayed in Nasdaq (if they are market orders), or are displayed in the Limit Order File (if they are limit orders). Only market makers that are Primary Market Makers under NASD Rule 4612 are eligible to enter into a sponsored arrangement for access by non-members.[50]

8. The Opening Process for Orders in the Limit Order File

Limit orders can be entered as good-till-canceled ("GTC") or good-till-date ("GTD"). Because of this capability, the File may carry over limit orders from one trading day to the next. In addition, the System will allow limit orders to be entered prior to the market opening and also will permit the entry of market orders that will be able to interact with limit orders in the Limit Order File at the opening of the file for executions. Consequently, at the opening of the market at 9:30, the Nasdaq Limit Order File could contain a number of limit and market orders.

Nasdaq believes that the following approach to execution of all such orders entered into the System prior to market open best accommodates customer requirements that executions occur as rapidly as possible and at prices as near as possible to the prevailing market at the open. At 9:30, when quotations are first opened in the System, Nasdaq will take a snapshot of the best quotes (the "9:30 Inside"). Thus, the 9:30 Inside includes market makers, ECNs and UTP exchanges, but not the Top of File of Nasdaq's Limit Order File. The opening process will use the 9:30 Inside to validate the executions of orders in the File.

The System will process the orders in the File at 9:30 by first matching the best priced limit order to buy against the best contra-side limit order to sell, bound by the 9:30 Inside. The system will continue to pair off matching buy and sell limit orders in the File, until all possible limit order matches that can take place at or within the 9:30 Inside have occurred. Limit orders that match other limit orders will be matched at a midpoint, giving price improvement to both where possible. If limits would match outside of the 9:30 Inside, then no execution takes place, as the opening match is bounded by the 9:30 Inside. After all possible limit-to-limit matches have occurred, the System will then match market orders to any remaining limit orders that are priced at or within the 9:30 Inside and execute such matches at the limit order price.

If the 9:30 Inside is locked at 9:30, the System will execute as many orders as it can match at that price. The remaining unmatched orders will be processed at 9:30 pursuant to normal business hours processing. For example, assume that the best bids and offers at 9:30 are priced at 20, and four limit orders are in the File at 9:30, each for 1,000 shares. There are limit orders to buy at 20 and 20 1/16, and limit orders to sell at 19 15/16 and 20 1/16. The system will execute the buy limit at 20 1/16 against the sell limit at 19 15/16 at a price of 20. The two remaining orders (buy at 20 and sell at 20 1/16) will not be executed. If the 9:30 Inside is crossed at 9:30 for a particular security, the System will not perform the opening match process for that security. Instead, in this situation, each order will be matched or delivered for execution, as the case may be, according to normal business hours processing. That is, limit orders that are marketable against the 9:30 Inside, and may market orders that have been entered prior to 9:30 will be delivered or executed against such prices in time sequence, commencing at 9:30. Once the crossed market has been eliminated, the File will be populated as during the normal intra-day process and executions will continue according to normal processing as discussed above. Thus, immediately after the match process is concluded, any market or marketable limit orders that do not match against limit orders in the opening process shall be delivered to or automatically executed against (depending on the size of the order) executing participants or the Limit Order File according to normal business hours processing as set forth above for non-directed orders. Execution reports for orders executed during the opening process will be discussed starting at 9:30 a.m.

9. Odd-Lot Processing

The new System will accept and execute orders less than one normal unit of trading, *i.e.*, odd-lot orders less than 100 shares. The System will provide a separate mechanism for processing and executing these orders as distinct from normal units of trading. First, odd-lot priced orders will not be displayed in the Limit Order File, nor will they match against any displayed File orders. Instead, the System will hold odd-lot orders in a separate file and automatically execute such odd-lots against market makers whenever the odd-lot order becomes marketable.[51] For example, if a member enters a market order for 50 shares into the System, it will immediately and automatically

[49] *See* NASD Rule 4613(e).

[50] The NASD notes that under the current Primary Market Maker qualification rule, all Nasdaq market makers qualify as Primary Market Makers. Nasdaq plans to amend the qualification standards to establish more stringent qualifying criteria.

[51] An odd-lot order becomes marketable when the best price in Nasdaq moves to the price of the odd-lot limit order. Odd-lot orders that are marketable at entry or become marketable will execute against the first market maker in rotation for odd-lot processing at the best price or at the odd-lot order's price.

execute the order against the market maker that is first in rotation for execution of such orders. The automatic execution will not decrease the market maker's displayed size.

10. Firm Quote Compliance Facility

To assist market makers in complying with the Firm Quote Rule, System market makers shall be provided with a means to indicate that the market maker has received an order via the telephone to trade at the market maker's Nasdaq-displayed quotation and that for a period of time while the market maker handles the telephone order, the System should not deliver additional orders for execution.

The market maker shall send via the System a message that records the time indicating when the market maker entered the message regarding the telephone order. When the System receives the message, the System shall not present an order to that market maker until 17 seconds after receipt of the original message. The System will provide the market maker with a reference number that shall be attached to the execution report that may occur as a result of the telephone order. A System market maker may only send one such message through the System for each telephone order necessitating the message. Sending such message without a corresponding transaction may be a violation of just and equitable principles of trade. Surveillance systems will be implemented to detect a pattern or practice of entering messages without corresponding transactions.

11. Amendments to Related Rules

In addition to the specific new rules proposed regarding the operations of the System, several rules found in NASD Rule Series 4600 and throughout the NASD Manual will have to be conformed in technical, non-substantive ways. In particular, Rule 4613 (Character of Quotations), will be amended to eliminate the references to SOES Tier Sizes for quotations of market makers. Rule Series 4700 (SOES Rules) will be rescinded entirely, and other rules referencing SOES will be rescinded or conformed accordingly, including Rule 4611(f) (Registration as a Nasdaq Market Maker), Rule 4619 (Withdrawal of Quotations and Passive Market Making), Rule 4620 (Voluntary Termination of Registration), Rules 4632 and 4642 (Trade Reporting) [52] and Rule 4618(c) (Clearance and Settlement).

E. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Exchange Act,[53] in particular subparagraphs (b)(2), (b)(6), (b)(9), and (b)(11), and Section 11A of the Exchange Act, in that the proposed rule change is designed to enhance the protection of investors and provide for the fairest and most efficient mechanism for transactions in the market for Nasdaq securities. Section 15A(b)(6) requires that the rules of a registered national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposed rule change represents a significant effort to provide for an integrated order delivery and execution system where all market participants and investors may be brought together in a single system and where all orders are processed and distributed in a fair and orderly fashion to achieve immediate or rapid executions at the best available price. This also is consistent with Section 11A(a)(1)(B) of the Exchange Act, which sets forth findings of Congress that new data processing and communications techniques create the opportunity for more efficient and effective market operations.

The integrated nature of the System will address issues related to unintended "double liability" that can be incurred by market makers, thus reducing a disincentive for market maker participation, and, along with the Firm Quote compliance Facility, should significantly ease the associated regulatory and compliance burdens involving the Firm Quote Rule and related NASD rules. Importantly, this also will enhance the NASD's ability to assure compliance with the Firm Quote Rule. Thus, the proposed rule change also comports with the requirements of subparagraph (b)(2) of Section 15A, which requires the association to be organized to enforce compliance by its members and associated persons with the provisions of the Exchange Act, rules thereunder, and the rules of the association.

In addition, the proposed rule change to establish a Nasdaq limit order book is designed to facilitate the display of the best priced limit orders in Nasdaq. Because the Top of File will be displayed in the quote montage, this facility is consistent with Section 15A(b)(11), which requires that the rules of a registered national securities association be designed to produce fair and informative quotations, prevent fictitious or misleading quotations and to promote orderly procedures for collecting, distributing, and publishing quotations. In this context, the proposed rule change also is consistent with the SEC's Order Handling Rules, in particular Rules 11Ac1–1 and 11Ac1–4, in that the book may be used by members to satisfy the requirements of the Display Rule with respect to customer orders, and is consistent with the ECN Display Alternative for market maker display of orders priced better than the market maker's public quote.

Finally, the proposed rule change is consistent with Section 11A(a)(1)(C) of the Exchange Act, which states, among other things,that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and order markets to assure (1) economically efficient execution of securities transactions; (2) fair competition among brokers and dealers; (3) the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities; (4) the practicability of brokers executing investors' orders in the best market; and (5) an opportunity for investors' orders to be executed without the participation of a dealer. The NASD and Nasdaq believe that the System advances all of these goals by providing an integrated order delivery and execution system and Limit Order File designed to provide maximum transparency and efficient executions at the best price for the benefit of all investors and market participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act, as amended.

[52] It should be noted that the rules governing the trade reporting of Nasdaq National Market securities found in NASD Rule 4632 are part of an effective transaction reporting plan approved by the Commission under SEC Rule 11Aa3–1. Accordingly, any proposed amendments to these rules are proposed amendments to the transaction reporting plan contemplated by that SEC rule.

[53] 15 U.S.C. § 78*o*–3.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

With 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the 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–98–17 and should be submitted by April 2, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[54]

Jonathan G. Katz,

Secretary.

Exhibit 1—Text of the Proposed Rule Change

The text of the proposed rule change as amended is as follows. (Additions are italicized; deletions are bracketed.)

4611. Registration as a Nasdaq Market Maker

(a) through (e) No Change.

[(f) Unless otherwise specified by the Association, each Nasdaq market maker that is registered as a market maker in a Nasdaq National Market security shall also at all times be registered as a market maker in the Small Order Execution System (SOES) with respect to that security and be subject to the SOES Rules as set forth in the Rule 4700 Series.]

(g) Re-designated as paragraph (f).

4613. Character of Quotations

(a) Two-Sided Quotations

[(1)] No Change.

[(2) Each member registered as a Nasdaq market maker in Nasdaq National Market equity securities shall display size in its quotations of 1,000, 500, or 200 shares and the following guidelines shall apply to determine the applicable size requirement:

(A) a 1,000 share requirement shall apply to Nasdaq National Market securities with an average daily non-block volume of 3,000 shares or more a day, a bid price of less than or equal to $100, and three or more market makers;

(B) a 500 share requirement shall apply to Nasdaq National Market securities with an average daily non-block volume of 1,000 shares or more a day, a bid price of less than or equal to $150, and two or more market makers and

(C) a 200 share requirement shall apply to Nasdaq National Market securities with an average daily non-block volume of less than 1,000 a day, a bid price of less than or equal to $250, and that have two or more market makers.

(3) Each member registered as a Nasdaq market maker in Nasdaq SmallCap Market equity securities shall display size in its quotations of 500 or 100 shares and the following guidelines shall apply to determine the applicable size requirement:

(A) a 500 share requirement shall apply to Nasdaq SmallCap Market securities with an average daily non-block volume of 1,000 shares or more a day or a bid price of less than $10.00 a share; and

(B) a 100 share requirement shall apply to Nasdaq SmallCap Market securities with an average daily non-block volume of less than 1,000 shares a day and a bid price equal to or greater than $10.00 a share.

(4) Share size display requirements in individual securities may be changed depending on unique circumstances as determined by the Association, and a list of the size requirements for all Nasdaq equity securities shall be published from time to time by the Association.]

(b) No Change.

(c) No Change.

(d) No Change.

(e) No Change.

4618. Clearance and Settlement

(a)-(b) No Change.

[(c) All SOES transactions shall be cleared and settled through a registered clearing agency using a continuous net settlement system.]

4619. Withdrawal of Quotations and Passive Market Making

(a) No Change.

(b) No Change.

(c) Excused withdrawal status may be granted to a market maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency and is withdrawn from participation in the Automated Confirmation Transaction service, thereby terminating its registration as a market maker in Nasdaq National Market issues. Provided however, that if the Association finds that the market maker's failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations will be considered voluntary and unexcused pursuant to Rule 4620 [and the Rules for the Small Order Execution System, as forth in the Rule 4700 Series] *and Rule 4940.*

4620. Voluntary Termination of Registration

(a) A market maker may voluntarily terminate its registration in a security by withdrawing its quotations from The Nasdaq Stock Market. A market maker that voluntarily terminates its registration *in the System* in a security may not re-register as a market maker in that security for twenty (20) business days[.]; [Withdrawal from SOES participation as a market maker in a Nasdaq National Market security shall constitute termination of registration as a market maker in that security for purposes of this Rule;] provided, however, that a market maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency and is withdrawn from participation in the Automated Confirmation Transaction System and thereby terminates its registration as a market maker in [Nasdaq National Market issues] *the System* may register as a market maker at any time after a clearing arrangement has been reestablished and the market maker has complied with ACT participant requirements contained in Rule 6100.

(b) No Change.

(c) No Change.

(d) No Change.

4632. Transaction Reporting

(a) through (d) No Change.

(e) Transactions Not Required To Be Reported.

The following types of transactions shall not be reported:

(1) transactions executed through *the System or* Computer Assisted Execution System (CAES);

(f) No Change.

4642. Transaction Reporting

(a) through (d) No Change.

(e) Transaction Not Required To be Reported.

The following types of transactions shall not be reported:

(1) Transactions executed through the *System or* Computer Assisted Execution System (CAES) [; the Small Order Execution System (SOES) or the SelectNet service].

(f) No Change.

4700. Small Order Execution System

Rules 4710, 4720, 4730, 4740, 4750, 4760, and 4770 are being rescinded in their entirety.

[54] 17 CFR 200.30–3(a)(12).

4900. Nasdaq Trading System

4910. Definitians

(a) The term "Autamated Confirmation Transactian service" ("ACT"), for purposes of the System rules, shall mean the automated system owned and operated by The Nasdaq Stock Market, Inc. which accammadates trade reparting af transactians executed through the System and submits lacked-in trades ta clearing.

(b) The term "automated quotatian update facility" shall mean the facility in the System that allows the System to automatically refresh a System market maker's quotation in any security thot the System market maker designotes when the System market maker's disployed size (and supplemental size, if any hos been reduced to zero. The facility will update either the bid or the offer side of the quote using a quotation interval designated by the market maker, depending upon the side of the market on which the execution has occurred ond refresh the market maker's displayed size ot an amount pre-determined by the morket maker.

(c) The term "customer order" shall mean an order from, or on behalf of, a person that is not a registered broker-deoler, except that for the purposes of these Rules, the term customer shall include registered options market makers. An order will nat be considered an agency order if it is for any occount of a person ossociated with the member firm entering the order or ony account controlled by such on associated person.

(d) The term "directed order" sholl mean on order (agency or proprietary) entered into the System by o porticipant that is directed to a porticular Executing Participant.

(e) The term "displayed size" shall mean the octuol size of the quote displayed to the market os required by Rule 4613(o).

(f) The term "ECN" shall mean on electronic communications network that is registered and disploying orders in Nasdaq pursuant to Rule 4623 of the NASD Rules.

(g) The term "Executing Participant" sholl include any of the following participants: (1) System market mokers; (2) electronic communicotions networks ("ECNs"); ond (3) UTP Exchange Specialists.

(h) The term "Firm Quote Rules " shall meon SEC Rule 11Ac1–1 and NASD Rules 3320 ond 4613(b).

(i) The term "inside morket" sholl mean the best bid and associated size from Executing Porticipants ond the best System limit order(s) to buy, as ranked by price, ond the best affer and assaciated size from Executing Participants and the best System limit order(s) ta sell, as ranked by price, displayed by Nasdaq.

(j) The term "liability order" shall mean an order that when delivered ta an Executing Participant imposes obligatians an the Executing Participant to respond to such order in compliance with the Firm Quote Rules.

(k) The term "limit order" shall mean an order entered into the System that is a priced order.

(l) The term "marketable limit arder" shall mean a limit order that, at the time it is entered inta the System, if it is a limit order ta buy, is priced at the current inside affer or higher, of if it is a limit arder ta sell, is priced at the inside bid or lower.

(m) The term "nan-directed arder" shall mean an order entered into the System and not directed ta any particular Executing Participant.

(n) The term "open quate" shall mean a System market maker's quatation price and displayed size in an eligible security against which orders may be executed through the System during normal business hours, as specified by the NASD, ar at such times that a market moker hos notified Nasdaq pursuont to Rule 4617 that it is open for business. For the purposes of these Rules, o market moker has a "closed quote" when (1) it is outside of normal business hours; (2) its displayed quotation size has been decreosed through System executions to zero; or (3) it has been deemed "closed" pursuant to Rule 4940 below.

(o) The term "Order Entry Porticipant" shall mean shall mean o member of the Association that is registered as a participant authorized to enter orders on behalf of customers in the System pursuant to Rule 4920 below. A System market maker is deemed to be an Order Entry Participant in ony security in which it is registered os a System market moker.

(p) The term "participant" shall mean o person registered with the NASD and outhorized to undertake octivity in the system.

(q) The term "proprietary order" shall meon an order for the principal account of a broker or dealer.

(r) The term "registered options market maker" shall mean an exchange member registered with a national securities exchonge as o market maker or specialist pursuant to the rules of such exchonge far the purpose of regularly engoging in market making activities as a dealer or speciolist in on option of a Nasdaq-listed security.

(s) The term "sponsored participant" shall meon o customer that is on institution (as defined in NASD Rule 3110(c)(4)) ar registered options market maker thot hos entered into a sponsarship orrangement accepted by Nosdoq pursuant to Rule 4920(e) below.

(t) The term "supplemental size" shall mean the size that a System Market Maker chooses to mointain in the System-provided supplementol size feature that refreshes the System Market Maker's displayed size by the System Market Maker's pre-determined amount after the displayed size has been reduced to zero following a System-generated execution.

(u) The term "System" shall mean the order delivery and execution system owned and operated by The Nasdaq Stock Market, Inc. (a wholly awned subsidiory of the Natianal Association of Securities Dealers, Inc.).

(v) The term "System eligible security" shall mean any security listed on the Nosdoq National Market ar Nasdaq SmallCap Market.

(w) The term "System market maker" shall mean a member of the Association that is registered and quating with an open quote as o Nasdaq morket maker pursuant to the requirements of Rule 4600 af the NASD Rules and is registered pursuant to Rule 4920 below as a market maker in one or more System-eligible securities.

(x) The term "UTP exchange" shall mean any registered national securities exchange that has unlisted trading privileges in Nasdaq securities pursuant to the Nasdaq/NMS/UTP Plan.

(y) The term "UTP exchange specialist" shall mean a broker-dealer registered as a specialist in Nasdaq securities pursuant ta the rules of an exchange that: (1) is a signatory as either a porticipant or limited porticipant in the Joint Self-Regulotory Orgonization Plan Governing the Collection, Consolidation and Disseminotion Of Quotation and Transaction Information For Exchonge-Listed Nasdoq/National Market System Securities Traded On Exchange On An Unlisted Trading Privilege Bosis ("Nasdaq/NMS/UTP Plon"); (2) provides for electronic occess that permits o UTP exchonge specialist to enter proprietary orders and permits System executions ogainst o UTP exchange specialist at its published quote pursuont to these Rules; and (3) permits oll transactions to be cleored ond settled through o registered clearing ogency using a continuous net settlement system.

4920. Registration Requirements

(a) Prior to entering or executing orders into the System, participants seeking to porticipote in the System sholl register and be outhorized by Nasdoq as Executing Porticiponts, Order Entry Participants or sponsored participonts, provided that eoch such porticipant meets the conditions set forth below:

(1) Executing Porticipants: Registration as an Executing Participant shall be conditioned on the participant's initial and continuing compliance with the following requirements:

(A) Membership in o clearing ogency registered with the Securities ond Exchonge Commission which mointains facilities through which system-compared trades may be settled; or entry into o correspondent clearing orrangement with an NASD member that clears trades through such clearing agency;

(B) registration as: (i) o market maker or an ECN (as the case may be) in Nasdoq pursuant to the Rule 4600 series of the NASD Rules and compliance with all applicable rules ond operating procedures of the Association and the SEC; or (ii) os an exchange speciolist in good standing with an exchange that is o porticipant in the Nosdaq/UTP Plon and compliance with oll opplicoble rules and operating procedures of the Association, its UTP Exchonge and the SEC;

(C) maintenance of the security of any system that ollows access to Nasdaq systems so as to prevent improper use or occess of Nosdoq Systems, such as the unauthorized entry of orders or other data into Nasdaq-operated systems; and

(D) acceptance and settlement of each trade that is executed through the facilities of the System, ar if settlement is to be made through another clearing member, guarantee of the occeptance and settlement af such identified System trades by the clearing

member on the regularly scheduled settlement date.

(2) Order Entry Participants: Registration as an Order Entry Participant shall be conditioned upon the participant's initial and continuing compliance with the following requirements:

(A) membership in a clearing agency registered with the Securities and Exchange Commission which maintains facilities through which System-compared trades may be settled; or entry into a correspondent clearing arrangement with an NASD member that clears trades through such clearing agency;

(B) compliance with all applicable rules and operating procedures of the Association and the Securities and Exchange Commission;

(C) maintenance of the security of any system that allows access to Nasdaq systems so as to prevent Nasdaq systems from being improperly used or accessed; such as the unauthorized entry of orders or other data into the System or Nasdaq; and

(D) acceptance and settlement of each trade that is executed through the facilities of the System, or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such identified System trades by the clearing member on the regularly scheduled settlement date.

(3) Sponsored Participants: Registration as a sponsored participant shall be conditioned on the participant's and the participant sponsor's initial and continuing compliance with the following requirements:

(A) execution of, and continuing compliance with, at least one valid sponsorship agreement, as set forth in paragraph (e);

(B) membership of the sponsoring NASD member in a clearing agency registered with the Securities and Exchange Commission which maintains facilities through which System-compared trades may be settled; or such sponsoring NASD member's entry into a correspondent clearing arrangement with an NASD member that clears trades through such clearing agency;

(C) the sponsoring NASD member's acknowledgment that the sponsored participant will maintain the security of any system that allows access to Nasdaq-operated systems so as to prevent Nasdaq systems from being improperly used or accessed, such as through the unauthorized entry of orders or other data into Nasdaq-operated systems;

(D) the sponsoring NASD member's acceptance and settlement of each trade that is executed by the sponsored participant through the facilities of the System, or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such identified System trades by the clearing member on the regularly scheduled settlement date.

(b) Upon effectiveness of a participant's registration to participate in the System, participants may commence activity within the System for entry and/or execution of orders, as applicable, and their obligations as established in this rule will commence.

(c) Pursuant to Rule 4600 of the NASD Rules, participation as a System Market Maker is required by any Nasdaq market maker registered to make a market in a Nasdaq security. Pursuant to Rule 4623 of the NASD Rules, when an ECN is displaying an order in Nasdaq, such displayed order must be accessible for execution through the System.

(d) Each system participant shall be under a continuing obligation to inform the Association of noncompliance with any of the registration requirements set forth above.

(e) Sponsorship agreements:

(1) A System Market Maker that is a Primary Market Maker pursuant to Rule 4612 in a particular security may establish for such security a sponsorship arrangement with customers that permits the customer to enter directly from the customer's facility orders for display, delivery, or execution in Nasdaq's System and receive execution reports by means of a Nasdaq-authorized protocol provided by the System Market Maker, the customer or a third party vendor of such services.

(2) Sponsorship arrangements must be pursuant to Nasdaq-authorized sponsorship agreements. A Sponsored Participant may enter into sponsorship agreements with more than one sponsoring NASD member. A sponsorship agreement shall include, among other things, terms establishing the customer's agreement to comply with all applicable NASD Rules governing the entry, execution, reporting, clearing and settling of orders in System-eligible securities;

(3) The sponsoring member must agree that it is responsible for all orders entered into the System by the sponsored participant that identify the sponsoring NASD member as the sponsor and that any execution that occurs in the System as a result of such order is binding in all respects on the sponsoring member so identified;

(f) Limitations on liability for System malfunctions: The Association and its subsidiaries shall not be liable for any losses or damages arising out of the use of the System. Any loss or damages related to a failure of the System to deliver, display, execute, compare, submit for clearance and settlement, or otherwise process an order or message entered in the System shall be absorbed by the member entering the message, or the member sponsoring the customer that entered the message.

4930. Operating Hours of The System

Subject to any trading halt imposed by the SEC or NASD, or any system malfunction or emergency condition that warrants interruption of the operation of the System, the operating hours of the System shall be as follows:

(a) For directed orders, the System shall be open and capable of permitting the execution of such orders from 9:00 a.m. (ET) to 5:15 p.m. (ET).

(b) For non-directed orders, the System will commence normal operations at 9:30 a.m. (ET) and close at 4:00 p.m. (ET), i.e., normal business hours as defined in Rule 4617, except as provided for in the opening procedures set forth below. Non-directed orders that are limit orders may be entered at any time from 8:00 a.m. (ET) until 6:00 p.m. (ET) for processing in the System during normal operations. Non-directed market orders may be entered at any time from 8:00 a.m. (ET) until 4:00 p.m. (ET).

4940. Participant Obligations in the System

(a) Executing Participants

(1) A System Market Maker, ECN, or UTP Exchange Specialist shall commence participation in the System by initially contacting Nasdaq Market Operations to obtain authorization for order delivery and execution purposes in particular Nasdaq securities and identifying those devices through which such delivery and executions shall occur. Thereafter, on-line registration on a security-by-security basis is permissible, consistent with the requirements of Rule 4600 of the NASD Rules.

(2) Participation as a System Market Maker, ECN, or UTP Exchange Specialist obligates the participant, upon presentation of a market order or marketable limit order through the service, to execute such order as provided in Rule 4950 below. The System will transmit to the participant on the Nasdaq Workstation Service, or through a computer interface, as applicable, an execution report generated following each execution.

(3) A System Market Maker may elect to use the Nasdaq-provided automated quotation update facility in one or more securities in which it is registered. The facility will refresh the market maker's quotation automatically by a quotation price and size interval designated by the market maker, once its displayed size in the security has been reduced to zero size by executions that occur against the market maker in the System. The facility will refresh the market maker's quotation on either the bid or the offer side of the market, depending on the side that was reduced to zero size, by the price interval and size designated by the market maker.

(4) A System Market Maker may terminate its obligation by withdrawal from the System at any time. However, the market maker has the specific obligation to monitor its status in the System to assure that a withdrawal has in fact occurred. Except as otherwise permitted by Rule 11890 regarding the Association's authority to declare clearly erroneous transactions void, any transaction occurring prior to the effectiveness of the withdrawal will remain the responsibility of the market maker. A System Market Maker whose displayed size is reduced to zero on one side of the market will have a closed quote in Nasdaq and the System with respect to both sides of its market and will be permitted a standard grace period of three minutes within which to take action to restore its displayed size, if the market maker has not authorized use of the automated quotation update facility. A market maker that fails to renew its displayed size in a security within the allotted time will have its quotation on the side of the market that has been reduced to zero restored by the System at the lowest bid price (for a bid) or the highest offer price (for an offer) displayed in that security. Except as provided in subparagraph (5) below, a market maker that withdraws from a security may not re-register in the System as a market maker in that security for twenty (20) business days.

(5) Notwithstanding the provisions of subparagraph (4) above:

(A) a market maker that obtains an excused withdrawal pursuant to Rule 4619 of the NASD Rules prior to withdrawing from the System may reenter the System according to the conditions of its withdrawal;

(B) a market maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency, and its thereby withdrawn from participation in ACT and the System, may reenter the System after a clearing arrangement has been reestablished and the market marker has complied with ACT participant requirements, provided however, that if the Association finds that the ACT market marker's failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations will be considered voluntary and unexcused pursuant to Rule 4620 and these rules.

(6) In the event that a malfunction in the participant's System devices occurs rendering electronic communications with the System inoperable, the System participant is obligated to immediately contact Nasdaq Market Operations by telephone to request a closed quote status. If the closed quote status is granted, Market Operations personnel will enter such status notification into the System from a supervisory terminal. Such manual intervention, however, will take a certain period of time for completion and, unless otherwise permitted by the Association pursuant to its authority under Rule 11890, the System participant will continue to be obligated for any transaction executed prior to the effectiveness of its closed quote.

(b) Order Entry Participants

(1) An NASD member that is not registered as a market maker or as an ECN in a particular security must register as an Order Entry Participant to be able to enter orders into the System. Order Entry Participants can enter orders into the System only after an application for registration is reviewed and accepted by Nasdaq.

(2) Entry of Customer Orders: Executing Participants and Order Entry Participants are permitted to enter customer orders.

(3) Entry of Proprietary Orders: Provided that System market makers are permitted to enter quotations for actual size pursuant to Nasdaq market maker quotation rules, any Order Entry participant is permitted to enter proprietary orders into the System for display, delivery, and execution purposes. If, however, at the time that the new system is available for use, System market makers are not permitted to quote in actual size for all Nasdaq securities, only System market makers, UTP Exchange specialists, and registered option market makers may place proprietary orders for their market making accounts into the System. Proprietary orders may be entered only for securities for which the market maker or specialist is registered as a market maker or specialist. Any such proprietary order must be entered by an associated person of the market maker or specialist who is actively engaged in a market making capacity for that particular security.

(4) Proprietary Orders:

(A) Display and Execution—Proprietary orders are subject to the same display and execution processes and requirements as agency orders.

(B) Surveillance Requirements—A member that enters a proprietary order must designate the order with the appropriate designator to identify the order as proprietary.

(5) Time In Force Orders: The following types of orders may be entered into the System:

(A) day orders;
(B) good-till-canceled ("GTC"); and
(C) good-till-date ("GTD").

The System will not accept all or none ("AON") orders; orders with minimum size of executions; or other conditioned orders.

4950. Entry, Display, and Execution of Orders

(a) Types of Orders That May be Entered: The System will accept limit orders, marketable limit orders, market orders, and odd-lot orders. All such orders have a minimum life of 10 seconds during which period such orders may not be canceled by the participant entering the order.

(b) Order Price Increments: All priced orders submitted for execution in the System are subject to the same policy for price increments as market maker quotes. For securities priced at $10 or more, the minimum order increment shall be 1/16th. For stocks priced less than $10, the minimum order increment shall be 1/32th.

(c) Order Size: Any round or mixed lot order up to 999,999 shares may be entered into the System for normal display and execution processing provided that System market makers may quote in actual size. If market makers are not permitted to quote in actual size, Order Entry Participants that are not System Market Makers or registered options market makers may only enter orders up to 1000 shares for non-directed orders. Odd-lot orders are subject to a separate display and execution process set forth below.

(d) Directed Orders:

(1) General Provisions—During normal business hours (i.e., 9:30 a.m. to 4:00 p.m.), orders entered into the System may be directed to a particular Nasdaq Market Maker, ECN, or UTP Exchange Specialist for execution.

(2) No Display of Directed Orders—Directed orders are not displayed in the Nasdaq Limit Order File and do not interact with any order displayed there, i.e., directed orders do not match against limit orders in the Nasdaq Limit Order File.

(3) Price and Size of Directed Orders—Directed orders must be priced orders in round or mixed lots and can be of any size permitted in the System in accordance with paragraph (c) above.

(4) Processing of Directed Orders: Directed orders will be processed in time sequence with non-directed orders entered into the System; that is, a directed order will be queued with all other orders (directed and non-directed) and will not be delivered to a particular Executing Participant designated by the Order Entry Participant until orders in sequence ahead of it are delivered for execution.

(5) Liability for Directed Orders: Nasdaq Market Makers and ECNs that receive directed orders at or better than their quoted price (e.g., an order to sell at a price equal to or below their bid) are obligated to execute such orders up to their size displayed at the time that the order is delivered, in accordance with the same parameters for processing executions for non-directed orders in Rule 4950(e)(3), unless an exception to the SEC and NASD Firm Quote Rules applies. Directed orders that are sent at a price inferior to the price displayed (e.g., an order to sell at a price higher than their quoted bid) at the time of delivery or for a size greater than that currently displayed size do not obligate the Executing Participant to execute at that price or for any amount greater than the displayed size, except as provided for when the System Market Maker makes use of the supplemental size feature. All directed orders that impose liability on the Executing Participant will be designated as such on the order message delivered to such participant.

(6) Interaction of Directed Orders With Market Maker Supplemental Size: If a System Market Maker has elected to use supplemental size, and it receives a directed order greater than its displayed size, and such order is equal to or less than its supplemental size, the system shall either automatically execute such order if it is 1000 shares or less, or wait for a response from the market maker for either 17 seconds, if the order delivered is more than 1,000 shares, but less than 5,000 shares, or 32 seconds, if the order is 5,000 shares or greater, before executing the order up to the amount of its displayed size and its supplemental size. If the market maker accepts a partial amount or declines the order within the allotted time period, the market maker's supplemental size above the partial acceptance or the decline shall be eliminated by the System.

(7) Time In Force and Execution Process for Directed Orders: Order Entry Participants may cancel any directed order 10 seconds after entry. Directed orders will be delivered to or executed against an Executing Participant, except for a UTP Exchange Specialist, in the same manner as non-directed orders, as described in subparagraph (e)(3) below, except that non-liability orders priced inferior to the displayed price or at size larger than displayed size will be delivered for interaction by the Executing Participant. All orders directed to a UTP Exchange Specialist shall be delivered for the UTP Exchange Specialist's response. Delivery and/or execution of a directed order shall reduce the displayed size of the Executing Participant by the amount delivered or executed against the displayed size. Time in force for all delivered directed orders shall be the time parameters set forth in subparagraph (e)(3) below.

(8) Directed Orders Outside of Normal Market Hours: From 9:00 a.m. to 9:30 a.m. (ET) (pre-open directed orders) and from 4:00 p.m. to 5:15 p.m. (ET) (post-close directed orders) the System will permit the entry of directed orders. As long as an Executing Participant's quotation is in a closed quote state, the Executing Participant has no liability for that directed order. If an Executing Participant has chosen to open its quote after market close and a directed order is delivered, the order is treated as a liability

order subject to the same abligatians described in subparagraph (d)(5) abave, except that a market maker that opens its quote mamentorily, solely far the purpose af adjusting its quote to reflect the eliminatian af customer limit arders, will nat be subject ta Firm Quate Liability. Directed arders autside af narmal market haurs cannat be canceled within 10 seconds; the time in farce shall be ane minute.

(e) Non-directed Orders:

(1) General Provisions: Unless on order is directed to a particulor Executing Porticipant pursuant to paragraph (d) above, on order entered into the system sholl be considered o nan-directed order that shall be disployed ond/or executed according to the provisions of this subparagraph. If o non-directed order is executable ot the time it is ready to be delivered for execution (i.e., it is o morket order or marketoble limit order), it sholl be delivered for execution in time sequence based on the time the order is received in the System. Delivery for execution shall occur ogainst the next ovailable participont (either an Executing Porticipont or the Nosdaq Limit Order File) based on o price ond time priority ranking. If o non-directed order is o limit order thot is not executable ot the time it is received in Nosdaq's System, it shall be delivered to the Nosdaq Limit Order File for immediate disploy in the File.

(2) Entry of Non-Directed Orders: Round lot ond mixed lot orders of any size permitted pursuant to poragraph (c) of this rule may be entered into the System on o non-directed basis. Orders will be processed in the time sequence that they are received in Nosdaq's System. Orders will be delivered to the best price quoted in Nasdaq's System for execution purposes. Market orders ond marketable limit orders that are larger thon the displayed size of o porticipont will be split by the System ond will be delivered to multiple participants to obtoin on execution at the best prices availoble. Similorly, morket orders ond marketoble limit orders priced through the best prices will be executed ogoinst multiple Executing Porticiponts until the orders are fully executed. Morketable limit orders that cannot be fully executed because oll disployed size ot the marketoble limit order's price is exhausted sholl become o limit order displayed in the Nosdaq Limit Order File and subject to execution os described belaw.

(3) Processing of Nan-Directed Orders: Non-directed orders shall be delivered to the Executing Participont or the Nosdoq Limit Order File at the best price on o time priority basis. Nan-directed orders delivered in this process are delivered in size up to the size disployed by the Executing Porticipont or Limit Order File, except os provided when o market moker chooses to use supplemental size as described below in paragraph (f). Executing Participants are responsible for executing orders delivered ot their prices and up to their disployed size, unless on exception to the Firm Quote Rules opplies. The System will take the following actions based on the prices and size disployed ond the execution parameters chosen by the Executing Porticipants:

(A) Minimum Parameters For Automatic Execution: If the size of an arder, or part of an order, presented to an Executing Participont is 1,000 shares ar less, the System will deliver the arder in a size omaunt that is either (i) up ta the displayed size af the Executing Participont's quatatian ar (ii) the full size of the arder if such displayed quatatian size is greater thon the order size, ond immediately execute the arder against the participant at the time af delivery and decrease the displayed quote by the size af the order executed. The system will permit up to a 17-second deloy ofter execution to permit the Executing Participont to update its quotation before onother non-directed order is delivered to thot porticipont.

(B) Defoult Execution: If the size of an order, or part of an order, presented is greater than 1,000 shores but less thon 5,000 shares, ond on Executing Porticipont is disploying o quotation size of 1,000 shores or greater but less thon 5,000 shores, the System will deliver on amount of the order up to the Executing Porticipont's displayed size for execution ond will decreose the disployed size by the amount delivered immediotely upon action by the Executing Porticipont. The executing party hos up to 17 seconds from delivery to accept, decline, partiol, price improve, or do nothing with the delivered order. If the Executing Participant declines the order, the Executing Porticipont's quotation sholl be immediately placed in a closed quote state. If the Executing Participont does not respond to the order, the System will outomoticolly execute the order.

(C) Large Size Defoult Execution: If the size of on order, or part of on order, presented is 5,000 shares or greater, ond on Executing Participant is displaying o quotation size of 5,000 shores or greoter, the System sholl deliver the order to the Executing Porticipant far execution ond will decrease the disployed size by the amount delivered immediotely upon oction by the Executing Porticipont. The executing party hos up to 32 seconds from delivery to accept, decline, partiol, price improve, or do nothing with the delivered order. If the Executing Participant declines the order, the Executing Porticipont's quototion sholl be immediotely ploced in o closed quote state. if the Executing Participont does not respond to the order, the System will outomotically execute the order.

(D) Non-Directed Order Interaction with Market Maker Supplemental Size: If o market moker using supplementol size is olone at the inside price, and o non-directed order larger than its disployed size becomes avoilable for delivery, the entire order, up to the market maker's displayed size and its supplementol size, shall either be automatically executed if it is up to 1000 shores, or presented to the morket moker for its oction for up to 17 seconds, if the order is greater thon 1,000 shares but less thon 5,000 shores, or up to 32 seconds if the order is 5,000 shores or greater. If the market maker occepts o partiol omount less thon its remoining supplemental size or declines the order, the remainder of the market maker's supplementol size sholl be eliminated and the morket moker's quote shall be placed in o closed quote state until the market maker updates its quote, or three minutes, whichever time period is shorter. If the morket moker does nothing within 17 or 32 seconds, depending on the size of the order presented, the amount of the arder presented ta the market maker sholl be executed ogoinst the market maker.

(f) Supplemental Size: The System will permit System market makers to establish supplemental size to their displayed size, i.e., a System market maker may estoblish additional, undisplayed size that becames disployed in market maker-established size increments in the morket moker's quototion after the System has executed an order that decreoses the morket maker's disployed size to zero. The omount of interest entered into the supplementol size feature moy be any omount estoblished by the market moker, up to 99,000 shores, provided thot a morket maker may not use the supplementol size feature unless it is quoting in size of ot least 1,000 shares and the refreshed size of the quotatian maintoined by the supplementol size facility is in o minimum increment of 1,000 shores.

(g) Limit Order File: The System will mointoin o Limit Order File that will hold and disploy limit orders entered on o voluntary basis by participonts. The System will display ond execute limit orders entered into the File in the following monner:

(1) Disploy of Limit Orders: Limit Orders entered into the Limit Order File will be ranked according to price ond time sequence. The best-ranked limit order to buy ond the best-ranked limit order to sell in the file and the aggregate size of such orders ossocioted with such prices (i.e., the "Top of File") will be displayed dynomically in o window on Nosdaq presentotion devices and in the Nasdaq quote montoge where it will be ronked in price ond time sequence with market moker quototions ond ECN-disployed orders. In oddition, Nosdoq will maintain for oll Nosdoq subscribers a full file display that will contoin the prices ond oggregate sizes of oll limit orders contoined in the file. This full file disploy is not updoted dynomicolly ond must be accessed on o query basis. Morketable limit orders shall not be disployed in the Limit Order File.

(2) Execution of Limit Orders Displayed In The Limit Order File: When orders thot ore entered into the Nosdaq Limit Order File are ranked first in priarity in the System, the System will match non-directed morket ond marketable orders ogoinst the best-priced limit orders ond immediotely execute the orders ond report such executions to the consolidated trade reporting System for trade reporting ond the appropriote cleoring agency os o locked-in trode.

(3) Short Sole Limit Orders: The System will permit the entry ond execution of limit orders that are short sales. The System will not permit the execution of short sole orders thot would violote the NASD's Short Sale Rule, Rule 3350 of the NASD's Conduct Rules.

(4) Mixed Lot Orders: The System will display only the round lot portion of a mixed lot order in the Top of File and Nosdoq Quote Montage. The System will motch the full size of a mixed lot order only when such order can motch exoctly against onother mixed lot order. In cases where there is no exoct motch of mixed lot orders, the System will match the round lot portions of such matching orders, ond mointoin the remaining odd lot

portions of such orders for odd-lot processing.

(5) Opening Process: At 9:30 a.m. (ET) the System will commence an opening match process as follows to attempt to execute as many limit orders as possible held on the Limit Order File as of 9:30 together with any market orders also held at that time. At 9:30, the System will first match limit orders to limit orders, based on price/time priority, by providing executions bounded by the 9:30 inside quotation until all possible executions are exhausted. The 9:30 "inside" for this purpose includes quotations of ECNs and UTP exchanges, but does not include the Top of File, Limits that cross other limits, where both limits are outside the 9:30 inside, will be executed at the mid-point of the 9:30 inside,. Limits that cross other limits where one limit is at or within the 9:30 inside but the other is outside will be executed at a price that would provide price improvement for both orders if possible, provided the execution is at or within the 9:30 inside. Any remaining limits that cross other limits, both of which are within the 9:30 inside, will be executed at the midpoint of the two limit orders, providing price improvement to both. Next, the System executes as many market orders as possible against any remaining limit orders, provided the limit order is for a price at or within the 9:30 inside. If the inside quotation is locked at 9:30, the System will execute as many orders as can match at that price, with the remaining unmatched orders to be processed at 9:30 pursuant to normal business hours processing. If the inside quotation is crossed at 9:30 for a particular security, the System will not execute the File orders in that security. In this situation, each order will be matched or delivered for execution, as the case may be, according to normal business hours processing. Any market orders that do not match against limit orders in the opening shall be delivered, starting 9:30, to Executing Participants or the Limit Order File for execution purposes according to normal business hours processing as set forth above for non-directed orders. Execution reports for orders executed during the opening will be disseminated starting at 9:30 a.m.

(6)(A) Display of limit orders: All orders entered and displayed in Limit Order File shall be displayed anonymously.

(B) Execution of Limit Orders: When limit orders are executed, the System shall provide an execution report to any participant that participates in the execution and shall include the identifier of each such participant.

(h) Odd-Lot Processing:

(1) Acceptance and Display: Odd lot orders, and the remainder of mixed lot orders that could not be executed in the normal manner, and are less than 100 shares, (market, limit, and marketable limit) shall be accepted and processed by the System in a separate process. Odd lot limit orders will not be displayed or matched in the Nasdaq Limit Order File.

(2) Execution Process: An odd lot order shall be executed automatically against the next available Nasdaq market maker in rotation, when such odd lot order becomes executable. When the odd lot order becomes executable, it will execute at the best price available in the market against the market maker even if that market maker is not quoting that price. Odd lot executions shall not decrease the market maker's displayed size.

4960. Firm Quote Compliance Facility

(a) To assist System Market Makers in complying with the Firm Quote Rules, System Market Makers shall be provided with a means to indicate the NASD Regulation's Market Regulation that the System Market Maker has received an order via the telephone to trade at the System Market Maker's Nasdaq-displayed quotation and that for a period of time while the System Market Maker handles the telephone order, the System should not deliver additional orders for execution.

(b) The System Market Maker shall send via the System a message that creates a time record indicating when the Market Maker entered the message regarding the telephone order. When the System receives the message, the System shall not present an order to that Market Maker until 17 seconds after receipts of the original message. The System will provide the System Market Maker with a reference number that shall be attached to the execution report that may occur as a result of the telephone order. A System market maker may only send one such message through the System for each telephone order necessitating the message. Entering messages without corresponding transactions shall be a violation of just and equitable principles of trade.

4960. Clearance and Settlement

All transactions executed in the System shall be transmitted to the National Securities Clearing Corporation to be cleared and settled through a registered clearing agency using a continuous net settlement system.

4970. Obligation to Honor System Trades

If a trade reported by a participant, or clearing member acting on its behalf, is reported by the System to clearing at the close of any trading day, or shown by the activity reports generated by the System as constituting a side of a System trade, such System participant, or clearing member acting on its behalf, shall honor such trade on the scheduled settlement date.

4980. Compliance With Procedures And Rules

Failure of a participant or person associated with a participant to comply with any of the rules or requirements of the System may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of the Conduct Rules. No member shall effect a System transaction for the account of a customer, or for its own account, indirectly or through the offices of a third party, for the purpose of avoiding the application of these rules. Members are precluded from doing indirectly what is directly prohibited by these rules. All entries in the System shall be made in accordance with the procedures and requirements set forth in the User Guide. failure by a non-member participant to comply with any of the rules or requirements applicable to the System shall subject the NASD member sponsoring such non-member to censure, fine, suspension or revocation of its registration as a participant or any other fitting penalty under the Rules of the Association.

4990. Termination of System Service

The Association may, upon notice, terminate System service to a participant in the event that a participant fails to abide by any of the rules or operating procedures of the System or the Association, or fails to pay promptly for services rendered.

[FR Doc. 98–6340 Filed 3–11–98; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review Hulman Regional Airport Terre Haute, IN

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces it's determination that the noise exposure maps submitted by Hulman Regional Airport Authority for Hulman Regional Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Hulman Regional Airport under part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before August 19, 1998.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is February 20, 1998. The public comment period ends April 21, 1998.

FOR FURTHER INFORMATION CONTACT: Prescott C. Snyder, Airport Environmental Program Manager, 2300 East Devon Avenue, Des Plaines, Illinois 60018. [Telephone Number (847) 294–7538/Fax Number (847) 294–7046] Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds

that the noise exposure maps submitted for Hulman Regional Airport are in compliance with applicable requirements of part 150, effective February 20, 1998.

Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before August 19, 1998. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

Hulman Regional Airport Authority submitted to the FAA on November 14, 1998, noise exposure maps, descriptions and other documentation, which were produced during Hulman Regional Airport's FAR Part 150 Noise Compatibility Study, October 1997. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by Hulman Regional Airport Authority. The specific maps under consideration are the Existing Noise Exposure Map and 2002 NEM/NCP Noise Contours (1 Hub) in the submission. The FAA has determined that these maps for Hulman Regional Airport are in compliance with applicable requirements. This determination is effective on February 20, 1998. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detail overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Hulman Regional Airport, also effective on November 14, 1997. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before August 19, 1998.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Chicago Airports District Office, Room 201, 2300 East Devon Avenue, Des Plaines, Illinois 60018

Airport Director's Office, Hulman Regional Airport, 581 S. Airport Street, Terre Haute, Indiana 47803

Copies of the FAR part 150 Noise Compatibility Program documents are also available for public review during normal business hours at the following locations:

Vigo County Library, Reference Desk, One Library Square, Terre Haute, Indiana 47807

Vigo County Commissioner's Office, 201 Cherry Street, Terre Haute, Indiana 47807

West Central Economic Development District, 1718 Wabash Avenue, Terre Haute, Indiana 47807

Office of the Mayor, City Hall, 17 Harding Avenue, Terre Haute, Indiana 47807

Aeronautics Section, Intermodal Division, Indiana Department of Transportation, Indiana Government Center North, Room N901, 100 North Senate Avenue, Indianapolis, Indiana 46204–2219

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Chicago, Illinois, on February 20, 1998.

Gregory N. Sweeny,

Acting Assistant Manager, Chicago Airports District Office, FAA, Great Lakes Region.

[FR Doc. 98–6320 Filed 3–11–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–98–3]

Petitions 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 1, 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–CMTS@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 5, 1998.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29129.

Petitioner: Ilyushin Aviation Complex, Russia.

Regulations Affected: 25.1435(b)(1).

Description of Petition: In lieu of the requirements of 14 CFR § 25.1435(b)91) for a complete hydraulic system proof pressure test on the airplane, Ilyushin proposes to conduct a combination of the following tests: (1) Test of the complete hydraulic system at relief valve opening pressure 240+/−5 atmospheres (atm), (ii) Test of the hydraulic system components at 1.5 times operating pressure (315 atm) per § 25.1435(a)(2), and (iii) Test of the complete hydraulic system during flight and ground tests at operating pressure.

Docket No.: 29097.

Petitioner: Daniel Webster College.

Sections of the FAR Affected: 14 CFR 141.35(d)(2)(i).

Description of Relief Sought: To permit Mr. Joyce to serve as the chief instructor for Daniel Webster College without meeting the required minimum flight training experience of 1,000 flight hours.

Docket No.: 29106.

Petitioner: Forest Industries Flying Tankers Limited.

Sections of the FAR Affected: 14 CFR 61.55(a).

Description of Relief Sought: To permit Flying Tankers to operate its Martin JRM–3 Mars (Mars) airplanes (Canadian Registration Nos. C–FLYK and C–FLYL) in the United States with an aircraft maintenance engineer, instead of a qualified pilot as required by the aircraft's type certificate, occupying the position of second in command.

Docket No.: 29021.

Petitioner: Southern Air Transport.

Sections of the FAR Affected: 14 CFR 108.33.

Description of Relief Sought: To permit Southern Air Transport to employ Mr. Beamon as a flight crewmember, even though Mr. Beamon was convicted of second degree murder.

Dispositions of Petitions

Docket No.: 24187.

Petitioner: Florida Department of Law Enforcement.

Sections of the FAR Affected: 14 CFR 91.159(a) and 91.209(a).

Description of Relief Sought: To permit the Florida Department of Law Enforcement to conduct operations in support of drug law enforcement and drug traffic interdiction without complying with the visual flight rules (VFR) cruising altitude requirements or being equipped with lighted aircraft position lights while operating between sunset and sunrise. GRANT, February 9, 1998, Exemption No. 3598F.

Docket No.: 15078.

Petitioner: Drug Enforcement Administration.

Sections of the FAR Affected: 14 CFR 91.117(a), (b), and (c); 91.159(a); and 91.209(a) and (d).

Description of Relief Sought/ Disposition: To permit the Drug Enforcement Administration to conduct air operations in support of drug law enforcement and drug traffic interdiction. GRANT, February 9, 1998, Exemption No. 5506B.

Docket No.: 25177.

Petitioner: United States Coast Guard.

Sections of the FAR Affected: 14 CFR 91.117(b) and (c), 91.119(c), 91.159(a), and 91.209(a).

Description of Relief Sought/ Disposition: To permit the United States Coast Guard to conduct certain operations at airspeeds greater than and cruising altitudes other than those prescribed by the regulations, and between sunset and sunrise without lighted position lights. GRANT, February 13, 1998, Exemption No. 5231D.

Docket No.: 23980.

Petitioner: United States Hang Gliding Association, Inc.

Sections of the FAR Affected: 14 CFR 91.309 and 103.1(b).

Description of Relief Sought/ Disposition: To permit United States Hang Gliding Association, Inc., members to tow unpowered ultralight vehicles (hand gliders) using powered ultralight vehicles. GRANT, February 18, 1998, Exemption No. 4144G.

Docket No.: 26734.

Petitioner: Sierra Industries, Inc.

Sections of the FAR Affected: 14 CFR 91.9(a) and 91.531(a)(1) and (2).

Description of Relief Sought/ Disposition: To permit permits Sierra to allow certain qualified pilots of its Cessna Model 500 Citation (CE–500) airplanes (Serial Nos. 0001 through 0349 only) with Supplemental Type Certificate (STC) No. SA8176SW and either STC No. SA2172NM or STC No. SA645NW to operate those aircraft without a pilot who is designated as second in command. GRANT, February 18, 1998, Exemption No. 5517D.

Docket No.: 29033.

Petitioner: Praxair Surface Technologies, Inc.

Sections of the FAR Affected: 14 CFR 145.45(f).

Description of Relief Sought/ Disposition: To permit Praxair Surface Technologies, Inc., to assign copies of its Inspection Procedures Manual (IPM) to 12 fixed locations within its repair station's functional departments where the IPM would be readily available to all its supervisory and inspection personnel, rather than provide a copy of the IMP to each of these individuals.

GRANT, February 17, 1998, Exemption No. 6729.

Docket No.: 28945.

Petitioner: Air Transport International.

Sections of the FAR Affected: 14 CFR 121.433(c)(1)(iii), 121.441(a)(1), 121.441(b)(1), and Appendix F to part 121.

Description of Relief Sought/ Disposition: To permit Air Transportation International regulatory relief to the extent necessary to conduct a single visit training program for flight crewmembers and eventually transition into the Advanced Qualification Program codified in Special Federal Aviation Regulation 58. GRANT, February 9, 1998, Exemption No. 6728.

Docket No.: 28808.

Petitioner: DHL Airlines, Inc.

Sections of the FAR Affected: 14 CFR 121.433(c)(1)(iii), 121.441(a)(1), 121.441(b)(1), and Appendix F to part 121.

Description of Relief Sought/ Disposition: To permit DHL Airlines, Inc., regulatory relief to the extent necessary to conduct a single visit training program for flight crewmembers and eventually transition into the Advanced Qualification Program codified in Special Federal Aviation Regulation 58. GRANT, February 9, 1998, Exemption No. 6727.

Docket No.: 29077.

Petitioner: Bombardier Inc. Canadian.

Sections of the FAR Affected: 14 CFR 25.1435(b)(1).

Description of Relief Sought/ Disposition: To permit type certification of the Model BD700–1A10 by conducting a proof pressure test of the hydraulic system at 3400 psig (the system relief pressure) per the proposed § 25.1435(c)(3) and component testing at 1.5 times the operating pressure (4500 psig) per the current § 25.1435(a)(2). GRANT, February 13, 1998, Exemption No. 6726.

[FR Doc. 98–6321 Filed 3–11–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Aircraft Certification Procedures Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting cancellation.

SUMMARY: The FAA is issuing this notice to advise the public that the March 19 meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss Aircraft Certification Procedures Issues (63 FR 10258, March 2, 1998) has been cancelled.

FOR FURTHER INFORMATION CONTACT: Ms. Angela O. Anderson, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9681; fax (202) 267–5075.

Issued in Washington, DC, on March 6, 1998.

Brian A. Yanez,

Assistant Executive Director, Aviation Rulemaking Advisory Committee, Aircraft Certification Procedures Issues.

[FR Doc. 98–6372 Filed 3–11–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at MBS International Airport, Saginaw, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at MBS International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before April 13, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road Belleville, Michigan 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Elizabeth Owen, Airport Manager, of the MBS International Airport Commission at the following address: 8500 Garfield Road, P.O. Box P, Freeland, MI 48623.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the MBS International Airport Commission under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Jon Gilbert, Program Manager, Federal Aviation Administration, Detroit Airports District Officer, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111 (734–487–7281). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at MBS International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On February 27, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by MBS International Airport Commission was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 28, 1998.

The following is a brief overview of the application.

PFC Application No.: 98–02–C–00–MBS.

Level of the proposed PFC: $3.00.

Proposed charge effective date: November 1, 1998.

Proposed charge expiration date: November 30, 1999.

Total estimated PFC revenue: $812,050.00.

Brief description of proposed projects: (1) SRE building rehabilitation, (2) G.A. expansion, (3) Perimeter road rehabilitation, (4) SRE building apron rehabilitation, (5) Service road rehabilitation, (6) SRE procurement sand spreader, (7) SRE procurement plow truck, (8) Watermain to SRE building, (9) ARFF design, (10) ARFF building construction, (11) Snow sweeper SRE procurement, (12) Storm water drainage study, and (13) Runway 5/23 and taxiways rehab design.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air taxis and charters.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice, and other documents germane to the application in person at the MBS International Airport Commission.

Issued in Des Plaines, IL on March 4, 1998.

Benito De Leon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 98–6319 Filed 3–11–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–97–3202]

Waiver for Canadian Electric Utility Motor Carriers From Alcohol and Controlled Substances Testing

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of petition for waiver; request for comments.

SUMMARY: The FHWA is announcing its intent to waive certain Canadian electric utility motor carriers and drivers from the alcohol and controlled substances testing requirements in connection with certain limited emergency operations. The FHWA has received a petition from Hydro Quebec and Eastern Utilities Associates to waive these carriers. The FHWA would waive those Canadian electric utility motor carriers and drivers who enter the United States at the emergency request of a member New England Mutual Assistance Roster utility to quickly restore electric utility service for the New England electric utilities and their customers. The FHWA is proposing this action in accordance with the Commercial Motor Vehicle Safety Act of 1986. This waiver for Canadian electric utility motor carriers would extend only to the alcohol and controlled substances testing requirements for drivers required to be licensed under the commercial driver's license (CDL) requirements.

DATES: Submit comments on or before April 13, 1998.

ADDRESSES: All signed, written comments must refer to the docket number appearing at the top of this document. Submit all comments to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. David Miller, Office of Motor Carrier Research and Standards, (HCS–10), (202) 366–4009; Mr. Michael Falk, Office of Chief Counsel, (HCC–20), (202) 366–1384; Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions on-line 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 URL: http://www.nara.gov/nara/fedreg and at the Government Printing Office's databases at URL: http://www.access.gpo.gov/su_docs.

Under What Authority Does the FHWA Have Responsibility To Act?

The Commercial Motor Vehicle Safety Act of 1986 (CMVSA) (Pub. L. 99-570, Title XII, October 27, 1986, 100 Stat. 3207–170), as amended, requires the FHWA to provide notice and an opportunity for comment before the FHWA waives a regulation as it applies to individuals or commercial motor vehicles. The specific section of the law, now codified at 49 U.S.C. 31315, provides the following:

After notice and an opportunity for comment, the Secretary of Transportation (Secretary) may waive any part of this chapter or a regulation prescribed under this chapter as it applies to a class of individuals or commercial motor vehicles if the Secretary decides the waiver is not contrary to the public interest and does not diminish the safe operation of commercial motor vehicles. A waiver under this section shall be published in the **Federal Register** with reasons for the waiver. (Pub. L. 103–272, Sec. 1(e), July 5, 1994, 108 Stat. 1029).

This waiver authority has been delegated to the Federal Highway Administrator [49 CFR 1.48(v) (1996)].

On October 28, 1991, the Omnibus Transportation Employee Testing Act of 1991 (Omnibus Act), Pub. L. 102–143, 105 Stat. 959, was enacted and codified at 49 U.S.C. 31306. The Omnibus Act amended the CMVSA and required the Secretary to issue regulations requiring alcohol and controlled substances testing of CMV drivers who are subject to the CDL requirements of the CMVSA. The final rule implementing such testing requirements was published on February 15, 1994. See 59 FR 7302, codified at 49 CFR part 382. This 1994 rule replaced the controlled substances testing rule in 49 CFR part 391, and instituted alcohol testing. With subpart H of part 391 completely superseded by part 382 on January 1, 1996, the most recent compliance dates in part 391 for foreign-based motor carriers were removed. See 60 FR 54, January 3, 1995.

The Omnibus Act applies only to motor carriers and drivers operating in the United States, which includes foreign motor carriers and their drivers. The only express reference to foreign-based operations is the requirement that regulations established under the statute be "consistent with international obligations of the United States," and that the Secretary "shall consider applicable laws and regulations of foreign countries." 49 U.S.C. 31306(h). Thus, the statute requires foreign-based drivers to be subject to testing to the extent such rules are consistent with United States international obligations, and the Secretary is granted the authority to deem the requirement satisfied by, and must take into consideration, the laws and regulations of other nations.

As part of its consideration of foreign laws, the FHWA solicited information from interested parties regarding the applicability of part 382 to foreign-based drivers. 57 FR 59536 (December 15, 1992) (advance notice of proposed rulemaking); 59 FR 7528 (February 15, 1994) (notice of proposed rulemaking). In the notice of proposed rulemaking (NPRM), the FHWA proposed to apply part 382 to foreign-based operations beginning on January 1, 1996, while continuing to explore the possibility of entering into agreements to recognize other nations' testing programs for purposes of compliance with part 382. On September 22, 1995 (60 FR 49322), based upon comments received and the FHWA's intent to provide regulatory flexibility for foreign motor carriers, the agency established July 1, 1996, as the effective date for large foreign motor carriers and their drivers to comply with these regulations; and July 1, 1997, as the effective date for small foreign motor carriers and their drivers to comply with these regulations.

What Has Prompted This Notice?

Hydro Quebec, an electric utility motor carrier based in Quebec, Canada, and Eastern Utilities Associates, an electric utility motor carrier based in Boston, Massachusetts have petitioned the FHWA to waive from compliance with 49 CFR part 382 Canadian member

electric utility motor carriers responding to a request for assistance by a United States member of the New England Mutual Assistance Roster. The New England Mutual Assistance Roster members include both United States and Canadian electric utility motor carriers. The Canadian utilities and their drivers, who would never enter the United States under normal conditions, are not subject to alcohol and controlled substances testing until entering the United States. There are no equivalent Canadian testing rules. Hydro Quebec argues it would be in the public interest and it would not diminish the safe operation of commercial motor vehicles in the United States to allow it to be waived from the alcohol and controlled substances testing rules for the sole purpose of responding to a New England Mutual Assistance Roster member's request for assistance in an emergency.

The New England Mutual Assistance Roster members stress electric utility service restoration requires clear thinking and unhampered ability. The members also stress it is imperative that the mutual emergency assistance work force, including drivers, be free of drug use and alcohol abuse.

The Canadian utilities belonging to the New England Mutual Assistance Roster at this time are the following four utilities (any other Canadian electric utility motor carriers in the provinces of Ontario, New Brunswick, Nova Scotia, and Quebec responding to the six New England States would also be eligible to use this proposed waiver from compliance).

1. Hydro-Quebec 75 Boulevard Rene-Levesque ouest, Montreal, Quebec H2Z 1A4
2. Ontario Hydro 700 University Avenue, Toronto, Ontario M5G 1X6
3. New Brunswick Power Corporation 515 King Street, P.O. Box 2000, Fredericton, New Brunswick E3B 4X1
4. Novia Scotia Power Incorporated, P.O. Box 910, Halifax, Nova Scotia B3J 2W5

The FHWA would limit participation in this waiver to Canadian electric utility motor carriers responding to any New England Mutual Assistance Roster member utility's request for emergency assistance.

What Proposed Conditions Apply to This Proposed Waiver?

The FHWA proposes the following five conditions, modified from the New England Mutual Assistance Roster principles, would serve as the basis for this proposed waiver governing emergency assistance between the Canadian utilities and the New England utilities in the United States.

1. The emergency assistance period begins when the Responding Canadian Electric Utility Motor Carrier's (the Responding carrier) drivers or equipment cross the United States-Canada border transporting equipment and supplies to the Requesting New England Mutual Assistance Roster Motor Carrier (the Requesting Carrier). The emergency assistance period terminates when the Responding Carrier completes the transportation of such drivers or equipment and crosses back into Canada across the Canada-United States border.

2. The drivers of the Responding Carrier must at all times during the emergency assistance period in the United States continue to be drivers of the Responding Carrier and must not be deemed drivers of the Requesting Carrier for any purpose.

3. The Responding Carrier must make available at least one supervisor in addition to the crew foremen. All instructions for work to be done by the Responding Carrier's crews must be given by the Requesting Carrier to the Responding Carrier's supervisor(s); or, when the Responding Carrier's crews are to work in widely separated areas, to such of the Responding Carrier's foremen as may be designated for the purpose by the Responding Carrier's supervisor(s).

4. All time sheets and work records pertaining to the Responding Carrier's drivers furnishing emergency assistance must be kept by the Responding Carrier.

5. The Requesting Carrier must indicate to the Responding Carrier the type and size of trucks and other equipment desired as well as the number of job functions of drivers requested, but the extent to which the Responding Carrier makes available such equipment and drivers must be at the Responding Carrier's sole discretion.

To Whom Would the Canadian Utilities Be Providing Emergency Assistance?

The FHWA would limit this proposed waiver to emergency assistance provided by the Canadian electric utility motor carrier members in the four named Canadian provinces to any member of the New England Mutual Assistance Roster in the New England region of the United States. The following six States make up the New England region of the United States.

1. Connecticut
2. Maine
3. Massachusetts
4. New Hampshire
5. Rhode Island
6. Vermont

The following 19 electric utilities presently make up the United States members of the New England Mutual Assistance Roster. In the future, any new members in the above named six States would also be eligible to receive emergency assistance from the waived Canadian electric utilities.

1. Bangor Hydro-Electric Company, 33 State Street, P.O. Box 932, Bangor, Maine 04401
2. Boston Edison Company, 800 Boylston Street, Boston, Massachusetts 02199
3. Burlington Electric Department, 585 Pine Street, Burlington, Vermont 05401
4. Central Maine Power, 83 Edison Drive, Augusta, Maine 04336
5. Central Vermont Power Service Corporation, 77 Grove Street, Rutland, Vermont 05701
6. Citizens Utilities Company, Box 604, Newport, Vermont
7. Commonwealth Electric Company, 2421 Cranberry Highway, Wareham, Massachusetts 02571
8. Concord Electric Company, One McGuire Street, Concord, New Hampshire 03301
9. Eastern Utilities Associates, P.O. Box 2333, Boston, Massachusetts 02107

Includes the following five electric utility divisions.

a. Blackstone Valley Electric
b. Eastern Edison
c. EUA Service Corporation
d. Montaup Electric
e. Newport Electric

10. Exeter & Hampton Electric, 114 Drinkwater Road, Kensington, New Hampshire 03874
11. Fitchburg Gas and Electric Company, 285 John Fitch Highway, P.O. Box 2070, Fitchburg, Massachusetts 01420
12. Green Mountain Power Corporation, 25 Green Mountain Drive, P.O. Box 850, South Burlington, Vermont 05402–0580
13. New England Electric System, 25 Research Drive, Westborough, Massachusetts 01582
14. Northeast Utilities, P.O. Box 270, Hartford, Connecticut 06141–0270
15. Public Service of New Hampshire, 1000 Elm Street, P.O. Box 330, Manchester, New Hampshire 03105
16. Taunton Municipal Lighting Plant, 55 Weir Street, Taunton, Massachusetts 02780
17. The United Illuminating Company, 157 Church Street, New Haven, Connecticut 06506
18. Vermont Electric Power Company, Inc., RR 1, Box 4077, Rutland, Vermont 05701

19. Vermont Marble—Power Division, 61 Main Street, Proctor, Vermont 05765.

What If the Government of Canada Imposes Testing on United States Motor Carriers Entering Canada?

The FHWA would also expect the four named Canadian electric utility motor carriers to seek reciprocity with the Government of Canada for the United States electric utility motor carriers in the New England Mutual Assistance Roster, if the Government of Canada or the affected provinces promulgate regulations that do not currently apply to those carriers under United States laws or regulations. In this way, the Government of Canada would treat the United States electric utility motor carriers the same as the United States Government would treat Canadian electric utility motor carriers responding to the same types of electric utility emergencies.

Would a Waiver of the Canadian Electrical Utilities Be in the Public Interest and Not Diminish the Safe Operation of Commercial Motor Vehicles?

The FHWA has determined this waiver meets the requirements of 49 U.S.C. 31315 and believes it would be in the public interest to provide a limited waiver to the Canadian electric utility motor carriers. The Canadian electric utility motor carriers and their drivers do not normally operate in or through the United States. Unlike a Canadian for-hire or private motor carrier that regularly delivers or picks up products, or a provincial or Canadian Federal government entity regularly traversing a State to service provincial citizen interests, the Canadian utilities would, on rare occasions, enter the United States for limited periods of time for the sole purpose of restoring electrical service to United States citizens. The FHWA believes such limited and infrequent operations in the United States would not diminish the safe operations of commercial motor vehicles and is in the public interest, especially in the affected localities.

The FHWA believes, through mutual cooperation with Canadian authorities, the Canadian Federal and provincial governments have sufficient regulations in place for Canadian electric utility motor carriers to limit drivers' use of alcohol and controlled substances while operating commercial motor vehicles wholly within Canada. See Standard 6, Items 12.1 through 12.6, 13.1, and 13.2 of the National Safety Code for Motor Carriers, Canada, December 1994. Under current FHWA regulations, these Canadian motor carriers would not be subject to United States alcohol and controlled substances testing rules, unless they came into the United States for a few days on rare occasions. Read literally, the FHWA's current regulations would require these Canadian electrical utility motor carriers to set up programs to conduct testing for drivers who may never come across the United States-Canadian border or for drivers that cross the border on a very limited emergency basis. This is unreasonable in the FHWA's view. The FHWA does believe, however, it is reasonable to require testing for those Canadian for-hire, private, and government motor carriers and drivers who regularly operate in the United States.

The FHWA believes that the alcohol and controlled substances testing rules would prevent Canadian electric utility motor carriers and their Canadian drivers from responding quickly and effectively to requests for electrical emergency relief within the United States. The FHWA believes it would be contrary to the public interest to enforce rules that would delay efforts to protect lives and property.

Conversely, safe operation of commercial motor vehicles may well depend upon rapid emergency response, e.g., to restore electricity to traffic signals. The safety of the public would also depend upon rapid emergency response, e.g., to restore electricity as a source of heat and light to hospitals, the elderly, and homes in general. The FHWA adopted the alcohol and controlled substances testing rules to enhance safety. The regulatory burdens the testing requirements entail are not justifiable when their effect, during limited periods when electric power failures can most effectively be contained or mitigated, is to increase the risks to public health and welfare.

The FHWA does not believe this proposed waiver will impair the safety of the Canadian electric utilities' motor vehicle operations during emergencies. Other applicable provisions of the Federal Motor Carrier Regulations (49 CFR parts 300 through 399) would remain in effect, unless an authority having the power to declare an emergency, as set forth in 49 CFR 390.23, does so. Commercial driver's license requirements in 49 CFR part 383 (and those under the Canadian National Safety Code) would not be waived even if 49 CFR 390.23 was used to grant specific relief.

For more than 60 years motor carriers have been prohibited from permitting drivers to drive while using liquor or narcotic drugs. See 1 M.C.C. 1, at 19 (1936). Based upon data reported to FHWA by motor carriers, motor carriers generally use drivers who test almost 98 percent free of controlled substances and almost 100 percent free of alcohol. See 63 FR 2172, January 14, 1998. The FHWA believes that it should not force the Canadian electrical utility motor carriers to begin a program the FHWA believes would have little benefit to the citizens of the United States.

Analyses and Notices

The FHWA has initially determined that this action is not a significant action within the meaning of the Department of Transportation's policies and procedures.

The FHWA believes it is necessary to provide a shorter comment period than normal for this proposal. This action is needed for the winter season when the FHWA believes the New England Mutual Assistance members would most need the assistance of the Canadian electric utility motor carriers covered by this action. The FHWA believes it is imperative to provide New England citizens the greatest amount of protection against the loss of life and property by providing relief should the need arise. The FHWA does not anticipate great interest in, or a large number of comments on, this proposal. Thus, the FHWA believes a 30-day comment period is sufficient for this proposed action.

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the initial effects of this waiver on small entities with twenty or less truck tractors or straight trucks.

Initial Flexibility Analysis (IFA)

This action proposes to provide a limited waiver to certain Canadian electric utility motor carriers and their drivers. The FHWA believes there are a maximum of four affected small entities at this time. These would be the Canadian electric utilities named above. Additional Canadian electric utilities would be eligible for this proposed waiver, if the electric utilities are domiciled and operate primarily (i.e., 51 percent or more) in one of the four Canadian provinces of Ontario, Quebec, New Brunswick, or Nova Scotia.

The United States electric utilities named would be required, without this waiver, to limit the responders available to restore highway safety, e.g., traffic signals, and restore electric power to their customers. Failure to grant the waiver may delay the efficient and quick response to restore electric power to prevent highway accidents and

incidents, and to save lives from cold weather.

The FHWA believes no other Federal rules exist for alcohol and controlled substances testing of Canadian electric utility motor carriers responding to New England Mutual Assistance roster members. The FHWA is aware of Nuclear Regulatory Commission (NRC) and Department of Energy (DOE) testing requirements for alcohol and controlled substances, but believes these are limited to nuclear power plants and DOE installations in the United States. The FHWA believes the four named Candian electric utility motor carriers would not be required by the NRC or DOE to require alcohol and controlled substances testing to restore electric power to United States customers. The FHWA would like information from New England Mutual Assistance Roster members whether NRC or DOE have regulations requiring such testing.

Based upon this IFA evaluation, the FHWA believes any impact upon these small entities is highly unlikely. Furthermore, the FHWA notes the Omnibus Act mandates alcohol and controlled substances testing and the CMVSA mandates the waiver authority irrespective of the size of the entities.

For the reasons in the IFA above, the FHWA initially certifies this action would not have a significant economic impact on a substantial number of small entities. The FHWA will conduct a final flexibility analysis based upon any comments to the docket.

This proposed waiver has been analyzed in accordance with the principles and criteria contained in the Unfunded Mandates Reform Act of 1995 (the Unfunded Mandates Act)(Pub. L. 104–4, 109 Stat. 48). The FHWA has determined this action does not have sufficient unfunded mandate implications to warrant the preparation of an unfunded mandate assessment.

The amendments made by this proposed waiver would not have a substantial direct effect on States, nor on the relationship or distribution of power between the national government and the States because these changes proposed here do little to limit the policy making discretion of the States.

The waiver is not intended to preempt any State law or State regulation. Moreover, the changes made by this waiver would impose no additional cost or burden upon any State. Nor would the waiver have a significant effect upon the ability of the States to discharge traditional State governmental functions.

For purposes of section 202 of the Unfunded Mandates Act, the waiver of alcohol and controlled substances testing requirements would not impose a burden greater than $100 million.

Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, the FHWA estimates this proposal would have an annual burden savings of about $21,000. The FHWA, therefore, is not required to prepare a separate unfunded mandate assessment for this proposed waiver.

The information collection requirements associated with compliance by Canadian motor carriers and drivers with part 382 was included in the information collection budget approval request approved on September 22, 1997, by the Office of Management and Budget (OMB) under the PRA and has been assigned OMB control number 2125–0543, approved through September 30, 2000.

The FHWA estimates four Canadian electric utility motor carriers would send no more than 100 drivers to the United States for an emergency relief effort. The FHWA estimates these four Canadian electric utility motor carriers have a few thousand drivers each since they are monopolies in the areas they serve, but would only send a couple dozen drivers to an emergency in the United States.

The FHWA has calculated the information collection burden on these carriers in complying with part 382 based upon figures submitted and approved by the OMB in 1997. See Docket No. FHWA–1997–2313–7. The four motor carriers would share an estimated information collection start-up cost of $US 10,000 (excluding laboratory set-up costs) and an estimated recurring annual cost of $US 21,000 and 240 hours of time. The FHWA excluded laboratory start-up information collection costs because the approximately 70 laboratories across the United States and Canada able to perform the analysis of urine specimens have been in operation for at least one year and have incurred the start-up costs in prior years. The Canadian motor carriers would not incur the laboratory's start-up costs. The FHWA has calculated into the figure, though, the information collection cost of setting up contracts with the laboratories to conduct the testing.

The FHWA has included revised spreadsheets for these calculations in this docket for review. Refer to the docket number appearing at the top of this document.

If the FHWA grants this waiver, the FHWA will submit a request to the OMB, on a Form OMB–83C, to reduce the information collection burden by these amounts, or revised amounts based upon comments to this docket.

The FHWA has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Authority: 49 U.S.C. 31301 *et seq.*; and 49 CFR 1.48.

Issued on: March 4, 1998.

Kenneth R. Wykle,

Administrator, Federal Highway Administration.

[FR Doc. 98–6373 Filed 3–11–98; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3420]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

The proposed information for which OMB approval is being sought pertains to the content of petitions for exemption from the minimum driving range requirement for dual fuel electric passenger automobiles. This may be necessary for a manufacturer to secure a favorable corporate average fuel economy (CAFE) calculation.

DATES: Comments must be received on or before May 11, 1998.

ADDRESSES: Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted to U.S. Department of Transportation, Docket Management, PL–401, 400 Seventh Street, Southwest, Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB Control Number. It is requested, but not required, that one original plus two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Mr. Michael Robinson, NHTSA Information Collection Clearance Officer, NHTSA, 400 Seventh Street, Southwest, Room 5110, NAD–52, Washington, D.C. 20590. Mr. Robinson's telephone number is (202) 366–9456. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information:

Title 49, United States Code, Chapter 329

Background

A manufacturer of a dual fueled electric passenger automobile may enjoy a favorable calculation of its corporate average fuel economy (CAFE), provided it can meet certain minimum driving range requirements that are established by NHTSA and shall be based on the Environmental Protection Agency's urban and highway fuel economies as determined for average fuel economy purposes for those vehicles. The minimum driving range that is established, must be accomplished when operating on the alternative fuel only (49 U.S.C. 32901(c)).

49 U.S.C. 32901 (c)(2)(A) states that "The Secretary may prescribe a lower minimum driving range for a specific model than that prescribed under paragraph (1) of this subsection." It further states that "A manufacturer may petition for a lower range than prescribed under paragraph (1) for a specific model."

In order to ascertain whether an exemption should be granted and a lower minimum driving range should be established for a specific model, the Secretary shall consider such items as consumer acceptability, economic practicability, available technology, environmental impact, safety, drivability, performance, and any other factors the Secretary considers relevant. Ref. (49 U.S.C. 32901 (c)(3)).

Type of Request: Reinstatement of clearance.

OMB Clearance Number: 2127–0554.

Form Number: This collection of information uses no standard form, however, it allows for a manufacturer to petition the agency for an exemption from the established minimum driving range for dual fueled electric passenger automobiles when operating on electricity only. Certain prescribed information is requested to be included that will enable the agency to make a determination whether to grant an exemption or not and aid in the assigning a lower minimum driving range.

Requested Expiration Date of Approval: March 1, 2001.

Description of the Need for and Proposed Use of the Information: This information will be used by NHTSA to determine whether manufacturers are complying with certain provisions of the applicable statutes (Alternative Motor Fuels Act of 1988, and Average Fuel Economy Standards). It will also allow the agency to evaluate the overall vehicle design in terms of environmental impact, safety, performance, and other factors that might justify the granting of an exemption.

Description of Likely Respondents: Based on responses from other notices such as the Advance Notice of Proposed Rulemaking (ANPRM) and the Notice of Proposed Rulemaking (NPRM), it is anticipated that there would be fewer than 10 passenger car manufacturers that would seek such an exemption over a three year period. There is a possibility that some of these manufacturers would be small businesses (i.e., ones that employ less than 500 persons) and may not have access to some of the latest technology needed to meet the minimum driving range on electricity only. These small businesses that might be adversely affected could also be eligible for an exemption under the low volume criteria. The frequency of the petitioning burden would then be market driven. The others would be large volume manufacturers seeking to improve their CAFE.

Estimate of Total Annual Reporting and Record Keeping Burden Resulting From the Collection of Information: NHTSA estimates from previous information collection that the vehicle manufacturers will incur a total annual reporting and recordkeeping burden of less than two hundred sixty six hours (266 hr.). This is based on an estimate of no more than 80 hr. to prepare the petition, spread between ten (10) manufacturers, over a three year period.

Issued on: March 4, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–6299 Filed 3–11–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–167 (Sub-No. 1182X)]

Consolidated Rail Corporation—Abandonment Exemption—in Indiana County, PA

Consolidated Rail Corporation (Conrail) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 11.80 mile portion of the Blairsville Secondary Track between milepost 5.70± and milepost 17.50±, in Indiana County, PA. The line traverses United States Postal Service Zip Codes 15716, 15717, 15750 and 15748.

Conrail has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic moving over the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12

(newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment— Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on April 11, 1998, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by March 23, 1998. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 1, 1998, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: John J. Paylor, Association General Counsel, Consolidated Rail Corporation, 2001 Market Street—16A, Philadelphia, PA 19101–1416.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

Conrail has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by March 17, 1998. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), Conrail shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by Conrail's filing of a notice of consummation by March 12, 1999, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Decided: March 4, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–6232 Filed 3–11–98; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $900. *See* 49 CFR 1002.2(f)(25). This fee is scheduled to increase to $1000, effective March 20, 1998.

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund; Notice of Open Meeting of the Community Development Advisory Board

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of open meeting.

SUMMARY: This notice announces the third meeting of the Community Development Advisory Board (the "Advisory Board"), which provides advice to the Director of the Community Development Financial Institutions Fund (the "Fund").

DATES: The third meeting of the Community Development Advisory Board will be held on Friday, March 27, 1998 at 10:00 a.m.

FOR FURTHER INFORMATION CONTACT: The Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, D.C. 20005, (202) 622–8662 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 104(d) of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4703(d)) established the Community Development Advisory Board. The charter for the Advisory Board has been filed in accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. App.), and with the approval of the Secretary of the Treasury.

The function of the Advisory Board is to advise the Director of the Fund (who has been delegated the authority to administer the Fund) on the policies regarding the activities of the Fund. The Fund is a wholly owned corporation within the Department of the Treasury. The Advisory Board shall not advise the Fund on the granting or denial of any particular application. The Advisory Board shall meet at least annually.

It has been determined that this document is not a major rule as defined in Executive Order 12291 and that regulatory impact analysis therefore is not required. In addition, this document does not constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

The third meeting of the Advisory Board, all of which will be open to the public, will be held in the Boardroom of the American Institute of Architects, 1735 New York Avenue, NW., Washington, D.C., on Friday, March 27, 1998 at 10:00 a.m. The room will accommodate 75 persons. Seats are available on a first-come, first-served basis. Participation in the discussions of the meeting will be limited to Advisory Board members and Department of the Treasury staff. Anyone who would like to have the Advisory Board consider a written statement must submit it to the Fund, at the address of the Fund specified above in the **FOR FURTHER INFORMATION CONTACT** section, by 4:00 p.m., Tuesday, March 24, 1998.

At the meeting, the new management of the Fund will be introduced, information will be presented on the past rounds of the Community Development Financial Institutions Program and the Bank Enterprise Award Program, and the Director of the Fund will seek advice from members of the Community Development Advisory Board regarding future rounds under these programs, new initiatives of the Fund and the utilization of the Advisory Board.

Authority: 12 U.S.C. 4703; Chapter X, Pub. L. 104–19, 109 Stat. 237.

Dated: March 9, 1998.

Ellen Lazar,

Director, Community Development Financial Institutions Fund.

[FR Doc. 98–6412 Filed 3–11–98; 8:45 am]

BILLING CODE 4810–70–P

UNITED STATES INSTITUTE OF PEACE

Sunshine Act Meeting

DATE/TIME: Thursday, March 19, 1998, 9:00 a.m.–5:30 p.m.

LOCATION: 1550 M Street, NW., M Street Lobby Conference Room, Washington, DC 20005.

STATUS: Open Session—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

AGENDA: March 1998 Board Meeting; Approval of Minutes of the Eighty-Third Meeting (January 22, 1998) of the Board of Directors; Chairman's Report; President's Report; Committee Reports; Review of Unsolicited Grant Applications; Review of fellowship applications; Space Plans; Other General Issues.

CONTACT: Dr. Sheryl Brown, Director, Office of Communications, Telephone: (202) 457–1700.

Dated: March 10, 1998.

Charles E. Nelson,

Vice President for Management and Finance, United States Institute of Peace.

[FR Doc. 98–6535 Filed 3–10–98; 12:32 pm]

BILLING CODE 6820–AR–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Former Prisoners of War, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Advisory Committee on Former Prisoners of War will be held on May 4th through 6th, 1998, at the Department of Veterans Affairs, VA Central Office, 810 Vermont Avenue, NW., Washington, DC 20420. On May 4th, the meeting will be held in Room 930 and on both May 5th and 6th, the meeting will be held in Room 630. Each day the meeting will convene at 9:00 a.m. and end at 5:00 p.m. The meeting is open to the public.

The purpose of the meeting is to advise the Secretary of Veterans Affairs on the administration of benefits under title 38, United States Code, for veterans who are former prisoners of war, and to make recommendations on the need of such veterans for compensation, health care and rehabilitation.

The agenda for May 4th will begin with a review of committee reports and an update on the eight issues and five recommendations made to the Secretary on ways to help VA improve services to our POW community since the last meeting. The agenda on May 5th will include general business and a presentation of POW issues by the administrative and medical subcommittee of the Advisory Committee. The Committee has invited medical professionals from VA field activities (those who work with Ex-POW veterans) and medical professionals from the National Institute of Health and from the Naval Aero Medical Institute, Pensacola, Florida, for their input to the Committee. On May 6th, there will be discussions relating to complaints received from former POWs as to their care, treatment at VA medical centers, and compensation benefits. Subcommittee work will also be completed by medical professionals who sit on the Committee. They will review and analyze the comments that had been discussed by the Committee throughout the meeting for the purpose of assisting and compiling a final report to be sent to the Secretary.

Members of the public may direct questions or submit prepared statements for review by the Committee in advance of the meeting, in writing only, to Ms. Krsitine Moffitt, Director, Compensation and Pension Service (21), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Submitted material must be received at least five business days prior to the meeting. Members of the public may be asked to clarify submitted material prior to consideration by the Committee. A report of the meeting and roster of Committee members may be obtained from Ms. Moffitt.

Dated: March 5, 1998.

By Direction of the Acting Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 98–6366 Filed 3–11–98; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Special Medical Advisory Group, Notice of Availability of Annual Report

Under Section 10(d) of Public Law 92–463 (Federal Advisory Committee Act), notice is hereby given that the Annual Report of the Department of Veterans Affairs Special Medical Advisory Group for Fiscal Year 1997 has been issued.

The report summarizes activities of the Group relative to the care and treatment of disabled veterans and other matters pertinent to the Department of Veterans Affairs, Veterans Health Administration. It is available for public inspection at two locations:

Federal Documents Section, Exchange and Gift Division, LM 632, Library of Congress, Washington, D.C. 20540

and

Department of Veterans Affairs, Office of the Under Secretary for Health, VA Central Office, Room 811, 810 Vermont Avenue, N.W, Washington, D.C. 20420.

Dated: February 26, 1998.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 98–6359 Filed 3–11–98; 8:45 am]

BILLING CODE 8320–01–M

federal register

Thursday
March 12, 1998

Part II

Department of Defense

32 CFR Parts 21, 22, 23, 28, 32, and 34
DoD Grant and Agreement Regulations;
Final Rule

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 21, 22, 23, 28, 32, and 34

RIN 0790–AG28

DoD Grant and Agreement Regulations

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: The Department of Defense (DoD) is completing the establishment of most of the DoD Grant and Agreement Regulations (DoDGARs). The DoDGARs provide uniform policies and procedures for DoD Components' award and administration of grants and cooperative agreements.

DATES: These final rules are effective on April 13, 1998.

FOR FURTHER INFORMATION CONTACT: Mark Herbst; ODDR&E(R); 3080 Defense Pentagon; Washington, DC 20301–3080.

SUPPLEMENTARY INFORMATION: The specific regulatory actions that are being taken are to: (1) adopt four new parts of the DoDGARs (32 CFR parts 21, 22, 32, and 34); (2) make minor amendments to update one of the four existing parts of the DoDGARs (32 CFR part 28); and (3) eliminate another of the existing parts (32 CFR part 23), by incorporating its contents into one of the four new parts (32 CFR part 22).

The four new parts: address DoD Components' overall management of grant and agreement functions; set forth DoD Components' and grants officers' responsibilities related to the award and administration of grants and agreements; implement administrative requirements in OMB Circular A–110 for grants and agreements awarded to institutions of higher education and other nonprofit organizations; and establish administrative requirements for awards to for-profit organizations.

The minor amendments to the existing part provide DoD-specific procedures related to Governmentwide restrictions on lobbying.

The part that is being removed, with its contents incorporated into another part, is the rule implementing a law that prohibits the Department of Defense from providing funds by grant to institutions of higher education that have policies of denying, or that effectively prevent, the Secretary of Defense from obtaining for military recruiting purposes: entry to campuses; access to students on campuses; or access to directory information pertaining to students.

A. Background

DoD published a notice in the **Federal Register** on August 26, 1996 (61 FR 43867) requesting comments on four new DoDGARs parts and updates to two other parts. DoD received comments from: three universities; an association of academic institutions; an industry association; an attorneys' association; the Office of Management and Budget (OMB) and one other non-DoD Federal agency; and several DoD Components. All comments were considered in developing the final rule.

Some comments concerned a future DoDGARs part that was mentioned in the **Federal Register** preamble to the proposed rules. That future part, which is not included in this rulemaking, is being developed for a class of research agreements with for-profit firms that is meant to help integrate the defense and non-defense portions of the U.S. technology and industrial bases. The future part therefore will provide more flexible administrative requirements than those contained in part 34 of this rulemaking. Comments pertaining to that future part are addressed herein only to the extent that they also relate to parts that are included in this rulemaking.

The following sections present a summary of the major comments grouped by subject, and the responses to the comments. Changes in the rules are discussed in the responses to the comments. Other changes were made to increase readability.

B. Comments and Responses

Comments on General Matters

Comment: The DoDGARs should be included as a supplement to the rules for award and administration of procurement contracts, in the Defense Federal Acquisition Regulation Supplement. That would give DoD contracting officers a single source for rules on contracts, grants, and cooperative agreements.

Response: No change. It would be inappropriate to merge regulations for assistance instruments with the regulations for contracts, which are used for the very different purpose of acquisition.

Comment: The DoDGARs should include a structured format for grants and cooperative agreements, which could be similar to the uniform contract format that is currently in 48 CFR part 15, in the Federal Acquisition Regulations. The format could be an outline of major topical headings and specific clauses and provisions that are either mandatory or optional.

Response: No change. There are efforts currently among DoD activities, some in coordination with other Federal agencies, to maintain uniform formats for assistance instruments that are used for similar purposes (e.g., research). Codifying a single standard format in the DoDGARs at this time likely would hinder these efforts and also could impede ongoing initiatives to streamline agency business practices and eliminate unnecessary burdens on recipients.

Comments on Instrument Types, Authorities, and Applicability

Comment: The definition of the term "contract" in § 21.130 should be expanded to include cooperative agreements, which also are contracts. In some cases, even a grant is a contract.

Response: No change. Federal cooperative agreements and grants often are viewed as "contractual instruments" because they are binding agreements between two parties. However, under the Federal Grant and Cooperative Agreement Act (31 U.S.C., Chapter 63), Federal grants and cooperative agreements are assistance instruments that are quite distinct from Federal procurement contracts, and the term "contract" is used widely to mean procurement contracts in Federal statutes and rules for procurement instruments. If the DoD Grant and Agreement Regulations were to define the term "contract" inconsistently with the predominant Federal usage, it would create confusion for DoD Components, other Federal agencies, and Government contractors.

Comment: The term "assistance" should be defined in § 21.130 to exclude "other transactions." "Other transactions" can be written to be in the nature of assistance, but such legal instruments should not be considered to be "assistance" for purposes of applicable laws and regulations and should not be covered by the DoDGARs.

Response: No change. "Other transactions," as authorized by 10 U.S.C. 2371, are any transactions other than contracts, grants, and cooperative agreements. DoD recognizes that there could be different types of "other transactions," including some for providing assistance. Therefore, the rule can not state categorically that no "other transactions" are subject to the laws and regulations that apply when a Federal agency provides assistance.

Comment: Paragraph (b) of § 21.110 states that the DoDGARs in certain situations may include rules that apply to other nonprocurement instruments, in addition to grants and cooperative agreements. It should expressly state

that the DoDGARs do not apply to "other transactions."

Response: No change. Depending on the type of instrument it is, a particular "other transaction" may be subject to some DoDGARs rules—such as the rule at 32 CFR part 25 on nonprocurement debarment and suspension—that apply to more types of instruments than just cooperative agreements and grants.

Comment: The title of subpart C, part 21, currently is "Grants Information," but it should be changed to recognize the applicability of the subpart to cooperative agreements and other nonprocurement instruments, as well as grants.

Response: Agree. Changed the title to "Information Reporting on Grants, Cooperative Agreements, and Other Nonprocurement Instruments."

Comment: The use of the term "transaction" in § 22.220, "Exemptions," a section that otherwise addresses only grants and cooperative agreements, may lead to oonfusion with the term "other transaction."

Response: Revised the first sentence of § 22.220 to make it clear that the use of the term "transaction" in this case directly follows from the section of the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6307) that authorizes the Director of the Office of Management and Budget to exempt an agency *transaction.*

Comment: The wording of paragraph (b) of § 21.205, on the need for specific statutory authority to use a grant or cooperative agreement, may cause confusion. It may cause a grants officer to believe that an authorizing statute must specifically state that a grant or cooperative agreement may be used. What is required is that the intent of the authorizing statute must support the use of an assistance instrument.

Response: Agree. Revised the paragraph to say that the intent of the authorizing statute must support the use of an assistance instrument.

Comment: The last sentence in paragraph (b)(2) of § 21.205 should provide a more general statement about authorizing statutes that do not require delegation by the Secretary of Defense, consistent with the paragraph's heading, "Authorities that rise indirectly as a result of statute." The last sentence merely provides one example.

Response: Added a general statement to the paragraph.

Comment: Paragraph (a)(2) of § 22.205 should be revised to reflect the intent of 10 U.S.C. 2358, which allows the use of cooperative agreements for some development projects.

Response: No change. Paragraph (a)(2) of § 22.205 does permit the use of a cooperative agreement for a development project, in accordance with the Federal Grant and Cooperative Agreement Act (31 U.S.C., Chapter 63), if the principal purpose of that development project is assistance. The paragraph correctly notes that the principal purpose of almost all DoD development projects is acquisition, and that it therefore is not appropriate to use assistance instruments for carrying out those projects.

Comment: The last sentence of paragraph (a)(2) of § 22.205 should be revised to recognize that there is statutory authority to use "other transactions," as well as contracts, to carry out prototype projects relevant to weapons or weapons systems.

Response: Agree. Revised the sentence to recognize the use of acquisition transactions other than contracts.

Comment: Paragraph (b) of § 22.210 broadens the applicability of 10 U.S.C. 2358. It requires that any research project carried out through a grant or cooperative agreement must be relevant to defense missions or interests, even if the grant or cooperative agreement is awarded under a statutory authority other than 10 U.S.C. 2358. The paragraph should be modified, to limit this requirement to grants and cooperative agreements used to carry out research projects under the authority of 10 U.S.C. 2358.

Response: The requirement for defense relevance in 10 U.S.C. 2358 applies to research projects carried out under other authorities. Specifically, under paragraph (c) of 10 U.S.C. 2358, any research project carried out with funds appropriated to a DoD Component must comply with that requirement. Revised paragraph (b) of § 22.210 to clarify the broader applicability of the statute.

Comment: The DoD should clarify the relationship of part 32, which implements OMB Circular A–110, to parts 21 and 22. Doing so will let university and nonprofit recipients know the extent to which they must be familiar with those parts.

Response: Agree. Added a new paragraph (b) to § 32.1 to clarify that parts 21 and 22 provide guidance to DoD Components and grants officers and do not directly impose any requirements on recipients. Because that guidance indirectly affects recipients, the information in those parts concerning internal policies and procedures should be helpful to recipients of DoD awards.

Comment: Part 34 imposes administrative requirements for awards to commercial organizations that are burdensome, costly, and different from normal commercial practice. Commercial firms that cannot meet the requirements of part 34 should be made subject to the future DoDGARs part on agreements with more flexible administrative requirements.

Response: Replaced the term "commercial organization" throughout the rule with "for-profit organization." A number of comments revealed that the rule's use of the term "commercial organizations" to include all for-profit organizations confused the many people who use the term "commercial firms" to mean the subset of for-profit firms that have not traditionally performed under cost-type contracts or assistance instruments from the Federal Government.

The future DoDGARs part, as described earlier in this preamble, concerns a class of agreements for use in carrying out research programs to help integrate the defense and non-defense portions of the U.S. technology and industrial bases. A prime consideration in preparing that part is removing obstructions to participation in defense research by commercial firms that have not traditionally been Government contractors, where consistent with proper stewardship of Federal funds. That distinguishes the future DoDGARs part from part 34, which is intended to apply to the more general case of awards for any type of program performed by a for-profit firm.

Comments on Payments and Interest

Comment: Paragraph (b)(2) of § 22.810, paragraph (e)(1) of § 32.22, and paragraph (e) of § 34.12 address the responsibilities of DoD disbursing officers, as well as grants officers. The DoD Financial Management Regulation (the FMR, which is DoD 7000.14–R) addresses DoD disbursing officers' responsibilities. Therefore, these paragraphs of the DoDGARs should be revised to refer to the pertinent portions of the FMR, rather than create a duplicative set of rules.

Response: Agree. Reorganized and revised section 22.810 to specify requirements only in areas that are grants officers' responsibilities and refer to DoD 7000.14–R for requirements that are disbursing officers' responsibilities. Similarly, revised paragraph (e)(1) of § 32.22 and paragraph (e) of § 34.12 to refer to § 22.810, and thereby to DoD 7000.14–R.

Comment: Sections 32.21(b)(5) and 32.22(l) should be revised to include references to the Cash Management Improvement Act (CMIA) that are contained in the corresponding paragraphs of OMB Circular A–110.

Response: Agree in part. The final rule restores the Circular A–110 language in § 32.21(b)(5), because some provisions of the CMIA may apply in rare instances to universities or nonprofit organizations. The reference to the CMIA in § 32.22(l), however, is not restored; the Circular should be amended to delete that reference, to conform to updated Department of the Treasury regulations implementing the CMIA.

Comment: Paragraph (l) of § 32.22 should be revised to provide details about the data and format requirements for electronically remitting interest earned on advance payments, to facilitate direct deposit in the Department of the Treasury account for the Division of Payment Management of the Department of Health and Human Services' (DHHS/DPM).

Response: Revised this section to advise recipients that current information on the format for electronic submissions of interest payments should be obtained from the administrative grants officer. This will help to ensure that recipients have up-to-date information. If the information were codified in the DoDGARs, recipients would experience delays due to the regulatory process each time that changes were made in formats or data elements for electronic remittances.

Note: University and nonprofit recipients that are subject to the DoDGARs part 32 are advised of the following details about the current format for electronic submissions, to help ensure direct deposit of electronic remittances to the account of the DHHS/DPM: the preferred funds transfer format is CCD+; the American Banking Association routing number 05103670 should appear in the third field; the check digit in the fourth field is a six (6); and the account number for the DHHS/DPM, which is 303000, should appear in the fifth field.

Comment: The rules need to be revised to implement requirements in the Debt Collection Improvement Act of 1996 (Title 31, Pub. L. 104–134) to: obtain each recipient's Taxpayer Identification Number (TIN); include the TIN with each payment authorization forwarded to the disbursing office; and pay recipients by electronic funds transfer (EFT).

Response: Paragraph (d) of § 22.420, which contains the requirement to obtain each recipient's TIN, is revised to conform to the new law and refer to it. Revisions to § 22.810 implement the requirements for forwarding TINs with payment authorizations and for payment by EFT. Section 22.605 and Appendix C to part 22 also are revised, to ensure that award documents alert recipients and disbursing officers to the requirement for payment by EFT.

Comment: Section 34.12, "Payment," states that reimbursement is the preferred method of payment and makes no provision for payments of fixed amounts for accomplishment of technical milestones. Perhaps the technical-milestone method of payment is intended to be covered in the new DoDGARs part, still in draft, on flexible research agreements. Many commercial companies are unable or unwilling to contract with DoD when payments will be made on a cost reimbursement basis.

Response: No change. The milestone payment method is associated with the new type of research agreement that will be covered by a future DoDGARs part.

Comment: Under § 34.12, for-profit recipients must remit any interest earned to the DoD Component that made the award. It would be better to have the recipient remit the interest to the Defense Contracting Management Command (DCMC) office that has the responsibility for administering the agreement, by delegation from the DoD Component that awarded the agreement.

Response: Revised § 34.12 to provide for remittance of interest to the administrative grants officer that is responsible for post-award administration of the agreement.

Comments on Debt Collection

Comment: Paragraph (c)(2)(iv) of section 22.820 does not state how the interest rate will be determined, when a recipient owes the Government interest on a debt. The paragraph should provide for simple interest at the rate fixed by the Secretary of the Treasury under Pub. L. 92–41.

Response: Added a reference in this section to the DoD Financial Management Regulations (FMR) for rules covering interest costs. The FMR explains how the interest rate is determined.

Comment: Section 22.820, "Debt Collection," says that the recipient still may elect to appeal after the grants officer turns over a debt to the Defense Finance and Accounting Service (DFAS) for collection. Once a debt is turned over to DFAS, the debt collection rules in the Financial Management Regulation will apply, and DFAS may not decide to defer the debt to allow an appeal.

Response: Revised this section to clarify that further action to collect the debt is deferred, to allow time for an appeal, only when the recipient notifies the grants officer within the 30-day prescribed time period of its intent to appeal. If the recipient does not so notify the grants officer within that period, the debt is transferred to DFAS for collection.

Comments on Claims, Disputes, and Appeals

Comment: Section 22.815, "Claims, disputes, and appeals," says that a recipient's appeal of a grants officer's final decision is to be based solely on the basis of the written record, unless the Grant Appeal Authority decides to conduct fact-finding procedures or an oral hearing on the appeal. It would be desirable to give the recipient the right to a hearing before the Grant Appeal Authority, if requested.

Response: No change. The rules permit the Grant Appeal Authority to conduct an oral hearing, and a reasonable request from a recipient would be a basis for doing so. However, creating the right to a hearing is a step toward instituting a more formal appeals process, and there is no current problem that justifies the increased Government administration, with attendant burdens and costs, that is associated with a more formal process. Instituting a more formal process also runs counter to the direction taken in the rule, to strongly encourage Alternative Dispute Resolution and other less cumbersome means of resolving disputes.

Comment: Under § 22.820, "Debt collection," a debt owed by a recipient, based on a DoD Component's claim, bears interest and may include penalties and other administrative costs. Recommend adding a provision that recipient claims also bear interest.

Response: No change. A Federal agency may pay interest on claims only when it has statutory authority to do so.

Comment: Paragraph (d)(2) of § 22.815, "Claims, disputes, and appeals," states that a grants officer's decision is final, but then goes on to say that it can be appealed. A decision that can be appealed isn't final.

Response: Revised the paragraph to clarify that the decision is final, unless the recipient decides to appeal.

Comments on Cost Sharing, Budget Revisions, and Other Cost-Related Matters

Comment: Paragraph (b) of section 32.23, "Cost sharing and matching," requires the grants officer's prior approval for a university's or nonprofit organization's use of unrecovered indirect costs as cost sharing or matching. Recipients should be authorized, as a matter of DoD policy, to so use unrecovered indirect costs.

Response: Revised this paragraph to remove the prior approval requirement.

Comment: Paragraph (c)(2) of § 32.23, "Cost sharing and matching," specifies "current fair market value" as one metric for valuing buildings or land donated by a recipient as cost sharing or matching. The paragraph should include a statement that the DoD Component may use any reasonable basis for determining the fair market value.

Response: Revised the paragraph to add the suggested statement.

Comment: Paragraph (d)(1) of § 32.25, "Revision of budget and program plans," gives DoD Components the option to waive certain cost-related and administrative prior approvals required by OMB Circulars A–110, A–21, and A–122. It would be preferable for these waivers to be made the standard practice, rather than optional.

Response: No change. DoD awards grants and agreements to university and nonprofit recipients for various types of programs. Some recipients and programs need more oversight than others. DoD Components therefore need the flexibility provided by the OMB circulars to judge on a case-by-case basis whether they can waive these prior approvals. Furthermore, some of the prior approvals in the cost principles (OMB Circulars A–21 and A–122) relate to system-wide methods for handling indirect costs that should not be waived without first consulting with the cognizant agency responsible for negotiating the recipient's indirect cost rate.

Comment: Paragraph (d) of § 32.25, "Revision of budget and program plans," does not include the language from the corresponding section of OMB Circular A–110 that permits a university or nonprofit recipient to initiate a one-time extension of the expiration date of an award, without the Federal agency's prior approval, if the extension requires no additional Federal funds (i.e., it is a "no-cost extension"). Recommend that DoD include language authorizing recipients to initiate no-cost extensions, with the requirement that the recipients notify DoD of the actions. Regardless of the final resolution of the matter, § 32.25 should clearly state whether DoD requires prior approvals for no-cost extensions, rather than remaining silent and leaving university and nonprofit recipients in doubt about the policy.

Response: Revised the section to state that DoD Components may waive the prior approval requirement on a case-by-case basis, when the Components judge that doing so would not cause them to fail to comply with DoD incremental programming and budgeting policies. Those policies specify the period during which a given fiscal year's appropriations are to be used (e.g., that one fiscal year's research funds usually are to support effort only through the first three months of the next fiscal year).

Comment: It is unnecessary to give DoD Components the option to require university or nonprofit recipients to obtain the agency's prior approval for rebudgeting between direct cost categories on awards in excess of $100,000, as provided in paragraph (e) of § 32.25, "Revision of budget and program plans." Paragraph (e) even appears to contradict paragraphs (c) (1) through (5) of § 32.25, which specify prior approval requirements for other budget revisions related to nonconstruction awards.

Response: DoD Components need the flexibility provided by OMB Circular A–110 to require prior approvals for such budget changes, because some types of programs for which DoD Components use grants and agreements require more oversight than others. Nonetheless, this prior approval requirement generally is not appropriate for grants to support research, the likely object of the comment. Paragraph (e) of § 32.25 is revised to include a statement to that effect. While there are no apparent contradictions between paragraphs (c) and (e) of § 32.25, also revised paragraph (c) to refer to paragraph (e), to help prevent confusion about prior approval requirements for rebudgeting actions related to nonconstruction awards.

Comment: The DoD should restore to paragraph (c) of § 32.25 the requirement in the corresponding paragraph of OMB Circular A–110 for recipients to obtain prior approval before revising the budget in a way that transfers amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa, if the awarding office wishes to approve such transfers.

Response: Agree in part. The language is restored in that paragraph of the final rule, but with a caveat that requiring prior approval for such budget revisions should be required only in exceptional circumstances. That change addresses the rare cases in which an assistance program may require more Government oversight.

Comment: Section 34.13, "Cost sharing or matching," should be revised to address for-profit recipients' use of Independent Research and Development (IR&D) costs to meet cost sharing or matching requirements. The section should conform with Federal Acquisition Regulation (FAR) coverage for procurement contracts, at 48 CFR 31.205–18(e), which says that contributions of IR&D costs under certain types of cooperative arrangements may be treated as allowable indirect costs, if the work performed would have been allowed as IR&D had there been no cooperative arrangement.

Response: Revised this section to provide coverage for assistance instruments that conforms with the FAR coverage for procurement contracts.

Comment: Section 34.16, "Audits," should state that a for-profit recipient's audit costs are allowable as direct charges to the agreement. Also, the section should state whether audit costs are subject to cost sharing requirements.

Response: Added language to clarify that audit costs are allowable as direct or indirect costs, as appropriate. Cost sharing requirements apply to total project costs, of which audit costs are an element; there is no need to include language in the rule to specifically address the applicability of cost sharing requirements to audit costs or the many other specific types of direct or indirect cost that comprise the total project costs.

Comment: Section 34.11, "Standards for financial management systems," seems to not require for-profit recipients to do employee time reporting more frequently than monthly and permits reports to coincide with one or more pay periods. Many firms keep daily records for their DoD contract business—is the difference intended?

Response: The intent of the standards is to have records that accurately reflect the distribution of the actual activity of each employee that has salary or wages charged to DoD awards, and to keep paperwork burdens to the minimum that is necessary for that purpose. The rule provides flexibility for the recipient because the reporting frequency needed to ensure accurate records may vary, depending upon the circumstances. For example, if an employee works on just one project, there probably is no need to record time spent on various tasks more frequently than monthly. However, if an employee works on many projects, it is likely that more frequent recording of time spent on specific tasks is necessary.

Comment: Section 34.17, "Allowable costs," provides that for-profit recipients of prime awards, as well as for-profit subrecipients under prime awards, determine the allowability of costs in accordance with the Federal Acquisition Regulation (FAR). Section 32.27 similarly requires university and nonprofit recipients to flow down the FAR cost principles to for-profit subrecipients under their prime awards. Most commercial firms are unable to comply with these requirements—

Generally Accepted Accounting Principles (GAAP) should be applied, instead.

Response: DoD recognizes that alternatives to the FAR cost principles may be appropriate for use with certain types of research investment agreements that involve for-profit firms, due to cost matching and other characteristics of the agreements—such agreements will be covered by a future part of the DoDGARs. One change is made at this time in § 32.27 of the final rule. The provisions of part 34 will be revised, as needed, when that future part is adopted. At this time, those provisions are appropriate because part 34 applies to any type of program, not just research, that is performed by for-profit firms, not just commercial firms that have not traditionally done business with the Government.

Comment: Requirements for the allowability of costs for for-profit firms appear in paragraph (f) of § 32.27 in part 32, but part 32 applies to awards to universities and other nonprofit organizations, rather than to awards to for-profit firms. This is confusing.

Response: For-profit firms are mentioned in part 32 because they may be subawardees under prime awards to universities and nonprofit organizations, and the prime awardees need to know which requirements apply to those subawards.

Comment: The definition of "third-party in-kind contributions" in § 34.2, "Definitions," is confusing to commercial firms. The rule should clarify how third parties would contribute to the project and what their rights and responsibilities are.

Response: No change. The definition relates to § 34.13, "Cost sharing or matching," which specifies how one values third-party contributions, which include services of others' employees, volunteer services, and property donated by third parties. The definition and rules in part 34 on valuing third-party in-kind contributions parallel the Governmentwide guidance in OMB Circular A–110, as implemented in part 32 of the DoDGARs, for university and nonprofit recipients. While third-party contributions are not expected to be encountered as often by for-profit recipients as they are by university and nonprofit recipients, they can occur and it therefore is useful to include rules on how to value the contributions. It would be inappropriate for DoD rules to specify rights or responsibilities of third parties making such contributions—those properly would be worked out by the recipients and third parties.

Comments on Program Income and Revisions of Program Plans

Comment: The definition of "program income" in section 34.2 is too broad because it includes gross income that is "earned as a result of the award," and not just income earned by a for-profit recipient that is "directly generated by a supported activity." This is especially problematic when coupled with the requirement in paragraph (b)(2) of § 34.14 for the grants officer to consider whether the recipient has any obligation for program income generated after the project period is over. The purpose of many agreements is to stimulate development of technology that will generate income into the U.S. economy long after the project's end, thereby benefiting the Government.

Response: No change. This section applies mainly to program income earned during the project period. Any Federal interest in program income earned after that period must be provided for in the award, based on an understanding between the recipient and the Government at the time the award is negotiated. These rules apply to various programs, not just research; even for research, one can not rule out in all cases the appropriateness of a recipient's obligation to the Government with respect to program income that is generated after the project period. In cases where it is appropriate, the grants officer must have the same flexibility as a firm's representatives to negotiate agreement terms that are fair and equitable to both the firm and the Government.

Comment: The requirement in paragraph (c) of § 34.15 to immediately request and gain prior approval when making decisions regarding key personnel exceeds the provisions of most procurement contracts. The recipient should only have a requirement to promptly notify the Government when a change in key personnel is made.

Response: No change. The prior approval requirement applies only to key personnel specified in the application or award document. Usually, the experience and qualifications of such key personnel are prime considerations in making an assistance award, and the Government should be consulted before the recipient makes changes in those personnel. This is a standard requirement in Federal agency rules governing assistance awards, providing one illustration of the ways in which assistance relationships differ from acquisition relationships that are consummated through procurement contracts.

Comments on Property

Comment: It is not clear why some of the terms related to property in part 32, which implements OMB Circular A–110, are used or defined differently than in the Circular.

Response: Part 32 of the proposed rule included some nonsubstantive technical improvements to the language of the Circular. For example, the proposed rule replaced the term "supplies and other expendable property" with the term "supplies" in two places (in § 32.35 and in the definition in § 32.2 of "third party in-kind contributions") because the term "supplies" includes all expendable property. Similarly, the proposed rule deleted the term "expendable equipment" in § 32.23(f) because the term is self-contradictory (given that "equipment," as defined, is nonexpendable property).

Comment: Paragraph (b) of § 32.35, "Supplies," states that university and nonprofit recipients shall not use supplies acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services. Suggest adding another provision to address recipients providing commercially acquired services.

Response: No change. DoD is not aware of any instance in which a university or nonprofit recipient has provided to outside organizations commercially acquired services that were obtained under a Federal award. If a problem arises in this area, it should be addressed through a revision to the Governmentwide guidance in OMB Circular A–110, so that it will be implemented by all Federal agencies.

Comment: Paragraph (b) of § 34.21 provides that for-profit recipients receive only a conditional title to equipment purchased in whole or in part with Federal funds. Among the conditions, which are specified in §§ 34.21 and 34.23, are that the recipient: Keep track of real property or equipment for a project; make the property available for use on other projects on a non-interfering basis and in a certain order of priority; assess charges for the property's use to Federal contracts or projects not supported by any Federal agency, treating those use charges as program income; and handle the disposition of the property at project's end, compensating the Government for its share of the current fair market value. These are burdensome requirements; the provisions of § 34.23, for example, will require commercial firms to establish costly property management systems. Recommend

instead that recipients be given unconditional title to any equipment purchased in part with recipient funds and in part with Federal funds.

Response: No change. A Federal agency needs specific authority to vest title to equipment unconditionally. Therefore, the section correctly states that the title shall be a conditional title unless a statute specifically authorizes a DoD Component to vest title in the recipient without further obligation to the Government, and the DoD Component elects to do so. The conditions of the title are reasonable, because they apply specifically to property in which the Federal Government has a continuing financial interest. The provisions of § 34.23, for example, which are based on OMB Circular A–110's Governmentwide guidance for assistance awards, maintain accountability for Federally owned property and for equipment that is acquired with Federal funds under an award.

Comment: Under paragraph (c) of § 34.21, a for-profit recipient may offer real property or equipment that is purchased with recipient funds or donated by a third party to meet a portion of any required cost share or match. However, the Government then has a financial interest in the property, a share of the value attributable to the Federal participation in the project. The property then is subject to provisions of the rule concerning the property's encumbrance, disposal, tracking, and use for projects other than the one for which it is being used to meet cost sharing requirements. This policy is inequitable, unnecessary, and will discourage commercial firms from entering into cooperative arrangements with the Department of Defense. We are not aware of any Federal agency taking this position for real property or equipment purchased by recipients or donated by third parties.

Response: Revised the section to clarify that these provisions apply to property acquired with recipient funds or donated by a third party only when the full value of the property is accepted as the value of the contribution toward cost sharing or matching. With that clarification, the provisions of this section are based on Governmentwide policies established by OMB Circulars A–110 and A–102 for assistance awards to universities and nonprofit organizations and certain awards to State and local governments—Circular A–110 also states that its provisions may be used for awards to for-profit organizations, and DoD understands that other Federal agencies do so.

It is important to note that accepting the full value of property as the value to be counted for purposes of cost sharing or matching is the exception rather than the rule. Usually, one only would count the depreciation of the property during the project period or the cost of using the property, either of which normally is a fraction of the full value. There is no issue with title in those cases, because the recipient owns unconditionally any property purchased with its own funds or donated to it by a third party.

In the exceptional cases where the full value is used for cost sharing or matching purposes, the recipient is effectively donating the property to a project that it and the Government are jointly supporting. It would defeat the purpose of cost sharing in such cases if the recipient kept the asset, free and clear, after contributing the asset's full value toward its share of the support for the project. The provisions of the rule to which the property is subject in those exceptional cases (e.g., that the recipient keep track of the property and not encumber it without the grants officer's approval) are reasonable.

Comment: Upon completion of a project, if there is an inventory of leftover unused supplies that are not needed for other Federal projects and the inventory's value exceeds $5,000, § 34.24 states that a for-profit recipient is to reimburse the Federal Government for its share of the value. This means that supplies will be subject to controls that are very costly and administratively burdensome, such as the requirements in § 34.23 for the recipient's property management system.

Response: No change. Normally, recipients should be buying supplies as needed for the project and expensing them when used. Therefore, large inventories of *unused* supplies should not be left over at the end of the project. If the value of unused supplies equals that of an item of equipment, it should reimburse the Government for its share of the cost of those supplies. With respect to the applicability of the specific requirements in § 34.23 for the recipient's property management system, that section applies to equipment acquired under the award, but not supplies; the rule only states the requirement concerning large inventories of unused supplies charged to the project, and the recipient determines what system it will use to comply with the requirement.

Comment: Section 34.25 states that the Government has the right, unless it is waived by the DoD Component, to obtain, reproduce, publish or otherwise use the data first produced under an award. This section should be revised to state that the data may be used only for Federal Government purposes.

Response: Revised this section to clarify that the data may be used only for Federal Government purposes.

Comment: The intellectual property rights accorded the Government under assistance awards to for-profit firms, in § 34.25, are a disincentive to industry to participate in cooperative agreements. The regulations should not set a rigid minimum set of rights which the Government must obtain in every case. Instead, the regulation should state that the grants officer may negotiate an allocation of rights that is fair and equitable depending upon the circumstances of the particular agreement.

Response: No change other than the clarification on data rights described in the response to the preceding comment. For patents, the rule provides the grants officer with all of the flexibility in current statute and executive order applicable to grants and cooperative agreements. For copyrights, data, and software, the rule's provisions are appropriate for intellectual property generated with Federal support under most assistance awards, and grants officers can handle the exceptional cases through the usual deviation procedure. One class of instruments that DoD plans to handle differently is the class of research investment agreements, with cost matching and other distinguishing features, that will be the subject of a future DoDGARs part.

Comment: Section 34.25 states that awards are to include the patent clause specified by Department of Commerce (DoC) regulations at 37 CFR 401.14. The section should be modified to allow for-profit firms to obtain rights in subject inventions of subawardees that are small businesses or nonprofit organizations. Otherwise, the patent clause in the DoC regulations will preclude a firm from doing so, even if the for-profit awardee has paid in part for the subawardees' effort as part of its cost share.

Response: No change. The comment relates primarily to the new class of research investment agreements that will be the subject of a future DoDGARs part. For cooperative agreements covered by part 34, grants officers already can handle any individual cases where alternative provisions are justified, by making determinations of exceptional circumstances under 37 CFR 401.3(a)(2) in the DoC regulations.

Comment: Section 34.25 should be revised to provide an "authorization and consent" clause to be included in cooperative agreements with for-profit

recipients. The clause would say that the Government authorizes and consents to all use and manufacture by the recipient, in the performance of the cooperative agreement or any subaward, of any invention described in and covered by a United States patent.

Response: No change. It would not be appropriate to include a clause in cooperative agreements authorizing a recipient's or subrecipient's infringement of U.S. patents held by other parties.

Comments on Procurement

Comment: Section 34.31, which specifies requirements for procurements made by for-profit recipients of DoD assistance awards, contains requirements that often differ significantly from standard commercial practices. For example, the section provides that preaward documents may be subject to preaward review by the grants officer. Also, this section requires certain Government flowdown and audit provisions. The requirements will require commercial firms to draft Government terms and conditions for subcontracts, and to establish Government-unique purchasing requirements. Recommend these requirements be eliminated.

Response: In response to the general comment, the few requirements in this section were carefully selected from the much larger set of requirements specified by OMB Circular A–110 for university and other nonprofit recipients of Federal assistance. They are judged to be the minimal set of requirements that are needed to ensure proper stewardship of Federal assistance.

In response to the first specific comment on preaward review of a recipient's procurement documents, the word "exceptional" was added to the sentence that advises the grants officer that preaward review is the exception rather than the rule. The sentence now states that recipients will only be required to provide such documents for the grants officer's pre-award review in exceptional cases where the grants officer judges that there is a compelling need to do so. For those projects where there is substantial involvement by the Government and a procurement is central to the success of the project (e.g., the purchase of a large computer to be used jointly by a recipient and Government researchers), DoD believes that the Government's right to a preaward review of the procurement documents can be essential.

With respect to the second specific comment on flowdown of Government-unique requirements to contracts under assistance awards, many of the requirements are required by law, regulation, or executive order—DoD therefore cannot waive them and they must be included when they are applicable, as the rule states. The few other requirements are those carefully selected as the minimal set for proper stewardship for most financial assistance, such as the standard access to records by DoD, the Comptroller General, and their duly authorized representatives. As it prepares the future DoDGARs part for a specific class of research investment agreements, DoD will consider which requirements might be waived in light of the substantial cost sharing and other special features of that class of instruments.

Comment: The Office of Management and Budget expressed concern that § 32.44 included a $10 million threshold, below which a recipient would not have to maintain its procurement procedures in writing. The concern is that the threshold would create substantive differences between requirements of the DoD and those in other Federal agencies' implementation of OMB Circular A–110.

Response: The provision was revised, as requested. The Office of Management and Budget has agreed to explore the possibility of amending OMB Circular A–110 to establish for all Federal agencies' awards a dollar threshold below which recipients would be relieved of the requirement to maintain procurement procedures in writing.

Comment: The definition of "contract" in § 21.130 refers to it as an instrument reflecting a certain type of relationship between the Federal Government and a State, a local government, or other person. Suggest adding the words "or entity" after the word "person."

Response: Replaced the word "person" with "recipient," which is the term used at 31 U.S.C. 6303 in the Federal Grant and Cooperative Agreement Act, the defining statute that specifies when it is appropriate for Federal agencies to use contracts. The term "recipient" covers persons and other entities.

Comment: Change the wording of the definition of "contract" in § 34.2 to clarify that there can be subcontracts under a grant or cooperative agreement.

Response: Revised the wording to clarify that the term "contract" includes: Recipients' procurement contracts under DoD assistance awards; subrecipients' procurement contracts under assistance subawards; and procurement subcontracts under contracts awarded by recipients or subrecipients.

Comments on Records Retention

Comment: The first and second sentences in paragraph (e) of § 34.42 provide that: (1) DoD Components, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to certain records of for-profit recipients that are pertinent to awards; and (2) this right includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents. In the first sentence, recommend replacing the words "duly authorized representatives" and the words "unrestricted access" with "duly authorized Government representatives" and "access during normal working hours," respectively. Recommend deleting the second sentence, which goes beyond what is authorized in existing law.

Response: No change. The wording of this section mirrors that of the Governmentwide guidance in OMB Circular A–110 for assistance awards to nonprofit organizations, guidance issued after legal review by all major Federal agencies and with the benefit of public review and comment. It is not necessary to add the words "during normal working hours" to clarify what is meant by "reasonable access to a recipient's personnel," because it rarely would be reasonable to insist upon access at other times. Adding the word "Government" to "duly authorized representatives" could be contrary to the increased reliance upon non-Federal auditors that accompanies the Governmentwide emphasis on the single-audit concept, which is broadened to for-profit recipients by the rule's § 34.16. Finally, there is no intent to have the word "interview" interpreted in an extreme way that would appear to give the Government access that exceeds its statutory authority.

Comment: In light of the increasing transfer of records from hard copy to electronic media, recommend including language similar to that in the Federal Acquisition Regulation at 48 CFR 4.703(d), which implemented Pub. L. 103–335's requirements concerning such transfers for procurement contracts.

Response: Added new paragraphs to both § 32.53, for awards to university and other nonprofit recipients, and § 34.42, for awards to for-profit firms.

Comments on Termination and Enforcement

Comment: Paragraph (a)(1) of § 34.51 provides that the grants officer may terminate awards to a for-profit firm if the recipient "fails to comply with the terms and conditions of an award." It should be amended to say "fails to comply with the *material* terms and conditions."

Response: No change. The provision already says "*materially* fails to comply with the terms and conditions."

Comment: Section 34.51 should be revised to provide the Government the same flexibility it has with procurement contracts to unilaterally terminate awards to for-profit firms for reasons other than non-performance or non-compliance.

Response: No change. This is an example of a basic difference between procurement and assistance relationships. Other than terminations for cause, the Government should be able to terminate assistance awards only by mutual agreement with the recipient, as the rule provides.

Comment: It should be expressly specified in paragraph (a) of § 34.52 that a for-profit recipient is to be paid all of the allowable costs that it incurred prior to termination if the award is terminated for failure to comply with a material provision of the award.

Response: Revised paragraph (a)(3) of § 34.52 to state that, in the case of termination, the recipient will be reimbursed for allowable costs it incurred prior to termination, with the possible exception of costs for activities or actions not in compliance.

Comments on National Policy Requirements

Comment: Appendix B to part 22 contains a requirement for the grants officer to include an award clause implementing the "officials not to benefit" statute. That statute (41 U.S.C. 22) was amended by section 6004 of the Federal Acquisition Streamlining Act (FASA), to eliminate the requirement to include a clause. This is an unnecessary clause and should be deleted.

Response: No change. Due to FASA's amendment of 41 U.S.C. 22, the statute itself no longer requires an "officials not to benefit" clause in Federal awards. However, recipients of Federal awards still must comply with the "officials not to benefit" requirement in 41 U.S.C. 22, just as they must comply with all other applicable U.S. statutes and Federal regulations. Compliance with those requirements is inherently a condition of the award; while a general award clause could require compliance with all applicable Federal statutes and regulations, without identifying any of them, fairness dictates that recipients be informed about specific requirements whenever possible. For that reason, Appendix B to part 22 offers clauses that the grants officer may use to communicate the requirements to recipients.

Comment: Appendix B to part 22 flows down to subrecipients a number of requirements for which that flowdown apparently is not required by law. They include nondiscrimination items a., b., d., and e., as well as the Cargo Preference and Clean Air and Water Acts.

Response: No change. Each of these requirements does flow down to subrecipients, as stated in the appendix, due to the implementation of the statute in Federal regulation. By helping to clarify the applicability to awards and subawards of the most common national policy requirements, the appendix should be useful to both grants officers and recipients.

Comment: Appendix B to part 22 states that the Architectural Barriers Act applies to awards for the construction or alteration of buildings or facilities which will require public accessibility. There is no basis in law or regulation for limiting the applicability of the Act to buildings that require public accessibility (employees, for example, may be disabled and usually are not considered members of the public). The only statutory exemption is for certain types of facilities that are restricted to use only by able-bodied military personnel.

Response: Corrected the statement in the appendix on the applicability of the Act.

Comment: Section 22.510(a)(2)(ii) states that grants officers may allow recipients to incorporate certifications into a provision that cites them by reference, rather than providing the full text of the certification with each proposal or award document. In accordance with statute or codified regulations, certain certifications cannot be incorporated by reference.

Response: No substantive change. For the three certifications (debarment and suspension, drug-free workplace, and lobbying) that currently are required, the Department has concluded that the pertinent statutes, Executive order, and DoD regulations (32 CFR parts 25 and 28) do not presently preclude incorporation of the certifications by reference. For clarity, the final rule includes additional statements that certifications may be incorporated by reference to the extent consistent with statute and codified regulation.

Comment: Section 22.510 states that Appendix A to part 22 includes "suggested" language for incorporating certifications by reference. However, this is not permitted because the certification language is required, not suggested.

Response: The language in Appendix A incorporates by reference the exact certification language that is required to comply with statute and codified regulation. To alleviate the confusion, the term "suggested" is removed from § 22.510 and Appendix A. Section 22.510 now states that Appendix A "includes language that may be used for incorporating certifications by reference."

Comment: Section 22.510(a)(2)(ii)(C) states that grants officers may obtain the certification concerning debarment and suspension at the time of award, notwithstanding the regulatory requirement at 32 CFR 25.510(a) to obtain that certification at the time of proposal submission. The Office of Management and Budget is concerned that adoption of this provision would grant the DoD a deviation from the Governmentwide common rule on debarment and suspension, creating a nonuniformity with other Federal agencies.

Response: The provision is revised, as suggested.

C. Other Changes

Changes for Audit Requirements and Conditional Exemptions

On August 29, 1997 (62 FR 45934 ff.), subsequent to the DoD's proposal of these rules for comment, the Office of Management and Budget made two changes to OMB Circular A–110. The first change was to delete references to OMB Circular A–128, "Audits of State and Local Governments," which recently was rescinded, and to refer instead to the revised OMB Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations." Part 32 in these final rules, which is the DoD's implementation of OMB Circular A–110, includes this change. Conforming changes also were made in part 22 of these final rules.

The second change made by the Office of Management and Budget to OMB Circular A–110 was to add a new section that addresses conditional exemptions. The applicability of that new section to the DoD is under review and will be addressed in a future rulemaking action.

Deferral of Final Action on Proposed Changes to 32 CFR Part 33

As requested by the Office of Management and Budget, the DoD agreed to defer final action on the two proposed amendments to part 33, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," which is the DoD's implementation of a Governmentwide rule. Those two proposed changes were to implement: (1) The Resource Conservation and Recovery Act (42 U.S.C. 6962); and (2) changes made by the Federal Acquisition Streamlining Act of 1994 to the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330, as amended). The deferral enables the Office of Management and Budget to coordinate these amendments with other Federal agencies and request that the agencies amend the Governmentwide rule.

Changes for Military Recruiting

As stated in the DoD's preamble when these rules were proposed, the rule previously codified at 32 CFR part 23, "Grants and Agreements—Military Recruiting on Campus," is moved by this final rulemaking to section 22.520 in part 22. A few, nonsubstantive technical corrections are made to the language that previously appeared in part 23, to allow its incorporation into part 22.

Executive Order 12866

Part 32 was determined to be a "significant regulatory action," as defined by Executive Order 12866, by the Administrator of the Office of Management and Budget's Office of Information and Regulatory Affairs. The Department of Defense believes that none of the rules will: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104–4)

These regulatory actions do not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))

These regulatory actions will not have a significant adverse impact on a substantial number of small entities.

Paperwork Reduction Act of 1995 (44 U.S.C. 3500 et seq.)

These regulatory actions will not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act. Reporting and recordkeeping requirements in parts 32 and 34 are those promulgated by the updated OMB Circular A–110, which the Office of Management and Budget proposed in August 1992 (57 FR 39018), asking for public comments, and finalized in November 1993 (58 FR 62992).

List of Subjects

32 CFR Part 21

Grant programs, Grants administration.

32 CFR Part 22

Accounting, Grant programs, Grants administration, Intergovernmental relations, Reporting and recordkeeping requirements.

32 CFR Part 23

Colleges and universities, Grant programs, Grants administration, Penalties.

32 CFR Part 28

Grant programs, Loan programs, Lobbying, Penalties, Reporting and recordkeeping requirements.

32 CFR Part 32

Accounting, Colleges and universities, Grant programs, Grants administration, Hospitals, Nonprofit organizations, Reporting and recordkeeping requirements.

32 CFR Part 34

Accounting, Business and industry, Grant programs, Grants administration, Reporting and recordkeeping requirements.

Accordingly, title 32 of the Code of Federal Regulations, chapter I, subchapter B, is revised as follows.

1. The heading of subchapter B is revised to read as follows:

SUBCHAPTER B—DoD GRANT AND AGREEMENT REGULATIONS

2. Part 21 is added to read as follows:

PART 21—DoD GRANTS AND AGREEMENTS—GENERAL MATTERS

Subpart A—Defense Grant and Agreement Regulatory System

Sec.
21.100 Scope.
21.105 Authority, purpose, and issuance.
21.110 Applicability and relationship to acquisition regulations.
21.115 Compliance and implementation.
21.120 Publication and maintenance.
21.125 Deviations.
21.130 Definitions.

Subpart B—Authorities and Responsibilities

21.200 Purpose.
21.205 DoD Components' authorities.
21.210 Vesting and delegation of authority.
21.215 Contracting activities.
21.220 Grants officers.

Subpart C—Information Reporting on Grants, Cooperative Agreements, and Other Nonprocurement Instruments

21.300 Purpose.
21.305 Defense Assistance Awards Data System.
21.310 Catalog of Federal Domestic Assistance.
21.315 Uniform grants and agreements numbering system.

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

Subpart A—Defense Grant and Agreement Regulatory System

§ 21.100 Scope.

The purposes of this part, which is one portion of the DoD Grant and Agreement Regulations (DoDGARs), are to:

(a) Provide general information about the DoDGARs.

(b) Set forth general policies and procedures related to DoD Components' overall management of functions related to grants and cooperative agreements.

§ 21.105 Authority, purpose, and issuance.

(a) DoD Directive 3210.6[1] established the Defense Grant and Agreement Regulatory System (DGARS). The directive authorized publication of policies and procedures comprising the DGARS in the DoD Grant and Agreement Regulations (DoDGARs), in DoD instructions, and in other DoD publications, as appropriate. Thus, the

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. Authorized users may also obtain copies from the Defense Technical Information Center, 8725 John J. Kingman Rd., Suite 0944, Fort Belvoir, VA 22060–6218.

DoDGARs are one element of the DGARS.

(b) The purposes of the DoDGARs, in conjunction with other elements of the DGARS, are to provide uniform policies and procedures for grants and cooperative agreements awarded by DoD Components, in order to meet DoD needs for:

(1) Efficient program execution, effective program oversight, and proper stewardship of Federal funds.

(2) Compliance with relevant statutes; Executive orders; and applicable guidance, such as Office of Management and Budget (OMB) circulars.

(3) Collection from DoD Components, retention, and dissemination of management and fiscal data related to grants and agreements.

(c) The Director of Defense Research and Engineering, or his or her designee:

(1) Develops and implements DGARS policies and procedures.

(2) Issues and maintains the DoD Grant and Agreement Regulations and other DoD publications that comprise the DGARS.

§ 21.110 Applicability and relationship to acquisition regulations.

(a) *Applicability to grants and cooperative agreements.* The DoD Grant and Agreement Regulations (DoDGARs) apply to all DoD grants and cooperative agreements.

(b) *Applicability to other nonprocurement instruments.* (1) In accordance with DoD Directive 3210.6, the DoDGARs may include rules that apply to other nonprocurement instruments, when specifically required in order to implement a statute, Executive order, or Governmentwide rule that applies to other nonprocurement instruments, as well as to grants and cooperative agreements. For example, the rule on nonprocurement debarment and suspension in 32 CFR part 25, subparts A through E, applies to all nonprocurement transactions, including grants, cooperative agreements, contracts of assistance, loans and loan guarantees (see definition of "primary covered transaction" at 32 CFR 25.110(a)(1)(i)).

(2) The following is a list of DoDGARs rules that apply not only to grants and cooperative agreements, but also to other types of nonprocurement instruments:

(i) Requirements for reporting to the Defense Assistance Award Data System, in subpart C of this part.

(ii) The rule on nonprocurement debarment and suspension in 32 CFR part 25, subparts A through E.

(iii) Drug-free workplace requirements in 32 CFR part 25, subpart F.

(iv) Restrictions on lobbying in 32 CFR part 28.

(v) Administrative requirements for grants, cooperative agreements, and other financial assistance to:

(A) Universities and other nonprofit organizations, in 32 CFR part 32.

(B) State and local governments, in 32 CFR part 33.

(3) Grants officers should be aware that each rule that applies to other types of nonprocurement instruments (i.e., other than grants and cooperative agreements) states its applicability to such instruments. However, grants officers must exercise caution when determining the applicability of some Governmentwide rules that are included in the DoDGARs, because a term may be defined differently in a Governmentwide rule than it is defined elsewhere in the DoDGARs. For example, the Governmentwide implementation of the Drug-Free Workplace Act of 1988 (32 CFR part 25, subpart F) states that it applies to grants, but defines "grants" to include cooperative agreements and other forms of financial assistance.

(c) *Relationship to acquisition regulations.* The Federal Acquisition Regulation (FAR) (48 CFR parts 1–53), the Defense Federal Acquisition Regulation Supplement (DFARS) (48 CFR parts 201–270), and DoD Component supplements to the FAR and DFARS apply to DoD Components' procurement contracts used to acquire goods and services for the direct benefit or use of the Federal Government. Policies and procedures in the FAR and DFARS do not apply to grants, cooperative agreements, or other nonprocurement transactions unless the DoDGARs specify that they apply.

§ 21.115 Compliance and implementation.

The Head of each DoD Component that awards or administers grants and cooperative agreements, or his or her designee:

(a) Is responsible for ensuring compliance with the DoDGARs within that DoD Component.

(b) May authorize the issuance of regulations, procedures, or instructions that are necessary to implement DGARS policies and procedures within the DoD Component, or to supplement the DoDGARs to satisfy needs that are specific to the DoD Component, as long as such regulations, procedures, or instructions do not impose additional costs or administrative burdens on recipients or potential recipients. Heads of DoD Components or their designees shall establish policies and procedures in areas where uniform policies and procedures throughout the DoD Component are required, such as for:

(1) Requesting class deviations from the DoDGARs (see § 21.125) or exemptions from the provisions of 31 U.S.C. 6301 *et seq.*, that govern the appropriate use of contracts, grants, and cooperative agreements (see 32 CFR 22.220).

(2) Designating one or more Grant Appeal Authorities to resolve claims, disputes, and appeals (see 32 CFR 22.815).

(3) Reporting data on assistance awards and programs, as required by 31 U.S.C. chapter 61 (see subpart C of this part).

(4) Prescribing requirements for use and disposition of real property acquired under awards, if the DoD Component makes any awards to institutions of higher education or to other nonprofit organizations under which real property is acquired in whole or in part with Federal funds (see 32 CFR 32.32).

§ 21.120 Publication and maintenance.

(a) The DoDGARs are published as chapter I, subchapter B, title 32 of the Code of Federal Regulations (CFR) and in a separate loose-leaf edition. The loose-leaf edition is divided into parts, subparts, and sections, to parallel the CFR publication. Cross-references within the DoDGARs are stated as CFR citations (e.g., a reference to § 21.115 in part 21 would be to 32 CFR 21.115).

(b) Updates to the DoDGARs are published in the **Federal Register**. When finalized, updates also are published as Defense Grant and Agreement Circulars, with revised pages for the separate, loose-leaf edition.

(c) Revisions to the DoDGARs are recommended to the Director of Defense Research and Engineering (DDR&E) by a standing working group. The DDR&E, Director of Defense Procurement, and each Military Department shall be represented on the working group. Other DoD Components that use grants or cooperative agreements may also nominate representatives. The working group meets when necessary.

§ 21.125 Deviations.

(a) The Head of the DoD Component or his or her designee may authorize individual deviations from the DoDGARs, which are deviations that affect only one grant or cooperative agreement, if such deviations are not prohibited by statute, executive order or regulation.

(b) Class deviations that affect more than one grant or cooperative agreement must be approved in advance by the Director, Defense Research and

Engineering (DDR&E) or his or her designee. Note that OMB concurrence also is required for deviations from two parts of the DoDGARs, 32 CFR parts 32 and 33, in accordance with 32 CFR 32.4 and 33.6, respectively.

(c) Copies of justifications and agency approvals for individual deviations and written requests for class deviations shall be submitted to: Deputy Director, Defense Research and Engineering, ATTN: Research, 3080 Defense Pentagon, Washington DC 20301–3080.

(d) Copies of requests and approvals for individual and class deviations shall be maintained in award files.

§ 21.130 Definitions.

Acquisition. The acquiring (by purchase, lease, or barter) of property or services for the direct benefit or use of the United States Government (see more detailed definition at 48 CFR 2.101). In accordance with 31 U.S.C. 6303, procurement contracts are the appropriate legal instruments for acquiring such property or services.

Assistance. The transfer of a thing of value to a recipient to carry out a public purpose of support or stimulation authorized by a law of the United States (see 31 U.S.C. 6101(3)). Grants and cooperative agreements are examples of legal instruments used to provide assistance.

Contract. See the definition for procurement contract in this section.

Contracting activity. An activity to which the Head of a DoD Component has delegated broad authority regarding acquisition functions, pursuant to 48 CFR 1.601.

Contracting officer. A person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. A more detailed definition of the term appears at 48 CFR 2.101.

Cooperative agreement. A legal instrument which, consistent with 31 U.S.C. 6305, is used to enter into the same kind of relationship as a grant (see definition "grant"), except that substantial involvement is expected between the Department of Defense and the recipient when carrying out the activity contemplated by the cooperative agreement. The term does not include "cooperative research and development agreements" as defined in 15 U.S.C. 3710a.

Deviation. The issuance or use of a policy or procedure that is inconsistent with the DoDGARs.

DoD Components. The Office of the Secretary of Defense, the Military Departments, the Defense Agencies, and DoD Field Activities.

Grant. A legal instrument which, consistent with 31 U.S.C. 6304, is used to enter into a relationship:

(1) The principal purpose of which is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by a law of the United States, rather than to acquire property or services for the Department of Defense's direct benefit or use.

(2) In which substantial involvement is not expected between the Department of Defense and the recipient when carrying out the activity contemplated by the grant.

Grants officer. An official with the authority to enter into, administer, and/or terminate grants or cooperative agreements.

Nonprocurement instrument. A legal instrument other than a procurement contract. Examples include instruments of financial assistance, such as grants or cooperative agreements, and those of technical assistance, which provide services in lieu of money.

Procurement contract. A legal instrument which, consistent with 31 U.S.C. 6303, reflects a relationship between the Federal Government and a State, a local government, or other recipient when the principal purpose of the instrument is to acquire property or services for the direct benefit or use of the Federal Government. See the more detailed definition for contract at 48 CFR 2.101.

Recipient. An organization or other entity receiving a grant or cooperative agreement from a DoD Component.

Subpart B—Authorities and Responsibilities

§ 21.200 Purpose.

This subpart describes the sources and flow of authority to use grants and cooperative agreements, and assigns the broad responsibilities associated with DoD Components' use of such instruments.

§ 21.205 DoD Components' authorities.

(a) In accordance with 31 U.S.C. 6301 *et seq.*, DoD Components shall use grants and cooperative agreements as legal instruments reflecting assistance relationships between the United States Government and recipients.

(b) Unlike the use of a procurement contract (for which Federal agencies have inherent, Constitutional authority), use of a grant or cooperative agreement to carry out a program requires authorizing legislation, the intent of which supports the use of an assistance instrument (e.g., the intent of the legislation authorizing a program supports a judgment that the principal purpose of the program is assistance, rather than acquisition). DoD Components may award grants and cooperative agreements under a number of statutory authorities that fall into three categories:

(1) *Authorities that statutes provide to the Secretary of Defense.* These authorities generally are delegated by the Secretary of Defense to Heads of DoD Components, usually through DoD directives, instructions, or policy memoranda that are not part of the Defense Grant and Agreement Regulatory System. Examples of statutory authorities in this category are:

(i) Authority under 10 U.S.C. 2391 to make grants or conclude cooperative agreements to assist State and local governments in planning and carrying out community adjustments and economic diversification required by changes in military installations or in DoD contracts or spending that may have a direct and significant adverse consequence on the affected community.

(ii) Authority under 10 U.S.C. 2413 to enter into cooperative agreements with entities that furnish procurement technical assistance to businesses.

(2) *Authorities that statutes may provide directly to Heads of DoD Components.* When a statute authorizes the head of a DoD Component to use a grant or cooperative agreement or to carry out a program with a principal purpose of assistance, use of that authority requires no delegation by the Secretary of Defense. For example, 10 U.S.C. 2358 authorizes the Secretaries of the Military Departments, in addition to the Secretary of Defense, to perform research and development projects through grants and cooperative agreements. A Military Department's use of the authority of 10 U.S.C. 2358 therefore requires no delegation by the Secretary of Defense.

(3) *Authorities that arise indirectly as the result of statute.* For example, authority to use a grant or cooperative agreement may result from:

(i) A federal statute authorizing a program that is consistent with an assistance relationship (i.e., the support or stimulation of a public purpose, rather than the acquisition of a good or service for the direct benefit of the Department of Defense). In accordance with 31 U.S.C. chapter 63, such a program would appropriately be carried out through the use of grants or cooperative agreements.

(ii) Exemptions requested by the Department of Defense and granted by the Office of Management and Budget

under 31 U.S.C. 6307, as described in 32 CFR 22.220.

§ 21.210 Vesting and delegation of authority.

(a) The authority and responsibility for awarding grants and cooperative agreements is vested in the Head of each DoD Component that has such authority.

(b) The Head of each such DoD Component, or his or her designee, may delegate to the heads of contracting activities (HCAs) within that Component, authority to award grants or cooperative agreements, to appoint grants officers (see § 21.220(c)), and to broadly manage the DoD Component's functions related to grants and cooperative agreements. An HCA is the same official (or officials) designated as the head of the contracting activity for procurement contracts, as defined at 48 CFR 2.101—the intent is that overall management responsibilities for a DoD Component's functions related to nonprocurement instruments be assigned only to officials that have similar responsibilities for procurement contracts.

§ 21.215 Contracting activities.

When designated by the Head of the DoD Component or his or her designee (see 32 CFR 21.210(b)), the HCA is responsible for the grants and cooperative agreements made by or assigned to that activity. He or she shall supervise and establish internal policies and procedures for that activity's assistance awards.

§ 21.220 Grants officers.

(a) *Authority.* Only grants officers are authorized to sign grants or cooperative agreements, or to administer or terminate such legal instruments on behalf of the Department of Defense. Grants officers may bind the Government only to the extent of the authority delegated to them.

(b) *Responsibilities.* Grants officers should be allowed wide latitude to exercise judgment in performing their responsibilities. Grants officers are responsible for ensuring that:

(1) Individual grants and cooperative agreements are used effectively in the execution of DoD programs, and are awarded and administered in accordance with applicable laws, Executive orders, regulations, and DoD policies.

(2) Sufficient funds are available for obligation.

(3) Recipients of grants and cooperative agreements receive impartial, fair, and equitable treatment.

(c) *Selection, appointment and termination of appointment of grants officers.* Each DoD Component that awards grants or enters into cooperative agreements shall have a formal process (see § 21.210(b)) to select and appoint grants officers and terminate their appointments. DoD Components are not required to maintain a selection process for grants officers separate from the selection process for contracting officers, and written statements of appointment or termination for grants officers may be integrated into the necessary documentation for contracting officers, as appropriate.

(1) *Selection.* In selecting grants officers, appointing officials shall consider the complexity and dollar value of the grants and cooperative agreements to be assigned and judge whether candidates possess the necessary experience, training, education, business acumen, judgment, and knowledge of contracts and assistance instruments to function effectively as grants officers.

(2) *Appointment.* Statements of appointment shall be in writing and shall clearly state the limits of grants officers' authority, other than limits contained in applicable laws or regulations. Information on the limits of a grants officer's authority shall be readily available to the public and agency personnel.

(3) *Termination.* Written statements of termination are required, unless the written statement of appointment provides for automatic termination. No termination shall be retroactive.

Subpart C—Information Reporting on Grants, Cooperative Agreements, and Other Nonprocurement Instruments

§ 21.300 Purpose.

This subpart prescribes policies and procedures for compiling and reporting data related to grants, cooperative agreements, and other nonprocurement instruments subject to information reporting requirements of 31 U.S.C. chapter 61.

§ 21.305 Defense Assistance Awards Data System.

(a) *Purposes of the system.* Data from the Defense Assistance Awards Data System (DAADS) are used to provide:

(1) DoD inputs to meet statutory requirements for Federal Governmentwide reporting of data related to obligations of funds by grant, cooperative agreement, or other nonprocurement instrument.

(2) A basis for meeting Governmentwide requirements to report to the Federal Assistance Awards Data System maintained by the Department of Commerce and for preparing other recurring and special reports to the President, the Congress, the General Accounting Office, and the public.

(3) Information to support policy formulation and implementation and to meet management oversight requirements related to the use of grants, cooperative agreements, and other nonprocurement instruments.

(b) *Responsibilities.* (1) The Deputy Director, Defense Research and Engineering (DDDR&E), or his or her designee, shall issue the manual described in paragraph (b)(2)(ii) of this section.

(2) The Director for Information Operations and Reports, Washington Headquarters Services (DIOR, WHS) shall, consistent with guidance issued by the DDDR&E:

(i) Process DAADS information on a quarterly basis and prepare recurring and special reports using such information.

(ii) Prepare, update, and disseminate "Department of Defense Assistance Awards Data System," an instruction manual for reporting information to DAADS. The manual, which shall be issued by the office of the DDR&E, shall specify procedures, formats, and editing processes to be used by DoD Components, including magnetic tape layout and error correction schedules.

(3) The following offices shall serve as central points for collecting DAADS information from contracting activities within the DoD Components:

(i) For the Army: As directed by the U.S. Army Contracting Support Agency.

(ii) For the Navy: As directed by the Office of Naval Research.

(iii) For the Air Force: As directed by SAF/AQCP.

(iv) For the Office of the Secretary of Defense, Defense Agencies, and DoD Field Activities: Each Defense Agency shall identify a central point for collecting and reporting DAADS information to the DIOR, WHS, at the address given in paragraph (c)(2) of this section. DIOR, WHS shall serve as the central point for offices and activities within the Office of the Secretary of Defense and for DoD Field Activities.

(4) The office that serves, in accordance with paragraph (b)(3) of this section, as the central point for collecting DAADS information from contracting activities within each DoD Component shall:

(i) Establish internal procedures to ensure reporting by contracting activities that use grants, cooperative agreements or other nonprocurement instruments subject to 31 U.S.C. chapter 61.

(ii) Collect information required by DD Form 2566, "DoD Assistance Award

Action Report," from those contracting activities, and report it to DIOR, WHS, in accordance with paragraph (d) of this section.

(iii) Submit to the DDDR&E, at the address given in § 21.125(c), any recommended changes to the DAADS or to the instruction manual described in paragraph (b)(2)(ii) of this section.

(c) *Reporting procedures.* The data required by the DD Form 2566 shall be:

(1) Collected for each individual grant, cooperative agreement, or other nonprocurement action that is subject to 31 U.S.C. chapter 61 and involves the obligation or deobligation of Federal funds. Each action is reported as an obligation under a specific program listed in the Catalog of Federal Domestic Assistance (CFDA, see § 21.310). The program to be shown is the one that provided the funds being obligated (i.e., if a grants officer in one DoD Component obligates appropriations of a second DoD Component's program, the grants officer would show the CFDA program of the second DoD Component on the DD Form 2566).

(2) Reported on a quarterly basis to DIOR, WHS by the offices that are designated pursuant to paragraph (b)(3) of this section. For the first three quarters of the Federal fiscal year, the data are due by close-of-business (COB) on the 15th day after the end of the quarter (i.e., first-quarter data are due by COB on January 15th, second-quarter data by COB April 15th, and third-quarter data by COB July 15th). Fourth-quarter data are due by COB October 25th, the 25th day after the end of the quarter. If any due date falls on a weekend or holiday, the data are due on the next regular workday. The mailing address for DIOR, WHS is 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

(3) Reported on a computer tape, floppy diskette or by other means permitted by the instruction manual described in paragraph (b)(2)(ii) of this section. The data shall be reported in the format specified in the instruction manual.

(d) *Report control symbol.* DoD Components' reporting of DAADS data is used by DoD to satisfy Governmentwide requirements to report to the Federal Assistance Awards Data System, which is assigned Interagency Report Control Number 0252–DOC–QU.

§ 21.310 Catalog of Federal Domestic Assistance.

(a) *Purpose and scope of the reporting requirement.* (1) Under the Federal Program Information Act (31 U.S.C. 6101 *et seq.*), as implemented through OMB Circular A–89,[2] the Department of Defense is required to provide certain information about its domestic assistance programs to OMB and the General Services Administration (GSA). GSA makes this information available to the public by publishing it in the Catalog of Federal Domestic Assistance (CFDA) and maintaining the Federal Assistance Programs Retrieval System, a computerized data base of the information.

(2) The CFDA covers all domestic assistance programs and activities, regardless of the number of awards made under the program, the total dollar value of assistance provided, or the duration. In addition to programs using grants and cooperative agreements, covered programs include those providing assistance in other forms, such as payments in lieu of taxes or indirect assistance resulting from Federal operations.

(b) *Responsibilities.* (1) Each DoD Component that provides domestic financial assistance shall:

(i) Report to the Director for Information Operations and Reports, Washington Headquarters Services (DIOR, WHS) all new programs and changes as they occur, or as DIOR, WHS requests annual updates to existing CFDA information.

(ii) Identify to the DIOR, WHS a point-of-contact who will be responsible for reporting such program information and for responding to inquiries related to it.

(2) The DIOR, WHS shall act as the Department of Defense's single office for collecting, compiling and reporting such program information to OMB and GSA.

§ 21.315 Uniform grants and agreements numbering system.

DoD Components shall assign identifying numbers to all nonprocurement instruments subject to this subpart, including grants and cooperative agreements. The numbering system parallels the procurement instrument identification (PII) numbering system specified in 48 CFR 204.70 (in the "Defense Federal Acquisition Regulation Supplement"), as follows:

(a) The first six alphanumeric characters of the assigned number shall be identical to those specified by 48 CFR 204.7003(a)(1) to identify the DoD Component and contracting activity.

(b) The seventh and eighth positions shall be the last two digits of the fiscal year in which the number is assigned to the grant, cooperative agreement, or other nonprocurement instrument.

(c) The 9th position shall be a number: "1" for grants; "2" for cooperative agreements; and "3" for other nonprocurement instruments.

(d) The 10th through 13th positions shall be the serial number of the instrument. DoD Components and contracting activities need not follow any specific pattern in assigning these numbers and may create multiple series of letters and numbers to meet internal needs for distinguishing between various sets of awards.

3. Part 22 is added to read as follows:

PART 22—DoD GRANTS AND AGREEMENTS—AWARD AND ADMINISTRATION

Subpart A—General

Sec.
22.100 Purpose, relation to other parts, and organization.
22.105 Definitions.

Subpart B—Selecting the Appropriate Instrument

22.200 Purpose.
22.205 Distinguishing assistance from procurement.
22.210 Authority for providing assistance.
22.215 Distinguishing grants and cooperative agreements.
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Subpart C—Competition

22.300 Purpose.
22.305 General policy and requirement for competition.
22.310 Statutes concerning certain research, development, and facilities construction grants.
22.315 Merit-based, competitive procedures.
22.320 Special competitions.
22.325 Historically Black colleges and universities (HBCUs) and other minority institutions (MIs).

Subpart D—Recipient Qualification Matters—General Policies and Procedures

22.400 Purpose.
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22.505 Purpose.
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Subpart F—Award

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22.605 Grants officers' responsibilities.
22.610 Award instruments.

Subpart G—Field Administration

22.700 Purpose.
22.705 Policy.

[2] Contact the Office of Management and Budget, EOP Publications, 725 17th St. N.W., New Executive Office Building, Washington, D.C. 20503.

22.710 Assignment of grants administration offices.
22.715 Grants administration office functions.

Subpart H—Post-Award Administration

22.800 Purpose and relation to other parts.
22.805 Post-award requirements in other parts.
22.810 Payments.
22.815 Claims, disputes, and appeals.
22.820 Debt collection.
22.825 Closeout audits.
Appendix A to Part 22—Proposal Provision for Required Certifications.
Appendix B to Part 22—Suggested Award Provisions for National Policy Requirements That Often Apply.
Appendix C to Part 22—Administrative Requirements and Issues To Be Addressed in Award Terms and Conditions.

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

Subpart A—General

§ 22.100 Purpose, relation to other parts, and organization.

(a) This part outlines grants officers' and DoD Components' responsibilities related to the award and administration of grants and cooperative agreements.

(b) In doing so, it also supplements other parts of the DoD Grant and Agreement Regulations (DoDGARs) that are either Governmentwide rules or DoD implementation of Governmentwide guidance in Office of Management and Budget (OMB) Circulars. Those other parts of the DoDGARs, which are referenced as appropriate in this part, are:

(1) Governmentwide rules on debarment, suspension and drug-free workplace requirements, in 32 CFR part 25.

(2) The Governmentwide rule on lobbying restrictions, in 32 CFR part 28.

(3) Administrative requirements for grants and agreements awarded to specific types of recipients:

(i) For State and local governmental organizations, in the Governmentwide rule at 32 CFR part 33.

(ii) For institutions of higher education and other nonprofit organizations, at 32 CFR part 32.

(iii) For for-profit organizations, at 32 CFR part 34.

(c) The organization of this part parallels the award and administration process, from pre-award through post-award matters. It therefore is organized in the same manner as the parts of the DoDGARs (32 CFR parts 32, 33, and 34) that prescribe administrative requirements for specific types of recipients.

§ 22.105 Definitions.

Other than the terms defined in this section, terms used in this part are defined in 32 CFR 21.130.

Administrative offset. An action whereby money payable by the United States Government to, or held by the Government for, a recipient is withheld to satisfy a delinquent debt the recipient owes the Government.

Advanced research. Advanced technology development that creates new technology or demonstrates the viability of applying existing technology to new products and processes in a general way. Advanced research is most closely analogous to precompetitive technology development in the commercial sector (i.e., early phases of research and development on which commercial competitors are willing to collaborate, because the work is not so coupled to specific products and processes that the results of the work must be proprietary). It does not include development of military systems and hardware where specific requirements have been defined. It is typically funded in Advanced Technology Development (Budget Activity 3 and Research Category 6.3A) programs within Research, Development, Test and Evaluation (RDT&E).

Applied research. Efforts that attempt to determine and exploit the potential of scientific discoveries or improvements in technology such as new materials, devices, methods and processes. It typically is funded in Applied Research (Budget Activity 2 and Research Category 6.2) programs within Research, Development, Test and Evaluation (RDT&E). Applied research normally follows basic research but may not be fully distinguishable from the related basic research. The term does not include efforts whose principal aim is the design, development, or testing of specific products, systems or processes to be considered for sale or acquisition; these efforts are within the definition of "development."

Basic research. Efforts directed toward increasing knowledge and understanding in science and engineering, rather than the practical application of that knowledge and understanding. It typically is funded within Basic Research (Budget Activity 1 and Research Category 6.1) programs within Research, Development, Test and Evaluation (RDT&E). For the purposes of this part, basic research includes:

(1) Research-related, science and engineering education, including graduate fellowships and research traineeships.

(2) Research instrumentation and other activities designed to enhance the infrastructure for science and engineering research.

Claim. A written demand or written assertion by one of the parties to a grant or cooperative agreement seeking as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of award terms, or other relief arising under or relating to a grant or cooperative agreement. A routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim by written notice to the grants officer if it is disputed either as to liability or amount, or is not acted upon in a reasonable time.

Debt. Any amount of money or any property owed to a Federal Agency by any person, organization, or entity except another United States Federal Agency. Debts include any amounts due from insured or guaranteed loans, fees, leases, rents, royalties, services, sales of real or personal property, or overpayments, penalties, damages, interest, fines and forfeitures, and all other claims and similar sources. Amounts due a nonappropriated fund instrumentality are not debts owed the United States, for the purposes of this subchapter.

Delinquent debt. A debt:

(1) That the debtor fails to pay by the date specified in the initial written notice from the agency owed the debt, normally within 30 calendar days, unless the debtor makes satisfactory payment arrangements with the agency by that date; and

(2) With respect to which the debtor has elected not to exercise any available appeals or has exhausted all agency appeal processes.

Development. The systematic use of scientific and technical knowledge in the design, development, testing, or evaluation of potential new products, processes, or services to meet specific performance requirements or objectives. It includes the functions of design engineering, prototyping, and engineering testing.

Electronic commerce. The conduct of business through the use of automation and electronic media, in lieu of paper transactions, direct personal contact, telephone, or other means. For grants and cooperative agreements, electronic commerce can include the use of electronic data interchange, electronic mail, electronic bulletin board systems, and electronic funds transfer for: program announcements or solicitations; applications or proposals; award documents; recipients' requests for payment; payment authorizations; and payments.

Electronic data interchange. The exchange of standardized information communicated electronically between business partners, typically between computers. It is DoD policy that DoD Component EDI applications conform to the American National Standards Institute (ANSI), Accredited Standards Committee (ASC) X–12 standard.[1]

Electronic funds transfer. A system that provides the authority to debit or credit accounts in financial institutions by electronic means rather than source documents (e.g., paper checks). Processing typically occurs through the Federal Reserve System and/or the Automated Clearing House (ACH) computer network. It is DoD policy that DoD Component EFT transmissions conform to the American National Standards Institute (ANSI), Accredited Standards Committee (ASC) X–12 standard.

Historically Black colleges and universities. Institutions of higher education determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. Each DoD Component's contracting activities and grants officers may obtain a list of historically Black colleges and universities from that DoD Component's Small and Disadvantaged Business Utilization office.

Institution of higher education. An educational institution that meets the criteria in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)). Note, however, that institution of higher education has a different meaning in § 22.520, as given at § 22.520(b)(2).

Minority institutions. Institutions of higher education that meet the criteria for *minority institutions* specified in 10 U.S.C. 2323. Each DoD Component's contracting activities and grants officers may obtain copies of a current list of institutions that qualify as *minority institutions* under 10 U.S.C. 2323 from that DoD Component's Small and Disadvantaged Business Utilization office (the list of *minority institutions* changes periodically, based on Department of Education data on institutions' enrollments of minority students).

Research. Basic, applied, and advanced research, as defined in this section.

Subaward. An award of financial assistance in the form of money, or property in lieu of money, made under a DoD grant or cooperative agreement by a recipient to an eligible subrecipient. The term includes financial assistance for substantive program performance by the subrecipient of a portion of the program for which the DoD grant or cooperative agreement was made. It does not include the recipient's procurement of goods and services needed to carry out the program.

[1] Available from Accredited Standards Committee, X–12 Secretariat, Data Interchange Standards Association, 1800 Diagonal Road, Suite 355, Alexandria, VA 22314–2852; Attention: Manager Maintenance and Publications.

Subpart B—Selecting the Appropriate Instrument

§ 22.200 Purpose.

This subpart provides the bases for determining the appropriate type of instrument in a given situation.

§ 22.205 Distinguishing assistance from procurement.

Before using a grant or cooperative agreement, the grants officer shall make a positive judgment that an assistance instrument, rather than a procurement contract, is the appropriate instrument, based on the following:

(a) *Purpose.* (1) The grants officer must judge that the principal purpose of the activity to be carried out under the instrument is to stimulate or support a public purpose (i.e., to provide assistance), rather than acquisition (i.e., to acquire goods and services for the direct benefit of the United States Government). If the principal purpose is acquisition, then the grants officer shall judge that a procurement contract is the appropriate instrument, in accordance with 31 U.S.C. chapter 63 ("Using Procurement Contracts and Grant and Cooperative Agreements"). Assistance instruments shall not be used in such situations, except:

(i) When a statute specifically provides otherwise; or

(ii) When an exemption is granted, in accordance with § 22.220.

(2) For research and development, the appropriate use of grants and cooperative agreements therefore is almost exclusively limited to the performance of selected basic, applied, and advanced research projects. Development projects nearly always shall be performed by contract or other acquisition transaction because their principal purpose is the acquisition of specific deliverable items (e.g., prototypes or other hardware) for the benefit of the Department of Defense.

(b) *Fee or profit.* Payment of fee or profit is consistent with an activity whose principal purpose is the acquisition of goods and services for the direct benefit or use of the United States Government, rather than an activity whose principal purpose is assistance. Therefore, the grants officer shall use a procurement contract, rather than an assistance instrument, in all cases where:

(1) Fee or profit is to be paid to the recipient of the instrument; or

(2) The instrument is to be used to carry out a program where fee or profit is necessary to achieving program objectives.

§ 22.210 Authority for providing assistance.

(a) Before a grant or cooperative agreement may be used, the grants officer must:

(1) Identify the program statute, the statute that authorizes the DoD Component to carry out the activity the principal purpose of which is assistance (see 32 CFR 21.205(b)).

(2) Review the program statute to determine if it contains requirements that affect the:

(i) Solicitation, selection, and award processes. For example, program statutes may authorize assistance to be provided only to certain types of recipients; may require that recipients meet certain other criteria to be eligible to receive assistance; or require that a specific process shall be used to review recipients' proposals.

(ii) Terms and conditions of the award. For example, some program statutes require a specific level of cost sharing or matching.

(b) The grants officer shall ensure that the award of DoD appropriations through a grant or cooperative agreement for a research project meets the standards of 10 U.S.C. 2358, DoD's broad authority to carry out research, even if the research project is authorized under a statutory authority other than 10 U.S.C. 2358. The standards of 10 U.S.C. 2358 are that, in the opinion of the Head of the DoD Component or his or her designee, the projects must be:

(1) Necessary to the responsibilities of the DoD Component.

(2) Related to weapons systems and other military needs or of potential interest to the DoD Component.

§ 22.215 Distinguishing grants and cooperative agreements.

(a) Once a grants officer judges, in accordance with §§ 22.205 and 22.210, that either a grant or cooperative agreement is the appropriate instrument, the grants officer shall distinguish between the two instruments as follows:

(1) Grants shall be used when the grants officer judges that substantial involvement is not expected between the Department of Defense and the recipient when carrying out the activity contemplated in the agreement.

(2) Cooperative agreements shall be used when the grants officer judges that substantial involvement is expected.

The grants officer should document the nature of the substantial involvement that led to selection of a cooperative agreement. Under no circumstances are cooperative agreements to be used solely to obtain the stricter controls typical of a contract.

(b) In judging whether substantial involvement is expected, grants officers should recognize that "substantial involvement" is a relative, rather than an absolute, concept, and that it is primarily based on programmatic factors, rather than requirements for grant or cooperative agreement award or administration. For example, substantial involvement may include collaboration, participation, or intervention in the program or activity to be performed under the award.

§ 22.220 Exemptions.

Under 31 U.S.C. 6307, "the Director of the Office of Management and Budget may exempt an agency transaction or program" from the requirements of 31 U.S.C. chapter 63. Grants officers shall request such exemptions only in exceptional circumstances. Each request shall specify for which individual transaction or program the exemption is sought; the reasons for requesting an exemption; the anticipated consequences if the exemption is not granted; and the implications for other agency transactions and programs if the exemption is granted. The procedures for requesting exemptions shall be:

(a) In cases where 31 U.S.C. chapter 63 would require use of a contract and an exemption from that requirement is desired:

(1) The grants officer shall submit a request for exemption, through appropriate channels established by his or her DoD Component (see 32 CFR 21.115(b)(1)), to the Director of Defense Procurement (DDP).

(2) The DDP, after coordination with the Director of Defense Research and Engineering (DDR&E), shall transmit the request to OMB or notify the DoD Component that the request has been disapproved.

(b) In other cases, the DoD Component shall submit a request for the exemption through appropriate channels to the DDR&E. The DDR&E shall transmit the request to OMB or notify the DoD Component that the request has been disapproved.

(c) Where an exemption is granted, documentation of the approval shall be maintained in the award file.

Subpart C—Competition

§ 22.300 Purpose.

This subpart establishes DoD policy and implements statutes related to the use of competitive procedures in the award of grants and cooperative agreements.

§ 22.305 General policy and requirement for competition.

(a) It is DoD policy to maximize use of competition in the award of grants and cooperative agreements. This also conforms with:

(1) 31 U.S.C. 6301(3), which encourages the use of competition in awarding all grants and cooperative agreements.

(2) 10 U.S.C. 2374(a), which sets out Congressional policy that any new grant for research, development, test, or evaluation be awarded through merit-based selection procedures.

(b) Grants officers shall use merit-based, competitive procedures (as defined by § 22.315) to award grants and cooperative agreements:

(1) In every case where required by statute (e.g., 10 U.S.C. 2361, as implemented in § 22.310, for certain grants to institutions of higher education).

(2) To the maximum extent practicable in all cases where not required by statute.

§ 22.310 Statutes concerning certain research, development, and facilities construction grants.

(a) *Definitions specific to this section.* For the purposes of implementing the requirements of 10 U.S.C. 2374 in this section, the following terms are defined:

(1) *Follow-on grant.* A grant that provides for continuation of research and development performed by a recipient under a preceding grant. Note that follow-on grants are distinct from incremental funding actions during the period of execution of a multi-year award.

(2) *New grant.* A grant that is not a follow-on grant.

(b) *Statutory requirement to use competitive procedures.* (1) A grants officer shall not award a grant by other than merit-based, competitive procedures (as defined by § 22.315) to an institution of higher education for the performance of research and development or for the construction of research or other facilities, unless:

(i) In the case of a new grant for research and development, there is a statute meeting the criteria in paragraph (c)(1) of this section;

(ii) In the case of a follow-on grant for research and development, or of a grant for the construction of research or other facilities, there is a statute meeting the criteria in paragraph (c)(2) of this section; and

(iii) The Secretary of Defense submits to Congress a written notice of intent to make the grant. The grant may not be awarded until 180 calendar days have elapsed after the date on which Congress received the notice of intent. Contracting activities must submit a draft notice of intent with supporting documentation through channels to the Deputy Director, Defense Research and Engineering.

(2) Because subsequently enacted statutes may, by their terms, impose different requirements than set out in paragraph (b)(1) of this section, grants officers shall consult legal counsel on a case-by-case basis, when grants for the performance of research and development or for the construction of research or other facilities are to be awarded to institutions of higher education by other than merit-based competitive procedures.

(c) *Subsequent statutes.* In accordance with 10 U.S.C. 2361 and 10 U.S.C. 2374, a provision of law may not be construed as requiring the award of a grant through other than the merit-based, competitive procedures described in § 22.315, unless:

(1) *Institutions of higher education—new grants for research and development.* In the case of a new grant for research and development to an institution of higher education, such provision of law specifically:

(i) Identifies the particular institution of higher education involved;

(ii) States that such provision of law modifies or supersedes the provisions of 10 U.S.C. 2361 (a requirement that applies only if the statute authorizing or requiring award by other than competitive procedures was enacted after September 30, 1989); and

(iii) States that the award to the institution of higher education involved is required by such provision of law to be made in contravention of the policy set forth in 10 U.S.C. 2374(a).

(2) *Institutions of higher education—follow-on grants for research and development and grants for the construction of any research or other facility.* In the case of any such grant to an institution of higher education, such provision of law specifically:

(i) Identifies the particular institution of higher education involved; and

(ii) States that such provision of law modifies or supersedes the provisions of 10 U.S.C. 2361 (a requirement that applies only if the statute authorizing or requiring award by other than competitive procedures was enacted after September 30, 1989).

(3) *Other entities—new grants for research and development*—(i) *General.* In the case of a new grant for research and development to an entity other than

an institution of higher education, such provision of law specifically:

(A) Identifies the particular entity involved;

(B) States that the award to that entity is required by such provision of law to be made in contravention of the policy set forth in 10 U.S.C. 2374(a).

(ii) *Exception*. The requirement of paragraph (c)(3)(i) of this section does not apply to any grant that calls upon the National Academy of Sciences to:

(A) Investigate, examine, or experiment upon any subject of science or art of significance to the Department of Defense or any Military Department; and

(B) Report on such matters to the Congress or any agency of the Federal Government.

§ 22.315 Merit-based, competitive procedures.

Competitive procedures are methods that encourage participation in DoD programs by a broad base of the most highly qualified performers. These procedures are characterized by competition among as many eligible proposers as possible, with a published or widely disseminated notice. Competitive procedures include, as a minimum:

(a) Notice to prospective proposers. The notice may be a notice of funding availability or Broad Agency Announcement published in the **Federal Register** or Commerce Business Daily, respectively, or a notice that is made available broadly by electronic means. Alternatively, it may take the form of a specific notice that is distributed to eligible proposers (a specific notice must be distributed to at least two eligible proposers to be considered as part of a competitive procedure). Notices must include, as a minimum, the following information:

(1) Programmatic area(s) of interest, in which proposals or applications are sought.

(2) Eligibility criteria for potential recipients (see subpart D of this part).

(3) Criteria that will be used to select the applications or proposals that will be funded, and the method for conducting the evaluation.

(4) The type(s) of funding instruments (e.g., grants, cooperative agreements, other assistance instruments, or procurement contracts) that are anticipated to be awarded pursuant to the announcement.

(5) Instructions for preparation and submission of a proposal or application, including the time by which it must be submitted.

(b) At least two eligible, prospective proposers.

(c) Impartial review of the merits of applications or proposals received in response to the notice, using the evaluation method and selection criteria described in the notice. For research and development awards, in order to be considered as part of a competitive procedure, the two principal selection criteria, unless statute provides otherwise, must be the:

(1) Technical merits of the proposed research and development; and

(2) Potential relationship of the proposed research and development to Department of Defense missions.

§ 22.320 Special competitions.

Some programs may be competed for programmatic or policy reasons among specific classes of potential recipients. An example would be a program to enhance U.S. capabilities for academic research and research-coupled graduate education in defense-critical, science and engineering disciplines, a program that would be competed specifically among institutions of higher education. All such special competitions shall be consistent with program representations in the President's budget submission to Congress and with subsequent Congressional authorizations and appropriations for the programs.

§ 22.325 Historically Black colleges and universities (HBCUs) and other minority institutions (MIs).

Increasing the ability of HBCUs and MIs to participate in federally funded, university programs is an objective of Executive Order 12876 (3 CFR, 1993 Comp., p. 671) and 10 U.S.C. 2323. Grants officers shall include appropriate provisions in Broad Agency Announcements (BAAs) or other announcements for programs in which awards to institutions of higher education are anticipated, in order to promote participation of HBCUs and MIs in such programs. Also, whenever practicable, grants officers shall reserve appropriate programmatic areas for exclusive competition among HBCUs and MIs when preparing announcements for such programs.

Subpart D—Recipient Qualification Matters—General Policies and Procedures

§ 22.400 Purpose.

The purpose of this subpart is to specify policies and procedures for grants officers' determination of recipient qualifications prior to award.

§ 22.405 Policy.

(a) *General*. Grants officers normally shall award grants or cooperative agreements only to qualified recipients that meet the standards in § 22.415. This practice conforms with the Governmentwide policy, stated at 32 CFR 25.115(a), to do business only with responsible persons.

(b) *Exception*. In exceptional circumstances, grants officers may make awards to recipients that do not fully meet the standards in § 22.415 and include special award conditions that are appropriate to the particular situation, in accordance with 32 CFR 32.14, 33.12, or 34.4.

§ 22.410 Grants officers' responsibilities.

The grants officer is responsible for determining a recipient's qualification prior to award. The grants officer's signature on the award document shall signify his or her determination that either:

(a) The potential recipient meets the standards in § 22.415 and is qualified to receive the grant or cooperative agreement; or

(b) An award is justified to a recipient that does not fully meet the standards, pursuant to § 22.405(b). In such cases, grants officers shall document in the award file the rationale for making an award to a recipient that does not fully meet the standards.

§ 22.415 Standards.

To be qualified, a potential recipient must:

(a) Have the management capability and adequate financial and technical resources, given those that would be made available through the grant or cooperative agreement, to execute the program of activities envisioned under the grant or cooperative agreement.

(b) Have a satisfactory record of executing such programs or activities (if a prior recipient of an award).

(c) Have a satisfactory record of integrity and business ethics.

(d) Be otherwise qualified and eligible to receive a grant or cooperative agreement under applicable laws and regulations (see § 22.420(c)).

§ 22.420 Pre-award procedures.

(a) The appropriate method to be used and amount of effort to be expended in deciding the qualification of a potential recipient will vary. In deciding on the method and level of effort, the grants officer should consider factors such as:

(1) DoD's past experience with the recipient;

(2) Whether the recipient has previously received cost-type contracts, grants, or cooperative agreements from the Federal Government; and

(3) The amount of the prospective award and complexity of the project to be carried out under the award.

(b) There is no DoD-wide requirement to obtain a pre-award credit report, audit, or any other specific piece of information. On a case-by-case basis, the grants officer will decide whether there is a need to obtain any such information to assist in deciding whether the recipient meets the standards in § 22.415 (a), (b), and (c).

(1) Should the grants officer in a particular case decide that a pre-award credit report, audit, or survey is needed, he or she should consult first with the appropriate grants administration office (identified in § 22.710), and decide whether pre-existing surveys or audits of the recipient, such as those of the recipient's internal control systems under OMB Circular A–133 [2] will satisfy the need (see § 22.715(a)(1)).

(2) If, after consulting with the grants administration office, the grants officer decides to obtain a credit report, audit, or other information, and the report or other information discloses that a potential recipient is delinquent on a debt to an agency of the United States Government, then:

(i) The grants officer shall take such information into account when determining whether the potential recipient is qualified with respect to the grant or cooperative agreement; and

(ii) If the grants officer decides to make the award to the recipient, unless there are compelling reasons to do otherwise, the grants officer shall delay the award of the grant or cooperative agreement until payment is made or satisfactory arrangements are made to repay the debt.

(c) In deciding whether a recipient is otherwise qualified and eligible in accordance with the standard in § 22.415(d), the grants officer shall ensure that the potential recipient:

(1) Is not identified on the Governmentwide "List of Parties Excluded from Federal Procurement and Nonprocurement Programs" as being debarred, suspended, or otherwise ineligible to receive the award. The grants officer shall check the list of such parties for:

(i) Potential recipients of prime awards, as described at 32 CFR 25.505(d);

(ii) A recipient's principals (e.g., officers, directors, or other key employees, as defined at 32 CFR 25.105); and

(iii) Potential recipients of subawards, where DoD Component approval of such principals or lower-tier recipients is required under the terms of the award (see 32 CFR 25.505(e)).

(2) Has provided all certifications and assurances required by Federal statute, Executive order, or codified regulation, unless they are to be addressed in award terms and conditions at the time of award (see § 22.510).

(3) Meets any eligibility criteria that may be specified in the statute authorizing the specific program under which the award is being made (see § 22.210(a)(2)).

(d) Grants officers shall obtain each recipient's Taxpayer Identification Number (TIN, which may be the Social Security Number for an individual and Employer Identification Number for a business or non-profit entity) and notify the recipient that the TIN is being obtained for purposes of collecting and reporting on any delinquent amounts that may arise out of the recipient's relationship with the Government. Obtaining the TIN and so notifying the recipient is a statutory requirement of 31 U.S.C. 7701, as amended by the Debt Collection Improvement Act of 1996 (section 31001(i)(1), Pub. L. 104–134).

Subpart E—National Policy Matters

§ 22.505 Purpose.

The purpose of this subpart is to supplement other regulations that implement national policy requirements, to the extent that it is necessary to provide additional guidance to DoD grants officers. The other regulations that implement national policy requirements include:

(a) The other parts of the DoDGARs (32 CFR parts 32, 33, and 34) that implement the Governmentwide guidance in OMB Circulars A–102 [3] and A–110 [4] on administrative requirements for grants and cooperative agreements. Those parts address some national policy matters that appear in the OMB Circulars.

(b) DoD regulations other than the DoDGARs.

(c) Other Federal agencies' regulations.

§ 22.510 Certifications, representations, and assurances.

(a) *Certifications*—(1) *Policy.* Certifications of compliance with national policy requirements are to be obtained from recipients only for those national policies where a statute, Executive order, or codified regulation specifically states that a certification is required. Other national policy requirements may be addressed by obtaining representations or assurances (see paragraph (b) of this section). Grants officers should utilize methods for obtaining certifications, in accordance with Executive Order 12866 (3 CFR, 1993 Comp., p. 638), that minimize administration and paperwork.

(2) *Procedures.* (i) When necessary, grants officers may obtain individual, written certifications.

(ii) Whenever possible, and to the extent consistent with statute and codified regulation, grants officers should identify the certifications that are required for the particular type of recipient and program, and consolidate them into a single certification provision that cites them by reference.

(A) Appendix A to this part lists the common certifications and cites their applicability. Because some certifications (e.g., the certification on lobbying in Appendix A to this part) are required by law to be submitted at the time of proposal, rather than at the time of award, Appendix A to this part includes language that may be used for incorporating common certifications by reference into a proposal.

(B) If a grants officer elects to have proposers incorporate certifications by reference into their proposals, he or she must do so in one of the two following ways. When required by statute or codified regulation, the solicitation must include the full text of the certifications that proposers are to provide by reference. In other cases, the grants officer may include language in the solicitation that informs the proposers where the full text may be found (e.g., in documents or computer network sites that are readily available to the public) and offers to provide it to proposers upon request.

(C) Grants officers may incorporate certifications by reference in award documents when doing so is consistent with statute and codified regulation. Note that a statute requires submission of the lobbying certification in Appendix A to this part at the time of proposal, and that 32 CFR 25.510(a) requires submission of certifications regarding debarment and suspension at the time of proposal. The provision that a grants officer would use to incorporate certifications in award documents, when consistent with statute and codified regulation, would be similar to the provision in Appendix A to this part, except that it would be modified to state that the recipient is providing the required certifications by signing the award document or by accepting funds under the award.

(b) *Representations and assurances.* Many national policies, either in statute or in regulation, require recipients of grants and cooperative agreements to make representations or provide

[2] Contact the Office of Management and Budget, EOP Publications, 725 17th St. NW, New Executive Office Building, Washington, DC 20503.

[3] See footnote 2 to § 22.420(b)(1).

[4] See footnote 2 to § 22.420(b)(1).

assurances (rather than certifications) that they are in compliance with the policies. As discussed in § 22.610(b), Appendix B to this part suggests award terms and conditions that may be used to address several of the more commonly applicable national policy requirements. These terms and conditions may be used to obtain required assurances and representations, if the grants officer wishes to do so at the time of award, rather than through the use of the standard application form (SF–424 [5]) or other means at the time of proposal.

§ 22.515 Provisions of annual appropriations acts.

An annual appropriations act can include general provisions stating national policy requirements that apply to the use of funds (e.g., obligation through a grant or cooperative agreement) appropriated by the act. Because these requirements are of limited duration (the period during which a given year's appropriations are available for obligation), and because they can vary from year to year and from one agency's appropriations act to another agency's, the grants officer must know the agency(ies) and fiscal year(s) of the appropriations being obligated by a given grant or cooperative agreement, and may need to consult legal counsel if he or she does not know the requirements applicable to those appropriations.

§ 22.520 Military recruiting on campus.

(a) *Purpose.* The purpose of this section is to implement section 558 of the National Defense Authorization Act for Fiscal Year 1995 (Pub. L. 103–337), as it specifically affects grants and cooperative agreements (note that section 558 appears as a note to 10 U.S.C. 503). This section thereby supplements DoD's primary implementation of section 558, in 32 CFR part 216, "Military Recruiting and Reserve Officer Training Corps Program Access to Institutions of Higher Education."

(b) *Definitions specific to this section.* In this section:

(1) *Directory information* has the following meaning, given in section 558(c) of Pub. L. 103–337. It means, with respect to a student, the student's name, address, telephone listing, date and place of birth, level of education, degrees received, and the most recent previous educational institution enrolled in by the student.

(2) *Institution of higher education* has a different meaning in this section than it does in the rest of this part. The meaning of the term in other sections of this part is given at § 22.105. In this section, "institution of higher education" (IHE) has the following meaning, given at 32 CFR 216.3. The term means a domestic college, university, or subelement thereof providing postsecondary school courses of study, including foreign campuses of such domestic institutions. The term includes junior colleges, community colleges, and institutions providing courses leading to undergraduate and post-graduate degrees. The term does not include entities that operate exclusively outside the United States, its territories, and possessions. A subelement of an IHE is a discrete (although not necessarily autonomous) organizational entity that may establish policy or practices affecting military recruiting and related actions (e.g., an undergraduate school, law school, medical school, or other graduate school).

(c) *Statutory requirement.* No funds available to the Department of Defense may be provided by grant to any institution of higher education that either has a policy of denying or that effectively prevents the Secretary of Defense from obtaining, for military recruiting purposes, entry to campuses or access to students on campuses or access to directory information pertaining to students.

(d) *Policy.*—(1) *Applicability to subordinate elements of institutions of higher education.* 32 CFR part 216, DoD's primary implementation of section 558, establishes procedures by which the Department of Defense identifies institutions of higher education that have a policy or practice described in paragraph (c) of this section. In cases where those procedures lead to a determination that specific subordinate elements of an institution of higher education have such a policy or practice, rather than the institution as a whole, 32 CFR part 216 provides that the prohibition on use of DoD funds applies only to those subordinate elements.

(2) *Applicability to cooperative agreements.* As a matter of DoD policy, the restrictions of section 558, as implemented by 32 CFR part 216, apply to cooperative agreements, as well as grants.

(3) *Deviations.* Grants officers may not deviate from any provision of this section without obtaining the prior approval of the Director of Defense Research and Engineering. Requests for deviations shall be submitted, through appropriate channels, to: Director for Research, ODDR&E(R), 3080 Defense Pentagon, Washington, DC 20301–3080.

(e) *Grants officers' responsibilities.* A grants officer shall:

(1) Not award any grant or cooperative agreement to an institution of higher education that has been identified pursuant to the procedures of 32 CFR part 216. Such institutions are identified on the Governmentwide "List of Parties Excluded from Federal Procurement and Nonprocurement Programs," as being ineligible to receive awards of DoD funds (note that 32 CFR 25.505(d) requires the grants officer to check the list prior to determining that a recipient is qualified to receive an award).

(2) [Reserved].

(3) Not consent to any subaward of DoD funds to such an organization, under a grant or cooperative agreement to any recipient, if such subaward requires the grants officer's consent.

(4) Include the clause in paragraph (f) of this section in each grant or cooperative agreement with an institution of higher education. Note that this requirement does not flow down (i.e., recipients are not required to include the clause in subawards).

(5) If an institution of higher education refuses to accept the clause in paragraph (f) of this section:

(i) Determine that the institution is not qualified with respect to the award. The grants officer may award to an alternative recipient.

(ii) Transmit the name of the institution, through appropriate channels, to the Director for Accession Policy, Office of the Assistant Secretary of Defense for Force Management Policy, OASD(FMP), 4000 Defense Pentagon, Washington, DC 20301–4000. This will allow OASD(FMP) to decide whether to initiate an evaluation of the institution under 32 CFR part 216, to determine whether it is an institution that has a policy or practice described in paragraph (c) of this section.

(f) *Clause for award documents.* The following clause is to be included in grants and cooperative agreements with institutions of higher education:

"As a condition for receipt of funds available to the Department of Defense (DoD) under this award, the recipient agrees that it is not an institution of higher education (as defined in 32 CFR part 216) that has a policy of denying, and that it is not an institution of higher education that effectively prevents, the Secretary of Defense from obtaining for

[5] For copies of Standard Forms listed in this part, contact regional grants administration offices of the Office of Naval Research. Addresses for the offices are listed in the "DoD Directory of Contract Administration Services Components," DLAH 4105.4, which can be obtained either from: Defense Logistics Agency, Publications Distribution Division (DASC–WDM), 8725 John J. Kingman Rd., Suite 0119, Fort Belvoir, VA 22060–6220; or from the Defense Contract Management Command home page at http://www.dcmc.dcrb.dla.mil."

military recruiting purposes: (A) Entry to campuses or access to students on campuses; or (B) access to directory information pertaining to students. If the recipient is determined, using the procedures in 32 CFR part 216, to be such an institution of higher education during the period of performance of this agreement, and therefore to be in breach of this clause, the Government will cease all payments of DoD funds under this agreement and all other DoD grants and cooperative agreements to the recipient, and it may suspend or terminate such grants and agreements unilaterally for material failure to comply with the terms and conditions of award."

§ 22.525 Paperwork Reduction Act.

Grants officers shall include appropriate award terms or conditions, if a recipient's activities under an award will be subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3500, et seq.):

(a) Generally, the Act only applies to Federal agencies—it requires agencies to obtain clearance from the Office of Management and Budget before collecting information using forms, schedules, questionnaires, or other methods calling either for answers to:

(1) Identical questions from ten or more persons other than agencies, instrumentalities, or employees of the United States.

(2) Questions from agencies, instrumentalities, or employees of the United States which are to be used for statistical compilations of general public interest.

(b) The Act applies to similar collections of information by recipients of grants or cooperative agreements only when:

(1) A recipient collects information at the specific request of the awarding Federal agency; or

(2) The terms and conditions of the award require specific approval by the agency of the information collection or the collection procedures.

§ 22.530 Metric system of measurement.

(a) *Statutory requirement*. The Metric Conversion Act of 1975, as amended by the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 205) and implemented by Executive Order 12770 (3 CFR, 1991 Comp., p. 343), states that:

(1) The metric system is the preferred measurement system for U.S. trade and commerce.

(2) The metric system of measurement will be used, to the extent economically feasible, in federal agencies' procurements, grants, and other business-related activities.

(3) Metric implementation shall not be required to the extent that such use is likely to cause significant inefficiencies or loss of markets to United States firms.

(b) *Responsibilities*. DoD Components shall ensure that the metric system is used, to the maximum extent practicable, in measurement-sensitive activities supported by programs that use grants and cooperative agreements, and in measurement-sensitive outputs of such programs.

Subpart F—Award

§ 22.600 Purpose.

This subpart sets forth grants officers' responsibilities relating to the award document and other actions at the time of award.

§ 22.605 Grants officers' responsibilities.

At the time of award, the grants officer is responsible for ensuring that:

(a) The award instrument contains the appropriate terms and conditions, in accordance with § 22.610.

(b) Information about the award is provided to the office responsible for preparing reports for the Defense Assistance Award Data System (DAADS), to ensure timely and accurate reporting of data required by 31 U.S.C. 6101–6106 (see 32 CFR part 21, subpart C).

(c)(1) In addition to the copy of the award document provided to the recipient, a copy is forwarded to the office designated to administer the grant or cooperative agreement, and another copy is forwarded to the finance and accounting office designated to make the payments to the recipient.

(2) For any award subject to the electronic funds transfer (EFT) requirement described in § 22.810(b)(2), the grants officer shall include a prominent notification of that fact on the first page of the copies forwarded to the recipient, the administrative grants officer, and the finance and accounting office. On the first page of the copy forwarded to the recipient, the grants officer also shall include a prominent notification that the recipient, to be paid, must submit a Payment Information Form (Standard Form SF–3881[6]) to the responsible DoD payment office, if that payment office does not currently have the information (e.g., bank name and account number) needed to pay the recipient by EFT.

§ 22.610 Award instruments.

(a) Each award document shall include terms and conditions that:

(1) Address programmatic requirements (e.g., a statement of work or other appropriate terms or conditions that describe the specific goals and objectives of the project). The grants officer shall develop such terms and conditions in coordination with program officials.

(2) Provide for the recipient's compliance with:

(i) Pertinent Federal statutes or Executive orders that apply broadly to Federal or DoD assistance awards.

(ii) Any program-specific requirements that are prescribed in the program statute (see § 22.210(a)(2)), or appropriation-specific requirements that are stated in the pertinent Congressional appropriations (see § 22.515).

(iii) Pertinent portions of the DoDGARs or other Federal regulations, including those that implement the Federal statutes or Executive orders described in paragraphs (a)(2) (i) and (ii) of this section.

(3) Specify the grants officer's instructions for post-award administration, for any matter where the post-award administration provisions in 32 CFR part 32, 33, or 34 give the grants officer options for handling the matter. For example, under 32 CFR 32.24(b), the grants officers must choose among possible methods for the recipient's disposition of program income. It is essential that the grants officer identify the option selected in each case, to provide clear instructions to the recipient and the grants officer responsible for post-award administration of the grant or cooperative agreement.

(b) To assist grants officers:

(1) Appendix B to this part provides model clauses to implement certain Federal statutes, Executive orders, and regulations (see paragraph (a)(2)(i) of this section) that frequently apply to DoD grants and cooperative agreements. Grants officers may incorporate the model clauses into award terms and conditions, as appropriate. It should be noted that Appendix B to this part is an aid, and not an exhaustive list of all requirements that apply in all cases. Depending on the circumstances of a given award, other statutes, Executive orders, or codified regulations also may apply (e.g., Appendix B to this part does not list program-specific requirements described in paragraph (a)(2)(ii) of this section).

(2) Appendix C to this part is a list of administrative requirements that apply to awards to different types of recipients. It also identifies post-award administration issues that the grants officer must address in the award terms and conditions.

[6] See footnote 5 to § 22.510(b).

Subpart G—Field Administration

§ 22.700 Purpose.

This subpart prescribes policies and procedures for administering grants and cooperative agreements. It does so in conjunction with 32 CFR parts 32, 33, and 34, which prescribe administrative requirements for particular types of recipients.

§ 22.705 Policy.

(a) DoD policy is to have each recipient deal with a single office, to the maximum extent practicable, for post-award administration of its grants and cooperative agreements. This reduces burdens on recipients that can result when multiple DoD offices separately administer grants and cooperative agreements they award to a given recipient. It also minimizes unnecessary duplication of field administration services.

(b) To further reduce burdens on recipients, the office responsible for performing field administration services for grants and cooperative agreements to a particular recipient shall be, to the maximum extent practicable, the same office that is assigned responsibility for performing field administration services for contracts awarded to that recipient.

(c) Contracting activities and grants officers therefore shall use cross-servicing arrangements whenever practicable and, to the maximum extent possible, delegate responsibility for post-award administration to the cognizant grants administration offices identified in § 22.710.

§ 22.710 Assignment of grants administration offices.

In accordance with the policy stated in § 22.705(b), the DoD offices (referred to in this part as "grants administration offices") that are assigned responsibility for performing field administration services for grants and cooperative agreements are (see the "DoD Directory of Contract Administration Services Components," DLAH 4105.4,[7] for specific addresses of administration offices):

(a) Regional offices of the Office of Naval Research, for grants and cooperative agreements with:

(1) Institutions of higher education and laboratories affiliated with such institutions, to the extent that such organizations are subject to the university cost principles in OMB Circular A–21.[8]

(2) Nonprofit organizations that are subject to the cost principles in OMB Circular A–122,[9] if their principal business with the Department of Defense is research and development.

(b) Field offices of the Defense Contract Management Command, for grants and cooperative agreements with all other entities, including:

(1) For-profit organizations.

(2) Nonprofit organizations identified in Attachment C of OMB Circular A–122 that are subject to for-profit cost principles in 48 CFR part 31.

(3) Nonprofit organizations subject to the cost principles in OMB Circular A–122, if their principal business with the Department of Defense is other than research and development.

(4) State and local governments.

§ 22.715 Grants administration office functions.

The primary responsibility of cognizant grants administration offices shall be to advise and assist grants officers and recipients prior to and after award, and to help ensure that recipients fulfill all requirements in law, regulation, and award terms and conditions. Specific functions include:

(a) Conducting reviews and coordinating reviews, audits, and audit requests. This includes:

(1) Advising grants officers on the extent to which audits by independent auditors (i.e., public accountants or Federal auditors) have provided the information needed to carry out their responsibilities. If a recipient has had an independent audit in accordance with OMB Circular A–133, and the audit report disclosed no material weaknesses in the recipient's financial management and other management and control systems, additional preaward or closeout audits usually will not be needed (see §§ 22.420(b) and 22.825(b)).

(2) Performing pre-award surveys, when requested by a grants officer, after providing advice described in paragraph (a)(1) of this section.

(3) Reviewing recipients' systems and compliance with Federal requirements, in coordination with any reviews and compliance audits performed by independent auditors under OMB Circular A–133, or in accordance with the terms and conditions of the award. This includes:

(i) Reviewing recipients' financial management, property management, and purchasing systems, to determine the adequacy of such systems.

(ii) Determining that recipients have drug-free workplace programs, as required under 32 CFR part 25.

(4) Notifying the Office of the Assistant Inspector General for Policy and Oversight (OAIG(P&O)), 400 Army-Navy Drive, Arlington, VA 22202, if either of the following is not available within a reasonable period of time (e.g., six months) after the date on which a recipient of DoD grants and agreements was to have submitted its audit report under OMB Circular A–133 to the OAIG(P&O):

(i) The recipient's audit report under OMB Circular A–133.

(ii) The OAIG(P&O)'s desk review of the recipient's audit report, or a letter stating that the OAIG(P&O) has decided not to conduct a desk review.

(b) Performing property administration services for Government-owned property, and for any property acquired by a recipient, with respect to which the recipient has further obligations to the Government.

(c) Ensuring timely submission of required reports.

(d) Executing administrative closeout procedures.

(e) Establishing recipients' indirect cost rates, where the Department of Defense is the cognizant or oversight Federal agency with the responsibility for doing so.

(f) Performing other administration functions (e.g., receiving recipients' payment requests and transmitting approved payment authorizations to payment offices) as delegated by applicable cross-servicing agreements or letters of delegation.

Subpart H—Post-Award Administration

§ 22.800 Purpose and relation to other parts.

This subpart sets forth grants officers' and DoD Components' responsibilities for post-award administration, by providing DoD-specific requirements on payments; debt collection; claims, disputes and appeals; and closeout audits.

§ 22.805 Post-award requirements in other parts.

Grants officers responsible for post-award administration of grants and cooperative agreements shall administer such awards in accordance with the following parts of the DoDGARs, as supplemented by this subpart:

(a) *Awards to domestic recipients.* Standard administrative requirements for grants and cooperative agreements with domestic recipients are specified in other parts of the DoDGARs, as follows:

[7] Copies may be obtained either from the Defense Logistics Agency, Publications Distribution Division (DASC–WDM), 8725 John J. Kingman Rd., Suite 0119, Fort Belvoir, VA 22060–6220, or from the Defense Contract Management Command home page at http://www.dcmc.dcrb.dla.mil.

[8] See footnote 2 to § 22.420(b)(1).

[9] See footnote 2 to § 22.420(b)(1).

(1) For awards to domestic institutions of higher education and other nonprofit organizations, requirements are specified in 32 CFR part 32, which is the DoD implementation of OMB Circular A–110.

(2) For awards to State and local governments, requirements are specified in 32 CFR part 33, which is the DoD codification of the Governmentwide common rule to implement OMB Circular A–102.

(3) For awards to domestic for-profit organizations, requirements are specified in 32 CFR part 34, which is modeled on the requirements in OMB Circular A–110.

(b) *Awards to foreign recipients.* DoD Components shall use the administrative requirements specified in paragraph (a) of this section, to the maximum extent practicable, for grants and cooperative agreements to foreign recipients.

§ 22.810 Payments.

(a) *Purpose.* This section prescribes policies and grants officers' post-award responsibilities, with respect to payments to recipients of grants and cooperative agreements.

(b) *Policy.* (1) It is Governmentwide policy to minimize the time elapsing between any payment of funds to a recipient and the recipient's disbursement of the funds for program purposes (see 32 CFR 32.22(a) and 33.21(b), and the implementation of the Cash Management Improvement Act at 31 CFR part 205).

(2) It also is a Governmentwide requirement to use electronic funds transfer (EFT) in the payment of any grant for which an application or proposal was submitted or renewed on or after July 26, 1996, unless the recipient has obtained a waiver by submitting to the head of the pertinent Federal agency a certification that it has neither an account with a financial institution nor an authorized payment agent. This requirement is in 31 U.S.C. 3332, as amended by the Debt Collection Improvement Act of 1996 (section 31001(x)(1)(A), Pub. L. 104–134), and as implemented by Department of Treasury regulations at 31 CFR part 208. As a matter of DoD policy, this requirement applies to cooperative agreements, as well as grants. Within the Department of Defense, the Defense Finance and Accounting Service implements this EFT requirement, and grants officers have collateral responsibilities at the time of award, as described in § 22.605(c), and in postaward administration, as described in § 22.810(c)(3)(iv).

(3) Expanding on these Governmentwide policies, DoD policy is for DoD Components to use electronic commerce, to the maximum extent practicable, in the portions of the payment process for grants and cooperative agreements for which grants officers are responsible. In cases where recipients submit each payment request to the grants officer, this includes using electronic methods to receive recipients' requests for payment and to transmit authorizations for payment to the DoD payment office. Using electronic methods will improve timeliness and accuracy of payments and reduce administrative burdens associated with paper-based payments.

(c) *Post-award responsibilities.* In cases where the recipient submits each payment request to the grants officer, the administrative grants officer designated to handle payments for a grant or cooperative agreement is responsible for:

(1) Handling the recipient's requests for payments in accordance with DoD implementation of Governmentwide guidance (see 32 CFR 32.22, 33.21, or 34.12, as applicable).

(2) Reviewing each payment request to ensure that:

(i) The request complies with the award terms.

(ii) Available funds are adequate to pay the request.

(iii) The recipient will not have excess cash on hand, based on expenditure patterns.

(3) Maintaining a close working relationship with the personnel in the finance and accounting office responsible for making the payments. A good working relationship is necessary, to ensure timely and accurate handling of financial transactions for grants and cooperative agreements. Administrative grants officers:

(i) Should be generally familiar with policies and procedures for disbursing offices that are contained in Chapter 19 of Volume 10 of the DoD Financial Management Regulation (the FMR, DoD 7000.14-R[10]).

(ii) Shall forward authorizations to the designated payment office expeditiously, so that payments may be made in accordance with the timely payment guidelines in Chapter 19 of Volume 10 of the FMR. Unless alternative arrangements are made with the payment office, authorizations should be forwarded to the payment office at least 3 working days before the end of the period specified in the FMR. The period specified in the FMR is:

(A) No more than seven calendar days after receipt of the recipient's request by the administrative grants officer, whenever electronic commerce is used (i.e., EDI to request and authorize payments and electronic funds transfer (EFT) to make payments).

(B) No more than thirty calendar days after receipt of the recipient's request by the administrative grants officer, when it is not possible to use electronic commerce and paper transactions are used.

(C) No more than seven calendar days after each date specified, when payments are authorized in advance based on a predetermined payment schedule, provided that the payment schedule was received in the disbursing office at least 30 calendar days in advance of the date of the scheduled payment.

(iii) Shall ensure that the recipients' Taxpayer Identification Number (TIN) is included with each payment authorization forwarded to the payment office. This is a statutory requirement of 31 U.S.C. 3325, as amended by the Debt Collection Improvement Act of 1996 (section 31001(y), Pub. L. 104–134).

(iv) For each award that is required to be paid by EFT (see § 22.605(c) and (§ 22.810(b)(2)), shall prominently indicate that fact in the payment authorization.

§ 22.815 Claims, disputes, and appeals.

(a) *Award terms.* Grants officers shall include in grants and cooperative agreements a term or condition that incorporates the procedures of this section for:

(1) Processing recipient claims and disputes.

(2) Deciding appeals of grants officers' decisions.

(b) *Submission of claims*—(1) *Recipient claims.* If a recipient wishes to submit a claim arising out of or relating to a grant or cooperative agreement, the grants officer shall inform the recipient that the claim must:

(i) Be submitted in writing to the grants officer for decision;

(ii) Specify the nature and basis for the relief requested; and

(iii) Include all data that supports the claim.

(2) *DoD Component claims.* Claims by a DoD Component shall be the subject of a written decision by a grants officer.

(c) *Alternative Dispute Resolution (ADR)*—(1) *Policy.* DoD policy is to try

[10] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. Authorized users may also obtain copies from the Defense Technical Information Center, 8725 John J. Kingman Rd., Suite 0944, Fort Belvoir, VA 22060–6218.

to resolve all issues concerning grants and cooperative agreements by mutual agreement at the grants officer's level. DoD Components therefore are encouraged to use ADR procedures to the maximum extent practicable. ADR procedures are any voluntary means (e.g., mini-trials or mediation) used to resolve issues in controversy without resorting to formal administrative appeals (see paragraph (e) of this section) or to litigation.

(2) *Procedures.* (i) The ADR procedures or techniques to be used may either be agreed upon by the Government and the recipient in advance (e.g., when agreeing on the terms and conditions of the grant or cooperative agreement), or may be agreed upon at the time the parties determine to use ADR procedures.

(ii) If a grants officer and a recipient are not able to resolve an issue through unassisted negotiations, the grants officer shall encourage the recipient to enter into ADR procedures. ADR procedures may be used prior to submission of a recipient's claim or at any time prior to the Grant Appeal Authority's decision on a recipient's appeal (see paragraph (e)(3)(iii) of this section).

(d) *Grants officer decisions.* (1) Within 60 calendar days of receipt of a written claim, the grants officer shall either:

(i) Prepare a written decision, which shall include the reasons for the decision; shall identify all relevant data on which the decision is based; shall identify the cognizant Grant Appeal Authority and give his or her mailing address; and shall be included in the award file; or

(ii) Notify the recipient of a specific date when he or she will render a written decision, if more time is required to do so. The notice shall inform the recipient of the reason for delaying the decision (e.g., the complexity of the claim, a need for more time to complete ADR procedures, or a need for the recipient to provide additional information to support the claim).

(2) The decision of the grants officer shall be final, unless the recipient decides to appeal. If a recipient decides to appeal a grants officer's decision, the grants officer shall encourage the recipient to enter into ADR procedures, as described in paragraph (c) of this section.

(e) *Formal administrative appeals*—(1) *Grant appeal authorities.* Each DoD Component that awards grants or cooperative agreements shall establish one or more Grant Appeal Authorities to decide formal, administrative appeals in accordance with paragraph (e)(3) of this section. Each Grant Appeal Authority shall be either:

(i) An individual at a grade level in the Senior Executive Service, if civilian, or at the rank of Flag or General Officer, if military; or

(ii) A board chaired by such an individual.

(2) *Right of appeal.* A recipient has the right to appeal a grants officer's decision to the Grant Appeal Authority (but note that ADR procedures, as described in paragraph (c) of this section, are the preferred means for resolving any appeal).

(3) *Appeal procedures*—(i) *Notice of appeal.* A recipient may appeal a decision of the grants officer within 90 calendar days of receiving that decision, by filing a written notice of appeal to the Grant Appeal Authority and to the grants officer. If a recipient elects to use an ADR procedure, the recipient is permitted an additional 60 calendar days to file the written notice of appeal to the Grant Appeal Authority and grants officer.

(ii) *Appeal file.* Within 30 calendar days of receiving the notice of appeal, the grants officer shall forward to the Grant Appeal Authority and the recipient the appeal file, which shall include copies of all documents relevant to the appeal. The recipient may supplement the file with additional documents it deems relevant. Either the grants officer or the recipient may supplement the file with a memorandum in support of its position. The Grant Appeal Authority may request additional information from either the grants officer or the recipient.

(iii) *Decision.* The appeal shall be decided solely on the basis of the written record, unless the Grant Appeal Authority decides to conduct fact-finding procedures or an oral hearing on the appeal. Any fact-finding or hearing shall be conducted using procedures that the Grant Appeal Authority deems appropriate.

(f) *Representation.* A recipient may be represented by counsel or any other designated representative in any claim, appeal, or ADR proceeding brought pursuant to this section, as long as the representative is not otherwise prohibited by law or regulation from appearing before the DoD Component concerned.

(g) *Non-exclusivity of remedies.* Nothing in this section is intended to limit a recipient's right to any remedy under the law.

§ 22.820 Debt collection.

(a) *Purpose.* This section prescribes procedures for establishing debts owed by recipients of grants and cooperative agreements, and transferring them to payment offices for collection.

(b) *Resolution of indebtedness.* The grants officer shall attempt to resolve by mutual agreement any claim of a recipient's indebtedness to the United States arising out of a grant or cooperative agreement (e.g., by a finding that a recipient was paid funds in excess of the amount to which the recipient was entitled under the terms and conditions of the award).

(c) *Grants officer's decision.* In the absence of such mutual agreement, any claim of a recipient's indebtedness shall be the subject of a grants officer decision, in accordance with § 22.815(b)(2). The grants officer shall prepare and transmit to the recipient a written notice that:

(1) Describes the debt, including the amount, the name and address of the official who determined the debt (e.g., the grants officer under § 22.815(d)), and a copy of that determination.

(2) Informs the recipient that:

(i) Within 30 calendar days of the grants officer's decision, the recipient shall either pay the amount owed to the grants officer (at the address that was provided pursuant to paragraph (c)(1) of this section) or inform the grants officer of the recipient's intention to appeal the decision.

(ii) If the recipient elects not to appeal, any amounts not paid within 30 calendar days of the grants officer's decision will be a delinquent debt.

(iii) If the recipient elects to appeal the grants officer's decision the recipient has 90 calendar days, or 150 calendar days if ADR procedures are used, after receipt of the grants officer's decision to file the appeal, in accordance with § 22.815(e)(3)(i).

(iv) The debt will bear interest, and may include penalties and other administrative costs, in accordance with the debt collection provisions in Chapters 29, 31, and 32 of Volume 5 and Chapters 18 and 19 of Volume 10 of the DoD Financial Management Regulation (DoD 7000.14–R). No interest will be charged if the recipient pays the amount owed within 30 calendar days of the grants officer's decision. Interest will be charged for the entire period from the date the decision was mailed, if the recipient pays the amount owed after 30 calendar days.

(d) *Follow-up.* Depending upon the response from the recipient, the grants officer shall proceed as follows:

(1) If the recipient pays the amount owed within 30 calendar days to the grants officer, the grants officer shall forward the payment to the responsible payment office.

(2) If within 30 calendar days the recipient elects to appeal the grants officer's decision, further action to collect the debt is deferred, pending the outcome of the appeal. If the final result of the appeal is a determination that the recipient owes a debt to the Federal Government, the grants officer shall send a demand letter to the recipient and transfer responsibility for further debt collection to a payment office, as described in paragraph (d)(3) of this section.

(3) If within 30 calendar days the recipient has neither paid the amount due nor provided notice of intent to file an appeal of the grants officer's decision, the grants officer shall send a demand letter to the recipient, with a copy to the payment office that will be responsible for collecting the delinquent debt. The payment office will be responsible for any further debt collection activity, including issuance of additional demand letters (see Chapter 19 of volume 10 of the DoD Financial Management Regulation, DoD 7000.14–R). The grants officer's demand letter shall:

(i) Describe the debt, including the amount, the name and address of the official that determined the debt (e.g., the grants officer under § 22.815(d)), and a copy of that determination.

(ii) Notify the recipient that the debt is a delinquent debt that bears interest from the date of the grants officer's decision, and that penalties and other administrative costs may be assessed.

(iii) Identify the payment office that is responsible for the collection of the debt, and notify the recipient that it may submit a proposal to that payment office to defer collection, if immediate payment is not practicable.

(e) *Administrative offset.* In carrying out the responsibility for collecting delinquent debts, a disbursing officer may need to consult grants officers, to determine whether administrative offset against payments to a recipient owing a delinquent debt would interfere with execution of projects being carried out under grants or cooperative agreements. Disbursing officers may also ask grants officers whether it is feasible to convert payment methods under grants or cooperative agreements from advance payments to reimbursements, to facilitate use of administrative offset. Grants officers therefore should be familiar with guidelines for disbursing officers, in Chapter 19 of Volume 10 of the Financial Management Regulation (DoD 7000.14–R), concerning withholding and administrative offset to recover delinquent debts.

§ 22.825 Closeout audits.

(a) *Purpose.* This section establishes DoD policy for obtaining audits at closeout of individual grants and cooperative agreements. It thereby supplements the closeout procedures specified in:

(1) 32 CFR 32.71 and 32.72, for awards to institutions of higher education and other nonprofit organizations.

(2) 32 CFR 33.50 and 33.51, for awards to State and local governments.

(3) 32 CFR 34.61 and 34.62, for awards to for-profit entities.

(b) *Policy.* Grants officers shall use their judgment on a case-by-case basis, in deciding whether to obtain an audit prior to closing out a grant or cooperative agreement (i.e., there is no specific DoD requirement to obtain an audit prior to doing so). Factors to be considered include:

(1) The amount of the award.

(2) DoD's past experience with the recipient, including the presence or lack of findings of material deficiencies in recent:

(i) Audits of individual awards; or

(ii) Systems-wide financial audits and audits of the compliance of the recipient's systems with Federal requirements, under OMB Circular A–133, where that Circular is applicable. (See § 22.715(a)(1)).

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APPENDIX A TO PART 22-PROPOSAL PROVISION FOR REQUIRED CERTIFICATIONS

PROVISION IN PROPOSAL (or, suitably modified, in award)	USED FOR			SOURCE OF REQUIREMENT
	Type of Award	Type of Recipient	Specific Situation	
By signing and submitting this proposai , the recipient is providing the:				
(1) Certification at Appendix A to 32 CFR Part 25 regarding debarment, suspension, and other responsibility matters.	Any nonprocurement transaction [see "primary covered transaction," defined at 32 CFR 25.110(a)(1)(i)]	All but foreign governments, foreign governmental entities, and others excluded from "person," as defined at 32 CFR 25.105	Any	Subparts A through E of 32 CFR 25, which implement E.O. 12549 [3 CFR, 1986 Comp., p. 189]; E.O. 12689 [3 CFR, 1989 Comp., p. 235]; and Sec. 2455 of Federai Acquisition and Streamlining Act of 1994 (Pub. L. 103-355)
(2) Certification at Appendix C to 32 CFR Part 25 regarding drug-free workplace requirements.	Any financial assistance, including any grant or cooperative agreement [see "grant," as broadly defined at 32 CFR 25.605(b)(7)]	Any	Any, except where inconsistent with internationai obligations of the U.S. or the iaws or regulations of a foreign government [see 32 CFR 25.610(b)]	Subpart F of 32 CFR 25, which implements sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Titie V, Subtitle D; 41 U.S.C. 701, et seq.)
(3) Certification at Appendix A to 32 CFR Part 28 regarding lobbying.	Any financial assistance [see 32 CFR 28.105(b) and definitions of "Federai grant," "Federal cooperative agreement," and "Federal loan" in 32 CFR 28.105(c),(d), and (e)]	All but Indian tribe or tribai organization with respect to expenditures specifically permitted by other Federai law [see 32 CFR 28.105(l)]	Any	32 CFR 28, which implements 31 U.S.C. 1352

APPENDIX B TO PART 22-SUGGESTED AWARD PROVISIONS FOR NATIONAL POLICY REQUIREMENTS THAT OFTEN APPLY

SUGGESTED AWARD PROVISION	USED FOR:			SOME REQUIREMENT(S) THE GRANTS OFFICER SHOULD NOTE
	Type of Award	Type of Recipient	Specific Situation	
Nondiscrimination By signing this agreement or accepting funds under this agreement, the recipient assures that it will comply with applicable provisions of the following, national policies prohibiting discrimination:				
a. On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.) , as implemented by DoD regulations at 32 CFR part 195.	Grants, cooperative agreements, and other financial assistance included at 32 CFR 195.2(d).	Any.	Any.	32 CFR part 195.6 requires grants officer to obtain recipient's assurance of compliance. It also requires the recipient to flow down requirements to subrecipients.
b. On the basis of race, color, religion, sex, or national origin, in Executive Order 11246 [3 CFR, 1964-1965 Comp., p. 339], as implemented by Department of Labor regulations at 41 CFR part 60.	Grants, cooperative agreements, and other prime awards defined at 40 CFR 60-1.3 as "Federally assisted construction contract."	Any.	Awards under which construction work is to be done.	The grants officer should inform the recipient that 41 CFR 60-1.4(b) prescribes a clause that recipients must include in federally assisted, construction awards and subawards [60-1.4(d) allows incorporation by reference]. This requirement also is at 32 CFR 33.36(l)(3) and at paragraphs 1. of Appendices A to 32 CFR part 32 and 32 CFR part 34.
c. On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.).	Grants, cooperative agreements, and other financial assistance included at 20 U.S.C. 1682.	Educational institution [for sex discrimination, excepts any institution controlled by religious organization, when inconsistent with the organization's religious tenets].	Any educational program or activity receiving Federal financial assistance.	
d. On the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR part 90.	Grants, cooperative agreements, and other awards defined at 45 CFR 90.4 as "Federal financial assistance."	Any.	Any.	45 CFR 90.4 requires that recipient flow down requirements to subrecipients [definition of "recipient" at 45 CFR 90.4 includes entities to which assistance is extended indirectly, through another recipient].

APPENDIX B TO PART 22-SUGGESTED AWARD PROVISIONS FOR NATIONAL POLICY REQUIREMENTS THAT OFTEN APPLY

SUGGESTED AWARD PROVISION	USED FOR:			SOME REQUIREMENT(S) THE GRANTS OFFICER SHOULD NOTE
	Type of Award	Type of Recipient	Specific Situation	
e. On the basis of handicap, in:				
1. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DoD regulations at 32 CFR part 56.	Grants, cooperative agreements, and other awards included in "Federal financial assistance" definition at 32 CFR 56.3(b).	Any.	Any.	32 CFR 56.9(b) requires grants officer to obtain recipient's written assurance of compliance and specifies what the assurance includes. Note that requirements flow down to subawards ["recipient," defined at 32 CFR 56.3(g), includes entities receiving assistance indirectly through other recipients].
2. The Architectural Barriers Act of 1968 (42 U.S.C. 4151, et seq.).	Grant or loan.	Any.	Construction or alteration of buildings or facilities, except those restricted to use only by able-bodied uniformed personnel .	
Live Organisms By signing this agreement or accepting funds under this agreement, the recipient assures that it will comply with applicable provisions of the following national policies concerning live organisms:				
a. For human subjects, the Common Federal Policy for the Protection of Human Subjects, codified by the Department of Health and Human Services at 45 CFR part 46 and implemented by the Department of Defense at 32 CFR part 219.	Any.	Any.	Research, development, test, or evaluation involving live human subjects, with some exceptions [see 32 CFR part 219].	32 CFR 219.103 requires each recipient to have a Federally approved, written assurance of compliance [it may be HHS-approved, on file with HHS; DoD-approved, on file with a DoD Component; or may need to be obtained by the grants officer for the specific award].

APPENDIX B TO PART 22-SUGGESTED AWARD PROVISIONS FOR NATIONAL POLICY REQUIREMENTS THAT OFTEN APPLY

SUGGESTED AWARD PROVISION	USED FOR:			SOME REQUIREMENT(S) THE GRANTS OFFICER SHOULD NOTE
	Type of Award	Type of Recipient	Specific Situation	
b. For animals:				
1. Rules on animal acquisition, transport, care, handling, and use in: (i) 9 CFR parts 1-4, Department of Agriculture rules that implement the Laboratory Animal Welfare Act of 1966 (7 U.S.C. 2131-2156); and (ii) the "Guide for the Care and Use of Laboratory Animals," National Institutes of Health Publication No. 86-23.	Any.	Any.	Research, experimentation, or testing involving the use of animals.	Prior to making an award under which animal-based research, testing, or training is to be performed, DoD Directive 3216.1[1] requires administrative review of the proposal by a DoD veterinarian trained or experienced in laboratory animal science and medicine, as well as a review by the recipient's Institutional Animal Care and Use Committee.
2. Prohibitions on the purchase or use of dogs or cats for certain medical training purposes, In Section 8019 (10 U.S.C. 2241 note) of the Department of Defense Appropriations Act, 1991 (Pub. Law 101-511).	Any.	Any.	Use of DoD appropriations for training on treatment of wounds.	
3. Rules of the Departments of Interior (50 CFR parts 10-24) and Commerce (50 CFR parts 217-227) implementing laws and conventions on the taking, possession, transport, purchase, sale, export, or import of wildlife and plants, including the: Endangered Species Act of 1973 (16 U.S.C. 1531-1543); Marine Mammal Protection Act (16 U.S.C. 1361-1384); Lacey Act (18 U.S.C. 42); and Convention on International Trade in Endangered Species of Wild Fauna and Flora.	Any.	Any.	Activities which may involve or impact wildlife and plants.	

1 Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. Authorized users may also obtain copies from the Defense Technical Information Center, 8725 John J. Kingman Rd., Suite 0944, Fort Belvoir, VA 22060-6218.

APPENDIX B TO PART 22-SUGGESTED AWARD PROVISIONS FOR NATIONAL POLICY REQUIREMENTS THAT OFTEN APPLY

SUGGESTED AWARD PROVISION	USED FOR:			SOME REQUIREMENT(S) THE GRANTS OFFICER SHOULD NOTE
	Type of Award	Type of Recipient	Specific Situation	
Hatch Act The recipient agrees to comply with the Hatch Act (5 U.S.C. 1501-1508 and 7324-7328), as implemented by the Office of Personnel Management at 5 CFR part 151, which limits political activity of employees or officers of State or local governments whose employment is connected to an activity financed in whole or part with Federal funds.	Grants or loans.	State and local governments.	All but employees of educational or research institutions supported by State; political subdivision thereof; or religious, philanthropic, or cultural organization.	
Environmental Standards By signing this agreement or accepting funds under this agreement, the recipient assures that it will: a. Comply with applicable provisions of the Clean Air Act (42 U.S.C. 7401, et. Seq.) and Clean Water Act (33 U.S.C. 1251, et. seq.), as implemented by Executive Order 11738 [3 CFR, 1971-1975 Comp., p. 799] and Environmental Protection Agency (EPA) rules at 40 CFR part 15. In accordance with the EPA rules, the recipient further agrees that it will: - Not use any facility on the EPA's List of Violating Facilities in performing any award that is nonexempt under 40 CFR 15.5, as long as the facility remains on the list. - Notify the awarding agency if it intends to use a facility in performing this award that is on the List of Violating Facilities or that the recipient knows has been recommended to be placed on the List of Violating Facilities.	Grants, cooperative agreements, and other awards included in definitions of "grant" and "loan" in 40 CFR part 15.	Any.	Any, for Clean Air Act, Clean Water Act, and Executive Order 11738. 40 CFR 15.5 makes awards of less than $100,000, and certain other awards, exempt from the EPA regulations.	40 CFR 15.31 requires the assurances in the suggested award provision. It also requires that recipients flow down requirements to subawards ("grant" as defined at 40 CFR 15.4 includes subagreements). Executive Order 11738 establishes additional responsibilities for grants officers.

APPENDIX B TO PART 22-SUGGESTED AWARD PROVISIONS FOR NATIONAL POLICY REQUIREMENTS THAT OFTEN APPLY

SUGGESTED AWARD PROVISION	USED FOR:			SOME REQUIREMENT(S) THE GRANTS OFFICER SHOULD NOTE
	Type of Award	Type of Recipient	Specific Situation	
b. Identify to the awarding agency any impact this award may have on:				
1. The quality of the human environment, and provide help the agency may need to comply with the National Environmental Policy Act (NEPA; at 42 U.S.C. 4321, et. seq.) and to prepare Environmental Impact Statements or other required environmental documentation. In such cases, the recipient agrees to take no action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) until the agency provides written notification of compliance with the environmental impact analysis process.	Any.	Any.	Any actions that may affect the environment.	The Council on Environmental Quality's regulations for implementing NEPA are at 40 C.F.R. parts 1500-1508. Executive Order 11514 [3 CFR, 1966-1970 Comp., p. 902], as amended by Executive Order 11991, sets policies and procedures for considering actions in the U.S. Executive Orders11988 [3 CFR, 1977 Comp., p. 117] and 11990 [3 CFR, 1977 Comp., p. 121] specify additional considerations, when actions involve floodplains or wetlands, respectively.
2. Flood-prone areas, and provide help the agency may need to comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C. 4001, et. seq.), which require flood insurance, when available, for Federally assisted construction or acquisition in flood-prone areas.	Grants, cooperative agreements, and other "financial assistance" (see 42 U.S.C. 4003).	Any.	Awards involving construction, land acquisition or development, with some exceptions [see 42 U.S.C. 4001, et. seq.].	The grants officer should inform the recipient that 42 U.S.C. 4012a prohibits awards for acquisition or construction in flood-prone areas (Federal Emergency Management Agency publishes lists of such areas in the Federal Register), unless recipient has required insurance. If action is in a floodplain, Executive Order 11988 [3 CFR, 1977 Comp., p. 117] specifies additional pre-award procedures for Federal agencies. Recipients are to apply requirements to subawards ("financial assistance," defined at 42 U.S.C. 4003, includes indirect Federal assistance).

APPENDIX B TO PART 22-SUGGESTED AWARD PROVISIONS FOR NATIONAL POLICY REQUIREMENTS THAT OFTEN APPLY

SUGGESTED AWARD PROVISION	USED FOR:			SOME REQUIREMENT(S) THE GRANTS OFFICER SHOULD NOTE
	Type of Award	Type of Recipient	Specific Situation	
3. Coastal zones, and provide help the agency may need to comply with the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, et. Seq.), concerning protection of U.S. coastal resources.	Grants, cooperative agreements, and other "Federal assistance" [see 16 U.S.C. 1456(d)].	State and local governments, interstate and other regional agencies.	Awards that may affect the coastal zone.	16 U.S.C. 1456(d) prohibits approval of projects inconsistent with a coastal State's approved management program for the coastal zone.
4. Coastal barriers, and provide help the agency may need to comply with the Coastal Barriers Resource Act (16 U.S.C. 3501, et. seq.), concerning preservation of barrier resources.	Grants, cooperative agreements, and other "financial assistance" (see 16 U.S.C. 3502).	Any.	Awards that may affect barriers along the Atlantic and Gulf coasts and Great Lakes' shores.	16 U.S.C. 3504-3505 prohibit new awards for actions within Coastal Barrier System, except for certain purposes. Requirements flow to subawards (16 U.S.C. 3502 includes indirect assistance as "financial assistance").
5. Any existing or proposed component of the National Wild and Scenic Rivers system, and provide help the agency may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271, et seq.).	Any.	Any.	Awards that may affect existing or proposed element of National Wild and Scenic Rivers system.	
6. Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide help the agency may need to comply with the Safe, Drinking Water Act (42 U.S.C. 300h-3).	Any.	Any.	Construction in any area with aquifer that the EPA finds would create public health hazard, if contaminated.	42 U.S.C. 300h-3(e) precludes awards of Federal financial assistance for any project that the EPA administrator determines may contaminate a sole-source aquifer so as to threaten public health.

APPENDIX B TO PART 22-SUGGESTED AWARD PROVISIONS FOR NATIONAL POLICY REQUIREMENTS THAT OFTEN APPLY

SUGGESTED AWARD PROVISION	USED FOR:			SOME REQUIREMENT(S) THE GRANTS OFFICER SHOULD NOTE
	Type of Award	Type of Recipient	Specific Situation	
National Historic Preservation The recipient agrees to identify to the awarding agency any property listed or eligible for listing on the National Register of Historic Places that will be affected by this award, and to provide any help the awarding agency may need, with respect to this award, to comply with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470, et seq.), as implemented by the Advisory Council on Historic Preservation regulations at 36 C.F.R. part 800 and Executive Order 11593 [3 CFR, 1971-1975 Comp., p. 559].	Any.	Any.	Any construction, acquisition, modernization, or other activity that may impact a historic property.	36 CFR part 800 requires grants officers to get comments from the Advisory Council on Historic Preservation before proceeding with Federally assisted projects that may affect properties listed on or eligible for listing on the National Register of Historic Places.
Officials Not to Benefit No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this agreement, or to any benefit arising from it, in accordance with 41 U.S.C. 22.	Grants, cooperative agreements, and other "agreements."	Any.	Any.	
Preference for U.S. Flag Carriers Travel supported by U.S. Government funds under this agreement shall use U.S.-flag air carriers (air carriers holding certificates under 49 U.S.C. 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B138942.	Any.	Any.	Any agreement under which international air travel may be supported by U.S. Government funds.	

APPENDIX B TO PART 22-SUGGESTED AWARD PROVISIONS FOR NATIONAL POLICY REQUIREMENTS THAT OFTEN APPLY

SUGGESTED AWARD PROVISION	USED FOR:			SOME REQUIREMENT(S) THE GRANTS OFFICER SHOULD NOTE
	Type of Award	Type of Recipient	Specific Situation	
Cargo Preference The recipient agrees that it will comply with the Cargo Preference Act of 1954 (46 U.S.C. 1241), as implemented by Department of Transportation regulations at 46 CFR 381.7, which require that at least 50 percent of equipment, materials or commodities procured or otherwise obtained with U.S. Government funds under this agreement, and which may be transported by ocean vessel, shall be transported on privately owned U.S.-flag commercial vessels, if available.	Grants, cooperative agreements, and other awards included in 46 CFR 381.7.	Any.	Any award where possibility exists for ocean transport of items procured or obtained by or on behalf of the recipient, or any of the recipient's contractors or subcontractors.	46 CFR 381.7 requires grants officers to include appropriate clauses in award documents. It also requires recipients to include appropriate clauses in contracts using U.S. Government funds under agreements, where ocean transport of procured goods is possible [e.g., see clause at 46 CFR 381.7(b)].
Military Recruiters [Grants officers shall include the exact award provision specified at 32 CFR 22.520]	Grants and cooperative agreements.	Domestic institution of higher education (see 32 CFR 22.520).	Any.	
Relocation and Real Property Acquisition The recipient assures that it will comply with 49 CFR part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601, et seq.) and provides for fair and equitable treatment of persons displaced by Federally assisted programs or persons whose property is acquired as a result of such programs.	Grants, cooperative agreements, and other "Federal financial assistance" [see 49 CFR 24.2(j)].	"State agency" as defined in 49 CFR part 24 to include persons with authority to acquire property by eminent domain under State law.	Any project that may result in real property acquisition or displacement where State agency hasn't opted to certify to Dept. of Transportation in lieu of providing assurance.	42 U.S.C. 4630 and 49 CFR 24.4, as implemented by DoD at 32 CFR part 259, requires grants officers to obtain recipients' assurance of compliance.

APPENDIX C TO PART 22-ADMINISTRATIVE REQUIREMENTS AND ISSUES TO BE ADDRESSED IN AWARD TERMS AND CONDITIONS

REQUIREMENT, IN BRIEF	SOURCE OF REQUIREMENT, FOR EACH TYPE OF RECIPIENT (WHERE DETAILS MAY BE FOUND)			ISSUES TO BE ADDRESSED IN AWARD TERMS/CONDITIONS
	University or other nonprofit	Governmental entity	For-profit entity	
Standards for Financial Management Systems. Recipients' systems to comply with:	32 CFR 32.21	32 CFR 33.20	32 CFR 34.11	For university, nonprofit, or for-profit entity, specify if want: • Bonding and insurance [32 CFR 32.21(c) or 32 CFR 34.11(b)]. • Fidelity bond [32 CFR 32.21(d) or 32 CFR 34.11(c)].
Payment. Recipients request payments and handle advances and interest in compliance with:	32 CFR 32.22	32 CFR 33.21, 33.41(d) and (e)	32 CFR 34.12	Specify: • Payment method (e.g., advance, reimbursement, working capital advance). NOTE: if predetermined payment schedule is used, must specify means to ensure that recipients don't develop large cash balances well in advance of needs for such funds (e.g., recipient submits SF-269 or SF-270 forms at regular intervals, for grants officer to review recipients' cash on hand). • Name/address of office to which recipient sends payment requests. • How frequently recipient may submit payment requests. • Whether recipient requests payment by SF-270, SF-271, or other form, or by electronic means (e.g., electronic data interchange). • Name/address of office that will make payments, and whether the recipient is to receive payments by electronic funds transfer (see §22.605(c) and §22.810(b)(2)). • Name/address of office to which recipient is to remit any interest earned, if advance payment method is to be used. If interest is to be remitted using electronic commerce, information should be provided on required format and data elements.
Allowable costs. Allowability of costs to be in accordance with:	32 CFR 32.27 and 32.28	32 CFR 33.22 and 33.23	32 CFR 34.17	
Fee/profit. None allowed.			32 CFR 34.18	
Cost share or match. If cost share or match is required, allowability and valuation are governed by:	32 CFR 32.23	32 CFR 33.24	32 CFR 34.13	Specify if want to allow inclusion of certain types of items as cost share or allow them to be valued in certain ways [32 CFR 32.23(b), (c), and (g); 32 CFR 33.24(b)(4), (b)(5), and (e)(2); 32 CFR 34.13(a)(7), (b)(1), and (b)(4)(ii)].

APPENDIX C TO PART 22-ADMINISTRATIVE REQUIREMENTS AND ISSUES TO BE ADDRESSED IN AWARD TERMS AND CONDITIONS

REQUIREMENT, IN BRIEF	SOURCE OF REQUIREMENT, FOR EACH TYPE OF RECIPIENT (WHERE DETAILS MAY BE FOUND)			ISSUES TO BE ADDRESSED IN AWARD TERMS/CONDITIONS
	University or other nonprofit	Governmental entity	For-profit entity	
Program Income. Recipients account for program income in accordance with:	32 CFR 32.24	32 CFR 33.25	32 CFR 34.14	Specify: • Method for disposition [32 CFR 32.24(b), (c), and (d); 32 CFR 33.25(g); 32 CFR 34.14(d), (e), and (f)]. • If want recipient to have obligation to Government for certain types of income or for income earned after end of project period [32 CFR 32.24(e) and (h), 32 CFR 33.25(a), (d), (e), and (h), 32 CFR 34.14(b)]. • If want to allow recipient to deduct costs of generating income [32 CFR 32.24(f), 32 CFR 33.25(c), 32 CFR 34.14(c)].
Revision of budget/program plans. Recipients request prior approval for plan changes, in accordance with:	32 CFR 32.25	32 CFR 33.30	32 CFR 34.15	Specify if wish to: • Waive some prior approvals that are optional, but are in effect unless specifically waived [32 CFR 33.30(b), (c)(1), (d)(3); 32 CFR 34.15(c)(2)]. • Require some prior approvals that are optional, but are only in effect if specifically stated [32 CFR 32.25(c)(5), (d), (e), (h); 32 CFR 34.15(c)(3)]. • Waive the requirement for prior approval [32 CFR 25.25(d)(3)] for recipient to initiate one-time, no-cost extension, as long as the DoD Component judges that the recipient's doing so would not cause the DoD Component to fail to comply with DoD funding policies (e.g., the incremental programming and budgeting policy for research funding) contained in Volume 2A of the DoD Financial Management Regulation (DoD 7000.14-R).
Audit. Recipients periodically to have independent, financial and compliance audit and report to DoD, subject to provisions of:	32 CFR 32.26	32 CFR 33.26	32 CFR 34.16	Require all but for-profit entities to submit copy of OMB Circular A-133 audit reports to IG, DoD. Require for-profit entities to submit audit reports to whichever office(s) the DoD Component wishes audit reports to be sent.
Procurement. Recipients systems for acquiring goods and services under awards are to comply with:	32 CFR 32.40 through 32.49	32 CFR 33.36	32 CFR 34.30 through 34.31	Specify if want to require recipient to make certain preaward documents available for DoD Component's review [32 CFR 32.44(e); 32 CFR 33.36(g); 32 CFR 34.31(b)].
Subawards. Recipients flow down requirements to subawards in accordance with:	32 CFR 32.5, 32 CFR 33.37, and 32 CFR 34.1(b)(2)			

APPENDIX C TO PART 22-ADMINISTRATIVE REQUIREMENTS AND ISSUES TO BE ADDRESSED IN AWARD TERMS AND CONDITIONS

REQUIREMENT, IN BRIEF	SOURCE OF REQUIREMENT, FOR EACH TYPE OF RECIPIENT (WHERE DETAILS MAY BE FOUND)			ISSUES TO BE ADDRESSED IN AWARD TERMS/CONDITIONS
	University or other nonprofit	Governmental entity	For-profit entity	
Property. Recipients manage in accordance with:	32 CFR 32.30 through 32.37	32 CFR 33.31 through 33.34	32 CFR 34.20 through 34.25	Specify if want: • To allow for-profit entities to acquire real property under awards [32 CFR 34.21(a)]. • University or other nonprofit to have any further obligation to Government for exempt property [32 CFR 32.33(b)]. • To retain right to transfer title [32 CFR 32.34(h). 32 CFR 33.32(g)]. • To allow recipients to use equipment for certain purposes [32 CFR 32.34(d) and (e); 32 CFR 33.32(c)(4); 32 CFR 34.21(d)]. • To waive data rights [32 CFR 32.36(c); 32 CFR 34.24(b)(1)(ii)]. • To require recipients to record liens [32 CFR 32.37]. For research awards to certain recipients, include patents clause required by 37 CFR 401 [32 CFR 32.36(b); 32 CFR 34.24(a)].
Reports. Requirements are specified in:	32 CFR 32.51 and 32.52	32 CFR 33.40 and 33.41	32 CFR 34.41	Specify: • When recipients are to submit periodic and final performance reports [32 CFR 32.51(b) and (c); 32 CFR 33.40(b), (c), and (f); 32 CFR 34.41]. • Frequency of financial status/cash transaction reports [32 CFR 32.52(a)(1)(iii) and (a)(2)(iv); 32 CFR 33.41(b)(3) and (c); 32 CFR 34.41], or if wish to waive them under certain conditions [32 CFR 32.52(a)(1)(i) and (a)(2)(v); 32 CFR 33.41(a)(6); 32 CFR 34.41]. • Whether want reports on cash or accrual basis [32 CFR 32.52(a)(1)(ii); 32 CFR 33.41(b)(2); 32 CFR 34.41].
Records. Retention and access requirements specified in:	32 CFR 32.53	32 CFR 33.42	32 CFR 34.42	
Termination and enforcement. Award is subject to:	32 CFR 32.61 and 32.62	32 CFR 33.43 and 33.44	32 CFR 34.51 and 34.52	
Disputes, claims, and appeals. Procedures are specified in:	32 CFR 22.815			• Include term or condition that incorporates procedures, in accordance with 32 CFR 22.815(a).
After-the-award requirements. Closeout, subsequent adjustments, continuing responsibilities, and collection of amounts due are subject to requirements in:	32 CFR 32.71 through 32.73	32 CFR 33.50 through 33.52	32 CFR 34.61 through 34.63	

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PART 23—[REMOVED]

4. Under the authority of 5 U.S.C. 301, Part 23 is removed.

PART 28—[AMENDED]

5. Part 28 is amended as follows:

a. The authority citation for part 28 continues to read as follows:

Authority: Sect. 319, Pub. L. 102–121 (31 U.S.C. 1352); 5 U.S.C. 301; 10 U.S.C. 113.

b. Section 28.500 is revised to read as follows:

§ 28.500 Secretary of Defense.

(a) *Exemption authority.* The Secretary of Defense may exempt, on a case-by-case basis, a covered Federal action from the prohibition whenever the Secretary determines, in writing, that such an exemption is in the national interest. The Secretary shall transmit a copy of each such written exemption to Congress immediately after making such a determination.

(b) *Policy.* It is the policy of the Department of Defense that exemptions under paragraph (a) of this section shall be requested only rarely and in exceptional circumstances.

(c) *Procedures.* Each DoD Component that awards or administers Federal grants, Federal cooperative agreements, or Federal loans subject to this part shall establish procedures whereby:

(1) A grants officer wishing to request an exemption for a grant, cooperative agreement, or loan shall transmit such request through appropriate channels to: Director for Research, ODDR&E(R), 3080 Defense Pentagon, Washington, DC. 20301–3080.

(2) Each such request shall explain why an exemption is in the national interest, a justification that must be transmitted to Congress for each exemption that is approved.

6. Part 32 is added to read as follows:

PART 32—ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS

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32.2 Definitions
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32.4 Deviations.
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32.11 Pre-award policies.
32.12 Forms for applying for Federal assistance.
32.13 Debarment and suspension.
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32.21 Standards for financial management systems.
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32.23 Cost sharing or matching.
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Property Standards

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32.45 Cost and price analysis.
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32.48 Contract provisions.
32.49 Resource Conservation and Recovery Act.

Reports and Records

32.50 Purpose of reports and records.
32.51 Monitoring and reporting program performance.
32.52 Financial reporting.
32.53 Retention and access requirements for records.

Termination and Enforcement

32.60 Purpose of termination and enforcement.
32.61 Termination.
32.62 Enforcement.

Subpart D—After-the-Award Requirements

32.70 Purpose.
32.71 Closeout procedures.
32.72 Subsequent adjustments and continuing responsibilities.
32.73 Collection of amounts due.
Appendix A to Part 32—Contract Provisions

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

Subpart A—General

§ 32.1 Purpose.

(a) *General.* This part implements OMB Circular A–110 [1] and establishes uniform administrative requirements for awards and subawards to institutions of higher education, hospitals, and other non-governmental, non-profit organizations.

(b) *Relationship to other parts.* This part is an integral part of the DoD Grant and Agreement Regulations (DoDGARs), which comprise this subchapter of the Code of Federal Regulations. This part includes references to other parts of the DoDGARs that implement Governmentwide guidance and provide uniform internal policies and procedures for DoD Components that make or administer awards. Although parts 21 and 22 of this subchapter do not impose any direct requirements on recipients, and recipients therefore are not required to be familiar with those parts, the information in those parts concerning internal policies and procedures should be helpful to recipients of DoD awards.

(c) *Prime awards.* DoD Components shall apply the provisions of this part to awards to recipients that are institutions of higher education, hospitals, and other non-profit organizations. DoD Components shall not impose additional or inconsistent requirements, except as provided in §§ 32.4 and 32.14, or unless specifically required by Federal statute or executive order.

(d) *Subawards.* Any legal entity that receives an award from a DoD Component shall apply the provisions of this part to subawards with institutions of higher education, hospitals, and other non-profit organizations. Thus, a governmental or for-profit organization, whose prime award from a DoD Component is subject to 32 CFR part 33 or part 34, respectively, applies this part to subawards with institutions of higher education, hospitals, or other non-profit organizations. It should be noted that subawards are for the performance of substantive work under awards, and are distinct from contracts for procuring goods and services. It should be further noted that non-profit organizations that implement Federal programs for the States are also subject to State requirements.

§ 32.2 Definitions.

The following are definitions of terms used in this part. Grants officers are cautioned that terms may be defined differently in this part than they are in other parts of the DoD Grant and Agreement Regulations, because this part implements OMB Circular A–110 and uses definitions as stated in that

[1] For copies of the Circular, contact the Office of Management and Budget, EOP Publications, 725 17th St. NW, New Executive Office Building, Washington, DC 20503.

Circular. In such cases, the definition given in this section applies to the term as it is used in this part, and the definition given in other parts applies to the term as it is used in those parts. For example, *suspension* is defined in this section to mean temporary withdrawal of Federal sponsorship under an award, but is defined at 32 CFR 25.105 to be an action taken to exclude a person from participating in a grant, cooperative agreement, or other covered transaction.

Accrued expenditures. The charges incurred by the recipient during a given period requiring the provision of funds for:

(1) Goods and other tangible property received;

(2) Services performed by employees, contractors, subrecipients, and other payees; and

(3) Other amounts becoming owed under programs for which no current services or performance is required.

Accrued income. The sum of:

(1) Earnings during a given period from:

(i) Services performed by the recipient; and

(ii) Goods and other tangible property delivered to purchasers.

(2) Amounts becoming owed to the recipient for which no current services or performance is required by the recipient.

Acquisition cost of equipment. The net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

Advance. A payment made by Treasury check or other appropriate payment mechanism to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules.

Award. Financial assistance that provides support or stimulation to accomplish a public purpose. Awards include grants and other agreements in the form of money or property in lieu of money, by the Federal Government to an eligible recipient. The term does not include: Technical assistance, which provides services instead of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals; and, contracts which are required to be entered into and administered under procurement laws and regulations.

Cash contributions. The recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

Closeout. The process by which the grants officer administering an award made by a DoD Component determines that all applicable administrative actions and all required work of the award have been completed by the recipient and DoD Component.

Contract. A procurement contract under an award or subaward, and a procurement subcontract under a recipient's or subrecipient's contract.

Cost sharing or matching. That portion of project or program costs not borne by the Federal Government.

Date of completion. The date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which Federal sponsorship ends.

Disallowed costs. Those charges to an award that the grants officer administering an award made by a DoD Component determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

DoD Component. A Military Department, Defense Agency, DoD field activity, or organization within the Office of the Secretary of Defense that provides or administers an award to a recipient.

Equipment. Tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. However, consistent with recipient policy, lower limits may be established.

Excess property. Property under the control of any DoD Component that, as determined by the head thereof, is no longer required for its needs or the discharge of its responsibilities.

Exempt property. Tangible personal property acquired in whole or in part with Federal funds, where the DoD Component has statutory authority to vest title in the recipient without further obligation to the Federal Government. An example of exempt property authority is contained in the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6306), for property acquired under an award to conduct basic or applied research by a non-profit institution of higher education or non-profit organization whose principal purpose is conducting scientific research.

Federal funds authorized. The total amount of Federal funds obligated by a DoD Component for use by the recipient. This amount may include any authorized carryover of unobligated funds from prior funding periods when permitted by agency regulations or agency implementing instructions.

Federal share (of real property, equipment, or supplies). That percentage of the property's acquisition costs and any improvement expenditures paid with Federal funds.

Funding period. The period of time when Federal funding is available for obligation by the recipient.

Intangible property and debt instruments. Property that includes, but is not limited to, trademarks, copyrights, patents and patent applications and such property as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership, whether considered tangible or intangible.

Obligations. The amounts of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the recipient during the same or a future period.

Outlays or *expenditures.* Charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of third party in-kind contributions applied and the amount of cash advances and payments made to subrecipients. For reports prepared on an accrual basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subrecipients and other payees and other amounts becoming owed under programs for which no current services or performance are required.

Personal property. Property of any kind except real property. It may be tangible, having physical existence, or intangible, having no physical existence, such as copyrights, patents, or securities.

Prior approval. Written approval by an authorized official evidencing prior consent.

Program income. Gross income earned by the recipient that is directly generated by a supported activity or

earned as a result of the award (see exclusions in § 32.24(e) and (h)). Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in program regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them.

Project costs. All allowable costs, as set forth in the applicable Federal cost principles, incurred by a recipient and the value of the contributions made by third parties in accomplishing the objectives of the award during the project period.

Project period. The period established in the award document during which Federal sponsorship begins and ends.

Property. Real property and personal property (equipment, supplies, intangible property and debt instruments), unless stated otherwise.

Real property. Land, including land improvements, structures and appurtenances thereto, but excluding movable machinery and equipment.

Recipient. An organization receiving financial assistance directly from DoD Components to carry out a project or program. The term includes public and private institutions of higher education, public and private hospitals, and other quasi-public and private non-profit organizations such as, but not limited to, community action agencies, research institutes, educational associations, and health centers. The term also includes consortia comprised of any combination of universities, other nonprofit organizations, governmental organizations, for-profit organizations, and other entities, to the extent that the consortia are legally incorporated as nonprofit organizations. The term does not include Government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large-scale programs that are Government-owned or controlled, or are designated as federally-funded research and development centers.

Research and development. All research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other non-profit institutions. *Research* is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. *Development* is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

Small award. An award not exceeding the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently $100,000).

Subaward. An award of financial assistance in the form of money, or property in lieu of money, made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance which is excluded from the definition of "award" in this section.

Subrecipient. The legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided.

Supplies. All personal property excluding equipment, intangible property, and debt instruments as defined in this section, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement ("subject inventions"), as defined in 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements."

Suspension. An action by a DoD Component that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by the DoD Component. Suspension of an award is a separate action from suspension of a participant under 32 CFR part 25.

Termination. The cancellation of an award, in whole or in part, at any time prior to the date of completion.

Third party in-kind contributions. The value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

Unliquidated obligations. The amount of obligations incurred by the recipient:

(1) That have not been paid, if financial reports are prepared on a cash basis.

(2) For which an outlay has not been recorded, if reports are prepared on an accrued expenditure basis.

Unobligated balance. The portion of the funds authorized by a DoD Component that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

Unrecovered indirect cost. The difference between the amount awarded and the amount which could have been awarded under the recipient's approved negotiated indirect cost rate.

Working capital advance. A procedure whereby funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period.

§ 32.3 Effect on other issuances.

For awards subject to this part, all administrative requirements of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with the requirements of this part shall be superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in § 32.4.

§ 32.4 Deviations.

(a) *Individual deviations.* Individual deviations affecting only one award may be approved by DoD Components in accordance with procedures stated in 32 CFR 21.125(a) and (c).

(b) *Small awards.* DoD Components may apply less restrictive requirements than the provisions of this part when awarding small awards, except for those requirements which are statutory.

(c) *Other class deviations.* (1) For classes of awards other than small awards, the Director of Defense Research and Engineering (DDR&E), or his or her designee, may grant exceptions from the requirements of this part:

(i) With the written concurrence of the Office of the Management and Budget (OMB). The DDR&E, or his or her designee, shall provide written notification to OMB of the Department of Defense's intention to grant a class deviation; and

(ii) When exceptions are not prohibited by statute.

(2) DoD Components shall request approval for such deviations in

accordance with 32 CFR 21.125(b) and (c). However, in the interest of maximum uniformity, exceptions from the requirements of this part shall be permitted only in unusual circumstances.

§ 32.5 Subawards.

Unless sections of this part specifically exclude subrecipients from coverage, the provisions of this part shall be applied to subrecipients performing work under awards if such subrecipients are institutions of higher education, hospitals or other non-profit organizations. State and local government subrecipients are subject to the provisions of 32 CFR part 33. Subrecipients that are for-profit organizations are subject to 32 CFR part 34.

Subpart B—Pre-Award Requirements

§ 32.10 Purpose.

Sections 32.11 through 32.17 prescribe application forms and instructions and other pre-award matters.

§ 32.11 Pre-award policies.

(a) *Use of grants, cooperative agreements, and contracts.* (1) OMB Circular A–110 states that:

(i) In each instance, the Federal awarding agency shall decide on the appropriate award instrument (i.e., grant, cooperative agreement, or contract).

(ii) The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301–6308) governs the use of grants, cooperative agreements, and contracts. Under that Act:

(A) A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute.

(B) Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government.

(C) The statutory criterion for choosing between grants and cooperative agreements is that for the latter, "substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement."

(2) In selecting the appropriate award instruments, DoD Components' grants officers shall comply with the DoD implementation of the Federal Grant and Cooperative Agreement Act at 32 CFR 21.205(a) and 32 CFR part 22, subpart B.

(b) *Public notice and priority setting.* As a matter of Governmentwide policy, Federal awarding agencies shall notify the public of intended funding priorities for programs that use discretionary awards, unless funding priorities are established by Federal statute. For DoD Components, compliance with competition policies and statutory requirements implemented in 32 CFR part 22, subpart C, shall constitute compliance with this Governmentwide policy.

§ 32.12 Forms for applying for Federal assistance.

(a) DoD Components shall comply with the applicable report clearance requirements of 5 CFR part 1320, "Controlling Paperwork Burdens on the Public," with regard to all forms used in place of or as a supplement to the Standard Form 424 [2] (SF–424) series.

(b) Applicants shall use the SF–424 series or those forms and instructions prescribed by DoD Components.

(c) For Federal programs covered by E.O. 12372 (3 CFR, 1982 Comp., p. 197), "Intergovernmental Review of Federal Programs," the applicant shall complete the appropriate sections of the SF–424 (Application for Federal Assistance) indicating whether the application was subject to review by the State Single Point of Contact (SPOC). The name and address of the SPOC for a particular State can be obtained from the DoD Component or the Catalog of Federal Domestic Assistance. The SPOC shall advise the applicant whether the program for which application is made has been selected by that State for review.

(d) DoD Components that do not use the SF–424 form should indicate whether the application is subject to review by the State under E.O. 12372.

§ 32.13 Debarment and suspension.

DoD Components and recipients shall comply with the nonprocurement debarment and suspension common rule at 32 CFR part 25. This common rule restricts subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

[2] For copies of Standard Forms listed in this part, contact regional grants administration offices of the Office of Naval Research. Addresses for the offices are listed in the "DoD Directory of Contract Administration Services Components," DLAH 4105.4, which can be obtained from: Defense Logistics Agency, Publications Distribution Division (DASC–WDM), 8725 John J. Kingman Rd., Suite 0119, Fort Belvoir, VA 22060–6220.

§ 32.14 Special award conditions.

(a) DoD Components may impose additional requirements as needed, over and above those provided in this part, if an applicant or recipient:

(1) Has a history of poor performance;

(2) Is not financially stable;

(3) Has a management system that does not meet the standards prescribed in this part;

(4) Has not conformed to the terms and conditions of a previous award; or

(5) Is not otherwise responsible.

(b) Before imposing additional requirements, DoD Components shall notify the applicant or recipient in writing as to:

(1) The nature of the additional requirements;

(2) The reason why the additional requirements are being imposed;

(3) The nature of the corrective action needed;

(4) The time allowed for completing the corrective actions; and

(5) The method for requesting reconsideration of the additional requirements imposed.

(c) Any special conditions shall be promptly removed once the conditions that prompted them have been corrected.

(d) Grants officers:

(1) Should coordinate the imposition and removal of special award conditions with the cognizant grants administration office identified in 32 CFR 22.710.

(2) Shall include in the award file the written notification to the recipient, described in paragraph (b) of this section, and the documentation required by 32 CFR 22.410(b).

§ 32.15 Metric system of measurement.

The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205) declares that the metric system is the preferred measurement system for U.S. trade and commerce, and for Federal agencies' procurements, grants, and other business-related activities. DoD grants officers shall comply with requirements concerning the use of the metric system at 32 CFR 22.530.

§ 32.16 Resource Conservation and Recovery Act (RCRA).

Recipients' procurements shall comply with applicable requirements of the Resource Conservation and Recovery Act (RCRA), as described at § 32.49.

§ 32.17 Certifications and representations.

(a) OMB Circular A–110 authorizes and encourages each Federal agency, unless prohibited by statute or codified regulation, to allow recipients to submit

certifications and representations required by statute, executive order, or regulation on an annual basis, if the recipients have ongoing and continuing relationships with the agency. The Circular further states that annual certifications and representations, when used, shall be signed by responsible officials with the authority to ensure recipients' compliance with the pertinent requirements.

(b) DoD grants officers shall comply, with the provisions concerning certifications and representations at 32 CFR 22.510. Those provisions ease burdens on recipients to the extent possible, given current statutory and regulatory impediments to obtaining all certifications on an annual basis. The provisions thereby also comply with the intent of OMB Circular A–110, to use less burdensome methods for obtaining certifications and representations, as such methods become feasible.

Subpart C—Post-Award Requirements

Financial and Program Management

§ 32.20 Purpose of financial and program management.

Sections 32.21 through 32.28 prescribe standards for financial management systems, methods for making payments and rules for: satisfying cost sharing and matching requirements, accounting for program income, budget revision approvals, making audits, determining allowability of cost, and establishing fund availability.

§ 32.21 Standards for financial management systems.

(a) DoD Components shall require recipients to relate financial data to performance data and develop unit cost information whenever practical. For awards that support research, it should be noted that it is generally not appropriate to develop unit cost information.

(b) Recipients' financial management systems shall provide for the following.

(1) Accurate, current and complete disclosure of the financial results of each federally-sponsored project or program in accordance with the reporting requirements set forth in § 32.52. If a DoD Component requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient shall not be required to establish an accrual accounting system. These recipients may develop such accrual data for its reports on the basis of an analysis of the documentation on hand.

(2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.

(3) Effective control over and accountability for all funds, property and other assets. Recipients shall adequately safeguard all such assets and assure they are used solely for authorized purposes.

(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data. As discussed in paragraph (a) of this section, unit cost data is generally not appropriate for awards that support research.

(5) Written procedures to minimize the time elapsing between the transfer of funds to the recipient from the U.S. Treasury and the issuance or redemption of checks, warrants or payments by other means for program purposes by the recipient. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101–453) govern, payment methods of State agencies, instrumentalities, and fiscal agents should be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, "Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs."

(6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles (see § 32.27) and the terms and conditions of the award.

(7) Accounting records including cost accounting records that are supported by source documentation.

(c) Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, the DoD Component, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.

(d) The DoD Component may require adequate fidelity bond coverage where the recipient lacks sufficient coverage to protect the Federal Government's interest.

(e) Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, "Surety Companies Doing Business with the United States."

§ 32.22 Payment.

(a) Payment methods shall minimize the time elapsing between the transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payment by other means by the recipients. Payment methods of State agencies or instrumentalities shall be consistent with Treasury-State agreements under the Cash Management Improvement Act (CMIA) (31 U.S.C. 3335 and 6503) or default procedures in 31 CFR part 205.

(b) Recipients are to be paid in advance, provided they maintain or demonstrate the willingness to maintain:

(1) Written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient; and

(2) Financial management systems that meet the standards for fund control and accountability as established in § 32.21. Cash advances to a recipient organization shall be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for direct program or project costs and the proportionate share of any allowable indirect costs.

(c) Whenever possible, advances shall be consolidated to cover anticipated cash needs for all awards made by the DoD Component to the recipient.

(1) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer.

(2) Advance payment mechanisms are subject to 31 CFR part 205.

(3) Recipients shall be authorized to submit requests for advances and reimbursements at least monthly when electronic fund transfers are not used.

(d) Requests for Treasury check advance payment shall be submitted on SF–270,[3] "Request for Advance or Reimbursement," or other forms as may be authorized by OMB. This form is not to be used when Treasury check advance payments are made to the recipient automatically through the use of a predetermined payment schedule or if inconsistent with DoD procedures for electronic funds transfer.

(e) Reimbursement is the preferred method when the requirements in paragraph (b) of this section cannot be met. DoD Components may also use this method on any construction agreement,

[3] See footnote 2 to § 32.12(a).

or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal assistance constitutes a minor portion of the project.

(1) When the reimbursement method is used, the responsible DoD payment office generally makes payment within 30 calendar days after receipt of the billing by the office designated to receive the billing, unless the billing is improper (for further information about timeframes for payments, see 32 CFR 22.810(c)(3)(ii)).

(2) Recipients shall be authorized to submit requests for reimbursement at least monthly when electronic funds transfers are not used.

(f) If a recipient cannot meet the criteria for advance payments and the grants officer, in consultation with the program manager, has determined that reimbursement is not feasible because the recipient lacks sufficient working capital, the award may provide for cash on a working capital advance basis. Under this procedure, the award shall provide for advancing cash to the recipient to cover its estimated disbursement needs for an initial period generally geared to the awardee's disbursing cycle. Thereafter, the award shall provide for reimbursing the recipient for its actual cash disbursements. The working capital advance method of payment shall not be used for recipients unwilling or unable to provide timely advances to their subrecipient to meet the subrecipient's actual cash disbursements.

(g) To the extent available, recipients shall disburse funds available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(h) Unless otherwise required by statute, grants officers shall not withhold payments for proper charges made by recipients at any time during the project period unless:

(1) A recipient has failed to comply with the project objectives, the terms and conditions of the award, or Federal reporting requirements; or

(2) The recipient or subrecipient is delinquent in a debt to the United States under OMB Circular A–129, "Managing Federal Credit Programs" (see definitions of "debt" and "delinquent debt," at 32 CFR 22.105). Under such conditions, the grants officer may, upon reasonable notice, inform the recipient that payments shall not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated (also see 32 CFR 22.420(b)(2) and 22.820).

(i) Standards governing the use of banks and other institutions as depositories of funds advanced under awards are as follows:

(1) Except for situations described in paragraph (i)(2) of this section, DoD Components shall not require separate depository accounts for funds provided to a recipient or establish any eligibility requirements for depositories for funds provided to a recipient. However, recipients must be able to account for the receipt, obligation and expenditure of funds.

(2) Advances of Federal funds shall be deposited and maintained in insured accounts whenever possible.

(j) Consistent with the national goal of expanding the opportunities for women-owned and minority-owned business enterprises, recipients shall be encouraged to use women-owned and minority-owned banks (a bank which is owned at least 50 percent by women or minority group members).

(k) Recipients shall maintain advances of Federal funds in interest bearing accounts, unless:

(1) The recipient receives less than $120,000 in Federal awards per year;

(2) The best reasonably available interest bearing account would not be expected to earn interest in excess of $250 per year on Federal cash balances; or

(3) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

(l)(1) Interest earned on Federal advances deposited in interest bearing accounts shall be remitted annually to Department of Health and Human Services, Payment Management System, PO Box 6021, Rockville, MD 20852.

(2) In keeping with Electronic Funds Transfer rules (31 CFR part 206), interest should be remitted to the HHS Payment Management System through an electronic medium such as the FEDWIR Deposit System. Electronic remittances should be in the format and should include any data that are specified by the grants officer as being necessary to facilitate direct deposit in HHS' account at the Department of the Treasury.

(3) Recipients that do not have electronic remittance capability should use a check.

(4) Interest amounts up to $250 per year may be retained by the recipient for administrative expense.

(m) Except as noted elsewhere in this part, only the following forms shall be authorized for the recipients in requesting advances and reimbursements. DoD Components shall not require more than an original and two copies of these forms.

(1) SF–270, Request for Advance or Reimbursement. Each DoD Component shall adopt the SF–270 as a standard form for all nonconstruction programs when electronic funds transfer or predetermined advance methods are not used. DoD Components, however, have the option of using this form for construction programs in lieu of the SF–271,[4] "Outlay Report and Request for Reimbursement for Construction Programs."

(2) SF–271, Outlay Report and Request for Reimbursement for Construction Programs. Each DoD Component shall adopt the SF–271 as the standard form to be used for requesting reimbursement for construction programs. However, a DoD Component may substitute the SF–270 when the DoD Component determines that it provides adequate information to meet Federal needs.

§ 32.23 Cost sharing or matching.

(a) All contributions, including cash and third party in-kind, shall be accepted as part of the recipient's cost sharing or matching when such contributions meet all of the following criteria:

(1) Are verifiable from the recipient's records.

(2) Are not included as contributions for any other federally-assisted project or program.

(3) Are necessary and reasonable for proper and efficient accomplishment of project or program objectives.

(4) Are allowable under the applicable cost principles.

(5) Are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching.

(6) Are provided for in the approved budget when required by the DoD Component.

(7) Conform to other provisions of this part, as applicable.

(b) Unrecovered indirect costs (see definition in § 32.2) may be included as part of cost sharing or matching.

(c) Values for recipient contributions of services and property shall be established in accordance with the applicable cost principles. If a DoD Component authorizes recipients to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of

[4] See footnote 2 to § 32.12(a).

the donated property for cost sharing or matching shall be the lesser of:

(1) The certified value of the remaining life of the property recorded in the recipient's accounting records at the time of donation; or

(2) The current fair market value. However, when there is sufficient justification, the DoD Component may approve the use of the current fair market value of the donated property, even if it exceeds the certified value at the time of donation to the project. The DoD Component may accept the use of any reasonable basis for determining the fair market value of the property.

(d) Volunteer services furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for volunteer services shall be consistent with those paid for similar work in the recipient's organization. In those instances in which the required skills are not found in the recipient organization, rates shall be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

(e) When an employer other than the recipient furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (plus an amount of fringe benefits that are reasonable, allowable, and allocable, but exclusive of overhead costs), provided these services are in the same skill for which the employee is normally paid.

(f) Donated supplies may include such items as office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to donated supplies included in the cost sharing or matching share shall be reasonable and shall not exceed the fair market value of the property at the time of the donation.

(g) The method used for determining cost sharing or matching for donated equipment, buildings and land for which title passes to the recipient may differ according to the purpose of the award, if the purpose of the award is to:

(1) Assist the recipient in the acquisition of equipment, buildings or land, the total value of the donated property may be claimed as cost sharing or matching; or

(2) Support activities that require the use of equipment, buildings or land, normally only depreciation or use charges for equipment and buildings may be made. However, the full value of equipment or other capital assets and fair rental charges for land may be allowed, provided that the DoD Component has approved the charges.

(h) The value of donated property shall be determined in accordance with the usual accounting policies of the recipient, with the following qualifications.

(1) The value of donated land and buildings shall not exceed its fair market value at the time of donation to the recipient as established by an independent appraiser (e.g., certified real property appraiser or General Services Administration representative) and certified by a responsible official of the recipient.

(2) The value of donated equipment shall not exceed the fair market value of equipment of the same age and condition at the time of donation.

(3) The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(4) The value of loaned equipment shall not exceed its fair rental value.

(i) The following requirements pertain to the recipient's supporting records for in-kind contributions from third parties:

(1) Volunteer services shall be documented and, to the extent feasible, supported by the same methods used by the recipient for its own employees.

(2) The basis for determining the valuation for personal service and property shall be documented.

§ 32.24 Program income.

(a) DoD Components shall apply the standards set forth in this section in requiring recipient organizations to account for program income related to projects financed in whole or in part with Federal funds.

(b) Except as provided in paragraph (h) of this section, program income earned during the project period shall be retained by the recipient and, in accordance with the terms and conditions of the award, shall be used in one or more of the following ways:

(1) Added to funds committed to the project by the DoD Component and recipient and used to further eligible project or program objectives.

(2) Used to finance the non-Federal share of the project or program.

(3) Deducted from the total project or program allowable cost in determining the net allowable costs on which the Federal share of costs is based.

(c) When a program regulation or award authorizes the disposition of program income as described in paragraphs (b)(1) or (b)(2) of this section, program income in excess of any limits stipulated shall be used in accordance with paragraph (b)(3) of this section.

(d) In the event that program regulations or the terms and conditions of the award do not specify how program income is to be used, paragraph (b)(3) of this section shall apply automatically to all projects or programs except research. For awards that support research, paragraph (b)(1) of this section shall apply automatically unless the terms and conditions specify another alternative or the recipient is subject to special award conditions, as indicated in § 32.14.

(e) Unless program regulations or the terms and conditions of the award provide otherwise, recipients shall have no obligation to the Federal Government regarding program income earned after the end of the project period.

(f) If authorized by program regulations or the terms and conditions of the award, costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

(g) Proceeds from the sale of property shall be handled in accordance with the requirements of the Property Standards (see §§ 32.30 through 32.37).

(h) Unless program regulations or the terms and condition of the award provide otherwise, recipients shall have no obligation to the Federal Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. Note that the Patent and Trademark Amendments (35 U.S.C. chapter 18) apply to inventions made under an experimental, developmental, or research award.

§ 32.25 Revision of budget and program plans.

(a) The budget plan is the financial expression of the project or program as approved during the award process. It may include either the sum of the Federal and non-Federal shares, or only the Federal share, depending upon DoD Component requirements. It shall be related to performance for program evaluation purposes whenever appropriate.

(b) Recipients are required to report deviations from budget and program plans, and request prior approvals for budget and program plan revisions, in accordance with this section.

(c) For nonconstruction awards, recipients shall request prior approvals from the cognizant grants officer for one or more of the following program or budget related reasons.

(1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(2) Change in a key person specified in the application or award document.

(3) The absence for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(4) The need for additional Federal funding.

(5) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa, if approval is required by the DoD Component. DoD Components should require this prior approval only in exceptional circumstances. The requirement in each such case must be stated in the award document.

(6) The inclusion, unless waived by the DoD Component, of costs that require prior approval in accordance with OMB Circular A–21,[5] "Cost Principles for Institutions of Higher Education," OMB Circular A–122,[6] "Cost Principles for Non-Profit Organizations," or Appendix E to 45 CFR part 74, "Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals," or 48 CFR part 31, "Contract Cost Principles and Procedures," as applicable. However, it should be noted that many of the prior approvals in these cost principles are appropriately waived only after consultation with the cognizant federal agency responsible for negotiating the recipient's indirect costs.

(7) The transfer of funds allotted for training allowances (direct payment to trainees) to other categories of expense.

(8) Unless described in the application and funded in the approved awards, the subaward, transfer or contracting out of any work under an award. This provision does not apply to the purchase of supplies, material, equipment or general support services.

(9) If required by the DoD Component, the transfer of funds among direct cost categories that is described in paragraph (e) of this section.

(d) (1) Except for requirements listed in paragraphs (c)(1) and (c)(4) of this section, OMB Circular A–110 authorizes DoD Components, at their option, to waive cost-related and administrative prior written approvals required by this part and OMB Circulars A–21 and A–122 (but see cautionary note at end of paragraph (c)(5) of this section).

(2) The two prior approvals listed in paragraphs (d)(2)(i) and (ii) of this section are automatically waived unless the award document states otherwise. DoD Components should override this automatic waiver and require the prior approvals, especially for research awards, only in exceptional circumstances. Absent an override in the award terms and conditions, recipients need not obtain prior approvals before:

(i) Incurring pre-award costs 90 calendar days prior to award (incurring pre-award costs more than 90 calendar days prior to award would still require the prior approval of the DoD Component). All pre-award costs are incurred at the recipient's risk (i.e., the DoD Component is under no obligation to reimburse such costs if for any reason the recipient does not receive an award or if the award is less than anticipated and inadequate to cover such costs).

(ii) Carrying forward unobligated balances to subsequent funding periods.

(3) Under certain conditions, a DoD Component may authorize a recipient to initiate, without prior approval, a one-time, no-cost extension (i.e., an extension in the expiration date of an award that does not require additional Federal funds) for a period of up to twelve months, as long as the no-cost extension does not involve a change in the approved objectives or scope of the project. The conditions for waiving this prior approval requirement are that the DoD Component must:

(i) Judge that the recipient's subsequently initiating a one-time, no-cost extension would not cause the DoD Component to fail to comply with DoD funding policies (for further information on the location of DoD funding policies, grants officers may refer to Appendix C to 32 CFR part 22).

(ii) Require a recipient that wishes to initiate a one-time, no-cost extension to so notify the office that made the award at least 10 calendar days before the original expiration date of the award.

(e) The DoD Component may, at its option, restrict the transfer of funds among direct cost categories, functions and activities for awards in which the Federal share of the project exceeds $100,000 and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by the DoD Component. As a matter of DoD policy, requiring prior approvals for such transfers generally is not appropriate for grants to support research. No DoD Component shall permit a transfer that would cause any Federal appropriation or part thereof to be used for purposes other than those consistent with the original intent of the appropriation.

(f) For construction awards, recipients shall request prior written approval promptly from grants officers for budget revisions whenever:

(1) The revision results from changes in the scope or the objective of the project or program;

(2) The need arises for additional Federal funds to complete the project; or

(3) A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in § 32.27.

(g) When a DoD Component makes an award that provides support for both construction and nonconstruction work, the DoD Component may require the recipient to request prior approval from the grants officer before making any fund or budget transfers between the two types of work supported.

(h) No other prior approval requirements for specific items may be imposed unless a deviation has been approved, in accordance with the deviation procedures in § 32.4(c).

(i) For both construction and nonconstruction awards, DoD Components shall require recipients to notify the grants officer in writing promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the recipient for the project period by more than $5000 or five percent of the Federal award, whichever is greater. This notification shall not be required if an application for additional funding is submitted for a continuation award.

(j) When requesting approval for budget revisions, recipients shall use the budget forms that were used in the application unless the grants officer indicates a letter of request suffices.

(k) Within 30 calendar days from the date of receipt of the request for budget revisions, the grants officer shall review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, the grants officer shall inform the recipient in writing of the date when the recipient may expect the decision.

§ 32.26 Non-Federal audits.

(a) Recipients and subrecipients that are institutions of higher education or other non-profit organizations (including hospitals) shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised OMB

[5] See footnote 1 to § 32.1(a).

[6] See footnote 1 to § 32.1(a).

Circular A–133,[7] "Audits of States, Local Governments, and Non-Profit Organizations."

(b) State and local governments that are subrecipients shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised OMB Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations."

(c) Hospitals that are subrecipients and are not covered by the audit provisions of revised OMB Circular A–133 shall be subject to the audit requirements specified in award terms and conditions.

(d) For-profit organizations that are subrecipients shall be subject to the audit requirements specified in 32 CFR 34.16.

§ 32.27 Allowable costs.

(a) *General.* For each kind of recipient or subrecipient of a cost-type assistance award, or each contractor receiving a. cost-type contract under an assistance award, there is a set of Federal principles for determining allowable costs. Allowability of costs shall be determined in accordance with the cost principles applicable to the entity incurring the costs.

(b) *Governmental organizations.* Allowability of costs incurred by State, local or federally-recognized Indian tribal governments that may be subrecipients or contractors under awards subject to this part is determined in accordance with the provisions of OMB Circular A–87,[8] "Cost Principles for State and Local Governments."

(c) *Non-profit organizations.* The allowability of costs incurred by non-profit organizations that may be recipients or subrecipients of awards subject to this part, or contractors under such awards, is determined in accordance with the provisions of OMB Circular A–122, "Cost Principles for Non-Profit Organizations."

(d) *Higher educational institutions.* The allowability of costs incurred by institutions of higher education that may be recipients, subrecipients, or contractors is determined in accordance with the provisions of OMB Circular A–21, "Cost Principles for Educational Institutions."

(e) *Hospitals.* The allowability of costs incurred by hospitals that are recipients, subrecipients, or contractors is determined in accordance with the provisions of Appendix E to 45 CFR part 74, "Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals."

(f) *For-profit organizations.* The allowability of costs incurred by subrecipients or contractors that are either for-profit organizations or non-profit organizations listed in Attachment C to Circular A–122 is determined in accordance with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR part 31; however, the grants officer or the award terms and conditions may in rare cases authorize a determination of allowable costs that are in accordance with uniform cost accounting standards and comply with cost principles acceptable to the Department of Defense.

§ 32.28 Period of availability of funds.

Where a funding period is specified, a recipient may charge to the award only allowable costs resulting from obligations incurred during the funding period and any pre-award costs (see § 32.25(d)(2)(i)) authorized by the DoD Component.

Property Standards

§ 32.30 Purpose of property standards.

Sections 32.31 through 32.37 set forth uniform standards governing management and disposition of property furnished by the Federal Government and property whose cost was charged to a project supported by a Federal award. DoD Components shall require recipients to observe these standards under awards and shall not impose additional requirements, unless specifically required by Federal statute. The recipient may use its own property management standards and procedures provided it observes the provisions of §§ 32.31 through 32.37.

§ 32.31 Insurance coverage.

Recipients shall, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with Federal funds as provided to property owned by the recipient. Federally-owned property need not be insured unless required by the terms and conditions of the award.

§ 32.32 Real property.

Each DoD Component that makes awards under which real property is acquired in whole or in part with Federal funds shall prescribe requirements for recipients concerning the use and disposition of such property. Unless otherwise provided by statute, such requirements, at a minimum, shall contain the following:

(a) Title to real property shall vest in the recipient subject to the condition that the recipient shall use the real property for the authorized purpose of the project as long as it is needed and shall not encumber the property without approval of the DoD Component.

(b) The recipient shall obtain written approval by the grants officer for the use of real property in other federally sponsored projects when the recipient determines that the property is no longer needed for the purpose of the original project. Use in other projects shall be limited to those under federally sponsored projects (i.e., awards) or programs that have purposes consistent with those authorized for support by the DoD Component.

(c) When the real property is no longer needed as provided in paragraphs (a) and (b) of this section, the recipient shall request disposition instructions from the DoD Component or its successor Federal agency. The responsible Federal agency shall observe one or more of the following disposition instructions:

(1) The recipient may be permitted to retain title without further obligation to the Federal Government after it compensates the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project.

(2) The recipient may be directed to sell the property under guidelines provided by the DoD Component and pay the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the recipient is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

(3) The recipient may be directed to transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the recipient shall be entitled to compensation for its attributable percentage of the current fair market value of the property.

§ 32.33 Federally-owned and exempt property.

(a) *Federally-owned property.* (1) Title to federally-owned property remains vested in the Federal Government. Recipients shall submit annually an inventory listing of federally-owned property in their custody to the DoD Component that made the award. Upon completion of the award or when the property is no longer needed, the recipient shall report the property to the

[7] See footnote 1 to § 32.1(a).

[8] See footnote 1 to § 32.1(a).

DoD Component for further Federal agency utilization.

(2) If the DoD Component that made the award has no further need for the property, it shall be declared excess and either:

(i) Reported to the General Services Administration, in accordance with the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483(b)(2)), as implemented by General Services Administration regulations at 41 CFR 101–47.202; or

(ii) Disposed of by alternative methods pursuant to other specific statutory authority. For example, DoD Components are authorized by the Federal Technology Transfer Act (15 U.S.C. 3710(i)), to donate research equipment to educational and non-profit organizations for the conduct of technical and scientific education and research activities—donations under this Act shall be in accordance with the DoD implementation of E.O. 12999 (3 CFR, 1996 Comp., p. 180), "Educational Technology: Ensuring Opportunity for All Children in the Next Century," as applicable. Appropriate instructions shall be issued to the recipient by the DoD Component.

(b) *Exempt property.* (1) When statutory authority exists, a DoD Component may vest title to property acquired with Federal funds in the recipient without further obligation to the Federal Government and under conditions the DoD Component considers appropriate. For example, under 31 U.S.C. 6306, DoD Components may so vest title to tangible personal property under a grant or cooperative agreement for basic or applied research in a nonprofit institution of higher education or a nonprofit organization whose primary purpose is conducting scientific research. Such property is "exempt property."

(2) As a matter of policy, DoD Components shall make maximum use of the authority of 31 U.S.C. 6306 to vest title to exempt property in institutions of higher education, without further obligation to the Government, to enhance the university infrastructure for future performance of defense research and related, science and engineering education.

(3) DoD Components may establish conditions, in regulation or in award terms and conditions, for vesting title to exempt property. Should a DoD Component not establish conditions, title to exempt property upon acquisition shall vest in the recipient without further obligation to the Federal Government.

§ 32.34 Equipment.

(a) Title to equipment acquired by a recipient with Federal funds shall vest in the recipient, subject to conditions of this section.

(b) The recipient shall not use equipment acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute, for as long as the Federal Government retains an interest in the equipment.

(c) The recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds and shall not encumber the property without approval of the DoD Component that made the award. When no longer needed for the original project or program, the recipient shall use the equipment in connection with its other federally-sponsored activities, in the following order of priority:

(1) First, activities sponsored by the DoD Component that funded the original project.

(2) Second, activities sponsored by other DoD Components.

(3) Then, activities sponsored by other Federal agencies.

(d) During the time that equipment is used on the project or program for which it was acquired, the recipient shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the equipment was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by the DoD Component that financed the equipment; second preference shall be given to projects or programs sponsored by other DoD Components; and third preference shall be given to projects or programs sponsored by other Federal agencies. If the property is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by the DoD Component that financed the property. User charges shall be treated as program income.

(e) When acquiring replacement equipment, the recipient may use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to the approval of the DoD Component that financed the equipment.

(f) The recipient's property management standards for equipment acquired with Federal funds and federally-owned property shall include all of the following:

(1) Records for equipment and federally-owned property shall be maintained accurately and shall include the following information:

(i) A description of the equipment or federally-owned property.

(ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(iii) Source of the equipment or federally-owned property, including the award number.

(iv) Whether title vests in the recipient or the Federal Government.

(v) Acquisition date (or date received, if the property was furnished by the Federal Government) and cost.

(vi) Information from which one can calculate the percentage of Federal participation in the cost of the equipment (not applicable to property furnished by the Federal Government).

(vii) Location and condition of the equipment or federally-owned property and the date the information was reported.

(viii) Unit acquisition cost.

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates the DoD Component that made the award for its share.

(2) Property owned by the Federal Government shall be identified to indicate Federal ownership.

(3) A physical inventory of equipment and federally-owned property shall be taken and the results reconciled with the equipment records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment or federally-owned property.

(4) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment or federally-owned property. Any loss, damage, or theft of equipment or federally-owned property shall be investigated and fully documented; if the property was owned by the Federal Government, the recipient shall promptly notify the DoD Component.

(5) Adequate maintenance procedures shall be implemented to keep the equipment or federally-owned property in good condition.

(6) Where the recipient is authorized or required to sell the equipment, proper sales procedures shall be established which provide for competition to the extent practicable and result in the highest possible return.

(g) When the recipient no longer needs the equipment, the equipment may be used for other activities in accordance with the following standards.

(1) For equipment with a current per unit fair market value of $5,000 or more, the recipient may retain the equipment for other uses provided that compensation is made to the DoD Component that originally made the award or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the equipment.

(2) If the recipient has no need for the equipment, the recipient shall request disposition instructions from the DoD Component. The DoD Component shall issue instructions to the recipient no later than 120 calendar days after the recipient's request and the following procedures shall govern:

(i) The grants officer, in consultation with the program manager, shall judge whether the age and nature of the equipment warrant a screening procedure to determine whether the equipment is useful to a DoD Component or other Federal agency. If a screening procedure is warranted:

(A) The DoD Component shall determine whether the equipment can be used to meet DoD requirements.

(B) If no DoD requirement exists, the availability of the equipment shall be reported to the General Services Administration by the DoD Component to determine whether a requirement for the equipment exists in other Federal agencies.

(ii) If so instructed or if disposition instructions are not issued within 120 calendar days after the recipient's request, the recipient shall sell the equipment and reimburse the DoD Component that made the award an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the recipient shall be permitted to deduct and retain from the Federal share $500 or ten percent of the proceeds, whichever is less, for the recipient's selling and handling expenses.

(iii) If the recipient is instructed to ship the equipment elsewhere, the recipient shall be reimbursed by the Federal Government by an amount which is computed by applying the percentage of the recipient's participation in the cost of the original project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(iv) If the recipient is instructed to otherwise dispose of the equipment, the recipient shall be reimbursed by the DoD Component that made the award for such costs incurred in its disposition.

(h) The DoD Component may reserve the right to transfer the title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such transfer shall be subject to the following standards.

(1) The equipment shall be appropriately identified in the award or otherwise made known to the recipient in writing. For exempt property, in accordance with § 32.33(b)(3), note that this identification must occur by the time of award, or title to the property vests in the recipient without further obligation to the Government.

(2) The DoD Component shall issue disposition instructions within 120 calendar days after receipt of a final inventory. The final inventory shall list all equipment acquired with award funds and federally-owned property. If the DoD Component fails to issue disposition instructions for equipment within the 120 calendar day period, the recipient shall apply the standards of paragraph (g) of this section.

(3) When the DoD Component exercises its right to take title, the equipment shall be subject to the provisions for federally-owned property.

§ 32.35 Supplies.

(a) Title to supplies shall vest in the recipient upon acquisition. If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other federally-sponsored project or program, the recipient shall retain the supplies for use on non-Federal sponsored activities or sell them, but shall, in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as for equipment.

(b) The recipient shall not use supplies acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute as long as the Federal Government retains an interest in the supplies.

§ 32.36 Intangible property.

(a) The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. DoD Components reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

(b) Recipients are subject to applicable regulations governing patents and inventions, including Governmentwide regulations issued by the Department of Commerce at 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."

(c) Unless waived by the DoD Component making the award, the Federal Government has the right to:

(1) Obtain, reproduce, publish or otherwise use the data first produced under an award.

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d) Title to intangible property and debt instruments acquired under an award or subaward (rather than developed or produced under the award or subaward) vests upon acquisition in the recipient. The recipient shall use that property for the originally-authorized purpose, and the recipient shall not encumber the property without approval of the DoD Component that made the award. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with the provisions of § 32.34(g).

§ 32.37 Property trust relationship.

Real property, equipment, intangible property and debt instruments that are acquired or improved with Federal funds shall be held in trust by the recipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. DoD Components may require recipients to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal funds and that use and disposition conditions apply to the property.

Procurement Standards

§ 32.40 Purpose of procurement standards.

Sections 32.41 through 32.48 set forth standards for use by recipients in

establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders.

§ 32.41 Recipient responsibilities.

The standards contained in this section do not relieve the recipient of the contractual responsibilities arising under its contract(s). The recipient is the responsible authority, without recourse to the DoD Component that made the award, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of statute are to be referred to such Federal, State or local authority as may have proper jurisdiction.

§ 32.42 Codes of conduct.

The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

§ 32.43 Competition.

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

§ 32.44 Procurement procedures.

(a) All recipients shall establish written procurement procedures. These procedures shall provide, at a minimum, that:

(1) Recipients avoid purchasing unnecessary items;

(2) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement; and

(3) Solicitations for goods and services provide for all of the following:

(i) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.

(ii) Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.

(iii) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

(iv) The specific features of "brand name or equal" descriptions that bidders are required to meet when such items are included in the solicitation.

(v) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.

(vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

(b) Positive efforts shall be made by recipients to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients of Federal awards shall take all of the following steps to further this goal:

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

(c) The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the recipient but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting shall not be used.

(d) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by the DoD implementation, in 32 CFR part 25, of E.O.s 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), "Debarment and Suspension."

(e) Recipients shall, on request, make available for the DoD Component's pre-award review, procurement documents such as request for proposals or invitations for bids, independent cost

estimates, etc., when any of the following conditions apply:

(1) A recipient's procurement procedures or operation fails to comply with the procurement standards in this part.

(2) The procurement is expected to exceed the simplified acquisition threshold fixed at 41 U.S.C. 403 (11) (currently $100,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation.

(3) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a "brand name" product.

(4) The proposed award over the simplified acquisition threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the simplified acquisition threshold.

§ 32.45 Cost and price analysis.

Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

§ 32.46 Procurement records.

Procurement records and files for purchases in excess of the simplified acquisition threshold shall include the following at a minimum:

(a) Basis for contractor selection;

(b) Justification for lack of competition when competitive bids or offers are not obtained; and

(c) Basis for award cost or price.

§ 32.47 Contract administration.

A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

§ 32.48 Contract provisions.

The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions shall also be applied to subcontracts:

(a) Contracts in excess of the simplified acquisition threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(b) All contracts in excess of the simplified acquisition threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds $100,000. For those contracts or subcontracts exceeding $100,000, the DoD Component may accept the bonding policy and requirements of the recipient, provided the grants officer has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(4) Where bonds are required in the situations described in §§ 32.40 through 32.49, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, "Surety Companies Doing Business with the United States."

(d) All negotiated contracts (except those for less than the simplified acquisition threshold) awarded by recipients shall include a provision to the effect that the recipient, the Department of Defense, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(e) All contracts, including those for amounts less than the simplified acquisition threshold, by recipients and their contractors shall contain the procurement provisions of Appendix A to this part, as applicable.

§ 32.49 Resource Conservation and Recovery Act.

Under the Resource Conservation and Recovery Act (RCRA) (section 6002, Pub. L. 94–580, 42 U.S.C. 6962), any State agency or agency of a political subdivision of a State which is using appropriated Federal funds must comply with section 6002. Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency (EPA) (40 CFR parts 247–254). Accordingly, State and local institutions of higher education, hospitals, and non-profit organizations that receive direct Federal awards or other Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to the EPA guidelines.

Reports and Records

§ 32.50 Purpose of reports and records.

Sections 32.51 through 32.53 set forth the procedures for monitoring and reporting on the recipient's financial and program performance and the necessary standard reporting forms. They also set forth record retention requirements.

§ 32.51 Monitoring and reporting program performance.

(a) Recipients are responsible for managing and monitoring each project, program, subaward, function or activity

supported by the award. Recipients shall monitor subawards to ensure subrecipients have met the audit requirements as delineated in § 32.26.

(b) The award terms and conditions shall prescribe the frequency with which the performance reports shall be submitted. Except as provided in paragraph (f) of this section, performance reports shall not be required more frequently than quarterly or less frequently than annually. Annual reports shall be due 90 calendar days after the award year; quarterly or semi-annual reports shall be due 30 calendar days after the reporting period. DoD Components may require annual reports before the anniversary dates of multiple year awards in lieu of these requirements. The final performance reports are due 90 calendar days after the expiration or termination of the award.

(c) If inappropriate, a final technical or performance report shall not be required after completion of the project.

(d) When required, performance reports shall generally contain, for each award, brief information on each of the following:

(1) A comparison of actual accomplishments with the goals and objectives established for the period, the findings of the investigator, or both. Whenever appropriate and the output of programs or projects can be readily quantified, such quantitative data should be related to cost data for computation of unit costs. However, unit costs are generally inappropriate for research (see § 32.21 (a) and (b)(4)).

(2) Reasons why established goals were not met, if appropriate.

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(e) Recipients shall not be required to submit more than the original and two copies of performance reports.

(f) Recipients shall immediately notify the grants officer of developments that have a significant impact on the award-supported activities. Also, notification shall be given in the case of problems, delays, or adverse conditions which materially impair the ability to meet the objectives of the award. This notification shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

(g) DoD Components' representatives may make site visits, as needed.

(h) DoD Components shall comply with applicable clearance requirements of 5 CFR part 1320 when requesting performance data from recipients.

§ 32.52 Financial reporting.

(a) The following forms or such other forms as may be approved by OMB are authorized for obtaining financial information from recipients:

(1) *SF–269* [9] *or SF–269A,* [10] *Financial Status Report.* (i) DoD Components shall require recipients to use the SF–269 or SF–269A to report the status of funds for all nonconstruction projects or programs. A DoD Component may, however, have the option of not requiring the SF–269 or SF–269A when the SF–270, Request for Advance or Reimbursement, or SF–272,[11] Report of Federal Cash Transactions, is determined to provide adequate information to meet agency needs, except that a final SF–269 or SF–269A shall be required at the completion of the project when the SF–270 is used only for advances.

(ii) The DoD Component shall prescribe whether the report shall be on a cash or accrual basis. If the award requires accrual information and the recipient's accounting records are not normally kept on the accrual basis, the recipient shall not be required to convert its accounting system, but shall develop such accrual information through best estimates based on an analysis of the documentation on hand.

(iii) The DoD Component shall determine the frequency of the Financial Status Report for each project or program, considering the size and complexity of the particular project or program. However, the report shall not be required more frequently than quarterly or less frequently than annually. A final report shall be required at the completion of the award.

(iv) The DoD Component shall require recipients to submit the SF–269 or SF–269A (an original and no more than two copies) no later than 30 calendar days after the end of each specified reporting period for quarterly and semi-annual reports, and 90 calendar days for annual and final reports. Extensions of reporting due dates may be approved by the grants officer upon request of the recipient.

(2) *SF–272, Report of Federal Cash Transactions.* (i) When funds are advanced to recipients the DoD Component shall require each recipient to submit the SF–272 and, when necessary, its continuation sheet, SF–272a.[12] The grants officer shall use this report to monitor cash advanced to recipients and to obtain disbursement information for each award to the recipients.

(ii) DoD Components may require forecasts of Federal cash requirements in the "Remarks" section of the report.

(iii) When practical and deemed necessary, DoD Components may require recipients to report in the "Remarks" section the amount of cash advances received in excess of three working days. Recipients shall provide short narrative explanations of actions taken to reduce the excess balances.

(iv) Recipients shall be required to submit not more than the original and two copies of the SF–272 15 calendar days following the end of each quarter. DoD Components may require a monthly report from those recipients receiving advances totaling $1 million or more per year.

(v) DoD Components may waive the requirement for submission of the SF–272 for any one of the following reasons:

(A) When monthly advances do not exceed $25,000 per recipient, provided that such advances are monitored through other forms contained in this section;

(B) If, in the grants officer's opinion, the recipient's accounting controls are adequate to minimize excessive Federal advances; or

(C) When electronic payment mechanisms or SF–270 forms provide adequate data.

(b) When the DoD Component needs additional information or more frequent reports, the following shall be observed:

(1) When additional information is needed to comply with legislative requirements, grants officers shall issue instructions to require recipients to submit such information under the "Remarks" section of the reports.

(2) When a grants officer, after consultation with the Federal agency assigned cognizance for a recipient's audit and audit resolution, determines that the recipient's accounting system does not meet the standards in § 32.21, additional pertinent information to further monitor awards may be obtained upon written notice to the recipient until such time as the system is brought up to standard. The grants officer, in obtaining this information, shall comply with applicable report clearance requirements of 5 CFR part 1320.

(3) Grants officers are encouraged to shade out any line item on any report if not necessary.

(4) DoD Components are encouraged to accept the identical information from the recipients in machine readable format or computer printouts or electronic outputs in lieu of prescribed formats.

[9] See footnote 2 to § 32.12(a).

[10] See footnote 2 to § 32.12(a).

[11] See footnote 2 to § 32.12(a).

[12] See footnote 2 to § 32.12(a).

(5) DoD Components may provide computer or electronic outputs to recipients when it expedites or contributes to the accuracy of reporting.

§ 32.53 Retention and access requirements for records.

(a) This section sets forth requirements for record retention and access to records for awards to recipients. DoD Components shall not impose any other record retention or access requirements upon recipients.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final expenditure report. The only exceptions are the following:

(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.

(3) When records are transferred to or maintained by the DoD Component that made the award, the 3-year retention requirement is not applicable to the recipient.

(4) Indirect cost rate proposals, cost allocations plans, and related records, for which retention requirements are specified in paragraph (g) of this section.

(c) Copies of original records may be substituted for the original records if authorized by the grants officer.

(d) The grants officer shall request that recipients transfer certain records to DoD Component custody when he or she determines that the records possess long term retention value. However, in order to avoid duplicate recordkeeping, a grants officer may make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) DoD Components, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

(f) Unless required by statute, no DoD Component shall place restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when the DoD Component can demonstrate that such records shall be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to the DoD Component making the award.

(g) Indirect cost rate proposals, cost allocations plans, etc. Paragraphs (g)(1) and (g)(2) of this section apply to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) *If submitted for negotiation.* If the recipient submits an indirect-cost proposal, plan, or other computation to the Federal agency responsible for negotiating the recipient's indirect cost rate, as the basis for negotiation of the rate, or the subrecipient submits such a proposal, plan, or computation to the recipient, then the 3-year retention period for its supporting records starts on the date of such submission.

(2) *If not submitted for negotiation.* If the recipient is not required to submit to the cognizant Federal agency or the subrecipient is not required to submit to the recipient the proposal, plan, or other computation for negotiation purposes, then the 3-year retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(h) If the information described in this section is maintained on a computer, recipients shall retain the computer data on a reliable medium for the time periods prescribed. Recipients may transfer computer data in machine readable form from one reliable computer medium to another. Recipients' computer data retention and transfer procedures shall maintain the integrity, reliability, and security of the original computer data. Recipients shall also maintain an audit trail describing the data transfer. For the record retention time periods prescribed in this section, recipients shall not destroy, discard, delete, or write over such computer data.

Termination and Enforcement

§ 32.60 Purpose of termination and enforcement.

Sections 32.61 and 32.62 set forth uniform suspension, termination and enforcement procedures.

§ 32.61 Termination.

(a) Awards may be terminated in whole or in part only as follows:

(1) By the grants officer, if a recipient materially fails to comply with the terms and conditions of an award;

(2) By the grants officer with the consent of the recipient, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated; or

(3) By the recipient upon sending to the grants officer written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. The recipient must provide such notice at least 30 calendar days prior to the effective date of the termination. However, if the grants officer determines in the case of partial termination that the reduced or modified portion of the award will not accomplish the purposes for which the award was made, he or she may terminate the award in its entirety.

(b) If costs are allowed under an award, the responsibilities of the recipient referred to in § 32.71, including those for property management as applicable, shall be considered in the termination of the award, and provision shall be made for continuing responsibilities of the recipient after termination, as appropriate.

§ 32.62 Enforcement.

(a) *Remedies for noncompliance.* If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, the grants officer may, in addition to imposing any of the special conditions outlined in § 32.14, take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the recipient or more severe enforcement action by the grants officer and DoD Component.

(2) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award.

(4) Withhold further awards for the project or program.

(5) Take other remedies that may be legally available.

(b) *Hearings and appeals.* In taking an enforcement action, the DoD Component shall provide the recipient an opportunity for hearing, appeal, or other administrative proceeding to which the recipient is entitled under any statute or regulation applicable to the action involved. Award terms or conditions will incorporate the procedures of 32 CFR 22.815 for processing recipient claims and disputes and for deciding appeals of grants officers' decisions.

(c) *Effects of suspension and termination.* Costs of a recipient resulting from obligations incurred by the recipient during a suspension or after termination of an award are not allowable unless the grants officer expressly authorizes them in the notice of suspension or termination or subsequently. Other recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if the costs:

(1) Result from obligations which were properly incurred by the recipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are noncancellable; and

(2) Would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under 32 CFR part 25.

Subpart D—After-the-Award Requirements

§ 32.70 Purpose.

Sections 32.71 through 32.73 contain closeout procedures and other procedures for subsequent disallowances and adjustments.

§ 32.71 Closeout procedures.

(a) Recipients shall submit, within 90 calendar days after the date of completion of the award, all financial, performance, and other reports required by the terms and conditions of the award. The grants officer may approve extensions when requested by the recipient.

(b) Unless the grants officer authorizes an extension, a recipient shall liquidate all obligations incurred under the award not later than 90 calendar days after the funding period or the date of completion as specified in the terms and conditions of the award or in agency implementing instructions.

(c) The responsible grants officer and payment office shall expedite completion of steps needed to close out awards and make prompt, final payments to a recipient for allowable reimbursable costs under the award being closed out.

(d) The recipient shall promptly refund any balances of unobligated cash that the DoD Component has advanced or paid and that is not authorized to be retained by the recipient for use in other projects. OMB Circular A–129[13] governs unreturned amounts that become delinquent debts (see 32 CFR 22.820).

(e) When authorized by the terms and conditions of the award, the grants officer shall make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The recipient shall account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with §§ 32.31 through 32.37.

(g) In the event a final audit has not been performed prior to the closeout of an award, the DoD Component shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

§ 32.72 Subsequent adjustments and continuing responsibilities.

(a) The closeout of an award does not affect any of the following:

(1) The right of the Department of Defense to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Audit requirements in § 32.26.

(4) Property management requirements in §§ 32.31 through 32.37.

(5) Records retention as required in § 32.53.

(b) After closeout of an award, a relationship created under an award may be modified or ended in whole or in part with the consent of the grants officer and the recipient, provided the responsibilities of the recipient referred to in § 32.73(a), including those for property management as applicable, are considered and provisions made for continuing responsibilities of the recipient, as appropriate.

[13] See footnote 1 to § 32.1(a).

§ 32.73 Collection of amounts due.

(a) Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government.

(b) OMB Circular A–110 informs each Federal agency that:

(1) If a debt is not paid within a reasonable period after the demand for payment, the Federal agency may reduce the debt by:

(i) Making administrative offset against other requests for reimbursement.

(ii) Withholding advance payments otherwise due to the recipient.

(iii) Taking other action permitted by statute.

(2) Except as otherwise provided by law, the Federal awarding agency shall charge interest on an overdue debt in accordance with 4 CFR Chapter II, "Federal Claims Collection Standards."

(c) DoD grants officers shall follow the procedures in 32 CFR 22.820 for issuing demands for payment and transferring debts to DoD payment offices for collection. Recipients will be informed about pertinent procedures and timeframes through the written notices of grants officers' decisions and demands for payment.

Appendix A to Part 32—Contract Provisions

All contracts awarded by a recipient, including those for amounts less than the simplified acquisition threshold, shall contain the following provisions as applicable:

1. *Equal Employment Opportunity*—All contracts shall contain a provision requiring compliance with E.O. 11246 (3 CFR, 1964–1965 Comp., p. 339), "Equal Employment Opportunity," as amended by E.O. 11375 (3 CFR, 1966–1970 Comp., p. 684), "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR ch. 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

2. *Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c)*—All contracts and subawards in excess of $2000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all

suspected or reported violations to the responsible DoD Component.

3. *Davis-Bacon Act, as amended (40 U.S.C. 276a to a–7)*—This Act applies to procurements under awards only when the Federal program legislation specifically makes it apply (i.e., Davis-Bacon does not by itself apply to procurements under awards). In cases where another statute does make the Davis-Bacon Act apply, all construction contracts awarded by the recipients and subrecipients of more than $2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a–7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal awarding agency.

4. *Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333)*—Where applicable, all contracts awarded by recipients in excess of $100,000 for construction or other purposes that involve the employment of mechanics or laborers shall include a provision for compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR part 5). Under section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

5. *Rights to Inventions Made Under a Contract, Grant or Cooperative Agreement*—Contracts, grants, or cooperative agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."

6. *Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.)*, as amended—Contracts and subawards of amounts in excess of $100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 *et seq.*). Violations shall be reported to the responsible DoD Component and the Regional Office of the Environmental Protection Agency (EPA).

7. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*—Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

8. *Debarment and Suspension (E.O.s 12549 and 12689)*—Contract awards that exceed the simplified acquisition threshold and certain other contract awards shall not be made to parties listed on the General Services Administration's Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs in accordance with E.O.s 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding its exclusion status and that of its principals.

7. Part 34 is added to read as follows:

PART 34—ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH FOR-PROFIT ORGANIZATIONS

Subpart A—General

Sec.

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34.2 Definitions.
34.3 Deviations.
34.4 Special award conditions.

Subpart B—Post-Award Requirements

Financial and Program Management

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34.30 Purpose of procurement standards.
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34.40 Purpose of reports and records.
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Termination and Enforcement

34.50 Purpose of termination and enforcement.
34.51 Termination.
34.52 Enforcement.
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Subpart C—After-the-Award Requirements

34.60 Purpose.
34.61 Closeout procedures.
34.62 Subsequent adjustments and continuing responsibilities.
34.63 Collection of amounts due.
Appendix A to Part 34—Contract Provisions

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

Subpart A—General

§ 34.1 Purpose.

(a) This part prescribes administrative requirements for awards to for-profit organizations.

(b) Applicability to prime awards and subawards is as follows:

(1) *Prime awards.* DoD Components shall apply the provisions of this part to awards to for-profit organizations. DoD Components shall not impose requirements that are in addition to, or inconsistent with, the requirements provided in this part, except:

(i) In accordance with the deviation procedures or special award conditions in § 34.3 or § 34.4, respectively; or

(ii) As required by Federal statute, Executive order, or Federal regulation implementing a statute or Executive order.

(2) *Subawards.* (i) Any legal entity (including any State, local government, university or other nonprofit organization, as well as any for-profit entity) that receives an award from a DoD Component shall apply the provisions of this part to subawards with for-profit organizations. It should be noted that subawards (see definition in § 34.2) are financial assistance for substantive programmatic performance

and do not include recipients' procurement of goods and services.

(ii) For-profit organizations that receive prime awards covered by this part shall apply to each subaward the administrative requirements that are applicable to the particular type of subrecipient (e.g., 32 CFR part 33 specifies requirements for subrecipients that are States or local governments, and 32 CFR part 32 contains requirements for universities or other nonprofit organizations).

§ 34.2 Definitions.

The following are definitions of terms as used in this part. Grants officers are cautioned that terms may be defined differently in this part than they are in other parts of the DoD Grant and Agreement Regulations (DoDGARs).

Advance. A payment made by Treasury check or other appropriate payment mechanism to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules.

Award. A grant or cooperative agreement.

Cash contributions. The recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

Closeout. The process by which the grants officer administering an award made by a DoD Component determines that all applicable administrative actions and all required work of the award have been completed by the recipient and DoD Component.

Contract. Either:

(1) A procurement contract made by a recipient under a DoD Component's award or by a subrecipient under a subaward; or

(2) A procurement subcontract under a contract awarded by a recipient or subrecipient.

Cost sharing or matching. That portion of project or program costs not borne by the Federal Government.

Disallowed costs. Those charges to an award that the grants officer administering an award made by a DoD Component determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

DoD Component. A Military Department, Defense Agency, DoD Field Activity, or organization within the Office of the Secretary of Defense that provides or administers an award to a recipient.

Equipment. Tangible nonexpendable personal property charged directly to the award having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. That definition applies for the purposes of the Federal administrative requirements in this part. However, the recipient's policy may be to use a lower dollar value for defining "equipment," and nothing in this part should be construed as requiring the recipient to establish a higher limit for purposes other than the administrative requirements in this part.

Excess property. Property under the control of any DoD Component that, as determined by the head thereof, is no longer required for its needs or the discharge of its responsibilities.

Expenditures. See the definition for outlays in this section.

Federally owned property. Property in the possession of, or directly acquired by, the Government and subsequently made available to the recipient.

Funding period. The period of time when Federal funding is available for obligation by the recipient.

Intellectual property. Intangible personal property such as patents and patent applications, trademarks, copyrights, technical data, and software rights.

Obligations. The amounts of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the recipient during the same or a future period.

Outlays or *expenditures.* Charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of third party in-kind contributions applied and the amount of cash advances and payments made to subrecipients. For reports prepared on an accrual basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subrecipients and other payees and other amounts becoming owed under programs for which no current services or performance are required.

Personal property. Property of any kind except real property. It may be:

(1) Tangible, having physical existence (i.e., equipment and supplies); or

(2) Intangible, having no physical existence, such as patents, copyrights, data and software.

Prior approval. Written or electronic approval by an authorized official evidencing prior consent.

Program income. Gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award. Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in program regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them.

Project costs. All allowable costs, as set forth in the applicable Federal cost principles, incurred by a recipient and the value of the contributions made by third parties in accomplishing the objectives of the award during the project period.

Project period. The period established in the award document during which Federal sponsorship begins and ends.

Property. Real property and personal property (equipment, supplies, and intellectual property), unless stated otherwise.

Real property. Land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

Recipient. A for-profit organization receiving an award directly from a DoD Component to carry out a project or program.

Research. Basic, applied, and advanced research activities. *Basic research* is defined as efforts directed toward increasing knowledge or understanding in science and engineering. *Applied research* is defined as efforts that attempt to determine and exploit the potential of scientific discoveries or improvements in technology, such as new materials, devices, methods, and processes. "Advanced research," advanced technology development that creates new technology or demonstrates the viability of applying existing technology to new products and processes in a general way, is most closely analogous to precommercialization or precompetitive technology development in the commercial sector (it does not include development of military systems and hardware where specific requirements have been defined).

Small award. An award not exceeding the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently $100,000).

Small business concern. A concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it has applied for an award, and qualified as a small business under the criteria and size standards in 13 CFR part 121. For more details, grants officers should see 48 CFR part 19 in the "Federal Acquisition Regulation."

Subaward. Financial assistance in the form of money, or property in lieu of money, provided under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but the term includes neither procurement of goods and services nor any form of assistance which is excluded from the definition of "award" in this section.

Subrecipient. The legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided.

Supplies. Tangible expendable personal property that is charged directly to the award and that has a useful life of less than one year or an acquisition cost of less than $5000 per unit.

Suspension. An action by a DoD Component that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by the DoD Component. Suspension of an award is a separate action from suspension of a recipient under 32 CFR part 25.

Termination. The cancellation of an award, in whole or in part, under an agreement at any time prior to either:

(1) The date on which all work under an award is completed; or

(2) The date on which Federal sponsorship ends, as given on the award document or any supplement or amendment thereto.

Third party in-kind contributions. The value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

Unobligated balance. The portion of the funds authorized by a DoD Component that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

§ 34.3 Deviations.

(a) *Individual deviations.* Individual deviations affecting only one award may be approved by DoD Components in accordance with procedures stated in 32 CFR 21.125(a).

(b) *Small awards.* DoD Components may apply less restrictive requirements than the provisions of this part when awarding small awards, except for those requirements which are statutory.

(c) *Other class deviations.* For classes of awards other than small awards, the Director, Defense Research and Engineering, or his or her designee, may grant exceptions from the requirements of this part when exceptions are not prohibited by statute. DoD Components shall request approval for such deviations in accordance with 32 CFR 21.125 (b) and (c).

§ 34.4 Special award conditions.

(a) Grants officers may impose additional requirements as needed, over and above those provided in this part, if an applicant or recipient:

(1) Has a history of poor performance;

(2) Is not financially stable;

(3) Has a management system that does not meet the standards prescribed in this part;

(4) Has not conformed to the terms and conditions of a previous award; or

(5) Is not otherwise responsible.

(b) Before imposing additional requirements, DoD Components shall notify the applicant or recipient in writing as to:

(1) The nature of the additional requirements;

(2) The reason why the additional requirements are being imposed;

(3) The nature of the corrective action needed;

(4) The time allowed for completing the corrective actions; and

(5) The method for requesting reconsideration of the additional requirements imposed.

(c) Any special conditions shall be promptly removed once the conditions that prompted them have been corrected.

(d) Grants officers:

(1) Should coordinate the imposition and removal of special award conditions with the cognizant grants administration office identified in 32 CFR 22.710.

(2) Shall include in the award file the written notification to the recipient, described in paragraph (b) of this section, and the documentation required by 32 CFR 22.410(b).

Subpart B—Post-award Requirements

Financial and Program Management

§ 34.10 Purpose of financial and program management.

Sections 34.11 through 34.17 prescribe standards for financial management systems; methods for making payments; and rules for cost sharing and matching, program income, revisions to budgets and program plans, audits, allowable costs, and fee and profit.

§ 34.11 Standards for financial management systems.

(a) Recipients shall be allowed and encouraged to use existing financial management systems established for doing business in the commercial marketplace, to the extent that the systems comply with Generally Accepted Accounting Principles (GAAP) and the minimum standards in this section. As a minimum, a recipient's financial management system shall provide:

(1) Effective control of all funds. Control systems must be adequate to ensure that costs charged to Federal funds and those counted as the recipient's cost share or match are consistent with requirements for cost reasonableness, allowability, and allocability in the applicable cost principles (see § 34.17) and in the terms and conditions of the award.

(2) Accurate, current and complete records that document for each project funded wholly or in part with Federal funds the source and application of the Federal funds and the recipient's required cost share or match. These records shall:

(i) Contain information about receipts, authorizations, assets, expenditures, program income, and interest.

(ii) Be adequate to make comparisons of outlays with budgeted amounts for each award (as required for programmatic and financial reporting under § 34.41. Where appropriate, financial information should be related to performance and unit cost data. Note that unit cost data are generally not appropriate for awards that support research.

(3) To the extent that advance payments are authorized under § 34.12, procedures that minimize the time elapsing between the transfer of funds to the recipient from the Government and the recipient's disbursement of the funds for program purposes.

(4) The recipient shall have a system to support charges to Federal awards for salaries and wages, whether treated as direct or indirect costs. Where employees work on multiple activities

or cost objectives, a distribution of their salaries and wages will be supported by personnel activity reports which must:

(i) Reflect an after the fact distribution of the actual activity of each employee.

(ii) Account for the total activity for which each employee is compensated.

(iii) Be prepared at least monthly, and coincide with one or more pay periods.

(b) Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, the DoD Component, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.

(c) The DoD Component may require adequate fidelity bond coverage where the recipient lacks sufficient coverage to protect the Federal Government's interest.

(d) Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, "Surety Companies Doing Business with the United States."

§ 34.12 Payment.

(a) *Methods available.* Payment methods for awards with for-profit organizations are:

(1) *Reimbursement.* Under this method, the recipient requests reimbursement for costs incurred during a time period. In cases where the recipient submits each request for payment to the grants officer, the DoD payment office reimburses the recipient by electronic funds transfer or check after approval of the request by the grants officer designated to do so.

(2) *Advance payments.* Under this method, a DoD Component makes a payment to a recipient based upon projections of the recipient's cash needs. The payment generally is made upon the recipient's request, although predetermined payment schedules may be used when the timing of the recipient's needs to disburse funds can be predicted in advance with sufficient accuracy to ensure compliance with paragraph (b)(2)(iii) of this section.

(b) *Selecting a method.* (1) The preferred payment method is the reimbursement method, as described in paragraph (a)(1) of this section

(2) Advance payments, as described in paragraph (a)(2) of this section, may be used in exceptional circumstances, subject to the following conditions:

(i) The grants officer, in consultation with the program official, must judge that advance payments are necessary or will materially contribute to the probability of success of the project contemplated under the award (e.g., as startup funds for a project performed by a newly formed company). The rationale for the judgment shall be documented in the award file.

(ii) Cash advances shall be limited to the minimum amounts needed to carry out the program.

(iii) Recipients and the DoD Component shall maintain procedures to ensure that the timing of cash advances is as close as is administratively feasible to the recipients' disbursements of the funds for program purposes, including direct program or project costs and the proportionate share of any allowable indirect costs.

(iv) Recipients shall maintain advance payments of Federal funds in interest-bearing accounts, and remit annually the interest earned to the administrative grants officer responsible for post-award administration (the grants officer shall forward the payment to the responsible payment office, for return to the Department of Treasury's miscellaneous receipts account), unless one of the following applies:

(A) The recipient receives less than $120,000 in Federal awards per year.

(B) The best reasonably available interest bearing account would not be expected to earn interest in excess of $250 per year on Federal cash balances.

(C) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

(c) *Frequency of payments.* For either reimbursements or advance payments, recipients shall be authorized to submit requests for payment at least monthly.

(d) *Forms for requesting payment.* DoD Components may authorize recipients to use the SF–270,[1] "Request for Advance or Reimbursement;" the SF–271,[2] "Outlay Report and Request for Reimbursement for Construction Programs;" or prescribe other forms or formats as necessary.

(e) *Timeliness of payments.* Payments normally will be made within 30 calendar days of the receipt of a recipient's request for reimbursement or advance by the office designated to receive the request (for further information about timeframes for payments, see 32 CFR 22.810(c)(3)(ii)).

(f) *Precedence of other available funds.* Recipients shall disburse funds available from program income, rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting additional cash payments.

(g) *Withholding of payments.* Unless otherwise required by statute, grants officers shall not withhold payments for proper charges made by recipients during the project period for reasons other than the following:

(1) A recipient has failed to comply with project objectives, the terms and conditions of the award, or Federal reporting requirements, in which case the grants officer may suspend payments in accordance with § 34.52.

(2) The recipient is delinquent on a debt to the United States (see definitions of "debt" and "delinquent debt" in 32 CFR 22.105). In that case, the grants officer may, upon reasonable notice, withhold payments for obligations incurred after a specified date, until the debt is resolved.

§ 34.13 Cost sharing or matching.

(a) *Acceptable contributions.* All contributions, including cash contributions and third party in-kind contributions, shall be accepted as part of the recipient's cost sharing or matching when such contributions meet all of the following criteria:

(1) They are verifiable from the recipient's records.

(2) They are not included as contributions for any other federally-assisted project or program.

(3) They are necessary and reasonable for proper and efficient accomplishment of project or program objectives.

(4) They are allowable under § 34.17.

(5) They are not paid by the Federal Government under another award, except:

(i) Costs that are authorized by Federal statute to be used for cost sharing or matching; or

(ii) Independent research and development (IR&D) costs. In accordance with the for-profit cost principle in 48 CFR 31.205–18(e), use of IR&D as cost sharing is permitted, whether or not the Government decides at a later date to reimburse any of the IR&D as allowable indirect costs. In such cases, the IR&D must meet all of the criteria in paragraphs (a) (1) through (4) and (a) (6) through (8) of this section.

(6) They are provided for in the approved budget, when approval of the budget is required by the DoD Component.

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[1] For copies of Standard Forms listed in this part, contact regional grants administration offices of the Office of Naval Research. Addresses for the offices are listed in the "DoD Directory of Contract Administration Services Components," DLAH 4105.4, which can be obtained from either: Defense Logistics Agency, Publications Distribution Division (DASC–WDM), 8725 John J. Kingman Rd., Suite 0119, Fort Belvoir, VA 22060–6220; or the Defense Contract Management Command home page at http://www.dcmc.dcrb.dla.mil.

[2] See footnote 1 to this paragraph (d).

(7) If they are real property or equipment, whether purchased with recipient's funds or donated by third parties, they must have the grants officer's prior approval if the contributions' value is to exceed depreciation or use charges during the project period (paragraphs (b)(1) and (b)(4)(ii) of this section discuss the limited circumstances under which a grants officer may approve higher values). If a DoD Component requires approval of a recipient's budget (see paragraph (a)(6) of this section), the grants officer's approval of the budget satisfies this prior approval requirement, for real property or equipment items listed in the budget.

(8) They conform to other provisions of this part, as applicable.

(b) *Valuing and documenting contributions*—(1) *Valuing recipient's property or services of recipient's employees.* Values shall be established in accordance with the applicable cost principles in § 34.17, which means that amounts chargeable to the project are determined on the basis of costs incurred. For real property or equipment used on the project, the cost principles authorize depreciation or use charges. The full value of the item may be applied when the item will be consumed in the performance of the award or fully depreciated by the end of the award. In cases where the full value of a donated capital asset is to be applied as cost sharing or matching, that full value shall be the lesser of the following:

(i) The certified value of the remaining life of the property recorded in the recipient's accounting records at the time of donation; or

(ii) The current fair market value. However, when there is sufficient justification, the grants officer may approve the use of the current fair market value of the donated property, even if it exceeds the certified value at the time of donation to the project. The grants officer may accept the use of any reasonable basis for determining the fair market value of the property.

(2) *Valuing services of others' employees.* When an employer other than the recipient furnishes the services of an employee, those services shall be valued at the employee's regular rate of pay plus an amount of fringe benefits and overhead (at an overhead rate appropriate for the location where the services are performed) provided these services are in the same skill for which the employee is normally paid.

(3) *Valuing volunteer services.* Volunteer services furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for volunteer services shall be consistent with those paid for similar work in the recipient's organization. In those instances in which the required skills are not found in the recipient organization, rates shall be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

(4) *Valuing property donated by third parties.* (i) Donated supplies may include such items as office supplies or laboratory supplies. Value assessed to donated supplies included in the cost sharing or matching share shall be reasonable and shall not exceed the fair market value of the property at the time of the donation.

(ii) Normally only depreciation or use charges for equipment and buildings may be applied. However, the fair rental charges for land and the full value of equipment or other capital assets may be allowed, when they will be consumed in the performance of the award or fully depreciated by the end of the award, provided that the grants officer has approved the charges. When use charges are applied, values shall be determined in accordance with the usual accounting policies of the recipient, with the following qualifications:

(A) The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(B) The value of loaned equipment shall not exceed its fair rental value.

(5) *Documentation.* The following requirements pertain to the recipient's supporting records for in-kind contributions from third parties:

(i) Volunteer services shall be documented and, to the extent feasible, supported by the same methods used by the recipient for its own employees.

(ii) The basis for determining the valuation for personal services and property shall be documented.

§ 34.14 Program income.

(a) DoD Components shall apply the standards in this section to the disposition of program income from projects financed in whole or in part with Federal funds.

(b) Recipients shall have no obligation to the Government, unless the terms and conditions of the award provide otherwise, for program income earned:

(1) From license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. Note, however, that the Patent and Trademark Amendments (35 U.S.C. Chapter 18), as implemented in § 34.25, apply to inventions made under a research award.

(2) After the end of the project period. If a grants officer anticipates that an award is likely to generate program income after the end of the project period, the grants officer should indicate in the award document whether the recipient will have any obligation to the Federal Government with respect to such income.

(c) If authorized by the terms and conditions of the award, costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

(d) Other than any program income excluded pursuant to paragraphs (b) and (c) of this section, program income earned during the project period shall be retained by the recipient and used in one or more of the following ways, as specified in program regulations or the terms and conditions of the award:

(1) Added to funds committed to the project by the DoD Component and recipient and used to further eligible project or program objectives.

(2) Used to finance the non-Federal share of the project or program.

(3) Deducted from the total project or program allowable cost in determining the net allowable costs on which the Federal share of costs is based.

(e) If the terms and conditions of an award authorize the disposition of program income as described in paragraph (d)(1) or (d)(2) of this section, and stipulate a limit on the amounts that may be used in those ways, program income in excess of the stipulated limits shall be used in accordance with paragraph (d)(3) of this section.

(f) In the event that the terms and conditions of the award do not specify how program income is to be used, paragraph (d)(3) of this section shall apply automatically to all projects or programs except research. For awards that support research, paragraph (d)(1) of this section shall apply automatically unless the terms and conditions specify another alternative or the recipient is subject to special award conditions, as indicated in § 34.4.

(g) Proceeds from the sale of property that is acquired, rather than fabricated,

under an award are not program income and shall be handled in accordance with the requirements of the Property Standards (see §§ 34.20 through 34.25).

§ 34.15 Revision of budget and program plans.

(a) The budget plan is the financial expression of the project or program as approved during the award process. It may include either the sum of the Federal and non-Federal shares, or only the Federal share, depending upon DoD Component requirements. It shall be related to performance for program evaluation purposes whenever appropriate.

(b) Recipients are required to report deviations from budget and program plans, and request prior approvals for budget and program plan revisions, in accordance with this section.

(c) Recipients shall immediately request, in writing, prior approval from the cognizant grants officer when there is reason to believe that within the next seven calendar days a programmatic or budgetary revision will be necessary for certain reasons, as follows:

(1) The recipient always must obtain the grants officer's prior approval when a revision is necessary for either of the following two reasons (i.e., these two requirements for prior approval may never be waived):

(i) A change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(ii) A need for additional Federal funding.

(2) The recipient must obtain the grants officer's prior approval when a revision is necessary for any of the following six reasons, unless the requirement for prior approval is waived in the terms and conditions of the award (i.e., if the award document is silent, these prior approvals are required):

(i) A change in a key person specified in the application or award document.

(ii) The absence for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(iii) The inclusion of any additional costs that require prior approval in accordance with applicable cost principles for Federal funds and recipients' cost share or match, in § 34.17 and § 34.13, respectively.

(iv) The inclusion of pre-award costs. All such costs are incurred at the recipient's risk (i.e., the DoD Component is under no obligation to reimburse such costs if for any reason the recipient does not receive an award, or if the award is less than anticipated and inadequate to cover such costs).

(v) A "no-cost" extension of the project period that does not require additional Federal funds and does not change the approved objectives or scope of the project.

(vi) Any subaward, transfer or contracting out of substantive program performance under an award, unless described in the application and funded in the approved awards. This provision does not apply to the purchase of supplies, material, or general support services, except that procurement of equipment or other capital items of property always is subject to the grants officer's prior approval under § 34.21(a), if it is to be purchased with Federal funds, or § 34.13(a)(7), if it is to be used as cost sharing or matching.

(3) The recipient also must obtain the grants officer's prior approval when a revision is necessary for either of the following reasons, if specifically required in the terms and conditions of the award document (i.e., if the award document is silent, these prior approvals are not required):

(i) The transfer of funds among direct cost categories, functions and activities for awards in which the Federal share of the project exceeds $100,000 and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by the DoD Component. No DoD Component shall permit a transfer that would cause any Federal appropriation or part thereof to be used for purposes other than those consistent with the original intent of the appropriation.

(ii) For awards that provide support for both construction and nonconstruction work, any fund or budget transfers between the two types of work supported.

(d) Within 30 calendar days from the date of receipt of the recipient's request for budget revisions, the grants officer shall review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, the grants officer shall inform the recipient in writing of the date when the recipient may expect the decision.

§ 34.16 Audits.

(a) Any recipient that expends $300,000 or more in a year under Federal awards shall have an audit made for that year by an independent auditor, in accordance with paragraph (b) of this section. The audit generally should be made a part of the regularly scheduled, annual audit of the recipient's financial statements. However, it may be more economical in some cases to have the Federal awards separately audited, and a recipient may elect to do so, unless that option is precluded by award terms and conditions, or by Federal laws or regulations applicable to the program(s) under which the awards were made.

(b) The auditor shall determine and report on whether:

(1) The recipient has an internal control structure that provides reasonable assurance that it is managing Federal awards in compliance with Federal laws and regulations, and with the terms and conditions of the awards.

(2) Based on a sampling of Federal award expenditures, the recipient has complied with laws, regulations, and award terms that may have a direct and material effect on Federal awards.

(c) The recipient shall make the auditor's report available to DoD Components whose awards are affected.

(d) The requirement for an annual independent audit is intended to ascertain the adequacy of the recipient's internal financial management systems and to curtail the unnecessary duplication and overlap that usually results when Federal agencies request audits of individual awards on a routine basis. Therefore, a grants officer:

(1) Shall consider whether the independent audit satisfies his or her requirements, before requesting any additional audits; and

(2) When requesting an additional audit, shall:

(i) Limit the scope of such additional audit to areas not adequately addressed by the independent audit.

(ii) Coordinate the audit request with the Federal agency with the predominant fiscal interest in the recipient, as the agency responsible for the scheduling and distribution of audits. If DoD has the predominant fiscal interest in the recipient, the Defense Contract Management Command (DCMC) is responsible for monitoring audits, ensuring resolution of audit findings, and distributing audit reports. When an additional audit is requested and DoD has the predominant fiscal interest in the recipient, DCMC shall, to the extent practicable, ensure that the additional audit builds upon the independent audit or other audits performed in accordance with this section.

(e) There may be instances in which Federal auditors have recently performed audits, are performing audits, or are planning to perform audits, of a recipient. In these cases, the recipient and its Federal cognizant agency should seek to have the non-Federal,

independent auditors work with the Federal auditors to develop a coordinated audit approach, to minimize duplication of audit work.

(f) Audit costs (including a reasonable allocation of the costs of the audit of the recipient's financial statement, based on the relative benefit to the Government and the recipient) are allowable costs of DoD awards.

§ 34.17 Allowable costs.

Allowability of costs shall be determined in accordance with the cost principles applicable to the type of entity incurring the costs, as follows:

(a) *For-profit organizations.* Allowability of costs incurred by for-profit organizations that are recipients of prime awards from DoD Components, and those that are subrecipients under prime awards to other organizations, is to be determined in accordance with:

(1) The for-profit cost principles in 48 CFR parts 31 and 231 (in the Federal Acquisition Regulation, or FAR, and the Defense Federal Acquisition Regulation Supplement, or DFARS, respectively).

(2) The supplemental information on allowability of audit costs, in § 34.16(f).

(b) *Other types of organizations.* Allowability of costs incurred by other types of organizations that may be subrecipients under a prime award to a for-profit organization is determined as follows:

(1) *Institutions of higher education.* Allowability is determined in accordance with OMB Circular A–21,[3] "Cost Principles for Educational Institutions."

(2) *Other nonprofit organizations.* Allowability is determined in accordance with OMB Circular A–122,[4] "Cost Principles for Non-Profit Organizations." Note that Attachment C of the Circular identifies selected nonprofit organizations for whom cost allowability is determined in accordance with the FAR cost principles for for-profit organizations.

(3) *Hospitals.* Allowability is determined in accordance with the provisions of 45 CFR part 74, Appendix E, "Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals."

(4) *Governmental organizations.* Allowability for State, local, or federally recognized Indian tribal governments is determined in accordance with OMB Circular A–87,[5] "Cost Principles for State and Local Governments."

§ 34.18 Fee and profit.

In accordance with 32 CFR 22.205(b), grants and cooperative agreements shall not:

(a) Provide for the payment of fee or profit to the recipient.

(b) Be used to carry out programs where fee or profit is necessary to achieving program objectives.

Property Standards

§ 34.20 Purpose of property standards.

Sections 34.21 through 34.25 set forth uniform standards for management, use, and disposition of property. DoD Components shall encourage recipients to use existing property-management systems, to the extent that the systems meet these minimum requirements.

§ 34.21 Real property and equipment.

(a) *Prior approval for acquisition with Federal funds.* Recipients may purchase real property or equipment in whole or in part with Federal funds under an award only with the prior approval of the grants officer.

(b) *Title.* Title to such real property or equipment shall vest in the recipient upon acquisition. Unless a statute specifically authorizes a DoD Component to vest title in the recipient without further obligation to the Government, and the DoD Component elects to do so, the title shall be a conditional title. Title shall vest in the recipient subject to the conditions that the recipient:

(1) Use the real property or equipment for the authorized purposes of the project until funding for the project ceases, or until the property is no longer needed for the purposes of the project.

(2) Not encumber the property without approval of the grants officer.

(3) Use and dispose of the property in accordance with paragraphs (d) and (e) of this section.

(c) *Federal interest in real property or equipment offered as cost-share.* A recipient may offer the full value of real property or equipment that is purchased with recipient's funds or that is donated by a third party to meet a portion of any required cost sharing or matching, subject to the prior approval requirement in § 34.13(a)(7). If a recipient does so, the Government has a financial interest in the property, a share of the property value attributable to the Federal participation in the project. The property therefore shall be considered as if it had been acquired in part with Federal funds, and shall be subject to the provisions of paragraphs (b)(1), (b)(2) and (b)(3) of this section, and to the provisions of § 34.23.

(d) *Use.* If real property or equipment is acquired in whole or in part with Federal funds under an award, and the award provides that title vests conditionally in the recipient, the real property or equipment is subject to the following:

(1) During the time that the real property or equipment is used on the project or program for which it was acquired, the recipient shall make it available for use on other projects or programs, if such other use will not interfere with the work on the project or program for which the real property or equipment was originally acquired. Use of the real property or equipment on other projects will be in the following order of priority:

(i) Activities sponsored by DoD Components' grants, cooperative agreements, or other assistance awards;

(ii) Activities sponsored by other Federal agencies' grants, cooperative agreements, or other assistance awards;

(iii) Activities under Federal procurement contracts, or activities not sponsored by any Federal agency. If so used, use charges shall be assessed to those activities. For real property or equipment, the use charges shall be at rates equivalent to those for which comparable real property or equipment may be leased. The use charges shall be treated as program income.

(2) After Federal funding for the project ceases, or when the real property or equipment is no longer needed for the purposes of the project, the recipient may use the real property or equipment for other projects, insofar as:

(i) There are Federally sponsored projects for which the real property or equipment may be used. If the only use for the real property or equipment is for projects that have no Federal sponsorship, the recipient shall proceed with disposition of the real property or equipment, in accordance with paragraph (e) of this section.

(ii) The recipient obtains written approval from the grants officer to do so. The grants officer shall ensure that there is a formal change of accountability for the real property or equipment to a currently funded, Federal award.

(iii) The recipient's use of the real property or equipment for other projects is in the same order of priority as described in paragraph (d)(1) of this section.

(e) *Disposition.* (1) When an item of real property or equipment is no longer needed for Federally sponsored projects, the recipient shall proceed as follows:

[3] For copies of the Circular, contact the Office of Management and Budget, EOP Publications, 725 17th St. N.W., New Executive Office Building, Washington, D.C. 20503.

[4] See footnote 3 to paragraph (b)(1) of this section.

[5] See footnote 3 to paragraph (b)(1) of this section.

(i) If the property that is no longer needed is equipment (rather than real property), the recipient may wish to replace it with an item that is needed currently for the project. In that case, the recipient may use the original equipment as trade-in or sell it and use the proceeds to offset the costs of the replacement equipment, subject to the approval of the responsible agency (i.e., the DoD Component or the Federal agency to which the DoD Component delegated responsibility for administering the equipment).

(ii) The recipient may elect to retain title, without further obligation to the Federal Government, by compensating the Federal Government for that percentage of the current fair market value of the real property or equipment that is attributable to the Federal participation in the project.

(iii) If the recipient does not elect to retain title to real property or equipment (see paragraph (e)(1)(ii) of this section), or request approval to use equipment as trade-in or offset for replacement equipment (see paragraph (e)(1)(i) of this section), the recipient shall request disposition instructions from the responsible agency.

(2) If a recipient requests disposition instructions, in accordance with paragraph (e)(1)(iii) of this section, the responsible grants officer shall:

(i) For equipment (but not real property), consult with the Federal program manager and judge whether the age and nature of the equipment warrant a screening procedure, to determine whether the equipment is useful to a DoD Component or other Federal agency. If a screening procedure is warranted, the responsible agency shall determine whether the equipment can be used to meet a DoD Component's requirement. If no DoD requirement is found, the responsible agency shall report the availability of the equipment to the General Services Administration, to determine whether a requirement for the equipment exists in other Federal agencies.

(ii) For either real property or equipment, issue instructions to the recipient for disposition of the property no later than 120 calendar days after the recipient's request. The grants officer's options for disposition are to direct the recipient to:

(A) Transfer title to the real property or equipment to the Federal Government or to an eligible third party provided that, in such cases, the recipient shall be entitled to compensation for its attributable percentage of the current fair market value of the real property or equipment, plus any reasonable shipping or interim storage costs incurred. If title is transferred to the Federal Government, it shall be subject thereafter to provisions for Federally owned property in § 34.22.

(B) Sell the real property or equipment and pay the Federal Government for that percentage of the current fair market value of the property that is attributable to the Federal participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sale proceeds). When the recipient is authorized or required to sell the real property or equipment, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

(3) If the responsible agency fails to issue disposition instructions within 120 calendar days of the recipient's request, as described in paragraph (e)(2)(ii) of this section, the recipient shall dispose of the real property or equipment through the option described in paragraph (e)(2)(ii)(B) of this section.

§ 34.22 Federally owned property.

(a) *Annual inventory.* Recipients shall submit annually an inventory listing of all Federally owned property in their custody (property furnished by the Federal Government, rather than acquired by the recipient with Federal funds under the award), to the DoD Component or other Federal agency responsible for administering the property under the award.

(b) *Use on other activities.* (1) Use of federally owned property on other activities is permissible, if authorized by the DoD Component responsible for administering the award to which the property currently is charged.

(2) Use on other activities will be in the following order of priority:

(i) Activities sponsored by DoD Components' grants, cooperative agreements, or other assistance awards;

(ii) Activities sponsored by other Federal agencies' grants, cooperative agreements, or other assistance awards;

(iii) Activities under Federal procurement contracts, or activities not sponsored by any Federal agency. If so used, use charges shall be assessed to those activities. For real property or equipment, the use charges shall be at rates equivalent to those for which comparable real property or equipment may be leased. The use charges shall be treated as program income.

(c) *Disposition of property.* Upon completion of the award, the recipient shall report the property to the responsible agency. The agency may:

(1) Use the property to meet another Federal Government need (e.g, by transferring accountability for the property to another Federal award to the same recipient, or by directing the recipient to transfer the property to a Federal agency that needs the property, or to another recipient with a currently funded award).

(2) Declare the property to be excess property and either:

(i) Report the property to the General Services Administration, in accordance with the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483(b)(2)), as implemented by General Services Administration regulations at 41 CFR 101–47.202; or

(ii) Dispose of the property by alternative methods, if there is statutory authority to do so (e.g., DoD Components are authorized by 15 U.S.C. 3710(i), the Federal Technology Transfer Act, to donate research equipment to educational and nonprofit organizations for the conduct of technical and scientific education and research activities. Such donations shall be in accordance with the DoD implementation of E.O. 12999 (3 CFR, 1996 Comp., p. 180), "Educational Technology: Ensuring Opportunity for All Children in the Next Century," as applicable.) Appropriate instructions shall be issued to the recipient by the responsible agency.

§ 34.23 Property management system.

The recipient's property management system shall include the following, for property that is Federally owned, and for equipment that is acquired in whole or in part with Federal funds, or that is used as matching share:

(a) Property records shall be maintained, to include the following information:

(1) A description of the property.

(2) Manufacturer's serial number, model number, Federal stock number, national stock number, or any other identification number.

(3) Source of the property, including the award number.

(4) Whether title vests in the recipient or the Federal Government.

(5) Acquisition date (or date received, if the property was furnished by the Federal Government) and cost.

(6) Information from which one can calculate the percentage of Federal participation in the cost of the property (not applicable to property furnished by the Federal Government).

(7) The location and condition of the property and the date the information was reported.

(8) Ultimate disposition data, including date of disposal and sales

price or the method used to determine current fair market value where a recipient compensates the Federal Government for its share.

(b) Federally owned equipment shall be marked, to indicate Federal ownership.

(c) A physical inventory shall be taken and the results reconciled with the property records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the property.

(d) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft of property shall be investigated and fully documented; if the property was owned by the Federal Government, the recipient shall promptly notify the Federal agency responsible for administering the property.

(e) Adequate maintenance procedures shall be implemented to keep the property in good condition.

§ 34.24 Supplies.

(a) Title shall vest in the recipient upon acquisition for supplies acquired with Federal funds under an award.

(b) Upon termination or completion of the project or program, the recipient shall retain any unused supplies. If the inventory of unused supplies exceeds $5,000 in total aggregate value and the items are not needed for any other Federally sponsored project or program, the recipient shall retain the items for use on non-Federal sponsored activities or sell them, but shall, in either case, compensate the Federal Government for its share.

§ 34.25 Intellectual property developed or produced under awards.

(a) *Patents.* Grants and cooperative agreements with:

(1) Small business concerns shall comply with 35 U.S.C. Chapter 18, as implemented by 37 CFR part 401, which applies to inventions made under grants and cooperative agreements with small business concerns for research and development. 37 CFR 401.14 provides a standard clause that is required in such grants and cooperative agreements in most cases, 37 CFR 401.3 specifies when the clause shall be included, and 37 CFR 401.5 specifies how the clause may be modified and tailored.

(2) For-profit organizations other than small business concerns shall comply with 35 U.S.C. 210(c) and Executive Order 12591 (3 CFR, 1987 Comp., p. 220) (which codifies a Presidential Memorandum on Government Patent Policy, dated February 18, 1983).

(i) The Executive order states that, as a matter of policy, grants and cooperative agreements should grant to all for-profit organizations, regardless of size, title to patents made in whole or in part with Federal funds, in exchange for royalty-free use by or on behalf of the Government (i.e., it extends the applicability of 35 U.S.C. Chapter 18, to the extent permitted by law, to for-profit organizations other than small business concerns).

(ii) 35 U.S.C. 210(c) states that 35 U.S.C. Chapter 18 is not intended to limit agencies' authority to agree to the disposition of rights in inventions in accordance with the Presidential memorandum codified by the Executive order. It also states that such grants and cooperative agreements shall provide for Government license rights required by 35 U.S.C. 202(c)(4) and march-in rights required by 35 U.S.C. 203.

(b) *Copyright, data and software rights.* Requirements concerning data and software rights are as follows:

(1) The recipient may copyright any work that is subject to copyright and was developed under an award. DoD Components reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

(2) Unless waived by the DoD Component making the award, the Federal Government has the right to:

(i) Obtain, reproduce, publish or otherwise use for Federal Government purposes the data first produced under an award.

(ii) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

Procurement Standards

§ 34.30 Purpose of procurement standards.

Section 34.31 sets forth requirements necessary to ensure:

(a) Compliance of recipients' procurements that use Federal funds with applicable Federal statutes and executive orders.

(b) Proper stewardship of Federal funds used in recipients' procurements.

§ 34.31 Requirements.

The following requirements pertain to recipients' procurements funded in whole or in part with Federal funds or with recipients' cost-share or match:

(a) *Reasonable cost.* Recipients procurement procedures shall make maximum practicable use of competition, or shall use other means that ensure reasonable cost for procured goods and services.

(b) *Pre-award review of certain procurements.* Prior to awarding a procurement contract under an award, a recipient may be required to provide the grants officer administering the award with pre-award documents (e.g., requests for proposals, invitations for bids, or independent cost estimates) related to the procurement. Recipients will only be required to provide such documents for the grants officer's pre-award review in exceptional cases where the grants officer judges that there is a compelling need to do so. In such cases, the grants officer must include a provision in the award that states the requirement.

(c) *Contract provisions.* (1) Contracts in excess of the simplified acquisition threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(2) All contracts in excess of the simplified acquisition threshold shall contain suitable provisions for termination for default by the recipient or for termination due to circumstances beyond the control of the contractor.

(3) All negotiated contracts in excess of the simplified acquisition threshold shall include a provision permitting access of the Department of Defense, the Comptroller General of the United States, or any of their duly authorized representatives, to any books, documents, papers, and records of the contractor that are directly pertinent to a specific program, for the purpose of making audits, examinations, excerpts, and transcriptions.

(4) All contracts, including those for amounts less than the simplified acquisition threshold, awarded by recipients and their contractors shall contain the procurement provisions of Appendix A to this part, as applicable.

Reports and Records

§ 34.40 Purpose of reports and records.

Sections 34.41 and 34.42 prescribe requirements for monitoring and reporting financial and program performance and for records retention.

§ 34.41 Monitoring and reporting program and financial performance.

Grants officers may use the provisions of 32 CFR 32.51 and 32.52 for awards to for-profit organizations, or may include equivalent technical and financial reporting requirements that

ensure reasonable oversight of the expenditure of appropriated funds. As a minimum, equivalent requirements must include:

(a) Periodic reports (at least annually, and no more frequently than quarterly) addressing both program status and business status, as follows:

(1) The program portions of the reports must address progress toward achieving program performance goals, including current issues, problems, or developments.

(2) The business portions of the reports shall provide summarized details on the status of resources (federal funds and non-federal cost sharing or matching), including an accounting of expenditures for the period covered by the report. The report should compare the resource status with any payment and expenditure schedules or plans provided in the original award; explain any major deviations from those schedules; and discuss actions that will be taken to address the deviations.

(3) When grants officers previously authorized advance payments, pursuant to § 34.12(a)(2), they should consult with the program official and consider whether program progress reported in the periodic report, in relation to reported expenditures, is sufficient to justify continued authorization of advance payments.

(b) Unless inappropriate, a final performance report that addresses all major accomplishments under the award.

§ 34.42 Retention and access requirements for records.

(a) This section sets forth requirements for records retention and access to records for awards to recipients.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final expenditure report. The only exceptions are the following:

(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.

(3) When records are transferred to or maintained by the DoD Component that made the award, the 3-year retention requirement is not applicable to the recipient.

(4) Indirect cost rate proposals, cost allocations plans, and related records, for which retention requirements are specified in § 34.42(g).

(c) Copies of original records may be substituted for the original records if authorized by the grants officer.

(d) The grants officer shall request that recipients transfer certain records to DoD Component custody when he or she determines that the records possess long term retention value. However, in order to avoid duplicate recordkeeping, a grants officer may make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) DoD Components, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

(f) Unless required by statute, no DoD Component shall place restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when the DoD Component can demonstrate that such records shall be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to the DoD Component making the award.

(g) Indirect cost proposals, cost allocation plans, and other cost accounting documents (such as documents related to computer usage chargeback rates), along with their supporting records, shall be retained for a 3-year period, as follows:

(1) If a recipient is required to submit an indirect-cost proposal, cost allocation plan, or other computation to the cognizant Federal agency, for purposes of negotiating an indirect cost rate or other rates, the 3-year retention period starts on the date of the submission. This retention requirement also applies to subrecipients submitting similar documents for negotiation to the recipient.

(2) If the recipient or the subrecipient is not required to submit the documents or supporting records for negotiating an indirect cost rate or other rates, the 3-year retention period for the documents and records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(h) If the information described in this section is maintained on a computer, recipients shall retain the computer data on a reliable medium for the time periods prescribed. Recipients may transfer computer data in machine readable form from one reliable computer medium to another. Recipients' computer data retention and transfer procedures shall maintain the integrity, reliability, and security of the original computer data. Recipients shall also maintain an audit trail describing the data transfer. For the record retention time periods prescribed in this section, recipients shall not destroy, discard, delete, or write over such computer data.

Termination and Enforcement

§ 34.50 Purpose of termination and enforcement.

Sections 34.51 through 34.53 set forth uniform procedures for suspension, termination, enforcement, and disputes.

§ 34.51 Termination.

(a) Awards may be terminated in whole or in part only in accordance with one of the following:

(1) By the grants officer, if a recipient materially fails to comply with the terms and conditions of an award.

(2) By the grants officer with the consent of the recipient, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

(3) By the recipient upon sending to the grants officer written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. The recipient must provide such notice at least 30 calendar days prior to the effective date of the termination. However, if the grants officer determines in the case of partial termination that the reduced or modified portion of the award will not accomplish the purposes for which the award was made, he or she may terminate the award in its entirety.

(b) If costs are allowed under an award, the responsibilities of the recipient referred to in § 34.61(b), including those for property management as applicable, shall be considered in the termination of the award, and provision shall be made for continuing responsibilities of the recipient after termination, as appropriate.

§ 34.52 Enforcement.

(a) *Remedies for noncompliance.* If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, the grants officer may, in addition to imposing any of the special conditions outlined in § 34.4, take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the recipient or more severe enforcement action by the grants officer and DoD Component.

(2) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award. In the case of termination, the recipient will be reimbursed for allowable costs incurred prior to termination, with the possible exception of those for activities and actions described in paragraph (a)(2) of this section.

(4) Withhold further awards for the project or program.

(5) Take other remedies that may be legally available.

(b) *Hearings and appeals.* In taking an enforcement action, the grants officer and DoD Component shall provide the recipient an opportunity for hearing, appeal, or other administrative proceeding to which the recipient is entitled under any statute or regulation applicable to the action involved (see § 34.53 and 32 CFR 22.815).

(c) *Effects of suspension and termination.* Costs of a recipient resulting from obligations incurred by the recipient during a suspension or after termination of an award are not allowable unless the grants officer expressly authorizes them in the notice of suspension or termination or subsequently. Other recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if the costs:

(1) Result from obligations which were properly incurred by the recipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are noncancellable; and

(2) Would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under 32 CFR part 25.

§ 34.53 Disputes and appeals.

Recipients have the right to appeal certain decisions by grants officers. In resolving such issues, DoD policy is to use Alternative Dispute Resolution (ADR) techniques, to the maximum practicable extent. See 32 CFR 22.815 for standards for DoD Components' dispute resolution and formal, administrative appeal procedures.

Subpart C—After-the-Award Requirements

§ 34.60 Purpose.

Sections 34.61 through 34.63 contain procedures for closeout and for subsequent disallowances and adjustments.

§ 34.61 Closeout procedures.

(a) The cognizant grants officer shall, at least six months prior to the expiration date of the award, contact the recipient to establish:

(1) All steps needed to close out the award, including submission of financial and performance reports, liquidation of obligations, and decisions on property disposition.

(2) A schedule for completing those steps.

(b) The following provisions shall apply to the closeout:

(1) The responsible grants officer and payment office shall expedite completion of steps needed to close out awards and make prompt, final payments to a recipient for allowable reimbursable costs under the award being closed out.

(2) The recipient shall promptly refund any unobligated balances of cash that the DoD Component has advanced or paid and that is not authorized to be retained by the recipient for use in other projects. For unreturned amounts that become delinquent debts, see 32 CFR 22.820.

(3) When authorized by the terms and conditions of the award, the grants officer shall make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(4) The recipient shall account for any real property and personal property acquired with Federal funds or received from the Federal Government in accordance with §§ 34.21 through 34.25.

(5) If a final audit is required and has not been performed prior to the closeout of an award, the DoD Component shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

§ 34.62 Subsequent adjustments and continuing responsibilities.

(a) The closeout of an award does not affect any of the following:

(1) The right of the Department of Defense to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Audit requirements in § 34.16.

(4) Property management requirements in §§ 34.21 through 34.25.

(5) Records retention as required in § 34.42.

(b) After closeout of an award, a relationship created under an award may be modified or ended in whole or in part with the consent of the grants officer and the recipient, provided the responsibilities of the recipient referred to in § 34.61(a), including those for property management as applicable, are considered and provisions made for continuing responsibilities of the recipient, as appropriate.

§ 34.63 Collection of amounts due.

Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. Procedures for issuing the demand for payment and pursuing administrative offset and other remedies are described in 32 CFR 22.820.

Appendix A to Part 34—Contract Provisions

All contracts awarded by a recipient, including those for amounts less than the simplified acquisition threshold, shall contain the following provisions as applicable:

1. *Equal Employment Opportunity*—All contracts shall contain a provision requiring compliance with E.O. 11246 (3 CFR, 1964–1965 Comp., p. 339), "Equal Employment Opportunity," as amended by E.O. 11375 (3 CFR, 1966–1970 Comp., p. 684), "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR chapter 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

2. *Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c)*—All contracts and subawards in excess of $2000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient

shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the responsible DoD Component.

3. *Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333)*—Where applicable, all contracts awarded by recipients in excess of $100,000 for construction and other purposes that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

4. *Rights to Inventions Made Under a Contract, Grant or Cooperative Agreement*—Contracts, grants, or cooperative agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."

5. *Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended*—Contracts and subawards of amounts in excess of $100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 *et seq.*). Violations shall be reported to the responsible DoD Component and the Regional Office of the Environmental Protection Agency (EPA).

6. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*—Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

7. *Debarment and Suspension (E.O.s 12549 and 12689)*—Contract awards that exceed the simplified acquisition threshold and certain other contract awards shall not be made to parties listed on nonprocurement portion of the General Services Administration's Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs in accordance with E.O.s 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principals.

Dated: March 3, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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Thursday
March 12, 1998

Part III

Department of Justice

Federal Bureau of Investigation

Implementation of Section 104 of the Communications Assistance for Law Enforcement Act; Notice

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Implementation of Section 104 of the Communications Assistance for Law Enforcement Act

AGENCY: Federal Bureau of Investigation (FBI).

ACTION: Final notice of capacity.

SUMMARY: The FBI is providing the Final Notice of the requirements for actual and maximum capacity for the interception of the content of communications and call-identifying information that telecommunications carriers may be required to effect to support law enforcement's electronic surveillance needs, as mandated in section 104 of the Communications Assistance for Law Enforcement Act (CALEA) (Public Law 103–414, 47 U.S.C. 1001–1010). On October 16, 1995, the FBI published an Initial Notice of Capacity for comment (60 FR 53643); and on November 9, 1995, the comment period was extended until January 16, 1996. After reviewing the comments received, the FBI published the Second Notice of Capacity on January 14, 1997, for comment (62 FR 1902). Comments were accepted on the Second Notice of Capacity through March 15, 1997. After reviewing the comments received, the FBI is issuing this Final Notice of Capacity.

DATES: Effective Date: March 12, 1998.

Compliance Dates:

1. Carrier Statement Submission Compliance: September 8, 1998.
2. Capacity Compliance: March 12, 2001.

FOR FURTHER INFORMATION: Contact the CALEA Implementation Section, Federal Bureau of Investigation (FBI), P.O. Box 220450, Chantilly, Virginia 20153–0450 or call (800) 551–0336. Please refer to your question as a capacity notice question. The FBI has made this Final Notice of Capacity, as well as its associated appendixes, available on its Internet homepage (http://www.fbi.gov).

I. Background

A. Purpose of CALEA

On October 25, 1994, President Clinton signed into law the Communications Assistance for Law Enforcement Act (CALEA). Its objective is to make clear a telecommunications carrier's duty to cooperate with law enforcement with regard to electronic surveillance-related interceptions for law enforcement purposes. (For purposes of this notice, the word "interception" is used to refer to either the interception of call content or call-identifying information.) CALEA was enacted to preserve law enforcement's ability, pursuant to court order or other lawful authorization, to access call content and call-identifying information, including information from pen register and traps and traces, in an ever-changing telecommunications environment. On February 24, 1995, the Attorney General delegated management and administration responsibilities of CALEA to the FBI (see 28 CFR 0.85(o)). The FBI is implementing CALEA on behalf of all Federal, State, and local law enforcement.

In 1968, when Congress statutorily authorized court-ordered electronic surveillance, there were no technological limitations on the number of interceptions that could be conducted. However, the onset of new and advanced technologies has begun to erode the ability of the telecommunications industry to support law enforcement's interception needs. In an effort to preserve the ability to conduct interceptions, which is a vital investigative tool, the Congress determined that technological solutions must be employed, thereby necessitating greater levels of assistance from telecommunications carriers.

The intent of CALEA is to define and clarify the level of technical assistance required from telecommunications carriers. CALEA does not alter or expand law enforcement's fundamental statutory authority to intercept communications. It simply seeks to ensure that, after law enforcement obtains legal authority, telecommunications carriers will have the necessary technical ability to fulfill their statutory obligation to accommodate requests for assistance.

B. Capacity Notice Mandate

Because many future interceptions will be effected through equipment controlled by telecommunications carriers, CALEA obligates the Attorney General to provide carriers with information they will need (a) to be capable of accommodating the actual number of simultaneous interceptions law enforcement might conduct as of October 25, 1998, and (b) to size and design their networks to accommodate the maximum number of simultaneous interceptions that law enforcement might conduct after October 25, 1998. (Although actual and maximum capacity determinations represent estimates for October 25, 1998, and thereafter, telecommunications carrier compliance with capacity requirements is, by terms of CALEA, required 3 years after the effective date of this Final Notice of Capacity.) These two information elements are referred to in CALEA as "actual" and "maximum" capacity requirements. In accordance with section 104 of CALEA, the FBI, which has been delegated CALEA implementation responsibilities from the Attorney General, on behalf of Federal, State and local law enforcement, must provide notice of estimated future actual and maximum capacity requirements. The statute defines these requirements as follows:

For actual capacity: The actual number of communication interceptions, pen registers, and trap and trace devices, representing a portion of the maximum capacity, that the Attorney General estimates that government agencies authorized to conduct electronic surveillance may conduct and use simultaneously by the date that is 4 years after the date of enactment of CALEA.

For maximum capacity: The maximum capacity required to accommodate all of the communication interceptions, pen registers, and trap and trace devices that the Attorney General estimates that government agencies authorized to conduct electronic surveillance may conduct and use simultaneously after the date that is 4 years after the date of enactment of CALEA.

Although CALEA requires the Attorney General to estimate the actual number of communication interceptions, pen registers, and trap and trace interceptions that may be required simultaneously by the date that is four years after the date of enactment of CALEA (or three years after the effective date of this Final Notice of Capacity, whichever is longer) and thereafter, the estimates should not be interpreted as constituting the number of interceptions that law enforcement intends to, or is planning to, conduct. The number of interceptions that will actually be needed will be determined by active authorized law enforcement investigations which require interception efforts.

Under CALEA, telecommunications carriers are required to have an actual capacity available for immediate use on the date that is 3 years after the effective date of this Final Notice of Capacity. Maximum capacity, on the other hand, is a capacity level that telecommunications carriers must be able to accommodate "expeditiously" if law enforcement needs an increase in the future. The time frame for "expeditious" expansion to maximum capacity was not specified in CALEA. However, law enforcement typically maintains ongoing liaison with telecommunications carriers serving their areas. Such liaison will facilitate the needed technical capability and capacity to be prearranged, thereby ensuring that the interception can begin

as soon as the lawful authorization is received. Such liaison is critical because electronic surveillance interceptions are by their very nature time sensitive. Law enforcement considers 5 business days from a telecommunications carrier's receipt of a court order to be a reasonable period of time within which to permit an incremental expansion up to the maximum capacity. This time frame is based on past practice as to the time typically involved under existing procedures used by law enforcement and telecommunications carriers to make technical interception arrangements.

The term "expeditious," as used herein, applies to section 104 capacity requirements regarding incremental expansion up to the maximum capacity. It should not be confused with "expeditious access" to call content and call-identifying information as used in section 103 of CALEA, which pertains to the assistance capability requirements.

Law enforcement has interpreted the maximum capacity chiefly as a requirement that telecommunications carriers will follow to determine a capacity ceiling. This ceiling is intended to provide telecommunications carriers with a stable framework for cost-effectively designing future capacity into their networks. It also would provide room for accommodating future interception-related "worst-case scenarios." Establishing the maximum capacity will allow telecommunications carriers to assist law enforcement during serious, unpredictable emergencies requiring unusual levels of interception.

Consistent with CALEA, this Final Notice of Capacity identifies the number of simultaneous interceptions that a telecommunications carrier should be able to accommodate in a given geographic area as of the date that is 3 years after the effective date of this Final Notice of Capacity and thereafter. An "interception" relates to accessing and delivering all communications (call content) or call-identifying information associated with the telecommunications service of the subject specified in a court order or other lawful authorization. The telecommunications service targeted for interception includes all of the services and features associated with the subject's wireline/wireless telephone number, or as otherwise specified in the court order or lawful authorization.

For a call content-based "interception", a carrier is responsible for accessing and delivering all communications and call-identifying information supported by the subject's telecommunications service. This is the case regardless of the advanced services or features to which the subject subscribes (e.g., call forwarding used to redirect a call); and notwithstanding that the subject may be engaged in more than one communication (e.g., a subject is engaged in a voice telephone call and simultaneously sends a fax or data transmission, or a subject is engaged with several (different) parties in a conference call and simultaneously communicates with a non-conferenced party). For interceptions of call-identifying information (e.g., pen registers and trap and trace device-based interceptions), a carrier is responsible for accessing and delivering all call-identifying information related to the communications that is generated or received by the subject, regardless of the advanced services or features to which the subject subscribes.

The fact that a subject utilizes advanced services and features as part of his/her telecommunications service or is capable of sending or receiving more than one communication simultaneously does not mean that carrier access and delivery of each constitutes a separate interception. Consequently, telecommunications carriers need to ensure that, regardless of their solutions (which may be varied), the solution permits access and delivery of all of the communications or call-identifying information for each interception as specified by the interception order. Because of this circumstance, and because CALEA forbids the Government from dictating solutions, law enforcement will be available to consult and work with carriers as they develop solutions.

In some instances a telecommunications carrier may be able to meet the assistance capability requirements without modifying its equipment, facilities, or services. As a practical matter, conventional methods of effectuating interceptions of call content and call-identifying information, such as loop extender technologies, may meet the requirements of CALEA for some subjects of court-ordered interceptions, depending on the types of services and features to which the subject subscribes. Telecommunications carriers that presently meet these requirements under the circumstances described above will be in compliance until their equipment, facilities, or services are replaced or significantly upgraded or otherwise undergo major modification. Furthermore, telecommunications carriers that cannot meet the assistance capability requirements may still be considered to be in compliance if the Government does not agree to reimburse such carriers for modifications to equipment, facilities, and services installed or deployed on or before January 1, 1995. Such carriers will continue to be in compliance with CALEA until such time as their equipment, facilities, or services are significantly upgraded, replaced, or otherwise undergo major modification.

C. Initial Notice of Capacity

On October 16, 1995, law enforcement's proposed estimated future actual and maximum capacity requirements were presented in an Initial Notice of Capacity published in the **Federal Register** as mandated by section 104 of CALEA. On November 9, 1995 the industry comment period was extended until January 16, 1996. The Initial Notice and the comments on it were summarized in Section V of the Second Notice of Capacity, published in the **Federal Register** on January 14, 1997 (62 FR 1902).

D. Second Notice of Capacity

Following the release of the Initial Notice of Capacity, law enforcement consulted with telecommunications industry representatives, privacy advocates, and other interested parties to receive feedback on the method used to express estimated future actual and maximum capacity requirements. This consultative process assisted law enforcement in understanding the challenges facing the industry and others in applying the capacity requirements. After deliberation, law enforcement refined its approach of defining capacity requirements and issued a Second Notice of Capacity, published in the **Federal Register** on January 14, 1997 (62 FR 1902) to more fully articulate estimated future actual and maximum capacity requirements. Comments on the Second Notice of Capacity were accepted through March 15, 1997. The comments and the responses to the comments filed regarding the Second Notice of Capacity are summarized in Section VII of this notice. After the publication of the Second Notice of Capacity, law enforcement received comments and recommendations from telecommunications industry representatives, privacy advocates, and other interested parties on the method used to express future actual and maximum capacity requirements.

E. Final Notice of Capacity

This Final Notice of Capacity is being issued after careful consideration of the submitted comments to the Second Notice of Capacity. During a pre-publication review, the Government

determined that for some purposes this Final Notice of Capacity had the force and effect of a rule, therefore certain administrative and regulatory requirements needed to be met prior to publication. This notice fulfills the obligations of the Attorney General under section 104(a)(1) of CALEA. As mandated by section 104(d), telecommunications carriers have 180 days after the effective date of this Final Notice of Capacity to submit a Carrier Statement to the Government identifying any of their systems or services that do not have the interception capacity set forth in this Final Notice of Capacity to accommodate CALEA's section 103 requirements.

CALEA applies to all telecommunications carriers as defined in section 102(8). Capacity notices will eventually be issued covering all telecommunications carriers. However, this Final Notice of Capacity should be viewed as the first phase applicable to telecommunications carriers offering services that are of most immediate concern to law enforcement—that is, those telecommunications carriers offering local exchange services and certain commercial mobile radio services, specifically cellular service and personal communications service (PCS). For the purpose of this notice, PCS is considered a service operating in the licensed portion of the 2 GHz band of the electromagnetic spectrum, from 1850 MHz to 1990 MHz. Telecommunications carriers offering local exchange services are referred to hereafter in this notice as "wireline" carriers, and telecommunications carriers offering cellular and PCS services are referred to as "wireless" carriers.

Generally speaking, resellers of telecommunications services ("resellers") lease some portion of a host carrier's facilities which allows the transmission or switching of wireline, wireless or other electronic communications. Resellers holding themselves out for hire to the public in the provision of telecommunications services subjects resellers, as telecommunication carriers under CALEA, to the obligations of CALEA. For purposes of this Notice of Capacity, law enforcement believes that a reseller and its host carrier can be treated collectively, as a single entity, given their common utilization of network equipment, facilities, and services to which CALEA addresses itself. This Notice of Capacity does not address resellers' and host carriers' independent obligations to ensure compliance with other provisions within CALEA.

The exclusion from this notice of certain other telecommunications carriers that have services deployed currently or anticipate deploying services in the near term does not exempt them from any obligations under CALEA. Law enforcement will consult with these other telecommunications carriers before applicable capacity requirements are established and subsequent notices are issued. Law enforcement looks forward to consulting with these other telecommunications carriers to develop a reasonable method for characterizing capacity requirements for them.

II. Applicable Administrative Procedures and Executive Orders

A. Small Business Regulatory Enforcement Fairness Act of 1996

The Final Notice of Capacity is not a major rule as defined by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA),[1] based upon an assessment that this Final Notice of Capacity will not have an annual effect on the economy of $100,000,000 or more; will not cause a major increase in costs or prices; and will not result in a significant adverse effect on competition, employment, investment, productivity, and innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

B. Executive Order 12612

The Final Notice of Capacity will not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it has been determined that this notice does not create sufficient federalism implications to warrant the preparation of a Federalism Assessment.

C. Information Collection

The Final Notice of Capacity contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Section V of this notice details the information collection requirement associated with the Carrier Statement to be submitted by carriers.

D. Executive Order 12988

The Final Notice of Capacity meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

E. Executive Order 12866

This Final Notice of Capacity has been drafted and reviewed in accordance with Executive Order 12866, § 1(b), Principles of Regulation. It has been determined that this notice is not a "significant regulatory action" under Executive Order 12866, § 3(f), Regulatory Planning and Review and, in particular, that this notice will neither have an annual economic impact on the economy in excess of $100,000,000, nor will it economically impact State and local governments.[2] Although not required by Executive Order 12866, this notice has been informally reviewed by the Office of Management and Budget (OMB).

Economic Assessment

Using a per intercept cost of $460,[3] the only cost estimate provided by the industry, the FBI estimates that industry compliance will not exceed $28,926,667 in any one year and will cost a total of $86,780,000 over a three year period. Law enforcement estimates that the time frame for capacity to be deployed is three years. If the time is greater than three years then the annual costs will decrease. Total estimated costs are apportioned as follows: $71,300,000 for local exchange carriers and $15,480,000 for commercial radio, cellular and PCS service providers based on the wireline and wireless capacity requirements published in the appendixes of this Final Notice of Capacity. Furthermore, it should be noted that carrier capacity compliance costs for equipment, facilities or services identified on a Carrier Statement, to be submitted within 180 days of the effective date of this Final Notice of Capacity, may be eligible for Government reimbursement. Until the Attorney General agrees to reimburse a carrier for such modifications, that carrier's equipment, facilities or services shall be considered compliant with this Final Notice of Capacity.[4] Capacity costs associated with any equipment, facilities or

[1] See Subtitle II of the Contract with America Advancement Act of 1996, Pub. L. No. 104–121, 110 Stat. 847 (1996).

[2] H. Rep. No. 103–827, 103d Cong., 2d Sess., reprinted in 1994 U.S.C.C.A.N. 3489, 3505, Page 34.

[3] Among all the comments to both the Initial Notice of Capacity and the Second Notice of Capacity, GTE, in its comments to the Second Notice of Capacity, was the only respondent to provide estimated capacity costs. The cost of $460 per intercept is based on the following criteria: (a) each intercept would require the necessary hardware to provide law enforcement with two channels, (b) the equipment used to meet the capacity requirements would be dedicated solely for law enforcement use, and (c) the $460 represents an average cost of intercept equipment and could vary between $453 and $470.

[4] CALEA, Section 104(e).

services deployed after the Carrier Statement period of 180 days following the effective date of this Final Notice of Capacity will not be eligible for reimbursement.

F. Unfunded Mandates Reform Act of 1995

A Government analysis of the Unfunded Mandates Reform Act (UMRA) has determined this Final Notice of Capacity will not result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995 (UMRA). Even so, the FBI has voluntarily abided by the tenets of the UMRA throughout this final notice.

G. Regulatory Flexibility Act—Final Regulatory Flexibility Analysis (FRFA)

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*, as amended) requires that an Initial Regulatory Flexibility Analysis (IRFA) be prepared and published with all proposed rules. Earlier analysis by the Government did not indicate that the Initial Notice of Capacity satisfied the criteria set forth in Section 603(a) of the RFA, requiring completion of an IRFA. However, upon review of comments submitted in response to both the Initial and Second Notices of Capacity, and upon further consideration by DOJ's Office of Policy Development, it has been determined that this Final Notice of Capacity does fall within the scope of the RFA. Therefore, the following Final Regulatory Flexibility Analysis (FRFA) has been completed in accordance with the requirements of Section 604 of the RFA.

Need for and Objectives of This Final Notice

The Final Notice of Capacity implements section 104(a) of the Communications Assistance for Law Enforcement Act (CALEA) (Public Law 103–414), which requires the Attorney General to publish notice of the estimated future actual and maximum capacity requirements that telecommunications carriers may be required to effect in support of electronic surveillance. The capacity requirements serve as a means to preserve law enforcement's ability, pursuant to court order or other lawful authorization, to access call content and call-identifying information in an ever-changing telecommunications environment.

Description and Estimate of the Number of Small Entities To Which the Final Notice Will Apply

The Regulatory Flexibility Act defines small entity as having the same meaning as the terms small organization, small government jurisdiction, and small business concern. Of these definitions of small entity, this Final Notice of Capacity is applicable only to small business concerns.[5] The Small Business Act (15 U.S.C. 632) defines a small business concern as one that (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). More specifically, small business concerns within Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radio Telephone) are defined by the SBA as those having 1,500 or fewer employees. The statutory and SBA definitions of "small business concern" were used for purposes of this FRFA analysis.

Total Number of Telephone Companies Affected. The capacity requirements presented herein may have a significant effect on a minimal number of telephone companies defined as small businesses by the SBA. The U.S. Bureau of the Census (the Census Bureau) reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services for at least 1 year.[6] This number contains a variety of different categories of providers, including local exchange carriers (LEC), interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, and PCS providers. Some of those 3,497 telephone service firms may not qualify as small business concerns or small incumbent LECs because they are not "independently owned and operated."[7] For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business concern. Consequently, the FBI estimates that fewer than 3,497 telephone service firms would qualify as small business concerns and be affected by this Final Notice of Capacity.

Wireline Carriers and Service Providers. The SBA has developed a definition of small business concerns that are telecommunications companies other than radiotelephone (wireless) companies (Telephone Communications, Except Radiotelephone). The Census Bureau reports that 2,321 such telephone companies were in operation for at least 1 year at the end of 1992.[8] Employing the SBA's definition, a small business telephone company other than a radiotelephone company is one with 1,500 or fewer employees.[9] Of the 2,321 non-radiotelephone companies listed by the Census Bureau, 2,295 were reported to have fewer than 1,000 employees. Thus, at least 2,295 non-radiotelephone companies might qualify as small entities or small incumbent LECs based on employment statistics. Since it is certain that some of these carriers are not independently owned and operated, this figure overstates the actual number of non-radiotelephone companies that would constitute small business concerns under the SBA's definition. Consequently, the FBI estimates that there are fewer than 2,295 small entity telephone communications companies (other than radiotelephone companies) that may be affected by this Final Notice of Capacity.

Local Exchange Carriers. Neither the FCC nor the SBA has developed a definition of small providers of local exchange services. The closest applicable definition under SBA rules is that of telephone communications companies other than radiotelephone (wireless) companies.[10] The most reliable source of information regarding the number of LECs nationwide, of which the FBI is aware, appears to be the data that the FCC collects annually in connection with the TRS Worksheet.[11] According to most recent data, 1,347 companies reported that they were engaged in the provision of local exchange services.[12] As some of these carriers have more than 1,500 employees, the FBI is unable to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's

[5] Actual and maximum capacity requirements apply to all telecommunications carriers as defined in section 102(8) of CALEA. This Final Notice of Capacity, however, is intended to apply only to providers of local exchange service, commercial mobile radio service, cellular service, and personal communications services (PCS).

[6] United States Department of Commerce, Bureau of the Census, 1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size, at Firm Size 1–123 (indicating only the number of such firms engaged in providing telephone service and not the size of such firms) (1995) (1992 Census).

[7] 15 U.S.C. § 632(a)(1).

[8] 1992 Census, supra, at Firm Size 1–123.

[9] 13 CFR § 121.201, SIC 4812.

[10] 13 CFR § 121.201, SIC 4813.

[11] Federal Communications Commission, Industry Analysis Division, Telecommunications Industry Revenue: TRS Fund Worksheet Data, (Average Total Telecommunications Revenue Reported by Class of Carrier) (Dec. 1996) (TRS Worksheet).

[12] TRS Worksheet at Tbl. 1.

definition. Consequently, the FBI estimates that there are fewer than 1,347 small incumbent LECs that may be affected by this Final Notice of Capacity.

Competitive Access Providers. Neither the FCC nor the SBA has developed a definition specifically applicable to small entities that are providers of competitive access services (CAPs). The closest applicable definition under the SBA rules is that of telephone communications companies other than radiotelephone (wireless) companies.[13] The most reliable source of information regarding the number of CAPs nationwide, of which the FBI is aware, is the data the FCC collects annually in connection with the TRS Worksheet. According to most recent data, 57 companies reported that they were engaged in the provision of competitive access services.[14] The FBI has no information on the number of carriers that are independently owned and operated, nor on those that have 1,500 or fewer employees and thus is unable to estimate with greater precision the number of CAPs that would qualify as small business concerns under the SBA's definition. Consequently, the FBI estimates that there are fewer than 57 small entity CAPs that may be affected by this Final Notice of Capacity.

Radiotelephone (Wireless) Carriers. The SBA has developed a definition of small business concerns for radiotelephone (wireless) companies. The Census Bureau reports that there were 1,176 wireless companies in operation for at least 1 year at the end of 1992.[15] According to the SBA's definition, a small business radiotelephone company is one employing 1,500 or fewer persons.[16] The Census Bureau also reported that 1,164 radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small business concerns if independently owned and operated. Because of the lack of information on the number of carriers that are independently owned and operated, the FBI is unable to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, the FBI estimates that there are fewer than 1,164 small business concerns considered radiotelephone companies that may be affected by this Final Notice of Capacity.

Cellular Service Carriers. Neither the FCC nor the SBA has developed a definition of small entities specifically applicable to providers of cellular services. The closest applicable definition under the SBA rules is that of radiotelephone (wireless) companies (SIC 4812). The most reliable source of information regarding the number of cellular service carriers nationwide, of which the FBI is aware, is the data the FCC collects annually in connection with the *TRS Worksheet.* According to most recent data, 792 companies reported that they were engaged in the provision of cellular services.[17] The FBI has no information on the number of carriers that are independently owned and operated, nor on those that employ 1,500 or fewer persons, and thus is unable to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, the FBI estimates that there are fewer than 792 small entity cellular carriers that may be affected by this Final Notice of Capacity.

Broadband Personal Communications Service (PCS) Licensees. The broadband PCS spectrum is divided into six frequency blocks designated A through F and the FCC has held auctions for each block. The FCC has defined small entity in the auctions for C and F Blocks as an entity that earned average gross revenues of less than $40 million in the three previous calendar years.[18] For F Block, an additional classification of very small business was added and is defined as an entity that, together with its affiliates, earned average gross revenues of not more than $15 million for the preceding three calendar years.[19] These regulations, defining small entity in the context of broadband PCS C Block auctions, have been approved by the SBA. No small businesses within the SBA-approved definition bid successfully for licenses in A and B Blocks. There were 90 winning bidders that qualified as small entities in the C Block auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for D, E, and F Blocks. However, licenses for C, D, E, and F Blocks have not been awarded fully; therefore few, if any, small businesses currently provide PCS services. Based on this information, the FBI concludes that the number of small broadband PCS licensees will include the 90 winning bidders and the 93 qualifying bidders in the D, E, and F Blocks, for a total of 183 small PCS providers as defined by the SBA and the FCC's auction rules.

Rural Radiotelephone Service. The FCC has not adopted a definition of small business specific to Rural Radiotelephone Service, which is defined in Section 22.99 of the FCC's Rules.[20] A subset of Rural Radiotelephone Service is basic exchange telephone radio systems (BETRS).[21] Accordingly, the FBI will use the SBA's definition applicable to radiotelephone companies, i.e., an entity employing 1,500 or fewer persons. There are approximately 1,000 Rural Radiotelephone Service licensees; the FBI estimates that a large majority of them may qualify as small entities under the SBA's definition.[22]

Reporting, Recordkeeping, and Other Compliance Requirements

The Final Notice of Capacity does not impose reporting or record keeping requirements [23] on the entities to which it applies. It does, however, administer compliance requirements, as defined in Appendixes A through D of this notice.

Summary and Analysis of Significant Issues Raised by Public Comments

On October 16, 1995, the FBI published an Initial Notice of Capacity for comment (60 FR 53643). On November 9, 1995 the industry comment period was extended until January 16, 1996. After reviewing comments in response to the Initial Notice of Capacity, the FBI published a Second Notice of Capacity (62 FR 1902). Comments on the Second Notice of Capacity were accepted from January 14, 1997, through March 15, 1997. Upon review of comments submitted in response to both the Initial and Second Notices of Capacity, it was determined that issues and sentiments specific to small entities were not only represented, but also shared by industry as a whole. A detailed summary of comments is presented in Section VII of

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[13] 13 CFR § 121.201, SIC 4813.

[14] TRS Worksheet at Tbl. 1.

[15] 1992 Census at Firm Size 1–123.

[16] 13 CFR § 121.201, SIC 4812.

[17] TRS Worksheet at Tbl. 1.

[18] See Amendment of Parts 20 and 24 of the FCC's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order, 11 FCC Rcd 7824 (1996).

[19] See Amendment of Parts 20 and 24 of the FCC's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order, 11 FCC Rcd 7824 (1996).

[20] 47 CFR § 22.99.

[21] See 47 CFR §§ 22.757—22.759.

[22] 13 CFR § 121.201, SIC 4812.

[23] To the extent that CALEA compliance may entail reporting and recordkeeping requirements, those issues are separate from the capacity requirements covered in this Final Notice of Capacity and are the subject of a pending proceeding before the FCC. (Communications Assistance for Law Enforcement Act, CC Docket No. 97–213, released October 10, 1997).

the notice. Those of particular interest to small entities are reviewed below.

Burden on small companies. Small business commenters or organizations representing small business interests expressed concern that projected capacity requirements pose a disparate economic burden on small telecommunications carriers that serve areas in which a single historical incident involving a large of number of simultaneous interceptions occurred. Commenters were also concerned that the methodology used to develop the projected capacity requirements relies far too heavily on unusually high historical incidents and ignores routine levels of interception activity over time. One commenter stated that "a carrier serving a small town, with 1,000 access lines, could have a greater capacity burden than NYNEX in New York City if the small carrier had experienced a single incident of major criminal activity 15 years ago."[24] As stated in Section III of the Notice (Methodology for Projecting Capacity Requirements), law enforcement's capacity requirements were estimated by considering historical surveillance statistics and industry survey data. Furthermore, as the notice explains, historical intercept activity was measured for the period January 1993 through March 1995. Any intercept activity before that time was not considered and, therefore, is not an influential factor in estimating current capacity requirements. However, taking into consideration that intercept activity may have occurred before or after the data collection period, a historic capacity requirement of one is used as the basis for estimating actual and maximum capacity requirements for those geographic areas with no reported interceptions during the survey period.

Small business commenters or organizations representing small business interests stated that historical intercept activity should not be the only factor considered to derive capacity requirements; carriers' market size and number of subscribers should also be considered.[25] As indicated in Section III of the Notice, no conclusive correlation exists between the variables "location of criminal activity" and "carrier size." Although some large carriers may serve high crime regions and, likewise, some small carriers low crime regions, no causal relationship exists. Consequently, law enforcement's historical analysis of electronic surveillance activity was based on geographic location and the actual occurrence of surveillance interceptions. Again, available data does not indicate that a statistically valid relationship exists between law enforcement capacity requirements and carrier size, whether size is determined by subscriber lines, geographic boundaries, or any other measure.

Steps Taken To Minimize Burdens on Small Entities

The FBI's guiding principle in the development of this Final Notice of Capacity was to allow the maximum range of compliance options to carriers based on configurations of their respective networks. The rule was crafted to require a minimal level of estimated capacity that allows law enforcement to effectively meet public safety needs. CALEA's mandate, which requires that this Final Notice of Capacity identify actual and maximum capacity requirements, allows carriers to configure their systems to accommodate the lower level of capacity (actual), while only requiring that they be able to expeditiously expand to the upper limit (maximum) should the need arise.

Within this framework, the FBI sought and incorporated industry input at all stages of the rulemaking process. Initially, the FBI met with telecommunications carriers and associations, including the United States Telephone Association (USTA), the Electronic Communications Service Provider (ECSP) Committee, the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), the Cellular Telephone Industry Association (CTIA), the National Telephone Cooperative Association (NTCA) and the Personal Communications Industry Association (PCIA), in order to explain the CALEA capacity requirements and to solicit questions, comments, and opinions from the industry. Using industry input from these meetings, the FBI drafted the Initial Notice of Capacity. While the Initial Notice of Capacity was being developed, the FBI continued to meet with industry to discuss concepts and solicit industry consultation. During these stages, the FBI continued to meet with representatives of both wireline and wireless carriers. The FBI presented to the ECSP Committee the draft methodology of the Initial Notice of Capacity and an explanation of such concepts as the applicability of actual and maximum requirements to individual switches. In addition to carrier representatives, ECSP Committee membership included representatives of various associations, including CTIA, NECA, OPASTCO, PCIA and USTA. Again, the FBI solicited comments and issued an open invitation to meet with anyone who wished to further discuss the Initial Notice of Capacity. This same consultative procedure was followed during the development of the subsequent Second Notice of Capacity. Once the Second Notice of Capacity was published, the FBI met again with the ECSP committee, as well as with various individual carriers and associations both before and after its publication to provide supplemental explanations of the Second Notice of Capacity and to solicit comments and extend an invitation to discuss the notice further. The FBI maintained an ongoing dialogue with the telecommunications industry with regard to the Initial and Second Notices of Capacity through meetings and in response to comments.

In addition to industry input, the FBI solicited advice from a number of other government entities including the Department of Justice, the FCC, the OMB, and the SBA, as well as state and local law enforcement.[26]

The FBI recognizes that some small telecommunications carriers (small entities) offering service in certain geographic areas with significant intercept activity may be obligated to afford significant interception capacity. At the same time, the FBI also recognizes that the capacity requirements represent a critical means of safeguarding the public and, consequently, any exemption or relaxation from compliance would not be without cost. Therefore, to ensure that small entities are not unduly burdened, the FBI is developing a process whereby small entities may petition the Attorney General for reconsideration of their respective capacity requirements. The petition evaluation process will include consideration of a carrier's size, dynamics of the region in which the carrier operates, historical intercept activity, and law enforcement's electronic surveillance needs.

The FBI is also drafting a Small Business Compliance Guide (Guide) as required by SBREFA (5 U.S.C. Sections 801–808). The Guide will be provided to the SBA and various industry associations representing the interests of

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[24] Comments of Cellular Mobile Systems of St. Cloud General Partnership, LLP, in response to the Second Notice of Capacity Requirements and Request for Comments; Feb. 13, 1997; Page 2.

[25] Cellular Mobile Systems of St. Cloud, Teleport Communications Group, NTCA, OPASTCO, PCIA, in response to the Second Notice of Capacity Requirements and Request for Comments; Feb. 13, 1997.

[26] The FBI had a continuous dialogue with members of federal, state, and local law enforcement between June 1995 and September 1997.

small entities. It will also be available upon request from the FBI. The Guide will identify an FBI small business liaison to assist small carriers with rule application.

In conclusion, the FBI believes this Final Notice of Capacity is fair and reasonable. The FBI remains committed to assisting small entities in attaining compliance. The FBI intends not only to maintain dialogue with industry representatives and the SBA's Office of Advocacy while developing the Small Business Compliance Guide, but also to ensure that small entities are provided the necessary information and assistance to attain compliance in the least burdensome and most cost effective manner possible.

III. Methodology for Projecting Capacity Requirements

A. Overview

The CALEA mandate set forth in section 104 obligates the Attorney General to estimate future interception capacity requirements and marks the first time that: (a) Information has been required to be provided to telecommunications carriers in order for them to design future networks with reference to the amount of potential future interception activity that may occur, and (b) the entire law enforcement community has been required to project its collective future potential needs for interception. This mandate has generated legitimate concern in the law enforcement community because telephone technology historically placed no constraints on the number of court-ordered interceptions that could be effected. If not implemented carefully, an under-scoping of capacity requirements under CALEA would have the unintended effect of restricting the technical ability to conduct interceptions authorized in court orders. If future interception needs are understated, law enforcement's investigative abilities will be hampered and, more importantly, public safety will be jeopardized.

Capacity notice provisions were included in CALEA to ensure that law enforcement's future interception needs in a geographic area would be articulated so that telecommunications carriers would be put on notice as to their obligations, in terms of how many interceptions they would need to be able to effect. These provisions also present a means for telecommunications carriers to better understand the nature and extent of their existing statutory obligations to accommodate law enforcement's interception needs. (Because law enforcement requirements for all types of interceptions are a function of authorized investigations, the estimated number that may be required in the future cannot be zero because that would imply that there is a county or market service area where an interception would not be conducted or would never be required. See Section G "Establishing Threshold Capacity Requirements" for further discussion on how minimum threshold interception capacities are estimated.) To establish capacity requirements that would meet law enforcement's future potential interception needs, law enforcement used a rigorous methodology. Objectives of the methodology used to establish capacity requirements are to ensure that future interception capacity requirements would (a) Be rationally grounded, and based on historical interception activity, (b) ensure that public safety is not compromised, (c) provide telecommunications carriers with a degree of certainty regarding law enforcement's potential interception needs over a reasonable period of time, (d) be based on well-recognized geographic areas affected, and (e) not dictate a solution to the industry.

The methodology consisted of these steps:

- Collecting information on historical interception activity
- Determining geographic areas for identifying capacity requirements
- Deriving a basis for determining capacity requirements for wireline carriers
- Deriving a basis for determining capacity requirements for wireless carriers
- Deriving growth factors for projecting future capacity requirements from historical information
- Establishing threshold capacity requirements.

B. Collecting Information on Historical Interception Activity

To comply with CALEA's mandate to project future capacity needs, law enforcement believed it was essential to first establish a historical baseline of interception activity from which future interception needs could be projected. This effort entailed a detailed review and analysis of the available information on recent federal, state, and local law enforcement interceptions throughout the United States. Such information had never before been collected in a single repository. Amassing this detailed and extremely sensitive information required an unprecedented and time-consuming effort. It involved identifying sources from which accurate information could be retrieved efficiently. The information required included the numbers of all types of interceptions (communications, pen register, and trap and trace) performed by federal, state, and local law enforcement agencies, in terms of the actual number of telephone lines intercepted at each locality. (For purposes of this notice, the word "line" refers to the transmission path from a subscriber's terminal to the network via a wireline or wireless medium.)

The Wiretap Report, published annually by the Administrative Office of the United States Courts, was a valuable source of historical information on criminal Title III (call content) court orders; however, it did not identify the actual number of interception lines associated with each court order or, more importantly, the vastly greater number of lines associated with call-identifying information interceptions (e.g., from pen registers and traps and traces) that have been performed by all law enforcement agencies. Even though law enforcement used information on the number of court orders reported in the Wiretap Report for forecasting purposes as described later in this section, the report did not contain the necessary line-related information needed to identify the level of past interceptions for establishing a historical baseline of activity.

To obtain line-related information regarding past simultaneous interceptions, records of interception activity were acquired from telecommunications carriers as well as law enforcement officials, and from the federal and state Clerks of Court offices (the official repositories for all interception court orders) through a survey. The objective of the survey effort was to determine the numbers of all types of interceptions (communications, pen register, and trap and trace) conducted between January 1, 1993, and March 1, 1995, for all geographic areas. Highly sensitive information pertaining to each interception was collected, including interception start/end dates and area code and exchange. The time period of January 1, 1993 to March 1, 1995 was chosen to obtain recent interception information that was reasonably retrievable given the time constraint imposed by CALEA with regard to publishing a Notice of Capacity.

Approximately 1,500 telecommunications carriers, representing nearly all wireline and cellular telephone companies (as of March 1995), were requested to provide information identifying where and how many interceptions had occurred within their networks during the survey period.

Records were submitted by approximately 66 percent of the telecommunications carriers surveyed. To ensure receipt of information from a comprehensive representation of the telecommunications industry, law enforcement worked closely with telecommunications carriers serving large markets or unique geographic areas. Such carriers included the Regional Bell Operating Companies (RBOC), GTE, and the largest providers of cellular service.

Sensitive interception records maintained under seal within the Clerks of Court offices were acquired through two separate efforts. Federal court order information was collected under special court orders directing the unsealing of this information for the limited purpose of issuing capacity notices required under section 104 of CALEA. State and local law enforcement records were collected with the assistance of the offices of the State Attorney Generals, District Attorneys, and state-wide prosecutors. This effort resulted in the collection of information on all federal law enforcement interception activity for the period surveyed and information on interceptions by state and local law enforcement from most states. (Some states' laws do not authorize the conduct of all types of interceptions, e.g., call content interceptions, and other states do not maintain retrievable records of all historical interception activity.)

C. Determining Geographic Areas for Identifying Capacity Requirements

Section 104(a)(2)(B) of CALEA requires law enforcement to identify, to the maximum extent practicable, the capacity needed at "specific geographic locations." In addressing this mandate, law enforcement decided that using point-specific sites, such as switch locations, city blocks, or neighborhoods, would not be appropriate because it would not properly take into account movement in criminal activity and could lead to the compromise of sensitive investigations. Also, law enforcement believed that any geographic designation used should not be subject to frequent change, should relate to discernible and officially recognized geographic territorial boundaries, and should be commonly understood by the affected parties.

It was also considered essential that the geographic designations be ones that: (a) Historically have not been affected by regulatory changes in the telecommunications marketplace, (b) would allow flexibility for telecommunications carriers in developing solutions, and (c) would not be affected by changes in the configurations of telecommunications networks.

Law enforcement concluded that, for wireline carriers, county boundaries or their equivalent best met the criteria above and should be used to define the geographic locations for projecting future capacity requirements. (For purposes of this notice, the term "county" includes boroughs and parishes, as well as the District of Columbia and a few independent cities in Missouri, Maryland, Nevada, and Virginia that are not part of any county. U.S. territories such as American Samoa, Guam, the Mariana Islands, Puerto Rico, and the U.S. Virgin Islands are treated similarly.) Further, using the geographic designation of a county in this way was deemed appropriate because it is used by both telecommunications carriers and law enforcement. Telecommunications carriers pay county taxes and fees and are affected by county regulations. Likewise, law enforcement's legal territorial jurisdictions frequently are drawn based on county boundaries, and resources for law enforcement are often allocated on a county basis.

For wireless carriers, individual county boundaries were not considered to be a feasible geographic designation for identifying capacity requirements. Instead, law enforcement determined that wireless market service areas—Metropolitan Statistical Areas (MSA), Rural Statistical Areas (RSA), Major Trading Areas (MTA), and Basic Trading Areas (BTA)—would be more appropriate geographic designations. Although wireless market service areas comprise sets of counties, market service areas best take into account the greater inherent mobility of wireless subscribers. Furthermore, what is most important is that historical information on wireless interceptions could only be associated with market service areas.

The approach selected—using counties for wireline carriers and market service areas for wireless carriers—was also responsive to comments on the Initial Notice of Capacity urging that the two types of telecommunications carriers be treated separately; thus, different geographic designations should appropriately apply.

D. Deriving a Basis for Determining Capacity Requirements for Wireline Carriers

Having established the county as the appropriate geographic area for identifying capacity requirements for wireline carriers, law enforcement had to decide on a basis for determining capacity requirements for each county. Section 104(a)(2)(A) of CALEA stated that the capacity requirements could be based on type of equipment, type of service, number of subscribers, type or size of carrier, or nature of service area, but allowed the use of "any other measure." Law enforcement chose to use the historical interception activity associated with telecommunications equipment located within a county as the most logical basis for making determinations about projected capacity requirements in a county.

Each wireline interception reported during the historical period surveyed (January 1, 1993, to March 1, 1995) was associated with a telecommunications switch, based on its area code and exchange (frequently referred to as its "NPA/NXX code"), as found in the April 1995 version of the Local Exchange Routing Guide (LERG) published by Bellcore. The LERG contains information on the switching systems and exchanges of wireline carriers and is considered to be an authoritative source by the telecommunications industry. Thereafter, telecommunications switches were associated to counties by using the vertical and horizontal coordinates marking the switch's physical location.

CALEA also required that capacity requirements be expressed in terms of "simultaneous" interceptions. Law enforcement chose to consider interceptions occurring on the same day, rather than at exactly the same moment, as being simultaneous.[27] This time frame was logical from a law enforcement perspective, because interception court orders are authorized for a certain number of days as opposed to some other unit of time. Additionally, the time frame of one day was compatible with the historical data that was recorded only in days.

The daily interception activity of each switch in a county was examined, and the single day with the most interceptions during the period surveyed was used to identify the switch's highest number of simultaneous interceptions. Thereafter, the highest number of simultaneous interceptions identified for each switch in the county was totaled to produce a historical baseline for the county. Law enforcement believed that this approach provided a reasonable representation of

[27] Through the survey, the FBI was able to accurately discern the number of interceptions that were authorized simultaneously for any given day. As might well have been expected, it was impossible for the FBI to discern the number of interceptions that were effected simultaneously down to the hour, minute, or second.

past interception needs for the geographic area during the period surveyed. This approach also avoided the problems that would be inherent in trying to specify capacity requirements for interceptions on a site-specific or equipment-specific basis because of the fluid nature of interceptions conducted over time and because of changes in equipment and the services that the equipment supports. After determining the county's historical baseline, law enforcement sought to establish an appropriate means of utilizing that activity as a basis for projecting future capacity requirements. In the Initial Notice of Capacity, requirements were expressed as a percentage of the engineered capacity of equipment, facilities, and services. It was thought that in so doing, carriers would have more flexibility in addressing the capacity requirements. Comments on the Initial Notice of Capacity, however, questioned the meaning of engineered capacity and recommended that capacity requirements be expressed as fixed numbers rather than as percentages. In response, law enforcement re-examined this issue and found that using fixed numbers for each county would be a clearer way to express capacity requirements without tying them to constantly-changing components of telecommunications networks.

E. Deriving a Basis for Determining Capacity Requirements for Wireless Carriers

Having established the market service area as the appropriate geographic area for identifying future capacity requirements for wireless carriers, law enforcement had to decide on a basis for determining capacity requirements for each market service area. Each cellular interception reported during the period surveyed (January 1, 1993, to March 1, 1995) was associated with a cellular market service area using the August 1995 version of the Cibernet database, which contains information on roaming and billing arrangements for cellular networks and is considered to be an authoritative source by the telecommunications industry. Thereafter, the single day with the most interceptions during the period surveyed was identified and used as the historical baseline for each market service area.

Due to the similarities between cellular and PCS, law enforcement used the historical interception activity of cellular carriers to develop projections of future capacity requirements for PCS carriers. Cellular markets are defined by MSAs and RSAs, and PCS markets are defined by MTAs and BTAs. Historical cellular interception activity was mapped to a PCS market service area. Again, the single day with the most interceptions during the period surveyed was identified and used as the historical baseline for the market service area.

To be responsive to comments on the Initial Notice objecting to the use of percentages of engineered capacity, law enforcement found that using fixed numbers rather than percentages was also an appropriate means to express capacity requirements for wireless carriers.

F. Deriving Growth Factors for Projecting Future Capacity Requirements From Historical Information

Section 104 of CALEA requires the Attorney General to project future requirements for actual and maximum capacity. As discussed previously in this notice, law enforcement derived a baseline for these estimates from the historical interception activity in geographic areas defined as counties for wireline carriers and market service areas for wireless carriers during the period surveyed. To project future capacity requirements, growth factors were developed and applied to the historical information.

As noted, comments on the Initial Notice of Capacity recommended that capacity requirements be stated separately for wireline and wireless carriers. In response, law enforcement derived distinct growth factors for wireline and wireless carriers.

1. Formulas

As discussed below, four growth factors were used in this Final Notice of Capacity to project future capacity requirements: $A_{wireline}$, $A_{wireless}$, $M_{wireline}$, and $M_{wireless}$. The "A" factors were applied to historical interception activity to estimate future actual capacity requirements as of October 1998, and the "M" factors were used to estimate future maximum capacity requirements.

The formulas used for the projections were:

Wireline:

Future Actual Capacity Requirement in a County Equals The Historical Interception Activity in the County Multiplied by $A_{wireline}$

Future Maximum Capacity Requirement in a County Equals The Future Actual Capacity Requirement in the County Multiplied by $M_{wireline}$

Wireless:

Future Actual Capacity Requirement in a Market Service Area Equals The Historical Interception Activity in the Market Service Area Multiplied by $A_{wireless}$

Future Maximum Capacity Requirement in a Market Service Area Equals The Future Actual Capacity Requirement in the Market Service Area Multiplied by $M_{wireless}$

All of the resulting requirements for future actual and maximum capacity were rounded up to the next whole number.

2. Growth Factors

The growth factors used herein were derived solely from analysis related to the historical interception information. Three sources of historical information were deemed to provide relevant information to be considered as growth factors: (a) The number of court orders for call content interceptions which was obtained from the Wiretap Report published by the Administrative Office of United States Courts for the time period 1980 through 1995; (b) the number of court orders for call-identifying information from pen register and trap and trace interceptions, which was obtained from reports published by the Department of Justice (DOJ) documenting pen register and trap and trace usage by DOJ agencies for the time period 1987 through 1995; and (c) the historical baseline number of call content interceptions and interceptions of call-identifying information, which was obtained from the survey of law enforcement and industry for the time period January 1, 1993, through March 1, 1995.

To project the future numerical level of court orders, statistical and analytical methods were applied to the historical interception information. It should be understood that the projections for the number of potential future court orders do not mean that they are the numbers of orders that law enforcement will in fact obtain or intends to obtain. Rather, they are part of a statistical method used to derive growth factors that would be useful, ultimately, in calculating future actual and maximum capacity requirements.

A commonly-used analytical tool for projections, known as Best-Fit-Line analysis, was used to track the number of court orders over time and then to project the number into the future. Projections were made for call content court orders for wireline and wireless for the year 1998 and the year 2004. Projections were also made for the vastly greater number of pen register and trap and trace court orders for wireline and wireless for the year 1998 and the year 2004. Composite growth

figures for wireline interceptions and for wireless interceptions were then calculated by weighting the court order projections by the relative number of call content interceptions and interceptions of call-identifying information during the period surveyed. The resulting $A_{wireline}$ and $A_{wireless}$ growth factors were based on the 1998 projections. The $M_{wireline}$ and $M_{wireless}$ growth factors were based on the 2004 projections. The year 1998 was selected to comply with the statutory language of CALEA requiring law enforcement to estimate actual capacity requirements by that time. The year 2004 was selected because it provided a 10-year period after the passage of CALEA, a period that was considered reasonable for projecting maximum capacity requirements. It was also considered to be a rational period for constituting a stable capacity ceiling and a design guide.

The value derived for $A_{wireline}$ is 1.259; the value derived for $A_{wireless}$ is 1.707; the value derived for $M_{wireline}$ is 1.303; and the value derived for $M_{wireless}$ is 1.621. These growth factors can also be translated into, and understood in terms of, annual growth rates for capacity requirements. For wireline, if computed annually, growth rates are 5.92 percent for the period from 1994 through 1998, and 4.55 percent for the period from 1998 through 2004. For wireless, if computed annually, growth rates are 14.30 percent and 8.38 percent respectively, for the same time periods. Of relevance in determining the differences in growth rates are the expectations of overall business growth for wireline and wireless telephone services. Market projections for wireline show a steady growth rate of 3.5 percent annually, and wireless annual growth is projected to be 12.0 percent during each of the next 10 years.

For more information on how the growth factors were derived, refer to Appendix E which is available in the FBI's reading room.

G. Establishing Threshold Capacity Requirements

In its review of historical interception activity, law enforcement found that numerous counties and market service areas had no interception activity during the time period surveyed. Under the methodology described above, these counties and market service areas would have future actual and maximum capacity requirements equal to zero. However, the establishment of future capacity requirements of zero would not provide even a minimal level of interception capacity, nor would it address growth flexibility, and it would largely undermine the intent of CALEA, which is to preserve law enforcement's ability to conduct some level of interceptions everywhere. Additionally, it is possible that law enforcement may have conducted interceptions in these areas before or after the period surveyed, and it may well have to do so again. Experience has shown that criminal activity can occur anywhere. Therefore, law enforcement must be capable of conducting a number of interceptions in all areas. Consequently, *minimum threshold* baseline capacities were developed for counties and market service areas that otherwise would have had a capacity requirement of zero under the above methodology.

For wireline telephone service offered in counties, law enforcement examined the distribution of historical interception activity and found that many counties had no interceptions, and many others had only one interception during the time period surveyed. To avoid having counties with no future capacity requirements, law enforcement decided to treat counties with zero historical interceptions as if they had one interception. Hence, when the growth factors for counties were applied, it produced a future actual capacity requirement of two simultaneous interceptions and a future maximum capacity requirement of three simultaneous interceptions.

For wireless market service areas, law enforcement took a similar approach. Here, too, it found that many market service areas had no interceptions during the time period surveyed. Law enforcement chose to treat these market service areas as if they had one interception. Hence, when the growth factors for wireless carriers were applied to these market service areas, the result was a future actual capacity requirement of two simultaneous interceptions and a future maximum capacity requirement of four simultaneous interceptions.

IV. Alternative Analysis

Consideration was given to potentially effective and feasible alternatives to this rule. However, as discussed in this Alternative Analysis section, Law enforcement determined that alternatives were not viable in that they either (1) Would impose undue burdens by not allowing companies the flexibility to use the efficiencies of their networks to efficiently meet the requirements; (2) would potentially impose unfair burdens to companies with specific types of equipment; (3) would not meet the needs of law enforcement; or, (4) would not take into consideration the differences between the wireline and wireless market.

A. Alternative Approaches Considered in Determining Capacity Requirements

Law enforcement considered and rejected a number of alternatives while developing this rule. Initially, law enforcement considered whether a new regulation was actually necessary. That a notice was required was obvious from the mandate of CALEA Section 104, which directs the Attorney General on behalf of all law enforcement entities to publish notice of the actual and maximum capacity requirements that telecommunications carriers may be required to effect in support of lawfully authorized electronic surveillance. Law enforcement could identify no other existing regulations which might provide viable alternatives. Ultimately, law enforcement determined that it was necessary to develop new regulations which were both industry and CALEA specific. This rule is the result of that development effort.

B. Alternative Promulgated in Initial Notice of Capacity

In accordance with CALEA 104(a)(2), the Government examined many different alternatives of expressing the capacity requirements. The alternatives included basing the requirements upon the type of equipment, type of service, number of subscribers, type of carrier, and nature of service area. In fulfilling the mandated role described above, law enforcement examined a number of alternative approaches in expressing the capacity required at specific geographic locations. On October 16, 1995, law enforcement's proposed future actual and maximum capacity requirements were presented in an Initial Notice of Capacity published in the **Federal Register** (60FR53643). Comments on the Initial Notice were accepted through January 16, 1996.

In the Initial Notice of Capacity the actual and maximum capacity requirements were presented as a percentage of the engineered capacity of the equipment, facilities, and services that provide a customer or subscriber with the ability to originate, terminate, or direct communications. Engineered capacity referred to the maximum number of subscribers that could be served by that equipment, facility, or service. The percentage were to apply to both the engineered subscriber capacity of a switch and to non-switch equipment (i.e., network peripherals) involved in the origination, termination, or direction of communications. Percentages were used rather than fixed numbers due to the dynamics and

diversity of the telecommunications industry. The use of percentages was expected to allow telecommunications carriers the flexibility to adjust to changes in marketplace conditions or changes in the number of subscribers, access lines, equipment, facilities, etc., and still know the required level of capacity. The percentages were then applied to three categories, based upon geography and historical intercept activities.

As a result of extensive consultation with Federal, State, and local law enforcement agencies, telecommunications carriers, providers of telecommunications support services, and manufacturers of telecommunications equipment, the FBI proposed the following capacity requirements: each telecommunications carrier would have needed the ability to meet the capability assistance requirements defined in section 103 of the CALEA for a number of simultaneous pen register, trap and trace, and communication interceptions equal to the percentage of the engineered capacity of the equipment, facilities, or services that provide a customer or subscriber with the ability to originate, terminate, or direct communications.

Each telecommunications carrier would have needed to ensure that it could expeditiously increase its capacity to meet the assistance capability requirements defined in section 103 of the CALEA for a number of simultaneous pen register, trap and trace, and communication interceptions equal to the percentage of the engineered capacity of the equipment, facilities, or services that provide a customer or subscriber with the ability to originate, terminate, or direct communications. When translated from percentages to numbers, capacity requirements would have been rounded up to the nearest whole number.

As noted above, the telecommunications industry generally expressed the view that this approach was less useful than expressing capacity requirements with fixed numbers. Consequently, this approach was abandoned in favor of an approach based upon the use of fixed numbers.

C. Alternative Methods of Expressing Capacity Requirements

Following the release of the Initial Notice of Capacity, law enforcement consulted with telecommunications industry representatives, privacy advocates, and other interested parties to receive feedback on the method used to express future actual and maximum capacity requirements. This consultative process assisted law enforcement in understanding the challenges facing the industry and others in applying the capacity requirements as expressed in the Initial Notice of Capacity. Law enforcement refined its approach of defining capacity requirements and issued a Second Notice of Capacity, published in the **Federal Register** on January 14, 1997 (62FR1902) to more fully articulate estimated actual and maximum capacity requirements. Comments on the Second Notice of Capacity were accepted through March 15, 1997.

The objective of both the Initial and Second Notice of Capacity was to ensure that law enforcement's future capacity requirements would (a) be rationally grounded, and based on historical interception activity, (b) ensure that public safety is not compromised, (c) provide both wireline and wireless telecommunications carriers with a degree of certainty regarding law enforcement's needs over a reasonable period of time, (d) be based on the geographic areas affected, and (e) not dictate a specific solution to the industry.

Section 104 of CALEA mandates that the Attorney General publish a Notice of Capacity estimating the capacity requirements that law enforcement may need to conduct electronic surveillance in the future. The FBI examined several different methods and formulas to determine the best way to calculate the requirements to be imposed on the telecommunications industry. The first method, which was used in the Initial Notice of Capacity, was to express the actual and maximum capacity requirements as a percentage of the engineered capacity of the equipment, facilities, and services that provide a customer or subscriber with the ability to originate, terminate, or direct communications. This methodology is described in detail in the Initial Notice of Capacity.[28] The industry considered percentages an imprecise guideline, the term "engineered capacity" confusing, and that fixed numbers would be a better representation of how capacity requirements should represented.

Capacity Requirement on a Switch Specific Basis

Law enforcement assessed the industry comment of expressing future capacity on a switch or equipment specific basis and determined that capacity requirements would need to be met regardless of the type, size, or configuration of switching equipment deployed in any given geographic area.

Comments received to the Second Notice of Capacity indicated that without a more specific delineation of the capacity requirements, carriers would be placed in the position of applying the capacity requirements to all the equipment in a geographic area. However, law enforcement determined that there was no certain correlation between specific equipment and a geographic location where future interception capacity may be required.

One alternative considered was publishing the capacity requirements on an individual switch basis. With the rapid pace at which the telecommunications industry network advances and changes, identification of any specific equipment in the Notice of Capacity would run the risk of being invalid at the time the Notice of Capacity is effective. Moreover, any new equipment installed after the publication date of the Notice of Capacity would not be identified and present an unnecessary level of ambiguity to all new equipment.

Equipment supporting the wireline network can be identified within the Local Exchange Routing Guide (LERG). All local exchange switches servicing the network are listed with their respective vertical and horizontal coordinates, and the area codes and exchanges that they serve. No equivalent source of information exists for the wireless network. Therefore, expressing wireless capacity requirements could not be accomplished at a similar geographic level as in the wireline network.

A second alternative considered was the assessment of all simultaneous intercept activity in a given county, regardless of the amount and location of equipment within the county. This analysis would result in the determination of the day with the highest number of interceptions when all interceptions reported within the county were considered. The application of the requirements would be as though the electronic surveillance needs of the entire county was served by a single switch. This value would always be less than or equal to the sum of all the switch simultaneities within the county and would not allow for the very real possibility that switch simultaneities could occur concurrently in the future. For the majority of the counties there was no significant difference between the sum of switch simultaneities and county simultaneity (i.e., 2454 of the 3146 would retain the same county requirement as published in the Second Notice of Capacity).

[28] Initial Notice of Capacity, published 10/16/95 60FR53643.

However, those counties with significant capacity requirements would be subject to the largest numeric change in the value of historic surveillance experience and hence placed under the greatest risk of underestimating the capacity requirement.

This alternative results in significant implementation difficulty for meeting capacity needs because any individual switch activity would not be taken into account. In fact, this approach dilutes the magnitude of historic interception activity. This method of consideration would, over time, understate the needs of law enforcement.

Furthermore, the promulgation of capacity requirements on a switch specific basis presupposes a solution and does not allow any flexibility to carriers as networks evolve. Switch specific capacity requirements were determined to be an unsatisfactory method of expressing capacity requirements due to the dynamics and diversity of the telecommunications industry.

Further, requirements on a switch specific basis would be untenable due to the potential for future changes in switch sizes and the areas they serve. Switch specific capacity requirements would be fundamentally flawed since they would inappropriately "freeze" future interception capacity based upon past switch activity. Some reasonable flexibility must be employed. The use of geographic areas is expected to allow telecommunications carriers the flexibility to adjust to changes in marketplace conditions or changes in the number of subscribers, access lines, equipment, facilities, etc.

Single Largest Switch Intercept Value Within a Geographic Area

A third alternative considered was the application of capacity based on the single largest switch intercept value in a county to all switches located in that county. This approach would result in an excess of capacity required to be deployed in the network and hence have significant cost implications. Additionally, there would be little or no law enforcement justification for applying the single largest switch historical interception value to switches within the county with minimal electronic surveillance experience.

Average Intercept Activity Value

A fourth alternative considered was the establishment of capacity based on an average intercept activity value for all switches in a county and the application of this value to each switch in that county. This alternative would result in an understatement of capacity needs for the county because switches with significant historic electronic surveillance in some geographic areas would not have an adequate capacity requirement. The number of switches within a given county can increase or decrease the average intercept activity for the entire county, thereby possibly dangerously understating capacity requirements in a high intercept area.

Total Intercepts Regardless of Simultaneity

A fifth alternative considered was to express total capacity requirements of a geographic area based on the total number of intercepts conducted in that geographic area during the observed time period, regardless of the simultaneity. A large number of interceptions does not universally translate into a large simultaneity value for a given county or switch. The total number of intercepts conducted in a geographic area is not truly representative of law enforcement requirements. Furthermore, this could not be considered as a viable alternative for computing capacity as it does not meet CALEA's simultaneity requirement as expressed in Section 104(a).

Average Intercept Length

Another alternative would have been to base, in part, the capacity requirements on the average intercept length for the county. While this information may act as an indicator of interception activity in the county, it would not necessarily be a reflection of a given switch. If the average length of the interceptions is significant it would be an indication that the simultaneity is a less peaked or random event. However, county numbers may still be too nondescript in a small number of counties to be transcribed to individual switches as requirements in those instances where the county is very large geographically, or contains a large number of individual switches.

Size of Carrier

An analysis of the telecommunications industry reveals that no association exists between the location of criminal activity and the size of a carrier that provides service in that geographic area. The analysis of the historic electronic surveillance activity was based on the geographic location and the occurrence of each surveillance reported. No direct relationship can be drawn from the available data between the capacity requirements and the size of the carrier, whether that carrier is measured by the number of lines with which it provides service, the geographic area in which it provides service or any other measure of size.

Expressing Individual Carrier Capacity Requirements

Establishment of capacity requirements for individual carriers cannot be accurately characterized as a geographic method of expressing capacity requirements as mandated by CALEA. As the existing incumbent carrier community reacts to increased competition as a result of the Telecommunications Act of 1996, service territories will undoubtedly change. Establishing capacity requirements on a carrier-specific basis also leaves the deployment of capacity up to the interpretation of that carrier. In the case of a carrier with a very large service area, law enforcement needs in a particular geographic area may not be satisfied. The possibility of a carrier not having sufficient capacity of equipment, facilities and services in a given geographic area would be a real threat to the public safety. Furthermore, law enforcement was unable to establish a correlation between where interceptions may be needed and individual carriers such as to support accurate future electronic surveillance estimations.

Service or Feature-Specific Capacity Requirements

Expressing capacity based on services or features would be unworkable and would fail to provide law enforcement with the coverage and capability necessary to effect electronic surveillance wherever it may be needed. Not all services or features are supported in all geographic areas. With new services and features constantly under development and deployment, expressing capacity requirements on a service or feature basis would create an environment that is subject to frequent change both as to territories and networks. Further, since criminal activity is mobile in nature, service or feature-specific capacity requirements would not be conducive to meeting law enforcement requirements.

V. Statement of Capacity Requirements

Section 104 of CALEA mandates that law enforcement capacity requirements be expressed on a geographical basis, to the maximum extent practicable, and be published in the **Federal Register** after government notice and after industry and public comment. In fulfillment of this mandate, law enforcement, for the first time in history, conducted an unprecedented survey of historical electronic surveillance activity including all line related pen register, trap and trace and communications

interceptions for the period January 1, 1993 through March 1, 1995. The analysis of this collected information was used to form a baseline from which future interception activity was projected using well recognized statistical tools and methods.

The issuance of this Notice of Capacity represents fulfillment of the statutory mandate to provide notice for estimated future actual and maximum capacity requirements. Taking the unpredictable nature of crime into account, law enforcement has made every attempt to provide reasonable and prudent numbers in specific geographic areas, to the maximum extent practicable, based upon hard historical interception data.

The capacity requirements as stated in this Final Notice of Capacity are requirements of a geographic nature and do not presuppose a specific technical solution or deployment strategy of the industry or of an individual carrier. The capacity requirements are expressed as to specific geographical areas to the maximum extent practicable and hence satisfy the obligation placed upon law enforcement by CALEA. Law enforcement, in the fulfillment of its CALEA obligations, has expressed the capacity requirements after careful consideration of the comments to the Initial Notice of Capacity and Second Notice of Capacity.

The methodology used in the formulation of these estimated future capacity requirements represents interception capacity that may be required within various geographic areas.

Both the county and market service area capacity requirements are based on historic interception activity with future capacity projections based on growth factor analyses which draw upon past levels of lawfully authorized interception orders.

The capacity requirements are being expressed in a solution neutral manner. Switch specific delineation of capacity requirements would be contrary to the letter and spirit of CALEA. Furthermore, promulgation of capacity requirements on a switch-specific basis presupposes a solution and does not allow any flexibility for the industry and would be dated to time-specific configurations.

The dynamic nature of telecommunications technology, and of the telecommunications industry itself, does not lend itself to the delineation of capacity requirements of a more granular nature. Law enforcement, in the publication of estimated future capacity requirements, projected capacity requirements that would be applicable regardless of individual carrier network deployment strategies.

Additionally, law enforcement can not articulate capacity requirements in any greater detailed fashion without endangering the public safety and risking exposure of law enforcement sensitive information. The dynamic nature of criminal activity precludes law enforcement from publishing capacity requirements at such a detailed level that would aid the criminal element in determining where law enforcement is focusing its interception efforts.

Capacity requirements as published in this Final Notice of Capacity represent law enforcement's future estimated actual and maximum interception needs in each geographic area. Carriers are encouraged to propose solutions that adequately meet law enforcement needs within a given geographic area. A carrier's specific network configuration may afford the carrier opportunities to propose unique solutions by which it can meet law enforcement requirements.

The obligation to satisfy the capacity requirements in a cost-effective and reasonable manner is the responsibility of all carriers that operate within a given geographic area. Although law enforcement can not dictate how carriers should apply the capacity requirements, law enforcement is providing guidance to the industry as to the distribution of capacity requirements within a particular geographic area.

A. Capacity Requirements for Wireline Carriers

Law enforcement is providing notice of the estimated number of future communication interceptions, pen register and trap and trace device-based interceptions that may be conducted simultaneously in a given geographic area. Counties have been selected as the appropriate geographic basis for expressing interception capacity requirements for telecommunications carriers offering local exchange service (i.e., wireline carriers). Appendix A lists all actual and maximum estimates by county. (Appendix A is available in the FBI's reading room for review). These numbers represent estimates of potential future simultaneous call content interceptions and interceptions of call-identifying information for each county in the United States and its territories. Wireline carriers may ascertain the actual and maximum capacity estimates that will affect them by looking up in Appendix A the county (or counties) for which they offer local exchange service. These future capacity requirement estimates will remain in effect for all telecommunications carriers providing wireline service to these areas until such time, if any, as the Attorney General publishes a notice of any necessary increase in the maximum capacity pursuant to section 104(c) of CALEA.

County capacity requirements represent the estimated future number of all types of interceptions that may be conducted simultaneously anywhere within the county. When effective, the county capacity requirements apply to all existing and any future wireline carriers offering local exchange service in each county, regardless of the type of equipment used or the customer base. Individual carriers configure their networks differently, and as a result, law enforcement recognizes that carriers may pursue different solutions for meeting the capacity requirements.

B. Capacity Requirements for Wireless Carriers

Law enforcement is providing notice of the estimated number of future communication interceptions, pen register and trap and trace device-based interceptions that may be conducted simultaneously in a given geographic area and has selected market service areas—MSAs, RSAs, MTAs, and BTAs—as the appropriate geographic basis for expressing actual and maximum interception capacity requirements for telecommunications carriers offering wireless services, specifically those providing cellular and PCS services (i.e., wireless carriers). Appendix B lists all actual and maximum capacity estimates for MSAs and RSAs; Appendix C lists all actual and maximum capacity estimates for MTAs; and Appendix D lists all the actual and maximum estimates for BTAs. (Appendixes B, C, and D are available in the FBI's reading room for review). These numbers represent estimates of potential future simultaneous call content interceptions and interceptions of call-identifying information for each market service area. These future capacity requirement estimates will remain in effect for all wireless carriers providing service to these areas until such time, if any, as the Attorney General publishes a notice of any necessary increases in maximum capacity pursuant to section 104(c) of CALEA.

In all cases, the statement of interception capacity for a wireless market service area reflects law enforcement's estimated future number of interceptions that may be conducted simultaneously anywhere in the service area. Law enforcement must be capable of conducting interceptions at any time, regardless of the location of a subject's

mobile telephone device within the service area. Once effective, the market service area capacity requirements apply to all existing and any future telecommunications carrier offering wireless service in each market. Individual carriers configure their networks differently, and as a result, law enforcement recognizes that carriers may pursue different solutions for meeting the capacity requirements.

In response to comments submitted to the Second Notice of Capacity and in order to offer some flexibility for PCS carriers, law enforcement has chosen to amend the treatment of capacity as to the geographic areas for PCS carriers serving Major Trading Areas (MTAs) and Basic Trading Areas (BTAs). Because each PCS market capacity requirement is based on the historic activity of its respective and composite cellular markets, every PCS license holder will have the following options: (1) Provide for the equivalent total capacity of the composite cellular markets served (MSAs and RSAs, as delineated in Appendix B), or (2) provide the PCS requirements for MTAs and BTAs as delineated in Appendix C and D.

The first option is responsive to the concerns of PCS carriers in that it allows for PCS capacity requirements to more closely match the cellular historical activity from which both the cellular and PCS requirements were derived. This option addresses geographically large PCS license areas that have capacity requirements driven by a small number of their composite cellular markets. This option is available to PCS license holders provided that their systems and services can be shown to serve only a portion of the MTA or BTA that can be described with reference to one or more composite cellular markets. As a PCS service provider expands to offer service throughout a PCS license area, the PCS carrier would be responsible for the cumulative total of the capacity requirements of the composite cellular markets.

The second option allows a PCS carrier, serving an entire license area (composed of its respective and composite cellular markets), to meet law enforcement capacity requirements everywhere throughout the market area. The simultaneity of all historic interceptions occurring within the geographic area now served by a PCS market is the only way for law enforcement to represent its estimated actual and maximum capacity requirements. Therefore, this second option can be used by those PCS carriers providing telecommunications services throughout the market area.

C. Capacity Application

With reference to the matter of applying interception capacity so as to accommodate the estimated actual and maximum future capacity numbers specified for the various geographical areas set forth for wireline and wireless carriers in this Final Notice of Capacity, distribution of interception capacity will be addressed either pursuant to CALEA Section 104(d) and (e) or otherwise.

1. Although law enforcement cannot, under CALEA, dictate solutions, it is law enforcement's position, consistent with CALEA, that carriers should consider solutions and approaches for accommodating the published capacity requirements in a way that maximizes cost-effectiveness.

2. Each carrier's deployment strategy must ensure that, if needed, the estimated actual and maximum capacity requirements set forth for the applicable geographic areas can be met. Two points require emphasis: (1) The capacity numbers set forth are for a geographic area and are not switch-specific requirements, and (2) no carrier will be expected to provide capacity in excess of the geographically-based capacity numbers set forth in this Final Notice of Capacity. Until such time, if any, that law enforcement seeks modification of the maximum capacity numbers in any geographic area through the publication of a new capacity notice, no carrier will be expected to provide capacity in excess of the maximum capacity specified for that area.

3. Switches serving multiple geographic areas will need to address the potential cumulative requirement specified for those geographic areas.

4. Law enforcement believes that the industry will develop several solutions for meeting the geographically-based capacity requirements as stated in this Final Notice of Capacity. In the event that a carrier elects to deploy a switch-based solution, it should consider the following information:

Nominal Levels of Capacity

Under this Final Notice of Capacity, carriers will find that the overwhelming majority of the geographic areas delineated in the Notice have estimated capacity requirements that are quite nominal.

The nominal character of the capacity requirements for the 3,146 counties delineated in Appendix A can be summarized by the following statistics. Over 66 percent of all counties (2,089) have an actual capacity requirement of two and a maximum capacity requirement of three simultaneous interceptions. As described earlier in this Final Notice of Capacity, these thresholds were based on a county historic experience of one interception. Approximately 90 percent of all counties (2,807) have an actual capacity requirement of twelve or less and a maximum capacity requirement of sixteen simultaneous interceptions or less.

The nominal character of the capacity requirements for the 734 cellular market service areas delineated in Appendix B can be summarized by the following statistics. Approximately 70 percent of all markets (510) have an actual capacity requirement of two and a maximum capacity requirement of four simultaneous interceptions. As described earlier in this Final Notice of Capacity, this threshold was based on a market service area historic experience of one interception. Over 83 percent of all cellular market service areas (614) have an actual capacity requirement of twelve or less and a maximum capacity requirement of twenty simultaneous interceptions or less.

Wireline High-End Switch Capacity

In order to offer capacity guidance to those carriers that are offering service in the relatively small number of counties where the estimated actual and maximum capacity numbers may be somewhat sizeable, (e.g., 17 out of the 3,146 counties have maximum capacity requirements of 235 or more) and who choose to pursue a switch-based solution, law enforcement is providing a high-end capacity ceiling that it would expect from any one switch. The interception data collected during the two year survey period indicates that there is a discernable difference in the interception requirements that law enforcement would need depending upon the type of surveillance conducted. The data indicates that the highest level of historic call-identifying information-based interceptions experienced by any one switch was 235, while the highest level of historic call content-based interceptions experienced by any one switch was 45. Applying the previously described wireline growth factors, the data suggests that a maximum of 386 call-identifying information-based interceptions and a maximum of 75 call content-based interceptions may occur on a switch. This information has led law enforcement to decide that it will not require any wireline carrier to effect more than 386 simultaneous call-identifying information-based interceptions or more than 75 call content-based interceptions from any one switch, regardless of the actual and

maximum capacity requirements of the counties served by that switch.

Wireless High-End Switch Capacity

In order to offer capacity guidance to those carriers that are offering service in the relatively small number of market service areas where the estimated actual and maximum capacity numbers may be somewhat sizeable, (e.g., 30 out of the 734 cellular market service areas have maximum capacity requirements of 58 or more) and who choose to pursue a switch-based solution, law enforcement is providing a high-end capacity ceiling that it would expect from any one switch. The interception data collected during the two year survey period indicates that there is a discernable difference in the interception requirements that law enforcement would need depending upon the type of surveillance conducted. The data indicates that the highest level of historic call-identifying information-based interceptions experienced by any one carrier in a given market was 58, while the highest level of historic call content-based interceptions experienced by any one carrier in a given market was 41. Applying the previously described wireless growth factors, the data suggests that a maximum of 163 call-identifying information-based interceptions and a maximum of 114 call content-based interceptions may occur in a market for which a carrier would be responsible. This information has led law enforcement to decide that it will not require any wireless carrier to effect more than 163 simultaneous call-identifying information-based interceptions or more than 114 call content-based interceptions from any one switch in a market, regardless of the actual and maximum capacity requirements of the market service areas served by that switch. This guidance can be used by any wireless carrier covered by this Final Notice of Capacity.

With reference to the matter of applying interception capacity to accommodate the actual and maximum future capacity numbers specified for the various geographical areas set forth for wireline and wireless carriers in this Final Notice of Capacity in those instances that are *not* covered by CALEA Section 104(d) and (e), (where carriers are obligated to meet the interception capacity requirements without reimbursement) the following information is offered:

1. The interception capacity requirement within each wireline or wireless geographic area can be applied and capacity distributed at the discretion of each carrier.

Carriers are in the best position to make judgments about how they will be best able to meet the capacity requirement obligation within each geographic area based upon the solutions they choose to use in each area. Solutions that a carrier may choose to deploy could include centralized, network-based solutions or switch-based solutions, combinations of these, or other solutions that may be developed within the telecommunications industry.

2. From a law enforcement perspective, the fundamental concern is that interception capacity must be available as needed. Hence, as long as carriers can accommodate the interception capacity required when needed, the capacity could be addressed and applied as either reserved or deployed.

D. Delivery of Capacity Requirements

Comments from interested parties have requested greater clarity in law enforcement's definition of an interception for the purpose of applying law enforcement's capacity requirements to ensure a CALEA-compliant solution. Interested parties have also commented requesting clarification as to the matter of "delivery" as delivery would relate to law enforcement's estimated capacity requirement per interception. In order to provide such additional clarification, the following illustrative examples are being furnished. They are not intended as an exhaustive list of options for the industry to pursue. As different solutions are developed by the industry, the delivery of law enforcement's estimated capacity requirements may change accordingly.

For pen register and trap and trace device-based interceptions, where only call-identifying dialing and signaling information is collected by the carrier and delivered to law enforcement, it is anticipated that one delivery channel per interception will suffice for the delivery of such information to law enforcement. This figure presupposes, and is based on, a solution where a carrier will "extract" any and all dialed digits and related signaling from a subject's voice channel necessary to fully complete a call and provide such information on a single delivery channel. Another solution may require two delivery channels per interception to law enforcement if such dialed digits and related signaling are not extracted from a subject's voice channel by a carrier. Furthermore, a carrier may choose to consolidate the delivery of many pen register and trap and trace device-based interceptions onto a single delivery channel. The specific solution chosen by a carrier will therefore dictate the number of delivery channels necessary to accommodate pen register and trap and trace device-based interceptions.

In the case of communications content interceptions, the number of delivery channels required will be dependent on the specific services and features made available by a carrier in any given geographic area. Law enforcement further believes that the industry will develop and deploy additional services and features in the future which will also impact the delivery of communications content interceptions to law enforcement. Any solution developed and deployed by the industry would need to accommodate those additional services and features.

The following examples are intended to further clarify the delivery of law enforcement's estimated capacity requirements, based on the information currently available to law enforcement, should a carrier choose to effect a switch-based CALEA-compliant solution. The following examples do not advocate or discourage the selection and deployment of any particular solution.

For the majority of counties, (2,089 of 3,146, or 66.4 percent) where the estimated wireline actual capacity requirement is two and the estimated maximum capacity requirement is three, the delivery of intercepted call-identifying information to law enforcement may take on any of the following forms. In the event that all of the interceptions are call-identifying information interceptions, the smallest number of delivery channels necessary would be one. This would be the case when a carrier extracts post cut-through dialed digits and related signaling and consolidates all of this information onto a single delivery channel and all of the information is intended for a single law enforcement agency.

The largest possible number of delivery channels required per interception for these 2,089 counties occur under circumstances where every interception was a communications content-based interception and the subject of the interception employs advanced features and services. If each such subject subscribes to and simultaneously makes use of three advanced features, a carrier may need to make available up to five delivery channels to law enforcement. These advanced features, being supported by such subjects' service, include but are not limited to call waiting, an incoming call forwarded to voice-mail, and a conference call. The delivery of all of the potential intercepted

communications content and call-identifying information associated with these features could necessitate up to 15 delivery channels for the entire county for the simultaneous delivery to law enforcement of all of the potential communications and related call-identifying information supported by the subjects' service.

An additional 820 (26.1 percent) counties have estimated wireline maximum capacity requirements of 25 or less. In the case where all 25 interceptions are call-identifying information-based interceptions, a carrier may be required to provide 50 channels for the delivery of dialed digits and related signaling information. This number would decrease where the carrier extracts post cut-through dialed digits and signaling and consolidates the information on a single delivery channel. The largest possible number of delivery channels a carrier may be required to provide would be where all 25 interceptions were communications content-based and the subject of each interception utilizes a number of advanced features. As in the previous example, if each subject subscribes to and simultaneously makes use of three advanced features, a carrier may need to make up to five delivery channels available to law enforcement. In this example, if every subject within the county subscribes to and employs these services simultaneously, there would be a need for up to 125 delivery channels to be made simultaneously available to law enforcement.

The above two examples have application to 2,909 of the 3,146 (92.5 percent) counties covered by this Final Notice of Capacity. For those relatively few counties where the estimated capacity requirements of a county exceed the maximum levels set forth above for a switch-based solution, the number of delivery channels required would be contingent upon the type of interception and the specific solution chosen by a carrier. The 386 maximum simultaneous interceptions described earlier can include as many as 75 communications content interceptions. Using the previous example, this would result in 311 (386 less 75) channels necessary for the delivery of pen register and trap and trace device interceptions (this would be the case when a carrier extracts post cut-through dialed digits and related signaling and consolidates this information onto a single delivery channel per intercept) and up to five channels for each of the communications content interceptions. The total number of channels would therefore be 686 ($5 \times 75 = 375 + 311 = 686$). This number would be greatly reduced if the information for the 311 pen register and trap and trace device interceptions were to be further consolidated.

For the majority of wireless markets (510 of 734 cellular markets, or 69.5 percent), where the estimated wireless actual capacity requirement is two and the estimated wireless maximum capacity requirement is four, the delivery of intercepted call-identifying information to law enforcement may take on any of the following forms. In the event that all of the interceptions are call-identifying information interceptions, the smallest number of delivery channels necessary would be one. This would be the case when a carrier extracts post cut-through dialed digits and related signaling and consolidates all of this information onto a single delivery channel and all of the information is intended for a single law enforcement agency.

The largest possible number of delivery channels required per interception for these 510 cellular markets would occur under the circumstances where every interception was a communications content-based interception and the subject of the interception employs advanced features and services. If each such subject subscribes to and simultaneously makes use of three advances features, a carrier may need to make available up to five delivery channels to law enforcement. If every subject within the market subscribes to and employs these services simultaneously, there would be a need for up to 20 delivery channels to be made simultaneously available to law enforcement.

An additional 114 (15.5 percent) cellular markets have estimated capacity wireless maximum requirements of 25 or less. In the case where all 25 interceptions are call-identifying information-based interceptions, a carrier may be required to provide 50 channels for the delivery of dialed digit and signaling information. This number would decrease where the carrier extracts post cut-through dialed digits and signaling and consolidates the information on a single delivery channel. The largest possible number of delivery channels a carrier may be required to provide would be in the case where all 25 interceptions were communications content-based and the subject of each interception utilizes advanced features. As in the previous example, if each subject subscribes to and simultaneously makes use of three advanced features, a carrier may need to make up to five delivery channels available to law enforcement. In this example, if every subject within the county subscribes to and employs these services simultaneously, there would be a need for up to 125 delivery channels to be made simultaneously available to law enforcement.

The above two examples have application to 624 of the 734 (85.0 percent) cellular markets covered by this Final Notice of Capacity. For those relatively few markets where the estimated capacity requirements of a market exceed the maximum levels set forth above for a switch-based solution, the number of delivery channels required would be contingent upon the type of interception and the specific solution chosen by a carrier. The 163 maximum simultaneous interceptions described earlier can include as many as 114 communications content interceptions. Using the previous example, this would result in 49 (163 less 114) channels necessary for the delivery of pen register and trap and trace device interceptions (this would be the case when a carrier extracts post cut-through dialed digits and related signaling and consolidates this information onto a single delivery channel per intercept) and up to five channels for each of the communications content interceptions. The total number of channels would therefore be 619 ($114 \times 5 = 570 + 49 = 619$). This number would be reduced if the information for the 49 pen register and trap and trace device interceptions were to be further consolidated.

VI. Related Issues

A. Carrier Statement

Section 104(d) of CALEA requires that within 180 days of this Final Notice of Capacity, a telecommunications carrier shall submit a statement identifying any of its systems or services that do not have the capacity to accommodate simultaneously the number of call content interceptions and interceptions of call-identifying information set forth in this Final Notice of Capacity. Resellers of telecommunication service need not report on systems or services subject to the reporting requirements of another carrier. The information in the Carrier Statement will be used, in conjunction with law enforcement priorities and other factors, to determine the telecommunications carriers that may be reimbursed in accordance with CALEA section 104(e).

A Telecommunications Carrier Statement Template has been developed with the assistance of the telecommunications industry to facilitate submission of the Carrier Statement. Use of the template is not mandatory, but law enforcement

encourages industry to use the template when identifying any of its systems or services that do not have the capacity to accommodate simultaneously the number of call content interceptions, pen registers, and trap and trace interceptions set forth in this Final Notice of Capacity.

The information to be solicited will include the following: Common Language Location Identifier (CLLI) code or equivalent identifier, switch model or other system or service type, and the city and state where the system or service is located. Unique information required for wireline systems and services will include the host CLLI code if the system or service is a remote, and the county or counties served by the system or service. Unique information required for wireless systems and services will include the MSA or RSA market service area number(s), or the MTA or BTA market trading area number(s) served by the system or service.

The confidentiality of the data received from the telecommunications carriers will be protected by the appropriate statute, regulation, or non-disclosure agreements.

After reviewing the Carrier Statements, the Attorney General may, subject to the availability of appropriations, agree to reimburse a carrier for costs directly associated with modifications to attain capacity requirements in accordance with the final rules on cost recovery. Decisions to enter into cost reimbursement agreements will be based on law enforcement prioritization factors.

On April 10, 1996, the Carrier Statement Notice was published in the **Federal Register** for comment under the Paperwork Reduction Act of 1995 (PRA) (61 FR 15974). A sixty-day comment period ensued ending on June 10, 1996. After reviewing the comments received, the Second Carrier Statement Notice was published in the **Federal Register** on April 24, 1997 (62 FR 20032). It was published a second time on May 6, 1997 (62 FR 24662) to correct the issuing agency. Comments were accepted on the Second Carrier Statement Notice through June 6, 1997. In accordance with the PRA of 1995, public comment has twice been solicited on the reporting and record keeping requirements of the Telecommunications Carrier Statement. These reporting and record keeping requirements have been assigned an Office of Management and Budget (OMB) Control Number 1110–0024, which expires on November 30, 2000.

B. Cost Recovery Rules

CALEA authorizes the appropriation of $500 million for reimbursing telecommunications carriers for certain reasonable costs directly associated with achieving CALEA compliance. Section 109(e) directs the Attorney General to establish regulations, after notice and comment, for determining such reasonable costs and establishing the procedures whereby telecommunications carriers may seek reimbursement. In accordance with the section 109 (e) mandate, the final rule was published in the **Federal Register**, 62 FR 13307, on March 20, 1997.

As authorized by section 109, and upon execution of a cooperative agreement, a telecommunications carrier may be reimbursed for the following: (1) All reasonable plant costs directly associated with the modifications performed by the carrier in connection with equipment, facilities, and services installed or deployed on or before January 1, 1995, in order to comply with section 103; (2) additional reasonable plant costs directly associated with making the requirements in section 103 reasonably achievable with respect to equipment, facilities, or services installed or deployed after January 1, 1995; and (3) reasonable plant costs directly associated with modifications of any telecommunications carrier's systems or services, as identified in the Carrier Statement, that do not have the capacity to accommodate simultaneously the number of call content interceptions and interceptions of call-identifying information set forth in this Final Notice of Capacity.

VII. The Second Notice of Capacity

A. Statement of Capacity Requirements in the Second Notice

The Second Notice of Capacity identified the number of simultaneous interceptions that telecommunications carriers should be able to accommodate in a given geographical area as of the date that is 3 years after the date of this Final Notice of Capacity and thereafter.

The Initial Notice of Capacity, being law enforcement's first expression of estimated future interception capacity on a national scale and for all agencies, was viewed by the industry as too ambiguous to adequately convey capacity requirements. The comments to the Initial Notice of Capacity led to a significant change in the methodology used in developing the capacity requirements, as well as to the expression of those requirements on a geographically specific basis. Each of those comments was reviewed and analyzed, and ultimately resulted in the new approach reflected in the Second Notice of Capacity. As discussed later, some comments to the Second Notice of Capacity suggested changes that, if adopted, would have produced a Final Notice of Capacity similar to the Initial Notice of Capacity.

B. Discussion of Comments on the Second Notice of Capacity

On January 14, 1997, law enforcement's estimates for future actual and maximum capacity were presented in the Second Notice of Capacity. The Second Notice of Capacity was published in the **Federal Register** as mandated by section 104 of CALEA. Comments on the Second Notice of Capacity were accepted through March 17, 1997. Twenty-nine parties consisting of individuals, privacy advocates, telecommunications companies and industry associations submitted comments. The substantive comments are set forth in the following fourteen points.

1. The Capacity Requirements Are Not Representative of the Historical Electronic Surveillance Information Supplied by the Industry

Seventeen comments (AirTouch Communications, Ameritech, AT&T Wireless, Bell Atlantic NYNEX Mobile, Bell Atlantic, BellSouth, Cellular Mobile Systems of St. Cloud, Cellular Telecommunications Industry Association, Center for Democracy and Technology and the Center for National Security Studies, GTE, Harrisonville Telephone Co., MCI, Pacific Telesis Group, Personal Communications Industry Association, SBC Communications, United States Telephone Association, US West) were received on the Second Notice of Capacity stating that the capacity requirements were too high. Twelve of these comments indicated that the numbers were too high and should not be applied to every carrier, nor should the numbers be applied to every switch within a geographic area. Two of these comments stated that the Government failed to estimate its capacity needs in a "cost-conscious manner". Two of the comments specifically indicated that the wireless numbers were too high. One comment suggested that the information used in calculating the capacity requirements be audited by the industry in an effort to validate the requirements.

In response to the foregoing comments, law enforcement responds by stating that the future estimated capacity requirements were projected by applying statistical and analytical methods to the historical interception information collected during the survey

of law enforcement and the telecommunications industry. It should be understood that the projections for the number of potential future interceptions do not mean that they are the numbers of interceptions that law enforcement will in fact effect or intends to effect.

An option considered by law enforcement was to use only industry-provided numbers in calculating capacity requirements. However, there exist areas within the country for which neither industry nor law enforcement data was available. Therefore, the inconsistency in reporting between the industry and law enforcement did not allow for the sole reliance on or use of either set of data. Law enforcement believes, based upon a review of the industry's reporting, that using only information from the industry would have resulted in an underestimation of law enforcement interception capacity requirements in certain areas of the country.

2. The Definition of Expeditious Is Not Realistic for the Expansion From Actual Capacity to Maximum Capacity

Seven comments (AirTouch Communications, Bell Atlantic, Organization for the Promotion and Advancement of Small Telecommunications Companies, Pacific Telesis Group, Personal Communications Industry Association, SBC Communications, Telecommunications Industry Association) were received from the telecommunications industry stating that five business days would not be sufficient to allow a carrier to make the necessary equipment changes or additions to expand its interception capacity from the actual to the maximum capacity.

In order to assure that law enforcement will be able to effect timely interceptions, carriers must be able to expeditiously expand to the maximum capacity within five days. However, law enforcement intends to give as much advance notice and flexibility as possible in fulfilling this requirement.

Further, increasing capacity to meet the maximum requirement under most circumstances should not pose any significant technological hurdle for a service provider because the difference between actual and maximum capacities is very small for most geographic areas. Law enforcement also recognizes that in those instances where the difference between actual and maximum capacity would be sizeable, the increase in capacity requested by law enforcement from actual to maximum capacity would most likely be incremental in nature and solution dependent. Because the solution(s) to be employed is(are) currently not known, law enforcement cannot reasonably predict exact incremental increases in capacity. However, experience has shown that the telecommunications industry has the technical means to respond promptly, and law enforcement has no reason to believe that the industry will not continue to cooperate or be able to respond as needed in this regard.

3. The Second Notice of Capacity Inappropriately Uses a Day as the Base Unit for Calculating Simultaneity

Four comments (Center for Democracy and Technology and the Center for National Security Studies, Pacific Telesis Group, United States Telephone Association, US West) were received indicating that the Second Notice of Capacity inappropriately uses a day as the base unit for calculating simultaneity. One of the comments suggested using traditional industry factors such as traffic engineering "busy hour", to determine capacity requirements for individual switches.

The derivation of simultaneity was based on the information available to law enforcement. The records compiled by law enforcement, as described in this Final Notice of Capacity, pertaining to the historic interception activity is only available based upon, and can only be analyzed for, individual days. The use of traffic engineering may be appropriate in traditional telephony but is impossible to apply to surveillance data. Criminal usage patterns, which are not available, would need to be collected and analyzed for these parameters to use traffic engineering principles. Furthermore, law enforcement used a "day" as the base unit for calculating simultaneity because court orders are authorized for a certain number of days as opposed to any other measure of time, and because no more detailed information exists.

4. Request for Switch Specific Requirements

Twelve comments (AirTouch Communications, Bell Atlantic NYNEX Mobile, Bell Atlantic, BellSouth, Cellular Telecommunications Industry Association, Center for Democracy and Technology and the Center for National Security Studies, GTE, Personal Communications Industry Association, SBC Communications, Telecommunications Industry Association, United States Telephone Association, US West) were received requesting switch-specific capacity requirements. Several of the comments suggested that the Government should break the data down on a switch-specific level.

As described in Section IV.C. above, this alternative was considered, but promulgation of capacity requirements on a switch specific basis presupposes a solution, does not allow any flexibility to carriers as networks evolve, and would be less useful to both industry and law enforcement. Nonetheless, after consideration of these comments, law enforcement decided to offer information and guidance on how a carrier may choose to apply the capacity requirements in any given geographic area if the carrier chooses to deploy a switch-based solution (See Section V.C.). That choice will be at the discretion of the carrier. Under those circumstances, if a carrier chooses to deploy a switch-based solution, the capacity requirement can initially be distributed at the discretion of the carrier with the understanding that the estimated actual capacity requirements of the area need to be met.

5. Request for Specific Breakdown of Communications Content, Pen Register, and Trap and Trace Interception Orders

Nine comments (AirTouch Communications, Bell Atlantic NYNEX Mobile, Bell Atlantic, BellSouth, Cellular Telecommunications Industry Association, Personal Communications Industry Association, SBC Communications, Telecommunications Industry Association, United States Telephone Association) were received stating that the capacity requirements should be delineated according to the type of interception (i.e., pen register, trap and trace, and communications content).

The average national ratio of communications content interceptions to pen register and trap and trace interceptions is not necessarily in any way representative of any specific geographic region, nor is it representative of any specific switching entity. The past ratio of pen registers and traps and traces to full communication content interception was derived from national averages of all interceptions conducted during the 26-month survey period. The Government believes that it would be inappropriate to use any such ratio in all localities as a basis for developing a solution to meet the capacity requirements in a particular area. Any solution developed by the industry must account for the significant variance in the distribution of the types of interceptions. The variance for historical switch-specific data is from zero percent communications content interceptions up to 100 percent

communications content interceptions from area to area. Several examples exist where the application of the nationwide ratio would clearly hamper law enforcement efforts to conduct electronic surveillance and protect public safety.

Further, law enforcement has concluded that because it does not know the type(s) of surveillance that will be needed in the future, it cannot provide the industry with a specific breakdown of such surveillances by county or market service area based upon past interception activity. Also, owing to the various technical solutions and approaches that carriers are considering for certain capabilities, such as the potential extraction and delivery of post cut-through dialed digits and signaling, law enforcement cannot accurately articulate a specific breakdown of surveillances by type. In the event that a carrier elects to use a solution that is switch-based, the Government has taken steps to quantify the maximum level of pen register and call content interceptions that would be expected from any one switch in terms of a "high end capacity ceiling" (see Section V.C.).

6. Request for Specific Number of Call Content Channels (CCC) and Call Data Channel (CDC)

Four comments (AT&T Wireless, SBC Communications, Telecommunications Industry Association, United States Telephone Association) were received requesting that capacity requirements be specified as numbers of CCCs and CDCs.

Law enforcement does not currently know what approaches carriers will employ as solutions to meet CALEA requirements. The suggestion that the required number of CCCs and CDCs should be defined separately presupposes a solution where carriers isolate and deliver all call-identifying information over a CDC, including post cut through digits dialed and related signaling. It would be inappropriate for law enforcement to presuppose any particular solution. Further, the interim industry standard (J-STD-025) does not support the extraction of dual-tone multi-frequency (DTMF) signals, and as such, may lead to very different solutions from those that the comments presuppose.

7. Apportionment of Capacity Requirements Amongst Carriers Serving a Particular Geographical Area

Thirteen comments (AirTouch Communications, AT&T Wireless, Bell Atlantic NYNEX Mobile, BellSouth, Cellular Telecommunications Industry Association, Center for Democracy and Technology and the Center for National Security Studies, National Telephone Cooperative Association, Organization for the Promotion and Advancement of Small Telecommunications Companies, Pacific Telesis Group, Personal Communications Industry Association, SBC Communications, Telecommunications Industry Association, Teleport Communications Group) were received stating that capacity requirements should be specified for each carrier serving a particular geographical area based upon each carrier's market share.

An apportionment of capacity amongst carriers cannot reasonably be made based on ever-changing market factors and market shares that law enforcement can only guess at. The inherent instability and constant market share movements within the telecommunications market makes apportionment impossible on a "percentage of the market" basis. Furthermore, the historical data does not show any correlation between market share and electronic surveillance activity. For example, in a number of instances where there are multiple services providers in a geographic area, one service provider has accounted for the majority of historic intercepts. However, as discussed above, in a number of instances, an individual carrier can distribute the capacity requirements at its discretion as long as the requirements (as stated in the appendixes to this Final Notice of Capacity) for an entire geographical area are met. Furthermore, if a carrier chooses to deploy a switch-based solution, Section V.C. of this Final Notice of Capacity delineates the maximum simultaneous interceptions that would be expected from any one switch.

8. Capacity Requirements Will Serve as a Barrier to New Entrants in the Market

Six comments (AT&T, AT&T Wireless, Cellular Telecommunications Industry Association, MCI, Telecommunications Industry Association, Teleport Communications Group) were received indicating that the capacity requirements will serve as a barrier to new entrants into the market. One comment suggested that the Government should issue a third notice for new entrants.

Law enforcement realizes that a new entrant in a county or market service area can initially expect to capture only a very small portion of the subscriber base. Also, as stated in the previous response and elsewhere above, an individual carrier, based on its unique network configuration, can distribute the capacity requirements at its discretion with the understanding that the capacity requirements as stated in the appendixes to this Final Notice of Capacity represent law enforcement's estimated actual and maximum capacity requirements for an entire geographical area. Furthermore, if a carrier chooses to deploy a switch-based solution, Section V.C. of this Final Notice of Capacity delineates the maximum simultaneous interceptions that would be expected from any one switch.

9. The Data Used in Deriving the Capacity Requirements Should Be Audited

One comment (Telecommunications Industry Association) was received stating that the data collected during the survey period for the purposes of deriving capacity requirements should be audited.

Law enforcement considered the comment requesting the audit of data used in the calculation of the capacity requirements and concluded that the detailed electronic surveillance information for the entire United States is of a sensitive nature, and should not be disclosed. However, the FBI is prepared to let an individual carrier examine the subset of information pertaining to that carrier's network and historic interception activity. Law enforcement has previously provided carriers with the opportunity to examine such data by which the capacity requirements for their networks were determined.

10. The Methodology Used for the Extrapolation of PCS Capacity Requirements Is Not Appropriate Nor Representative of Law Enforcement Needs

Two comments (BellSouth, Personal Communications Industry Association) were received indicating that the Second Notice of Capacity's method of determining capacity requirements for PCS was incorrect and does not represent law enforcement's needs.

The decision to publish PCS capacity requirements on a market basis was driven by the fact that each individual PCS license holder could serve the entire market at its discretion. With no historical PCS interception activity, as mentioned previously in this Final Notice of Capacity, and the fact that each PCS market is composed of whole or partial cellular markets from which capacity requirements can be reasonably derived, law enforcement believes that market-based requirements offer the most reasonable and supportable means of fulfilling law enforcement's CALEA mandate to publish capacity

requirements on a geographical basis for all carriers.

After consideration of the comments from the PCS industry and in order to offer some flexibility for PCS carriers, law enforcement has chosen to amend the geographical areas that can be used for the PCS capacity requirements for those PCS carriers serving Major Trading Areas (MTA) and Basic Trading Areas (BTA). Every PCS license holder will have the option of supporting either the equivalent total capacity requirements of the composite cellular markets (MSAs & RSAs as delineated in Appendix B) in which the license holder can provide service or the PCS requirements for MTAs and BTAs as delineated in Appendixes C and D, respectively. This approach is responsive to PCS carriers' concern about PCS markets not accurately reflecting historical surveillance activity, and it allows a PCS carrier to increase its capacity as it expands into new service areas.

11. Any Negotiation Between Law Enforcement and a Carrier Regarding the Capacity Requirements in One or More Geographical Areas Should Be Made Part of the Public Record

Two comments (Ameritech, Personal Communications Industry Association) were received stating that any negotiation between the Government and carriers regarding capacity requirements should be made available to the public.

The Final Notice of Capacity defines the estimated actual and maximum capacity requirements on a geographical basis for wireline and wireless (cellular and PCS) carriers. Law enforcement will not alter these actual or maximum capacity requirements with any carrier. Law enforcement has met its statutory requirement by making public the number of interceptions it estimates it may need to conduct in specified geographic areas in the future. The capacity requirements reflect the total number of communications content, pen register, and trap and trace interceptions that law enforcement estimates it may need to conduct. Furthermore, law enforcement has suggested information and guidance for the application of the requirements to the industry within this Final Notice of Capacity.

12. Growth Factor Derivation is Inappropriate and Not At All Reflective of Overall Crime Trends

Four comments (AT&T Wireless, BellSouth, Telecommunications Industry Association, United States Telephone Association) were received stating that the growth factor derivation was inappropriate and not reflective of overall crime trends. One comment suggested using zero or negative growth rates.

Overall crime trends are not necessarily indicative of, or directly related to, electronic surveillance needs. While certain types of crime may be decreasing, the record for electronic surveillance orders, as shown by the *Wiretap Reports* and the DOJ reports on the use of pen registers and trap and traces, indicates that over time federal, state, and local investigations have required and increased use of electronic surveillance. It must be stated that law enforcement agencies and prosecutorial offices (as well as the courts) have relied on the use of electronic surveillance where required notwithstanding overall crime trends. Also, the maximum capacity requirements are not representative of the number of interceptions that law enforcement expects to perform on a regular basis, but rather a capacity ceiling to be used by the industry in the development of technical solutions.

13. The Methodology Used in the Formulation of Capacity Requirements Is Inappropriate

Nine comments (Ameritech, AT&T Wireless, Bell Atlantic NYNEX Mobile, BellSouth, Center for Democracy and Technology and the Center for National Security Studies, GTE, SBC Communications, Telecommunications Industry Association, United States Telephone Association) were received questioning the methodology used for determining capacity requirements.

As discussed in Section IV.C., alternative methods of expressing capacity requirements were considered. The methodology used to determine future capacity requirements projects the potential interception needs of law enforcement in geographic areas to the maximum extent practicable. Both the wireline county and the wireless market service area requirements were based on historic interception activity and used growth factors derived from past interception trends as well as commonly-used statistical tools in the issuance of lawfully authorized surveillance orders.

14. The Final Notice of Capacity Should Express Capacity Requirements in Terms of Engineered Capacity

One comment (Cellular Telecommunications Industry Association) requested that the capacity requirements be expressed in terms of "engineered capacity".

In the Initial Notice of Capacity, requirements were expressed as a percentage of the engineered capacity of equipment, facilities, and services. It was thought that in so doing, carriers would have more flexibility in addressing the capacity requirements. Comments submitted on the Initial Notice of Capacity, however, questioned the meaning of engineered capacity and recommended that capacity requirements be expressed as fixed numbers rather than as percentages. In response, law enforcement re-examined this issue and found that using fixed numbers for each county and market service area would be a clearer way to express capacity requirements without tying them to constantly-changing components of telecommunications networks.

After consideration of the aforementioned comments, law enforcement decided to offer information and guidance on ways that a carrier may choose to apply the capacity requirements in any given geographic area (See Section V.C.).

Dated: March 3, 1998.

Louis Freeh,

Director, Federal Bureau of Investigation, Department of Justice.

APPENDIX A.—NOTICE OF CAPACITY REQUIREMENTS BY COUNTY FOR TELECOMMUNICATIONS CARRIERS PROVIDING LOCAL SERVICES

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a county.]*

State	County	County requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
Alabama	Autauga	3	4	2
Alabama	Baldwin	3	4	2
Alabama	Barbour	2	3	1
Alabama	Bibb	2	3	0
Alabama	Blount	2	3	0
Alabama	Bullock	2	3	0
Alabama	Butler	2	3	0
Alabama	Calhoun	11	15	8
Alabama	Chambers	18	24	14
Alabama	Cherokee	2	3	1
Alabama	Chilton	2	3	0
Alabama	Choctaw	2	3	0
Alabama	Clarke	2	3	1
Alabama	Clay	2	3	0
Alabama	Cleburne	2	3	0
Alabama	Coffee	2	3	0
Alabama	Colbert	6	8	4
Alabama	Conecuh	2	3	1
Alabama	Coosa	2	3	0
Alabama	Covington	2	3	0
Alabama	Crenshaw	2	3	0
Alabama	Cullman	2	3	0
Alabama	Dale	2	3	0
Alabama	Dallas	8	11	6
Alabama	DeKalb	3	4	2
Alabama	Elmore	3	4	2
Alabama	Escambia	2	3	1
Alabama	Etowah	4	6	3
Alabama	Fayette	2	3	0
Alabama	Franklin	2	3	1
Alabama	Geneva	2	3	0
Alabama	Greene	2	3	0
Alabama	Hale	2	3	0
Alabama	Henry	2	3	0
Alabama	Houston	6	8	4
Alabama	Jackson	8	11	6
Alabama	Jefferson	77	101	61
Alabama	Lamar	2	3	0
Alabama	Lauderdale	6	8	4
Alabama	Lawrence	2	3	0
Alabama	Lee	2	3	0
Alabama	Limestone	4	6	3
Alabama	Lowndes	2	3	0
Alabama	Macon	2	3	0
Alabama	Madison	63	83	50
Alabama	Marengo	9	12	7
Alabama	Marion	2	3	0
Alabama	Marshall	2	3	1
Alabama	Mobile	62	81	49
Alabama	Monroe	2	3	1
Alabama	Montgomery	24	32	19
Alabama	Morgan	9	12	7
Alabama	Perry	2	3	0
Alabama	Pickens	2	3	0
Alabama	Pike	7	10	5
Alabama	Randolph	2	3	0
Alabama	Russell	2	3	0
Alabama	Shelby	2	3	0
Alabama	St. Clair	12	16	9
Alabama	Sumter	2	3	0
Alabama	Talladega	6	8	4
Alabama	Tallapoosa	8	11	6
Alabama	Tuscaloosa	12	16	9

APPENDIX A.—NOTICE OF CAPACITY REQUIREMENTS BY COUNTY FOR TELECOMMUNICATIONS CARRIERS PROVIDING LOCAL SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a county.]*

State	County	County requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
Alabama	Walker	2	3	0
Alabama	Washington	2	3	0
Alabama	Wilcox	6	8	4
Alabama	Winston	2	3	0
Alaska	Aleutians East	14	19	11
Alaska	Aleutians West	6	8	4
Alaska	Anchorage	57	75	45
Alaska	Bethel	3	4	2
Alaska	Bristol Bay	2	3	0
Alaska	Denali	2	3	0
Alaska	Dillingham	2	3	0
Alaska	Fairbanks North Star	2	3	1
Alaska	Haines	2	3	0
Alaska	Juneau	9	12	7
Alaska	Kenai Peninsula	2	3	0
Alaska	Ketchikan Gateway	47	62	37
Alaska	Kodiak Island	2	3	0
Alaska	Lake and Peninsula	2	3	1
Alaska	Matanuska-Susitna	6	8	4
Alaska	Nome	2	3	0
Alaska	North Slope	6	8	4
Alaska	Northwest Arctic	2	3	0
Alaska	Prince of Wales-Ketchikan	2	3	0
Alaska	Sitka	2	3	1
Alaska	Skagway-Hoonah-Angoon	2	3	0
Alaska	Southeast Fairbanks	2	3	0
Alaska	Valdez-Cordova	2	3	0
Alaska	Wade Hampton	2	3	0
Alaska	Wrangell-Petersburg	2	3	0
Alaska	Yakutat	2	3	0
Alaska	Yukon-Koyukuk	7	10	5
American Samoa	American Samoa	2	3	0
Arizona	Apache	2	3	0
Arizona	Cochise	37	49	29
Arizona	Coconino	6	8	4
Arizona	Gila	2	3	0
Arizona	Graham	2	3	0
Arizona	Greenlee	2	3	0
Arizona	La Paz	2	3	0
Arizona	Maricopa	502	655	398
Arizona	Mohave	21	28	16
Arizona	Navajo	2	3	1
Arizona	Pima	148	193	117
Arizona	Pinal	14	19	11
Arizona	Santa Cruz	14	19	11
Arizona	Yavapai	17	23	13
Arizona	Yuma	41	54	32
Arkansas	Arkansas	2	3	0
Arkansas	Ashley	2	3	1
Arkansas	Baxter	2	3	0
Arkansas	Benton	3	4	2
Arkansas	Boone	2	3	0
Arkansas	Bradley	2	3	0
Arkansas	Calhoun	2	3	0
Arkansas	Carroll	2	3	0
Arkansas	Chicot	2	3	0
Arkansas	Clark	3	4	2
Arkansas	Clay	2	3	1
Arkansas	Cleburne	2	3	0
Arkansas	Cleveland	2	3	0
Arkansas	Columbia	2	3	0
Arkansas	Conway	2	3	1
Arkansas	Craighead	2	3	0

APPENDIX A.—NOTICE OF CAPACITY REQUIREMENTS BY COUNTY FOR TELECOMMUNICATIONS CARRIERS PROVIDING LOCAL SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a county.]*

State	County	County requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
Arkansas	Crawford	2	3	0
Arkansas	Crittenden	2	3	0
Arkansas	Cross	2	3	0
Arkansas	Dallas	2	3	0
Arkansas	Desha	2	3	0
Arkansas	Drew	2	3	0
Arkansas	Faulkner	2	3	1
Arkansas	Franklin	2	3	0
Arkansas	Fulton	2	3	0
Arkansas	Garland	21	28	16
Arkansas	Grant	2	3	0
Arkansas	Greene	2	3	0
Arkansas	Hempstead	2	3	0
Arkansas	Hot Spring	2	3	0
Arkansas	Howard	2	3	0
Arkansas	Independence	2	3	0
Arkansas	Izard	2	3	0
Arkansas	Jackson	2	3	0
Arkansas	Jefferson	11	15	8
Arkansas	Johnson	2	3	0
Arkansas	Lafayette	2	3	0
Arkansas	Lawrence	2	3	0
Arkansas	Lee	2	3	0
Arkansas	Lincoln	2	3	0
Arkansas	Little River	2	3	0
Arkansas	Logan	2	3	0
Arkansas	Lonoke	2	3	0
Arkansas	Madison	2	3	0
Arkansas	Marion	2	3	0
Arkansas	Miller	2	3	0
Arkansas	Mississippi	13	17	10
Arkansas	Monroe	2	3	0
Arkansas	Montgomery	2	3	0
Arkansas	Nevada	2	3	0
Arkansas	Newton	2	3	0
Arkansas	Ouachita	2	3	0
Arkansas	Perry	2	3	0
Arkansas	Phillips	2	3	0
Arkansas	Pike	2	3	0
Arkansas	Poinsett	2	3	0
Arkansas	Polk	2	3	0
Arkansas	Pope	2	3	0
Arkansas	Prairie	2	3	0
Arkansas	Pulaski	22	29	17
Arkansas	Randolph	2	3	0
Arkansas	Saline	6	8	4
Arkansas	Scott	2	3	0
Arkansas	Searcy	2	3	0
Arkansas	Sebastian	3	4	2
Arkansas	Sevier	2	3	0
Arkansas	Sharp	2	3	0
Arkansas	St. Francis	2	3	0
Arkansas	Stone	2	3	0
Arkansas	Union	2	3	0
Arkansas	Van Buren	2	3	0
Arkansas	Washington	6	8	4
Arkansas	White	3	4	2
Arkansas	Woodruff	2	3	0
Arkansas	Yell	2	3	0
California	Alameda	142	186	112
California	Alpine	2	3	0
California	Amador	14	19	11
California	Butte	8	11	6

APPENDIX A.—NOTICE OF CAPACITY REQUIREMENTS BY COUNTY FOR TELECOMMUNICATIONS CARRIERS PROVIDING LOCAL SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a county.]*

State	County	County requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
California	Calaveras	3	4	2
California	Colusa	2	3	0
California	Contra Costa	72	94	57
California	Del Norte	4	6	3
California	El Dorado	11	15	8
California	Fresno	52	68	41
California	Glenn	2	3	1
California	Humboldt	8	11	6
California	Imperial	29	38	23
California	Inyo	2	3	0
California	Kern	42	55	33
California	Kings	2	3	1
California	Lake	4	6	3
California	Lassen	2	3	0
California	Los Angeles	1360	1773	1080
California	Madera	17	23	13
California	Marin	56	73	44
California	Mariposa	4	6	3
California	Mendocino	7	10	5
California	Merced	12	16	9
California	Modoc	2	3	0
California	Mono	2	3	0
California	Monterey	27	36	21
California	Napa	13	17	10
California	Nevada	13	17	10
California	Orange	147	192	116
California	Placer	16	21	12
California	Plumas	2	3	0
California	Riverside	86	113	68
California	Sacramento	110	144	87
California	San Benito	2	3	1
California	San Bernardino	52	68	41
California	San Diego	332	433	263
California	San Francisco	96	126	76
California	San Joaquin	33	43	26
California	San Luis Obispo	16	21	12
California	San Mateo	65	85	51
California	Santa Barbara	18	24	14
California	Santa Clara	143	187	113
California	Santa Cruz	16	21	12
California	Shasta	14	19	11
California	Sierra	2	3	0
California	Siskiyou	7	10	5
California	Solano	32	42	25
California	Sonoma	72	94	57
California	Stanislaus	24	32	19
California	Sutter	11	15	8
California	Tehama	4	6	3
California	Trinity	2	3	0
California	Tulare	18	24	14
California	Tuolumne	2	3	0
California	Ventura	29	38	23
California	Yolo	13	17	10
California	Yuba	2	3	0
Colorado	Adams	32	42	25
Colorado	Alamosa	2	3	0
Colorado	Arapahoe	79	103	62
Colorado	Archuleta	3	4	2
Colorado	Baca	2	3	0
Colorado	Bent	2	3	0
Colorado	Boulder	19	25	15
Colorado	Chaffee	2	3	1
Colorado	Cheyenne	2	3	0

APPENDIX A.—NOTICE OF CAPACITY REQUIREMENTS BY COUNTY FOR TELECOMMUNICATIONS CARRIERS PROVIDING LOCAL SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a county.]*

State	County	County requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
Colorado	Clear Creek	2	3	0
Colorado	Conejos	2	3	0
Colorado	Costilla	12	16	9
Colorado	Crowley	4	6	3
Colorado	Custer	2	3	0
Colorado	Delta	3	4	2
Colorado	Denver	148	193	117
Colorado	Dolores	2	3	0
Colorado	Douglas	8	11	6
Colorado	Eagle	4	6	3
Colorado	El Paso	32	42	25
Colorado	Elbert	2	3	1
Colorado	Fremont	2	3	1
Colorado	Garfield	9	12	7
Colorado	Gilpin	2	3	0
Colorado	Grand	2	3	0
Colorado	Gunnison	4	6	3
Colorado	Hinsdale	2	3	0
Colorado	Huerfano	2	3	0
Colorado	Jackson	2	3	0
Colorado	Jefferson	42	55	33
Colorado	Kiowa	3	4	2
Colorado	Kit Carson	2	3	0
Colorado	La Plata	3	4	2
Colorado	Lake	2	3	0
Colorado	Larimer	40	53	31
Colorado	Las Animas	2	3	0
Colorado	Lincoln	2	3	0
Colorado	Logan	2	3	0
Colorado	Mesa	8	11	6
Colorado	Mineral	2	3	0
Colorado	Moffat	2	3	0
Colorado	Montezuma	2	3	0
Colorado	Montrose	3	4	2
Colorado	Morgan	2	3	0
Colorado	Otero	3	4	2
Colorado	Ouray	2	3	1
Colorado	Park	2	3	0
Colorado	Phillips	2	3	0
Colorado	Pitkin	6	8	4
Colorado	Prowers	2	3	0
Colorado	Pueblo	2	3	1
Colorado	Rio Blanco	2	3	0
Colorado	Rio Grande	2	3	0
Colorado	Routt	2	3	0
Colorado	Saguache	2	3	0
Colorado	San Juan	2	3	0
Colorado	San Miguel	8	11	6
Colorado	Sedgwick	2	3	0
Colorado	Summit	8	11	6
Colorado	Teller	2	3	0
Colorado	Washington	2	3	0
Colorado	Weld	11	15	8
Colorado	Yuma	2	3	1
Connecticut	Fairfield	76	100	60
Connecticut	Hartford	66	86	52
Connecticut	Litchfield	16	21	12
Connecticut	Middlesex	7	10	5
Connecticut	New Haven	77	101	61
Connecticut	New London	22	29	17
Connecticut	Tolland	2	3	0
Connecticut	Windham	3	4	2
Delaware	Kent	11	15	8

APPENDIX A.—NOTICE OF CAPACITY REQUIREMENTS BY COUNTY FOR TELECOMMUNICATIONS CARRIERS PROVIDING LOCAL SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a county.]*

State	County	County requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
Delaware	New Castle	29	38	23
Delaware	Sussex	6	8	4
District of Columbia	District of Columbia	216	282	171
Florida	Alachua	7	10	5
Florida	Baker	3	4	2
Florida	Bay	8	11	6
Florida	Bradford	2	3	1
Florida	Brevard	56	73	44
Florida	Broward	222	290	176
Florida	Calhoun	2	3	0
Florida	Charlotte	3	4	2
Florida	Citrus	2	3	0
Florida	Clay	3	4	2
Florida	Collier	13	17	10
Florida	Columbia	2	3	0
Florida	Dade	570	743	452
Florida	DeSoto	3	4	2
Florida	Dixie	2	3	0
Florida	Duval	61	80	48
Florida	Escambia	27	36	21
Florida	Flagler	2	3	0
Florida	Franklin	2	3	0
Florida	Gadsden	2	3	0
Florida	Gilchrist	2	3	0
Florida	Glades	2	3	0
Florida	Gulf	2	3	0
Florida	Hamilton	2	3	0
Florida	Hardee	2	3	1
Florida	Hendry	2	3	0
Florida	Hernando	13	17	10
Florida	Highlands	6	8	4
Florida	Hillsborough	148	193	117
Florida	Holmes	3	4	2
Florida	Indian River	6	8	4
Florida	Jackson	6	8	4
Florida	Jefferson	2	3	0
Florida	Lafayette	2	3	0
Florida	Lake	18	24	14
Florida	Lee	46	60	36
Florida	Leon	6	8	4
Florida	Levy	2	3	0
Florida	Liberty	2	3	0
Florida	Madison	2	3	1
Florida	Manatee	31	41	24
Florida	Marion	18	24	14
Florida	Martin	4	6	3
Florida	Monroe	22	29	17
Florida	Nassau	2	3	0
Florida	Okaloosa	11	15	8
Florida	Okeechobee	2	3	1
Florida	Orange	46	60	36
Florida	Osceola	11	15	8
Florida	Palm Beach	97	127	77
Florida	Pasco	21	28	16
Florida	Pinellas	121	158	96
Florida	Polk	31	41	24
Florida	Putnam	11	15	8
Florida	Santa Rosa	8	11	6
Florida	Sarasota	37	49	29
Florida	Seminole	16	21	12
Florida	St. Johns	4	6	3
Florida	St. Lucie	8	11	6
Florida	Sumter	2	3	1

APPENDIX A.—NOTICE OF CAPACITY REQUIREMENTS BY COUNTY FOR TELECOMMUNICATIONS CARRIERS PROVIDING LOCAL SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a county.]*

State	County	County requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
Florida	Suwannee	2	3	0
Florida	Taylor	2	3	1
Florida	Union	2	3	0
Florida	Volusia	21	28	16
Florida	Wakulla	2	3	0
Florida	Walton	3	4	2
Florida	Washington	3	4	2
Georgia	Appling	3	4	2
Georgia	Atkinson	2	3	0
Georgia	Bacon	2	3	0
Georgia	Baker	2	3	0
Georgia	Baldwin	3	4	2
Georgia	Banks	2	3	0
Georgia	Barrow	2	3	0
Georgia	Bartow	4	6	3
Georgia	Ben Hill	2	3	0
Georgia	Berrien	2	3	0
Georgia	Bibb	17	23	13
Georgia	Bleckley	2	3	0
Georgia	Brantley	11	15	8
Georgia	Brooks	6	8	4
Georgia	Bryan	17	23	13
Georgia	Bulloch	104	136	82
Georgia	Burke	2	3	1
Georgia	Butts	2	3	1
Georgia	Calhoun	2	3	0
Georgia	Camden	36	47	28
Georgia	Candler	2	3	1
Georgia	Carroll	2	3	1
Georgia	Catoosa	2	3	1
Georgia	Charlton	2	3	0
Georgia	Chatham	16	21	12
Georgia	Chattahoochee	2	3	0
Georgia	Chattooga	3	4	2
Georgia	Cherokee	2	3	1
Georgia	Clarke	4	6	3
Georgia	Clay	2	3	0
Georgia	Clayton	11	15	8
Georgia	Clinch	2	3	0
Georgia	Cobb	33	43	26
Georgia	Coffee	9	12	7
Georgia	Colquitt	2	3	0
Georgia	Columbia	2	3	0
Georgia	Cook	2	3	0
Georgia	Coweta	2	3	1
Georgia	Crawford	2	3	0
Georgia	Crisp	2	3	0
Georgia	Dade	2	3	1
Georgia	Dawson	4	6	3
Georgia	Decatur	2	3	0
Georgia	DeKalb	46	60	36
Georgia	Dodge	3	4	2
Georgia	Dooly	2	3	0
Georgia	Dougherty	7	10	5
Georgia	Douglas	2	3	1
Georgia	Early	2	3	0
Georgia	Echols	2	3	0
Georgia	Effingham	2	3	0
Georgia	Elbert	2	3	0
Georgia	Emanuel	2	3	0
Georgia	Evans	2	3	0
Georgia	Fannin	2	3	0
Georgia	Fayette	3	4	2

APPENDIX A.—NOTICE OF CAPACITY REQUIREMENTS BY COUNTY FOR TELECOMMUNICATIONS CARRIERS PROVIDING LOCAL SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a county.]*

State	County	County requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
Georgia	Floyd	7	10	5
Georgia	Forsyth	2	3	0
Georgia	Franklin	2	3	1
Georgia	Fulton	65	85	51
Georgia	Gilmer	2	3	0
Georgia	Glascock	2	3	0
Georgia	Glynn	2	3	1
Georgia	Gordon	3	4	2
Georgia	Grady	2	3	0
Georgia	Greene	3	4	2
Georgia	Gwinnett	17	23	13
Georgia	Habersham	2	3	0
Georgia	Hall	3	4	2
Georgia	Hancock	2	3	0
Georgia	Haralson	2	3	0
Georgia	Harris	2	3	0
Georgia	Hart	2	3	0
Georgia	Heard	2	3	0
Georgia	Henry	7	10	5
Georgia	Houston	2	3	1
Georgia	Irwin	6	8	4
Georgia	Jackson	2	3	0
Georgia	Jasper	3	4	2
Georgia	Jeff Davis	2	3	0
Georgia	Jefferson	2	3	0
Georgia	Jenkins	2	3	0
Georgia	Johnson	2	3	1
Georgia	Jones	3	4	2
Georgia	Lamar	4	6	3
Georgia	Lanier	2	3	0
Georgia	Laurens	2	3	0
Georgia	Lee	2	3	0
Georgia	Liberty	38	50	30
Georgia	Lincoln	2	3	1
Georgia	Long	2	3	0
Georgia	Lowndes	3	4	2
Georgia	Lumpkin	2	3	1
Georgia	Macon	2	3	0
Georgia	Madison	2	3	0
Georgia	Marion	2	3	0
Georgia	McDuffie	2	3	0
Georgia	McIntosh	2	3	0
Georgia	Meriwether	2	3	0
Georgia	Miller	2	3	0
Georgia	Mitchell	2	3	0
Georgia	Monroe	2	3	0
Georgia	Montgomery	2	3	0
Georgia	Morgan	2	3	0
Georgia	Murray	2	3	0
Georgia	Muscogee	2	3	1
Georgia	Newton	2	3	1
Georgia	Oconee	2	3	0
Georgia	Oglethorpe	2	3	0
Georgia	Paulding	2	3	0
Georgia	Peach	2	3	0
Georgia	Pickens	2	3	0
Georgia	Pierce	2	3	0
Georgia	Pike	2	3	0
Georgia	Polk	2	3	1
Georgia	Pulaski	2	3	0
Georgia	Putnam	2	3	1
Georgia	Quitman	2	3	0
Georgia	Rabun	2	3	1

APPENDIX A.—NOTICE OF CAPACITY REQUIREMENTS BY COUNTY FOR TELECOMMUNICATIONS CARRIERS PROVIDING LOCAL SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a county.]*

State	County	County requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
Georgia	Randolph	2	3	0
Georgia	Richmond	8	11	6
Georgia	Rockdale	2	3	1
Georgia	Schley	2	3	0
Georgia	Screven	2	3	1
Georgia	Seminole	2	3	0
Georgia	Spalding	2	3	0
Georgia	Stephens	2	3	1
Georgia	Stewart	2	3	0
Georgia	Sumter	2	3	0
Georgia	Talbot	2	3	0
Georgia	Taliaferro	2	3	0
Georgia	Tattnall	2	3	0
Georgia	Taylor	2	3	0
Georgia	Telfair	6	8	4
Georgia	Terrell	2	3	1
Georgia	Thomas	7	10	5
Georgia	Tift	2	3	0
Georgia	Toombs	2	3	0
Georgia	Towns	2	3	0
Georgia	Treutlen	2	3	0
Georgia	Troup	14	19	11
Georgia	Turner	2	3	0
Georgia	Twiggs	2	3	0
Georgia	Union	2	3	0
Georgia	Upson	2	3	0
Georgia	Walker	2	3	0
Georgia	Walton	3	4	2
Georgia	Ware	2	3	0
Georgia	Warren	2	3	0
Georgia	Washington	2	3	0
Georgia	Wayne	2	3	0
Georgia	Webster	2	3	0
Georgia	Wheeler	2	3	0
Georgia	White	2	3	0
Georgia	Whitfield	4	6	3
Georgia	Wilcox	2	3	0
Georgia	Wilkes	2	3	0
Georgia	Wilkinson	2	3	0
Georgia	Worth	2	3	0
Guam	Guam	2	3	0
Hawaii	Hawaii	3	4	2
Hawaii	Honolulu	71	93	56
Hawaii	Kauai	2	3	0
Hawaii	Maui	2	3	0
Idaho	Ada	7	10	5
Idaho	Adams	2	3	0
Idaho	Bannock	8	11	6
Idaho	Bear Lake	2	3	0
Idaho	Benewah	2	3	0
Idaho	Bingham	2	3	1
Idaho	Blaine	4	6	3
Idaho	Boise	2	3	0
Idaho	Bonner	2	3	0
Idaho	Bonneville	4	6	3
Idaho	Boundary	2	3	0
Idaho	Butte	2	3	0
Idaho	Camas	2	3	0
Idaho	Canyon	3	4	2
Idaho	Caribou	2	3	0
Idaho	Cassia	2	3	0
Idaho	Clark	2	3	0
Idaho	Clearwater	2	3	0

APPENDIX A.—NOTICE OF CAPACITY REQUIREMENTS BY COUNTY FOR TELECOMMUNICATIONS CARRIERS PROVIDING LOCAL SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a county.]*

State	County	County requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
Idaho	Custer	2	3	0
Idaho	Elmore	4	6	3
Idaho	Franklin	2	3	0
Idaho	Fremont	2	3	0
Idaho	Gem	2	3	0
Idaho	Gooding	2	3	0
Idaho	Idaho	2	3	0
Idaho	Jefferson	2	3	0
Idaho	Jerome	2	3	1
Idaho	Kootenai	4	6	3
Idaho	Latah	2	3	0
Idaho	Lemhi	2	3	0
Idaho	Lewis	2	3	0
Idaho	Lincoln	2	3	0
Idaho	Madison	2	3	0
Idaho	Minidoka	2	3	0
Idaho	Nez Perce	2	3	0
Idaho	Oneida	2	3	0
Idaho	Owyhee	2	3	0
Idaho	Payette	2	3	0
Idaho	Power	2	3	0
Idaho	Shoshone	4	6	3
Idaho	Teton	2	3	0
Idaho	Twin Falls	17	23	13
Idaho	Valley	2	3	0
Idaho	Washington	6	8	4
Illinois	Adams	14	19	11
Illinois	Alexander	2	3	0
Illinois	Bond	2	3	0
Illinois	Boone	2	3	0
Illinois	Brown	2	3	1
Illinois	Bureau	8	11	6
Illinois	Calhoun	2	3	0
Illinois	Carroll	2	3	0
Illinois	Cass	2	3	0
Illinois	Champaign	16	21	12
Illinois	Christian	2	3	0
Illinois	Clark	2	3	1
Illinois	Clay	2	3	0
Illinois	Clinton	2	3	0
Illinois	Coles	7	10	5
Illinois	Cook	318	415	252
Illinois	Crawford	2	3	1
Illinois	Cumberland	2	3	0
Illinois	De Witt	2	3	0
Illinois	DeKalb	3	4	2
Illinois	Douglas	2	3	1
Illinois	DuPage	36	47	28
Illinois	Edgar	2	3	0
Illinois	Edwards	2	3	0
Illinois	Effingham	3	4	2
Illinois	Fayette	2	3	0
Illinois	Ford	2	3	1
Illinois	Franklin	2	3	1
Illinois	Fulton	11	15	8
Illinois	Gallatin	2	3	1
Illinois	Greene	2	3	0
Illinois	Grundy	2	3	0
Illinois	Hamilton	2	3	0
Illinois	Hancock	4	6	3
Illinois	Hardin	2	3	0
Illinois	Henderson	2	3	0
Illinois	Henry	14	19	11

APPENDIX A.—NOTICE OF CAPACITY REQUIREMENTS BY COUNTY FOR TELECOMMUNICATIONS CARRIERS PROVIDING LOCAL SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a county.]*

State	County	County requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
Illinois	Iroquois	2	3	1
Illinois	Jackson	6	8	4
Illinois	Jasper	2	3	0
Illinois	Jefferson	2	3	0
Illinois	Jersey	2	3	0
Illinois	Jo Daviess	2	3	0
Illinois	Johnson	2	3	0
Illinois	Kane	48	63	38
Illinois	Kankakee	13	17	10
Illinois	Kendall	2	3	0
Illinois	Knox	19	25	15
Illinois	La Salle	8	11	6
Illinois	Lake	9	12	7
Illinois	Lawrence	2	3	1
Illinois	Lee	4	6	3
Illinois	Livingston	2	3	1
Illinois	Logan	6	8	4
Illinois	Macon	4	6	3
Illinois	Macoupin	2	3	0
Illinois	Madison	11	15	8
Illinois	Marion	2	3	1
Illinois	Marshall	2	3	0
Illinois	Mason	2	3	0
Illinois	Massac	2	3	0
Illinois	McDonough	2	3	0
Illinois	McHenry	3	4	2
Illinois	McLean	16	21	12
Illinois	Menard	2	3	1
Illinois	Mercer	12	16	9
Illinois	Monroe	18	24	14
Illinois	Montgomery	2	3	1
Illinois	Morgan	2	3	0
Illinois	Moultrie	3	4	2
Illinois	Ogle	2	3	0
Illinois	Peoria	8	11	6
Illinois	Perry	6	8	4
Illinois	Piatt	2	3	0
Illinois	Pike	2	3	0
Illinois	Pope	2	3	0
Illinois	Pulaski	2	3	0
Illinois	Putnam	2	3	0
Illinois	Randolph	6	8	4
Illinois	Richland	4	6	3
Illinois	Rock Island	11	15	8
Illinois	Saline	2	3	0
Illinois	Sangamon	26	34	20
Illinois	Schuyler	3	4	2
Illinois	Scott	2	3	0
Illinois	Shelby	2	3	1
Illinois	St. Clair	6	8	4
Illinois	Stark	2	3	0
Illinois	Stephenson	2	3	0
Illinois	Tazewell	6	8	4
Illinois	Union	2	3	0
Illinois	Vermilion	21	28	16
Illinois	Wabash	2	3	0
Illinois	Warren	2	3	0
Illinois	Washington	2	3	0
Illinois	Wayne	2	3	0
Illinois	White	2	3	0
Illinois	Whiteside	4	6	3
Illinois	Will	9	12	7
Illinois	Williamson	2	3	1

APPENDIX A.—NOTICE OF CAPACITY REQUIREMENTS BY COUNTY FOR TELECOMMUNICATIONS CARRIERS PROVIDING LOCAL SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a county.]*

State	County	County requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
Illinois	Winnebago	7	10	5
Illinois	Woodford	2	3	0
Indiana	Adams	2	3	0
Indiana	Allen	9	12	7
Indiana	Bartholomew	2	3	0
Indiana	Benton	2	3	0
Indiana	Blackford	2	3	1
Indiana	Boone	2	3	1
Indiana	Brown	2	3	0
Indiana	Carroll	2	3	0
Indiana	Cass	2	3	0
Indiana	Clark	2	3	1
Indiana	Clay	2	3	1
Indiana	Clinton	2	3	0
Indiana	Crawford	2	3	0
Indiana	Daviess	2	3	1
Indiana	De Kalb	3	4	2
Indiana	Dearborn	2	3	0
Indiana	Decatur	2	3	0
Indiana	Delaware	2	3	1
Indiana	Dubois	2	3	0
Indiana	Elkhart	2	3	0
Indiana	Fayette	2	3	0
Indiana	Floyd	3	4	2
Indiana	Fountain	2	3	0
Indiana	Franklin	2	3	0
Indiana	Fulton	2	3	0
Indiana	Gibson	2	3	0
Indiana	Grant	7	10	5
Indiana	Greene	3	4	2
Indiana	Hamilton	3	4	2
Indiana	Hancock	2	3	0
Indiana	Harrison	3	4	2
Indiana	Hendricks	6	8	4
Indiana	Henry	2	3	1
Indiana	Howard	2	3	0
Indiana	Huntington	2	3	0
Indiana	Jackson	2	3	0
Indiana	Jasper	2	3	1
Indiana	Jay	2	3	0
Indiana	Jefferson	2	3	1
Indiana	Jennings	2	3	0
Indiana	Johnson	6	8	4
Indiana	Knox	3	4	2
Indiana	Kosciusko	3	4	2
Indiana	La Porte	4	6	3
Indiana	Lagrange	2	3	0
Indiana	Lake	57	75	45
Indiana	Lawrence	2	3	0
Indiana	Madison	8	11	6
Indiana	Marion	33	43	26
Indiana	Marshall	2	3	0
Indiana	Martin	2	3	0
Indiana	Miami	4	6	3
Indiana	Monroe	7	10	5
Indiana	Montgomery	3	4	2
Indiana	Morgan	2	3	0
Indiana	Newton	2	3	0
Indiana	Noble	2	3	0
Indiana	Ohio	2	3	0
Indiana	Orange	2	3	1
Indiana	Owen	2	3	0
Indiana	Parke	3	4	2

APPENDIX A.—NOTICE OF CAPACITY REQUIREMENTS BY COUNTY FOR TELECOMMUNICATIONS CARRIERS PROVIDING LOCAL SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a county.]*

State	County	County requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
Indiana	Perry	2	3	0
Indiana	Pike	2	3	0
Indiana	Porter	9	12	7
Indiana	Posey	6	8	4
Indiana	Pulaski	2	3	0
Indiana	Putnam	2	3	0
Indiana	Randolph	2	3	0
Indiana	Ripley	2	3	0
Indiana	Rush	2	3	0
Indiana	Scott	2	3	0
Indiana	Shelby	2	3	1
Indiana	Spencer	2	3	0
Indiana	St. Joseph	2	3	1
Indiana	Starke	2	3	0
Indiana	Steuben	2	3	0
Indiana	Sullivan	2	3	0
Indiana	Switzerland	2	3	0
Indiana	Tippecanoe	2	3	1
Indiana	Tipton	2	3	0
Indiana	Union	2	3	0
Indiana	Vanderburgh	3	4	2
Indiana	Vermillion	3	4	2
Indiana	Vigo	4	6	3
Indiana	Wabash	2	3	0
Indiana	Warren	2	3	0
Indiana	Warrick	2	3	0
Indiana	Washington	4	6	3
Indiana	Wayne	2	3	1
Indiana	Wells	2	3	0
Indiana	White	2	3	0
Indiana	Whitley	2	3	0
Iowa	Adair	2	3	0
Iowa	Adams	2	3	1
Iowa	Allamakee	2	3	0
Iowa	Appanoose	2	3	0
Iowa	Audubon	2	3	0
Iowa	Benton	4	6	3
Iowa	Black Hawk	6	8	4
Iowa	Boone	4	6	3
Iowa	Bremer	2	3	1
Iowa	Buchanan	6	8	4
Iowa	Buena Vista	11	15	8
Iowa	Butler	2	3	0
Iowa	Calhoun	2	3	0
Iowa	Carroll	2	3	1
Iowa	Cass	3	4	2
Iowa	Cedar	4	6	3
Iowa	Cerro Gordo	9	12	7
Iowa	Cherokee	3	4	2
Iowa	Chickasaw	2	3	1
Iowa	Clarke	2	3	0
Iowa	Clay	2	3	0
Iowa	Clayton	2	3	0
Iowa	Clinton	2	3	1
Iowa	Crawford	2	3	1
Iowa	Dallas	4	6	3
Iowa	Davis	2	3	0
Iowa	Decatur	2	3	1
Iowa	Delaware	2	3	0
Iowa	Des Moines	2	3	0
Iowa	Dickinson	2	3	1
Iowa	Dubuque	17	23	13
Iowa	Emmet	2	3	1

APPENDIX A.—NOTICE OF CAPACITY REQUIREMENTS BY COUNTY FOR TELECOMMUNICATIONS CARRIERS PROVIDING LOCAL SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a county.]*

State	County	County requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
Iowa	Fayette	2	3	0
Iowa	Floyd	9	12	7
Iowa	Franklin	2	3	0
Iowa	Fremont	2	3	0
Iowa	Greene	2	3	0
Iowa	Grundy	2	3	0
Iowa	Guthrie	2	3	1
Iowa	Hamilton	4	6	3
Iowa	Hancock	2	3	0
Iowa	Hardin	3	4	2
Iowa	Harrison	2	3	0
Iowa	Henry	2	3	0
Iowa	Howard	2	3	1
Iowa	Humboldt	2	3	0
Iowa	Ida	2	3	0
Iowa	Iowa	6	8	4
Iowa	Jackson	2	3	0
Iowa	Jasper	7	10	5
Iowa	Jefferson	2	3	0
Iowa	Johnson	6	8	4
Iowa	Jones	4	6	3
Iowa	Keokuk	2	3	0
Iowa	Kossuth	2	3	0
Iowa	Lee	3	4	2
Iowa	Linn	11	15	8
Iowa	Louisa	2	3	0
Iowa	Lucas	2	3	1
Iowa	Lyon	8	11	6
Iowa	Madison	2	3	0
Iowa	Mahaska	2	3	0
Iowa	Marion	2	3	0
Iowa	Marshall	12	16	9
Iowa	Mills	2	3	0
Iowa	Mitchell	4	6	3
Iowa	Monona	2	3	0
Iowa	Monroe	2	3	0
Iowa	Montgomery	2	3	1
Iowa	Muscatine	3	4	2
Iowa	O'Brien	2	3	1
Iowa	Osceola	2	3	0
Iowa	Page	2	3	0
Iowa	Palo Alto	2	3	0
Iowa	Plymouth	9	12	7
Iowa	Pocahontas	2	3	0
Iowa	Polk	21	28	16
Iowa	Pottawattamie	12	16	9
Iowa	Poweshiek	8	11	6
Iowa	Ringgold	2	3	0
Iowa	Sac	2	3	0
Iowa	Scott	4	6	3
Iowa	Shelby	2	3	0
Iowa	Sioux	6	8	4
Iowa	Story	3	4	2
Iowa	Tama	6	8	4
Iowa	Taylor	2	3	0
Iowa	Union	2	3	0
Iowa	Van Buren	2	3	0
Iowa	Wapello	2	3	0
Iowa	Warren	2	3	0
Iowa	Washington	2	3	0
Iowa	Wayne	2	3	0
Iowa	Webster	9	12	7
Iowa	Winnebago	2	3	0

APPENDIX A.—NOTICE OF CAPACITY REQUIREMENTS BY COUNTY FOR TELECOMMUNICATIONS CARRIERS PROVIDING LOCAL SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a county.]*

State	County	County requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
Iowa	Winneshiek	2	3	0
Iowa	Woodbury	8	11	6
Iowa	Worth	2	3	0
Iowa	Wright	2	3	0
Kansas	Allen	2	3	0
Kansas	Anderson	2	3	0
Kansas	Atchison	2	3	0
Kansas	Barber	2	3	0
Kansas	Barton	2	3	0
Kansas	Bourbon	2	3	0
Kansas	Brown	2	3	1
Kansas	Butler	3	4	2
Kansas	Chase	2	3	0
Kansas	Chautauqua	2	3	0
Kansas	Cherokee	2	3	0
Kansas	Cheyenne	2	3	0
Kansas	Clark	2	3	0
Kansas	Clay	2	3	0
Kansas	Cloud	2	3	1
Kansas	Coffey	2	3	0
Kansas	Comanche	2	3	0
Kansas	Cowley	2	3	0
Kansas	Crawford	2	3	0
Kansas	Decatur	3	4	2
Kansas	Dickinson	3	4	2
Kansas	Doniphan	2	3	0
Kansas	Douglas	4	6	3
Kansas	Edwards	2	3	0
Kansas	Elk	2	3	1
Kansas	Ellis	3	4	2
Kansas	Ellsworth	2	3	1
Kansas	Finney	2	3	0
Kansas	Ford	2	3	0
Kansas	Franklin	2	3	0
Kansas	Geary	4	6	3
Kansas	Gove	2	3	0
Kansas	Graham	2	3	0
Kansas	Grant	2	3	0
Kansas	Gray	2	3	0
Kansas	Greeley	4	6	3
Kansas	Greenwood	2	3	0
Kansas	Hamilton	2	3	0
Kansas	Harper	2	3	0
Kansas	Harvey	3	4	2
Kansas	Haskell	2	3	0
Kansas	Hodgeman	8	11	6
Kansas	Jackson	2	3	0
Kansas	Jefferson	2	3	0
Kansas	Jewell	2	3	1
Kansas	Johnson	36	47	28
Kansas	Kearny	2	3	0
Kansas	Kingman	2	3	1
Kansas	Kiowa	2	3	0
Kansas	Labette	3	4	2
Kansas	Lane	2	3	0
Kansas	Leavenworth	2	3	0
Kansas	Lincoln	2	3	0
Kansas	Linn	2	3	0
Kansas	Logan	2	3	0
Kansas	Lyon	2	3	0
Kansas	Marion	2	3	0
Kansas	Marshall	2	3	1
Kansas	McPherson	4	6	3

APPENDIX A.—NOTICE OF CAPACITY REQUIREMENTS BY COUNTY FOR TELECOMMUNICATIONS CARRIERS PROVIDING LOCAL SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a county.]*

State	County	County requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
Kansas	Meade	2	3	0
Kansas	Miami	2	3	1
Kansas	Mitchell	2	3	1
Kansas	Montgomery	2	3	0
Kansas	Morris	2	3	0
Kansas	Morton	6	8	4
Kansas	Nemaha	2	3	0
Kansas	Neosho	2	3	0
Kansas	Ness	2	3	0
Kansas	Norton	2	3	0
Kansas	Osage	2	3	0
Kansas	Osborne	2	3	1
Kansas	Ottawa	2	3	1
Kansas	Pawnee	2	3	0
Kansas	Phillips	2	3	0
Kansas	Pottawatomie	3	4	2
Kansas	Pratt	2	3	0
Kansas	Rawlins	2	3	0
Kansas	Reno	4	6	3
Kansas	Republic	2	3	0
Kansas	Rice	2	3	0
Kansas	Riley	6	8	4
Kansas	Rooks	2	3	0
Kansas	Rush	2	3	0
Kansas	Russell	2	3	0
Kansas	Saline	9	12	7
Kansas	Scott	2	3	0
Kansas	Sedgwick	23	30	18
Kansas	Seward	3	4	2
Kansas	Shawnee	17	23	13
Kansas	Sheridan	2	3	0
Kansas	Sherman	2	3	0
Kansas	Smith	2	3	0
Kansas	Stafford	3	4	2
Kansas	Stanton	2	3	0
Kansas	Stevens	8	11	6
Kansas	Sumner	2	3	0
Kansas	Thomas	2	3	0
Kansas	Trego	2	3	0
Kansas	Wabaunsee	2	3	0
Kansas	Wallace	2	3	0
Kansas	Washington	2	3	1
Kansas	Wichita	3	4	2
Kansas	Wilson	2	3	0
Kansas	Woodson	2	3	0
Kansas	Wyandotte	31	41	24
Kentucky	Adair	2	3	0
Kentucky	Allen	2	3	0
Kentucky	Anderson	2	3	1
Kentucky	Ballard	2	3	0
Kentucky	Barren	3	4	2
Kentucky	Bath	2	3	0
Kentucky	Bell	8	11	6
Kentucky	Boone	8	11	6
Kentucky	Bourbon	2	3	0
Kentucky	Boyd	2	3	0
Kentucky	Boyle	2	3	0
Kentucky	Bracken	2	3	0
Kentucky	Breathitt	2	3	0
Kentucky	Breckinridge	2	3	0
Kentucky	Bullitt	12	16	9
Kentucky	Butler	2	3	0
Kentucky	Caldwell	2	3	0

APPENDIX A.—NOTICE OF CAPACITY REQUIREMENTS BY COUNTY FOR TELECOMMUNICATIONS CARRIERS PROVIDING LOCAL SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a county.]*

State	County	County requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
Kentucky	Calloway	2	3	1
Kentucky	Campbell	3	4	2
Kentucky	Carlisle	2	3	0
Kentucky	Carroll	2	3	0
Kentucky	Carter	2	3	0
Kentucky	Casey	2	3	0
Kentucky	Christian	2	3	0
Kentucky	Clark	2	3	0
Kentucky	Clay	2	3	1
Kentucky	Clinton	2	3	0
Kentucky	Crittenden	2	3	0
Kentucky	Cumberland	2	3	0
Kentucky	Daviess	2	3	0
Kentucky	Edmonson	2	3	0
Kentucky	Elliott	2	3	0
Kentucky	Estill	2	3	0
Kentucky	Fayette	21	28	16
Kentucky	Fleming	2	3	0
Kentucky	Floyd	2	3	0
Kentucky	Franklin	2	3	0
Kentucky	Fulton	2	3	0
Kentucky	Gallatin	2	3	0
Kentucky	Garrard	2	3	0
Kentucky	Grant	2	3	0
Kentucky	Graves	2	3	0
Kentucky	Grayson	2	3	0
Kentucky	Green	2	3	0
Kentucky	Greenup	2	3	0
Kentucky	Hancock	2	3	0
Kentucky	Hardin	3	4	2
Kentucky	Harlan	2	3	0
Kentucky	Harrison	2	3	0
Kentucky	Hart	2	3	0
Kentucky	Henderson	2	3	1
Kentucky	Henry	2	3	0
Kentucky	Hickman	2	3	0
Kentucky	Hopkins	4	6	3
Kentucky	Jackson	2	3	0
Kentucky	Jefferson	21	28	16
Kentucky	Jessamine	2	3	0
Kentucky	Johnson	2	3	1
Kentucky	Kenton	14	19	11
Kentucky	Knott	2	3	0
Kentucky	Knox	2	3	0
Kentucky	Larue	2	3	0
Kentucky	Laurel	2	3	0
Kentucky	Lawrence	2	3	0
Kentucky	Lee	2	3	0
Kentucky	Leslie	2	3	0
Kentucky	Letcher	2	3	0
Kentucky	Lewis	2	3	0
Kentucky	Lincoln	2	3	0
Kentucky	Livingston	2	3	0
Kentucky	Logan	7	10	5
Kentucky	Lyon	2	3	0
Kentucky	Madison	6	8	4
Kentucky	Magoffin	2	3	1
Kentucky	Marion	2	3	0
Kentucky	Marshall	2	3	0
Kentucky	Martin	2	3	0
Kentucky	Mason	2	3	0
Kentucky	McCracken	3	4	2
Kentucky	McCreary	2	3	0

APPENDIX A.—NOTICE OF CAPACITY REQUIREMENTS BY COUNTY FOR TELECOMMUNICATIONS CARRIERS PROVIDING LOCAL SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a county.]*

State	County	County requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
Kentucky	McLean	2	3	0
Kentucky	Meade	2	3	0
Kentucky	Menifee	2	3	0
Kentucky	Mercer	3	4	2
Kentucky	Metcalfe	2	3	0
Kentucky	Monroe	2	3	0
Kentucky	Montgomery	3	4	2
Kentucky	Morgan	2	3	0
Kentucky	Muhlenberg	2	3	1
Kentucky	Nelson	2	3	0
Kentucky	Nicholas	2	3	0
Kentucky	Ohio	2	3	0
Kentucky	Oldham	2	3	0
Kentucky	Owen	2	3	0
Kentucky	Owsley	2	3	0
Kentucky	Pendleton	2	3	0
Kentucky	Perry	2	3	0
Kentucky	Pike	8	11	6
Kentucky	Powell	2	3	0
Kentucky	Pulaski	7	10	5
Kentucky	Robertson	2	3	0
Kentucky	Rockcastle	2	3	0
Kentucky	Rowan	2	3	0
Kentucky	Russell	2	3	0
Kentucky	Scott	2	3	0
Kentucky	Shelby	2	3	0
Kentucky	impson	2	3	0
Kentucky	Spencer	2	3	0
Kentucky	Taylor	2	3	0
Kentucky	Todd	2	3	0
Kentucky	Trigg	2	3	0
Kentucky	Trimble	2	3	0
Kentucky	Union	2	3	0
Kentucky	Warren	4	6	3
Kentucky	Washington	2	3	0
Kentucky	Wayne	2	3	0
Kentucky	Webster	2	3	0
Kentucky	Whitley	2	3	0
Kentucky	Wolfe	2	3	0
Kentucky	Woodford	2	3	0
Louisiana	Acadia	2	3	0
Louisiana	Allen	2	3	0
Louisiana	Ascension	2	3	0
Louisiana	Assumption	2	3	0
Louisiana	Avoyelles	3	4	2
Louisiana	Beauregard	2	3	0
Louisiana	Bienville	2	3	0
Louisiana	Bossier	2	3	1
Louisiana	Caddo	36	47	28
Louisiana	Calcasieu	2	3	0
Louisiana	Caldwell	2	3	0
Louisiana	Cameron	2	3	0
Louisiana	Catahoula	2	3	0
Louisiana	Claiborne	3	4	2
Louisiana	Concordia	2	3	0
Louisiana	De Soto	2	3	1
Louisiana	East Baton Rouge	57	75	45
Louisiana	East Carroll	2	3	0
Louisiana	East Feliciana	4	6	3
Louisiana	Evangeline	2	3	0
Louisiana	Franklin	2	3	0
Louisiana	Grant	2	3	0
Louisiana	Iberia	2	3	0

APPENDIX A.—NOTICE OF CAPACITY REQUIREMENTS BY COUNTY FOR TELECOMMUNICATIONS CARRIERS PROVIDING LOCAL SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a county.]*

State	County	County requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
Louisiana	Iberville	3	4	2
Louisiana	Jackson	2	3	0
Louisiana	Jefferson	55	72	43
Louisiana	Jefferson Davis	2	3	0
Louisiana	La Salle	2	3	0
Louisiana	Lafayette	7	10	5
Louisiana	Lafourche	2	3	0
Louisiana	Lincoln	2	3	1
Louisiana	Livingston	4	6	3
Louisiana	Madison	2	3	0
Louisiana	Morehouse	4	6	3
Louisiana	Natchitoches	2	3	0
Louisiana	Orleans	63	83	50
Louisiana	Ouachita	6	8	4
Louisiana	Plaquemines	2	3	0
Louisiana	Pointe Coupee	9	12	7
Louisiana	Rapides	6	8	4
Louisiana	Red River	2	3	0
Louisiana	Richland	2	3	1
Louisiana	Sabine	2	3	0
Louisiana	St. Bernard	13	17	10
Louisiana	St. Charles	3	4	2
Louisiana	St. Helena	2	3	0
Louisiana	St. James	2	3	0
Louisiana	St. John the Baptist	2	3	0
Louisiana	St. Landry	2	3	0
Louisiana	St. Martin	2	3	0
Louisiana	St. Mary	4	6	3
Louisiana	St. Tammany	8	11	6
Louisiana	Tangipahoa	2	3	1
Louisiana	Tensas	2	3	0
Louisiana	Terrebonne	2	3	0
Louisiana	Union	2	3	0
Louisiana	Vermilion	2	3	0
Louisiana	Vernon	2	3	0
Louisiana	Washington	4	6	3
Louisiana	Webster	2	3	1
Louisiana	West Baton Rouge	2	3	0
Louisiana	West Carroll	2	3	0
Louisiana	West Feliciana	2	3	1
Louisiana	Winn	2	3	0
Maine	Androscoggin	22	29	17
Maine	Aroostook	2	3	1
Maine	Cumberland	9	12	7
Maine	Franklin	2	3	0
Maine	Hancock	2	3	0
Maine	Kennebec	45	59	35
Maine	Knox	8	11	6
Maine	Lincoln	2	3	0
Maine	Oxford	2	3	0
Maine	Penobscot	16	21	12
Maine	Piscataquis	2	3	0
Maine	Sagadahoc	2	3	0
Maine	Somerset	2	3	0
Maine	Waldo	3	4	2
Maine	Washington	2	3	0
Maine	York	7	10	5
Mariana Islands	Mariana Islands	2	3	0
Maryland	Allegany	3	4	2
Maryland	Anne Arundel	67	88	53
Maryland	Baltimore	143	187	113
Maryland	Baltimore City	90	118	71
Maryland	Calvert	2	3	1

APPENDIX A.—NOTICE OF CAPACITY REQUIREMENTS BY COUNTY FOR TELECOMMUNICATIONS CARRIERS PROVIDING LOCAL SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a county.]*

State	County	County requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
Maryland	Caroline	2	3	0
Maryland	Carroll	8	11	6
Maryland	Cecil	11	15	8
Maryland	Charles	11	15	8
Maryland	Dorchester	8	11	6
Maryland	Frederick	12	16	9
Maryland	Garrett	2	3	0
Maryland	Harford	13	17	10
Maryland	Howard	36	47	28
Maryland	Kent	2	3	1
Maryland	Montgomery	84	110	66
Maryland	Prince George's	152	199	120
Maryland	Queen Anne's	2	3	0
Maryland	Somerset	3	4	2
Maryland	St. Mary's	2	3	1
Maryland	Talbot	3	4	2
Maryland	Washington	7	10	5
Maryland	Wicomico	4	6	3
Maryland	Worcester	7	10	5
Massachusetts	Barnstable	9	12	7
Massachusetts	Berkshire	2	3	0
Massachusetts	Bristol	11	15	8
Massachusetts	Dukes	2	3	0
Massachusetts	Essex	17	23	13
Massachusetts	Franklin	2	3	0
Massachusetts	Hampden	21	28	16
Massachusetts	Hampshire	2	3	1
Massachusetts	Middlesex	84	110	66
Massachusetts	Nantucket	2	3	0
Massachusetts	Norfolk	33	43	26
Massachusetts	Plymouth	17	23	13
Massachusetts	Suffolk	77	101	61
Massachusetts	Worcester	43	57	34
Michigan	Alcona	2	3	0
Michigan	Alger	2	3	0
Michigan	Allegan	2	3	0
Michigan	Alpena	2	3	0
Michigan	Antrim	2	3	0
Michigan	Arenac	2	3	0
Michigan	Baraga	2	3	0
Michigan	Barry	2	3	1
Michigan	Bay	2	3	0
Michigan	Benzie	2	3	0
Michigan	Berrien	8	11	6
Michigan	Branch	2	3	0
Michigan	Calhoun	6	8	4
Michigan	Cass	2	3	0
Michigan	Charlevoix	2	3	0
Michigan	Cheboygan	2	3	0
Michigan	Chippewa	2	3	0
Michigan	Clare	2	3	0
Michigan	Clinton	2	3	0
Michigan	Crawford	2	3	0
Michigan	Delta	2	3	0
Michigan	Dickinson	2	3	0
Michigan	Eaton	2	3	0
Michigan	Emmet	2	3	0
Michigan	Genesee	7	10	5
Michigan	Gladwin	3	4	2
Michigan	Gogebic	2	3	0
Michigan	Grand Traverse	2	3	0
Michigan	Gratiot	2	3	0
Michigan	Hillsdale	2	3	0

APPENDIX A.—NOTICE OF CAPACITY REQUIREMENTS BY COUNTY FOR TELECOMMUNICATIONS CARRIERS PROVIDING LOCAL SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a county.]*

State	County	County requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
Michigan	Houghton	2	3	0
Michigan	Huron	2	3	0
Michigan	Ingham	3	4	2
Michigan	Ionia	2	3	0
Michigan	Iosco	2	3	0
Michigan	Iron	2	3	0
Michigan	Isabella	3	4	2
Michigan	Jackson	3	4	2
Michigan	Kalamazoo	8	11	6
Michigan	Kalkaska	2	3	0
Michigan	Kent	4	6	3
Michigan	Keweenaw	2	3	0
Michigan	Lake	2	3	0
Michigan	Lapeer	3	4	2
Michigan	Leelanau	2	3	0
Michigan	Lenawee	2	3	0
Michigan	Livingston	3	4	2
Michigan	Luce	2	3	0
Michigan	Mackinac	2	3	1
Michigan	Macomb	34	45	27
Michigan	Manistee	2	3	1
Michigan	Marquette	6	8	4
Michigan	Mason	2	3	0
Michigan	Mecosta	2	3	0
Michigan	Menominee	2	3	0
Michigan	Midland	2	3	0
Michigan	Missaukee	2	3	0
Michigan	Monroe	3	4	2
Michigan	Montcalm	2	3	0
Michigan	Montmorency	2	3	0
Michigan	Muskegon	2	3	1
Michigan	Newaygo	2	3	0
Michigan	Oakland	74	97	58
Michigan	Oceana	2	3	0
Michigan	Ogemaw	2	3	0
Michigan	Ontonagon	2	3	0
Michigan	Osceola	2	3	0
Michigan	Oscoda	2	3	0
Michigan	Otsego	3	4	2
Michigan	Ottawa	2	3	0
Michigan	Presque Isle	2	3	0
Michigan	Roscommon	2	3	0
Michigan	Saginaw	23	30	18
Michigan	Sanilac	2	3	0
Michigan	Schoolcraft	2	3	0
Michigan	Shiawassee	2	3	1
Michigan	St. Clair	2	3	0
Michigan	St. Joseph	2	3	0
Michigan	Tuscola	8	11	6
Michigan	Van Buren	6	8	4
Michigan	Washtenaw	8	11	6
Michigan	Wayne	193	252	153
Michigan	Wexford	2	3	0
Minnesota	Aitkin	2	3	1
Minnesota	Anoka	51	67	40
Minnesota	Becker	6	8	4
Minnesota	Beltrami	2	3	1
Minnesota	Benton	7	10	5
Minnesota	Big Stone	2	3	0
Minnesota	Blue Earth	2	3	1
Minnesota	Brown	2	3	0
Minnesota	Carlton	3	4	2
Minnesota	Carver	8	11	6

APPENDIX A.—NOTICE OF CAPACITY REQUIREMENTS BY COUNTY FOR TELECOMMUNICATIONS CARRIERS PROVIDING LOCAL SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a county.]*

State	County	County requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
Minnesota	Cass	8	11	6
Minnesota	Chippewa	2	3	1
Minnesota	Chisago	3	4	2
Minnesota	Clay	2	3	1
Minnesota	Clearwater	2	3	0
Minnesota	Cook	2	3	0
Minnesota	Cottonwood	2	3	0
Minnesota	Crow Wing	7	10	5
Minnesota	Dakota	67	88	53
Minnesota	Dodge	2	3	0
Minnesota	Douglas	4	6	3
Minnesota	Faribault	2	3	1
Minnesota	Fillmore	2	3	0
Minnesota	Freeborn	2	3	0
Minnesota	Goodhue	8	11	6
Minnesota	Grant	4	6	3
Minnesota	Hennepin	264	344	209
Minnesota	Houston	6	8	4
Minnesota	Hubbard	4	6	3
Minnesota	Isanti	2	3	0
Minnesota	Itasca	2	3	0
Minnesota	Jackson	2	3	0
Minnesota	Kanabec	2	3	0
Minnesota	Kandiyohi	6	8	4
Minnesota	Kittson	11	15	8
Minnesota	Koochiching	2	3	0
Minnesota	Lac qui Parle	2	3	0
Minnesota	Lake	2	3	0
Minnesota	Lake of the Woods	2	3	1
Minnesota	Le Sueur	2	3	0
Minnesota	Lincoln	2	3	0
Minnesota	Lyon	2	3	0
Minnesota	Mahnomen	2	3	0
Minnesota	Marshall	9	12	7
Minnesota	Martin	2	3	0
Minnesota	McLeod	14	19	11
Minnesota	Meeker	4	6	3
Minnesota	Mille Lacs	4	6	3
Minnesota	Morrison	7	10	5
Minnesota	Mower	2	3	1
Minnesota	Murray	2	3	0
Minnesota	Nicollet	7	10	5
Minnesota	Nobles	4	6	3
Minnesota	Norman	2	3	0
Minnesota	Olmsted	22	29	17
Minnesota	Otter Tail	41	54	32
Minnesota	Pennington	3	4	2
Minnesota	Pine	6	8	4
Minnesota	Pipestone	2	3	0
Minnesota	Polk	2	3	0
Minnesota	Pope	3	4	2
Minnesota	Ramsey	100	131	79
Minnesota	Red Lake	2	3	0
Minnesota	Redwood	2	3	1
Minnesota	Renville	2	3	1
Minnesota	Rice	9	12	7
Minnesota	Rock	3	4	2
Minnesota	Roseau	9	12	7
Minnesota	Scott	4	6	3
Minnesota	Sherburne	29	38	23
Minnesota	Sibley	2	3	0
Minnesota	St. Louis	50	66	39
Minnesota	Stearns	21	28	16

APPENDIX A.—NOTICE OF CAPACITY REQUIREMENTS BY COUNTY FOR TELECOMMUNICATIONS CARRIERS PROVIDING LOCAL SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a county.]*

State	County	County requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
Minnesota	Steele	6	8	4
Minnesota	Stevens	2	3	0
Minnesota	Swift	2	3	0
Minnesota	Todd	6	8	4
Minnesota	Traverse	2	3	0
Minnesota	Wabasha	2	3	0
Minnesota	Wadena	2	3	0
Minnesota	Waseca	2	3	0
Minnesota	Washington	23	30	18
Minnesota	Watonwan	2	3	0
Minnesota	Wilkin	2	3	0
Minnesota	Winona	4	6	3
Minnesota	Wright	6	8	4
Minnesota	Yellow Medicine	2	3	0
Mississippi	Adams	2	3	0
Mississippi	Alcorn	2	3	1
Mississippi	Amite	2	3	0
Mississippi	Attala	2	3	0
Mississippi	Benton	2	3	0
Mississippi	Bolivar	2	3	0
Mississippi	Calhoun	13	17	10
Mississippi	Carroll	2	3	0
Mississippi	Chickasaw	2	3	0
Mississippi	Choctaw	2	3	0
Mississippi	Claiborne	2	3	0
Mississippi	Clarke	2	3	0
Mississippi	Clay	2	3	0
Mississippi	Coahoma	3	4	2
Mississippi	Copiah	2	3	0
Mississippi	Covington	2	3	0
Mississippi	DeSoto	2	3	1
Mississippi	Forrest	6	8	4
Mississippi	Franklin	2	3	0
Mississippi	George	2	3	0
Mississippi	Greene	2	3	0
Mississippi	Grenada	4	6	3
Mississippi	Hancock	2	3	1
Mississippi	Harrison	21	28	16
Mississippi	Hinds	31	41	24
Mississippi	Holmes	2	3	0
Mississippi	Humphreys	2	3	1
Mississippi	Issaquena	2	3	0
Mississippi	Itawamba	2	3	0
Mississippi	Jackson	6	8	4
Mississippi	Jasper	2	3	0
Mississippi	Jefferson	2	3	0
Mississippi	Jefferson Davis	2	3	0
Mississippi	Jones	2	3	0
Mississippi	Kemper	2	3	0
Mississippi	Lafayette	4	6	3
Mississippi	Lamar	3	4	2
Mississippi	Lauderdale	6	8	4
Mississippi	Lawrence	2	3	0
Mississippi	Leake	2	3	0
Mississippi	Lee	6	8	4
Mississippi	Leflore	2	3	0
Mississippi	Lincoln	2	3	0
Mississippi	Lowndes	2	3	0
Mississippi	Madison	2	3	0
Mississippi	Marion	2	3	0
Mississippi	Marshall	4	6	3
Mississippi	Monroe	2	3	0
Mississippi	Montgomery	2	3	0

APPENDIX A.—NOTICE OF CAPACITY REQUIREMENTS BY COUNTY FOR TELECOMMUNICATIONS CARRIERS PROVIDING LOCAL SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a county.]*

State	County	County requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
Mississippi	Neshoba	3	4	2
Mississippi	Newton	2	3	1
Mississippi	Noxubee	2	3	0
Mississippi	Oktibbeha	6	8	4
Mississippi	Panola	2	3	0
Mississippi	Pearl River	6	8	4
Mississippi	Perry	2	3	0
Mississippi	Pike	3	4	2
Mississippi	Pontotoc	2	3	0
Mississippi	Prentiss	2	3	0
Mississippi	Quitman	2	3	0
Mississippi	Rankin	6	8	4
Mississippi	Scott	2	3	0
Mississippi	Sharkey	2	3	0
Mississippi	Simpson	2	3	0
Mississippi	Smith	2	3	0
Mississippi	Stone	2	3	0
Mississippi	Sunflower	4	6	3
Mississippi	Tallahatchie	2	3	0
Mississippi	Tate	2	3	0
Mississippi	Tippah	3	4	2
Mississippi	Tishomingo	11	15	8
Mississippi	Tunica	2	3	0
Mississippi	Union	4	6	3
Mississippi	Walthall	2	3	0
Mississippi	Warren	2	3	0
Mississippi	Washington	4	6	3
Mississippi	Wayne	2	3	0
Mississippi	Webster	2	3	0
Mississippi	Wilkinson	2	3	0
Mississippi	Winston	2	3	0
Mississippi	Yalobusha	2	3	0
Mississippi	Yazoo	3	4	2
Missouri	Adair	2	3	0
Missouri	Andrew	2	3	0
Missouri	Atchison	3	4	2
Missouri	Audrain	2	3	0
Missouri	Barry	2	3	0
Missouri	Barton	2	3	0
Missouri	Bates	2	3	0
Missouri	Benton	2	3	0
Missouri	Bollinger	2	3	0
Missouri	Boone	6	8	4
Missouri	Buchanan	8	11	6
Missouri	Butler	2	3	0
Missouri	Caldwell	2	3	0
Missouri	Callaway	11	15	8
Missouri	Camden	2	3	0
Missouri	Cape Girardeau	4	6	3
Missouri	Carroll	2	3	0
Missouri	Carter	2	3	0
Missouri	Cass	2	3	0
Missouri	Cedar	2	3	0
Missouri	Chariton	2	3	1
Missouri	Christian	2	3	0
Missouri	Clark	2	3	0
Missouri	Clay	29	38	23
Missouri	Clinton	2	3	0
Missouri	Cole	2	3	1
Missouri	Cooper	2	3	0
Missouri	Crawford	2	3	0
Missouri	Dade	2	3	0
Missouri	Dallas	2	3	0

APPENDIX A.—NOTICE OF CAPACITY REQUIREMENTS BY COUNTY FOR TELECOMMUNICATIONS CARRIERS PROVIDING LOCAL SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a county.]*

State	County	County requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
Missouri	Daviess	2	3	0
Missouri	DeKalb	2	3	0
Missouri	Dent	2	3	0
Missouri	Douglas	2	3	0
Missouri	Dunklin	2	3	0
Missouri	Franklin	2	3	0
Missouri	Gasconade	2	3	0
Missouri	Gentry	2	3	0
Missouri	Greene	4	6	3
Missouri	Grundy	2	3	0
Missouri	Harrison	2	3	0
Missouri	Henry	2	3	0
Missouri	Hickory	2	3	0
Missouri	Holt	2	3	1
Missouri	Howard	2	3	0
Missouri	Howell	2	3	0
Missouri	Iron	2	3	0
Missouri	Jackson	148	193	117
Missouri	Jasper	2	3	1
Missouri	Jefferson	9	12	7
Missouri	Johnson	2	3	0
Missouri	Knox	2	3	1
Missouri	Laclede	6	8	4
Missouri	Lafayette	4	6	3
Missouri	Lawrence	2	3	0
Missouri	Lewis	2	3	0
Missouri	Lincoln	2	3	0
Missouri	Linn	2	3	0
Missouri	Livingston	2	3	1
Missouri	Macon	2	3	0
Missouri	Madison	2	3	0
Missouri	Maries	2	3	0
Missouri	Marion	2	3	1
Missouri	McDonald	12	16	9
Missouri	Mercer	2	3	0
Missouri	Miller	2	3	0
Missouri	Mississippi	2	3	0
Missouri	Moniteau	2	3	0
Missouri	Monroe	2	3	0
Missouri	Montgomery	3	4	2
Missouri	Morgan	2	3	0
Missouri	New Madrid	2	3	0
Missouri	Newton	2	3	0
Missouri	Nodaway	2	3	0
Missouri	Oregon	2	3	0
Missouri	Osage	2	3	1
Missouri	Ozark	2	3	0
Missouri	Pemiscot	2	3	1
Missouri	Perry	2	3	0
Missouri	Pettis	2	3	0
Missouri	Phelps	2	3	0
Missouri	Pike	2	3	0
Missouri	Platte	12	16	9
Missouri	Polk	2	3	1
Missouri	Pulaski	2	3	1
Missouri	Putnam	2	3	0
Missouri	Ralls	2	3	0
Missouri	Randolph	2	3	0
Missouri	Ray	2	3	0
Missouri	Reynolds	2	3	0
Missouri	Ripley	2	3	1
Missouri	Saline	2	3	0
Missouri	Schuyler	2	3	0

APPENDIX A.—NOTICE OF CAPACITY REQUIREMENTS BY COUNTY FOR TELECOMMUNICATIONS CARRIERS PROVIDING LOCAL SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a county.]*

State	County	County requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
Missouri	Scotland	4	6	3
Missouri	Scott	2	3	1
Missouri	Shannon	2	3	0
Missouri	Shelby	2	3	0
Missouri	St. Charles	9	12	7
Missouri	St. Clair	2	3	0
Missouri	St. Francois	3	4	2
Missouri	St. Louis	80	105	63
Missouri	St. Louis City	46	60	36
Missouri	Ste. Genevieve	2	3	1
Missouri	Stoddard	2	3	0
Missouri	Stone	2	3	0
Missouri	Sullivan	2	3	0
Missouri	Taney	2	3	0
Missouri	Texas	2	3	0
Missouri	Vernon	2	3	0
Missouri	Warren	2	3	0
Missouri	Washington	2	3	1
Missouri	Wayne	2	3	0
Missouri	Webster	2	3	0
Missouri	Worth	2	3	0
Missouri	Wright	2	3	0
Montana	Beaverhead	2	3	0
Montana	Big Horn	2	3	0
Montana	Blaine	2	3	0
Montana	Broadwater	2	3	0
Montana	Carbon	2	3	0
Montana	Carter	2	3	0
Montana	Cascade	2	3	0
Montana	Chouteau	2	3	0
Montana	Custer	8	11	6
Montana	Daniels	2	3	0
Montana	Dawson	2	3	0
Montana	Deer Lodge	2	3	0
Montana	Fallon	2	3	0
Montana	Fergus	4	6	3
Montana	Flathead	41	54	32
Montana	Gallatin	13	17	10
Montana	Garfield	2	3	0
Montana	Glacier	2	3	0
Montana	Golden Valley	2	3	0
Montana	Granite	2	3	0
Montana	Hill	2	3	0
Montana	Jefferson	2	3	0
Montana	Judith Basin	3	4	2
Montana	Lake	3	4	2
Montana	Lewis and Clark	21	28	16
Montana	Liberty	2	3	0
Montana	Lincoln	4	6	3
Montana	Madison	2	3	0
Montana	McCone	2	3	0
Montana	Meagher	2	3	0
Montana	Mineral	2	3	0
Montana	Missoula	11	15	8
Montana	Musselshell	2	3	0
Montana	Park	2	3	0
Montana	Petroleum	2	3	0
Montana	Phillips	2	3	0
Montana	Pondera	2	3	0
Montana	Powder River	2	3	0
Montana	Powell	2	3	0
Montana	Prairie	2	3	0
Montana	Ravalli	2	3	1

APPENDIX A.—NOTICE OF CAPACITY REQUIREMENTS BY COUNTY FOR TELECOMMUNICATIONS CARRIERS PROVIDING LOCAL SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a county.]*

State	County	County requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
Montana	Richland	2	3	0
Montana	Roosevelt	2	3	0
Montana	Rosebud	2	3	0
Montana	Sanders	2	3	0
Montana	Sheridan	2	3	0
Montana	Silver Bow	8	11	6
Montana	Stillwater	2	3	0
Montana	Sweet Grass	2	3	0
Montana	Teton	2	3	0
Montana	Toole	2	3	0
Montana	Treasure	2	3	0
Montana	Valley	2	3	0
Montana	Wheatland	2	3	0
Montana	Wibaux	2	3	0
Montana	Yellowstone	3	4	2
Montana	Yellowstone National Park	2	3	0
Nebraska	Adams	2	3	1
Nebraska	Antelope	2	3	0
Nebraska	Arthur	2	3	0
Nebraska	Banner	2	3	0
Nebraska	Blaine	2	3	0
Nebraska	Boone	2	3	0
Nebraska	Box Butte	2	3	0
Nebraska	Boyd	2	3	0
Nebraska	Brown	2	3	0
Nebraska	Buffalo	6	8	4
Nebraska	Burt	2	3	0
Nebraska	Butler	2	3	1
Nebraska	Cass	2	3	1
Nebraska	Cedar	6	8	4
Nebraska	Chase	2	3	0
Nebraska	Cherry	2	3	0
Nebraska	Cheyenne	2	3	0
Nebraska	Clay	2	3	1
Nebraska	Colfax	2	3	0
Nebraska	Cuming	2	3	1
Nebraska	Custer	2	3	0
Nebraska	Dakota	2	3	0
Nebraska	Dawes	2	3	0
Nebraska	Dawson	2	3	0
Nebraska	Deuel	2	3	0
Nebraska	Dixon	2	3	0
Nebraska	Dodge	2	3	1
Nebraska	Douglas	66	86	52
Nebraska	Dundy	2	3	0
Nebraska	Fillmore	2	3	0
Nebraska	Franklin	2	3	0
Nebraska	Frontier	2	3	0
Nebraska	Furnas	2	3	0
Nebraska	Gage	16	21	12
Nebraska	Garden	2	3	0
Nebraska	Garfield	2	3	0
Nebraska	Gosper	2	3	0
Nebraska	Grant	2	3	0
Nebraska	Greeley	2	3	0
Nebraska	Hall	13	17	10
Nebraska	Hamilton	24	32	19
Nebraska	Harlan	2	3	0
Nebraska	Hayes	2	3	0
Nebraska	Hitchcock	2	3	0
Nebraska	Holt	2	3	0
Nebraska	Hooker	2	3	0
Nebraska	Howard	2	3	0

APPENDIX A.—NOTICE OF CAPACITY REQUIREMENTS BY COUNTY FOR TELECOMMUNICATIONS CARRIERS PROVIDING LOCAL SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a county.]*

State	County	County requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
Nebraska	Jefferson	2	3	0
Nebraska	Johnson	2	3	0
Nebraska	Kearney	2	3	0
Nebraska	Keith	2	3	0
Nebraska	Keya Paha	2	3	0
Nebraska	Kimball	2	3	0
Nebraska	Knox	2	3	0
Nebraska	Lancaster	18	24	14
Nebraska	Lincoln	2	3	0
Nebraska	Logan	2	3	0
Nebraska	Loup	2	3	0
Nebraska	Madison	2	3	0
Nebraska	McPherson	2	3	0
Nebraska	Merrick	2	3	0
Nebraska	Morrill	4	6	3
Nebraska	Nance	2	3	0
Nebraska	Nemaha	2	3	0
Nebraska	Nuckolls	2	3	0
Nebraska	Otoe	2	3	0
Nebraska	Pawnee	2	3	0
Nebraska	Perkins	2	3	0
Nebraska	Phelps	2	3	0
Nebraska	Pierce	3	4	2
Nebraska	Platte	8	11	6
Nebraska	Polk	11	15	8
Nebraska	Red Willow	2	3	0
Nebraska	Richardson	3	4	2
Nebraska	Rock	2	3	0
Nebraska	Saline	6	8	4
Nebraska	Sarpy	9	12	7
Nebraska	Saunders	2	3	0
Nebraska	Scotts Bluff	4	6	3
Nebraska	Seward	3	4	2
Nebraska	Sheridan	2	3	1
Nebraska	Sherman	2	3	0
Nebraska	Sioux	2	3	0
Nebraska	Stanton	2	3	0
Nebraska	Thayer	2	3	0
Nebraska	Thomas	2	3	0
Nebraska	Thurston	2	3	0
Nebraska	Valley	2	3	0
Nebraska	Washington	2	3	0
Nebraska	Wayne	2	3	0
Nebraska	Webster	2	3	0
Nebraska	Wheeler	2	3	0
Nebraska	York	22	29	17
Nevada	Carson City	18	24	14
Nevada	Churchill	3	4	2
Nevada	Clark	422	550	335
Nevada	Douglas	8	11	6
Nevada	Elko	2	3	0
Nevada	Esmeralda	2	3	0
Nevada	Eureka	2	3	0
Nevada	Humboldt	2	3	0
Nevada	Lander	2	3	1
Nevada	Lincoln	2	3	0
Nevada	Lyon	2	3	0
Nevada	Mineral	2	3	0
Nevada	Nye	2	3	1
Nevada	Pershing	6	8	4
Nevada	Storey	2	3	0
Nevada	Washoe	46	60	36
Nevada	White Pine	2	3	0

APPENDIX A.—NOTICE OF CAPACITY REQUIREMENTS BY COUNTY FOR TELECOMMUNICATIONS CARRIERS PROVIDING LOCAL SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a county.]*

State	County	County requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
New Hampshire	Belknap	9	12	7
New Hampshire	Carroll	2	3	0
New Hampshire	Cheshire	9	12	7
New Hampshire	Coos	2	3	0
New Hampshire	Grafton	3	4	2
New Hampshire	Hillsborough	9	12	7
New Hampshire	Merrimack	18	24	14
New Hampshire	Rockingham	28	37	22
New Hampshire	Strafford	2	3	0
New Hampshire	Sullivan	2	3	1
New Jersey	Atlantic	36	47	28
New Jersey	Bergen	118	154	93
New Jersey	Burlington	28	37	22
New Jersey	Camden	45	59	35
New Jersey	Cape May	11	15	8
New Jersey	Cumberland	12	16	9
New Jersey	Essex	116	152	92
New Jersey	Gloucester	12	16	9
New Jersey	Hudson	56	73	44
New Jersey	Hunterdon	2	3	1
New Jersey	Mercer	24	32	19
New Jersey	Middlesex	47	62	37
New Jersey	Monmouth	32	42	25
New Jersey	Morris	41	54	32
New Jersey	Ocean	29	38	23
New Jersey	Passaic	42	55	33
New Jersey	Salem	2	3	0
New Jersey	Somerset	8	11	6
New Jersey	Sussex	6	8	4
New Jersey	Union	50	66	39
New Jersey	Warren	2	3	1
New Mexico	Bernalillo	61	80	48
New Mexico	Catron	2	3	0
New Mexico	Chaves	4	6	3
New Mexico	Cibola	6	8	4
New Mexico	Colfax	2	3	0
New Mexico	Curry	2	3	0
New Mexico	DeBaca	2	3	0
New Mexico	Dona Ana	22	29	17
New Mexico	Eddy	7	10	5
New Mexico	Grant	2	3	0
New Mexico	Guadalupe	2	3	0
New Mexico	Harding	2	3	0
New Mexico	Hidalgo	4	6	3
New Mexico	Lea	2	3	0
New Mexico	Lincoln	2	3	1
New Mexico	Los Alamos	2	3	0
New Mexico	Luna	8	11	6
New Mexico	McKinley	2	3	0
New Mexico	Mora	2	3	0
New Mexico	Otero	4	6	3
New Mexico	Quay	2	3	0
New Mexico	Rio Arriba	2	3	0
New Mexico	Roosevelt	3	4	2
New Mexico	San Juan	12	16	9
New Mexico	San Miguel	2	3	0
New Mexico	Sandoval	3	4	2
New Mexico	Santa Fe	6	8	4
New Mexico	Sierra	2	3	0
New Mexico	Socorro	2	3	0
New Mexico	Taos	4	6	3
New Mexico	Torrance	2	3	0
New Mexico	Union	2	3	0

APPENDIX A.—NOTICE OF CAPACITY REQUIREMENTS BY COUNTY FOR TELECOMMUNICATIONS CARRIERS PROVIDING LOCAL SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a county.]*

State	County	County requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
New Mexico	Valencia	3	4	2
New York	Albany	43	57	34
New York	Allegany	2	3	1
New York	Bronx	136	178	108
New York	Broome	42	55	33
New York	Cattaraugus	3	4	2
New York	Cayuga	13	17	10
New York	Chautauqua	2	3	1
New York	Chemung	2	3	1
New York	Chenango	3	4	2
New York	Clinton	6	8	4
New York	Columbia	4	6	3
New York	Cortland	2	3	0
New York	Delaware	19	25	15
New York	Dutchess	12	16	9
New York	Erie	92	120	73
New York	Essex	2	3	0
New York	Franklin	3	4	2
New York	Fulton	2	3	1
New York	Genesee	17	23	13
New York	Greene	3	4	2
New York	Hamilton	4	6	3
New York	Herkimer	2	3	0
New York	Jefferson	8	11	6
New York	Kings	220	287	174
New York	Lewis	2	3	0
New York	Livingston	3	4	2
New York	Madison	4	6	3
New York	Monroe	128	167	101
New York	Montgomery	2	3	1
New York	Nassau	154	201	122
New York	New York	401	523	318
New York	Niagara	16	21	12
New York	Oneida	41	54	32
New York	Onondaga	56	73	44
New York	Ontario	8	11	6
New York	Orange	27	36	21
New York	Orleans	2	3	0
New York	Oswego	17	23	13
New York	Otsego	6	8	4
New York	Putnam	12	16	9
New York	Queens	333	434	264
New York	Rensselaer	13	17	10
New York	Richmond	47	62	37
New York	Rockland	45	59	35
New York	Saratoga	7	10	5
New York	Schenectady	8	11	6
New York	Schoharie	3	4	2
New York	Schuyler	19	25	15
New York	Seneca	2	3	0
New York	St. Lawrence	4	6	3
New York	Steuben	8	11	6
New York	Suffolk	114	149	90
New York	Sullivan	4	6	3
New York	Tioga	3	4	2
New York	Tompkins	4	6	3
New York	Ulster	21	28	16
New York	Warren	7	10	5
New York	Washington	4	6	3
New York	Wayne	8	11	6
New York	Westchester	126	165	100
New York	Wyoming	2	3	1
New York	Yates	2	3	0

APPENDIX A.—NOTICE OF CAPACITY REQUIREMENTS BY COUNTY FOR TELECOMMUNICATIONS CARRIERS PROVIDING LOCAL SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a county.]*

State	County	County requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
North Carolina	Alamance	4	6	3
North Carolina	Alexander	2	3	0
North Carolina	Alleghany	12	16	9
North Carolina	Anson	3	4	2
North Carolina	Ashe	2	3	0
North Carolina	Avery	2	3	0
North Carolina	Beaufort	2	3	0
North Carolina	Bertie	2	3	0
North Carolina	Bladen	2	3	0
North Carolina	Brunswick	11	15	8
North Carolina	Buncombe	11	15	8
North Carolina	Burke	2	3	1
North Carolina	Cabarrus	8	11	6
North Carolina	Caldwell	2	3	0
North Carolina	Camden	2	3	0
North Carolina	Carteret	2	3	0
North Carolina	Caswell	3	4	2
North Carolina	Catawba	2	3	1
North Carolina	Chatham	2	3	0
North Carolina	Cherokee	2	3	0
North Carolina	Chowan	2	3	0
North Carolina	Clay	2	3	0
North Carolina	Cleveland	4	6	3
North Carolina	Columbus	6	8	4
North Carolina	Craven	2	3	0
North Carolina	Cumberland	11	15	8
North Carolina	Currituck	2	3	0
North Carolina	Dare	2	3	1
North Carolina	Davidson	13	17	10
North Carolina	Davie	2	3	0
North Carolina	Duplin	2	3	0
North Carolina	Durham	6	8	4
North Carolina	Edgecombe	2	3	0
North Carolina	Forsyth	41	54	32
North Carolina	Franklin	2	3	1
North Carolina	Gaston	4	6	3
North Carolina	Gates	2	3	0
North Carolina	Graham	2	3	0
North Carolina	Granville	11	15	8
North Carolina	Greene	2	3	0
North Carolina	Guilford	14	19	11
North Carolina	Halifax	4	6	3
North Carolina	Harnett	2	3	0
North Carolina	Haywood	2	3	0
North Carolina	Henderson	8	11	6
North Carolina	Hertford	6	8	4
North Carolina	Hoke	2	3	0
North Carolina	Hyde	2	3	0
North Carolina	Iredell	6	8	4
North Carolina	Jackson	7	10	5
North Carolina	Johnston	2	3	0
North Carolina	Jones	2	3	0
North Carolina	Lee	2	3	0
North Carolina	Lenoir	6	8	4
North Carolina	Lincoln	2	3	0
North Carolina	Macon	6	8	4
North Carolina	Madison	2	3	0
North Carolina	Martin	2	3	0
North Carolina	McDowell	2	3	0
North Carolina	Mecklenburg	13	17	10
North Carolina	Mitchell	2	3	1
North Carolina	Montgomery	4	6	3
North Carolina	Moore	11	15	8

APPENDIX A.—NOTICE OF CAPACITY REQUIREMENTS BY COUNTY FOR TELECOMMUNICATIONS CARRIERS PROVIDING LOCAL SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a county.]*

State	County	County requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
North Carolina	Nash	7	10	5
North Carolina	New Hanover	3	4	2
North Carolina	Northampton	4	6	3
North Carolina	Onslow	2	3	1
North Carolina	Orange	2	3	0
North Carolina	Pamlico	2	3	0
North Carolina	Pasquotank	2	3	0
North Carolina	Pender	2	3	0
North Carolina	Perquimans	2	3	0
North Carolina	Person	2	3	0
North Carolina	Pitt	31	41	24
North Carolina	Polk	2	3	0
North Carolina	Randolph	29	38	23
North Carolina	Richmond	2	3	0
North Carolina	Robeson	2	3	0
North Carolina	Rockingham	2	3	0
North Carolina	Rowan	9	12	7
North Carolina	Rutherford	2	3	1
North Carolina	Sampson	2	3	0
North Carolina	Scotland	2	3	0
North Carolina	Stanly	2	3	0
North Carolina	Stokes	2	3	0
North Carolina	Surry	3	4	2
North Carolina	Swain	2	3	0
North Carolina	Transylvania	13	17	10
North Carolina	Tyrrell	2	3	0
North Carolina	Union	2	3	0
North Carolina	Vance	3	4	2
North Carolina	Wake	22	29	17
North Carolina	Warren	2	3	0
North Carolina	Washington	2	3	0
North Carolina	Watauga	2	3	0
North Carolina	Wayne	2	3	1
North Carolina	Wilkes	2	3	0
North Carolina	Wilson	2	3	0
North Carolina	Yadkin	2	3	0
North Carolina	Yancey	2	3	0
North Dakota	Adams	2	3	0
North Dakota	Barnes	2	3	0
North Dakota	Benson	2	3	0
North Dakota	Billings	2	3	0
North Dakota	Bottineau	2	3	0
North Dakota	Bowman	2	3	0
North Dakota	Burke	2	3	0
North Dakota	Burleigh	6	8	4
North Dakota	Cass	14	19	11
North Dakota	Cavalier	2	3	0
North Dakota	Dickey	2	3	0
North Dakota	Divide	2	3	0
North Dakota	Dunn	2	3	0
North Dakota	Eddy	2	3	0
North Dakota	Emmons	2	3	0
North Dakota	Foster	2	3	0
North Dakota	Golden Valley	2	3	0
North Dakota	Grand Forks	3	4	2
North Dakota	Grant	2	3	0
North Dakota	Griggs	2	3	0
North Dakota	Hettinger	2	3	0
North Dakota	Kidder	2	3	0
North Dakota	LaMoure	3	4	2
North Dakota	Logan	2	3	0
North Dakota	McHenry	2	3	0
North Dakota	McIntosh	2	3	0

APPENDIX A.—NOTICE OF CAPACITY REQUIREMENTS BY COUNTY FOR TELECOMMUNICATIONS CARRIERS PROVIDING LOCAL SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a county.]*

State	County	County requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
North Dakota	McKenzie	7	10	5
North Dakota	McLean	2	3	1
North Dakota	Mercer	2	3	0
North Dakota	Morton	2	3	0
North Dakota	Mountrail	8	11	6
North Dakota	Nelson	2	3	0
North Dakota	Oliver	2	3	0
North Dakota	Pembina	2	3	0
North Dakota	Pierce	2	3	0
North Dakota	Ramsey	2	3	0
North Dakota	Ransom	2	3	0
North Dakota	Renville	3	4	2
North Dakota	Richland	2	3	0
North Dakota	Rolette	14	19	11
North Dakota	Sargent	2	3	0
North Dakota	Sheridan	2	3	0
North Dakota	Sioux	2	3	0
North Dakota	Slope	2	3	0
North Dakota	Stark	2	3	0
North Dakota	Steele	2	3	1
North Dakota	Stutsman	3	4	2
North Dakota	Towner	2	3	0
North Dakota	Traill	2	3	1
North Dakota	Walsh	2	3	0
North Dakota	Ward	8	11	6
North Dakota	Wells	2	3	0
North Dakota	Williams	2	3	0
Ohio	Adams	2	3	0
Ohio	Allen	12	16	9
Ohio	Ashland	2	3	0
Ohio	Ashtabula	2	3	1
Ohio	Athens	2	3	0
Ohio	Auglaize	2	3	0
Ohio	Belmont	2	3	0
Ohio	Brown	2	3	0
Ohio	Butler	4	6	3
Ohio	Carroll	2	3	1
Ohio	Champaign	2	3	0
Ohio	Clark	2	3	0
Ohio	Clermont	3	4	2
Ohio	Clinton	2	3	0
Ohio	Columbiana	3	4	2
Ohio	Coshocton	2	3	0
Ohio	Crawford	2	3	0
Ohio	Cuyahoga	168	219	133
Ohio	Darke	2	3	0
Ohio	Defiance	3	4	2
Ohio	Delaware	2	3	1
Ohio	Erie	2	3	0
Ohio	Fairfield	2	3	1
Ohio	Fayette	2	3	0
Ohio	Franklin	29	38	23
Ohio	Fulton	2	3	0
Ohio	Gallia	2	3	0
Ohio	Geauga	9	12	7
Ohio	Greene	6	8	4
Ohio	Guernsey	2	3	0
Ohio	Hamilton	50	66	39
Ohio	Hancock	3	4	2
Ohio	Hardin	2	3	0
Ohio	Harrison	2	3	0
Ohio	Henry	2	3	0
Ohio	Highland	2	3	1

APPENDIX A.—NOTICE OF CAPACITY REQUIREMENTS BY COUNTY FOR TELECOMMUNICATIONS CARRIERS PROVIDING LOCAL SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a county.]*

State	County	County requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
Ohio	Hocking	2	3	0
Ohio	Holmes	2	3	0
Ohio	Huron	2	3	0
Ohio	Jackson	2	3	0
Ohio	Jefferson	2	3	0
Ohio	Knox	2	3	1
Ohio	Lake	13	17	10
Ohio	Lawrence	2	3	0
Ohio	Licking	7	10	5
Ohio	Logan	2	3	1
Ohio	Lorain	2	3	1
Ohio	Lucas	53	70	42
Ohio	Madison	2	3	0
Ohio	Mahoning	24	32	19
Ohio	Marion	4	6	3
Ohio	Medina	3	4	2
Ohio	Meigs	2	3	0
Ohio	Mercer	2	3	0
Ohio	Miami	2	3	0
Ohio	Monroe	2	3	0
Ohio	Montgomery	29	38	23
Ohio	Morgan	2	3	1
Ohio	Morrow	2	3	0
Ohio	Muskingum	2	3	0
Ohio	Noble	2	3	0
Ohio	Ottawa	2	3	0
Ohio	Paulding	2	3	1
Ohio	Perry	2	3	0
Ohio	Pickaway	2	3	0
Ohio	Pike	2	3	0
Ohio	Portage	16	21	12
Ohio	Preble	4	6	3
Ohio	Putnam	2	3	0
Ohio	Richland	2	3	0
Ohio	Ross	2	3	0
Ohio	Sandusky	2	3	0
Ohio	Scioto	2	3	0
Ohio	Seneca	2	3	0
Ohio	Shelby	2	3	0
Ohio	Stark	7	10	5
Ohio	Summit	40	53	31
Ohio	Trumbull	2	3	0
Ohio	Tuscarawas	4	6	3
Ohio	Union	2	3	0
Ohio	Van Wert	2	3	0
Ohio	Vinton	2	3	0
Ohio	Warren	7	10	5
Ohio	Washington	2	3	1
Ohio	Wayne	9	12	7
Ohio	Williams	2	3	0
Ohio	Wood	2	3	0
Ohio	Wyandot	2	3	0
Oklahoma	Adair	2	3	0
Oklahoma	Alfalfa	2	3	1
Oklahoma	Atoka	6	8	4
Oklahoma	Beaver	2	3	1
Oklahoma	Beckham	2	3	0
Oklahoma	Blaine	2	3	1
Oklahoma	Bryan	2	3	0
Oklahoma	Caddo	9	12	7
Oklahoma	Canadian	8	11	6
Oklahoma	Carter	2	3	0
Oklahoma	Cherokee	2	3	0

APPENDIX A.—NOTICE OF CAPACITY REQUIREMENTS BY COUNTY FOR TELECOMMUNICATIONS CARRIERS PROVIDING LOCAL SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a county.]*

State	County	County requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
Oklahoma	Choctaw	2	3	1
Oklahoma	Cimarron	2	3	0
Oklahoma	Cleveland	19	25	15
Oklahoma	Coal	2	3	0
Oklahoma	Comanche	19	25	15
Oklahoma	Cotton	2	3	0
Oklahoma	Craig	2	3	0
Oklahoma	Creek	7	10	5
Oklahoma	Custer	2	3	0
Oklahoma	Delaware	2	3	0
Oklahoma	Dewey	2	3	0
Oklahoma	Ellis	2	3	0
Oklahoma	Garfield	2	3	0
Oklahoma	Garvin	3	4	2
Oklahoma	Grady	7	10	5
Oklahoma	Grant	2	3	0
Oklahoma	Greer	2	3	1
Oklahoma	Harmon	2	3	0
Oklahoma	Harper	2	3	0
Oklahoma	Haskell	2	3	0
Oklahoma	Hughes	2	3	0
Oklahoma	Jackson	2	3	0
Oklahoma	Jefferson	2	3	0
Oklahoma	Johnston	2	3	0
Oklahoma	Kay	2	3	1
Oklahoma	Kingfisher	2	3	0
Oklahoma	Kiowa	2	3	1
Oklahoma	Latimer	2	3	0
Oklahoma	Le Flore	2	3	0
Oklahoma	Lincoln	3	4	2
Oklahoma	Logan	2	3	0
Oklahoma	Love	2	3	0
Oklahoma	Major	2	3	0
Oklahoma	Marshall	2	3	0
Oklahoma	Mayes	6	8	4
Oklahoma	McClain	6	8	4
Oklahoma	McCurtain	2	3	0
Oklahoma	McIntosh	2	3	0
Oklahoma	Murray	2	3	0
Oklahoma	Muskogee	2	3	0
Oklahoma	Noble	2	3	0
Oklahoma	Nowata	2	3	1
Oklahoma	Okfuskee	2	3	0
Oklahoma	Oklahoma	108	141	85
Oklahoma	Okmulgee	2	3	1
Oklahoma	Osage	2	3	0
Oklahoma	Ottawa	2	3	0
Oklahoma	Pawnee	2	3	0
Oklahoma	Payne	2	3	0
Oklahoma	Pittsburg	2	3	0
Oklahoma	Pontotoc	2	3	0
Oklahoma	Pottawatomie	4	6	3
Oklahoma	Pushmataha	2	3	1
Oklahoma	Roger Mills	2	3	0
Oklahoma	Rogers	6	8	4
Oklahoma	Seminole	2	3	0
Oklahoma	Sequoyah	2	3	0
Oklahoma	Stephens	9	12	7
Oklahoma	Texas	2	3	0
Oklahoma	Tillman	2	3	0
Oklahoma	Tulsa	21	28	16
Oklahoma	Wagoner	2	3	0
Oklahoma	Washington	2	3	0

APPENDIX A.—NOTICE OF CAPACITY REQUIREMENTS BY COUNTY FOR TELECOMMUNICATIONS CARRIERS PROVIDING LOCAL SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a county.]*

State	County	County requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
Oklahoma	Washita	2	3	0
Oklahoma	Woods	2	3	0
Oklahoma	Woodward	2	3	1
Oregon	Baker	3	4	2
Oregon	Benton	7	10	5
Oregon	Clackamas	27	36	21
Oregon	Clatsop	8	11	6
Oregon	Columbia	3	4	2
Oregon	Coos	8	11	6
Oregon	Crook	2	3	0
Oregon	Curry	2	3	1
Oregon	Deschutes	6	8	4
Oregon	Douglas	2	3	0
Oregon	Gilliam	2	3	0
Oregon	Grant	2	3	0
Oregon	Harney	3	4	2
Oregon	Hood River	3	4	2
Oregon	Jackson	12	16	9
Oregon	Jefferson	6	8	4
Oregon	Josephine	2	3	1
Oregon	Klamath	6	8	4
Oregon	Lake	2	3	0
Oregon	Lane	26	34	20
Oregon	Lincoln	6	8	4
Oregon	Linn	2	3	0
Oregon	Malheur	2	3	0
Oregon	Marion	38	50	30
Oregon	Morrow	2	3	0
Oregon	Multnomah	105	137	83
Oregon	Polk	2	3	1
Oregon	Sherman	2	3	0
Oregon	Tillamook	2	3	1
Oregon	Umatilla	2	3	1
Oregon	Union	2	3	0
Oregon	Wallowa	4	6	3
Oregon	Wasco	3	4	2
Oregon	Washington	27	36	21
Oregon	Wheeler	2	3	0
Oregon	Yamhill	7	10	5
Pennsylvania	Adams	11	15	8
Pennsylvania	Allegheny	183	239	145
Pennsylvania	Armstrong	6	8	4
Pennsylvania	Beaver	7	10	5
Pennsylvania	Bedford	2	3	1
Pennsylvania	Berks	40	53	31
Pennsylvania	Blair	16	21	12
Pennsylvania	Bradford	19	25	15
Pennsylvania	Bucks	36	47	28
Pennsylvania	Butler	11	15	8
Pennsylvania	Cambria	18	24	14
Pennsylvania	Cameron	2	3	0
Pennsylvania	Carbon	7	10	5
Pennsylvania	Centre	11	15	8
Pennsylvania	Chester	21	28	16
Pennsylvania	Clarion	2	3	0
Pennsylvania	Clearfield	2	3	0
Pennsylvania	Clinton	2	3	0
Pennsylvania	Columbia	2	3	0
Pennsylvania	Crawford	4	6	3
Pennsylvania	Cumberland	7	10	5
Pennsylvania	Dauphin	22	29	17
Pennsylvania	Delaware	27	36	21
Pennsylvania	Elk	2	3	0

APPENDIX A.—NOTICE OF CAPACITY REQUIREMENTS BY COUNTY FOR TELECOMMUNICATIONS CARRIERS PROVIDING LOCAL SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a county.]*

State	County	County requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
Pennsylvania	Erie	8	11	6
Pennsylvania	Fayette	2	3	1
Pennsylvania	Forest	2	3	1
Pennsylvania	Franklin	2	3	0
Pennsylvania	Fulton	2	3	0
Pennsylvania	Greene	2	3	1
Pennsylvania	Huntingdon	6	8	4
Pennsylvania	Indiana	2	3	1
Pennsylvania	Jefferson	2	3	0
Pennsylvania	Juniata	2	3	0
Pennsylvania	Lackawanna	11	15	8
Pennsylvania	Lancaster	19	25	15
Pennsylvania	Lawrence	21	28	16
Pennsylvania	Lebanon	2	3	1
Pennsylvania	Lehigh	27	36	21
Pennsylvania	Luzerne	34	45	27
Pennsylvania	Lycoming	4	6	3
Pennsylvania	McKean	2	3	0
Pennsylvania	Mercer	3	4	2
Pennsylvania	Mifflin	2	3	0
Pennsylvania	Monroe	21	28	16
Pennsylvania	Montgomery	79	103	62
Pennsylvania	Montour	2	3	0
Pennsylvania	Northampton	21	28	16
Pennsylvania	Northumberland	2	3	1
Pennsylvania	Perry	8	11	6
Pennsylvania	Philadelphia	240	313	190
Pennsylvania	Pike	2	3	0
Pennsylvania	Potter	3	4	2
Pennsylvania	Schuylkill	4	6	3
Pennsylvania	Snyder	3	4	2
Pennsylvania	Somerset	8	11	6
Pennsylvania	Sullivan	2	3	0
Pennsylvania	Susquehanna	6	8	4
Pennsylvania	Tioga	18	24	14
Pennsylvania	Union	2	3	0
Pennsylvania	Venango	2	3	0
Pennsylvania	Warren	2	3	1
Pennsylvania	Washington	2	3	1
Pennsylvania	Wayne	11	15	8
Pennsylvania	Westmoreland	8	11	6
Pennsylvania	Wyoming	2	3	0
Pennsylvania	York	19	25	15
Puerto Rico	Puerto Rico	89	116	70
Rhode Island	Bristol	2	3	0
Rhode Island	Kent	9	12	7
Rhode Island	Newport	2	3	1
Rhode Island	Providence	66	86	52
Rhode Island	Washington	3	4	2
South Carolina	Abbeville	17	23	13
South Carolina	Aiken	2	3	1
South Carolina	Allendale	2	3	0
South Carolina	Anderson	17	23	13
South Carolina	Bamberg	3	4	2
South Carolina	Barnwell	6	8	4
South Carolina	Beaufort	3	4	2
South Carolina	Berkeley	2	3	1
South Carolina	Calhoun	2	3	0
South Carolina	Charleston	29	38	23
South Carolina	Cherokee	2	3	0
South Carolina	Chester	2	3	0
South Carolina	Chesterfield	2	3	0
South Carolina	Clarendon	2	3	0

APPENDIX A.—NOTICE OF CAPACITY REQUIREMENTS BY COUNTY FOR TELECOMMUNICATIONS CARRIERS PROVIDING LOCAL SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a county.]*

State	County	County requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
South Carolina	Colleton	2	3	1
South Carolina	Darlington	2	3	0
South Carolina	Dillon	2	3	0
South Carolina	Dorchester	4	6	3
South Carolina	Edgefield	2	3	0
South Carolina	Fairfield	2	3	0
South Carolina	Florence	4	6	3
South Carolina	Georgetown	2	3	0
South Carolina	Greenville	12	16	9
South Carolina	Greenwood	2	3	0
South Carolina	Hampton	2	3	0
South Carolina	Horry	2	3	1
South Carolina	Jasper	2	3	1
South Carolina	Kershaw	2	3	1
South Carolina	Lancaster	2	3	0
South Carolina	Laurens	2	3	1
South Carolina	Lee	2	3	0
South Carolina	Lexington	3	4	2
South Carolina	Marion	2	3	0
South Carolina	Marlboro	2	3	1
South Carolina	McCormick	11	15	8
South Carolina	Newberry	2	3	0
South Carolina	Oconee	3	4	2
South Carolina	Orangeburg	2	3	0
South Carolina	Pickens	2	3	1
South Carolina	Richland	26	34	20
South Carolina	Saluda	2	3	0
South Carolina	Spartanburg	7	10	5
South Carolina	Sumter	2	3	0
South Carolina	Union	8	11	6
South Carolina	Williamsburg	2	3	1
South Carolina	York	4	6	3
South Dakota	Aurora	3	4	2
South Dakota	Beadle	3	4	2
South Dakota	Bennett	2	3	0
South Dakota	Bon Homme	2	3	0
South Dakota	Brookings	6	8	4
South Dakota	Brown	2	3	1
South Dakota	Brule	2	3	0
South Dakota	Buffalo	2	3	0
South Dakota	Butte	2	3	0
South Dakota	Campbell	2	3	0
South Dakota	Charles Mix	2	3	0
South Dakota	Clark	2	3	0
South Dakota	Clay	2	3	0
South Dakota	Codington	2	3	0
South Dakota	Corson	2	3	0
South Dakota	Custer	2	3	0
South Dakota	Davison	2	3	0
South Dakota	Day	2	3	0
South Dakota	Deuel	2	3	0
South Dakota	Dewey	4	6	3
South Dakota	Douglas	2	3	1
South Dakota	Edmunds	2	3	0
South Dakota	Fall River	2	3	0
South Dakota	Faulk	2	3	0
South Dakota	Grant	2	3	0
South Dakota	Gregory	2	3	0
South Dakota	Haakon	2	3	0
South Dakota	Hamlin	2	3	0
South Dakota	Hand	2	3	0
South Dakota	Hanson	2	3	0
South Dakota	Harding	2	3	0

APPENDIX A.—NOTICE OF CAPACITY REQUIREMENTS BY COUNTY FOR TELECOMMUNICATIONS CARRIERS PROVIDING LOCAL SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a county.]*

State	County	County requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
South Dakota	Hughes	2	3	0
South Dakota	Hutchinson	2	3	0
South Dakota	Hyde	2	3	0
South Dakota	Jackson	2	3	0
South Dakota	Jerauld	2	3	0
South Dakota	Jones	2	3	0
South Dakota	Kingsbury	2	3	0
South Dakota	Lake	2	3	0
South Dakota	Lawrence	2	3	0
South Dakota	Lincoln	2	3	0
South Dakota	Lyman	2	3	0
South Dakota	Marshall	2	3	0
South Dakota	McCook	2	3	0
South Dakota	McPherson	2	3	0
South Dakota	Meade	2	3	0
South Dakota	Mellette	2	3	0
South Dakota	Miner	2	3	0
South Dakota	Minnehaha	13	17	10
South Dakota	Moody	2	3	0
South Dakota	Pennington	7	10	5
South Dakota	Perkins	2	3	0
South Dakota	Potter	2	3	0
South Dakota	Roberts	2	3	0
South Dakota	Sanborn	2	3	0
South Dakota	Shannon	2	3	0
South Dakota	Spink	2	3	0
South Dakota	Stanley	2	3	0
South Dakota	Sully	2	3	0
South Dakota	Todd	2	3	0
South Dakota	Tripp	2	3	0
South Dakota	Turner	2	3	0
South Dakota	Union	2	3	0
South Dakota	Walworth	2	3	0
South Dakota	Yankton	2	3	0
South Dakota	Ziebach	3	4	2
Tennessee	Anderson	2	3	0
Tennessee	Bedford	6	8	4
Tennessee	Benton	9	12	7
Tennessee	Bledsoe	2	3	0
Tennessee	Blount	12	16	9
Tennessee	Bradley	6	8	4
Tennessee	Campbell	3	4	2
Tennessee	Cannon	2	3	0
Tennessee	Carroll	3	4	2
Tennessee	Carter	2	3	0
Tennessee	Cheatham	2	3	0
Tennessee	Chester	2	3	0
Tennessee	Claiborne	2	3	0
Tennessee	Clay	2	3	0
Tennessee	Cocke	4	6	3
Tennessee	Coffee	3	4	2
Tennessee	Crockett	2	3	0
Tennessee	Cumberland	2	3	0
Tennessee	Davidson	41	54	32
Tennessee	Decatur	2	3	0
Tennessee	DeKalb	2	3	0
Tennessee	Dickson	2	3	0
Tennessee	Dyer	2	3	0
Tennessee	Fayette	2	3	0
Tennessee	Fentress	2	3	0
Tennessee	Franklin	2	3	0
Tennessee	Gibson	4	6	3
Tennessee	Giles	2	3	1

APPENDIX A.—NOTICE OF CAPACITY REQUIREMENTS BY COUNTY FOR TELECOMMUNICATIONS CARRIERS PROVIDING LOCAL SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a county.]*

State	County	County requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
Tennessee	Grainger	2	3	0
Tennessee	Greene	7	10	5
Tennessee	Grundy	6	8	4
Tennessee	Hamblen	2	3	0
Tennessee	Hamilton	38	50	30
Tennessee	Hancock	2	3	0
Tennessee	Hardeman	2	3	0
Tennessee	Hardin	11	15	8
Tennessee	Hawkins	11	15	8
Tennessee	Haywood	2	3	0
Tennessee	Henderson	2	3	0
Tennessee	Henry	2	3	0
Tennessee	Hickman	2	3	0
Tennessee	Houston	2	3	0
Tennessee	Humphreys	2	3	0
Tennessee	Jackson	2	3	0
Tennessee	Jefferson	4	6	3
Tennessee	Johnson	2	3	0
Tennessee	Knox	53	70	42
Tennessee	Lake	2	3	0
Tennessee	Lauderdale	2	3	0
Tennessee	Lawrence	2	3	1
Tennessee	Lewis	2	3	0
Tennessee	Lincoln	2	3	0
Tennessee	Loudon	7	10	5
Tennessee	Macon	3	4	2
Tennessee	Madison	2	3	0
Tennessee	Marion	4	6	3
Tennessee	Marshall	3	4	2
Tennessee	Maury	2	3	0
Tennessee	McMinn	3	4	2
Tennessee	McNairy	2	3	0
Tennessee	Meigs	3	4	2
Tennessee	Monroe	2	3	0
Tennessee	Montgomery	2	3	0
Tennessee	Moore	2	3	0
Tennessee	Morgan	2	3	0
Tennessee	Obion	2	3	0
Tennessee	Overton	2	3	0
Tennessee	Perry	2	3	0
Tennessee	Pickett	2	3	0
Tennessee	Polk	2	3	1
Tennessee	Putnam	2	3	0
Tennessee	Rhea	2	3	0
Tennessee	Roane	12	16	9
Tennessee	Robertson	3	4	2
Tennessee	Rutherford	2	3	0
Tennessee	Scott	2	3	0
Tennessee	Sequatchie	2	3	0
Tennessee	Sevier	2	3	1
Tennessee	Shelby	23	30	18
Tennessee	Smith	2	3	0
Tennessee	Stewart	2	3	0
Tennessee	Sullivan	13	17	10
Tennessee	Sumner	3	4	2
Tennessee	Tipton	2	3	0
Tennessee	Trousdale	2	3	0
Tennessee	Unicoi	2	3	0
Tennessee	Union	2	3	0
Tennessee	Van Buren	2	3	0
Tennessee	Warren	2	3	0
Tennessee	Washington	2	3	0
Tennessee	Wayne	2	3	0

APPENDIX A.—NOTICE OF CAPACITY REQUIREMENTS BY COUNTY FOR TELECOMMUNICATIONS CARRIERS PROVIDING LOCAL SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a county.]*

State	County	County requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
Tennessee	Weakley	3	4	2
Tennessee	White	2	3	0
Tennessee	Williamson	3	4	2
Tennessee	Wilson	2	3	0
Texas	Anderson	12	16	9
Texas	Andrews	2	3	0
Texas	Angelina	13	17	10
Texas	Aransas	2	3	0
Texas	Archer	2	3	0
Texas	Armstrong	2	3	0
Texas	Atascosa	2	3	0
Texas	Austin	2	3	0
Texas	Bailey	2	3	0
Texas	Bandera	2	3	0
Texas	Bastrop	2	3	1
Texas	Baylor	2	3	0
Texas	Bee	2	3	0
Texas	Bell	9	12	7
Texas	Bexar	131	171	104
Texas	Blanco	2	3	0
Texas	Borden	2	3	0
Texas	Bosque	2	3	0
Texas	Bowie	22	29	17
Texas	Brazoria	27	36	21
Texas	Brazos	14	19	11
Texas	Brewster	2	3	1
Texas	Briscoe	2	3	0
Texas	Brooks	2	3	0
Texas	Brown	9	12	7
Texas	Burleson	2	3	0
Texas	Burnet	2	3	1
Texas	Caldwell	3	4	2
Texas	Calhoun	2	3	1
Texas	Callahan	2	3	0
Texas	Cameron	37	49	29
Texas	Camp	2	3	0
Texas	Carson	2	3	0
Texas	Cass	2	3	0
Texas	Castro	3	4	2
Texas	Chambers	3	4	2
Texas	Cherokee	6	8	4
Texas	Childress	2	3	0
Texas	Clay	2	3	0
Texas	Cochran	2	3	0
Texas	Coke	2	3	0
Texas	Coleman	2	3	0
Texas	Collin	32	42	25
Texas	Collingsworth	2	3	0
Texas	Colorado	4	6	3
Texas	Comal	2	3	0
Texas	Comanche	2	3	0
Texas	Concho	2	3	0
Texas	Cooke	12	16	9
Texas	Coryell	9	12	7
Texas	Cottle	2	3	0
Texas	Crane	6	8	4
Texas	Crockett	2	3	0
Texas	Crosby	2	3	0
Texas	Culberson	2	3	0
Texas	Dallam	2	3	0
Texas	Dallas	305	398	242
Texas	Dawson	2	3	0
Texas	Deaf Smith	2	3	0

APPENDIX A.—NOTICE OF CAPACITY REQUIREMENTS BY COUNTY FOR TELECOMMUNICATIONS CARRIERS PROVIDING LOCAL SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a county.]*

State	County	County requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
Texas	Delta	2	3	0
Texas	Denton	28	37	22
Texas	DeWitt	2	3	0
Texas	Dickens	2	3	0
Texas	Dimmit	2	3	0
Texas	Donley	2	3	0
Texas	Duval	2	3	1
Texas	Eastland	11	15	8
Texas	Ector	2	3	1
Texas	Edwards	2	3	0
Texas	El Paso	94	123	74
Texas	Ellis	19	25	15
Texas	Erath	2	3	0
Texas	Falls	2	3	0
Texas	Fannin	3	4	2
Texas	Fayette	2	3	0
Texas	Fisher	2	3	0
Texas	Floyd	2	3	0
Texas	Foard	2	3	0
Texas	Fort Bend	38	50	30
Texas	Franklin	2	3	0
Texas	Freestone	7	10	5
Texas	Frio	2	3	0
Texas	Gaines	2	3	0
Texas	Galveston	21	28	16
Texas	Garza	2	3	0
Texas	Gillespie	2	3	0
Texas	Glasscock	2	3	0
Texas	Goliad	2	3	0
Texas	Gonzales	2	3	0
Texas	Gray	2	3	0
Texas	Grayson	7	10	5
Texas	Gregg	13	17	10
Texas	Grimes	2	3	1
Texas	Guadalupe	2	3	0
Texas	Hale	2	3	0
Texas	Hall	2	3	0
Texas	Hamilton	2	3	0
Texas	Hansford	2	3	0
Texas	Hardeman	2	3	0
Texas	Hardin	2	3	0
Texas	Harris	371	484	294
Texas	Harrison	2	3	1
Texas	Hartley	2	3	0
Texas	Haskell	2	3	0
Texas	Hays	4	6	3
Texas	Hemphill	2	3	0
Texas	Henderson	13	17	10
Texas	Hidalgo	34	45	27
Texas	Hill	2	3	0
Texas	Hockley	3	4	2
Texas	Hood	2	3	1
Texas	Hopkins	2	3	0
Texas	Houston	2	3	0
Texas	Howard	2	3	0
Texas	Hudspeth	2	3	0
Texas	Hunt	7	10	5
Texas	Hutchinson	2	3	0
Texas	Irion	2	3	0
Texas	Jack	2	3	0
Texas	Jackson	2	3	0
Texas	Jasper	2	3	1
Texas	Jeff Davis	2	3	0

APPENDIX A.—NOTICE OF CAPACITY REQUIREMENTS BY COUNTY FOR TELECOMMUNICATIONS CARRIERS PROVIDING LOCAL SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a county.]*

State	County	County requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
Texas	Jefferson	3	4	2
Texas	Jim Hogg	3	4	2
Texas	Jim Wells	8	11	6
Texas	Johnson	8	11	6
Texas	Jones	2	3	1
Texas	Karnes	2	3	0
Texas	Kaufman	11	15	8
Texas	Kendall	2	3	0
Texas	Kenedy	2	3	0
Texas	Kent	2	3	0
Texas	Kerr	2	3	0
Texas	Kimble	2	3	0
Texas	King	2	3	0
Texas	Kinney	2	3	0
Texas	Kleberg	2	3	0
Texas	Knox	2	3	0
Texas	La Salle	2	3	0
Texas	Lamar	2	3	0
Texas	Lamb	2	3	0
Texas	Lampasas	2	3	0
Texas	Lavaca	2	3	1
Texas	Lee	2	3	0
Texas	Leon	2	3	0
Texas	Liberty	8	11	6
Texas	Limestone	2	3	0
Texas	Lipscomb	2	3	0
Texas	Live Oak	2	3	0
Texas	Llano	2	3	0
Texas	Loving	2	3	0
Texas	Lubbock	21	28	16
Texas	Lynn	2	3	0
Texas	Madison	2	3	0
Texas	Marion	2	3	0
Texas	Martin	2	3	0
Texas	Mason	2	3	0
Texas	Matagorda	2	3	0
Texas	Maverick	22	29	17
Texas	McCulloch	3	4	2
Texas	McLennan	17	23	13
Texas	McMullen	2	3	0
Texas	Medina	2	3	0
Texas	Menard	2	3	0
Texas	Midland	2	3	0
Texas	Milam	2	3	1
Texas	Mills	2	3	0
Texas	Mitchell	2	3	0
Texas	Montague	2	3	0
Texas	Montgomery	36	47	28
Texas	Moore	2	3	0
Texas	Morris	2	3	0
Texas	Motley	2	3	0
Texas	Nacogdoches	7	10	5
Texas	Navarro	4	6	3
Texas	Newton	2	3	0
Texas	Nolan	2	3	0
Texas	Nueces	21	28	16
Texas	Ochiltree	2	3	0
Texas	Oldham	2	3	0
Texas	Orange	3	4	2
Texas	Palo Pinto	2	3	1
Texas	Panola	3	4	2
Texas	Parker	8	11	6
Texas	Parmer	2	3	0

APPENDIX A.—NOTICE OF CAPACITY REQUIREMENTS BY COUNTY FOR TELECOMMUNICATIONS CARRIERS PROVIDING LOCAL SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a county.]*

State	County	County requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
Texas	Pecos	2	3	1
Texas	Polk	2	3	1
Texas	Potter	7	10	5
Texas	Presidio	4	6	3
Texas	Rains	2	3	0
Texas	Randall	2	3	0
Texas	Reagan	2	3	0
Texas	Real	2	3	0
Texas	Red River	2	3	0
Texas	Reeves	2	3	1
Texas	Refugio	2	3	0
Texas	Roberts	2	3	0
Texas	Robertson	2	3	0
Texas	Rockwall	11	15	8
Texas	Runnels	3	4	2
Texas	Rusk	2	3	0
Texas	Sabine	2	3	0
Texas	San Augustine	2	3	0
Texas	San Jacinto	2	3	0
Texas	San Patricio	2	3	0
Texas	San Saba	2	3	0
Texas	Schleicher	2	3	0
Texas	Scurry	6	8	4
Texas	Shackelford	2	3	0
Texas	Shelby	2	3	0
Texas	Sherman	2	3	0
Texas	Smith	2	3	0
Texas	Somervell	2	3	0
Texas	Starr	33	43	26
Texas	Stephens	2	3	1
Texas	Sterling	2	3	0
Texas	Stonewall	2	3	0
Texas	Sutton	2	3	1
Texas	Swisher	2	3	0
Texas	Tarrant	108	141	85
Texas	Taylor	13	17	10
Texas	Terrell	2	3	0
Texas	Terry	2	3	0
Texas	Throckmorton	2	3	0
Texas	Titus	2	3	0
Texas	Tom Green	3	4	2
Texas	Travis	89	116	70
Texas	Trinity	6	8	4
Texas	Tyler	3	4	2
Texas	Upshur	2	3	0
Texas	Upton	2	3	0
Texas	Uvalde	2	3	0
Texas	Val Verde	18	24	14
Texas	Van Zandt	2	3	0
Texas	Victoria	7	10	5
Texas	Walker	2	3	1
Texas	Waller	2	3	0
Texas	Ward	2	3	1
Texas	Washington	3	4	2
Texas	Webb	22	29	17
Texas	Wharton	2	3	0
Texas	Wheeler	2	3	0
Texas	Wichita	18	24	14
Texas	Wilbarger	2	3	0
Texas	Willacy	3	4	2
Texas	Williamson	8	11	6
Texas	Wilson	2	3	1
Texas	Winkler	2	3	0

APPENDIX A.—NOTICE OF CAPACITY REQUIREMENTS BY COUNTY FOR TELECOMMUNICATIONS CARRIERS PROVIDING LOCAL SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a county.]*

State	County	County requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
Texas	Wise	3	4	2
Texas	Wood	4	6	3
Texas	Yoakum	2	3	0
Texas	Young	2	3	0
Texas	Zapata	4	6	3
Texas	Zavala	2	3	0
Utah	Beaver	2	3	0
Utah	Box Elder	2	3	0
Utah	Cache	6	8	4
Utah	Carbon	2	3	0
Utah	Daggett	2	3	0
Utah	Davis	12	16	9
Utah	Duchesne	2	3	0
Utah	Emery	19	25	15
Utah	Garfield	2	3	0
Utah	Grand	2	3	0
Utah	Iron	2	3	1
Utah	Juab	2	3	0
Utah	Kane	2	3	0
Utah	Millard	2	3	0
Utah	Morgan	2	3	0
Utah	Piute	4	6	3
Utah	Rich	2	3	0
Utah	Salt Lake	110	144	87
Utah	San Juan	2	3	0
Utah	Sanpete	7	10	5
Utah	Sevier	2	3	0
Utah	Summit	6	8	4
Utah	Tooele	2	3	0
Utah	Uintah	2	3	0
Utah	Utah	21	28	16
Utah	Wasatch	3	4	2
Utah	Washington	2	3	1
Utah	Wayne	2	3	0
Utah	Weber	14	19	11
Vermont	Addison	2	3	0
Vermont	Bennington	2	3	0
Vermont	Caledonia	2	3	0
Vermont	Chittenden	2	3	1
Vermont	Essex	2	3	0
Vermont	Franklin	2	3	0
Vermont	Grand Isle	2	3	0
Vermont	Lamoille	2	3	0
Vermont	Orange	2	3	0
Vermont	Orleans	3	4	2
Vermont	Rutland	2	3	0
Vermont	Washington	2	3	1
Vermont	Windham	2	3	0
Vermont	Windsor	2	3	0
Virgin Islands	Virgin Islands	8	11	6
Virginia	Accomack	3	4	2
Virginia	Albemarle	2	3	0
Virginia	Alexandria City	29	38	23
Virginia	Alleghany	2	3	0
Virginia	Amelia	2	3	0
Virginia	Amherst	2	3	0
Virginia	Appomattox	2	3	0
Virginia	Arlington	23	30	18
Virginia	Augusta	7	10	5
Virginia	Bath	2	3	0
Virginia	Bedford	4	6	3
Virginia	Bedford City	2	3	0
Virginia	Bland	2	3	0

APPENDIX A.—NOTICE OF CAPACITY REQUIREMENTS BY COUNTY FOR TELECOMMUNICATIONS CARRIERS PROVIDING LOCAL SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a county.]*

State	County	County requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
Virginia	Botetourt	2	3	0
Virginia	Bristol City	2	3	0
Virginia	Brunswick	2	3	0
Virginia	Buchanan	2	3	0
Virginia	Buckingham	2	3	0
Virginia	Buena Vista City	2	3	0
Virginia	Campbell	3	4	2
Virginia	Caroline	2	3	0
Virginia	Carroll	2	3	0
Virginia	Charles City	2	3	1
Virginia	Charlotte	2	3	0
Virginia	Charlottesville City	3	4	2
Virginia	Chesapeake City	4	6	3
Virginia	Chesterfield	27	36	21
Virginia	Clarke	2	3	0
Virginia	Clifton Forge City	2	3	0
Virginia	Colonial Heights City	8	11	6
Virginia	Covington City	2	3	0
Virginia	Craig	2	3	0
Virginia	Culpeper	6	8	4
Virginia	Cumberland	2	3	0
Virginia	Danville City	3	4	2
Virginia	Dickenson	3	4	2
Virginia	Dinwiddie	2	3	0
Virginia	Emporia City	2	3	0
Virginia	Essex	2	3	0
Virginia	Fairfax	75	98	59
Virginia	Fairfax City	3	4	2
Virginia	Falls Church City	2	3	0
Virginia	Fauquier	2	3	0
Virginia	Floyd	11	15	8
Virginia	Fluvanna	2	3	0
Virginia	Franklin	3	4	2
Virginia	Franklin City	2	3	0
Virginia	Frederick	2	3	0
Virginia	Fredericksburg City	4	6	3
Virginia	Galax City	2	3	0
Virginia	Giles	4	6	3
Virginia	Gloucester	2	3	0
Virginia	Goochland	3	4	2
Virginia	Grayson	2	3	0
Virginia	Greene	2	3	0
Virginia	Greensville	2	3	0
Virginia	Halifax	27	36	21
Virginia	Hampton City	6	8	4
Virginia	Hanover	8	11	6
Virginia	Harrisonburg City	2	3	0
Virginia	Henrico	24	32	19
Virginia	Henry	4	6	3
Virginia	Highland	2	3	0
Virginia	Hopewell City	3	4	2
Virginia	Isle of Wight	2	3	0
Virginia	James City	2	3	0
Virginia	King and Queen	2	3	0
Virginia	King George	4	6	3
Virginia	King William	2	3	0
Virginia	Lancaster	2	3	0
Virginia	Lee	2	3	0
Virginia	Lexington City	2	3	0
Virginia	Loudoun	19	25	15
Virginia	Louisa	2	3	0
Virginia	Lunenburg	2	3	1
Virginia	Lynchburg City	3	4	2

APPENDIX A.—NOTICE OF CAPACITY REQUIREMENTS BY COUNTY FOR TELECOMMUNICATIONS CARRIERS PROVIDING LOCAL SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a county.]*

State	County	County requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
Virginia	Madison	2	3	0
Virginia	Manassas City	2	3	1
Virginia	Manassas Park City	2	3	0
Virginia	Martinsville City	2	3	1
Virginia	Mathews	2	3	0
Virginia	Mecklenburg	9	12	7
Virginia	Middlesex	2	3	0
Virginia	Montgomery	2	3	0
Virginia	Nelson	2	3	0
Virginia	New Kent	2	3	0
Virginia	Newport News City	12	16	9
Virginia	Norfolk City	14	19	11
Virginia	Northampton	2	3	0
Virginia	Northumberland	2	3	1
Virginia	Norton City	2	3	0
Virginia	Nottoway	2	3	0
Virginia	Orange	2	3	1
Virginia	Page	3	4	2
Virginia	Patrick	2	3	0
Virginia	Petersburg City	2	3	1
Virginia	Pittsylvania	8	11	6
Virginia	Poquoson City	2	3	0
Virginia	Portsmouth City	6	8	4
Virginia	Powhatan	3	4	2
Virginia	Prince Edward	6	8	4
Virginia	Prince George	2	3	0
Virginia	Prince William	17	23	13
Virginia	Pulaski	2	3	0
Virginia	Radford City	2	3	0
Virginia	Rappahannock	2	3	0
Virginia	Richmond	2	3	0
Virginia	Richmond City	26	34	20
Virginia	Roanoke	6	8	4
Virginia	Roanoke City	4	6	3
Virginia	Rockbridge	2	3	0
Virginia	Rockingham	2	3	0
Virginia	Russell	2	3	1
Virginia	Salem City	2	3	0
Virginia	Scott	2	3	0
Virginia	Shenandoah	2	3	1
Virginia	Smyth	2	3	0
Virginia	Southampton	2	3	0
Virginia	Spotsylvania	7	10	5
Virginia	Stafford	3	4	2
Virginia	Staunton City	2	3	0
Virginia	Suffolk City	2	3	0
Virginia	Surry	2	3	0
Virginia	Sussex	2	3	0
Virginia	Tazewell	4	6	3
Virginia	Virginia Beach City	42	55	33
Virginia	Warren	3	4	2
Virginia	Washington	2	3	0
Virginia	Waynesboro City	3	4	2
Virginia	Westmoreland	2	3	1
Virginia	Williamsburg City	3	4	2
Virginia	Winchester City	3	4	2
Virginia	Wise	8	11	6
Virginia	Wythe	2	3	0
Virginia	York	2	3	0
Washington	Adams	4	6	3
Washington	Asotin	2	3	0
Washington	Benton	3	4	2
Washington	Chelan	4	6	3

APPENDIX A.—NOTICE OF CAPACITY REQUIREMENTS BY COUNTY FOR TELECOMMUNICATIONS CARRIERS PROVIDING LOCAL SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a county.]*

State	County	County requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
Washington	Clallam	2	3	0
Washington	Clark	19	25	15
Washington	Columbia	2	3	0
Washington	Cowlitz	2	3	0
Washington	Douglas	2	3	0
Washington	Ferry	2	3	0
Washington	Franklin	7	10	5
Washington	Garfield	2	3	0
Washington	Grant	2	3	1
Washington	Grays Harbor	2	3	0
Washington	Island	2	3	0
Washington	Jefferson	2	3	0
Washington	King	153	200	121
Washington	Kitsap	4	6	3
Washington	Kittitas	2	3	0
Washington	Klickitat	2	3	0
Washington	Lewis	2	3	1
Washington	Lincoln	2	3	0
Washington	Mason	4	6	3
Washington	Okanogan	2	3	1
Washington	Pacific	2	3	0
Washington	Pend Oreille	2	3	0
Washington	Pierce	28	37	22
Washington	San Juan	2	3	0
Washington	Skagit	2	3	0
Washington	Skamania	2	3	0
Washington	Snohomish	45	59	35
Washington	Spokane	18	24	14
Washington	Stevens	2	3	0
Washington	Thurston	6	8	4
Washington	Wahkiakum	2	3	0
Washington	Walla Walla	2	3	0
Washington	Whatcom	17	23	13
Washington	Whitman	2	3	0
Washington	Yakima	17	23	13
West Virginia	Barbour	2	3	1
West Virginia	Berkeley	6	8	4
West Virginia	Boone	2	3	0
West Virginia	Braxton	2	3	0
West Virginia	Brooke	2	3	0
West Virginia	Cabell	2	3	1
West Virginia	Calhoun	3	4	2
West Virginia	Clay	2	3	0
West Virginia	Doddridge	2	3	0
West Virginia	Fayette	2	3	0
West Virginia	Gilmer	2	3	0
West Virginia	Grant	2	3	0
West Virginia	Greenbrier	2	3	0
West Virginia	Hampshire	2	3	0
West Virginia	Hancock	3	4	2
West Virginia	Hardy	2	3	0
West Virginia	Harrison	6	8	4
West Virginia	Jackson	2	3	0
West Virginia	Jefferson	2	3	0
West Virginia	Kanawha	28	37	22
West Virginia	Lewis	2	3	0
West Virginia	Lincoln	2	3	0
West Virginia	Logan	2	3	0
West Virginia	Marion	2	3	0
West Virginia	Marshall	2	3	0
West Virginia	Mason	2	3	0
West Virginia	McDowell	2	3	0
West Virginia	Mercer	13	17	10

APPENDIX A.—NOTICE OF CAPACITY REQUIREMENTS BY COUNTY FOR TELECOMMUNICATIONS CARRIERS PROVIDING LOCAL SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a county.]*

State	County	County requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
West Virginia	Mineral	2	3	0
West Virginia	Mingo	2	3	0
West Virginia	Monongalia	3	4	2
West Virginia	Monroe	2	3	0
West Virginia	Morgan	2	3	0
West Virginia	Nicholas	2	3	0
West Virginia	Ohio	3	4	2
West Virginia	Pendleton	2	3	0
West Virginia	Pleasants	2	3	0
West Virginia	Pocahontas	2	3	0
West Virginia	Preston	2	3	1
West Virginia	Putnam	2	3	0
West Virginia	Raleigh	3	4	2
West Virginia	Randolph	3	4	2
West Virginia	Ritchie	3	4	2
West Virginia	Roane	2	3	0
West Virginia	Summers	2	3	0
West Virginia	Taylor	2	3	0
West Virginia	Tucker	2	3	0
West Virginia	Tyler	2	3	0
West Virginia	Upshur	3	4	2
West Virginia	Wayne	2	3	0
West Virginia	Webster	2	3	0
West Virginia	Wetzel	2	3	0
West Virginia	Wirt	2	3	0
West Virginia	Wood	6	8	4
West Virginia	Wyoming	2	3	0
Wisconsin	Adams	2	3	0
Wisconsin	Ashland	2	3	0
Wisconsin	Barron	14	19	11
Wisconsin	Bayfield	2	3	1
Wisconsin	Brown	23	30	18
Wisconsin	Buffalo	3	4	2
Wisconsin	Burnett	3	4	2
Wisconsin	Calumet	2	3	1
Wisconsin	Chippewa	2	3	1
Wisconsin	Clark	2	3	0
Wisconsin	Columbia	4	6	3
Wisconsin	Crawford	7	10	5
Wisconsin	Dane	21	28	16
Wisconsin	Dodge	13	17	10
Wisconsin	Door	2	3	0
Wisconsin	Douglas	3	4	2
Wisconsin	Dunn	6	8	4
Wisconsin	Eau Claire	2	3	1
Wisconsin	Florence	2	3	0
Wisconsin	Fond du Lac	2	3	0
Wisconsin	Forest	2	3	0
Wisconsin	Grant	3	4	2
Wisconsin	Green	4	6	3
Wisconsin	Green Lake	2	3	0
Wisconsin	Iowa	3	4	2
Wisconsin	Iron	2	3	0
Wisconsin	Jackson	2	3	0
Wisconsin	Jefferson	4	6	3
Wisconsin	Juneau	2	3	1
Wisconsin	Kenosha	11	15	8
Wisconsin	Kewaunee	7	10	5
Wisconsin	La Crosse	7	10	5
Wisconsin	Lafayette	2	3	0
Wisconsin	Langlade	2	3	1
Wisconsin	Lincoln	3	4	2
Wisconsin	Manitowoc	3	4	2

APPENDIX A.—NOTICE OF CAPACITY REQUIREMENTS BY COUNTY FOR TELECOMMUNICATIONS CARRIERS PROVIDING LOCAL SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a county.]*

State	County	County requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
Wisconsin	Marathon	2	3	1
Wisconsin	Marinette	3	4	2
Wisconsin	Marquette	3	4	2
Wisconsin	Menominee	6	8	4
Wisconsin	Milwaukee	61	80	48
Wisconsin	Monroe	2	3	0
Wisconsin	Oconto	2	3	1
Wisconsin	Oneida	2	3	0
Wisconsin	Outagamie	8	11	6
Wisconsin	Ozaukee	6	8	4
Wisconsin	Pepin	2	3	0
Wisconsin	Pierce	31	41	24
Wisconsin	Polk	3	4	2
Wisconsin	Portage	2	3	0
Wisconsin	Price	22	29	17
Wisconsin	Racine	13	17	10
Wisconsin	Richland	4	6	3
Wisconsin	Rock	12	16	9
Wisconsin	Rusk	2	3	0
Wisconsin	Sauk	6	8	4
Wisconsin	Sawyer	2	3	0
Wisconsin	Shawano	9	12	7
Wisconsin	Sheboygan	7	10	5
Wisconsin	St. Croix	4	6	3
Wisconsin	Taylor	12	16	9
Wisconsin	Trempealeau	2	3	0
Wisconsin	Vernon	2	3	0
Wisconsin	Vilas	2	3	0
Wisconsin	Walworth	2	3	0
Wisconsin	Washburn	6	8	4
Wisconsin	Washington	3	4	2
Wisconsin	Waukesha	12	16	9
Wisconsin	Waupaca	9	12	7
Wisconsin	Waushara	2	3	0
Wisconsin	Winnebago	2	3	0
Wisconsin	Wood	3	4	2
Wyoming	Albany	2	3	0
Wyoming	Big Horn	2	3	0
Wyoming	Campbell	7	10	5
Wyoming	Carbon	2	3	1
Wyoming	Converse	2	3	0
Wyoming	Crook	2	3	0
Wyoming	Fremont	2	3	0
Wyoming	Goshen	2	3	0
Wyoming	Hot Springs	2	3	0
Wyoming	Johnson	2	3	0
Wyoming	Laramie	6	8	4
Wyoming	Lincoln	2	3	0
Wyoming	Natrona	3	4	2
Wyoming	Niobrara	2	3	0
Wyoming	Park	2	3	0
Wyoming	Platte	2	3	0
Wyoming	Sheridan	2	3	0
Wyoming	Sublette	2	3	0
Wyoming	Sweetwater	3	4	2
Wyoming	Teton	3	4	2
Wyoming	Uinta	9	12	7
Wyoming	Washakie	2	3	0
Wyoming	Weston	2	3	0

* The term "county" includes boroughs and parishes as well as the District of Columbia and independent cities. U.S. territories (i.e., American Samoa, Guam, Mariana Islands, Puerto Rico, and the U.S. Virgin Islands) were considered as single entities.

APPENDIX B.—NOTICE OF CAPACITY REQUIREMENTS BY MSA/RSA FOR TELECOMMUNICATIONS CARRIERS PROVIDING CELLULAR SERVICES

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within an MSA/RSA*.]

MSA/RSA No.	MSA/RSA market name	Market requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
1	New York, NY	181	294	106
2	Los Angeles, CA	103	167	60
3	Chicago, IL	48	78	28
4	Philadelphia, PA	30	49	17
5	Detroit-Ann Arbor, MI	48	78	28
6	Boston, MA–NH	40	65	23
7	San Francisco-Oakland, CA	35	57	20
8	Washington, DC–MD–VA	65	106	38
9	Dallas-Fort Worth, TX	40	65	23
10	Houston, TX	84	137	49
11	St. Louis, MO–IL	23	38	13
12	Miami-Fort Lauderdale-Hollywood, FL	82	133	48
13	Pittsburgh, PA	16	26	9
14	Baltimore, MD	69	112	40
15	Minneapolis-St. Paul, MN	33	54	19
16	Cleveland, OH	28	46	16
17	Atlanta, GA	12	20	7
18	San Diego, CA	23	38	13
19	Denver-Boulder, CO	40	65	23
20	Seattle-Everett, WA	14	23	8
21	Milwaukee, WI	4	7	2
22	Tampa-St. Petersburg, FL	14	23	8
23	Cincinnati, OH–KY–IN	2	4	0
24	Kansas City, MO–KS	23	38	13
25	Buffalo, NY	12	20	7
26	Phoenix, AZ	43	70	25
27	San Jose, CA	33	54	19
28	Indianapolis, IN	9	15	5
29	New Orleans, LA	21	35	12
30	Portland, OR–WA	18	30	10
31	Columbus, OH	6	10	3
32	Hartford-New Britain-Bristol, CT	2	4	1
33	San Antonio, TX	36	59	21
34	Rochester, NY	7	12	4
35	Sacramento, CA	4	7	2
36	Memphis, TN–AR–MS	4	7	2
37	Louisville, KY–IN	2	4	0
38	Providence-Warwick-Pawtucket, RI–MA	4	7	2
39	Salt Lake City-Ogden, UT	26	43	15
40	Dayton, OH	2	4	0
41	Birmingham, AL	6	10	3
42	Bridgeport-Stamford-Norwalk, CT	9	15	5
43	Norfolk-Virginia Beach-Portsmouth-Danbury, VA	2	4	0
44	Albany-Schenectady-Troy, NY	2	4	0
45	Oklahoma City, OK	6	10	3
46	Nashville-Davidson, TN	4	7	2
47	Greensboro-Winston Salem-High Point, NC	2	4	0
48	Toledo, OH–MI	16	26	9
49	New Haven-West New Haven-Waterbury, CT	2	4	1
50	Honolulu, HI	7	12	4
51	Jacksonville, FL	6	10	3
52	Akron, OH	23	38	13
53	Syracuse, NY	7	12	4
54	Gary-Hammond-East Chicago, IN	48	78	28
55	Worcester-Fitchburg-Leominster, MA	11	18	6
56	Ne Pennsylvania, PA	2	4	0
57	Tulsa, OK	2	4	1
58	Allentown-Bethlehem-Easton, PA–NJ	23	38	13
59	Richmond, VA	2	4	0
60	Orlando, FL	14	23	8
61	Charlotte-Gastonia, NC	2	4	1
62	New Brunswick-Perth Amboy-Sayreville, NJ	93	151	54
63	Springfield-Chicopee-Holyoke, MA–CT	2	4	1

APPENDIX B.—NOTICE OF CAPACITY REQUIREMENTS BY MSA/RSA FOR TELECOMMUNICATIONS CARRIERS PROVIDING CELLULAR SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within an MSA/RSA*.]

MSA/RSA No.	MSA/RSA market name	Market requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
64	Grand Rapids, MI	16	26	9
65	Omaha, NE–IA	12	20	7
66	Youngstown-Warren, OH	6	10	3
67	Greenville-Spartanburg, SC	2	4	1
68	Flint, MI	38	62	22
69	Wilmington, DE–NJ–MD	23	38	13
70	Long Branch-Asbury Park, NJ	93	151	54
71	Raleigh-Durham, NC	4	7	2
72	West Palm Beach-Boca Raton, FL	82	133	48
73	Oxnard-Simi Valley-Ventura, CA	48	78	28
74	Fresno, CA	2	4	0
75	Austin, TX	11	18	6
76	New Bedford-Fall River, MA–RI	4	7	2
77	Tucson, AZ	60	98	35
78	Lansing-East Lansing, MI	16	26	9
79	Knoxville, TN	7	12	4
80	Baton Rouge, LA	2	4	0
81	El Paso, TX	18	30	10
82	Tacoma, WA	14	23	8
83	Mobile, AL	2	4	1
84	Harrisburg, PA	4	7	2
85	Johnson City-Kingsport-Bristol, TN–VA	2	4	1
86	Albuquerque, NM	7	12	4
87	Canton, OH	28	46	16
88	Chattanooga, TN–GA	2	4	0
89	Wichita, KS	2	4	0
90	Charleston-North Charleston, SC	2	4	0
91	San Juan-Caguas, PR	35	57	20
92	Little Rock-North Little Rock, AR	2	4	1
93	Las Vegas, NV	50	82	29
94	Saginaw-Bay City-Midland, MI	16	26	9
95	Columbia, SC	2	4	0
96	Fort Wayne, IN	7	12	4
97	Bakersfield, CA	2	4	1
98	Davenport-Rock Island-Moline, IA–IL	2	4	0
99	York, PA	4	7	2
100	Shreveport, LA	2	4	1
101	Beaumont-Port Arthur, TX	33	54	19
102	Des Moines, IA	4	7	2
103	Peoria, IL	2	4	0
104	Newport News-Hampton, VA	2	4	0
105	Lancaster, PA	4	7	2
106	Jackson, MS	4	7	2
107	Stockton, CA	4	7	2
108	Augusta, GA–SC	2	4	0
109	Spokane, WA	2	4	0
110	Huntington-Ashland, WV–KY–OH	2	4	1
111	Vallejo-Fairfield-Napa, CA	33	54	19
112	Corpus Christi, TX	11	18	6
113	Madison, WI	2	4	0
114	Lakeland-Winter Haven, FL	19	31	11
115	Utica-Rome, NY	2	4	0
116	Lexington-Fayette, KY	6	10	3
117	Colorado Springs, CO	33	54	19
118	Reading, PA	21	35	12
119	Evansville, IN–KY	2	4	0
120	Huntsville, AL	2	4	0
121	Trenton, NJ	21	35	12
122	Binghamton, NY	2	4	0
123	Santa Rosa-Petaluma, CA	33	54	19
124	Santa Barbara-Santa Maria-Lompoc, CA	19	31	11
125	Appleton-Oskosh-Neenah, WI	2	4	0
126	Salinas-Seaside-Monterey, CA	19	31	11

APPENDIX B.—NOTICE OF CAPACITY REQUIREMENTS BY MSA/RSA FOR TELECOMMUNICATIONS CARRIERS PROVIDING CELLULAR SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within an MSA/RSA*.]

MSA/RSA No.	MSA/RSA market name	Market requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
127	Pensacola, FL	2	4	1
128	Mcallen-Edinburgh-Mission, TX	12	20	7
129	South Bend-Mishawaka, IN	2	4	0
130	Erie, PA	24	39	14
131	Rockford, IL	9	15	5
132	Kalamazoo, MI	7	12	4
133	Manchester-Nashua, NH	2	4	0
134	Atlantic City, NJ	4	7	2
135	Eugene-Springfield, OR	11	18	6
136	Lorain-Elyria, OH	28	46	16
137	Melbourne-Titusville-Palm Bay, FL	14	23	8
138	Macon-Warner Robins, GA	9	15	5
139	Montgomery, AL	2	4	0
140	Charleston, WV	2	4	1
141	Duluth, MN–WI	2	4	1
142	Modesto, CA	6	10	3
143	Johnstown, PA	16	26	9
144	Orange County, NY	2	4	0
145	Hamilton-Middletown, OH	2	4	0
146	Daytona Beach, FL	11	18	6
147	Ponce, PR	30	49	17
148	Salem, OR	18	30	10
149	Fayetteville, NC	2	4	0
150	Visalia-Tulare-Porterville, CA	2	4	0
151	Poughkeepsie, NY	2	4	0
152	Portland, ME	2	4	0
153	Columbus, GA-AL	2	4	0
154	New London-Norwich, CT	4	7	2
155	Savannah, GA	2	4	1
156	Portsmouth-Dover-Rochester, NH–ME	2	4	0
157	Roanoke, VA	2	4	1
158	Lima, OH	16	26	9
159	Provo-Orem, UT	14	23	8
160	Killeen-Temple, TX	2	4	1
161	Lubbock, TX	11	18	6
162	Brownsville-Harlingen, TX	9	15	5
163	Springfield, MO	2	4	0
164	Fort Myers, FL	11	18	6
165	Fort Smith, AR–OK	2	4	0
166	Hickory, NC	2	4	0
167	Sarasota, FL	19	31	11
168	Tallahassee, FL	2	4	0
169	Mayaguez, PR	31	51	18
170	Galveston-Texas City, TX	33	54	19
171	Reno, NV	2	4	0
172	Lincoln, NE	2	4	0
173	Biloxi-Gulfport, MS	2	4	0
174	Lafayette, LA	2	4	0
175	Santa Cruz, CA	19	31	11
176	Springfield, IL	2	4	0
177	Battle Creek, MI	7	12	4
178	Wheeling, WV–OH	16	26	9
179	Topeka, KS	23	38	13
180	Springfield, OH	2	4	0
181	Muskegon, MI	16	26	9
182	Fayetteville-Springdale, AR	2	4	0
183	Asheville, NC	2	4	0
184	Houma-Thibodaux, LA	2	4	0
185	Terre Haute, IN	7	12	4
186	Green Bay, WI	2	4	0
187	Anchorage, AK	2	4	0
188	Amarillo, TX	2	4	0
189	Racine, WI	4	7	2

APPENDIX B.—NOTICE OF CAPACITY REQUIREMENTS BY MSA/RSA FOR TELECOMMUNICATIONS CARRIERS PROVIDING CELLULAR SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within an MSA/RSA*.]

MSA/RSA No.	MSA/RSA market name	Market requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
190	Boise City, ID	2	4	0
191	Yakima, WA	2	4	0
192	Gainesville, FL	2	4	0
193	Benton Harbor, MI	2	4	0
194	Waco, TX	6	10	3
195	Cedar Rapids, IA	2	4	0
196	Champaign-Urbana-Rantoul, IL	2	4	0
197	Lake Charles, LA	2	4	0
198	St. Cloud, MN	23	38	13
199	Steubenville-Weirton, OH–WV	2	4	1
200	Parkersburg-Marietta, WV–OH	2	4	1
201	Waterloo-Cedar Falls, IA	2	4	0
202	Arecibo, PR	31	51	18
203	Lynchburg, VA	2	4	0
204	Aguadilla, PR	31	51	18
205	Alexandria, LA	2	4	0
206	Longview-Marshall, TX	2	4	1
207	Jackson, MI	2	4	0
208	Fort Pierce, FL	62	101	36
209	Clarksville-Hopkinsville, TN–KY	4	7	2
210	Fort Collins-Loveland, CO	43	70	25
211	Bradenton, FL	14	23	8
212	Bremerton, WA	11	18	6
213	Pittsfield, MA	2	4	1
214	Richland-Kennewick-Pasco, WA	2	4	0
215	Chico, CA	2	4	0
216	Janesville-Beloit, WI	2	4	0
217	Anderson, IN	7	12	4
218	Wilmington, NC	2	4	0
219	Monroe, LA	2	4	0
220	Abilene, TX	4	7	2
221	Fargo-Moorehead, ND–MN	2	4	0
222	Tuscaloosa, AL	6	10	3
223	Elkhart-Goshen, IN	2	4	0
224	Bangor, ME	2	4	0
225	Altoona, PA	2	4	1
226	Florence, AL	4	7	2
227	Anderson, SC	2	4	1
228	Vineland-Milville-Bridgeton, NJ	4	7	2
229	Medford, OR	9	15	5
230	Decatur, IL	2	4	0
231	Mansfield, OH	2	4	0
232	Eau Claire, WI	2	4	0
233	Wichita Falls, TX	2	4	1
234	Athens, GA	12	20	7
235	Petersburg-Colonial Hts-Hopewell, VA	2	4	0
236	Muncie, IN	7	12	4
237	Tyler, TX	2	4	0
238	Sharon, PA	6	10	3
239	Joplin, MO	2	4	0
240	Texarkana, TX–AR	2	4	0
241	Pueblo, CO	33	54	19
242	Olympia, WA	11	18	6
243	Greeley, CO	43	70	25
244	Kenosha, WI	4	7	2
245	Ocala, FL	14	23	8
246	Dothan, AL	2	4	0
247	Lafayette, IN	7	12	4
248	Burlington, VT	2	4	0
249	Anniston, AL	6	10	3
250	Bloomington-Normal, IL	2	4	0
251	Williamsport, PA	2	4	0
252	Pascagoula, MS	2	4	0

APPENDIX B.—NOTICE OF CAPACITY REQUIREMENTS BY MSA/RSA FOR TELECOMMUNICATIONS CARRIERS PROVIDING CELLULAR SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within an MSA/RSA*.]

MSA/RSA No.	MSA/RSA market name	Market requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
253	Sioux City, IA–NE	2	4	0
254	Redding, CA	2	4	0
255	Odessa, TX	7	12	4
256	Charlottesville, VA	2	4	0
257	Hagerstown, MD	2	4	0
258	Jacksonville, NC	2	4	0
259	State College, PA	4	7	2
260	Lawton, OK	2	4	0
261	Albany, GA	2	4	0
262	Danville, VA	2	4	0
263	Wausau, WI	2	4	0
264	Florence, SC	2	4	0
265	Fort Walton Beach, FL	2	4	0
266	Glens Falls, NY	2	4	0
267	Sioux Falls, SD	2	4	0
268	Billings, MT	2	4	0
269	Cumberland, MD–WV	2	4	0
270	Bellingham, WA	11	18	6
271	Kokomo, IN	7	12	4
272	Gadsden, AL	6	10	3
273	Kankakee, IL	48	78	28
274	Yuba City, CA	4	7	2
275	St. Joseph, MO	23	38	13
276	Grand Forks, ND–MN	2	4	0
277	Sheboygan, WI	4	7	2
278	Columbia, MO	2	4	0
279	Lewiston-Auburn, ME	2	4	0
280	Burlington, NC	2	4	0
281	Laredo, TX	2	4	0
282	Bloomington, IN	7	12	4
283	Panama City, FL	2	4	0
284	Elmira, NY	2	4	0
285	Las Cruces, NM	7	12	4
286	Dubuque, IA	2	4	0
287	Bryan-College Station, TX	33	54	19
288	Rochester, MN	23	38	13
289	Rapid City, SD	2	4	0
290	Lacrosse, WI	2	4	0
291	Pine Bluff, AR	2	4	1
292	Sherman-Denison, TX	31	51	18
293	Owensboro, KY	2	4	0
294	San Angelo, TX	2	4	0
295	Midland, TX	2	4	0
296	Iowa City, IA	2	4	0
297	Great Falls, MT	4	7	2
298	Bismarck, ND	2	4	0
299	Casper, WY	2	4	0
300	Victoria, TX	2	4	0
301	Lawrence, KS	23	38	13
302	Enid, OK	2	4	0
303	Aurora-Elgin, IL	48	78	28
304	Joliet, IL	48	78	28
305	Alton-Granite City, IL	2	4	0
306	Gulf Of Mexico	2	4	0
307	Alabama 01—Franklin	2	4	0
308	Alabama 02—Jackson	2	4	0
309	Alabama 03—Lamar	2	4	0
310	Alabama 04—Bibb	2	4	0
311	Alabama 05—Cleburne	6	10	3
312	Alabama 06—Washington	2	4	0
313	Alabama 07—Butler	2	4	0
314	Alabama 08—Lee	2	4	0
315	Alaska 01—Wade Hampton	2	4	0

APPENDIX B.—NOTICE OF CAPACITY REQUIREMENTS BY MSA/RSA FOR TELECOMMUNICATIONS CARRIERS PROVIDING CELLULAR SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within an MSA/RSA*.]

MSA/RSA No.	MSA/RSA market name	Market requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
316	Alaska 02—Bethel	2	4	0
317	Alaska 03—Haines	2	4	0
318	Arizona 01—Mohave	2	4	0
319	Arizona 02—Coconino	2	4	0
320	Arizona 03—Navajo	2	4	0
321	Arizona 04—Yuma	33	54	19
322	Arizona 05—Gila	12	20	7
323	Arizona 06—Graham	12	20	7
324	Arkansas 01—Madison	2	4	0
325	Arkansas 02—Marion	2	4	0
326	Arkansas 03—Sharp	2	4	0
327	Arkansas 04—Clay	2	4	0
328	Arkansas 05—Cross	2	4	0
329	Arkansas 06—Cleburne	2	4	0
330	Arkansas 07—Pope	2	4	0
331	Arkansas 08—Franklin	2	4	0
332	Arkansas 09—Polk	2	4	0
333	Arkansas 10—Garland	2	4	0
334	Arkansas 11—Hempstead	2	4	0
335	Arkansas 12—Ouachita	2	4	0
336	California 01—Del Norte	2	4	0
337	California 02—Modoc	2	4	0
338	California 03—Alpine	2	4	1
339	California 04—Madera	2	4	0
340	California 05—San Luis Obispo	19	31	11
341	California 06—Mono	2	4	0
342	California 07—Imperial	2	4	1
343	California 08—Tehama	2	4	0
344	California 09—Mendocino	19	31	11
345	California 10—Sierra	4	7	2
346	California 11—El Dorado	4	7	2
347	California 12—Kings	2	4	0
348	Colorado 01—Moffat	2	4	0
349	Colorado 02—Logan	2	4	0
350	Colorado 03—Garfield	2	4	0
351	Colorado 04—Park	2	4	0
352	Colorado 05—Elbert	2	4	0
353	Colorado 06—San Miguel	2	4	0
354	Colorado 07—Saguache	33	54	19
355	Colorado 08—Kiowa	2	4	0
356	Colorado 09—Costilla	33	54	19
357	Connecticut 01—Litchfield	2	4	0
358	Connecticut 02—Windham	2	4	0
359	Deleware 01—Kent	21	35	12
360	Florida 01—Collier	38	62	22
361	Florida 02—Glades	108	176	63
362	Florida 03—Hardee	11	18	6
363	Florida 04—Citrus	14	23	8
364	Florida 05—Putnam	2	4	0
365	Florida 06—Dixie	2	4	0
366	Florida 07—Hamilton	2	4	0
367	Florida 08—Jefferson	2	4	0
368	Florida 09—Calhoun	2	4	0
369	Florida 10—Walton	2	4	1
370	Florida 11—Monroe	82	133	48
371	Georgia 01—Whitfield	2	4	0
372	Georgia 02—Dawson	2	4	0
373	Georgia 03—Chattooga	11	18	6
374	Georgia 04—Jasper	11	18	6
375	Georgia 05—Haralson	2	4	0
376	Georgia 06—Spalding	2	4	0
377	Georgia 07—Hancock	2	4	0
378	Georgia 08—Warren	2	4	0

APPENDIX B.—NOTICE OF CAPACITY REQUIREMENTS BY MSA/RSA FOR TELECOMMUNICATIONS CARRIERS PROVIDING CELLULAR SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within an MSA/RSA*.]

MSA/RSA No.	MSA/RSA market name	Market requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
379	Georgia 09—Marion	2	4	1
380	Georgia 10—Bleckley	2	4	0
381	Georgia 11—Toombs	2	4	0
382	Georgia 12—Liberty	2	4	0
383	Georgia 13—Early	2	4	0
384	Georgia 14—Worth	2	4	0
385	Hawaii 01—Kauai	4	7	2
386	Hawaii 02—Maui	4	7	2
387	Hawaii 03—Hawaii	4	7	2
388	Idaho 01—Boundary	2	4	0
389	Idaho 02—Idaho	2	4	0
390	Idaho 03—Lemhi	2	4	0
391	Idaho 04—Elmore	2	4	0
392	Idaho 05—Butte	11	18	6
393	Idaho 06—Clark	2	4	0
394	Illinois 01—Jo Daviess	9	15	5
395	Illinois 02—Bureau	2	4	0
396	Illinois 03—Mercer	2	4	0
397	Illinois 04—Adams	2	4	0
398	Illinois 05—Mason	2	4	0
399	Illinois 06—Montgomery	2	4	0
400	Illinois 07—Vermilion	2	4	0
401	Illinois 08—Washington	2	4	0
402	Illinois 09—Clay	2	4	0
403	Indiana 01—Newton	7	12	4
404	Indiana 02—Kosciusko	2	4	0
405	Indiana 03—Huntington	7	12	4
406	Indiana 04—Miami	2	4	0
407	Indiana 05—Warren	2	4	0
408	Indiana 06—Randolph	7	12	4
409	Indiana 07—Owen	2	4	0
410	Indiana 08—Brown	7	12	4
411	Indiana 09—Decatur	7	12	4
412	Iowa 01—Mills	2	4	0
413	Iowa 02—Union	2	4	0
414	Iowa 03—Monroe	2	4	0
415	Iowa 04—Muscatine	2	4	0
416	Iowa 05—Jackson	2	4	0
417	Iowa 06—Iowa	2	4	0
418	Iowa 07—Audubon	2	4	0
419	Iowa 08—Monona	2	4	0
420	Iowa 09—Ida	2	4	0
421	Iowa 10—Humboldt	2	4	0
422	Iowa 11—Hardin	2	4	0
423	Iowa 12—Winneshiek	2	4	0
424	Iowa 13—Mitchell	2	4	0
425	Iowa 14—Kossuth	2	4	0
426	Iowa 15—Dickinson	2	4	0
427	Iowa 16—Lyon	2	4	0
428	Kansas 01—Cheyenne	2	4	0
429	Kansas 02—Norton	2	4	0
430	Kansas 03—Jewell	2	4	0
431	Kansas 04—Marshall	2	4	0
432	Kansas 05—Brown	2	4	0
433	Kansas 06—Wallace	2	4	0
434	Kansas 07—Trego	2	4	0
435	Kansas 08—Ellsworth	2	4	0
436	Kansas 09—Morris	2	4	0
437	Kansas 10—Franklin	2	4	0
438	Kansas 11—Hamilton	2	4	0
439	Kansas 12—Hodgeman	2	4	0
440	Kansas 13—Edwards	2	4	0
441	Kansas 14—Reno	2	4	0

APPENDIX B.—NOTICE OF CAPACITY REQUIREMENTS BY MSA/RSA FOR TELECOMMUNICATIONS CARRIERS PROVIDING CELLULAR SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within an MSA/RSA*.]

MSA/RSA No.	MSA/RSA market name	Market requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
442	Kansas 15—Elk	2	4	0
443	Kentucky 01—Fulton	2	4	0
444	Kentucky 02—Union	2	4	0
445	Kentucky 03—Meade	2	4	0
446	Kentucky 04—Spencer	2	4	0
447	Kentucky 05—Barren	2	4	0
448	Kentucky 06—Madison	2	4	0
449	Kentucky 07—Trimble	2	4	0
450	Kentucky 08—Mason	2	4	0
451	Kentucky 09—Elliott	2	4	0
452	Kentucky 10—Powell	2	4	0
453	Kentucky 11—Clay	6	10	3
454	Louisiana 01—Claiborne	2	4	0
455	Louisiana 02—Morehouse	2	4	0
456	Louisiana 03—De Soto	2	4	0
457	Louisiana 04—Caldwell	2	4	0
458	Louisiana 05—Beauregard	2	4	0
459	Louisiana 06—Iberville	2	4	0
460	Louisiana 07—West Feliciana	2	4	0
461	Louisiana 08—St. James	2	4	0
462	Louisiana 09—Plaquemines	2	4	0
463	Maine 01—Oxford	2	4	0
464	Maine 02—Somerset	2	4	0
465	Maine 03—Kennebec	2	4	0
466	Maine 04—Washington	2	4	0
467	Maryland 01—Garrett	2	4	0
468	Maryland 02—Kent	28	46	16
469	Maryland 03—Frederick	26	43	15
470	Massachusetts 01—Franklin	2	4	0
471	Massachusetts 02—Barnstable	11	18	6
472	Michigan 01—Gogebic	2	4	0
473	Michigan 02—Alger	2	4	0
474	Michigan 03—Emmet	2	4	0
475	Michigan 04—Cheboygan	2	4	0
476	Michigan 05—Manistee	2	4	0
477	Michigan 06—Roscommon	2	4	0
478	Michigan 07—Newaygo	2	4	0
479	Michigan 08—Allegan	6	10	3
480	Michigan 09—Cass	2	4	0
481	Michigan 10—Tuscola	2	4	0
482	Minnesota 01—Kittson	2	4	1
483	Minnesota 02—Lake of the Woods	2	4	1
484	Minnesota 03—Koochiching	2	4	1
485	Minnesota 04—Lake	2	4	0
486	Minnesota 05—Wilkin	2	4	1
487	Minnesota 06—Hubbard	2	4	1
488	Minnesota 07—Chippewa	2	4	0
489	Minnesota 08—Lac Qui Pari	2	4	0
490	Minnesota 09—Pipestone	2	4	0
491	Minnesota 10—Le Sueur	2	4	0
492	Minnesota 11—Goodhue	2	4	0
493	Mississippi 01—Tunica	2	4	0
494	Mississippi 02—Benton	2	4	0
495	Mississippi 03—Bolivar	2	4	0
496	Mississippi 04—Yalobusha	2	4	0
497	Mississippi 05—Washington	2	4	0
498	Mississippi 06—Montgomery	2	4	0
499	Mississippi 07—Leake	2	4	0
500	Mississippi 08—Claiborne	2	4	0
501	Mississippi 09—Copiah	4	7	2
502	Mississippi 10—Smith	2	4	0
503	Mississippi 11—Lamar	2	4	0
504	Missouri 01—Atchison	2	4	0

APPENDIX B.—NOTICE OF CAPACITY REQUIREMENTS BY MSA/RSA FOR TELECOMMUNICATIONS CARRIERS PROVIDING CELLULAR SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within an MSA/RSA*.]

MSA/RSA No.	MSA/RSA market name	Market requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
505	Missouri 02—Harrison	23	38	13
506	Missouri 03—Schuyler	2	4	0
507	Missouri 04—De Kalb	23	38	13
508	Missouri 05—Linn	2	4	0
509	Missouri 06—Marion	2	4	0
510	Missouri 07—Saline	2	4	0
511	Missouri 08—Callaway	21	35	12
512	Missouri 09—Bates	2	4	0
513	Missouri 10—Benton	2	4	0
514	Missouri 11—Moniteau	2	4	0
515	Missouri 12—Maries	2	4	0
516	Missouri 13—Washington	14	23	8
517	Missouri 14—Barton	2	4	0
518	Missouri 15—Stone	2	4	0
519	Missouri 16—Laclede	2	4	0
520	Missouri 17—Shannon	2	4	0
521	Missouri 18—Perry	2	4	0
522	Missouri 19—Stoddard	2	4	0
523	Montana 01—Lincoln	2	4	0
524	Montana 02—Toole	2	4	0
525	Montana 03—Phillips	2	4	0
526	Montana 04—Daniels	2	4	0
527	Montana 05—Mineral	2	4	0
528	Montana 06—Deer Lodge	2	4	0
529	Montana 07—Fergus	9	15	5
530	Montana 08—Beaverhead	2	4	0
531	Montana 09—Carbon	2	4	0
532	Montana 10—Prairie	2	4	0
533	Nebraska 01—Sioux	2	4	0
534	Nebraska 02—Cherry	2	4	0
535	Nebraska 03—Knox	2	4	0
536	Nebraska 04—Grant	2	4	0
537	Nebraska 05—Boone	2	4	0
538	Nebraska 06—Keith	2	4	0
539	Nebraska 07—Hall	2	4	0
540	Nebraska 08—Chase	2	4	0
541	Nebraska 09—Adams	2	4	0
542	Nebraska 10—Cass	2	4	0
543	Nevada 01—Humboldt	2	4	0
544	Nevada 02—Lander	2	4	0
545	Nevada 03—Storey	2	4	0
546	Nevada 04—Mineral	2	4	0
547	Nevada 05—White Pine	2	4	0
548	New Hampshire 01—Coos	2	4	0
549	New Hampshire 02—Carroll	2	4	0
550	New Jersey 01—Hunterdon	2	4	0
551	New Jersey 02—Ocean	4	7	2
552	New Jersey 03—Sussex	2	4	0
553	New Mexico 01—San Juan	2	4	0
554	New Mexico 02—Colfax	2	4	0
555	New Mexico 03—Catron	2	4	0
556	New Mexico 04—Santa Fe	2	4	0
557	New Mexico 05—Grant	2	4	0
558	New Mexico 06—Lincoln	2	4	0
559	New York 01—Jefferson	2	4	0
560	New York 02—Franklin	2	4	0
561	New York 03—Chautauqua	2	4	0
562	New York 04—Yates	2	4	0
563	New York 05—Ostego	2	4	1
564	New York 06—Columbia	2	4	0
565	North Carolina 01—Cherokee	2	4	0
566	North Carolina 02—Yancey	2	4	0
567	North Carolina 03—Ashe	2	4	0

APPENDIX B.—NOTICE OF CAPACITY REQUIREMENTS BY MSA/RSA FOR TELECOMMUNICATIONS CARRIERS PROVIDING CELLULAR SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within an MSA/RSA*.]

MSA/RSA No.	MSA/RSA market name	Market requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
568	North Carolina 04—Henderson	2	4	0
569	North Carolina 05—Anson	2	4	0
570	North Carolina 06—Chatham	2	4	0
571	North Carolina 07—Rockingham	2	4	0
572	North Carolina 08—Northampton	2	4	0
573	North Carolina 09—Camden	2	4	0
574	North Carolina 10—Harnett	2	4	0
575	North Carolina 11—Hoke	2	4	0
576	North Carolina 12—Sampson	2	4	0
577	North Carolina 13—Greene	2	4	0
578	North Carolina 14—Pitt	2	4	0
579	North Carolina 15—Cabarrus	2	4	0
580	North Dakota 01—Divide	2	4	0
581	North Dakota 02—Bottineau	2	4	0
582	North Dakota 03—Barnes	2	4	0
583	North Dakota 04—Mckenzie	2	4	0
584	North Dakota 05—Kidder	2	4	0
585	Ohio 01—Williams	2	4	0
586	Ohio 02—Sandusky	2	4	0
587	Ohio 03—Ashtabula	2	4	0
588	Ohio 04—Mercer	2	4	0
589	Ohio 05—Hancock	2	4	0
590	Ohio 06—Morrow	2	4	0
591	Ohio 07—Tuscarawas	2	4	0
592	Ohio 08—Clinton	2	4	0
593	Ohio 09—Ross	2	4	0
594	Ohio 10—Perry	2	4	0
595	Ohio 11—Columbiana	2	4	0
596	Oklahoma 01—Cimarron	2	4	0
597	Oklahoma 02—Harper	2	4	0
598	Oklahoma 03—Grant	2	4	0
599	Oklahoma 04—Nowata	2	4	0
600	Oklahoma 05—Roger Mills	2	4	0
601	Oklahoma 06—Seminole	2	4	1
602	Oklahoma 07—Beckham	2	4	0
603	Oklahoma 08—Jackson	2	4	0
604	Oklahoma 09—Garvin	2	4	0
605	Oklahoma 10—Haskell	2	4	0
606	Oregon 01—Clatsop	2	4	0
607	Oregon 02—Hood River	2	4	0
608	Oregon 03—Umatilla	2	4	0
609	Oregon 04—Lincoln	9	15	5
610	Oregon 05—Coos	2	4	0
611	Oregon 06—Crook	2	4	0
612	Pennsylvania 01—Crawford	2	4	0
613	Pennsylvania 02—McKean	2	4	0
614	Pennsylvania 03—Potter	2	4	0
615	Pennsylvania 04—Bradford	2	4	0
616	Pennsylvania 05—Wayne	2	4	0
617	Pennsylvania 06—Lawrence	2	4	0
618	Pennsylvania 07—Jefferson	2	4	0
619	Pennsylvania 08—Union	2	4	0
620	Pennsylvania 09—Greene	2	4	0
621	Pennsylvania 10—Bedford	2	4	0
622	Pennsylvania 11—Huntingdon	2	4	1
623	Pennsylvania 12—Lebanon	2	4	0
624	Rhode Island 01—Newport	2	4	0
625	South Carolina 01—Oconee	2	4	0
626	South Carolina 02—Laurens	2	4	0
627	South Carolina 03—Cherokee	2	4	0
628	South Carolina 04—Chesterfield	2	4	0
629	South Carolina 05—Georgetown	2	4	0
630	South Carolina 06—Clarendon	2	4	0

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[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within an MSA/RSA*.]

MSA/RSA No.	MSA/RSA market name	Market requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
631	South Carolina 07—Calhoun	2	4	0
632	South Carolina 08—Hampton	2	4	0
633	South Carolina 09—Lancaster	2	4	0
634	South Dakota 01—Harding	2	4	0
635	South Dakota 02—Corson	2	4	0
636	South Dakota 03—McPherson	2	4	0
637	South Dakota 04—Marshall	2	4	0
638	South Dakota 05—Custer	2	4	0
639	South Dakota 06—Haakon	2	4	0
640	South Dakota 07—Sully	2	4	0
641	South Dakota 08—Kingsbury	2	4	0
642	South Dakota 09—Hanson	2	4	0
643	Tennessee 01—Lake	2	4	0
644	Tennessee 02—Cannon	2	4	0
645	Tennessee 03—Macon	2	4	1
646	Tennessee 04—Hamblen	11	18	6
647	Tennessee 05—Fayette	2	4	0
648	Tennessee 06—Giles	2	4	0
649	Tennessee 07—Bledsoe	4	7	2
650	Tennessee 08—Johnson	2	4	0
651	Tennessee 09—Maury	2	4	0
652	Texas 01—Dallam	2	4	0
653	Texas 02—Hansford	2	4	0
654	Texas 03—Parmer	2	4	0
655	Texas 04—Briscoe	2	4	1
656	Texas 05—Hardeman	2	4	0
657	Texas 06—Jack	31	51	18
658	Texas 07—Fannin	31	51	18
659	Texas 08—Gaines	2	4	0
660	Texas 09—Runnels	2	4	0
661	Texas 10—Navarro	2	4	0
662	Texas 11—Cherokee	33	54	19
663	Texas 12—Hudspeth	2	4	0
664	Texas 13—Reeves	2	4	0
665	Texas 14—Loving	2	4	0
666	Texas 15—Concho	2	4	0
667	Texas 16—Burleson	33	54	19
668	Texas 17—Newton	33	54	19
669	Texas 18—Edwards	4	7	2
670	Texas 19—Atascosa	2	4	0
671	Texas 20—Wilson	33	54	19
672	Texas 21—Chambers	33	54	19
673	Utah 01—Box Elder	24	39	14
674	Utah 02—Morgan	16	26	9
675	Utah 03—Juab	2	4	0
676	Utah 04—Beaver	2	4	0
677	Utah 05—Carbon	2	4	0
678	Utah 06—Piute	2	4	0
679	Vermont 01—Franklin	2	4	0
680	Vermont 02—Addison	2	4	0
681	Virginia 01—Lee	2	4	0
682	Virginia 02—Tazewell	2	4	0
683	Virginia 03—Giles	2	4	0
684	Virginia 04—Bedford	2	4	1
685	Virginia 05—Bath	2	4	0
686	Virginia 06—Highland	2	4	1
687	Virginia 07—Buckingham	2	4	0
688	Virginia 08—Amelia	2	4	0
689	Virginia 09—Greensville	2	4	0
690	Virginia 10—Frederick	2	4	0
691	Virginia 11—Madison	2	4	1
692	Virginia 12—Caroline	2	4	0
693	Washington 01—Clallam	11	18	6

APPENDIX B.—NOTICE OF CAPACITY REQUIREMENTS BY MSA/RSA FOR TELECOMMUNICATIONS CARRIERS PROVIDING CELLULAR SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within an MSA/RSA*.]

MSA/RSA No.	MSA/RSA market name	Market requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Historical experience
694	Washington 02—Okanogan	2	4	0
695	Washington 03—Ferry	2	4	0
696	Washington 04—Grays Harbor	2	4	0
697	Washington 05—Kittitas	2	4	0
698	Washington 06—Pacific	2	4	0
699	Washington 07—Skamania	2	4	0
700	Washington 08—Whitman	2	4	0
701 West	Virginia 01—Mason	2	4	0
702 West	Virginia 02—Wetzel	2	4	0
703 West	Virginia 03—Monongalia	2	4	0
704 West	Virginia 04—Grant	2	4	0
705 West	Virginia 05—Tucker	2	4	0
706 West	Virginia 06—Lincoln	2	4	0
707 West	Virginia 07—Raleigh	2	4	0
708	Wisconsin 01—Burnett	2	4	0
709	Wisconsin 02—Bayfield	2	4	0
710	Wisconsin 03—Vilas	2	4	0
711	Wisconsin 04—Marinette	2	4	0
712	Wisconsin 05—Pierce	2	4	0
713	Wisconsin 06—Trempealeau	2	4	0
714	Wisconsin 07—Wood	2	4	0
715	Wisconsin 08—Vernon	2	4	0
716	Wisconsin 09—Columbia	4	7	2
717	Wisconsin 10—Door	2	4	0
718	Wyoming 01—Park	2	4	0
719	Wyoming 02—Sheridan	2	4	0
720	Wyoming 03—Lincoln	2	4	0
721	Wyoming 04—Niobrara	2	4	0
722	Wyoming 05—Converse	2	4	0
723	Puerto Rico 01—Rincon	30	49	17
724	Puerto Rico 02—Adjuntas	30	49	17
725	Puerto Rico 03—Ciales	30	49	17
726	Puerto Rico 04—Aibonito	30	49	17
727	Puerto Rico 05—Ceiba	30	49	17
728	Puerto Rico 06—Vieques	30	49	17
729	Puerto Rico 07—Culebra	30	49	17
730	Virgin Islands 01—St. Thomas Island	2	4	0
731	Virgin Islands 02—St. Croix	2	4	0
732	Guam 01—Guam	2	4	0
733	American Samoa 01—American Samoa	2	4	0
734	Northern Mariana Islands 01—Northern Mariana Islands	2	4	0

*The acronym MSA/RSA is used for cellular service licensing purposes. The Federal Communications Commission (FCC) designated 734 markets; 306 Metropolitan Statistical Area ("MSAs") and 428 Rural Statistical Areas ("RSAs"), based on population density."

APPENDIX C.—NOTICE OF CAPACITY REQUIREMENTS BY PCS MARKET (MTA) FOR TELECOMMUNICATIONS CARRIERS PROVIDING PCS SERVICES

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within an MTA*.]

MTA No.	MTA market name	Market requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Calculated historical experience
1	New York	183	297	107
2	Los Angeles-San Diego	161	261	94
3	Chicago	48	78	28
4	San Francisco-Oakland-San Jose	43	70	25
5	Detroit	48	78	28
6	Charlotte-Greensboro-Greenville-Raleigh	12	20	7

APPENDIX C.—NOTICE OF CAPACITY REQUIREMENTS BY PCS MARKET (MTA) FOR TELECOMMUNICATIONS CARRIERS PROVIDING PCS SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within an MTA*.]

MTA No.	MTA market name	Market requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Calculated historical experience
7	Dallas-Ft Worth	70	114	41
8	Boston-Providence	52	85	30
9	Philadelphia	53	86	31
10	Washington-Baltimore	70	114	41
11	Atlanta	12	20	7
12	Minneapolis-St Paul	33	54	19
13	Tampa-St Petersburg-Orlando	98	159	57
14	Houston	84	137	49
15	Miami-Ft Lauderdale	84	137	49
16	Cleveland	33	54	19
17	New Orleans-Baton Rouge	21	35	12
18	Cincinnati-Dayton	7	12	4
19	St Louis	35	57	20
20	Milwaukee	4	7	2
21	Pittsburgh	16	26	9
22	Denver	45	73	26
23	Richmond-Norfolk	2	4	1
24	Seattle (Excluding Alaska)	14	23	8
25	Puerto Rico-U.S. Virgin Islands	35	57	20
26	Louisville-Lexington-Evansville	7	12	4
27	Phoenix	82	133	48
28	Memphis-Jackson	4	7	2
29	Birmingham	6	10	3
30	Portland	18	30	10
31	Indianapolis	9	15	5
32	Des Moines-Quad Cities	9	15	5
33	San Antonio	50	82	29
34	Kansas City	23	38	13
35	Buffalo-Rochester	16	26	9
36	Salt Lake City	41	67	24
37	Jacksonville	6	10	3
38	Columbus	6	10	3
39	El Paso-Albuquerque	43	70	25
40	Little Rock	2	4	1
41	Oklahoma City	6	10	3
42	Spokane-Billings	9	15	5
43	Nashville	6	10	3
44	Knoxville	14	23	8
45	Omaha	12	20	7
46	Wichita	2	4	0
47	Honolulu	7	12	4
48	Tulsa	2	4	1
49	Alaska	2	4	0
50	Guam-Northern Mariana Islands	2	4	0
51	American Samoa	2	4	0

*MTAs are Rand McNally Major Trading Areas. Areas defined by the FCC for the purpose of issuing licenses for PCS. Based on Material Copyright © 1992 Rand McNally & Company. Reprinted with permission of Rand McNally, all rights reserved.

APPENDIX D.—NOTICE OF CAPACITY REQUIREMENTS BY PCS MARKET (BTA) FOR TELECOMMUNICATIONS CARRIERS PROVIDING PCS SERVICES

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a BTA*.]

BTA No.	BTA market name	Market requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Calculated historical experience
1	Aberdeen, SD	2	4	0
2	Aberdeen, WA	2	4	0

APPENDIX D.—NOTICE OF CAPACITY REQUIREMENTS BY PCS MARKET (BTA) FOR TELECOMMUNICATIONS CARRIERS PROVIDING PCS SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a BTA*.]

BTA No.	BTA market name	Market requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Calculated historical experience
3	Abilene, TX	4	7	2
4	Ada, OK	2	4	0
5	Adrian, MI	2	4	0
6	Albany-Tifton, GA	2	4	1
7	Albany-Schenectady, NY	2	4	1
8	Albuquerque, NM	7	12	4
9	Alexandria, LA	2	4	0
10	Allentown-Bethlehem-Easton, PA	23	38	13
11	Alpena, MI	2	4	0
12	Altoona, PA	2	4	1
13	Amarillo, TX	2	4	1
14	Anchorage, AK	2	4	0
15	Anderson, IN	7	12	4
16	Anderson, SC	11	18	6
17	Anniston, AL	6	10	3
18	Appleton-Oshkosh, WI	2	4	0
19	Ardmore, OK	2	4	0
20	Asheville-Hendersonville, NC	2	4	0
21	Ashtabula, OH	2	4	0
22	Athens, GA	12	20	7
23	Athens, OH	2	4	0
24	Atlanta, GA	12	20	7
25	Atlantic City, NJ	4	7	2
26	Augusta, GA	11	18	6
27	Austin, TX	36	59	21
28	Bakersfield, CA	2	4	1
29	Baltimore, MD	70	114	41
30	Bangor, ME	2	4	0
31	Bartlesville, OK	2	4	0
32	Baton Rouge, LA	2	4	0
33	Battle Creek, MI	7	12	4
34	Beaumont-Port Arthur, TX	33	54	19
35	Beckley, WV	2	4	0
36	Bellingham, WA	11	18	6
37	Bemidji, MN	2	4	1
38	Bend, OR	2	4	0
39	Benton Harbor, MI	2	4	0
40	Big Spring, TX	2	4	0
41	Billings, MT	9	15	5
42	Biloxi-Gulfport-Pascagoula, MS	2	4	0
43	Binghamton, NY	2	4	0
44	Birmingham, AL	6	10	3
45	Bismarck, ND	2	4	0
46	Bloomington, IL	2	4	0
47	Bloomington-Bedford, IN	7	12	4
48	Bluefield, WV	2	4	0
49	Blytheville, AR	2	4 0	
50	Boise-Nampa, ID	2	4	0
51	Boston, MA	40	65	23
52	Bowling Green-Glasgow, KY	2	4	0
53	Bozeman, MT	2	4	0
54	Brainerd, MN	2	4	1
55	Bremerton, WA	11	18	6
56	Brownsville-Harlingen, TX	9	15	5
57	Brownwood, TX	2	4	0
58	Brunswick, GA	2	4	0
59	Bryan-College Station, TX	33	54	19
60	Buffalo-Niagara Falls, NY	12	20	7
61	Burlington, IA	2	4	0
62	Burlington, NC	2	4	0
63	Burlington, VT	2	4	0
64	Butte, MT	2	4	0
65	Canton-New Philadelphia, OH	28	46	16

APPENDIX D.—NOTICE OF CAPACITY REQUIREMENTS BY PCS MARKET (BTA) FOR TELECOMMUNICATIONS CARRIERS PROVIDING PCS SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a BTA*.]

BTA No.	BTA market name	Market requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Calculated historical experience
66	Cape Girardeau-Sikeston, MO	2	4	0
67	Carbondale-Marion, IL	2	4	0
68	Carlsbad, NM	2	4	0
69	Casper-Gillette, WY	2	4	0
70	Cedar Rapids, IA	2	4	0
71	Champaign-Urbana, IL	2	4	0
72	Charleston, SC	2	4	0
73	Charleston, WV	2	4	1
74	Charlotte-Gastonia, NC	2	4	1
75	Charlottesville, VA	2	4	1
76	Chattanooga, TN	11	18	6
77	Cheyenne, WY	2	4	0
78	Chicago, IL	48	78	28
79	Chio-Oroville, CA	2	4	0
80	Chillicothe, OH	2	4	0
81	Cincinnati, OH	7	12	4
82	Clarksburg-Elkins, WV	2	4	0
83	Clarksville, TN—Hopkinsville, KY	4	7	2
84	Cleveland-Akron, OH	28	46	16
85	Cleveland, TN	4	7	2
86	Clinton, IA—Sterling, IL	9	15	5
87	Clovis, NM	2	4	0
88	Coffeyville, KS	2	4	0
89	Colorado Springs, CO	33	54	19
90	Columbia, MO	21	35	12
91	Columbia, SC	2	4	0
92	Columbus, GA	2	4	1
93	Columbus, IN	7	12	4
94	Columbus-Starkville, MS	2	4	0
95	Columbus, OH	6	10	3
96	Cookeville, TN	2	4	1
97	Coos Bay-North Bend, OR	2	4	0
98	Corbin, KY	6	10	3
99	Corpus Christi, TX	33	54	19
100	Cumberland, MD	2	4	0
101	Dallas-Ft Worth, TX	55	90	32
102	Dalton, GA	2	4	0
103	Danville, IL	2	4	0
104	Danville, VA	2	4	0
105	Davenport, IA—Moline, IL	2	4	0
106	Dayton-Springfield, OH	2	4	0
107	Daytona Beach, FL	11	18	6
108	Decatur, AL	2	4	0
109	Decatur-Effingham, IL	2	4	0
110	Denver, CO	40	65	23
111	Des Moines, IA	4	7	2
112	Detroit, MI	48	78	28
113	Dickinson, ND	2	4	0
114	Dodge City, KS	2	4	0
115	Dothan-Enterprise, AL	2	4	0
116	Dover, DE	41	67	24
117	Du Bois-Clearfield, PA	2	4	0
118	Dubuque, IA	9	15	5
119	Duluth, MN	2	4	1
120	Dyersburg-Union City, TN	2	4	0
121	Eagle Pass-Del Rio, TX	4	7	2
122	East Liverpool-Salem, OH	2	4	0
123	Eau Claire, WI	2	4	0
124	El Centro-Calexico, CA	2	4	1
125	El Dorado-Magnolia-Camden, AR	2	4	0
126	Elkhart, IN	2	4	0
127	Elmira-Corning-Hornell, NY	2	4	0
128	El Paso, TX	18	30	10

APPENDIX D.—NOTICE OF CAPACITY REQUIREMENTS BY PCS MARKET (BTA) FOR TELECOMMUNICATIONS CARRIERS PROVIDING PCS SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a BTA*.]

BTA No.	BTA market name	Market requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Calculated historical experience
129	Emporia, KS	2	4	0
130	Enid, OK	2	4	0
131	Erie, PA	24	39	14
132	Escanaba, MI	2	4	0
133	Eugene-Springfield, OR	11	18	6
134	Eureka, CA	2	4	0
135	Evansville, IN	2	4	0
136	Fairbanks, AK	2	4	0
137	Fairmont, WV	2	4	0
138	Fargo, ND	2	4	1
139	Farmington, NM—Durango, CO	33	54	19
140	Fayetteville-Springdale-Rogers, AR	2	4	0
141	Fayetteville-Lumberton, NC	2	4	0
142	Fergus Falls, MN	2	4	1
143	Findlay-Tiffin, OH	2	4	0
144	Flagstaff, AZ	2	4	0
145	Flint, MI	38	62	22
146	Florence, AL	4	7	2
147	Florence, SC	2	4	0
148	Fond du Lac, WI	4	7	2
149	Ft. Collins-Loveland, CO	43	70	25
150	Ft Dodge, IA	2	4	0
151	Ft. Myers, FL	84	137	49
152	Ft. Pierce-Vero Beach-Stuart, FL	82	133	48
153	Ft. Smith, AR	2	4	0
154	Ft. Walton Beach, FL	2	4	1
155	Ft. Wayne, IN	7	12	4
156	Fredericksburg, VA	2	4	1
157	Fresno, CA	2	4	0
158	Gadsden, AL	6	10	3
159	Gainesville, FL	2	4	0
160	Gainesville, GA	2	4	0
161	Galesburg, IL	2	4	0
162	Gallup, NM	2	4	0
163	Garden City, KS	2	4	0
164	Glens Falls, NY	2	4	0
165	Goldsboro-Kinston, NC	2	4	0
166	Grand Forks, ND	2	4	1
167	Grand Island-Kearney, NE	2	4	0
168	Grand Junction, CO	2	4	0
169	Grand Rapids, MI	18	30	10
170	Great Bend, KS	2	4	0
171	Great Falls, MT	9	15	5
172	Greeley, CO	43	70	25
173	Green Bay, WI	2	4	0
174	Greensboro-Winston-Salem-High Point, NC	2	4	0
175	Greenville-Greenwood, MS	2	4	0
176	Greenville-Washington, NC	2	4	0
177	Greenville-Spartanburg, SC	2	4	1
178	Greenwood, SC	2	4	0
179	Hagerstown, MD—Chambersburg, PA—Martinsburg, WV	2	4	0
180	Hammond, LA	2	4	0
181	Harrisburg, PA	4	7	2
182	Harrison, AR	2	4	0
183	Harrisonburg,VA	2	4	1
184	Hartford, CT	2	4	1
185	Hastings, NE	2	4	0
186	Hattiesburg, MS	4	7	2
187	Hays, KS	2	4	0
188	Helena, MT	2	4	0
189	Hickory-Lenoir-Morganton, NC	2	4	0
190	Hilo, HI	4	7	2
191	Hobbs, NM	2	4	0

APPENDIX D.—NOTICE OF CAPACITY REQUIREMENTS BY PCS MARKET (BTA) FOR TELECOMMUNICATIONS CARRIERS PROVIDING PCS SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a BTA*.]

BTA No.	BTA market name	Market requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Calculated historical experience
192	Honolulu, HI	7	12	4
193	Hot Springs, AR	2	4	0
194	Houghton, MI	2	4	0
195	Houma-Thibodaux, LA	2	4	0
196	Houston, TX	84	137	49
197	Huntington, WV—Ashland, KY	2	4	1
198	Huntsville, AL	2	4	0
199	Huron, SD	2	4	0
200	Hutchinson, KS	2	4	0
201	Hyannis, MA	11	18	6
202	Idaho Falls, ID	11	18	6
203	Indiana, PA	2	4	0
204	Indianapolis, IN	9	15	5
205	Iowa City, IA	2	4	0
206	Iron Mountain, MI	2	4	0
207	Ironwood, MI	2	4	0
208	Ithaca, NY	2	4	0
209	Jackson, MI	2	4	0
210	Jackson, MS	4	7	2
211	Jackson, TN	2	4	0
212	Jacksonville, FL	6	10	3
213	Jacksonville, IL	2	4	0
214	Jacksonville, NC	2	4	0
215	Jamestown-Dunkirk, NY-Warren, PA	2	4	0
216	Janesville-Beloit, WI	4	7	2
217	Jefferson City, MO	21	35	12
218	Johnstown, PA	16	26	9
219	Jonesboro-Paragould, AR	2	4	0
220	Joplin, MO—Miami, OK	2	4	0
221	Juneau-Ketchikan, AK	2	4	0
222	Kahului-Wailuku-Lahaina, HI	4	7	2
223	Kalamazoo, MI	7	12	4
224	Kalispell, MT	2	4	0
225	Kankakee, IL	48	78	28
226	Kansas City, MO	23	38	13
227	Keene, NH	2	4	0
228	Kennewick-Pasco-Richland, WA	2	4	0
229	Kingsport-Johnston City, TN—Bristol, VA/TN	11	18	6
230	Kirksville, MO	23	38	13
231	Klamath Falls, OR	2	4	0
232	Knoxville, TN	12	20	7
233	Kokomo-Logansport, IN	7	12	4
234	La Crosse, WI—Winona, MN	2	4	0
235	Lafayette, IN	7	12	4
236	Lafayette-New Iberia, LA	2	4	0
237	La Grange, GA	2	4	0
238	Lake Charles, LA	2	4	0
239	Lakeland-Winter Haven, FL	19	31	11
240	Lancaster, PA	4	7	2
241	Lansing, MI	16	26	9
242	Laredo, TX	4	7	2
243	La Salle-Peru-Ottawa-Streator, IL	2	4	0
244	Las Cruces, NM	7	12	4
245	Las Vegas, NV	50	82	29
246	Laurel, MS	2	4	0
247	Lawrence, KS	23	38	13
248	Lawton-Duncan, OK	2	4	0
249	Lebanon-Claremont, NH	2	4	0
250	Lewiston-Moscow, ID	2	4	0
251	Lewiston-Auburn, ME	2	4	0
252	Lexington, KY	6	10	3
253	Liberal, KS	2	4	0
254	Lihue, HI	4	7	2

APPENDIX D.—NOTICE OF CAPACITY REQUIREMENTS BY PCS MARKET (BTA) FOR TELECOMMUNICATIONS CARRIERS PROVIDING PCS SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a BTA*.]

BTA No.	BTA market name	Market requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Calculated historical experience
255	Lima, OH	16	26	9
256	Lincoln, NE	2	4	0
257	Little Rock, AR	2	4	1
258	Logan, UT	24	39	14
259	Logan, WV	2	4	0
260	Longview-Marshall, TX	55	90	32
261	Longview, WA	2	4	0
262	Los Angeles, CA	103	167	60
263	Louisville, KY	7	12	4
264	Lubbock, TX	11	18	6
265	Lufkin-Nacogdoches, TX	33	54	19
266	Lynchburg, VA	2	4	0
267	McAlester, OK	2	4	1
268	McAllen, TX	12	20	7
269	McComb-Brookhaven, MS	4	7	2
270	McCook, NE	2	4	0
271	Macon-Warner Robins, GA	11	18	6
272	Madison, WI	4	7	2
273	Madisonville, KY	2	4	0
274	Manchester-Nashua-Concord, NH	2	4	0
275	Manhattan-Junction City, KS	2	4	0
276	Manitowoc, WI	2	4	0
277	Mankato-Fairmont, MN	2	4	0
278	Mansfield, OH	2	4	0
279	Marinette, WI—Menominee, MI	2	4	0
280	Marion, IN	7	12	4
281	Marion, OH	2	4	0
282	Marquette, MI	2	4	0
283	Marshalltown, IA	2	4	0
284	Martinsville, VA	2	4	1
285	Mason City, IA	2	4	0
286	Mattoon, IL	2	4	0
287	Meadville, PA	2	4	0
288	Medford-Grants Pass, OR	9	15	5
289	Melbourne-Titusville, FL	14	23	8
290	Memphis, TN	4	7	2
291	Merced, CA	2	4	1
292	Meridian, MS	2	4	0
293	Miami-Ft. Lauderdale, FL	82	133	48
294	Michigan City-La Porte, IN	7	12	4
295	Middlesboro-Harlan, KY	6	10	3
296	Midland, TX	2	4	0
297	Milwaukee, WI	4	7	2
298	Minneapolis-St. Paul, MN	33	54	19
299	Minot, ND	2	4	0
300	Missoula, MT	2	4	0
301	Mitchell, SD	2	4	0
302	Mobile, AL	2	4	1
303	Modesto, CA	6	10	3
304	Monroe, LA	2	4	0
305	Montgomery, AL	2	4	0
306	Morgantown, WV	2	4	0
307	Mt. Pleasant, MI	2	4	0
308	Mt. Vernon-Centralia, IL	2	4	0
309	Muncie, IN	7	12	4
310	Muskegon, MI	16	26	9
311	Muskogee, OK	2	4	1
312	Myrtle Beach, SC	2	4	0
313	Naples, FL	38	62	22
314	Nashville, TN	6	10	3
315	Natchez, MS	2	4	0
316	New Bern, NC	2	4	0
317	New Castle, PA	2	4	0

APPENDIX D.—NOTICE OF CAPACITY REQUIREMENTS BY PCS MARKET (BTA) FOR TELECOMMUNICATIONS CARRIERS PROVIDING PCS SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a BTA*.]

BTA No.	BTA market name	Market requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Calculated historical experience
318	New Haven-Waterbury-Meriden, CT	2	4	1
319	New London-Norwich, CT	4	7	2
320	New Orleans, LA	21	35	12
321	New York, NY	181	294	106
322	Nogales, AZ	12	20	7
323	Norfolk, NE	2	4	0
324	Norfolk-Virginia Beach-Newport News-Hampton, VA	2	4	0
325	North Platte, NE	2	4	0
326	Ocala, FL	14	23	8
327	Odessa, TX	7	12	4
328	Oil City-Franklin, PA	2	4	0
329	Oklahoma City, OK	6	10	3
330	Olean, NY—Bradford, PA	2	4	0
331	Olympia-Centralia, WA	11	18	6
332	Omaha, NE	12	20	7
333	Oneonta, NY	2	4	1
334	Opelika-Auburn, AL	6	10	3
335	Orangeburg, SC	2	4	0
336	Orlando, FL	14	23	8
337	Ottumwa, IA	2	4	0
338	Owensboro, KY	2	4	0
339	Paducah-Murray-Mayfield, KY	2	4	0
340	Panama City, FL	2	4	1
341	Paris, TX	31	51	18
342	Parkersburg, WV—Marietta, OH	2	4	1
343	Pensacola, FL	2	4	1
344	Peoria, IL	2	4	0
345	Petoskey, MI	2	4	0
346	Philadelphia, PA—Wilmington, DE—Trenton, NJ	31	51	18
347	Phoenix, AZ	48	78	28
348	Pine Bluff, AR	2	4	1
349	Pittsburg-Parsons, KS	2	4	0
350	Pittsburgh, PA	16	26	9
351	Pittsfield, MA	2	4	1
352	Plattsburgh, NY	2	4	0
353	Pocatello, ID	2	4	0
354	Ponca City, OK	2	4	0
355	Poplar Bluff, MO	2	4	0
356	Port Angeles, WA	11	18	6
357	Portland-Brunswick, ME	2	4	0
358	Portland, OR	18	30	10
359	Portsmouth, OH	2	4	0
360	Pottsville, PA	2	4	0
361	Poughkeepsie-Kingston, NY	2	4	1
362	Prescott, AZ	2	4	0
363	Presque Isle, ME	2	4	0
364	Providence-Pawtucket, RI—New Bedford-Fall River, MA	4	7	2
365	Provo-Orem, UT	14	23	8
366	Pueblo, CO	33	54	19
367	Quincy, IL—Hannibal, MO	2	4	0
368	Raleigh-Durham, NC	4	7	2
369	Rapid City, SD	2	4	0
370	Reading, PA	21	35	12
371	Redding, CA	2	4	0
372	Reno, NV	2	4	1
373	Richmond, IN	7	12	4
374	Richmond-Petersburg, VA	2	4	1
375	Riverton, WY	2	4	0
376	Roanoke, VA	2	4	1
377	Roanoke Rapids, NC	2	4	0
378	Rochester-Austin-Albert Lea, MN	23	38	13
379	Rochester, NY	7	12	4
380	Rockford, IL	9	15	5

APPENDIX D.—NOTICE OF CAPACITY REQUIREMENTS BY PCS MARKET (BTA) FOR TELECOMMUNICATIONS CARRIERS PROVIDING PCS SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a BTA*.]

BTA No.	BTA market name	Market requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Calculated historical experience
381	Rock Springs, WY	2	4	0
382	Rocky Mount-Wilson, NC	2	4	0
383	Rolla, MO	2	4	0
384	Rome, GA	11	18	6
385	Roseburg, OR	2	4	0
386	Roswell, NM	2	4	0
387	Russellville, AR	2	4	0
388	Rutland-Bennington, VT	2	4	0
389	Sacramento, CA	6	10	3
390	Saginaw-Bay City, MI	16	26	9
391	St. Cloud, MN	23	38	13
392	St. George, UT	2	4	0
393	St. Joseph, MO	23	38	13
394	St. Louis, MO	23	38	13
395	Salem-Albany-Corvallis, OR	18	30	10
396	Salina, KS	2	4	0
397	Salinas-Monterey, CA	19	31	11
398	Salisbury, MD	28	46	16
399	Salt Lake City-Ogden, UT	41	67	24
400	San Angelo, TX	4	7	2
401	San Antonio, TX	43	70	25
402	San Diego, CA	23	38	13
403	Sandusky, OH	2	4	0
404	San Francisco-Oakland-San Jose, CA	35	57	20
405	San Luis Obispo, CA	19	31	11
406	Santa Barbara-Santa Maria, CA	19	31	11
407	Santa Fe, NM	2	4	0
408	Sarasota-Bradenton, FL	19	31	11
409	Sault Ste. Marie, MI	2	4	0
410	Savannah, GA	2	4	1
411	Scottsbluff, NE	2	4	0
412	Scranton-Wilkes Barre-Hazleton, PA	2	4	0
413	Seattle-Tacoma, WA	14	23	8
414	Sedalia, MO	2	4	0
415	Selma, AL	2	4	0
416	Sharon, PA	6	10	3
417	Sheboygan, WI	4	7	2
418	Sherman-Denison, TX	31	51	18
419	Shreveport, LA	33	54	19
420	Sierra Vista-Douglas, AZ	12	20	7
421	Sioux City, IA	2	4	0
422	Sioux Falls, SD	2	4	0
423	Somerset, KY	2	4	0
424	South Bend-Mishawaka, IN	7	12	4
425	Spokane, WA	2	4	0
426	Springfield, IL	2	4	0
427	Springfield-Holyoke, MA	2	4	1
428	Springfield, MO	2	4	0
429	State College, PA	4	7	2
430	Staunton-Waynesboro, VA	2	4	1
431	Steubenville, OH—Weirton, WV	2	4	1
432	Stevens Point-Marshfield-Wisconsin Rapids, WI	2	4	0
433	Stillwater, OK	2	4	0
434	Stockton, CA	4	7	2
435	Stroudsburg, PA	2	4	0
436	Sumter, SC	2	4	0
437	Sunbury-Shamokin, PA	2	4	0
438	Syracuse, NY	7	12	4
439	Tallahassee, FL	2	4	1
440	Tampa-St. Petersburg-Clearwater, FL	86	140	50
441	Temple-Killeen, TX	2	4	1
442	Terre Haute, IN	7	12	4
443	Texarkana, TX/AR	31	51	18

APPENDIX D.—NOTICE OF CAPACITY REQUIREMENTS BY PCS MARKET (BTA) FOR TELECOMMUNICATIONS CARRIERS PROVIDING PCS SERVICES—Continued

[Numbers represent historical simultaneous interceptions and an estimation of the simultaneous requirement of pen register, trap and trace, and call content interceptions that may be conducted anywhere within a BTA*.]

BTA No.	BTA market name	Market requirement		
		Estimated actual interceptions that may be conducted	Estimated maximum interceptions that may be conducted	Calculated historical experience
444	Toledo, OH	16	26	9
445	Topeka, KS	23	38	13
446	Traverse City, MI	2	4	0
447	Tucson, AZ	60	98	35
448	Tulsa, OK	2	4	1
449	Tupelo-Corinth, MS	2	4	0
450	Tuscaloosa, AL	6	10	3
451	Twin Falls, ID	11	18	6
452	Tyler, TX	55	90	32
453	Utica-Rome, NY	2	4	0
454	Valdosta, GA	2	4	0
455	Vicksburg, MS	2	4	0
456	Victoria, TX	33	54	19
457	Vincennes-Washington, IN	2	4	0
458	Visalia-Porterville-Hanford, CA	2	4	0
459	Waco, TX	6	10	3
460	Walla Walla, WA—Pendelton, OR	2	4	0
461	Washington, DC	67	109	39
462	Waterloo-Cedar Falls, IA	2	4	0
463	Watertown, NY	2	4	0
464	Watertown, SD	2	4	1
465	Waterville-Augusta, ME	18	30	10
466	Wausau-Rhinelander, WI	2	4	0
467	Waycross, GA	2	4	0
468	Wenatchee, WA	2	4	0
469	West Palm Beach-Boca Raton, FL	82	133	48
470	West Plains, MO	2	4	0
471	Wheeling, WV	16	26	9
472	Wichita, KS	2	4	0
473	Wichita Falls, TX	31	51	18
474	Williamson, WV—Pikeville, KY	2	4	0
475	Williamsport, PA	2	4	0
476	Williston, ND	2	4	0
477	Willmar-Marshall, MN	2	4	1
478	Wilmington, NC	2	4	0
479	Winchester, VA	2	4	0
480	Worcester-Fitchburg-Leominster, MA	11	18	6
481	Worthington, MN	2	4	0
482	Yakima, WA	2	4	0
483	York-Hanover, PA	4	7	2
484	Youngstown-Warren, OH	6	10	3
485	Yuba City-Marysville, CA	4	7	2
486	Yuma, AZ	33	54	19
487	Zanesville-Cambridge, OH	2	4	0
488	San Juan, PR	35	57	20
489	Mayaguez-Aguadilla-Ponce, PR	31	51	18
490	Guam	2	4	0
491	US Virgin Islands	2	4	0
492	American Samoa	2	4	0
493	Northern Mariana Islands	2	4	0

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Appendix E—Methodology for Deriving Growth Factors

A. Introduction

Section 104(a) of CALEA requires the Attorney General to estimate future requirements for actual and maximum interception capacity. Law enforcement derived a baseline for these estimates from the historical interception activity in geographic areas defined as counties for wireline carriers and market service areas for wireless carriers. Growth factors were then developed and applied to the historical baseline of interception activity in order to project future actual and maximum capacity requirements.

The growth factors used in the Initial Notice of Capacity did not distinguish between services offered by wireline and wireless carriers. Comments on the Initial Notice, however, recommended that, because of the differences between these

technologies, separate capacity requirements should be established, and law enforcement agreed. As a result of establishing separate wireline and wireless capacity requirements, law enforcement considered it appropriate to also establish separate growth rates for each technology. The methodology for developing growth factors for wireline and wireless services is the subject of this appendix.

B. Background

In the Initial Notice of Capacity a multi variable linear regression model was used to project growth. This technique predicts one value, the dependent variable, in terms of one or more other variables. The Initial Notice of Capacity used a regression model to predict court orders for Title III interceptions as a function of the following predictors: population, wireline access lines, wireless subscribers, law enforcement manpower and violent crime. Although Title III court orders do not identify the number of interceptions associated with each order, or the vastly greater number of pen register and trap and trace interceptions, they were used for projecting future interception activity because of their extensive historical record of one aspect of electronic surveillance. In addition, a change in the number of Title III court orders is a likely indicator of changes in interception activity. This method, which combined wireless and wireline growth, yielded interception growth rates of 54 percent from 1994 to 1998 for actual capacity, and 130 percent from 1994 to 2004 for maximum capacity.

Initially, law enforcement tried to construct separate multi variable linear regression models for wireless and wireline services but could not produce statistically acceptable models. Consequently, it formulated a new statistical approach, which is detailed below.

C. Formulating Growth Projections for the Second Notice of Capacity

The formulation of the capacity growth projections for the Second Notice of Capacity is stated in terms of four growth factors: $A_{wireline}$, $A_{wireless}$, $M_{wireline}$, and $M_{wireless}$. The "A" factors are multipliers that were used to scale historical interception data to calculate the future actual capacity requirements. The "M" factors are multipliers that were used to scale the future actual capacity requirements to calculate the future maximum capacity requirements. The formulas are as follows:

Wireline:

Future Actual Capacity Requirement in a County Equals The Historical Interception Activity in the County Multiplied by $A_{wireline}$

Future Maximum Capacity Requirement in a County Equals The Future Actual Capacity Requirement in the County Multiplied by $M_{wireline}$

Wireless: Future Actual Capacity Requirement in a Market Service Area Equals The Historical Interception Activity in the Market Service Area Multiplied by $A_{wireless}$

Maximum Capacity Requirement in a Market Service Area Equals The Future Actual Capacity Requirement in the Market Service Area Multiplied by $M_{wireless}$

All the resulting capacity requirements were rounded up to the next whole number.

The above formulation was deemed appropriate for two reasons. First, it was responsive to the recommendation that separate requirements be established for services offered by wireline and wireless carriers. Second, it reflected the different dynamics and growth trends of the wireline and wireless sectors (e.g., the projected growth in wireline access lines for the next 10 years is 3.5 percent annually, while the projected growth in wireless subscribers for the next 10 years is 12.0 percent annually).

There were four major steps in the approach used: (a) Identifying data sources that would be appropriate for making growth projections; (b) processing the data from the sources selected to yield data sets that could be used to determine separate wireline and wireless growth projections; (c) calculating the wireline growth projection factors, $A_{wireline}$ and $M_{wireline}$, from the wireline data sets; and (d) calculating the wireless growth projection factors, $A_{wireless}$ and $M_{wireless}$, from the wireless data sets.

D. Step 1: Evaluation of Data Sources

Four criteria were used to evaluate the soundness of data sources for growth projection purposes: (a) comprehensiveness, meaning the data should encompass Title III interceptions and interceptions using pen register and trap and trace (PR/TT) devices, and it should cover all law enforcement agencies; (b) reliability, meaning the data should be collected and reported in a structured manner by a reliable source so that projections have a credible foundation; (c) availability, meaning the data should be available for multiple years in order to establish a trend sufficient for making projections; and (d) separability, meaning the data should be separable into wireline and wireless data sets so that distinct wireline and wireless growth projections can be developed.

Three data sources were identified as candidates: (a) historical records of interception activity from January 1, 1993, to March 1, 1995, gathered in a survey of law enforcement and the telecommunications industry; (b) data on Title III court orders extracted from the *Wiretap Reports* published by the Administrative Office of the United States Courts during the period from 1980 to 1995; and (c) data on PR/TT court orders taken from Department of Justice (DOJ) reports covering the period between 1987 and 1995.

(1) Historical Survey

When considered in the context of the four evaluation criteria, the historical records of interception activity did not provide a sufficient basis for making growth projections. Although comprehensive, separable, and reliable, the records did not rate well against the availability criterion. They covered only a 26-month period, which was insufficient for establishing a trend that could be used confidently for making projections. One year's worth of change in interception activity was observable from these records, but that was insufficient to make the 4 year and 10 year forecasts needed for deriving actual and maximum capacity requirements.

(2) Wiretap Report Data

The *Wiretap Reports* rated well against the availability, reliability, and separability criteria. Wiretap Reports dating from 1980 provided 16 years of data. They are also a highly reliable source of data compiled annually under a consistent recording and reporting approach. Furthermore, the Wiretap Report data could be sorted and analyzed to yield separate wireline and wireless data sets. However, the Wiretap Reports did not measure well against the comprehensiveness criterion. The Wiretap Reports covered only Title III court orders and did not include the number of line-related interceptions associated with each court order or data on PR/TT interceptions.

(3) DOJ Pen Register/Trap and Trace Reports

The DOJ PR/TT reports had two shortcomings. First, unlike the Wiretap Report data, the information in the DOJ PR/TT reports was not immediately separable into wireline and wireless data sets. Second, like the Wiretap Reports, the DOJ PR/TT reports did not precisely indicate the number of interceptions associated with each court order. In addition, the DOJ PR/TT reports covered only a subset of law enforcement agencies, namely, the Federal Bureau of Investigation, the Drug Enforcement Agency, the Immigration and Naturalization Service, the United States Marshals Service, and the DOJ Inspector General's Office. Therefore, projections based solely on data in the DOJ PR/TT reports would not capture interception activity across all federal, state, and local law enforcement agencies. Despite these limitations, the DOJ PR/TT reports were considered a reliable source because the data was collected and recorded in a structured and sustained manner during the period from 1987 to 1995.

Based on the evaluation criteria, none of the three candidate data sources alone could be used for deriving capacity growth projections. One of them, the historical survey of interception activity, did not provide enough years of data to support trend analysis, and there was no way to compensate for this shortcoming. But, by blending the Wiretap Report data with the DOJ PR/TT report data, the limitations of these two sources could be mitigated and an aggregate data set constructed that fared better against the evaluation criteria.

In particular, combining the Wiretap Report data and the DOJ PR/TT report data yielded an aggregate data set that covered both Title III and PR/TT court orders; and, therefore, it was comprehensive in coverage of interception court orders. However, it was not comprehensive in coverage of law enforcement because the DOJ PR/TT reports covered only a subset of law enforcement agencies, and there was no way to compensate for this deficiency.

With respect to the other evaluation criteria, the aggregate data set was reliable because the two constituent data sources themselves were reliable. It met the availability criterion because the two constituent data sources covered 16 and 9

consecutive years, respectively. Finally, by applying an assumption based on the *Wiretap Report* data, the DOJ PR/TT report data could be separated into wireline and wireless data sets. As a result, the aggregate data set itself became separable.

E. Step 2: Data Sorting and Analyzing

Before any growth projections could be made, the data in the *Wiretap Reports* and the DOJ PR/TT reports had to be sorted into separate wireline and wireless data sets.

For the *Wiretap Reports*, available information from each recorded court order was examined. The *Wiretap Report* had codes specifying the type(s) of Title III electronic surveillance court order and, in general, the place(s) where these orders were executed. Because entries in the *Wiretap Reports* simply represent Title III court orders and since one court order may authorize the interception of communications on multiple lines, some entries were counted as both wireline and wireless court orders. Furthermore, some court orders (e.g., for microphone surveillance) were not counted in either category.

The DOJ PR/TT reports combined wireline and wireless PR/TT activity on an annual basis and, therefore, could not be directly separated into wireline and wireless data sets. However, the separation could be estimated based on the following assumption: on a yearly basis, the wireline/wireless composition of Title III court orders is approximately the same as the wireline/wireless composition of PR/TT court orders. Because the vast majority of Title IIIs begin as PR/TTs, this assumption seems reasonable.

F. Steps 3 and 4: Calculation of Growth Factors

Capacity growth projections were then generated using the wireline and wireless data sets that characterized Title III and PR/TT court orders. For each data set, a statistical analysis known as Best-Fit Line (BFL) was applied. BFL analysis tracks the values of one variable over time, producing an equation for a line that can be used to predict future values with a minimal amount of error. BFLs were then generated for the four data sets: wireline Title III court orders, wireline PR/TT court orders, wireless Title III court orders, and wireless PR/TT court orders.

The BFLs were used to calculate values for "A" and "M". To compute "A", the BFLs were used to predict values for wireline and wireless Title III and PR/TT court orders for the years 1994 and 1998. Predicted values were required for these 2 years because (a) the year 1994 was the starting point for growth because it was the last complete year for which historical records of interception activity were available and (b) the year 1998 was specified in CALEA as the year for which actual capacity requirements are to be stated. Calculations using the ratio of the 1998 and 1994 predicted values resulted in intermediate "A" values for the four data sets.

The respective intermediate "A" values were combined to derive the $A_{wireline}$ and $A_{wireless}$ composite growth factors. These composite growth factors were calculated by weighting the intermediate "A" values by the relative number of call-content interceptions and interceptions of call-identifying information for the 2 year period surveyed. The resulting "A" growth factor values serve as the multipliers that, when applied to the historical interception data, yield future actual capacity requirements. The $A_{wireline}$ value derived is 1.259, and the $A_{wireless}$ value derived is 1.707. These values correspond to compounded annual growth rates of 5.92 percent and 14.30 percent for wireline and wireless interceptions respectively, over the 4 year period 1994 through 1998.

To compute "M", the BFLs were used to predict values of wireline and wireless Title III and PR/TT court orders for the years 1998 to 2004. Predicted values were required for these years because (a) the year 2004 provided a 10 year period since the passage of CALEA and this was considered to be a reasonable time period for projecting maximum capacity requirements and a rational time frame for setting a stable capacity ceiling, and (b) the year 1998 was the base figure to which the multiplier "M" was applied to calculate the future maximum capacity values. Calculations using the ratio of the 2004 and the 1998 predicted values resulted in intermediate "M" values for the four data sets.

The respective intermediate "M" values were combined to derive the $M_{wireline}$ and $M_{wireless}$ growth factors. These composite growth factors were calculated by weighting the intermediate "M" values by the relative number of call-content interceptions and interceptions of call-identifying information for the 2 year period surveyed. The resulting "M" values are the multipliers that, when applied to the actual capacity requirements, yield future maximum capacity requirements. The $M_{wireline}$ growth factor value derived is 1. 303. and the $M_{wireless}$ growth factor value derived is 1.621. These values correspond to compounded annual growth rates of 4.55 percent and 8.38 percent for wireline and wireless interceptions, respectively, over the 6 year period of 1998 through 2004.

Appendix F—List of Parties Filing Comments

(Filed on or before March 17, 1997)

AirTouch
Ameritech
AT&T
AT&T Wireless
Bell Atlantic
Bell Atlantic NYNEX Mobile
BellSouth Telecommunications
BellSouth Cellular Corp.
Cellular Mobile Systems of St. Cloud
Cellular Telecommunications Industry Association (CTIA)
Center for Democracy and Technology (CDT), Center for National Security Studies (CNSS)
John & Christina Crowley
Earl B. Couch, Jr.
GTE
Harrisonville Telephone Company
Craig S. Klyve, State of Wisconsin, Department of Justice
LDDS WorldCom
Susan B. Long, Syracuse University
MCI
National Telephone Cooperative Association (NTCA)
Organization for the Promotion and Advancement
Pacific Telesis Group
Personal Communications Industry Association (PCIA)
Philip A. Prossnitz, Office of the State's Attorney, McHenry County Illinois
SBC Communications
Gloria Sullivan
Telecommunications Industry Association (TIA)
Teleport Communications Group
United States Telephone Association (USTA)
US West
Claire Vogel

[FR Doc. 98–6230 Filed 3–11–98; 8:45 am]
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federal register

Thursday
March 12, 1998

Part IV

National Indian Gaming Commission

25 CFR Part 514

Annual Fees Payable by Indian Gaming Operations; Final Rule

Fee Rates; Notice

25 CFR Part 518

Issuance of Certificates of Self-Regulation to Tribes; Proposed Rule

25 CFR Chapter III

Self-Regulated Class III Gaming Operations; Advance Notice of Proposed Rulemaking

NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 514

RIN 3141–AA18

Annual Fees Payable by Indian Gaming Operations

AGENCY: National Indian Gaming Commission.

ACTION: Final rule.

SUMMARY: The National Indian Gaming Commission is amending its fee regulations to add class III gaming revenues to the assessable gross revenue base, increase the total amount of fees that can be imposed, and provide for an exemption for self-regulated tribes such as the Mississippi Band of Choctaw. This action is being taken pursuant to recent amendments to the Indian Gaming Regulatory Act. The primary effect of this action is to increase the funding for the National Indian Gaming Commission. This rule provides direction and guidance to Indian gaming operations (activities) to enable them to compute and pay the annual fees as authorized by the Indian Gaming Regulatory Act (IGRA) as amended. The computation and payment of annual fees are to be self-administered by each gaming operation that is subject to the jurisdiction of the Commission.

The proposed rule was published in the **Federal Register** on December 16, 1997. The 30-day comment period ended on January 15, 1998.

DATES: Effective April 13, 1998.

FOR FURTHER INFORMATION CONTACT: Fred W. Stuckwisch, National Indian Gaming Commission, 1441 L Street, N.W., Suite 9100, Washington, D.C. 20005; telephone 202/632–7003; fax 202/632–7066 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA), enacted on October 17, 1988, established the National Indian Gaming Commission (Commission). The Commission is charged with, among other things, regulating gaming on Indian lands. These amendments to the fee regulations are issued pursuant to the IGRA, as amended.

Purpose

The purpose of the fee regulations is to implement those portions of the IGRA that provide for the payment of fees by gaming operations and for the collection and use of such fees by the Commission. Gaming operations are the economic entities licensed by a tribe that operate the games, receive the revenues, issue the prizes, and pay the expenses. Gaming operations may be operated by a tribe directly, by a management contractor, or under certain conditions, by another person or other entity.

These regulations are being amended to:

(1) Add class III gaming revenues to the assessable gross revenue base,

(2) Increase the total amount of fees that can be imposed,

(3) Eliminate the requirement that a minimum fee be assessed on tier 1 revenues, and

(4) Provide an exemption for self-regulated tribes such as the Mississippi Band of Choctaw.

As a result, gaming operations offering only class II games must continue reporting and paying fees, gaming operations offering only class III games must begin reporting and paying fees, and gaming operations offering both class II and III games must begin reporting and paying fees on their class III revenues.

Starting Date

This rule will become effective for calendar year 1998 which means that all gaming operations within the jurisdiction of the Commission must self-administer the provisions of these amended regulations and must report and pay any fees that are due to the Commission for the first quarter of 1998 by the end of the first quarter of 1998 (March 31), or no later than April 13, 1998, the date these regulations become effective.

System Self-Administered

These regulations provide for a system of fee assessment and payment that is self-administered by the gaming operations. Briefly, the Commission adopts and communicates the assessment rates; the faming operations apply those rates to their revenues, compute the fees to be paid, and report and remit the fees to the Commission quarterly.

Fees Based on Assessable Gross Revenues

Annual fees are payable quarterly each calendar year based on the previous calendar year's assessable gross revenues from the gaming operations. For this purpose, all revenues from gaming operations determined by the licensing tribe to be Class II or III are included.

Adoption of Fee Rates

The Commission will adopt preliminary annual fee rate(s) during the first quarter of each calendar year and final annual fee rate(s) for that year during the fourth quarter. Separate rates may be set for assessable gross revenues of $1,500,000 (1st tier) and for revenues over $1,500,000 (2nd tier). When adopted, the Commission will publish the rates in the **Federal Register** as a Notice.

Fee Rates for Current Year

The Commission has adopted a preliminary fee rate of 0.00% for assessable gross revenues of $1,500,000 1st tier) and 0.00% for revenues over $1,500,000 (2nd tier) for use beginning with the first quarter (January 1—March 31) of the current calendar year (1998). The Commission may change this rate during subsequent quarters when more information about the assessable gross revenue base becomes available. The last or final rate adopted will ultimately determine the amount of fees paid during the year. The Commission is publishing a Notice announcing this preliminary rate simultaneously with these regulations in the **Federal Register**.

Self-Regulation

If a tribe has a certificate of self-regulation, the rate of fees imposed shall be no more than .25 percent of class II assessable gross revenues and 0% of class III assessable gross revenues. Later rulemakings will add the requirements for obtaining a certificate of self-regulation. The Commission is publishing in the **Federal Register** today its proposed rules for self-regulation of class II operations.

Reports and Payments

Gaming operations compute their fee payments by applying the rates adopted to their assessable gross revenues from the preceding calendar year. Gaming operations report their assessable gross revenues, fees, and calculations to the Commission with their quarterly payments. Payments and reports must be received by the Commission no later than March 31, June 30, September 30, and December 31, of each calendar year, beginning in 1998. As previously noted, payments and reports for the first quarter of 1998 will be due no later that 30 days following publication of this rule in the **Federal Register**, or April 13, 1998.

Computations

Briefly, the computations required for each quarter are:

(1) Multiply the previous calendar year's 1st tier assessable gross revenues by the rate for those revenues adopted by the Commission.

(2) Multiply the previous calendar year's 2nd tier assessable gross revenues adopted by the Commission.

(3) Add (total) the results (products) obtained in steps (1) and (2) above.

(4) Multiply the total in (3) by the fraction representing the applicable quarter of the calendar year: 1st quarter—¼; 2nd quarter—½ (2/4); 3rd quarter—¾; and 4th quarter—1 (4/4).

(5) Subtract the amounts already paid by the operation for the current year and credits, if any, due for any previous year's overpayment from the amount determined in (4). (The Commission will compute and tell the gaming operations the amounts of deductible "credits.")

(6) The gaming operation should pay the amount computed in (5) for the quarter.

Examples

The regulations include examples of the computations at §§ 514.1(b)(3) and 514.1(c)(7).

Use of Adjusted Numbers

Basing the fees on the previous year's assessable gross revenues provides enough time to the gaming operations to finalize and submit adjusted numbers before the end of the third quarter of the calendar year. Furthermore, the use of preliminary and final rates by the Commission is intended to provide enough time for the Commission to determine the assessable gross revenue base before finalizing the rates for each calendar year.

Applicability

These regulations apply to all gaming operations under the jurisdiction of the Commission. New gaming operations (with no gaming revenues generated in the previous calendar year) must file reports quarterly although no fees will be due. Gaming operations of tribes with certificates of self-regulation are not required to file quarterly reports if no fees are payable.

Penalties and Interest

Penalties and interest may apply for failures to file quarterly statements and to pay fees when due. The Commission may withhold, deny or revoke required approvals for failures to pay fees, penalties and interest. Furthermore, the failure of a gaming operation to pay the annual fee required is a substantial violation and may subject the operation to an order of temporary closure of all or part of the gaming operation pursuant to § 573.6(a). Procedures for appealing such adverse actions are found at § 577.

Public Comments and Responses

The Commission received eighteen separate communications about the proposed rule during the 30 day comment period. The comments ranged from simple requests for more time to comment to comprehensive analyses of the contents of parts of the proposed rule. The Commission has thoroughly considered these comments and its decisions are set forth in the paragraphs that follow.

Extension of the Comment Period

One commenter requested that the comment period for the proposed rule be extended to allow time for additional comments.

Response: The NIGC decided not to extend the comment period because:

—Many thoughtful, substantive comments were received during the comment period provided,
—No new concerns about the proposed rules were presented in the request to extend the comment period, and
—The Commission must begin collecting additional fees to continue operating at its current level and begin its expansion.

Funding Increase

One commenter wrote that the Tribe supports an increase in funding for the NIGC because it understands that effective regulation is a key to continued strong support for Native American Gaming and to protect the integrity of Native American Gaming. Two writers said they fully support the NIGC having the resources necessary to do a complete and thorough job of regulating and, more importantly, assisting the Tribes in the regulation of the Indian gaming industry. Another commenter pointed out that without viable enabling legislation, the NIGC may have little choice other than to impose a uniform fee across the board on all class III gaming operations and hope that enough tribes fail to meet or exceed the "Choctaw" standard, such that the needed revenue comes into the NIGC.

Response: The NIGC acknowledges and appreciates the positive support for the funding increase. It too wants to do a complete and thorough job of regulating and, more importantly, assisting the Tribes in the regulation of the Indian gaming industry. As to the enabling legislation, the NIGC is also concerned. It is presently reviewing its options.

NIGC Budget

One commenter stated that the NIGC should not be able to unilaterally set its own budget.

Response: The NIGC does not unilaterally set its own budget. NIGC's annual budget, pursuant to, and limited by, the IGRA, must be coordinated with the Secretary of the Interior and included with the budget of the Department of the Interior in the President's budget. Any request for appropriated funds is subject to the Secretary's approval. Furthermore, the Commission's budget is reviewed by subcommittees and committees of the U.S. Senate and House of Representatives.

Fee Assessment Revenues

One commenter noted that all fee assessment revenue must fund only NIGC activities.

Response: Fee assessment revenue is used to fund NIGC activities only. Amounts not used in one year are carried forward to subsequent years and used then to fund NIGC activities.

Phase-In

Several commenters suggested that the NIGC should establish rates which will achieve the ceiling gradually, because doing so will not only allow tribes to budget for anticipated increases in fees but will allow the NIGC to determine over a period of time whether or not it in fact requires the maximum amount of fees to fulfill its regulatory obligations. The NIGC should work with the tribes to assess what regulatory services are necessary.

Response: The regulations do not require that the Commission increase the fees to $8 million in the first fiscal year. The NIGC agrees that the amounts of fees assessed should be increased incrementally to meet the growing needs of the Commission. However, the reader should also understand that while the fee cap was raised from $1.5 million to $8 million, the funding for the Commission is being increased from about $4.4 million to a maximum of $8.5 million. This is because the Commission is currently being funded by a combination of fees, savings and appropriations, and in 1999 it will be funded by fees alone.

Assessment Base

One commenter suggested that the assessment should not be based on gross revenues. Another commenter said the "assessable gross revenues" should include an allowance for salaries and other regular business expenses.

Response: IGRA specifically provides for the assessment to be based on gross revenues. The only deductible operating expense provided by the IGRA is the allowance for the amortization of structures. Regulation and the cost of

such regulation should be proportionate to the volume of gaming, rather than its profitability.

Fee Rates

Several commenters said that fee rates should reflect the services provided by the NIGC. Some of those suggested that the rates should be set equally among the number of tribes engaged in class II and class III gaming while another said that the NIGC should differentiate clearly between class II gaming and class III gaming.

Response: The NIGC believes that the fee rates will relate to the services provided by the NIGC—to the Indian gaming industry as a whole as well as to the individual operations. When the Congress amended the IGRA, it authorized the assessment of fees on class II and III gaming revenues. It did not distinguish between class II and III and did not require different assessment on each. The NIGC has likewise decided not to distinguish between class II and class III revenues at this time. Should there be some basis to do so in the future, the NIGC will consider amending these regulations at a later date.

Range of Authorized Fee Rates

One commenter said that the rate imposed on the "assessable gross revenues" is troubling. Such a rate on the gross revenues may, in fact, result in a higher dollar amount than net revenues. Other commenters pointed out that the IGRA amendments provide for maximum fees of 2.5% on the first 1.5 million of "assessable gross revenues" and 5% on the amount above 1.5 million of "assessable gross revenues." These percentages strike them as being very high.

Response: The ranges of rates set forth in the regulations are the rates that are authorized, not necessarily the rates that will be assessed. There is an $8 million limit on the amount the NIGC can assess. Assuming the industry has assessable gross revenues of $6 billion and that class II and class III revenues are assessed at the same rate, the actual rate of assessment to collect $8 million would be 0.133%. An operation with $100 million of assessable gross revenues would pay $133,333 in fees while an operation with $10 million of assessable gross revenues would pay $13,333 in fees.

Tiers

One commenter stated that it is a good idea to have a "tier" structure for fees. A second commenter wrote that it is clear that Congress intends the Commission to continue the "sliding fee" system. A third commenter noted that Congress, in establishing the tiered fee structure, and in eliminating the minimum fee under the 1st tier, has authorized progressive rates that would impose a greater burden on larger, and presumably more profitable, operations. NIGC should change from the current flat-rate fee to a progressive fee structure. Further, nothing precludes the NIGC from setting progressive rates within the 2nd tier, so long as the maximum rate does not exceed 5%. Three other commenters contend that the two tier process is no longer relevant as a direct result of the addition of class III revenues and should be re-examined.

Response: The NIGC has decided to leave the tier structure in place without modification at this time. It provides flexibility in that it allows different rates for different groups of operations based on size and allows both a progressive and a regressive structure. While the NIGC has no immediate plans to use multiple rates within the second tier, it does believe that it may have the authority to do so.

Allowance for Amortization

Two commenters urged that in defining what is a proper allowance for amortization in arriving at assessable gross revenues, the NIGC should include such facilities as entertainment centers, hotels, and other ancillary facilities that clearly are designed to enhance gaming revenue but the revenue from which is not directly assessable by the NIGC.

Response: The regulations provide for the use of generally accepted accounting principles which require the matching of revenues and expenses. To allow the deduction of costs unrelated to the revenues being assessed would not be in accordance with generally accepted accounting principles. Furthermore, the revenues being assessed are the revenues of the gaming operation. The costs in question are not the costs of the gaming operation as defined in the regulations.

Another commenter believes that the regulations should clarify how the "allowance for amortization of capital expenditures for structures" will be determined.

Response: The regulations at § 514.1(b) (2) and (3) provide both the rules and an example.

Reporting Requirements

One commenter feels that the reporting requirements should not apply to self-regulated tribes inasmuch as they are exempt from Commission fees. In addition, the Commission should require information to be maintained and available for inspection rather than require submission of that information to the Agency.

Response: The Commission agrees that gaming operations of tribes with certificates of self-regulation that exempt entire operations from paying any fees should not be required to file the quarterly reports that support the fee payments and has revised its regulations accordingly. However, operations must submit quarterly reports even if no fees are due until the Commission determines that they are exempt from paying fees. The Commission does require, where appropriate, that gaming operations maintain and make available for inspection certain information. For example, § 571.14 requires a tribe to reconcile its quarterly fee assessment reports with its audited financial statements and make available such reconciliation upon request by the Commission's authorized representative.

Tribal Cap on Fees Payable

One commenter believes that a cap should be placed on the amount of fees which any tribe should pay to NIGC.

Response: There are already caps on the amounts of fees the gaming operations can be assessed. There are both the range of rates and the overall $8 million caps.

Duplication

One Tribe commented that Tribes will now be paying double for regulation of class III gaming. They point out that many Tribes are already paying fees to States for regulation and/or other purposes pursuant to their Tribal-State Compacts. Now NIGC will be assessing fees on class III revenues for regulation as well. Another Tribe commented that the proposed fee would cause them to be paying triple for the same services. Still another Tribe stated that Tribes should not pay for NIGC services that are already provided for by the Tribe and/or the state agencies.

Response: The NIGC agrees that tribes should not be paying more than once for the same services. Each of the various entities involved—the tribes, the states, the federal government—have a role to play in the regulation of Indian gaming. Those roles and responsibilities should not be redundant. The federal government serves a role separate from that of the tribes and states. It provides overall oversight for all Indian gaming, intervenes when state and/or tribal intervention is inappropriate, and takes action for violation of Federal laws. The three levels of government must, however, continue to work together to avoid overlap and duplication.

Credit for Other Costs of Regulation

Several commenters suggested that the Tribes should be given credit against their fees for regulation and other services provided by local governments. They pointed out that Tribal gaming operations pay substantial fees to fund state compact, IGRA and Tribal regulations and these fees should be credited against any fees paid to the NIGC.

Response: As discussed above, several entities have a role to play in the regulation of Indian gaming. Their roles and responsibilities are, or should be, complementary, not redundant. The work of each is measured and paid for in a unique manner. The work and cost of one tribal or state entity does not necessarily reduce the work and cost of the NIGC. The Tribe regulates the individual gaming operation; pursuant to a Tribal-State compact, the state may participate in the regulation of the Indian gaming industry of the state; and the NIGC focuses on the overall Indian gaming industry.

Economic Impact

One commenter thinks the proposed fee schedule will close down many marginal gaming operations and that the impact of the Fee Regulations on marginal gaming operations may be exacerbated by the exodus of "self-regulated" tribes from the fee paying pool and will eventually impose severe economic hardship on those Tribes which are not able to achieve this self-regulated status. Two other commenters pointed out that only those tribes that cannot afford regulatory schemes that equal or exceed the system used by the Mississippi Choctaw will be stuck with the entire $7 million price tag.

Response: The Commission acknowledges that more of a burden may be placed on "marginal" tribes if there is an exodus of self-regulated tribes from the fee structure. To mitigate that burden, the NIGC has initially decided to impose a fee on only the second tier, those revenues over $1.5 million. On the other hand, the Commission must implement and carry out the provisions of the IGRA as amended. To this end it is publishing in the **Federal Register** today an Advance Notice of Proposed Rulemaking to implement the self-regulation provision added to the IGRA by Public Law 105–83.

Hardship Exception

One commenter strongly urged the Commission to include another tier or an exception to the fee where the assessment would be greater than the net revenues. Another commenter urged that the non-compacted tribe, which is faced with a disproportionate burden in payment of the fee, should not be unfairly penalized.

Response: The Commission is sympathetic to the situations described, but the IGRA does not provide for such individual exceptions. The Commission's use of the tier system should provide some help in this regard.

Impact on Small Business Entities

One commenter believes that the Commission is incorrect in stating that the proposed rule will not have a significant impact on a substantial number of small business entities. He thinks that this rule will shut them and many other small tribal gaming operations down.

Response: The Commission does not believe that the impact will be grater that great given the $8 million cap. Only if the bulk of the Indian gaming industry becomes exempt from paying fees will the burden on the small business entities become so great.

Timing of Exemption From Fee Assessments

One commenter claimed that the NIGC has entirely failed to consider a critical element of fee assessment, i.e., a present exemption from fee assessments. It is not only unreasonable and unfair, but also arbitrary and capricious and clearly erroneous for the Commission to impose only that portion of the Congressional mandate that raises tribal fees and increases Commission revenues but delays until a later date, if at all, and abrogates, the tribal statutory entitlement to a present exemption from payment of the fees. Another commenter said that the NIGC should promulgate the rules governing the exemption prior to imposing fees on tribes that are indistinguishable from the Mississippi Choctaw. Yet another commenter argues that the NIGC must first allow the tribes the opportunity to apply for and receive a certificate of self-regulation before the subject fees may be lawfully assessed. Other commenters asserted that if the Mississippi Choctaw will be immediately exempt from application of the assessed fees, all tribes similarly situated should also be immediately eligible for this exemption. To do otherwise would lead to unfair preferential treatment which is discriminatory in nature. Several commenters said that the NIGC should issue regulations governing self-regulation as soon as possible.

Response: The NIGC agrees that if self-regulatory status is made available to one tribe, it should be made available to all tribes in a timely manner. In fact, it is publishing today proposed rules governing self-regulation of class II operations. The NIGC does not agree that self-regulatory status has been, or should be, made available automatically. Self-regulation status is an exception (exemption) to the general rule and any tribe seeking such status should be required to demonstrate its qualifications for such classification.

Scope of Exemption From Fee Assessments

One commenter suggested that the NIGC is now prohibited from assessing class II or class III fees against self-regulated gaming operations, that Section 2710(c)(5) of the IGRA was not expressly repealed by Congress but in effect has been superseded by Public Law 105–83. Another commenter asserted that new Section 18(a)(2)(C) of IGRA supersedes the old procedures under Section 11(c)(3) for a tribe to petition for a certificate of self-regulation from the Commission and thereby obtain a partial exemption from Commission fees.

Response: The NIGC does not agree with those interpretations. First, Section 2710(c)(5) and Section 11(c)(3) of the IGRA deal with class II while the provision in Public Law 105–83 and Section 18(a)(2)(C) of the IGRA deal with tribes such as the Mississippi Choctaw, who currently have only a class III operation. The NIGC believes that the Congress has authorized separate class II and class III self-regulation provisions. Consequently, the NIGC is publishing in the **Federal Register** today its proposed rules for self-regulation of class II operations and the Advance Notice of Proposed Rulemaking for class III operations.

Determination of Self-Regulation

One commenter contends that until the Commission determines which tribes are self-regulated and which are not, it may not properly assess any fees on Indian tribes.

Response: The Commission disagrees. The Commission's authority to assess fees is separate from its authority to determine which tribes are self-regulating. Furthermore, although class III self-regulated tribes may be exempt from the obligation to pay fees, that provision is not self implementing. Thus, regulations must be promulgated to determine which tribes are self-regulating.

NIGC's Class III Responsibilities

Two commenters stated that the NIGC has very few statutory duties or

responsibilities for class III gaming and what activities the NIGC does undertake for class III (such as approval of management contracts) are usually covered by fees paid by applicant tribes. Another commenter said that NIGC's only class III obligation is to receive the annual audits. And yet another commenter suggested that the Commission clarify in its regulations that it is authorized only to regulate class II gaming.

Response: The NIGC's responsibilities for class III gaming are considerably broader than these commenters suggest. Among other things, the NIGC is charged with:

—Determining whether the gaming operation is complying with all provisions of IGRA, any regulation prescribed by the Commission pursuant to the IGRA, or tribal regulations, ordinances, or resolutions approved under section 11 or 13 of the IGRA;

—Assure that the tribe has sole proprietary interest and responsibility for the conduct of the gaming activity;

—Assure that the net revenues from all tribal gaming are used for the specified purposes;

—Assure that the construction and maintenance of the gaming facility, and the gaming itself is conducted in a manner which adequately protects the environment and the public health and safety; and

—Determine that any class III gaming is conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State that is in effect.

Texas Rather Than User Fees

One commenter suggested that the fee regulations proposed by the Commission provide for taxes rather than user fees.

Response: The Commission disagrees. The fee assessments relate to the regulation of the Indian gaming industry and the provision of services to individual operations and the industry as a whole.

Class II and Class III Operation

Response: A gaming operation that conducts both class II and class III gaming is subject to the provisions applicable to class II, class III, and both class II and class III. There may be class II provisions that do not apply to the class III portion of the operation and there may be class III provisions that do not apply to the class II portion of the operation.

Negotiated Rulemaking

One commenter suggested that negotiated rulemaking should be used for the fee formula, self-regulating tribes, and other issues.

Response: The Commission agrees that negotiated rulemaking should always be considered but in the situations at hand, it believes that negotiated rulemaking is not practicable for the fee and self-regulating regulations. The Commission's budgetary needs required immediate decisions to implement the change in fees. Furthermore, the Commission concurred with commenters that regulations on self-regulation should be finished as soon as practicably possible. As a result, interested parties have been given ample opportunity to review, comment on, and discuss with Commissioners and staff the Commission's thinking with respect to the proposed regulations.

Regulatory Procedures

Regulatory Flexibility Act

This proposed rule will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexihility Act (5 U.S.C. 601 *et seq.*). The additional entities becoming subject to these regulations as a result of the changes now being made are generally larger than those entities presently covered. Furthermore, the fees that will be paid by the entities presently covered will be less than the fees they are presently paying.

Paperwork Reduction Act

The information collection requirements contained in paragraph (c) of this regulation have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 3141–0007. The information is being collected to determine the assessable gross revenue of each gaming operation and the aggregate assessable gross revenues of all gaming operations. The information will be used to set and adjust fee rates and to verify the computations of fees paid by each gaming operation. Response is mandatory.

National Environmental Policy Act

The Commission has determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Larry D. Rosenthal,
Chief of Staff, National Indian Gaming Commission.

List of Subjects in 25 CFR Part 514

Gambling, Indians-lands, Reporting and recordkeeping requirements.

Accordingly, 25 CFR Part 514 is amended as follows:

PART 514—FEES

1. The authority for Part 514 continues to read as follows:

Authority: 25 U.S.C. 2706, 2708, 2710, 2717, 2717a.

2. Section 514.1 is amended by revising paragraphs (a) introductory text, (a)(4), (b) introductory text, (b)(4), (c) introductory text, (c)(1), (c)(2), (c)(5) introductory text, (c)(8), and (d) introductory text, by removing paragraph (g), and by adding paragraph (a)(6), to read as follows:

§ 514.1 Annual fees.

(a) Each gaming operation under the jurisdiction of the Commission shall pay to the Commission annual fees as established by the Commission. The Commission, by a vote of not less than two of its members, shall adopt the rates of fees to be paid.

* * * * *

(4) The rates of fees imposed shall be—

(i) No more than 2.5 percent of the first $1,500,000 (1st tier), and

(ii) No more than 5 percent of amounts in excess of the first $1,500,000 (2nd tier) of the assessable gross revenues from each gaming operation subject to the jurisdiction of the Commission.

* * * * *

(6) If a tribe is determined to be self-regulated pursuant to the provisions of 25 U.S.C. 2717(a)(2)(C), no fees shall be imposed.

(b) For purposes of computing fees, assessable gross revenues for each gaming operation are the annual total amount of money wagered on class II and III games, admission fees (including table or card fees), less any amounts paid out as prizes or paid for prizes awarded, and less an allowance for amortization of capital expenditures for structures.

* * * * *

(4) All class II and III revenues from gaming operations are to be included.

(c) Each gaming operation subject to the jurisdiction of the Commission and not exempt from paying fees pursuant to the self-regulation provisions shall file

with the Commission quarterly a statement showing its assessable gross revenues for the previous calendar year.

(1) These quarterly statements shall show the amounts derived from each type of game, the amounts deducted for prizes, and the amounts deducted for the amortization of structures;

(2) These quarterly statements shall be filed no later than—March 31, June 30, September 30, and December 31, of each calendar year the gaming operation is subject to the jurisdiction of the Commission, beginning in September 1991. For calendar year 1998, the quarterly statement for the first quarter shall be filed no later than April 13, 1998. Any changes or adjustments to the previous year's assessable gross revenue amounts from one quarter to the next shall be explained.

* * * * *

(5) Each gaming operation shall determine the amount of fees to be paid and remit them with the statement required in paragraph (c) of this section. The fees payable shall be computed using—

* * * * *

(8) Quarterly statements, remittances and communications about fees shall be transmitted to the Commission at the following address: Office of Finance, National Indian Gaming Commission, 1441 L Street, N.W., Suite 9100, Washington, DC 20005. Checks should be made payable to the National Indian Gaming Commission (do not remit cash).

* * * * *

(d) The total amount of all fees imposed during any fiscal year shall not exceed $8,000,000. The Commission shall credit pro-rata any fees collected in excess of this amount against amounts otherwise due at the end of the quarter following the quarter during which the Commission makes such determination.

* * * * *

[FR Doc. 98–6282 Filed 3–11–98; 8:45 am]
BILLING CODE 7565–01–M

NATIONAL INDIAN GAMING COMMISSION

Fee Rates

AGENCY: National Indian Gaming Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given, 25 CFR 514.1 is being amended to include class III revenues in the revenue base, eliminate the minimum rate that can be charged, and increase the total amount of fees that can be imposed. These amendments are being published in the **Federal Register** today and will become effective on April 13, 1998.

Pursuant to 25 CFR 514.1(a)(3), the National Indian Gaming Commission has adopted preliminarily annual fee rates of 0.00% for tier 1 and 0.08% (.0008) for tier 2 for calendar year 1998. These rates shall apply to all assessable gross revenues from each gaming operation under the jurisdiction of the Commission.

All fee payments for calendar year 1998 should be made under the regulations as amended.

FOR FURTHER INFORMATION CONTACT: Cindy Altimus, National Indian Gaming Commission, 1441 L Street, NW, Suite 9100, Washington, DC 20005; telephone 202/632–7003; fax 202/632–7066 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act established the National Indian Gaming Commission which is charged with, among other things, regulating gaming on Indian lands. Recent amendments to the Indian Gaming Regulatory Act add class III gaming revenues to the assessable gross revenue base, increase the total amount of fees that can be imposed, eliminate the minimum rate that can be charged, and provide for an exemption for self-regulated tribes such as the Mississippi Band of Choctaw.

The regulations of the Commission (25 CFR part 514), as amended, provided for a system of fee assessment and payment that is self-administered by gaming operations. Pursuant to those regulations, the Commission is required to adopt and communicate assessment rates; the gaming operations are required to apply those rates to their revenues, compute the fees to be paid, report the revenues, and remit the fees to the Commission on a quarterly basis.

The regulations of the Commission and the rate being adopted today are effective for calendar year 1998. Therefore, all gaming operations within the jurisdiction of the Commission are required to self-administer the provisions of these regulations and report and pay any fees that are due to the Commission by March 31, 1998 or no later than April 13, 1998, the date the amendments become effective.

Larry D. Rosenthal,

Chief of Staff, National Indian Gaming Commission.

[FR Doc. 98–6281 Filed 3–11–98; 8:45 am]

BILLING CODE 7565–01–M

NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 518

Issuance of Certificates of Self-Regulation to Tribes

AGENCY: National Indian Gaming Commission.

ACTION: Proposed rule.

SUMMARY: The National Indian Gaming Commission (Commission) proposes regulations that provide for tribal self-regulation of class II gaming operations under the Indian Gaming Regulatory Act (Act). These regulations would implement the class II self-regulation provisions of the Act, under which tribes that meet specified criteria may obtain a certificate of self-regulation. The primary effect of this action is to establish requirements for and a process by which tribes may obtain certificates of self-regulation. In addition, the Commission may not assess a fee on the gaming activity of a class II gaming operation operated by a tribe which holds a certificate of self-regulation in excess of one quarter of one percent of the gross revenue of that operation.

DATES: Comments may be submitted on or before May 11, 1998. A public hearing will be held on April 1, 1998, in Portland, Oregon, from 9:00 a.m. until 1:00 p.m.

ADDRESSES: Comments may be mailed to: Self-Regulation Comments, National Indian Gaming Commission, 1441 L Street, N.W., Suite 9100, Washington, D.C. 20005, delivered to that address between 8:30 a.m. and 5:30 p.m., Monday through Friday, or faxed to 202/632–7066 (this is not a toll-free number). Comments received may be inspected between 9:00 a.m. and noon, and between 2:00 p.m. and 5:00 p.m., Monday through Friday. The public hearing will be held at the Double Tree Hotel, Lloyd Center, 1000 N.E. Multnomah, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Maria Getoff at 202/632–7003; fax 202/632–7066 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA, or the Act), enacted on October 17, 1988, established the National Indian Gaming Commission (Commission). Under the Act, the Commission is charged with regulating class II gaming and certain aspects of class III gaming on Indian lands. The regulations proposed today would implement the Commission's authority to issue certificates of self-regulation for class II gaming to qualified tribes under 25 U.S.C. 2710(c), which provides for a reduced fee rate on class II gaming activity for tribes that meet certain specific criteria and therefore qualify for a certificate of self-regulation. This criteria is set forth in 25 U.S.C. 2710(c)(4) (A), (B), and (C). Section 2710(c)(5)(C) of 25 U.S.C. provides that tribes that obtain certificates of self-regulation are subject to a fee of not more than one quarter of one percent of gross revenue on their class II gaming activity.

The Commission has relied on the self-regulation provisions of the Act to establish the criteria in these proposed regulations. In addition, with respect to minimum internal control standards, the Commission has reviewed the processes and procedures employed by the State of New Jersey, the State of Nevada and the materials received by the National Indian Gaming Association/National Congress of American Indians Task Force on Indian Gaming Internal Control Standards. These sources made clear the need for tribes to adopt and implement sufficient accounting, auditing, and internal control systems to be self-regulating.

Furthermore, the Commission has developed some basic examples of the information to be relied on by the Commission to determine whether a tribe is self-regulating. They include the establishment of an independent tribal regulatory body which performs certain functions, a sufficient source of funding for the regulatory body, and the adoption of a conflict of interest policy for tribal regulators. The Commission has identified these examples as areas that can make the difference between a tribal regulation system that adequately regulates gaming and one that does not.

After a tribe receives a certificate of self-regulation for class II gaming, the Commission retains oversight, investigative, and enforcement responsibilities and will continue to maintain an ongoing relationship with the tribe. A short list of the Commission's many responsibilities includes:

1. Ensuring compliance with licensing requirements pursuant to 25 C.F.R. Part 558;
2. Ensuring that the tribe has the sole proprietary interest in and responsibility for the conduct of the gaming pursuant to 25 C.F.R. 522.4(b)(1);
3. Reviewing and approving management contracts, including suitability determinations and compliance with the National Environmental Policy Act pursuant to 25 C.F.R. 533.1;
4. Ensuring that annual audit reports of the gaming operation are provided by the tribe to the Commission pursuant to 25 C.F.R. 571.13;
5. Issuing notices of violation, assessing civil fines, issuing temporary closure orders, holding hearings, taking testimony, and issuing decisions pursuant to 25 C.F.R. Part 573, 25 C.F.R. Part 575, and 25 C.F.R. Part 577;
6. Monitoring tribal operations to assure maintenance of status as self-regulatory pursuant to 25 U.S.C. § 2710(c)(6).

While this list is not exhaustive, it illustrates the extent to which the Commission will continue to be involved in the regulation of class II gaming, notwithstanding a tribe's self-regulating status.

The Act was recently amended, and that amendment may extend the application of self-regulation standards to apply to class III gaming operations as well as class II gaming operations. The Commission is therefore issuing an Advance Notice of Proposed Rulemaking regarding self-regulation by tribes of class III operations.

Requirement of an Independent Tribal Regulatory Body

Tribal gaming operations vary in type and size. A rigid set of rules for self-regulation could unnecessarily restrict tribes in the pursuit of a certificate of self-regulation. Therefore, the Commission proposes the adoption of a system to identify minimum factors that should be considered when evaluating a tribe's petition for self-regulation, while recognizing there are other factors to be considered as well. One minimum requirement is that the tribe have an independent tribal regulatory body. Effective regulatory oversight requires that there be a separation between the regulation and operation of tribal gaming activities. The independent regulatory body should be an arm of the tribal government, established for the exclusive purpose of regulating and monitoring gaming on behalf of the tribe. The regulatory body must be structured to ensure that the regulation of gaming is separate from the operation of gaming. The regulatory entity should have no involvement in the operational or managerial decisions of a gaming facility, except to the extent that the regulatory body identifies violations of federal or tribal law.

Therefore, pursuant to 25 U.S.C. 2710 (c) (3), (4), (5), and (6), these regulations are being proposed to establish the requirements and the process for obtaining a certificate of self-regulation.

Regulatory Flexibility Act

This proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. Because this rule is procedural in nature, it will not impose substantive requirements that could be deemed impacts within the scope of the Act.

Paperwork Reduction Act

The Commission is in the process of obtaining clearance from the Office of Management and Budget (OMB) for the information collection requirements contained in this proposed rule, as required by 44 U.S.C. 3501 et seq. The information required to be submitted is identified in sections 518.3 and 518.5, and relates to petitions for certificates of self-regulation. The information will be used to determine whether a tribe has met the criteria for the issuance of a certificate of self regulation, and also to monitor a tribe's ability to continue to meet the criteria on an ongoing basis in order to maintain its certificate of self-regulation. Response is required to obtain a benefit in accordance with 25 U.S.C. 2.

Public reporting burden for this collection of information is estimated to average 20 hours per petition, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The Commission estimates that approximately 10 tribes will petition each year for a certificate of self-regulation, for an annual burden of 200 hours.

In addition, the proposed rule requires tribes that hold certificates of self-regulation to prepare and submit an annual report to the Commission to establish that the tribe has continuously met the criteria for self-regulation. The Commission estimates that the annual reporting and recordkeeping burden for the annual report will be 50 hours. The Commission estimates that approximately 5 tribes per year will be issued certificates of self-regulation and thereby required to submit the annual report, for an annual burden of 250 hours. Total annual burden for the petition and the annual report is estimated at 450 hours. The Commission further estimates that the total annual cost to respondents will be between $225,000 and $650,000, depending on the size of the gaming operation.

Send comments regarding this collection of information, including suggestions for reducing the burden to both, Maria Getoff, National Indian Gaming Commission, 1441 L Street N.W., Suite 9100, Washington, DC 20005; and to the Office of Information and Regulatory Affair, Office of Management and Budget, Washington, DC 20503. The Office of Management and Budget (OMB) has up to 60 days to approve or disapprove the information collection, but may respond after 30 days; therefore public comments should be submitted to OMB within 30 days in order to assure their maximum consideration.

The Commission solicits public comment as to:

a. whether the collection of information is necessary for the proper performance of the functions of the Commission, and whether the information will have practical utility;

b. the accuracy of the Commission's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

c. the quality, utility, and clarity of the information to be collected; and

d. how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

An agency may not conduct, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

The Commission has determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Philip Hogen,
Commissioner, National Indian Gaming Commission.

List of Subjects in 25 CFR Part 518

Gambling, Indians-lands, Indians-tribal government, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the National Indian Gaming Commission proposes to amend 25 CFR by adding a new part 518 as follows:

PART 518—SELF REGULATION OF CLASS II GAMING

Sec.

518.1 What does this part cover?
518.2 Who may petition for a certificate of self-regulation?
518.3 What must a tribe submit to the Commission as part of its petition?
518.4 What criteria must a tribe meet to be issued a certificate of self-regulation?
518.5 What process will the Commission use to review petitions?
518.6 When will a certificate of self-regulation become effective?
518.7 If a tribe holds a certificate of self-regulation, is it required to report information to the Commission to maintain its self-regulatory status?
518.8 Does a tribe that holds a certificate of self-regulation have a continuous duty to advise the Commission of any information?
518.9 Are any of the investigative or enforcement powers of the Commission limited by the issuance of a certificate of self-regulation?
518.10 Under what circumstances may the Commission remove a certificate of self-regulation?
518.11 May a tribe request a hearing on the Commission's proposal to remove its certificate?
518.12 May a tribe request reconsideration by the Commission of a denial of a petition or a removal of a certificate of self-regulation?

Authority: 25 U.S.C. 2706(b)(10), 2710(c)(3)–(6).

§ 518.1 What does this part cover?

This part sets forth requirements for obtaining, and procedures governing, the Commission's issuance of certificates of self-regulation of class II gaming operations under 25 U.S.C. 2710(c). When the Commission issues a certificate of self-regulation, the certificate is issued to the tribe, not to a particular gaming operation; the certificate will apply to all class II gaming operations operated by the tribe that holds the certificate.

§ 518.2 Who may petition for a certificate of self-regulation?

A tribe may submit to the Commission a petition for self-regulation of class II gaming if, for the three (3) year period immediately preceding the date of its petition:

(a) The tribe has continuously conducted the gaming activity for which it seeks self-regulation;

(b) All gaming that the tribe has engaged in, or licensed and regulated, on Indian lands within the tribe's jurisdiction, is located within a State that permits such gaming for any purpose by any person, organization or entity (and such gaming is not otherwise specifically prohibited on Indian lands by federal law), in accordance with 25 U.S.C. 2710(b)(1)(A);

(c) The governing body of the tribe has adopted an ordinance or resolution that the Chairman has approved, in accordance with 25 U.S.C. 2710(b)(1)(B);

(d) The tribe has otherwise complied with the provisions of 25 U.S.C. 2710; and,

(e) The gaming operation and the tribal regulatory body have, for the three years immediately preceding the date of the petition, maintained all records required to support the petition for self-regulation.

§ 518.3 What must a tribe submit to the Commission as part of its petition?

(a) A petition for a certificate of self-regulation under this part shall contain:

(1) Two copies on 8½" X 11" paper of a petition for self-regulation approved by the governing body of the tribe and certified as authentic by an authorized tribal official, which includes:

(i) A brief history of each gaming operation(s), including the opening dates and periods of voluntary or involuntary closure;

(ii) An organizational chart of the independent tribal regulatory body;

(iii) A description of the process by which positions on the independent tribal regulatory body are filled;

(iv) A description of the process by which the independent tribal regulatory body is funded and the funding level for the three years immediately preceding the date of the petition;

(v) A list of the current regulators and employees of the independent tribal regulatory body, their titles, and the dates they began employment; and

(vi) A list of the current gaming operation division heads.

(2) A list of the documents maintained by the tribe, to which the Commission shall have access, for use in determining whether the tribe meets the eligibility criteria of § 518.2 and the approval criteria of § 518.4, which shall include but is not limited to:

(i) The tribe's constitution or other governing documents;

(ii) If applicable, the tribe's revenue allocation plan pursuant to 25 U.S.C. 2710(b)(3);

(iii) A description of the accounting system for all revenues from the gaming activities;

(iv) Manual(s) of the internal control systems of the gaming operation(s);

(v) For the three (3)-year period immediately preceding the date of the petition, reports on internal controls based on audits of the financial statements, which are in addition to the annual audit reports required to be submitted to the Commission under 25 U.S.C. 2710(b)(2)(C), and the management letters required to be submitted to the Commission under 25 CFR 571.13;

(vi) For the three (3)-year period immediately preceding the date of the petition, records of all allegations of criminal or dishonest activity, and measures taken to resolve the allegations;

(vii) For the three (3)-year period immediately preceding the date of the petition, records of all investigations, enforcement actions, and prosecutions of violations of the tribal gaming ordinance or regulations, including dispositions thereof;

(viii) Records of all current employees of the gaming operation, including the name, title, and licensing status of each employee;

(ix) The dates of issuance, and criteria for the issuance of tribal gaming licenses issued for each place, facility or location at which gaming is conducted;

(x) The tribe's current set of gaming regulations; and

(xi) The dates of the last three annual audit reports for the independent tribal regulatory body and the tribal government;

(3) A copy of the public notice required under 25 CFR 518.5(e), and a certification, signed by a tribal official, that it has been posted. Upon publication of the notice in a local newspaper, the tribe shall forward a copy of such publication to the Commission;

(4) A copy of an audit report(s), along with the opinion from an independent certified public accountant, which shows that tribal net gaming revenues were used in accordance with the requirements of 25 U.S.C. 2710(b)(2)(B) for the three (3)-year period immediately preceding the date of the petition.

§ 518.4 What criteria must a tribe meet to be issued a certificate of self-regulation?

(a) The Commission may issue a certificate of self-regulation if it determines that the tribe has, for the three years immediately preceding the petition:

(1) Conducted its gaming activity in a manner that:

(i) Has resulted in an effective and honest accounting of all revenues;

(ii) Has resulted in a reputation for safe, fair, and honest operation of the activity; and

(iii) Has been generally free of evidence of criminal or dishonest activity.

(2) Adopted and is implementing adequate systems for:

(i) Accounting of all revenues from the activity;

(ii) Investigation, licensing and monitoring of all employees of the gaming activity;

(iii) Investigation, enforcement and prosecution of violations of its gaming ordinance and regulations;

(3) Conducted the operation on a fiscally and economically sound basis; and

(4) The gaming activity has been conducted in full compliance with the IGRA, NIGC regulations, and the tribe's gaming ordinance and gaming regulations.

(b) Indicators that a tribe has met the criteria set forth in paragraph (a) of this section may include, but is not limited to:

(1) Adoption and implementation of minimum internal control standards which are at least as stringent as those promulgated by the Commission, or until such standards are promulgated by the Commission, minimum internal control standards at least as stringent as those required by the State of Nevada or the State of New Jersey;

(2) Evidence that suitability determinations are made with respect to tribal gaming regulators which are at least as stringent as those required for key employees and primary management officials of the gaming operation(s);

(3) Evidence of an established independent regulatory body within the tribal government which:

(i) Monitors gaming activities to ensure compliance with federal and tribal laws and regulations;

(ii) Promulgates tribal gaming regulations pursuant to tribal law;

(iii) Ensures that there is an adequate system for accounting of all revenues from the activity and monitors such system for continued effectiveness;

(iv) Performs routine audits of the gaming operation;

(v) Routinely receives and reviews accounting information from the gaming operation;

(vi) Has access to and may inspect, examine, photocopy and audits all papers, books, and records;

(vii) Provides ongoing information to the tribe on the status of the tribe's gaming operation(s);

(viii) Monitors compliance with minimum internal control standards for the gaming operation;

(ix) Adopts and implements an adequate system for investigation, licensing, and monitoring of all employees of the gaming activity;

(x) Maintains records on licensees and on persons denied licenses including persons otherwise prohibited from engaging in gaming activities within the tribe's jurisdiction;

(xi) Inspects and examines all premises where gaming is conducted;

(xii) Establishes standards for and issues vendor licenses or permits to persons or entities who deal with the gaming operation, such as

manufacturers and suppliers of services, equipment and supplies;

(xiii) Establishes or approves, and posts, rules of games;

(xiv) Inspects games, tables, equipment, cards, and chips or tokens used in the gaming operation(s);

(xv) Establishes standards for technological aids and tests such for compliance with standards;

(xvi) Establishes or approves video surveillance standards;

(xvii) Adopts and implements an adequate system for the investigation of possible violations of the tribal gaming ordinance and regulations and takes appropriate enforcement actions;

(xviii) Determines that there is adequate dispute resolution procedures for gaming operation employees and customers, and ensures that such system is adequately implemented; and

(xix) Takes testimony and conducts hearings on regulatory matters, including matters related to the revocation of primary management officials and key employee licenses.

(4) Documentation of a sufficient source of permanent and stable funding for the independent tribal regulatory body which is allocated and appropriated by the tribal governing body;

(5) Adoption of a conflict of interest policy for the regulators/regulatory body and their staff;

(6) Evidence that the operation is financially stable;

(7) Adoption and implementation of a system for adequate prosecution of violations of the tribal gaming ordinance and regulations, which may include the existence of a tribal court system authorized to hear and decide gaming related cases; and

(8) Evidence that the operation is being conducted in a safe manner, which may include, but not be limited to:

(i) The availability of medical, fire, and emergency services;

(ii) The existence of an evacuation plan; and

(iii) Proof of compliance with applicable building, health, and safety codes.

(c) The burden of establishing self-regulation is upon the tribe filing the petition.

(d) The Commission shall have complete access to all areas of and all papers, books, and records of the tribal regulatory body, the gaming operation, and any other entity involved in the regulation or oversight of the gaming operation. The Commission shall be allowed to inspect and photocopy any relevant materials. The tribe shall take no action to prohibit the Commission from soliciting information from any current or former employees of the tribe, the tribal regulatory body, or the gaming operation. Failure to adhere to this paragraph may be grounds for denial of a petition for self-regulation.

§ 518.5 What process will the Commission use to review petitions?

(a) The Commission shall undertake an initial review of the petition to determine whether the tribe meets all of the eligibility criteria of § 518.2. If the tribe fails to meet any of the eligibility criteria, the Commission shall deny the petition and so notify the tribe. If the tribe meets all of the eligibility criteria, the Commission shall review the petition and accompanying documents for completeness. If the Commission finds the petition incomplete, it shall immediately notify the tribe by letter, certified mail, return receipt requested, of any obvious deficiencies or significant omissions apparent in the petition and provide the tribe with an opportunity to submit additional information and/or clarification.

(b) The Commission shall notify a tribe, by letter, when it considers a petition to be complete.

(c) Upon receipt of a complete petition, the Commission shall conduct a review and investigation to determine whether the tribe meets the approval criteria under § 518.4. During the course of this review, the Commission may request from the tribe any additional material it deems necessary to assess whether the tribe has met the requirements for self-regulation. The tribe shall provide all information requested by the Commission in a timely manner. The Commission may consider any evidence which may be submitted by interested or informed parties.

(d) The tribe shall post a notice, contemporaneous with the filing of the petition, advising the public that it has petitioned the Commission for a certificate of self regulation. Such notice shall be posted in conspicuous places in the gaming operation and the tribal government offices. Such notice shall remain posted until the Commission either issues a certificate or declines to do so. The tribe shall also publish such notice, once a week for four weeks, in a local newspaper with a broad based circulation. Both notices shall state that one of the criteria for the issuance of a certificate is that the tribe has a reputation for safe, fair, and honest operation of the gaming activity, and shall solicit comments in this regard. The notices shall instruct commentors to submit their comments directly to the Commission, shall provide the mailing address of the Commission and shall request that commentors include their name, address and day time telephone number.

(e) After making an initial determination on the petition, the Commission shall issue a report of its findings to the tribe.

(f) The tribe shall have 60 days to submit to the Commission a written response to the report. This response may include additional materials which:

(1) The tribe deems necessary to adequately respond to the Commission's findings; and

(2) The tribe believes supports its petition.

(g) At the time of the submission of its response the tribe may request a hearing before the Commission. This request shall specify the issues to be addressed by the tribe at such hearing, and any proposed oral or written testimony the tribe wishes to present. The Commission may limit testimony.

(h) The Commission shall notify the tribe, within 10 days of receipt of such request, of the date and place of the hearing. The Commission shall also set forth the schedule for the conduct of the hearing, including the specification of all issues to be addressed at the hearing, the identification of any witnesses, the time allotted for testimony and oral argument, and the order of the presentation.

(i) Following review of the tribe's response and the conduct of the hearing, the full Commission shall issue a final decision on the petition. The decision shall set forth with particularity the Commission's findings with respect to the tribe's compliance with standards for self-regulation set forth in this part. Decisions to issue or to deny a certificate of self-regulation shall require a vote of at least two of the Commissioners.

§ 518.6 When will a certificate of self-regulation become effective?

A certificate of self-regulation shall become effective at the beginning of the next calendar year following the date of its issuance.

§ 518.7 If a tribe holds a certificate of self-regulation, is it required to report information to the Commission to maintain its self-regulatory status?

Yes. Each tribe that holds a certificate of self-regulation shall be required to submit a self-regulation report annually to the Commission in order to maintain its self-regulatory status. Such report shall set forth information, with supporting documentation, to establish that the tribe has continuously met the eligibility requirements of § 518.2 and

the approval requirements of § 518.4. Such report shall be filed with the Commission on April 15th of each year following the first year of self-regulation. Failure to file such report shall be grounds for the removal of a certificate under § 518.8.

§ 518.8 Does a tribe that holds a certificate of self-regulation have a continuous duty to advise the Commission of any information?

Yes. A tribe that holds a certificate of self-regulation has a continuous duty, at all times after the receipt of a certificate of self-regulation, to immediately advise the Commission of any circumstances that may negatively impact on the tribe's ability to continue to self-regulate. Failure to do so is grounds for removal of a certificate of self-regulation. Such circumstances may include, but are not limited to: a change in management contractor; financial instability; or any other factors that may undermine a tribe's ability to effectively regulate.

§ 518.9 Are any of the investigative or enforcement powers of the Commission limited by the issuance of a certificate of self-regulation?

No. The Commission retains its investigative and enforcement powers over all class II gaming tribes notwithstanding the issuance of a certificate of self-regulation. The Commission shall retain its powers to investigate and bring enforcement actions for violations of the Indian Gaming Regulatory Act, accompanying regulations, and violations of tribal gaming ordinances.

§ 518.10 Under what circumstances may the Commission remove a certificate of self-regulation?

The Commission may, after an opportunity for a hearing, remove a certificate of self-regulation by a majority vote of its members if it determines that the tribe no longer meets the eligiblity criteria of § 518.2, the approval criteria of § 518.4, the requirements of § 518.7 or the requirements of § 518.8. The Commission shall provide the tribe with prompt notice of the Commission's intent to remove a certificate of self-regulation under this part. Such notice shall state the reasons for the Commission's action and shall advise the tribe of its right to a hearing under § 518.9.

§ 518.11 May a tribe request a hearing on the Commission's proposal to remove its certificate?

Yes. A tribe may request a hearing regarding the Commission's proposal to remove a certificate of self regulation under § 518.8. Such a request shall be filed with the Commission within thirty (30) days after the tribe received notice of the Commission's action. Failure to request a hearing within the time provided by this section shall constitute a waiver of the right to a hearing.

§ 518.12 May a tribe request reconsideration by the Commission of a denial of a petition or a removal of a certificate of self-regulation?

Yes. A tribe may file a request for reconsideration of a denial of a petition or a removal of a certificate of self-regulation within 30 days of receipt of the denial or removal. Such request shall set forth the basis for the request, specifically identifying those Commission findings which the tribe believes to be erroneous. The Commission shall issue a decision with regard to any request for reconsideration within 30 days of receipt of the request. If the Commission fails to issue a decision within 30 days, the request shall be considered to be disapproved.

[FR Doc. 98–6284 Filed 3–11–98; 8:45 am]
BILLING CODE 7565–01–P

NATIONAL INDIAN GAMING COMMISSION

25 CFR Chapter III

Self-Regulated Class III Gaming Operations

AGENCY: National Indian Gaming Commission.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: This notice announces the initiation of the rulemaking process and requests information relevant to implementing regulations governing the classification of class III gaming operations as "self-regulated." The Commission may not assess any fee on the gaming activity of a class III gaming operation operated by a self-regulated tribe.

DATES: Comments in response to this advance notice must be submitted by May 11, 1998.

ADDRESSES: Commenters may submit their comments by mail, facsimile, or delivery to: Class III Self-Regulation Rule Comments, National Indian Gaming Commission, Suite 9100, 1441 L Street N.W., Washington, D.C. 20005. Fax number: 202–632–7066 (not a toll-free number). Public comments may be delivered or inspected from 9 a.m. until noon and from 2 p.m. to 5 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Maria Getoff at 202–632–7003, or by facsimile at 202–632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

1. Introduction

The Indian Gaming Regulatory Act (IGRA, or the Act), 25 U.S.C. 2701 et seq., was signed into law on October 17, 1988. The Act established the National Indian Gaming Commission (the Commission). The IGRA was enacted for several purposes, primary among them was to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting economic development, self-sufficiency, and strong tribal governments, as well as to provide for the regulation of gaming by Indian tribes adequate to shield them from organized crime. The IGRA was recently amended, by Public Law No. 105–83, to increase the total amount of fees that the Commission may impose on gaming tribes. 25 U.S.C. 2717(a). This increase was achieved by raising the original fee cap and by authorizing the Commission to collect fees from class III operations, which did not previously pay fees. The recent amendment also provides that self-regulated tribes "such as the Mississippi Band of Choctaw" (Band) shall not be required to pay fees. Section 2717(a)(2)(c) of 25 U.S.C. provides that "[n]othing in subsection (a) of this section shall apply to self-regulated tribes such as the Mississippi Band of Choctaw." (Subsection (a) provides that "the Commission shall establish a schedule of fees to be paid to the Commission annually by each gaming operation that conducts a class II or class III gaming activity that is regulated by this chapter"). The amendment provides no guidance as to what the term "self-regulated" means. It merely refers to the Band, which operates a class III gaming operation. The specific criteria for establishing self regulation are set forth in the original Act as applicable to class II activity only. That section has not been amended.

The Commission has issued, contemporaneously with this Advance Notice of Proposed Rulemaking, a Notice of Proposed Rulemaking regarding the issuance of certificates of self-regulation for class II operations.

The IGRA expressly authorizes the Commission to "promulgate such regulations and guidelines as it deems appropriate to implement the provision of this [Act]." 25 U.S.C. 2706(b)(10).

2. Advance Notice of Proposed Rulemaking

After consideration of this issue, the NIGC has determined that the appropriate course of action is to

publish an Advance Notice of Proposed Rulemaking to collect further information.

Before the NIGC proceeds in this area, it intends to have the benefit of a full airing of the issues through the public comment process.

3. Request for Comments

Public comment is requested to assist the NIGC in the drafting of regulations to govern the self-regulation certification process for class III gaming operations. Comment is requested on the following issues:

(a) What initial eligibility requirements should be met by a tribe before the Commission will undertake a review of a petition for self-regulation of its class III gaming operation(s)?

(b) What specific criteria should be met before a tribe may be issued a certificate of self-regulation with respect to its class III gaming operation(s)?

(c) What process should the Commission use for the review of petitions for self-regulation of a class III gaming operation(s)?

(d) Under what circumstances should the Commission remove a certificate of self-regulation?

(e) What should be the process for the removal of a certificate of self-regulation?

The Commission solicits any additional suggestions and/or interpretations regarding the issues raised in this Advance Notice of Proposed Rulemaking.

4. Public Participation

Interested parties are invited to submit comments on any or all of these and other pertinent issues related to issuing class III regulations on self-regulation. Comments must be submitted in triplicate by May 11, 1998 to Class III Self-Regulation Rule Comments, National Indian Gaming Commission, Suite 9100, 1441 L Street N.W., Washington, D.C. 20005. Fax number: 202–632–7066 (not a toll-free number). All written comments submitted in response to this notice will be available for inspection and copying in the NIGC office from 9 a.m. until noon and from 2 p.m. to 5 p.m. Monday through Friday. All timely written submissions will be considered in determining the nature of any proposal.

Authority and Signature

This Advance Notice of Proposed Rulemaking was prepared under the direction of Philip Hogen, Commissioner, National Indian Gaming Commission, 1441 L St. N.W., Suite 9100, Washington, D.C. 20005.

Signed at Washington, D.C. this 24th day of February, 1998.

Philip Hogen,

Commissioner, National Indian Gaming Commission.

[FR Doc. 98–6288 Filed 3–11–98; 8:45 am]

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federal register

Thursday
March 12, 1998

Part V

Federal Reserve System

12 CFR Parts 202 and 203

Equal Credit Opportunity and Home Mortgage Disclosure; Proposed Rules

FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Regulation B; Docket No. R–1008]

Equal Credit Opportunity

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Pursuant to its Regulatory Planning and Review Program, the Federal Reserve Board (the "Board") is undertaking a review of Regulation B, which carries out the provisions of the Equal Credit Opportunity Act (the "ECOA"). The ECOA makes it unlawful for creditors to discriminate against an applicant in any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, age, and other specified bases. The review will determine whether Regulation B should be revised to address technological and other developments; identify areas in the regulation that could be revised to better balance consumer protections and industry burden; and delete obsolete provisions. To gather information necessary for this review and to ensure the participation of interested parties, the Board is soliciting comment on several specific issues, while also soliciting comment generally on potential revisions to the regulation.

DATES: Comments must be received by May 29, 1998.

ADDRESSES: Comments should refer to Docket No. R–1008, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) any time. Comments may be inspected in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR section 261.12 of the Board's Rules Regarding Availability of Information.

FOR FURTHER INFORMATION CONTACT: Natalie E. Taylor or Sheilah Goodman, Staff Attorneys, or Jane Jensen Gell, Senior Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–2412 or 452–3667; for the hearing impaired *only*, contact Diane Jenkins, Telecommunications Device for the Deaf (TDD), at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background on ECOA and Regulation B

The Equal Credit Opportunity Act, 15 U.S.C. 1691, enacted in 1974, makes it unlawful for a creditor to discriminate against an applicant in any aspect of a credit transaction on the basis of sex or marital status. In 1975, pursuant to section 703 of the ECOA, the Board issued Regulation B to implement the ECOA. The Congress amended the ECOA in 1976 to prohibit discrimination on the additional bases of race, color, religion, national origin, age (provided the applicant has the capacity to contract), receipt of public assistance benefits, and good faith exercise of a right under the Consumer Credit Protection Act. The Board issued an amended Regulation B in 1976 to reflect the amendments.

Under the Board's Regulatory Planning and Review Program, which requires periodic review of the Board's regulations, the Board reviewed Regulation B and revised it in 1985 (50 FR 48018, November 20, 1985). In 1989, the Board modified Regulation B to implement amendments to the ECOA contained in the Women's Business Ownership Act of 1988. Those amendments required that creditors give written notice to business applicants of the right to a written statement of reasons for a credit denial, and imposed a record retention requirement for records relating to business credit applications (54 FR 50482, December 7, 1989). The Board further modified the regulation in 1993 to implement amendments to the ECOA contained in the Federal Deposit Insurance Corporation Improvement Act of 1991. The amendments provided applicants with a right to obtain a copy of the appraisal report used in an application secured by residential real property, and expanded the enforcement responsibilities of the federal financial supervisory agencies when information about possible violations of the ECOA becomes known (58 FR 65657, December 16, 1993). The Board also modified the regulation in 1997 to implement amendments to the ECOA contained in the Economic Growth and Regulatory Paperwork Reduction Act of 1996. The amendments created a privilege for information developed by creditors as a result of "self-tests" they conduct (62 FR 66412, December 18, 1997).

II. Review of Regulation B

The Board will review Regulation B with three goals in mind: (1) To determine whether regulatory amendments are needed to address technological and other developments; (2) to identify areas in the regulation that could be revised to better balance consumer protections and industry burden; and (3) to delete obsolete provisions.

This Advance Notice of Proposed Rulemaking is intended to gather information about broad policy issues that could be addressed by revisions to the regulation. The Board is soliciting comment on several specific issues, but also requests suggestions generally on other issues that commenters believe should be addressed or clarified. The Board will publish a proposed rule after evaluating the comments and further analysis.

Concurrently, the Board is undertaking a review of Regulation C (Home Mortgage Disclosure); an advance notice of proposed rulemaking is published elsewhere in today's **Federal Register**.

Comment is specifically solicited on the following issues:

1. Preapplication Marketing Practices

The ECOA and Regulation B prohibit discrimination by a creditor against an applicant—a person who has requested or received credit—on a prohibited basis regarding any aspect of a credit transaction. Credit transaction is defined in the regulation as every aspect of an applicant's dealings with a creditor beginning with information requirements. Thus, the coverage of the ECOA is generally limited to a person who has, at a minimum, sought credit information. However, the Board recognizes that a person could be discouraged from seeking credit or credit information. Accordingly, the regulation expressly prohibits a creditor from engaging in any practice that would discourage a reasonable person (on a prohibited basis) from applying for credit. The official staff commentary provides that a creditor is prohibited from using words, symbols, or other forms of communication in advertising that express, imply, or suggest a discriminatory preference or a policy of exclusion, although a creditor is permitted to engage in affirmative advertising to solicit or encourage traditionally disadvantaged groups to apply for credit.

Aside from the prohibition against discouragement, the ECOA has not been interpreted to apply to a creditor's preapplication marketing practices—

such as the selection of persons solicited for a credit card.[1] Creditors use a number of techniques to decide to whom solicitations will be sent. For instance, creditors will often specify criteria to credit bureaus, which then utilize credit reports to compile mailing lists that identify potential applicants who meet those criteria. This marketing technique—involving prescreened solicitations—is usually carried out through mailed solicitations as well as by telemarketing. Because individuals selected through the prescreening process have not requested credit, they are not deemed to be applicants for purposes of Regulation B when the prescreening occurs. It is only after the individuals respond to a creditor's invitation that the regulation applies.

During the 1985 review of Regulation B, the Board considered whether prescreened solicitations should be covered by the regulation. It was generally recognized that prescreened solicitations could result in a greater availability of credit for consumers. Also, there was no evidence at that time that creditors were improperly making use of prohibited characteristics. Therefore, the Board deemed it unnecessary to modify the regulation.

The Board recognizes that prescreening on a prohibited basis may facilitate the identification of potential customers and provide greater access to credit for some consumers. For example, some creditors have used age to target "older" individuals for credit solicitations and related financial services. However, the Board and the other banking agencies have also found instances in which creditors, primarily in the credit card industry, have used age to exclude youth and elderly persons from receiving solicitations for preapproved credit. Given the potential for using prohibited bases in prescreening to improperly exclude certain categories of individuals, the Board seeks to gain a better understanding of current practices, and solicits comment on how and to what extent creditors are using any prohibited bases in preapplication marketing.

2. Inquiry v. Application

Regulation B allows creditors to establish their own application procedures, including what and how much information to provide to consumers who request information before applying for credit. Creditors and others have expressed concern that the current distinction under Regulation B between an inquiry and an application is difficult to apply. The rule distinguishes between an inquiry and an application based on what the creditor communicates to the consumer. When a consumer requests credit information, this inquiry may entail a discussion of the consumer's credit characteristics. Creditors have suggested that under the regulation it is unclear when a creditor is simply providing information rather than communicating a credit decision—for example, when the creditor explains its underwriting standards in the context of the applicant's credit characteristics. A creditor is required to notify a consumer of action taken (including, as appropriate, a notice of adverse action) if in response to a consumer's request for credit information the creditor communicates a decision not to extend credit.

Creditors say that it is burdensome to provide an adverse action notice to every consumer who is provided with negative information in the information-gathering process. Also, they suggest that some consumers might be concerned about receiving adverse action notices when they are merely in the process of gathering information to shop for a loan.

Most questions that the Board receives regarding the distinction between an inquiry and an application arise in mortgage processes. With the increased use of prequalifications, preapprovals, and interactive loan-calculation tools provided over the Internet, creditors have had difficulty determining whether a notice is required. Sometimes, what begins with a creditor providing information turns into an evaluation of creditworthiness.

With prequalifications or preapprovals, consumers begin their loan-shopping by approaching a lender to determine the price of a home they could afford. In this process, creditors often obtain and review the consumer's credit report for a more accurate picture of the consumer's debt obligations and credit history. In most cases, the consumer has not identified a specific property, nor is the consumer necessarily ready to seek a loan from a particular creditor.

Some creditors provide loan-calculation tools on their home page on the Internet; and consumers are able to calculate the price of a home they could afford by entering information about income and other data. Some programs will calculate the maximum amount for which the consumer could qualify. Other programs encourage the consumer to call the financial institution when information has been entered and it appears from the calculation that the consumer would not qualify for a mortgage due to, for example, low income and high debt. Some creditors' home pages enable the consumer to take the next step of applying to the financial institution for a home loan.

In determining whether it is possible to provide additional guidance to clarify the distinction between an inquiry and application, the Board believes it is important to encourage creditors to provide information, counseling, and assistance to consumers seeking credit information. The sharing of information through counseling programs, such as home-ownership counseling, is a prime example. In home-ownership counseling, a third-party organization and financial institution may partner to counsel potential home buyers—typically first-time home buyers and, often but not necessarily, low-income home buyers—on how to obtain a mortgage. A credit report is often obtained to determine the consumer's financial position and to assist in an ongoing counseling process that could span a year or longer. In some programs, the third-party organization may not only provide counseling services, but also may prescreen applicants for the lender. The Board solicits comment on whether the more formal the process becomes in providing information, counseling, and assisting potential applicants—for example, verifying credit information, or prescreening applicants—the more the process should be treated as an application. The Board also solicits comment on the following:

(1) Should the Board devise a different test for determining when an informal discussion becomes an application? If yes, what should be the test?

(2) Should the Board seek to establish a "bright-line" test? For example, should an inquiry become an application when a creditor evaluates or verifies credit information through third-party information (such as by obtaining a credit report or credit score)?

(3) When, if at all, would the use of an interactive loan-calculation tool constitute an application?

(4) Is it possible or desirable to apply the current notification rules to home-ownership counseling programs? If not, how should the rules be designed to distinguish education-oriented counseling from advice offered by a lender, for example, to a consumer requesting a prequalification decision?

[1] The Fair Housing Act (FHA), which bars discrimination in housing-related transactions, differs in its treatment of prescreened solicitations. The FHA has been interpreted to prohibit persons from prescreening on a prohibited basis, whereas the ECOA permits any prescreening since only "applicants" receive the protections of the act.

(5) Are there some home-ownership counseling programs that have elements of both counseling and applications such that they should be distinguished from education-oriented counseling?

(6) Does the issue of distinguishing an inquiry from an application also arise in nonmortgage processes? If so, what are some of the distinguishing characteristics of such processes? Would a test developed for mortgage processes be effective for nonmortgage processes?

3. Voluntary Data Collection

Regulation B generally prohibits creditors from inquiring about an applicant's sex, marital status, race, color, religion, and national origin. This provision was included in the regulation in the belief that if creditors did not have this information, they could not use it to discriminate against applicants. At the same time, exceptions to this prohibition were also included in Regulation B. The regulation requires creditors to collect "monitoring information" (age, sex, marital status, and race or national origin) for mortgage loan applicants. This requirement was added because of the specific concern that the data was needed to help detect mortgage lending discrimination.

The regulation also allows creditors to collect data if required by another regulation, order, or agreement of a court or enforcement agency to monitor or enforce compliance with the ECOA, Regulation B, or any other federal or state statute or regulation. This exception was included in the regulation so that lenders would not have to choose between competing regulations or statutes. For example, creditors can collect data pursuant to the Home Mortgage Disclosure Act without concerns about violating Regulation B.

In April 1995, the Board published for comment a proposed amendment to Regulation B that would have allowed, but not required, creditors to collect information about an applicant's sex, marital status, race, color, and national origin for nonmortgage credit products. The regulation would have continued to bar creditors from considering this information in a credit decision. In December 1996, the Board withdrew the proposed amendment, noting that this issue might be more appropriate for the Congress to consider.

Since issuance of the final action, the Board has received requests from the other federal financial regulatory agencies, creditors, and community groups asking for further consideration of this matter. The Board believes that in light of the overall review of Regulation B it is appropriate to evaluate whether the prohibition on data collection should be changed. The Board solicits comment on whether to consider amending Regulation B to remove the prohibition barring creditors from collecting certain information about applicants for nonmortgage credit products.

4. Definition of Creditor

The ECOA and Regulation B prohibit a creditor from discriminating against an applicant on a prohibited basis regarding any aspect of a credit transaction. The ECOA's definition of creditor includes anyone who "regularly extends" or "regularly arranges for" the extension of credit. Regulation B combines the concepts and defines a creditor as a person who, in the ordinary course of business, regularly participates in the decision of whether or not to extend credit, including persons such as a potential purchaser of an obligation who influences the decision of whether or not to extend credit. For purposes of §§ 202.4 and 202.5(a) (the prohibitions against discrimination and discouragement), brokers or others who regularly refer applicants to creditors (or who select or offer to select creditors to whom applications can be made) are also deemed creditors.

As creditors expand their distribution systems for lending services and products, they have increasingly asked for guidance about how the definition of "creditor" applies when a lender acts in conjunction with other parties and discrimination occurs. The question could arise in the context of transactions in which a mortgage broker discriminates in originating loans that are funded by or closed in the name of the lender, for example, and also could arise in other types of lending, such as automobile financing.

Regulation B provides that a person (who may otherwise be a creditor) is not a creditor regarding a violation of the ECOA or the regulation committed by another creditor unless the person knew or had reasonable notice of the act, practice, or policy that constituted the violation before becoming involved in the credit transaction. The Board solicits comment on whether it is desirable or feasible to provide further guidance in this area, such as the circumstances under which a creditor is deemed to have knowledge of the acts of other parties when the creditor has participated in the decision to extend credit or set the credit terms.

Comment is solicited on the following:

(1) Is it feasible for the regulation to provide more specific guidance given that most issues will depend on the facts of a particular case?

(2) Should the current test—which relies on whether a person knew or had reasonable notice of an act of discrimination—be modified? If so, in what way?

(3) Should the regulation address whether, and under what circumstances, a creditor must monitor the pricing or other credit terms when another creditor (for example, a broker) participates in the transactions?

5. Documentation for Business Credit

Currently, Regulation B requires written applications if the credit is primarily for the purchase or refinancing of an applicant's principal dwelling. This rule does not apply to business credit. Many requests for business credit are made orally or without a formal written application. In such cases, a creditor usually requests that the applicant submit a financial statement for evaluation. As a general rule, Regulation B prohibits creditors from requiring the signature of a person other than the applicant on any credit instrument where the applicant is individually creditworthy. Where the financial statement offered to support the business credit lists jointly held property and is signed by both owners, some creditors are treating the financial statement as a joint application. Accordingly, both owners often are required to sign the note—even where the request for credit is being made by only one of the property owners. The Board does not believe that a joint property owner's signature on a financial statement to attest to the accuracy or veracity of information is definitive evidence of a joint application.

Without documentation in the files other than the financial statement, institutions may be required to spend considerable time and expense establishing that an application was for joint, rather than individual, credit. In addition, agencies that examine for compliance with Regulation B may impose costs and other burdens on institutions when it is difficult to determine whether a joint property owner actually intended to be a joint applicant. Accordingly, the Board has been asked to revise the regulation to provide guidance on what mechanisms may be used by creditors to establish a joint property owner's intent to apply for joint business credit.

The Board solicits comment on the following:

(1) What are some mechanisms through which evidence of an application for joint credit can be established?

(2) Should the Board provide guidance to clarify the mechanisms through which an application for joint credit can be evidenced? If not, how can creditors ensure that their practices do not violate the regulation?

6. Business Credit Exemptions

The ECOA authorizes the Board to exempt a class of transactions, or a particular type of transaction within a class, if the Board determines that the application of all or part of the regulation to such transactions would not contribute substantially to effectuating the purposes of the regulation. Pursuant to Section 703 of the ECOA, the Board has exercised its authority to exempt business credit from certain notification and record retention requirements for consumer credit if the business had gross revenues in excess of $1 million in its preceding fiscal year, or if the business requested an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit.

Amendments to the ECOA contained in the Women's Business Ownership Act of 1988 require the Board to review exemptions after five years to determine whether an additional extension is appropriate. While the exemptions for certain business credit do not affect the basic prohibition against discrimination in credit transactions, the exemptions do reduce burden for creditors by modifying the notice requirements of the regulation under § 202.9(a)(3) and the record retention rules under § 202.12(b)(5). The Board solicits comment on whether these exemptions are still appropriate.

7. Other Issues

The Board solicits comments on any other broad policy issues that should be addressed in the regulation.

By order of the Board of Governors of the Federal Reserve System, March 6, 1998.

William W. Wiles,

Secretary of the Board.

[FR Doc. 98–6325 Filed 3–11–98; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 203

[Regulation C; Docket No. R–1001]

Home Mortgage Disclosure

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Pursuant to its Regulatory Planning and Review Program, the Board is undertaking a review of Regulation C (Home Mortgage Disclosure). The purpose of the review is to identify ways in which the Board could revise Regulation C to clarify and simplify the regulatory language; respond to technological and other developments; reduce undue regulatory burden on the industry; delete obsolete provisions; and improve the quality and usefulness of the data. To gather information necessary for this review and to ensure the participation of interested parties, the Board is soliciting comment on several specific issues, while also soliciting comment generally on potential revisions to the regulation.

DATES: Comments must be received by May 29, 1998.

ADDRESSES: Comments should refer to Docket No. R–1001, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments received will be available for inspection in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.12 of the Board's Rules Regarding Availability of Information.

FOR FURTHER INFORMATION CONTACT: Jane Jensen Gell or John C. Wood, Senior Attorneys, or Pamela Morris Blumenthal, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or (202) 452–2412; for the hearing impaired *only*, Diane Jenkins, Telecommunications Device for the Deaf, at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background on HMDA and Regulation C

The Home Mortgage Disclosure Act of 1975 (HMDA) (12 U.S.C. 2801 *et seq.*) requires institutions to collect and report data about home purchase and home improvement loans. Institutions must report data for loans originated or purchased, as well as for loan applications that do not result in an origination. Regulation C, which carries out the act, requires institutions to report information about the application or loan: the application date, the action taken and the date of that action, the loan amount, and the loan type and purpose. Institutions must also report data about applicants or borrowers: their race, sex, and income. Finally, institutions must report the property location and occupancy status, and identify the type of purchaser for loans that they sell.

Institutions report this information to their supervisory agencies on an application-by-application basis using a register format. Institutions must make this register available to the public, with certain fields redacted to preserve applicants' privacy. In addition, the Federal Financial Institutions Examination Council (FFIEC), on behalf of the supervisory agencies, compiles this information and prepares individual disclosure statements for each institution, aggregate reports for all covered institutions in each metropolitan statistical area (MSA), and other reports. Individual disclosure statements are available to the public from each institution, and disclosure statements and aggregate reports are available at central depositories in each MSA.

The purpose of HMDA is threefold. One purpose is to provide the public and government officials with information that will help show whether financial institutions are serving the housing needs of the neighborhoods and communities in which they are located. A second purpose is to help public officials target public investments to promote private investments in neighborhoods where investment is needed. Finally, the collection and disclosure requirements provide data that assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes.

HMDA specifies the data that institutions must collect and report. Because of the volume of information that must be aggregated (in 1996, the data reflected 14.8 million loans and applications) institutions must standardize the data reports and generally submit them to their supervisory agency in a machine-readable form. The Board has imposed few additional items of data collection beyond those in the statute. To facilitate data retrieval, each entry in the institution's HMDA loan/application register (HMDA–LAR) must contain a unique identifier. Each entry must also contain the application date and the action taken date. Institutions must distinguish loans to purchase or improve multifamily dwellings from

other home purchase or home improvement loans.

II. Review of Regulation C

Pursuant to the Board's Regulatory Planning and Review Program, the Board has undertaken a review of Regulation C to determine whether revisions might be made to improve the regulation. The regulation was last reviewed in 1988, when the Board made organizational and technical changes to reduce burden. As discussed below, the Board has identified several possible areas for revision. The Board invites comments on these and any other issues that might warrant review. After evaluating the comments, the Board will publish a proposed rule for public comment.

Concurrently, the Board is also undertaking a review of Regulation B (Equal Credit Opportunity); an advance notice of proposed rulemaking is published elsewhere in today's **Federal Register**.

Comment is specifically solicited on the following issues:

1. Reporting Preapprovals

HMDA and Regulation C require lenders to report data regarding applications for mortgage loans that do not result in originations. Under Regulation C, an application is defined as an oral or written request for a home purchase or home improvement loan that is made according to the procedures established by the lender for the type of credit requested. Currently, a creditor that makes a preliminary decision about a potential applicant's creditworthiness before receiving a formal application does not report the decision—whether the decision involves a "prequalification" following a cursory review or involves comprehensive underwriting that could result in an approval subject to the applicant's finding an acceptable property (a "preapproval"). Following a preapproval, home buyers identify the property they wish to purchase and lenders evaluate information relating to the property offered as security for the loan. Preapprovals that lead to an origination are reported on the HMDA–LAR. Currently, requests for preapprovals that result in denials are not reported.

To the extent that reliance on preapprovals becomes standard industry practice, the application data could become less useful for the intended purpose of providing a basis for comparison regarding a creditor's lending decisions. If potential borrowers are denied at the preapproval stage and preapproval decisions are not reported, the reported denials may not be fully representative of a lender's credit decisions. The Board has been asked to consider requiring creditors to collect and report preapprovals, using a special code to distinguish them from formal applications. Comment is requested on all aspects of the issue including the following:

(1) Has the practice of preapprovals become common enough to suggest the need for coverage under Regulation C?

(2) In preapproval transactions, the creditor may lack some of the data called for by the HMDA–LAR. For example, the loan amount may be preliminary and the consumer often has not identified a property address. What level of information would make the reporting of data on preapprovals useful? More generally, at what stage in the loan application process would data regarding these decisions better reflect the pattern of a creditor's lending practices?

(3) Does reporting preapproval requests represent a potentially greater burden than reporting other transactions? Are there reporting distinctions, in either the level of information or the type of preapprovals, that would minimize the burden?

(4) Home-ownership counseling programs sometimes share similarities with preapproval programs. Some home-ownership counseling programs may target low- and moderate-income consumers; others are available to any first-time home buyer and have elements of both counseling and credit evaluation. The more formal the process of providing information and assistance becomes—for example, by verifying credit information—the more the counseling process resembles a preapproval. The Board believes it is important to ensure that creditors are not discouraged from providing assistance to consumers seeking credit information through counseling programs. Consequently, the Board solicits comment on ways to distinguish counseling programs from preapproval programs so as not to discourage creditors from providing information, assistance, and counseling to consumers shopping for credit.

(5) One approach for reporting preapproval decisions would be to track the requirements of Regulation B (Equal Credit Opportunity) and require reporting of all requests that require an adverse action notice under Regulation B. If a creditor evaluates information about a consumer, decides to decline the request, and communicates the decision to the consumer, Regulation B requires the creditor to treat the request as an application and send a notice of adverse action. Currently under Regulation C, creditors are instructed not to report preapproval decisions, even if under Regulation B they are required to give adverse action notices on preapproval requests that are denied. One disadvantage to this approach is that only denials would be reported.

(6) Would tracking the requirements of Regulation B work better if that regulation were revised along with Regulation C to establish a "bright-line" test that distinguished between an inquiry and an application? Suppose that, under both regulations, an inquiry (or request for a preapproval) would be treated as an application only if a creditor evaluated or verified credit information through third party information (such as by obtaining a credit report or credit score).

2. Reporting Refinancings and Home Improvement Loans

Regulation C provides considerable flexibility in the reporting of refinancing transactions in order to minimize compliance burden. A creditor, at its option, may report a refinancing transaction under one of several tests: if the existing obligation was a reportable transaction under Regulation C; if the existing obligation was secured by a lien on a dwelling; or if the new transaction will be secured by a lien on a dwelling. This approach, adopted in 1995, is intended to facilitate compliance by allowing lenders to report all dwelling-secured refinances.

Some reporting institutions as well as users of the HMDA data believe this rule makes the resulting data difficult to analyze and of limited value. They note that the data merge refinancings to reduce the borrower's interest rate on a home mortgage with newly home-secured loans used by the borrower to consolidate and replace previously unsecured consumer loans such as credit card debt.

The Home Mortgage Disclosure Act requires the reporting of information about mortgage loans in part to determine whether lenders are meeting the housing needs of their communities. The act defines a "mortgage loan" as (1) a loan secured by residential real property or (2) a home improvement loan. Regulation C implements the act by establishing a "purpose test" and requiring lenders to report loans for the purpose of home purchase or home improvement, and the refinancings of those loans. By expanding the definition of "refinancing," the Board broadened that category to include—at the institution's option—all dwelling-secured loans, regardless of the purpose of the original loan. The Board solicits

comment on whether the reporting categories should be further modified. Comment is requested on all aspects of the issue including the following:

(1) Would a change in the reporting categories improve the usefulness of the data?

(2) Would a change in the reporting categories make compliance easier and reduce burden?

(3) Would the cost of a change in the reporting categories outweigh any possible benefits?

3. Purchased Loans

Under HMDA and Regulation C, institutions must report all loans that they purchase, even those purchased in bulk or in the context of the purchase of a branch. In some circumstances, this requirement may impose a burden. For example, some institutions believe that obtaining the correct geographic reporting data is more costly if the loans were originated many years ago and the entity that originated and sold the loans was not a HMDA reporter.

The staff commentary to Regulation C provides that a HMDA reporter need not report loans acquired through a merger. The Board has received requests to extend this merger exception to loans acquired through the acquisition of a branch. The Board has also received requests to exclude "seasoned" purchased loans, or those that were not purchased at or shortly after the origination of the loan. Comment is requested on all aspects of the issue including the following:

(1) How useful is public disclosure of data on loans purchased as part of a branch acquisition? To what extent, if any, is it more burdensome to report loans purchased as part of a branch acquisition than other purchased loans? If the Board were to exclude loans purchased as part of a branch acquisition, should the exclusion be limited to a purchase involving "bricks and mortar?" What if an institution purchased the assets of a branch but not the liabilities?

(2) Is there some other way to modify the purchased loan category that would improve the data quality and reduce burden?

4. Temporary Financing

Regulation C excludes certain data from HMDA reporting, including temporary financing such as construction or bridge loans. Some institutions that make a considerable number of construction loans would like to include them with their HMDA data. More generally, a number of HMDA reporters have requested that the Board define "temporary financing." Comment is requested on all aspects of the issue including the following:

(1) How useful would it be for creditors to disclose data on construction lending? Would these data be more burdensome to collect and report than data on permanent financing? If the Board permitted lenders to report construction loans, should such loans be reported with home purchase loans or with a separate code?

(2) Regarding temporary financing generally, should the Board define home purchase loans with a term of less than a specified time as temporary? If so, should the threshold be one year? Two years?

5. Mobile Home Transactions

Currently, purchases or refinancings of mobile homes are reported together with purchases or refinancings of traditional homes. However, underwriting standards for transactions involving mobile homes may differ significantly from transactions involving traditional homes. Some HMDA reporters and users of the HMDA data have suggested that the data would be more useful and easier to analyze if transactions involving mobile homes were reported using a separate code. Comment is requested on all aspects of the issue, including whether it would reduce burden and improve the usefulness of the HMDA data to identify transactions involving mobile homes using a special code.

6. Additional Reporting

Some users believe that the HMDA data would be more useful if certain additional pieces of information were collected. For example, requiring institutions to report the reasons for denial could facilitate fair lending reviews. Currently, only those institutions supervised by the Office of the Comptroller of the Currency and the Office of Thrift Supervision are required to report denial reasons (which is voluntary under the statute). The data reported voluntarily show that the level of reporting varies by supervisory agency. For example, for data collected in 1996, 84 percent of the denied loans reported to the Federal Deposit Insurance Corporation and 64 percent of the denied loans reported to the Federal Reserve included denial reasons. In contrast, only 27 percent of the denied loans reported to the Department of Housing and Urban Development contained denial reasons.

Other HMDA users suggest that the regulation should require institutions to report the appraised value of the property purchased. This reporting would allow users of the data to calculate a loan-to-value ratio. Comment is requested on all aspects of these issues including the following:

(1) Would the public disclosure of data concerning denial reasons or property value further the purposes of HMDA, and in what way?

(2) Are there practical difficulties in obtaining and reporting these data?

(3) What costs would be involved in reporting denial reasons or property value?

7. Reorganization of the Regulation and Appendices

Currently, institutions have a variety of sources to assist them with HMDA compliance. Appendix A to Regulation C provides instructions for completing the loan/application register, and Appendix B provides instructions for completing the data collection form. In addition, the Board issued a staff commentary (as Supplement I to the regulation), and the FFIEC publishes the *Guide to HMDA Reporting: Getting it Right!* The Board will consider reorganizing the regulation, appendices, and supplement to clarify and simplify the presentation of the material, and thereby reduce burden. Comment is requested on all aspects of the issue including the following:

(1) Would it lessen burden if the interpretive material from the instructions were incorporated into the commentary and the instructions were converted into simple code descriptions?

(2) Could the regulation be organized to present information more clearly (for example, by consolidating the coverage requirements currently found in both the definitional section and the exemptions sections in a single "coverage" section)? Would the burden of learning a reorganized regulation outweigh the benefits of simplification and clarification?

8. Other Issues

The Board solicits comments on any other broad policy issues that should be addressed in the regulation.

By order of the Board of Governors of the Federal Reserve System, March 6, 1998.

William W. Wiles,

Secretary of the Board.

[FR Doc. 98–6326 Filed 3–11–98; 8:45 am]

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federal register

Thursday
March 12, 1998

Part VI

Department of Housing and Urban Development

24 CFR Parts 950, 953, 955, 1000, 1003, and 1005

Implementation of the Native American Housing Assistance and Self-Determination Act of 1996; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 950, 953, 955, 1000, 1003, and 1005

[Docket No. FR–4170–F–16]

RIN 2577–AB74

Implementation of the Native American Housing Assistance and Self-Determination Act of 1996; Final Rule

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: On July 2, 1997, HUD published a rule proposing to implement the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA). NAHASDA reorganizes the system of Federal housing assistance to Native Americans by eliminating several separate programs of assistance and replacing them with a single block grant program. In addition to simplifying the process of providing housing assistance, the purpose of NAHASDA is to provide Federal assistance for Indian tribes in a manner that recognizes the right of Indian self-determination and tribal self-governance. This rule makes final the policies and procedures set forth in the July 2, 1997 proposed rule, and takes into consideration the public comments received on the proposed rule. As required by section 106(b)(2) of NAHASDA, HUD developed the proposed and final rules with active tribal participation and using the procedures of the Negotiated Rulemaking Act.

EFFECTIVE DATE: April 13, 1998.

FOR FURTHER INFORMATION CONTACT: Jacqueline Johnson, Deputy Assistant Secretary for Native American Programs, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4100, Washington, DC 20410; telephone (202) 708–0950 (this is not a toll-free number). Speech or hearing-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. The July 2, 1997 Proposed Rule

On July 2, 1997 (62 FR 35718), HUD published for public comment a rule proposing to implement the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (NAHASDA). NAHASDA streamlines the process of providing housing assistance to Native Americans. Specifically, it eliminates several separate programs of assistance and replaces them with a single block grant program. In addition to simplifying the process of providing housing assistance, the purpose of NAHASDA is to provide Federal assistance for Indian tribes in a manner that recognizes the right of Indian self-determination and tribal self-governance.

The July 2, 1997 rule proposed to implement NAHASDA in a new 24 CFR part 1000. Part 1000 is divided into six subparts (A through F), each describing the regulatory requirements for a different aspect of NAHASDA. The Committee elected to present new part 1000 in a "Question and Answer" format. Additionally, the rule as much as practicable did not repeat statutory language. A reader was therefore required to have the statute available while reading the rule.

The July 2, 1997 rule also proposed to make several conforming amendments to HUD's existing Indian housing regulations. For example, the rule proposed to remove 24 CFR part 950 from the Code of Federal Regulations. Part 950, which sets forth the regulatory requirements for the "old" system of funding, was made obsolete by NAHASDA.

The rule also proposed to redesignate 24 CFR part 953 (Community Development Block Grants for Indian tribes and Alaskan Native Villages) and 24 CFR part 955 (Loan Guarantees for Indian Housing) as 24 CFR parts 1003 and 1005, respectively. These redesignations were designed to consolidate HUD's Indian housing regulations in the "1000 series" of title 24, and assist program participants by presenting uniformity.

Finally, the July 2, 1997 rule proposed amendments to the regulations currently set forth in part 955. These revisions were designed to reflect the amendments made by NAHASDA to section 184 of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z-13a).

The July 2, 1997 proposed rule provided a detailed description of the amendments to title 24 of the CFR.

II. Negotiated Rulemaking.

Section 106(b)(2)(A) of NAHASDA provides that all regulations required under NAHASDA be issued according to the negotiated rulemaking procedure under subchapter II of chapter 5 of title 5, United States Code. The rulemaking procedure referenced is the Negotiated Rulemaking Act of 1990. Accordingly, the Secretary of HUD established the Native American Housing Assistance and Self-Determination Negotiated Rulemaking Committee (Committee) to negotiate and develop a proposed rule implementing NAHASDA.

The Committee consisted of 58 members. Forty-eight of these members represented geographically diverse small, medium, and large Indian tribes. There were ten HUD representatives on the Committee. Additionally, three individuals from the Federal Mediation and Conciliation Service served as facilitators. While the Committee was much larger than usually chartered under the Negotiated Rulemaking Act, its larger size was justified due to the diversity of tribal interests, as well as the number and complexity of the issues involved.

Tribal leaders recommended and the Committee agreed to operate based on consensus rulemaking. The protocols adopted by the Committee define "consensus" as general agreement demonstrated by the absence of expressed disagreement by a Committee member in regards to a particular issue. HUD committed to using, to the maximum extent feasible consistent with its legal obligations, all consensus decisions as the basis for the proposed rule.

The Committee divided itself into six workgroups. Each workgroup was charged with analyzing specified provisions of the statute and drafting any regulations it believed were necessary for implementing those provisions. The draft regulations developed by the workgroups were then brought before the full Committee for review, amendment, and approval. A seventh workgroup was assigned the task of reviewing the approved regulations for format, style, and consistent use of terminology.

During February, March, and April 1997 the Committee met four times. The meetings were divided between workgroup sessions at which regulatory language was developed and full Committee sessions to discuss draft regulations produced by the workgroups. Tribal leaders were encouraged to attend the meetings and participate in the rulemaking process.

It was the Committee's policy to provide for public participation in the rulemaking process. All of the Committee sessions were announced in the **Federal Register** and were open to the public.

After the Negotiated Rulemaking Committee delivered a proposed rule, the Department placed the rule in clearance in accordance with its customary procedures for the finalization of proposed rules. As a result, numerous changes were suggested by offices within HUD which

had not been part of the negotiated rulemaking process. The Department did not send up a "red flag" or adjust its customary process, notwithstanding the fact that the proposed rule was the product of a negotiated rulemaking process. As a result, changes were made to the negotiated rule and were not communicated to the Negotiated Rulemaking Committee for comment prior to publication.

After discussing conflicting views of the propriety of the Department's actions, the Committee determined (with HUD agreement) that the Department's changes would be given consideration in a manner similar to public comments. As with public comments, the Department's changes were accepted by the Committee where they contributed to the clarity or legal accuracy of the rule, or where they more effectively implemented NAHASDA.

The Department regrets any misunderstanding its actions may have caused.

III. Discussion of Public Comments on the July 2, 1997 Proposed Rule

The public comment period on the July 2, 1997 proposed rule expired on August 18, 1997. The rule was of significant interest to Indian country, as demonstrated by the 134 public comments submitted on the regulations. These comments offered detailed and helpful suggestions on the implementation of NAHASDA. The Committee met during August, September, and October 1997 to consider the public comments and develop this final rule. This section of the preamble presents a summary of the significant issues raised by the public commenters on the July 2, 1997 proposed rule, and the Committee's responses to these comments. For the convenience of readers, the discussion of the public comments is organized by subpart and regulatory section.

Subpart A—General

Subpart A contains the legal authority and scope of the regulations. It also sets forth definitions for key terms used in the balance of the regulations. Subpart A also cross-references to other applicable Federal laws and regulations. Additionally, subpart A describes the conflict of interest provisions which are applicable under the new Indian housing block grant program.

Section 1000.1. Section 1000.1 describes the applicability and scope of 24 CFR part 1000. The Committee has made a clarifying amendment to this provision. Specifically, a sentence has been added to explain that to the extent practicable the regulations do not repeat statutory language.

Section 1000.2. Several commenters believe that the final rule should restate the trust responsibility of the United States to Indian tribes. One of the commenters recommended language regarding trust responsibility for inclusion in the final rule. The Committee has adopted the language suggested by this commenter and added a new undesignated paragraph at the end of § 1000.2.

Section 1000.4. Several commenters believe that this section did not accurately reflect the objectives of NAHASDA. The Committee has addressed this concern by specifically reiterating the language of NAHASDA section 201(a) which sets forth the primary objective of NAHASDA.

Section 1000.6. Several commenters objected to the unilateral change made by HUD to this section. Specifically, the language originally adopted by the Committee provided that the new Indian Housing Block Grant (IHBG) program is a "formula driven" program. HUD revised this to read "formula grant program." The Committee has adopted the suggestion made by these commenters to use the original regulatory language. The Committee believes this language more accurately reflects the nature of the IHBG program.

Section 1000.8. Several commenters believe that this section, which merely cross-referenced to HUD's general regulatory waiver provision at 24 CFR 5.110, was unclear. The Committee has corrected this by revising the section to reiterate the language of § 5.110.

Another commenter recommended that HUD should be required to respond to waiver requests within 30 days of receipt or the waiver should be automatically approved. The authority to grant regulatory waivers rests solely with the Secretary. The default approval procedure suggested by the commenter would contradict this principle. Accordingly, the comment has not been adopted.

Section 1000.10. A number of comments were received which suggested changes to definitions contained in the proposed rule. The Committee reviewed each of the comments and determined as follows:

1. *Adjusted income.* Several comments suggested excluding child support from annual income. The definition of adjusted income is specified in the statute. The statutory definition allows the Indian tribe to include in its Indian Housing Plan (IHP) other amounts they decide to exclude from annual income. Accordingly, no revision was made to the proposed rule.

2. *Annual income.* A number of suggestions were received to remove from the definition of annual income specific items such as per capita payments, lease payments, education stipends, etc. The definition in the proposed rule is modeled on the obsolete 1937 Act definition which was repealed by NAHASDA. In response to these comments, the Committee has revised the definition of "annual income" to provide Indian tribes with greater flexibility in determining what is annual income. The revised definition is modeled on the definition of annual income in the HOME program (24 CFR part 92) and provides three distinct definitions of annual income from which a recipient may choose.

3. *Homebuyer payment.* The Committee has added a new definition of "homebuyer payment." As explained in the preamble to the proposed rule (62 FR 35722), the term "homebuyer payment" is limited to lease-purchase payments, such as those in the Mutual Help Homeownership Opportunity Program. The addition of this new definition will clarify the meaning of the phrase for readers of the regulations.

4. *Indian area.* The proposed rule provided the broadest possible definition of "Indian area" to allow Indian tribes or Tribally Designated Housing Entities (TDHEs) to operate. The Committee has chosen not to make substantive revisions to this definition. However, in response to several comments, it has clarified the definition.

5. *Indian tribe.* One commenter suggested that only Federally recognized Indian tribes be recognized in Alaska. The definition of eligible recipients is statutory; therefore, no change was made to the definition.

6. *Median Income.* The Committee has amended the definition of median income. The proposed rule merely cross-referenced to the statutory definition. The amendment clarifies the definition for purposes of eligibility under a recipient's program.

7. *Person with disabilities.* HUD made several changes to language adopted by the Committee at the proposed rule stage designed to clarify that this definition was based on HUD's definition of "physical, or mental impairment" at 24 CFR 8.3. The regulations at 24 CFR part 8 implement section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). The Committee reviewed the HUD changes and determined they were unnecessary. Accordingly, this final rule reflects the original Committee language.

8. *Total development cost.* Several comments suggested clarifications and

modifications to this definition. Total development cost is a term used only for purposes of the formula. Therefore, the term is being defined under subpart D and is being removed from this section.

Section 1000.12. This section describes the nondiscrimination requirements that are applicable to the Indian Housing Block Grant (IHBG) program. In response to several public comments, the Committee has made several clarifying revisions to § 1000.12. The section now clarifies that the Indian Civil Rights Act applies to Federally recognized Indian tribes exercising powers of self-government. Further, § 1000.12(b) now clearly provides that title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*) apply to Indian tribes that are not covered by the ICRA. However, the title VI and title VIII requirements do not apply to actions by Indian tribes under section 201(b) of NAHASDA.

Section 1000.14. Several commenters objected to the relocation and property disposition requirements set forth in this section. The commenters wrote that these requirements were burdensome and redundant. Several commenters suggested that § 1000.14 simply cross-reference to the Department of Transportation regulations at 49 CFR part 24. The Department of Transportation is the lead agency in the implementation of the Uniform Relocation Act. The Committee has reviewed § 1000.14 and determined that it provides clear and concise guidance to recipients. Accordingly, no changes have been made.

Section 1000.16. A number of comments were received which expressed concern with the application of Davis-Bacon Act requirements to NAHASDA. The payment of Davis-Bacon wage rates to laborers and mechanics in the development of affordable housing under NAHASDA is a statutory requirement under section 104(b) of NAHASDA and cannot be removed by regulation.

Other commenters suggested that the regulations limit the applicability of Davis-Bacon to projects larger than 12 units. This suggestion was not adopted by the Committee for lack of statutory authority.

A number of commenters suggested that the labor standards section was not sufficiently clear. The Committee has replaced the language in the proposed rule, including those provisions modified by HUD without the consent of the Committee, with a more explicit discussion of labor standards including the applicability of Davis-Bacon wage rates, HUD determined wage rates, the Contract Work Hours and Safety Standards Act, and miscellaneous related laws and issuances.

Section 1000.18. One commenter questioned whether HUD or the recipient will have to conduct an Environmental Assessment (EA) before HUD's compliance determination for an IHP. The commenter recommended that the final rule clarify this issue. Section 1000.18 has been revised to provide that an environmental review does not have to be completed prior to HUD's compliance determination for an IHP.

One commenter noted that 24 CFR parts 50 and 58 do not refer to the Archaeological Resources Protection Act and Native American Graves Protection and Repatriation Act. The commenter believed these statutes should be addressed in the final rule. The Committee has not adopted this suggestion. Parts 50 and 58 list only statutes that apply to Federal projects specifically. The statutes referenced by the commenter have a broader scope.

Section 1000.20. Forty-seven comments were received on this section. These comments deal with HUD's environmental review responsibilities addressing the payment of review costs; the timely completion of reviews; and the eligibility, under NAHASDA, for NEPA training.

This section has been modified by the Committee to provide greater flexibility in addressing environmental review requirements. In addition to requesting HUD to complete reviews or the Indian tribe completing reviews, the Indian tribe can now choose to provide HUD with necessary information for HUD to complete the environmental reviews. Also, a sentence has been added which clearly notifies recipients that environmental reviews must be completed before affordable housing activities affecting the environment can begin.

Additionally, HUD raised an issue in the preamble of the proposed rule concerning the timing of environmental reviews as it relates to approval of the IHP. HUD has reviewed the IHP approval process and has determined that the approval of the IHP does not have an impact on the completion of the environmental reviews.

Section 1000.22. One commenter suggested that the final rule state whether additional funds will be available to the Indian tribes to meet the environmental review requirements. The rule states in § 1000.22 that environmental review costs are eligible costs. Another commenter wrote that Indian tribes should be reimbursed for all related expenses to the extent they assume environmental review responsibilities. The Committee has not revised § 1000.22 in response to these comments. There will be no additional funds available to Indian tribes for the review.

Section 1000.26. Several commenters objected to the applicability of 24 CFR part 85 to recipients under NAHASDA. These commenters believed that making part 85 applicable violated the self-governance principles of NAHASDA. Part 85 establishes uniform administrative requirements for grants and cooperative agreements to State, local, and Federally recognized tribal governments. The Committee determined that the consensus language of § 1000.26 should not be changed.

Several commenters recommended that the final rule specify which administrative provisions are applicable to NAHASDA. The Committee has adopted this comment. Accordingly, § 1000.26 has been revised to list the administrative requirements which apply to NAHASDA.

Section 1000.28. Several commenters believed the Committee should provide a definition of "self governance tribe." The Committee has added a sentence to this section which provides that for purposes of § 1000.28, a self-governance Indian tribe is an Indian tribe that participates in self governance activities as authorized under Public Law 93–638 (25 U.S.C. 450 *et seq.*).

Other commenters wrote that making the part 85 requirements applicable to self-governance Indian tribes violated the principles of tribal self-determination. The Committee agrees with these comments. Accordingly, the provision has been revised to provide that a self-governance Indian tribe may certify that its administrative requirements and standards meet or exceed the comparable requirements set forth in § 1000.26.

Section 1000.30 through 34. Several commenters objected to the inclusion of specific conflict of interest provisions in the proposed rule. The commenters believe that recipients should make their own determination regarding conflict of interest based on local conditions or the fact that other programs administered by the recipient may have conflict of interest requirements that are not entirely consistent with the proposed requirements. The Committee has not revised § 1000.30 based on these comments. The Committee determined that the final rule should set forth specific conflict of interest provisions to guide recipients.

Other commenters objected to the unilateral changes made by HUD subsequent to Committee approval. The

Committee reviewed the language modifications made by HUD and determined the language is clearer than the original language. Accordingly, the change has been incorporated.

In response to a number of public comments, the Committee has clarified the meaning of the term "family ties" used in this section. Section 1000.30 has been revised to make clear that this term applies to immediate family ties, which are determined by the Indian tribe or TDHE in its operating policies.

The Committee has also removed the reference to 24 CFR part 84, *Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,* from this section based upon its determination that the common rule requirements of part 85, *Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments,* apply to recipients. The part 85 requirements apply to governmental entities and therefore are more appropriate for recipients of NAHASDA assistance.

Additionally, the Committee has added a new § 1000.30(c) which excludes from the conflict of interest provisions those individuals who would otherwise be eligible for program benefits. Additional language clarifications were also made to sections 1000.32 and 1000.34.

Section 1000.36. Proposed § 1000.36 would have required a recipient to retain records regarding exceptions made to the conflict of interest provisions for a period of at least 5 years. Section 1000.548 of the proposed rule, renumbered as § 1000.552 in the final rule, requires that recipients maintain all other IHBG program records for a period of three years. One commenter suggested that the final rule establish a uniform time period for the retention of program records. The commenter further suggested that the three-year time period set forth in § 1000.548 of the proposed rule, now § 1000.552, be adopted. The Committee agrees and has revised § 1000.36 accordingly.

Section 1000.38. Several commenters objected to HUD's changes to the original Committee language. These commenters believe that the revisions made by HUD establish onerous flood insurance requirements. Other comments expressed concern with the workability of flood insurance requirements and suggested adding exclusions such as for inability to obtain coverage or for costs below $5000, or exemptions from the requirements due to lack of available land outside marginal floodplain areas. Another commenter stated that flood insurance requirements should be limited to acquisition and construction projects.

The Committee has decided to retain the revisions made by HUD to § 1000.38. HUD's changes added a citation to the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128) (FDPA). In addition, the changes clarified that flood insurance requirements apply under the FDPA to financial assistance for "acquisition and construction purposes", rather than to all affordable housing activities under NAHASDA. There is no authority to administratively adopt the exemptions suggested. Section 102(c)(2) of the FDPA contains an exclusion from the flood insurance purchase requirement for loans that have an original outstanding balance of $5000 or less and a repayment term of one year or less.

One commenter suggested that the following language from the FDPA should be added to the end of paragraph 1000.38(b): "Provided, that if the financial assistance provided is in the form of a loan or an insurance or guaranty of a loan, the amount of flood insurance required need not exceed the outstanding principal balance of the loan and need not be required beyond the term of the loan." The Committee has made the recommended change with minor revisions.

Section 1000.40. A number of comments were received questioning the applicability of lead-based paint poisoning prevention requirements to NAHASDA, the complexity and cost of complying with program regulations which applied to housing developed under the 1937 Act, and the limited information provided under the proposed rule as to the lead-based paint poison prevention requirements. In order to streamline the lead-based paint poisoning requirements applicable to NAHASDA and to provide guidance to recipients on protection against lead poisoning from applied paint, the Committee has replaced the limited language in the proposed rule with more extensive, grant activity based language utilizing HUD's experience in the HOME program.

Section 1000.42. Several commenters objected to the applicability of HUD's regulations at 24 CFR part 135, *Economic Opportunities for Low-and Very Low-Income Persons,* which implement section 3 of the Housing and Urban Development Act of 1968. The commenters believe that independent Section 3 regulations should be developed for the IHBG program. The Committee has determined that the development of independent Section 3 regulations would be extremely time-consuming. Further, the part 135 regulations provide an existing set of useful and comprehensive requirements for implementing the Section 3 requirements. Accordingly, the Committee has decided to retain the reference to 24 CFR part 135.

The Committee has made two changes to § 1000.42. First, the lengthy sentence explaining the purpose of section 3 has been removed and has been replaced with a more concise statement of purpose. This sentence merely repeated the language already found in 24 CFR 135.1. Second, a new § 1000.42(b) has been added which clarifies that the section 3 requirements apply only to those Section 3 covered projects or activities for which the amount of assistance exceeds $200,000.

Sections 1000.44 and 1000.46. Similar public comments were received on these two sections. Section 1000.44 provides that the prohibitions in 24 CFR part 24 on the use of debarred, suspended, or ineligible contractors apply to the IHBG program. Section 1000.46 provides that requirements of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*) and HUD's implementing regulations in 24 CFR part 24 apply to the IHBG program.

Several commenters recommended that Indian tribes be allowed to develop their own debarment and drug-free workplace procedures. The Committee reviewed the requirements set forth in 24 CFR part 24, and determined that they should continue to be referenced in the regulations. The Committee did make one clarifying change to §§ 1000.44 and 1000.46. Specifically, the sections have been revised to clarify that the part 24 requirements apply, in addition to any tribal debarment and drug-free workplace requirements.

Sections 1000.48 through 1000.54. One commenter recommended that the rule be amended to state that an Indian tribe or TDHE may provide preferences in the employment, training, procurement and services to members of the Federally recognized Indian tribes. The reason Indian preference was not addressed in the proposed rule is because it was a non-consensus item as indicated in the preamble to the proposed rule. The Committee has added four sections which address the applicability of Indian preference, requirements for the provision of Indian preference in program administration and procurement, and methods for addressing complaints.

Sections 1000.56, 1000.58, and 1000.60. Numerous comments were received on the issue of the method of NAHASDA payments, identified as a nonconsensus issue in the proposed

rule. After full consideration, HUD and the tribal members of the Committee have agreed to add new §§ 1000.56, 1000.58, and 1000.60, which track the statutory language of section 204(b) of NAHASDA. Section 204(b) authorizes a recipient to invest grant amounts for the purposes of carrying out affordable housing activities in investment securities and other obligations as approved by the Secretary.

The new regulatory provisions provide for a "phase-in" of the recipient's ability to drawdown NAHASDA funds for investment purposes. Specifically, new § 1000.58(f) provides that a recipient may invest its IHBG annual grant in an amount equal to the annual formula grant less any formula grant amounts allocated for the operating subsidy element of the Formula Current Assisted Housing Stock (FCAS) component of the formula multiplied by the following percentages, as appropriate: 50% in Fiscal Years 1998 and 1999; 75% in Fiscal Year 2000; and 100% in Fiscal Year 2001 and thereafter. Investments under these provisions may be for a period no longer than two years.

Section 1000.62. NAHASDA grant amounts will often generate interest funds from investment and program funds from tribal housing activities. The question of whether recipients could keep interest funds was a nonconsensus issue in the proposed rule. Many commenters and tribal committee members strongly supported the right of the recipients to keep all interest income earned on grant amounts. The Committee agrees and has drafted a new § 1000.62 to the final rule.

Tribal representatives and HUD agree that § 1000.62 provides that all program income must be used for affordable housing activities, but Indian tribes argue that program income is not subject to the requirements applicable to NAHASDA grant amounts. HUD disagrees, and interprets § 1000.62 to mean that the use of program income is subject to the same requirements as grant amounts and intends to implement § 1000.62 accordingly. This would have the effect of requiring program income to be subject to other statutory requirements such as environmental review requirements and maximum rent requirements applicable to grant amounts.

The Committee recognizes the importance of the need for developing guidance for accounting for program income grant amounts generated by the combined use of NAHASDA grant amounts and other funds. This guidance will be jointly developed by HUD and tribal representatives appointed by the Committee co-chairs. Every attempt will be made to develop and issue this guidance as expeditiously as possible.

Subpart B—Affordable Housing Activities

Subpart B contains the regulations necessary for the implementation of title II of NAHASDA. Among the topics addressed by subpart B are eligible affordable housing activities, low-income requirements, lease requirements and tenant selection.

Section 1000.104. Several commenters objected to the language, "absent evidence to the contrary", added at the end of each sentence. This language was stricken. This section was intended to clarify that NAHASDA and these regulations do not affect the eligibility of homebuyers and tenants assisted under the 1937 Act. The regulations were revised to reflect this intent. The original language was unclear regarding whether current families residing in housing units were automatically eligible for all NAHASDA activities or only for continued occupancy. One commenter commented that all Indians residing in Indian Country should be eligible for housing assistance. All Indians are eligible for assistance under specified activities under NAHASDA. However, the regulations are written to reflect the intent of Congress to provide assistance primarily for low income Indian families and to establish eligibility requirements for non low-income Indian families. NAHASDA does not impose requirements on continuing income eligibility after a participant enters a housing program.

Section 1000.106. One comment was received on the different standards applied to non low-income Indian families and non-Indian families. The regulations reflect the statutory requirements in NAHASDA and the Congressional intent to provide housing primarily for low income Indian families, while recognizing an Indian tribe's need to house other persons who are essential to the well-being of Indian families.

Section 1000.108. The Committee agreed with comments to remove the phrase "other housing activities" from this section and § 1000.112 to clarify that these regulations are addressing the assistance to non low-income Indian families and model housing activities.

Section 1000.110. For purposes of clarity, § 1000.118 has been redesignated as § 1000.110 and moved to immediately follow § 1000.108. Former §§ 1000.108 through 116 were renumbered to conform to this change.

NAHASDA requires a family to be low income at the time of purchase of a home. This caused problems for families buying homes pursuant to a lease purchase agreement. To solve the problem, the section was revised by adding a new paragraph (a) to make families who are not low income at the time of purchase of a home, eligible under the non low-income requirements. In addition, this section was revised to allow recipients to provide housing to non low-income Indian families who have been determined by the recipient to be essential to the well-being of the Indian families in the area, without requiring a higher repayment than low income Indian families.

Numerous comments were received that the formula for providing assistance to non low-income Indian families was difficult to understand. The formula was simplified. Comments were received that the amount a non low-income family must pay for the assistance should not be more than the fair market value of the assistance. Comments were received that the regulations gave HUD too much discretion. The regulations were revised to give more discretion to recipients, including the authority to limit payments to Fair Market Value.

Section 1000.112. One commenter believed that these regulations give too much discretion to HUD in evaluating model housing activities. The Committee disagreed with the comment because the regulations provide that HUD will review the proposals with the goal of approving the activities.

Section 1000.114. One commenter asked that the regulations state how notice is to be given. The regulations were changed to clarify that notice by HUD will be given in writing. One commenter commented that HUD should be given 90 days rather than 60 to approve or disapprove a proposal. The Committee believes that sixty days is sufficient time for HUD to approve or disapprove a proposal. This time period is consistent with the time period for approving an IHP.

Section 1000.116. A commenter requested that this section establish a time frame. The time frame is specified in § 1000.114. Other commenters asked whether the time period is affected by the consultation requirement. The time period within which HUD must respond is not affected by the requirement to consult with a recipient regarding its proposal.

Section 1000.118. Commenters asked whether the days specified in this section were calendar or business days and suggested that the number of days be consistent in each step of the appeal

process. The number of days specified in paragraphs (b), (c) and (d) of this section were changed to 20 calendar days. Paragraph (a) of this section was clarified to read "30 calendar days." The appeal process is consistent with other administrative appeal processes.

Section 1000.122. Several commenters stated the answer to the question should be "yes." The final rule clarifies that while NAHASDA does not prohibit the use of grant funds as matching funds, other programs may or may not have restrictions on what may be used as matching funds.

Section 1000.124. Many comments were received that the 30 percent maximum rent or homebuyer payment would impose a hardship in areas where the administrative fee alone exceeds 30 percent of a family's income. The 30 percent requirement is statutory and cannot be changed by the regulations. Many comments were also received on the impact of these regulations on current Mutual Help participants and Section 8 participants. These regulations do not apply to current participants of a lease purchase agreement, including Mutual Help or Homeownership participants under the 1937 Act or Section 8 participants. Their contracts are not affected by NAHASDA. A definition of "homebuyer payment" has been added to the list of defined terms in subpart A, which only refers to payments made under a lease purchase agreement for the purchase of a home. This clarifies that § 1000.124 applies only to rental payments and homebuyer payments made under a lease purchase agreement.

A commenter requested clarification on how adjusted income is determined. Guidance on adjusted income is provided in the definitions section. The section was revised to clarify that these regulations apply only to units assisted with NAHASDA grant amounts. A sentence was also added to address minimum rents.

Section 1000.126. Several commenters objected to the 30 percent limitation on rent or homebuyer payments. The 30 percent requirement is statutory.

Section 1000.132. Many commenters supported this section.

Section 1000.134. One commenter suggested that all HUD requirements for demolition or disposition be provided under this part. This section sets forth all requirements for demolition or disposition. Comments were received asking for more flexibility in disposing of units especially where units were sold to low-income Indian families. This section was revised to reflect this concern. The change allows a recipient to dispose of a home to a low-income Indian family without maximizing the sale price, so long as the disposition is consistent with a recipient's IHP.

Section 1000.138. Several commenters asked that the regulations exempt from the procurement requirements insurance purchased from Amerind. Language was added to the regulations to provide an exemption for nonprofit insurance entities which are owned and controlled by recipients and which have been approved by HUD.

Section 1000.142. Many comments were received regarding the necessity of HUD determining "useful life" and the criteria used to make such determination. The statute requires HUD to make determinations of what is "useful life." The regulations clarify this while ensuring that the determination will be made in accordance with the local conditions of the Indian area.

Section 1000.146. Many commenters expressed concern about the requirement that homebuyers be income eligible at the time of purchase. This is a statutory requirement. However, § 1000.110 was revised to allow families buying a home under a lease purchase agreement and who are no longer low-income at the time of purchase to be eligible as a non low-income family. This section has been revised to cross reference to § 1000.110.

Section 1000.148. This section of the proposed rule was removed because it was attempting to clarify the statutory language in section 207(a)(3) of NAHASDA concerning what law is applicable regarding the period of time required in giving notice. The answer confused rather than clarified that the law applicable to notice timing requirements is the applicable State, tribal or local law. The issue of applicable law can best be resolved in the recipient's lease.

Section 1000.150. One commenter asked whether HUD would pay the costs of obtaining the criminal conviction information. Another asked if it was a requirement to obtain the criminal conviction information. The costs of obtaining criminal conviction information is an eligible cost of NAHASDA. A recipient is not required to obtain such information. One commenter asked what could be done if such agencies refuse to comply with the request. HUD cannot force other agencies to comply, but the Indian tribe may seek a legal recourse.

Section 1000.154. One commenter suggested that persons other than those specified in NAHASDA section 208(c) be authorized to receive criminal conviction information. The Committee believes this is inconsistent with NAHASDA.

Section 1000.156. Many comments were received on this section. Many commented on the various elements included in the total development cost. One commenter asked whether donations counted towards total development cost. One commenter objected to any limits. The section was revised to clearly establish a limit on the amount of IHBG funds that can be used on the dwelling construction and equipment of a unit, and to clarify that other costs of development were eligible NAHASDA costs but not subject to the limit.

The costs of making a unit handicapped accessible is a part of the dwelling construction cost. The limit was placed in these regulations in recognition of the few cases of abuse in past Indian housing programs and was developed to prevent abuses in the new IHBG program.

Subpart C—Indian Housing Plan (IHP)

Subpart C sets forth the regulatory requirements concerning the preparation, submission, and review of an Indian tribe's IHP. (Note: The numbers of several sections in this subpart have been amended due to the addition of new sections. For example, § 1000.210 of the proposed rule is numbered as § 1000.218 of this final rule.)

Section 1000.201. One commenter requested that language be added to the beginning of the sentence to indicate "At the beginning of every fiscal year HUD will distribute funds ." The language "At the beginning" was not incorporated because the allocation of the formula is subject to appropriations and allocation at the beginning of the Fiscal Year cannot be guaranteed . Also, distribution of the grant is based on submission and approval of an IHP which may not take place at the beginning of the FY.

Another commenter suggested that funds should be allowed to be carried forward from one fiscal year to another. Based on NAHASDA, a recipient has more than one year to expend each annual grant based on goals and objectives in the IHP. As a performance measure, § 1000.524 provides that within 2 years of grant award, 90 percent of the funds must be obligated by the recipient. Another commenter asked what would happen to an Indian tribe's or TDHE's allocation under NAHASDA if an IHP was not submitted by November 3, 1997 deadline. A new provision has been added to address this question.

Section 1000.202. One commenter requested that eligible recipients should include TDHEs which existed and received funding as a Public Housing Agency (PHA) or Indian Housing Authority (IHA) under the 1937 Act. The Committee believes the language in § 1000.202 is clear as to who is an eligible recipient and the specific recipients are more fully defined in § 1000.206. Also, a new section (§ 1000.208) has been added which addresses the commenter's concern regarding an Indian tribe which had two IHAs established prior to September 30, 1996. However, under NAHASDA, PHAs are not default TDHEs unless otherwise recognized as IHAs under these regulations.

Section 1000.204. One commenter asked if the Indian tribe is obligated to notify an existing TDHE for its jurisdiction within a certain time period, if the Indian tribe designates itself as the grant recipient. First, if the Indian tribe designates itself as the recipient, there is no TDHE. Also, there is no requirement in NAHASDA which requires any notification to an existing entity which may own or manage units developed under the 1937 Act. The same commenter asked whether the TDHE is required to submit an IHP for its existing housing stock if the Indian tribe is also submitting an IHP within the same jurisdiction. If an Indian tribe designates itself as a recipient, there is no TDHE and the Indian tribe must provide for existing housing stock in its IHP. One commenter raised several concerns regarding the administration of NAHASDA regarding conflicts of interest, mismanagement, fraud, and abuse. The regulations as a whole were written to address these concerns.

Section 1000.206. Several commenters requested clarification on how TDHEs in Alaska are designated. TDHEs in Alaska are designated in the same manner as any other TDHE. Several commenters also stated that a default TDHE should be able to submit an IHP and obtain funding without obtaining Tribal certification. Section 102(d) of NAHASDA requires Tribal certification for each IHP including a default TDHE. However, the Committee has added § 1000.210 to address the commenters' concern regarding what would happen to 1937 Act units if an Indian tribe did not submit an IHP or if a default TDHE could not obtain tribal certification.

Section 1000.208 of the proposed rule. This section was formerly designated as § 1000.208, but has been redesignated as § 1000.212 due to the addition/ redesignation of other regulatory text. One commenter questioned the need for a detailed five-year plan; another requested that the five-year plan be submitted at the end of the first year of funding; and another requested deleting the requirement for the one-year plan. These requirements are statutory; however, the Committee believes the submission requirements are reasonable. Several commenters have requested an extension of the IHP submission deadline and clarification on what happens if the deadline date is not met. Section 100.214 (formerly designated as § 1000.209) has been amended to address the commenters concerns regarding the IHP submission deadline date. Also, § 1000.216 has been added to clarify what happens if the deadline date is not met.

Section 1000.211 of the proposed rule. This section was formerly designated as § 1000.210, but has been redesignated as § 1000.218 due to the addition/ redesignation of other regulatory text. One commenter asked what plan requirements were necessary for a consortium of Indian tribes. The Committee agrees that this comment needs to be addressed and language has been added to § 1000.212 to address this concern. Two commenters stated that the reference in the proposed rule was incorrect. The rule has not been revised, because it reflects the proper statutory reference.

Section 1000.212 of the proposed rule. This section was formerly designated as § 1000.212, but has been redesignated as § 1000.220 due to the addition/ redesignation of other regulatory text. A commenter requested that additional language be added to this section to encourage Indian tribes to assess the ability of the existing infrastructure to support additional housing. In response, the Committee believes that the current language that Indian tribes are encouraged to perform comprehensive housing needs assessments is adequate.

Section 1000.214 of the proposed rule. This section was formerly designated as § 1000.214, but has been redesignated as § 1000.222 due to the addition/ redesignation of other regulatory text. Two commenters requested that waiver authority be given to a TDHE. The Committee agrees and adopted the comment by adding a new § 1000.224. Comments were received in support of the definition of "small Indian tribe" and also agreeing that "small Indian tribe" should not be defined. No changes have been made to the regulations because the Committee believes that the IHP requirements are reasonable and the deadline date has been extended to allow small Indian tribes additional time to complete the plan.

Section 1000.216 of the proposed rule. This section was formerly designated as § 1000.216, but has been redesignated as § 1000.226 due to the addition/ redesignation of other regulatory text. Two commenters requested that the HUD changes made to this section be deleted. One stated that Title II of the Civil Rights Act would create problems for Indian tribes. The Title II referred to in § 1000.12 is the Indian Civil Rights Act. However, because the nondiscrimination requirements, as well as other Federal requirements outlined in these regulations apply whether or not the recipient certifies that it will comply, the language inserted in § 1000.226 is not needed and has been removed.

Section 1000.218 of the proposed rule. This section was formerly designated as § 1000.218, but has been redesignated as § 1000.228 due to the addition/ redesignation of other regulatory text. One commenter stated that the word "will" should be changed to "shall" and the word "substantial" should be removed. The word "will" and "shall" have the same meaning in these regulations. Also, the Committee has agreed that NAHASDA gives HUD the authority to develop the IHP format and minor changes may be needed to address comments. Accordingly, no changes have been made to this section.

Section 1000.220 of the proposed rule. This section was formerly designated as § 1000.220, but has been redesignated as § 1000.230 due to the addition/ redesignation of other regulatory text. One commenter stated that HUD should be given a limit of 60 days to respond. This requirement is statutory and is outlined in § 1000.230(b). Another commenter stated that a recipient should be required to agree to reasonable time frames for which to provide required certifications. The certifications are a requirement of the IHP submission and are statutory. An IHP cannot be determined to be in compliance without the certifications based on section 102(c)(5) of NAHASDA unless waived under § 1000.226.

A commenter stated that HUD approval should be required only for substantial modifications to the IHP. The Committee agrees with this comment and has added appropriate language to § 1000.232. A commenter stated that the limited HUD review of the IHP should be clearly defined. This limited review is outlined in section 103(c) of NAHASDA and the Committee determined that it was not necessary to repeat these statutory requirements. Another commenter asked when a HUD review would not be

necessary.NAHASDA mandates an IHP review by HUD.

Two commenters addressed the waiver provision in § 1000.230. One requested that the words "requested and approved" be added in paragraph (d). The Committee agrees and has added the language. The second stated that the waiver could not impose conditions which the recipient could not comply with due to conditions beyond the recipient's control. The Committee does not believe this language is necessary since the waiver indicates that HUD has determined the recipient cannot meet certain plan requirements.

Another commenter requested a new section to address partial approval of an IHP. HUD can only make a grant if it is determined that the plan meets the requirements of section 102 of NAHASDA. Therefore, this additional language has not been included in the regulations. However, HUD may approve an IHP pending approval of a model activity or assistance to non low-income Indian families.

Section 1000.222 of the proposed rule. This section was formerly designated as § 1000.222, but has been redesignated as § 1000.232 due to the addition/redesignation of other regulatory text. Several commenters addressed the requirement for modifications of the IHP including the 60-day timeframe for review. The Committee has addressed these comments by providing language in the regulations which limits when HUD's review and determination of compliance is necessary and provides the flexibility requested.

Section 1000.224 of the proposed rule. This section was formerly designated as § 1000.224, but has been redesignated as § 1000.234 due to the addition/redesignation of other regulatory text. One commenter recommended defining applicable judicial review available following final agency action. No change to the regulations is required because an agency's action may be challenged under the Administrative Procedure Act. Another commenter requested that a question be added on the requirements of the form HUD 50058. It is not necessary to address this in final regulations, however, the requirements as of October 1, 1997 will be covered in the transition notice published in the **Federal Register**.

Section 1000.226 of the proposed rule. This section was formerly designated as § 1000.226, but has been redesignated as § 1000.236 due to the addition/redesignation of other regulatory text. Several comments were received on this section. Some commenters requested a percentage should be set for administration and planning; others felt that the recipient should set the percentage. Several commenters asked that indirect costs be included as an eligible expense. There were also several questions related to reimbursement for reasonable planning costs associated with developing the IHP. NAHASDA states that the Secretary shall, by regulation, authorize each recipient to use a percentage of any grant amounts for administrative and planning expense. Section 1000.238 has been added which establishes a percentage which can be used for these costs and clarifies the eligibility of indirect costs. This percentage can be exceeded with HUD review and approval. The Committee has also made changes to § 1000.236 which are intended to further clarify what are considered administrative and planning costs.

Section 1000.228 of the proposed rule. This section was formerly designated as § 1000.228, but has been redesignated as § 1000.240 due to the addition/redesignation of other regulatory text. There were many comments received on this section. The Committee has clarified when a local cooperation agreement is needed. A statutory amendment would be required to address any of the other comments.

Section 1000.230 of the proposed rule. This section was formerly designated as § 1000.230, but has been redesignated as § 1000.242 due to the addition/redesignation of other regulatory text. There were many comments received on this section. The Committee has clarified when the tax exemption requirement applies. A statutory amendment would be required to address any of the other comments.

Subpart D—Allocation Formula

Subpart D implements title II of NAHASDA. Specifically, it establishes the formula for allocating amounts available for a fiscal year for block grants under NAHASDA.

Section 1000.301. One commenter felt that the following sentence should be added to § 1000.301: "Native Regional Housing Authorities in Alaska shall be the recipients of grants awarded under section 202(1) of NAHASDA for the maintenance and operation of current assisted stock." This cannot be done by regulation; it is a statutory requirement that Indian tribes be funded directly. The Committee agreed to adopt the clarifying changes made by HUD to this section at the proposed rule stage.

Section 1000.302. Several commenters wrote that the references to 24 CFR part 950 should be removed from the definition of "Allowable Expense Level (AEL) factor." As the commenters noted, the part 950 regulations are made obsolete by this final rule. The Committee agreed and revised the definition to reflect the removal of 24 CFR part 950.

Four commenters felt there was no reference provided for how AELFMR, AEL, FMR factor, local area cost adjustment factor for construction, and TDC are computed or what office is responsible for determining these rates or how they can be challenged. Except for AEL and TDC, the Committee felt the definitions are complete as written in the rule. The definition for AEL has been changed in the rule to improve its clarity. AEL was calculated by ONAP and will not be calculated again, there is a method to challenge FMR and the requirements are available from HUD. The definition of TDC has been added to the rule.

Six commenters were concerned with separate definitions of annual income for formula purposes than in the rest of the rule. The definition of annual income is different for purposes of the formula because the formula uses data collected by Census while the annual income for the remainder of the rule relates to income data collected from families by the Indian tribe or TDHE (and is statutory). For clarity, the definition has been changed to "Formula Annual Income" and the census definition is included.

Numerous comments were received on the definition for formula area. Several commenters proposed alternative definitions. Some commenters felt the rule should clearly state that a local cooperation agreement is not required where an Indian tribe or TDHE is providing housing services. Several commenters believed that other service areas designated by an Indian tribe as historical areas of operation or areas of service described in the Indian tribe's ordinance should be included in the definition of formula area. Three commenters felt that Tribal Jurisdictional Statistical Area and Tribal Designated Statistical Area should be defined or removed from the definition.

In response to comments, new language was added which maintains the integrity of the formula by both allowing Indian tribes that provide housing assistance off tribal lands to include a larger geographic area. The regulations still constrain the area and the population counted for an Indian tribe so that it would be fair and equitable for all Indian tribes.

The Committee added a definition of "Formula Response Form" to reflect the changes made elsewhere in the rule. The proposed rule would have required data for the formula to be included in

the IHP. However, because the data is needed before the IHP submission date, the Committee decided to require formula data to be submitted on a separate form.

One commenter felt the definition of "Section 8 unit" should be clarified. Some Section 8 assistance is not tied to a unit; rather, it is tenant-based assistance. The commenter believed this definition lumps all Section 8 under the definition and is confusing. The Committee considered the comment, and believes the definition is clear.

Sections 1000.304 and 1000.306. Several commenters believed that proposed § 1000.304(a) puts the burden on Indian tribes to develop measurable and verifiable data. The commenters felt this should be HUD's responsibility. The Committee believes that proposed § 1000.304 adequately meets the concerns of the commenters. However, the section may have been unclear to commenters so it has been split into two sections (§§ 1000.304 and 1000.306). An additional reference to reviewing the factors in Formula Current Assisted stock is added in reference to comments received on funding for Section 8 noted later.

One commenter recommended that the final rule require the use of more reliable data as soon as possible, and not establish a five year waiting period. The Committee believes the method currently proposed satisfies this concern as efforts to improve data must be begun immediately in order to complete the effort within five years.

Section 1000.308. A commenter believed the formula should be modified by a committee in the same fashion as the formula was developed. Section 1000.306 allows public participation in revision of the formula. While the tribal Committee members encourage HUD to convene a tribal group to negotiate modifications, the rule was not changed to require this.

Section 1000.310. Two commenters stated that the word "formula" added by HUD makes no sense. One commenter felt the proposed §§ 1000.308 and 1000.310 didn't seem to work together. The commenter also believed there is inconsistency among the proposed §§ 1000.308, 1000.324, 1000.326, and 1000.328 which need clarification. The word "formula" is included to maintain consistency in the rule. In response to the confusion over the relationship of Formula Current Assisted Stock to Section 8, they were combined under the single heading of Formula Current Assisted Stock. Furthermore, to provide greater clarity, the order of presentation was changed so that Formula Current Assisted Stock is listed before Need because this is the manner in which the formula is actually calculated. As a result of this change the sections on FCAS are moved ahead of the sections on Need and are renumbered accordingly.

Section 1000.312. Four comments were received relating to who should receive funding under Current Assisted Stock in cases where the ownership of the Current Assisted Stock remains separate from the Indian tribe. One commenter suggested that a new § 1000.346 be added, responding to the issue of whether IHAs or TDHEs are entitled to continued financial assistance for rental public housing projects. NAHASDA requires that the funding for Current Assisted Stock be provided to the Indian tribe where the Current Assisted Stock is located. Because of this statutory requirement, the Committee could not make the changes requested by the commenters, however language in § 1000.327 does address this concern as it relates to the overlapping areas unique to Alaska due to the Alaska Native Settlement Claims Act (ANSCA).

Section 1000.314. Two commenters felt the explanation on how the formula addresses units developed under the 1937 Act and in the development pipeline on October 1, 1997 was unclear. The Committee agreed and has reworded §§ 1000.314 through 1000.320 to improve clarity. The major change was to combine Section 8 into the "formula current assisted stock" component of the formula. As noted earlier under definitions, changes to IHP submission dates required the creation of a Formula Response Form.

Two commenters felt that units developed under NAHASDA should be included in the funding formula. One of the commenters felt that by not providing such a subsidy creates an incentive not to add either rental or homeownership units because the formula will not take into account the maintenance costs of these units. NAHASDA allows for great flexibility in developing housing stock. At this time the Committee is not able to determine the level of need for NAHASDA stock subsidy. This will be re-evaluated within the required 5-year time frame as noted in § 1000.306.

Two commenters stated that the development of housing units for homeownership under a model distinct from the existing Mutual Help program requires a larger initial subsidy investment to reduce the mortgage burden for the homeowner. However, the formula, because it fails to account for this greater expense, fails to count non-mutual help homeownership units, or include sufficient development funds. This encourages the use of the mutual help model instead of the mortgage model, which discourages the leveraging of private funds for mortgages and goes against NAHASDA. The Committee felt no changes were necessary. Under self-determination Indian tribes have responsibility to develop affordable housing activities within their available resources.

Section 1000.316. One commenter wrote that proposed § 1000.330 is confusing. The commenter questioned how Section 8 contracts that have expired or are due to expire in any subsequent year can be meaningful to a number derived as of September 30, 1997. The Committee agrees that the section is confusing and has incorporated it into § 1000.316 and reworded it for clarity.

One commenter wrote that Section 8 units should be multiplied by the national per unit average for low-rent units and not the Section 8 unit average since they are administered as low income rental units. The Committee disagrees. In developing the base funding for homeownership, Low-Rent, and Section 8 of the Formula Current Assisted Stock, the Committee sought to develop the base funding for each which reflects the actual operating cost of each.

One commenter wrote that Section 8 participants should continue to have flexibility to pay more than 30 percent of income in order to compete for units on the private rental market. Statutorily, recipients are not allowed to charge low-income families receiving subsidy under NAHASDA more than 30 percent of the family's adjusted income for affordable housing.

Four comments received were opposed to funding expired Section 8 contracts under NAHASDA. Opinions were expressed that NAHASDA does not have enough appropriation to fund the Section 8 and that the Section 8 administered by IHAs has a large number of non-Indians. Two commenters specified support for funding Section 8 under the formula.

Once a Section 8 contract administered by an IHA expires it cannot be renewed under the 1937 Act. To maintain this assistance for the households currently served by the Indian tribes, the Committee felt it was important to provide assistance under NAHASDA. Nonetheless, the Committee understands the concerns about the limited assistance available for Indian housing and has made note in this section and § 1000.306 that in five years subsidy for Section 8 should be reconsidered as a component of the formula.

Section 1000.317. Many comments were received from IHAs in Alaska concerning funds to maintain and operate 1937 Act units owned by the IHAs. In response to these comments, a new section has been added which states that formula funds for 1937 Act units owned by Regional Native Housing Authorities in Alaska will be allocated to the regional tribe.

Section 1000.318. One commenter wrote that even if units are conveyed over to a homeowner, the units should still count as Current Assisted Stock if the units are part of the five-year Comp Grant plan because there is a continuing obligation on the part of the Indian tribe's housing program to provide the assistance which has been promised. However, a conveyed unit, because it has become a private home, does not qualify as Current Assisted Stock. However, conveyed units for which Comprehensive Grant funding has been obligated in prior years may be modernized as scheduled.

One commenter stated that block grant amounts should be fixed based on units in management and should only be reduced as units leave management. The grant will not be increased when units are added to management after October 1, 1997. This gives the IHA no incentive to convey units out of management nor does it provide for costs of management of rental units added by the grant. The Committee considered this concern and has added language that requires conveyance of the units as soon as practicable as they are paid off under existing homeownership contracts.

One commenter noted that TDHEs should not be required to repay grant amounts for housing inventories reduced within the FY. The next grant year should be based on inventory at that date. The Committee agrees and has clarified this provision.

Two commenters suggested that the last sentence in the proposed § 1000.336 have the following added: "...by the Tribe or TDHE." The Committee has incorporated this change and also added "or IHA" to take into account situations where the IHA, not designated as the TDHE, continues to own the units.

Section 1000.324. The Committee agreed to adopt the clarifying change made by HUD to this section. One commenter noted that the "without kitchen or plumbing" variable is not an accurate measure of substandard housing because some Indian tribes building housing in remote location or extreme environmental conditions build new homes without kitchen or plumbing. After careful consideration of many issues, including the concern of the commenter, the Committee felt that it was important to include some indicator of substandard housing. Currently, the only indicator of substandard housing collected in a uniform manner for all Indian tribes related to substandard housing is "without kitchen or plumbing." Accordingly, no change has been made to the rule.

One commenter expressed that "Without kitchen or plumbing" should include heating. While the Committee considered this issue, it was not felt that the available data would adequately address the concern and thus the change to the variable could not be accommodated.

Two commenters noted that because most reservations are poverty areas and the majority of housing consists of HUD built homes and 30 percent is the maximum amount charged, the housing cost burden component appears to mainly reflect urban need. The commenter felt the need components should measure criteria which are proportionally consistent across the country and not include regional or special group needs. Because housing need is different throughout the country, each of the variables in the formula has some regional bias, including the housing cost burden variable referenced in the comment. However, it is the Committee's position that the combination of all of the variables in the formula most fairly allocates funds toward housing need in all regions of the country.

Two commenters felt there should be two need components. One as AIAN households which are overcrowded and the second as AIAN Households without kitchen or plumbing. Separating the two variables was considered. However, they were combined because they are highly correlated; places with overcrowding tend to also have households without complete kitchen or plumbing. The Committee combined the two variables in order to reflect both overcrowding and some components of substandard housing.

One commenter felt the need component should include non-Indians presently living in current assisted stock. IHAs provide housing for both Indians and non-Indians alike. The Committee recognizes that households with a divorced non-Indian with Indian children are not counted by the household variables, nor are other non-Indians that an Indian tribe may choose to serve. However, the needs side of the formula is intended to target toward Native American housing need. After receiving the funds based on Native American housing need, the Indian tribe may choose who they wish to serve. The current assisted stock component of the formula funds per unit regardless of the race of the resident.

One commenter noted that the formula does not adequately take into consideration the disparity between communities that currently have adequate infrastructure and those that do not. Among tribal communities in the same geographic region, the per-unit cost of infrastructure development typically varies much more than the per-unit cost for the houses alone. Tribal communities located in places that require capital investment infrastructure, such as very deep wells or long pipelines, will be severely disadvantaged under the current formula. The Committee sought out infrastructure data to be used in the formula. However, after discussions with Indian Health Service staff, it was determined that at this time the data were not appropriate for this formula. However, this will be one factor to be considered during the review of the formula over the next five years.

Several commenters recommended that the formula points and methods to weight these components agreed to by the Committee should be added to the regulations. The Committee agreed and has included the weights in the proposed rule.

Section 1000.326. Several comments submitted regarding "overlapping service areas", when more than one Indian tribe defines the same formula area. One commenter indicated that in Alaska there are tribal boundaries and a number of projects that border two or more Indian tribes. Furthermore, Alaska Native Land Claims Corporations overlap many Indian tribes. One commenter feared that without a quick HUD determination regarding overlapping formula area, Indian tribes might be placed in the situation of having to do political "battle" with one another to determine their fair share. The Committee agrees with the comments and have revised § 1000.326 to address overlap disputes between state and Federal Indian tribes as well as § 1000.327 to address the allocation of data for the unique overlapping areas in Alaska.

In addition, one comment was received relating to dual tribal membership and a change was made in the rule to reflect that concern. The other concern related to HUD's timing for dealing with issues related to overlapping areas and a change was made to put in a date specific when overlapping issues will be addressed.

One commenter indicated that the IHS is interested in working with HUD and other agencies on developing better data sources regarding the number and conditions of AIAN homes. Over the next 5 years HUD and the Indian tribes intend to improve the data available on Native American Housing need. IHS participation in this process is greatly appreciated. Furthermore, IHS assistance with current data that might be used for addressing problems related to overlapping service areas will be extremely helpful.

Section 1000.328. Twenty-four of the comments suggested that the needs component of the formula should provide a minimum level of funding, thirteen of the commenters suggesting a base allocation of $150,000.

After giving this issue serious consideration, the Committee agreed that if an Indian tribe receives less than $50,000 under the needs side of the formula in the first year it applies for funding, its need component is set to $50,000 with a downward adjustment for all other Indian tribes to cover this cost. In subsequent years up to the year 2002, an Indian tribe receiving less than $25,000 under need has their grant adjusted up to $25,000.

The Committee determined this minimum grant amount was allowable under NAHASDA under "other objectively measurable conditions as the Secretary and Indian tribes may specify."

Section 1000.330. One commenter felt it would be more equitable to allocate a standard across-the board housing allowance for every registered Native American who is a member of a recognized Indian tribe. A housing allowance for every registered Native American is contrary to the intent of the Act. NAHASDA requires that the block grants be targeted to the need of the Indian tribes and the Indian areas of the Indian tribes for assistance for affordable housing activities (Sec. 302(b)).

Two commenters felt that U.S. Census data do not reflect the housing need in Indian country. One commenter recommended the use of tribal waiting lists for housing and that those waiting lists be audited to ensure accuracy. In developing the proposed rule, issues of Census data quality and potential use of waiting list were discussed and carefully considered. Although recognizing the limitations of Census data, it is currently the only data available that is collected in a uniform manner that can be confirmed and verified for all Indian tribes on income and housing need. Section 1000.306 notes that a new set of measurable and verifiable data on Native American housing need will be developed not later than 5 years from the date of issuance of these regulations. Waiting lists tend to reflect local need rather than national need that is comparative across Indian tribes.

Section 1000.332. Three commenters felt this section (designated in the proposed rule as § 1000.318) should provide the procedural requirements for securing HUD approval, including automatic approval if HUD fails to act within a specified time. The Committee believes the details provided in § 1000.336 are adequate. However, the Committee felt commenters were confused by the order of the questions and answers presented in proposed §§ 1000.316 and 1000.318. Accordingly, the final rule reverses the order of these two sections.

Fourteen comments were received discussing HUD's provision of notice regarding formula data. Several commenters recommended that the data should be provided to Indian tribes/ TDHEs immediately for review. Commenters also suggested that HUD be required to provide notice of data and projected allocation not less than 120 days before the end of HUD's fiscal year. Other commenters recommended that HUD should be required to provide notice of data and projected allocation not less than 120 days before the date IHPs are required to be submitted.

The section was changed by adding a specific date (August 1 of each year) by which HUD will provide each Indian tribe with the data and a preliminary allocation based on an estimated appropriation for the next fiscal year. For consistency, all other deadlines in the formula component of the rule were made date specific.

Section 1000.334. Several related comments were made reflecting what information could be used for challenge. One commenter stated that many States, counties, cities, universities and other educational institutions have better data than the U.S. Census. The commenters asked why more systems need to be created if they are in place at the regional or local level. One commenter wrote that if the TDHE is providing accurate, verifiable information to be used in the formula, HUD should not be able to disallow that information. Two commenters wrote that challenge data could be certified by the Indian tribe and the BIA, as the BIA already uses tribal enrollment numbers for some contract funding.

The data used for the formula must be uniformly and consistently collected for all Indian tribes. Local data sources do not necessarily provide this. However, the Committee revised the rule to allow HUD greater discretion to accept data.

Section 1000.336. Five commenters requested more detail on "a method acceptable to HUD" for challenge. A more detailed explanation of "a method acceptable to HUD" for challenge will be included in the information packet sent out with the data to be used in the formula. Nonetheless, the Committee agreed that the section needed to be clarified in respect to submission of challenge material and the rule was changed accordingly.

Section 1000.338 of the proposed rule. This section was formerly designated as § 1000.338 but has been redesignated as § 1000.325 for purposes of clarity and better organization of the regulatory text. One commenter wrote that this section on adjusting for local area costs is unclear to someone unfamiliar with the existing program. An explanation of this section is included in the appendix which explains how the formula works. In addition, TDC is defined in § 1000.302.

Section 1000.340. Because many small IHAs did not receive modernization funding in FY 1996, two commenters felt the formula should be based on a three to five year average of operating subsidy and modernization received by the IHA. However, the current use of FY 1996 modernization is a statutory requirement that cannot be changed by regulation. Nonetheless, the comments reminded the Committee that an explanation of how this statutory requirement is incorporated into the formula was mistakenly not included in the proposed rule. Accordingly, new § 1000.342 has been added.

Section 1000.342. The proposed rule specifically requested comment on the issue of whether or not there should be an emergency and disaster relief set-aside as part of the block grant allocation.

Seventeen commenters opposed a set-aside. Several commenters wrote that funds should not be taken off the top of the block grant. These commenters believed this would serve to punish everyone for the disasters impacting the few. Other commenters suggested that an Indian tribe should address disaster relief by setting aside its own reserves for such circumstances. One commenter noted that a fund should not be established because insurance requirements protect TDHE property and FEMA is available for natural disasters. Another commenter opposed a set aside due to the lack of accepted definitions for "emergency" and "disaster." One of the comments suggested individual insurance coverage

should be required to be sufficient to cover disaster situations at 100 percent.

Thirty-three commenters were in favor of a disaster and/or emergency set aside. Many of these commenters recommended that the fund not exceed $10 million. Several commenters suggested that Indian tribes applying for this funding should be required to show that no other relief is available from other sources. One commenter supported the emergency fund, but recommended that Indian tribes should also have the option of establishing an emergency fund with a portion of their grant funds. After considering all of the comments, the Committee determined that a set aside would be difficult to implement and inadvisable. The Committee recommends that recipients consider the establishment of an insurance pool.

Performance Variable. The July 2, 1997 proposed rule solicited comments on the use of a performance variable in the formula allocation. Numerous comments were received.

Many commenters supported the inclusion of a performance variable in the allocation formula. These commenters believed a performance variable was necessary to establish a connection between performance and the amount of funding an Indian tribe receives. Further, the commenters believed that the inclusion of a performance variable would encourage proper fiscal management by Indian tribes. One commenter recommended that the performance objectives be established by the Indian tribes and be tribally driven.

Many commenters were opposed to the performance variable. These commenters believe that a performance variable is unnecessary and would only serve to divide Indian tribes. These commenters believed that the inclusion of a performance variable would lead to the high-performing recipients getting rewarded at the expense of low-performing recipients, which are in most need of assistance. One commenter writing against the proposal believes the inclusion of a performance variable would allow HUD subjectivity in funding decisions.

The Committee believes that performance is an important issue. However, the Committee determined that the inclusion of a performance variable in the formula would be inappropriate. Rather, the Committee has addressed performance measures in subpart F of these regulations, which deals with compliance issues and adjustments to funding.

General comments on the allocation formula. Several commenters submitted comments that did not refer to a specific section of subpart D, but rather concerned the allocation formula generally.

One commenter suggested the allocation formula be published as part of the final rule. The Committee agrees and the formula is published as part of the appendix to this final rule.

Another commenter suggested splitting allocations by region or size of Indian tribe on a bi-annual or tri-annual basis. This suggestion was considered and not adopted by the Committee for reasons of fairness and equity.

One commenter questioned whether special consideration would be given to the high costs of construction and maintenance in Alaska. The Committee provided for different regional costs to be accounted for in the formula.

Another commenter recommended that $15 million of the total amount of funds under the Need component be reserved annually for development of off-site sanitation facilities (water, sewer, and solid waste facilities) and allocated to Indian tribes based on a separate methodology. The Committee considered but did not adopt this proposal due to the impracticality of administering such a fund.

Subpart E—Federal Guarantees for Financing of Tribal Housing Activities

Subpart E describes the regulatory requirements necessary for the implementation of title VI of NAHASDA. This subpart establishes the terms and conditions by which HUD will guarantee the obligations issued by an Indian tribe or Tribally Designated Housing Entity for the purposes of financing eligible affordable housing activities. (Note: The numbers of several sections in this subpart have been amended due to the addition of new sections. For example, § 1000.406 of the proposed rule is numbered as § 1000.408 of this final rule.)

Section 1000.402. Several commenters suggested that State recognized Indian tribes should not be eligible for participation in Title VI. Two of these commenters added that if any State recognized Indian tribes were permitted to participate that their funding should come from a separate appropriation. The regulations were not changed because the statute allows for participation by State Indian tribes that meet the definition in section 4(12)(c) of NAHASDA.

Section 1000.404. This section of the final rule contains new language. Section 1000.404 of the proposed rule has been redesignated as § 1000.406 in the final rule. The preamble to the proposed rule sought input on whether a definition of lender should be added in the final rule. Some commenters agreed that the language should be added while others stated that no regulatory language should be added. It was the decision of the Committee that a lender definition was advisable. It was further agreed to utilize the language found in HUD's regulations for the Section 184 Loan Guarantee Program (currently located in 24 CFR part 955, but redesignated by this final rule as 24 CFR part 1005) to provide consistency in the two loan guarantee programs. Further, it was agreed that the additional language added to the definition of lender in part 1005 was appropriate for Title VI as well (see discussion of changes to part 1005 below). These agreements are implemented in the revised § 1000.404 of the final rule.

Section 1000.406 of the proposed rule. Section 1000.406 of the proposed rule has been redesignated as § 1000.408 in the final rule. One commenter suggested that HUD require only a certification and not volumes of paperwork. The Committee agreed with the comment but made no change to the proposed rule as the language as published was sufficiently broad and did not require excessive paperwork. An additional commenter stated that the financing terms of a non-guaranteed loan should not exceed the financing terms of a guaranteed loan to avoid penalizing financially responsible Indian tribes. The Committee concurred and reworded the rule to conform with statutory language regarding the timely execution of program plans.

Section 1000.408 of the proposed rule. Section 1000.408 of the proposed rule has been redesignated as § 1000.410 in the final rule. Numerous comments were received stating that the term of the Title VI loan should be longer than 20 years. The commenters noted that the proposed rule language provided no flexibility and was counterproductive to establishing creative financing mechanisms. One commenter requesting the longer loan term suggested that each application stand on its own merits. The Committee agreed with this suggestion and amended the language in the final rule. Additionally, the language in paragraph (a) was amended to correct wording which erroneously provided that security pledged with the note or other obligation could have been sold if the note was sold.

Section 1000.412 of the proposed rule. Section 1000.412 of the proposed rule has been redesignated as § 1000.414 in the final rule. While no comments were received, this section was divided into separate paragraphs to clearly show the

reader that NAHASDA contains two, distinctive requirements.

Section 1000.414 of the proposed rule. Section 1000.414 of the proposed rule has been redesignated as § 1000.416 in the final rule. Several commenters requested a change in wording from "may" to "will" which they believed responded to concerns from Indian tribes and was more grammatically correct. The Committee concurred and amended the language as noted.

Section 1000.418 of the proposed rule. Section 1000.418 of the proposed rule has been redesignated as § 1000.420 in the final rule. Two comments requested a change in the proposed rule by adding "should not" instead of the proposed wording of simply "not." The Committee did not concur with this change as the statute limits the net interest costs to 30 percent and does not provide for the flexibility the commenter is seeking.

Section 1000.422 of the proposed rule. Section 1000.422 of the proposed rule has been redesignated as § 1000.424 in the final rule. Several comments were received requesting the removal of the certification on the drug-free workplace and relocation requirements and the rewording of the certifications in general to be clearer to the reader. The Committee concurred with these recommendations and further streamlined the listing of required certifications. Several commenters requested that "regulation" be changed to "requirements" since the reference is to a statutory requirement, as opposed to a regulatory requirement. The Committee accepted this change.

Section 1000.428 of the proposed rule. Section 1000.428 of the proposed rule has been redesignated as § 1000.430 in the final rule. Several commenters suggested that the word "reasonable" be added to the conditions under which HUD may list conditions in the issuance of a guarantee certificate. The Committee concurred and made this change in paragraph (c) of this section. A comment was received requesting that a 45 day limit be placed on HUD to provide its request for information. The Committee agreed that a review period should be established and retained the 30 day review period.

Section 1000.432 of the proposed rule. Section 1000.432 of the proposed rule has been redesignated as § 1000.434 in the final rule. Two comments requested that the allocation process for title VI applicants be based only on seeking loan guarantee assistance. The Committee did not recommend any changes based on this comment as the Title VI applications will be received by the Department throughout the year and not at one time. Therefore, it is impossible for the Department to accurately predict the number of loans and the amount of those loans when applying the formula.

Two comments requested that the date when applications could be submitted for the unused funds be changed from the fourth quarter to the third quarter. The Committee agreed with these comments and the language was amended. Additionally, language was added to make clear to the reader that an application previously denied under the regional allocation method would need to be resubmitted at the beginning of the third quarter to be made eligible for unused funds.

Two comments stated that the allocation method should be based on need. The Committee did not adopt this recommendation as there is no statutory basis for such a requirement. The Committee believes that the language in the proposed rule provided a fair distribution of available funds. During the third quarter, an adjustment will be made for regions with higher participation or lower participation in Title VI.

Section 1000.434 of the proposed rule. Section 1000.434 of the proposed rule has been redesignated as § 1000.436 in the final rule. A comment was received which supported the monitoring of Title VI funds by HUD. The Committee agreed with this comment but determined that such monitoring was fully provided for in the proposed rule language. Therefore, no change was necessary. A comment was also received which recommended that this provision be deleted from the rule. The Committee did not concur on this provision as it would contradict the statute.

Subpart F—Recipient Monitoring, Oversight and Accountability

Subpart F implements title IV of NAHASDA. Among other topics, this subpart addresses monitoring of compliance, performance reports, HUD and tribal review, audits, and remedies for noncompliance. (Note: The numbers of several sections in this subpart have been amended due to the addition of new sections. For example, § 1000.528 of the proposed rule is numbered as § 1000.532 of this final rule.)

General comment. One commenter suggested that HUD elevate its capabilities to insure that it can effectively monitor NAHASDA activities. No regulatory changes were proposed.

Section 1000.501. One commenter was in favor of this provision.

Section 1000.502. HUD had added the word "periodically" in describing the HUD review process which otherwise was cross-referenced to section § 100.520. This prompted several negative comments. Section 1000.520 states that HUD will "at least annually" review each recipient's performance. Therefore, the word "periodically" has been removed.

HUD also added citations to 24 CFR 8.56 and 24 CFR 146.31. Several commenters objected to this addition. These referenced regulations are not applicable to these reviews and NAHASDA regulations, so they have been deleted.

In paragraph (c) one commenter expressed concern about adding the word "auditing" to HUD's review practices since HUD is unlikely to conduct financial audits of recipients. Therefore, the word "auditing" has been deleted.

One commenter challenged HUD's monitoring and suggested further regulating how Indian tribes and HUD should carry out their monitoring responsibilities. NAHASDA mandates that HUD monitor activities and the Committee believes that it is prudent for both HUD and Indian tribes to monitor recipients. The Committee additionally believes that Indian tribes and HUD should generally not be further restricted in their monitoring activities.

Several commenters wanted further detail on monitoring activities. However, the Committee believes the regulations as currently stated are adequate and appropriate.

Section 1000.508. A number of commenters objected to the regulations mandating that recipients take certain specified actions if they identified programmatic concerns. The regulations have been changed to state that some corrective action must be taken, but is not limited to the remedies outlined.

A comment argued that HUD has an obligation to provide technical assistance. This comment was considered but no language was adopted.

Section 1000.510. Similar to some comments regarding § 1000.508, commenters were concerned about the language added by HUD concerning "responsibility" and how this might be interpreted or what consequences it might have. However, the Committee agreed to retain the language.

Section 1000.512. At the suggestion of several commenters, paragraph (c) has been changed to cross-reference to § 1000.524.

Section 1000.514. Contrary to the suggestions of several commenters, the Committee does not believe that it is necessary to address the particulars of audit submissions in this section. Many

comments were received suggesting that Indian tribes need more time to submit performance reports. Therefore, the proposed period of 45 days has been changed to 60 days. Also, based on one comment, "program year" has now been changed to "recipient's program year."

Section 1000.516. As with the change made to § 1000.514, the term "program year" has been changed to read "recipient's program year."

One commenter inquired about staggering IHP deadlines to allow them to fit different fiscal years. The submission period for IHPs has been changed to permit IHP submission anytime prior to July 1 of the Federal Fiscal Year for which funds are appropriated (See § 1000.214). Coordination of plan submission with individual fiscal years has been left to the discretion of the individual recipients.

Section 1000.521. At the suggestion of several commenters, this new question and answer has been added giving HUD 60 days to issue a report on a recipient's performance.

Section 1000.522. Many comments were received regarding the notice for on-site reviews. In response, the regulations have been changed to require a 30-day written notice in most cases. One commenter suggested that in emergency situations where a notice is not required, that the term "emergency" be defined. However, the Committee believes that such a definition would be too cumbersome. One commenter proposed that the recipient and HUD be required to mutually agree on whether an on-site review should be done. The Committee does not agree with this proposal because it might conflict with the rights and duties that HUD has under NAHASDA.

The Committee encourages HUD to be sensitive to the right of Indian tribes to participate in exit reviews. Though no specific action is promulgated, HUD should incorporate such rights in its review procedures.

Section 1000.524. As addressed in the discussion of previous sections, paragraph (d) is changed to read "recipient's program year."

At the suggestion of several commenters, the amount of time that a recipient has to submit an annual performance report has been changed from 45 days to 60 days.

One commenter wanted to expressly address treatment of obligated funds and to define them as expended funds. However, the Committee feels this is not an appropriate definition and that explanatory language is not necessary.

One commenter felt that "substantial" compliance with regulations and statutes should be required in paragraph (f). The Committee agrees with this commenter and has changed the regulations accordingly.

One commenter suggested that HUD review be done biannually. However, this conflicts with the statutory requirement that HUD review recipients annually.

Section 1000.526. Many commenters objected to HUD adding paragraph (i) to the list of information which it may consider in reviewing a recipient's performance. It was agreed that this section be revised to apply only to "reliable" information relating to performance measurements.

One commenter asked whether paragraph (h) is an inappropriate waiver of attorney-client privilege. The Committee does not interpret this as a waiver because the section merely allows HUD to take into account matters that may be in litigation.

Section 1000.530. This section of the final rule contains new language. Section 1000.530 of the proposed rule has been redesignated as § 1000.538 in the final rule. A number of comments were received which stated that the proposed regulations did not provide a recipient a period of time to cure a performance problem before the Department initiates remedies available to it under either § 1000.528 of the proposed rule, redesignated as § 1000.532 in the final rule, (adjustments to future grants) or § 1000.530 of the proposed rule, redesignated as § 1000.538 in the final rule, (adjustments to current grant based on substantial noncompliance). The final rule adds new language at § 1000.530 which, depending upon the severity of the performance problem, provides a number of corrective and remedial measures which the recipient may take to cure the performance problem. At least one or more of the corrective and remedial actions must be taken by the Department before the Department pursues the remedies available to it under §§ 1000.532 or 1000.538 of the final rule. Such corrective or remedial measures are designed to (1) prevent continuance of the problem, (2) mitigate any adverse effects, and (3) prevent recurrence of the problem. The corrective and remedial actions are phrased as requests and recommendations to recipients.

Section 1000.528 of the proposed rule. Section 1000.528 of the proposed rule has been redesignated as § 1000.532 in the final rule. The July 2, 1997 proposed rule identified the reduction of grant amounts under section 405(c) of NAHASDA without affording notice and an opportunity for a hearing to be a nonconsensus issue. The tribal position in the proposed rule was that prior to the Department taking action under section 405(c) to adjust, reduce or withdraw future grant awards, the Department must provide notice and an opportunity for a hearing which would be available to the recipient under section 401(a) of NAHASDA (relating to substantial noncompliance issues involving the current year grant). The Department took the position in the proposed rule that section 405(c) permits the Department to adjust, reduce, withdraw, or take other appropriate actions based on the Department's review and audit of the recipient without providing prior notice and an opportunity for hearing.

Section 1000.528 of the proposed rule was drafted by the Department to implement section 405(c). The section, as drafted, did not provide notice and an opportunity for hearing.

Extensive comments were received which unanimously supported the tribal position that the Department afford notice and an opportunity for hearing prior to the Department taking the section 405(c) remedies against the future year grant. The final rule states HUD will (1) provide notice and an informal meeting to resolve program deficiencies prior to taking the section 405(c) remedies and following the future grant adjustment, reduction, withdrawal, or other action, and (2) provide the recipient with a hearing identical to that afforded recipients under section 401(a) of NAHASDA. The funds adjusted, reduced, or withdrawn shall not be reallocated until 15 days after this hearing has been held and a final decision rendered.

Several comments stated that the statutory language in section 405(c) regarding "appropriate adjustments" to future grants is vague and provides little or no guidance to either the Department or recipients. They recommended that some explanation be provided as to the standard that applies when HUD makes a determination to adjust a future grant. Paragraph (c) provides such a standard and mandates that the Department make adjustments in the recipient's future grant appropriate to the deficiency when the recipient has not complied significantly with a major activity of its IHP. If a reduction is made, a recipient may request a hearing identical to that provided for reductions under section 401(a) of NAHASDA.

Other comments were received that were directed at reducing the share of grant funds to recipients who failed to meet their own IHP goals and objectives. The solution to this situation recommended by these commenters was

to provide a performance variable in the funding allocation formula. Also received were comments specific to the issue of whether annual funding would continue for programs with identified management and performance shortfalls and whether, as proposed, the regulations would implement a system that could increase the existing project development pipeline. However, many comments were received that opposed adding performance variables to the formula to reduce funding to non-performing programs.

The response to these varied comments is the insertion of paragraph (c)—a mandatory program sanction which HUD must take. The sanctions only occur if a recipient fails to comply significantly with a major activity of its IHP and the deficiencies that caused the failure were not beyond the control of the recipient.

Since each participant prepares its own IHP and conducts monitoring and oversight activities to assure the IHP will be accomplished, the Committee believes that the actions taken by HUD in the new paragraph (c) are necessary to provide a "means of last resort" when the recipient fails in a way that wastes or mismanages NAHASDA funding. Further, the Committee intends that inclusion of paragraph (c) underscores HUD's responsibility to assure that funds are allocated to programs that address the goals and objectives set forth in their housing plans, thereby playing an active role in assuring the program's success.

Section 1000.530 of the proposed rule. Section 1000.530 of the proposed rule has been redesignated as § 1000.538 in the final rule. A number of commenters submitted questions regarding the definition of "substantial noncompliance." Several comments were received concerning providing a review and allowing an opportunity to cure a case of substantial noncompliance. In whole or in part, these concerns have been addressed in changes and additions made under §§ 1000.530, 1000.532, 1000.534, and 1000.536 of the final rule. One commenter endorsed the language as published.

Section 1000.532 of the proposed rule. Section 1000.532 of the proposed rule has been redesignated as § 1000.540 in the final rule. Numerous comments were received regarding hearing procedures to be followed. The reference to 24 CFR part 26 has been left intact. However, the references to the Rehabilitation Act and the Age Discrimination Act (which were added by HUD) have been removed since these laws are not applicable in the context of this section.

Section 1000.534 of the proposed rule. Section 1000.534 of the proposed rule has been redesignated as § 1000.542 in the final rule. Commenters in Alaska were concerned about how this section might apply to them and the unique circumstances when an Indian tribe might refuse to both certify a TDHE and submit an IHP covering certain existing units. This issue has been addressed in § 1000.210.

Several commenters were concerned with the structure and language of paragraph (b). The Committee has not revised the language, because the current language reflects the statute.

One commenter expressed concern that this section is inconsistent with the principles of self-determination, although the commenter acknowledges that the section is required by the statute. Because it is mandated by NAHASDA, no change was made to the regulations.

Section 1000.534 of the final rule. This section of the final rule contains new language. Section 1000.534 of the proposed rule has been redesignated as § 1000.542 in the final rule. The proposed rule identified as a nonconsensus issue the question of a definition of the term "substantial noncompliance" contained in section 401 of NAHASDA. The Indian tribes proposed a definition for this term which is the basis for terminating, reducing, or limiting payments under NAHASDA. HUD disagreed with inclusion of the definition, but welcomed public comment on whether the term should be defined and how. There were many public comments on this matter and all urged inclusion of a definition. The final rule adds a definition at § 1000.534 that indicates both the substantiality and noncompliance aspects of the definition.

Section 1000.536 of the proposed rule. This question was added to the proposed rule by HUD and the proposed rule language has been completely removed. One commenter's challenge to this question made the Committee realize that this provision is not needed. Tribal conditions and performance are evaluated each year by HUD upon the submission of an IHP. At that time, HUD shall make a new determination as to whether the recipient is in substantial compliance. Therefore, HUD is required to follow this process instead of determining that a particular instance of substantial noncompliance has ceased.

Section 1000.536 of the final rule. This section of the final rule contains new language. The language of § 1000.536 of the proposed rule has been removed from the final rule. This new question and answer provides that NAHASDA grant funds withheld from a recipient and not returned as a result of the hearing will be distributed by HUD in accordance with the next NAHASDA formula allocation.

Section 1000.538 of the proposed rule. Section 1000.538 of the proposed rule has been redesignated as § 1000.544 in the final rule. Several comments were received on this section. The regulations have been changed to better explain this requirement. (Also, see changes to §§ 1000.546 and 1000.548 of the final rule, which were §§ 1000.542 and 1000.544 of the proposed rule.)

Section 1000.540. The proposed rule language for this entire section has been removed because OMB Circular A–133 establishes new procedures for cognizant agencies and auditing oversight. Section 1000.532 of the proposed rule has been redesignated as § 1000.540 in the final rule.

Section 1000.552 of the proposed rule. Section 1000.552 of the proposed rule has been redesignated as § 1000.556 in the final rule. Several comments were received asking for clarification on this section. Language has been added to explain that there may be other laws or policies which are applicable.

Section 1000.554 of the proposed rule. Section 1000.554 of the proposed rule has been redesignated as § 1000.558 in the final rule. Several comments were received asking for clarification on this section. Language has been added to explain that there may be other laws or policies which are applicable.

Amendments to 24 CFR Part 1005—Section 184 Loan Guarantee Program Regulations

Section 1005.103. A comment was received which recommended a clarifying rewording of the definition for "Holder." The Committee agreed and revised the wording of the section accordingly.

Section 1005.104. One commenter provided several comments on the eligibility of lenders for the 184 program. While these comments were directed to the requirements of other Federal agencies, the rule was amended to expand the eligibility of lenders.

Section 1005.105. The Committee agreed to reword the provisions of paragraph (b) for further clarity and compliance with NAHASDA.

Many comments were received regarding paragraph (f) of this section. One commenter noted the adverse affect on HMDA data if loan applicants must go through a denial process. A comment discussed the shortage of housing in

rural Alaska and noted that a requirement for a written documentation would present a disadvantage to buyers under this program. Questions were also raised about the type and amount of documentation required. Several commenters requested removal of the "lack of access to private financial markets" language. Several commenters noted that the proposed language would discourage access to private markets which was inconsistent with the objective of NAHASDA. One commenter proposed that this provision be delayed until a later time so that market comparables could be established.

The Committee considered all comments and determined that the language regarding "lack of access" could not be removed as it is contained in NAHASDA. The Committee agrees with the comments that the provision, as drafted, could be detrimental to the program and Indian country and therefore the rule was revised. The new requirement provides for a certification from the borrower that they lack access to private financial markets. Written documentation is no longer required to support this certification.

Section 1005.107. Several commenters believed that NAHASDA intended that the TDHE servicing the Indian tribe be eligible under the liquidation provision. The Committee agreed with this comment and added the language.

III. Findings and Certifications

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (42 U.S.C. 3501–3530), and assigned OMB control number 2577–0218. *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.*

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made at the proposed rule stage in accordance with HUD regulations at 24 CFR part 50, implementing section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). That Finding of No Significant Impact remains applicable to this final rule and is available for public inspection during business hours in the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule have no federalism implications, and that the policies are not subject to review under the Order.

Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

This rule will not pose an environmental health risk or safety risk on children.

Unfunded Mandates Reform Act

The Secretary has reviewed this rule before publication and by approving it certifies, in accordance with the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), that this rule does not impose a Federal mandate that will 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.

Executive Order 12866, Regulatory Planning and Review.

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, Regulatory Planning and Review. OMB determined that this rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the final rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule, and in so doing certifies that this rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects

24 CFR Part 950

Aged, Grant programs—housing and community development, Grant programs—Indians, Indians, Individuals with disabilities, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 953

Alaska, Community development block grants, Grant programs—housing and community development, Indians, Reporting and recordkeeping requirements.

24 CFR Part 955

Indians, Loan programs—Indians, Reporting and recordkeeping requirements.

24 CFR Part 1000

Aged, Community development block grants, Grant programs—housing and community development, Grant programs—Indians, Indians, Individuals with disabilities, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 1003

Alaska, Community development block grants, Grant programs—housing and community development, Indians, Reporting and recordkeeping requirements.

24 CFR Part 1005

Indians, Loan programs—Indians, Reporting and recordkeeping requirements.

Accordingly, for the reasons described above, in title 24 of the Code of Federal Regulations, Chapter IX is amended as follows:

PART 950—[REMOVED]

1. Part 950 is removed.

PART 953—[REDESIGNATED]

2. Part 953 is redesignated as part 1003.

2a. Part 955 is redesignated as part 1005.

3. Part 1000 is added to read as follows:

PART 1000—NATIVE AMERICAN HOUSING ACTIVITIES

Subpart A—General

Sec.

1000.1 What is the applicability and scope of these regulations?
1000.2 What are the guiding principles in the implementation of NAHASDA?
1000.4 What are the objectives of NAHASDA?
1000.6 What is the nature of the IHBG program?
1000.8 May provisions of these regulations be waived?
1000.10 What definitions apply in these regulations?
1000.12 What nondiscrimination requirements are applicable?
1000.14 What relocation and real property acquisition policies are applicable?

1000.16 What labor standards are applicable?
1000.18 What environmental review requirements apply?
1000.20 Is an Indian tribe required to assume environmental review responsibilities?
1000.22 Are the costs of the environmental review an eligible cost?
1000.24 If an Indian tribe assumes environmental review responsibility, how will HUD assist the Indian tribe in performing the environmental review?
1000.26 What are the administrative requirements under NAHASDA?
1000.28 May a self-governance Indian tribe be exempted from the applicability of § 1000.26?
1000.30 What prohibitions regarding conflict of interest are applicable?
1000.32 May exceptions be made to the conflict of interest provisions?
1000.34 What factors must be considered in making an exception to the conflict of interest provisions?
1000.36 How long must a recipient retain records regarding exceptions made to the conflict of interest provisions?
1000.38 What flood insurance requirements are applicable?
1000.40 Do lead-based paint poisoning prevention requirements apply to affordable housing activities under NAHASDA?
1000.42 Are the requirements of section 3 of the Housing and Urban Development Act of 1968 applicable?
1000.44 What prohibitions on the use of debarred, suspended or ineligible contractors apply?
1000.46 Do drug-free workplace requirements apply?
1000.48 Are Indian preference requirements applicable to IHBG activities?
1000.50 What Indian preference requirements apply to IHBG administration activities?
1000.52 What Indian preference requirements apply to IHBG procurement?
1000.54 What procedures apply to complaints arising out of any of the methods of providing for Indian preference?
1000.56 How are NAHASDA funds paid by HUD to recipients?
1000.58 Are there limitations on the investment of IHBG funds?
1000.60 Can HUD prevent improper expenditure of funds already disbursed to a recipient?
1000.62 What is considered program income and what restrictions are there on its use?

Subpart B—Affordable Housing Activities

1000.101 What is affordable housing?
1000.102 What are eligible affordable housing activities?
1000.104 What families are eligible for affordable housing activities?
1000.106 What families receiving assistance under title II of NAHASDA require HUD approval?
1000.108 How is HUD approval obtained by a recipient for housing for non low-income Indian families and model activities?
1000.110 Under what conditions may non low-income Indian families participate in the program?
1000.112 How will HUD determine whether to approve model housing activities?
1000.114 How long does HUD have to review and act on a proposal to provide assistance to non low-income Indian families or a model housing activity?
1000.116 What should HUD do before declining a proposal to provide assistance to non low-income Indian families or a model housing activity?
1000.118 What recourse does a recipient have if HUD disapproves a proposal to provide assistance to non low-income Indian families or a model housing activity?
1000.120 May a recipient use Indian preference or tribal preference in selecting families for housing assistance?
1000.122 May NAHASDA grant funds be used as matching funds to obtain and leverage funding, including any Federal or state program and still be considered an affordable housing activity?
1000.124 What maximum and minimum rent or homebuyer payment can a recipient charge a low-income rental tenant or homebuyer residing in housing units assisted with NAHASDA grant amounts?
1000.126 May a recipient charge flat or income-adjusted rents?
1000.128 Is income verification required for assistance under NAHASDA?
1000.130 May a recipient charge a non low-income family rents or homebuyer payments which are more than 30 percent of the family's adjusted income?
1000.132 Are utilities considered a part of rent or homebuyer payments?
1000.134 When may a recipient (or entity funded by a recipient) demolish or dispose of current assisted stock?
1000.136 What insurance requirements apply to housing units assisted with NAHASDA grants?
1000.138 What constitutes adequate insurance?
1000.140 May a recipient use grant funds to purchase insurance for privately owned housing to protect NAHASDA grant amounts spent on that housing?
1000.142 What is the "useful life" during which low-income rental housing and low-income homebuyer housing must remain affordable as required in sections 205(a)(2) and 209 of NAHASDA?
1000.144 Are Mutual Help homes developed under the 1937 Act subject to the useful life provisions of section 205(a)(2)?
1000.146 Are homebuyers required to remain low-income throughout the term of their participation in a housing program funded under NAHASDA?
1000.150 How may Indian tribes and TDHEs receive criminal conviction information on adult applicants or tenants?
1000.152 How is the recipient to use criminal conviction information?
1000.154 How is the recipient to keep criminal conviction information confidential?
1000.156 Is there a per unit limit on the amount of IHBG funds that may be used for dwelling construction and dwelling equipment?

Subpart C—Indian Housing Plan (IHP)

1000.201 How are funds made available under NAHASDA?
1000.202 Who are eligible recipients?
1000.204 How does an Indian tribe designate itself as recipient of the grant?
1000.206 How is a TDHE designated?
1000.208 What happens if an Indian tribe had two IHAs as of September 30, 1996?
1000.210 What happens to existing 1937 Act units in those jurisdictions for which Indian tribes do not or cannot submit an IHP?
1000.212 Is submission of an IHP required?
1000.214 What is the deadline for submission of an IHP?
1000.216 What happens if the recipient does not submit the IHP to the Area ONAP by July 1?
1000.218 Who prepares an submits an IHP?
1000.220 What are the minimum requirements for the IHP?
1000.222 Are there separate IHP requirements for small Indian tribes and small TDHEs?
1000.224 Can any part of the IHP be waived?
1000.226 Can the certification requirements of section 102(c)(5) of NAHASDA be waived by HUD?
1000.228 If HUD changes its IHP format will Indian tribes be involved?
1000.230 What is the process for HUD review of IHPs and IHP amendments?
1000.232 Can an Indian tribe or TDHE amend its IHP?
1000.234 Can HUD's determination regarding the non-compliance of an IHP or a modification to an IHP be appealed?
1000.236 What are eligible administrative and planning expenses?
1000.238 What percentage of the IHBG funds can be used for administrative and planning expenses?
1000.240 When is a local cooperation agreement required for affordable housing activities?
1000.242 When does the requirement for exemption from taxation apply to affordable housing activities?

Subpart D—Allocation Formula

1000.301 What is the purpose of the IHBG formula?
1000.302 What are the definitions applicable for the IHBG formula?
1000.304 May the IHBG formula be modified?
1000.306 How can the IHBG formula be modified?
1000.308 Who can make modifications to the IHBG formula?
1000.310 What are the components of the IHBG formula?
1000.312 What is current assisted stock?

1000.314 What is formula current assisted stock?
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Authority: 25 U.S.C. 4101 *et seq.*; 42 U.S.C. 3535(d).

Subpart A—General

§ 1000.1 What is the applicability and scope of these regulations?

Under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (NAHASDA) the Department of Housing and Urban Development (HUD) provides grants, loan guarantees, and technical assistance to Indian tribes and Alaska Native villages for the development and operation of low-income housing in Indian areas. The policies and procedures described in this part apply to grants to eligible recipients under the Indian Housing Block Grant (IHBG) program for Indian tribes and Alaska Native villages. This part also applies to loan guarantee assistance under title VI of NAHASDA. The regulations in this part supplement the statutory requirements set forth in NAHASDA. This part, as much as

practicable, does not repeat statutory language.

§ 1000.2 What are the guiding principles in the implementation of NAHASDA?

(a) The Secretary shall use the following Congressional findings set forth in section 2 of NAHASDA as the guiding principles in the implementation of NAHASDA:

(1) The Federal government has a responsibility to promote the general welfare of the Nation:

(i) By using Federal resources to aid families and individuals seeking affordable homes in safe and healthy environments and, in particular, assisting responsible, deserving citizens who cannot provide fully for themselves because of temporary circumstances or factors beyond their control;

(ii) By working to ensure a thriving national economy and a strong private housing market; and

(iii) By developing effective partnerships among the Federal government, state, tribal, and local governments, and private entities that allow government to accept responsibility for fostering the development of a healthy marketplace and allow families to prosper without government involvement in their day-to-day activities.

(2) There exists a unique relationship between the Government of the United States and the governments of Indian tribes and a unique Federal responsibility to Indian people.

(3) The Constitution of the United States invests the Congress with plenary power over the field of Indian affairs, and through treaties, statutes, and historical relations with Indian tribes, the United States has undertaken a unique trust responsibility to protect and support Indian tribes and Indian people.

(4) The Congress, through treaties, statutes, and the general course of dealing with Indian tribes, has assumed a trust responsibility for the protection and preservation of Indian tribes and for working with Indian tribes and their members to improve their housing conditions and socioeconomic status so that they are able to take greater responsibility for their own economic condition.

(5) Providing affordable homes in safe and healthy environments is an essential element in the special role of the United States in helping Indian tribes and their members to improve their housing conditions and socioeconomic status.

(6) The need for affordable homes in safe and healthy environments on Indian reservations, in Indian communities, and in Native Alaskan villages is acute and the Federal government should work not only to provide housing assistance, but also, to the extent practicable, to assist in the development of private housing finance mechanisms on Indian lands to achieve the goals of economic self-sufficiency and self-determination for Indian tribes and their members.

(7) Federal assistance to meet these responsibilities should be provided in a manner that recognizes the right of Indian self-determination and tribal self-governance by making such assistance available directly to the Indian tribes or tribally designated entities under authorities similar to those accorded Indian tribes in Public Law 93–638 (25 U.S.C. 450 *et seq.*).

(b) Nothing in this section shall be construed as releasing the United States government from any responsibility arising under its trust responsibilities towards Indians or any treaty or treaties with an Indian tribe or nation.

§ 1000.4 What are the objectives of NAHASDA?

The primary objectives of NAHASDA are:

(a) To assist and promote affordable housing activities to develop, maintain and operate affordable housing in safe and healthy environments on Indian reservations and in other Indian areas for occupancy by low-income Indian families;

(b) To ensure better access to private mortgage markets for Indian tribes and their members and to promote self-sufficiency of Indian tribes and their members;

(c) To coordinate activities to provide housing for Indian tribes and their members and to promote self-sufficiency of Indian tribes and their members;

(d) To plan for and integrate infrastructure resources for Indian tribes with housing development for Indian tribes; and

(e) To promote the development of private capital markets in Indian country and to allow such markets to operate and grow, thereby benefiting Indian communities.

§ 1000.6 What is the nature of the IHBG program?

The IHBG program is formula driven whereby eligible recipients of funding receive an equitable share of appropriations made by the Congress, based upon formula components specified under subpart D of this part. IHBG recipients must have the administrative capacity to undertake the affordable housing activities proposed, including the systems of internal control necessary to administer these activities effectively without fraud, waste, or mismanagement.

§ 1000.8 May provisions of these regulations be waived?

Yes. Upon determination of good cause, the Secretary may, subject to statutory limitations, waive any provision of this part and delegate this authority in accordance with section 106 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3535(q)).

§ 1000.10 What definitions apply in these regulations?

Except as noted in a particular subpart, the following definitions apply in this part:

(a) The terms "*Adjusted income,*" "*Affordable housing,*" "*Drug-related criminal activity,*" "*Elderly families and near-elderly families,*" "*Elderly person,*" "*Grant beneficiary,*" "*Indian,*" "*Indian housing plan (IHP),*" "*Indian tribe,*" "*Low-income family,*" "*Near-elderly persons,*" "*Nonprofit,*" "*Recipient,*" *Secretary,*" "*State,*" and "*Tribally designated housing entity (TDHE)*" are defined in section 4 of NAHASDA.

(b) In addition to the definitions set forth in paragraph (a) of this section, the following definitions apply to this part:

Affordable housing activities are those activities identified in section 202 of NAHASDA.

Annual Contributions Contract (ACC) means a contract under the 1937 Act between HUD and an IHA containing the terms and conditions under which HUD assists the IHA in providing decent, safe, and sanitary housing for low-income families.

Annual income has one of the following meanings, as determined by the Indian tribe:

(1) "Annual income" as defined for HUD's Section 8 programs in 24 CFR part 5, subpart F (except when determining the income of a homebuyer for an owner-occupied rehabilitation project, the value of the homeowner's principal residence may be excluded from the calculation of Net Family assets); or

(2) Annual income as reported under the Census long-form for the most recent available decennial Census. This definition includes:

(i) Wages, salaries, tips, commissions, etc.;

(ii) Self-employment income;

(iii) Farm self-employment income;

(iv) Interest, dividends, net rental income, or income from estates or trusts;

(v) Social security or railroad retirement;

(vi) Supplemental Security Income, Aid to Families with Dependent Children, or other public assistance or public welfare programs;
(vii) Retirement, survivor, or disability pensions; and
(viii) Any other sources of income received regularly, including Veterans' (VA) payments, unemployment compensation, and alimony; or
(3) Adjusted gross income as defined for purposes of reporting under Internal Revenue Service (IRS) Form 1040 series for individual Federal annual income tax purposes.
Assistant Secretary means the Assistant Secretary for Public and Indian Housing.
Department or HUD means the Department of Housing and Urban Development.
Family includes, but is not limited to, a family with or without children, an elderly family, a near-elderly family, a disabled family, a single person, as determined by the Indian tribe.
Homebuyer payment means the payment of a family purchasing a home pursuant to a lease purchase agreement.
Homeless family means a family who is without safe, sanitary and affordable housing even though it may have temporary shelter provided by the community, or a family who is homeless as determined by the Indian tribe.
IHBG means Indian Housing Block Grant.
Income means annual income as defined in this subpart.
Indian Area means the area within which an Indian tribe operates affordable housing programs or the area in which a TDHE is authorized by one or more Indian tribes to operate affordable housing programs. Whenever the term "jurisdiction" is used in NAHASDA it shall mean "Indian Area" except where specific reference is made to the jurisdiction of a court.
Indian Housing Authority (IHA) means an entity that:
(1) Is authorized to engage or assist in the development or operation of low-income housing for Indians under the 1937 Act; and
(2) Is established:
(i) By exercise of the power of self government of an Indian tribe independent of state law; or
(ii) By operation of state law providing specifically for housing authorities for Indians, including regional housing authorities in the State of Alaska.
Median income for an Indian area is the greater of:
(1) The median income for the counties, previous counties, or their equivalent in which the Indian area is located; or
(2) The median income for the United States.
NAHASDA means the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*).
1937 Act means the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*).
Office of Native American Programs (ONAP) means the office of HUD which has been delegated authority to administer programs under this part. An "Area ONAP" is an ONAP field office.
Person with Disabilities means a person who —
(1) Has a disability as defined in section 223 of the Social Security Act;
(2) Has a developmental disability as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act;
(3) Has a physical, mental, or emotional impairment which-
(i) Is expected to be of long-continued and indefinite duration;
(ii) Substantially impedes his or her ability to live independently; and
(iii) Is of such a nature that such ability could be improved by more suitable housing conditions.
(4) The term "person with disabilities" includes persons who have the disease of acquired immunodeficiency syndrome or any condition arising from the etiologic agent for acquired immunodeficiency syndrome.
(5) Notwithstanding any other provision of law, no individual shall be considered a person with disabilities, for purposes of eligibility for housing assisted under this part, solely on the basis of any drug or alcohol dependence. The Secretary shall consult with Indian tribes and appropriate Federal agencies to implement this paragraph.
(6) For purposes of this definition, the term "*physical, mental or emotional impairment*" includes, but is not limited to:
(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculoskeletal, special sense organs, respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or
(ii) Any mental or psychological condition, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
(iii) The term "*physical, mental, or emotional impairment*" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, and emotional illness.

§ 1000.12 What nondiscrimination requirements are applicable?

(a) The requirements of the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and HUD's implementing regulations in 24 CFR part 146.
(b) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and HUD's regulations at 24 CFR part 8 apply.
(c) The Indian Civil Rights Act (Title II of the Civil Rights Act of 1968; 25 U.S.C. 1301–1303), applies to Federally recognized Indian tribes that exercise powers of self-government.
(d) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*) apply to Indian tribes that are not covered by the Indian Civil Rights Act. However, the Title VI and Title VIII requirements do not apply to actions by Indian tribes under section 201(b) of NAHASDA.

§ 1000.14 What relocation and real property acquisition policies are applicable?

The following relocation and real property acquisition policies are applicable to programs developed or operated under NAHASDA:
(a) *Real Property acquisition requirements.* The acquisition of real property for an assisted activity is subject to 49 CFR part 24, subpart B. Whenever the recipient does not have the authority to acquire the real property through condemnation, it shall:
(1) Before discussing the purchase price, inform the owner:
(i) Of the amount it believes to be the fair market value of the property. Such amount shall be based upon one or more appraisals prepared by a qualified appraiser. However, this provision does not prevent the recipient from accepting a donation or purchasing the real property at less than its fair market value.
(ii) That it will be unable to acquire the property if negotiations fail to result in an amicable agreement.
(2) Request HUD approval of the proposed acquisition price before executing a firm commitment to purchase the property if the proposed acquisition payment exceeds the fair market value. The recipient shall

include with its request a copy of the appraisal(s) and a justification for the proposed acquisition payment. HUD will promptly review the proposal and inform the recipient of its approval or disapproval.

(b) *Minimize displacement.* Consistent with the other goals and objectives of this part, recipients shall assure that they have taken all reasonable steps to minimize the displacement of persons (households, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(c) *Temporary relocation.* The following policies cover residential tenants and homebuyers who will not be required to move permanently but who must relocate temporarily for the project. Such residential tenants and homebuyers shall be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly housing costs (e.g., rent/utility costs).

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe and sanitary dwelling to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may occupy a suitable, decent, safe, and sanitary dwelling in the building/complex following completion of the repairs; and

(iv) The provisions of paragraph (c)(1) of this section.

(d) *Relocation assistance for displaced persons.* A displaced person (defined in paragraph (g) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4601–4655) and implementing regulations at 49 CFR part 24.

(e) *Appeals to the recipient.* A person who disagrees with the recipient's determination concerning whether the person qualifies as a "displaced person," or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the recipient.

(f) *Responsibility of recipient.* (1) The recipient shall certify that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section. The recipient shall ensure such compliance notwithstanding any third party's contractual obligation to the recipient to comply with the provisions in this section.

(2) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. However, such assistance may also be paid for with funds available to the recipient from any other source.

(3) The recipient shall maintain records in sufficient detail to demonstrate compliance with this section.

(g) *Definition of displaced person.* (1) For purposes of this section, the term "displaced person" means any person (household, business, nonprofit organization, or farm) that moves from real property, or moves his or her personal property from real property, permanently, as a direct result of rehabilitation, demolition, or acquisition for a project assisted under this part. The term "displaced person" includes, but is not limited to:

(i) A tenant-occupant of a dwelling unit who moves from the building/complex permanently after the submission to HUD of an IHP that is later approved.

(ii) Any person, including a person who moves before the date described in paragraph (g)(1)(i) of this section, that the recipient determines was displaced as a direct result of acquisition, rehabilitation, or demolition for the assisted project.

(iii) A tenant-occupant of a dwelling unit who moves from the building/complex permanently after the execution of the agreement between the recipient and HUD, if the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(A) The tenant-occupant's monthly rent and estimated average monthly utility costs before the agreement; or

(B) 30 percent of gross household income.

(iv) A tenant-occupant of a dwelling who is required to relocate temporarily, but does not return to the building/complex, if either:

(A) The tenant-occupant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied unit, any increased housing costs and incidental expenses; or

(B) Other conditions of the temporary relocation are not reasonable.

(v) A tenant-occupant of a dwelling who moves from the building/complex after he or she has been required to move to another dwelling unit in the same building/complex in order to carry out the project, if either:

(A) The tenant-occupant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or

(B) Other conditions of the move are not reasonable.

(2) Notwithstanding the provisions of paragraph (g)(1) of this section, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person moved into the property after the submission of the IHP to HUD, but, before signing a lease or commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated or suffer a rent increase) and the fact that the person would not qualify as a "displaced person" or for any assistance provided under this section as a result of the project.

(ii) The person is ineligible under 49 CFR 24.2(g)(2).

(iii) The recipient determines the person is not displaced as a direct result of acquisition, rehabilitation, or demolition for an assisted project. To exclude a person on this basis, HUD must concur in that determination.

(3) A recipient may at any time ask HUD to determine whether a specific displacement is or would be covered under this section.

(h) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a person displaced as a direct result of rehabilitation or demolition of the real property, the term "initiation of negotiations" means the execution of the agreement covering the rehabilitation or demolition (See 49 CFR part 24).

§ 1000.16 What labor standards are applicable?

(a) *Davis-Bacon wage rates.* (1) As described in section 104(b) of NAHASDA, contracts and agreements for assistance, sale or lease under NAHASDA must require prevailing wage rates determined by the Secretary of Labor under the Davis-Bacon Act (40 U.S.C. 276a–276a–5) to be paid to

laborers and mechanics employed in the development of affordable housing.

(2) When NAHASDA assistance is only used to assist homebuyers to acquire single family housing, the Davis-Bacon wage rates apply to the construction of the housing if there is a written agreement with the owner or developer of the housing that NAHASDA assistance will be used to assist homebuyers to buy the housing.

(3) Prime contracts not in excess of $2000 are exempt from Davis-Bacon wage rates.

(b) *HUD-determined wage rates.* Section 104(b) also mandates that contracts and agreements for assistance, sale or lease under NAHASDA require that prevailing wages determined or adopted (subsequent to a determination under applicable state, tribal or local law) by HUD shall be paid to maintenance laborers and mechanics employed in the operation, and to architects, technical engineers, draftsmen and technicians employed in the development, of affordable housing.

(c) *Contract Work Hours and Safety Standards Act.* Contracts in excess of $100,000 to which Davis-Bacon or HUD-determined wage rates apply are subject by law to the overtime provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327).

(d) *Volunteers.* The requirements in 24 CFR part 70 concerning exemptions for the use of volunteers on projects subject to Davis-Bacon and HUD-determined wage rates are applicable.

(e) *Other laws and issuances.* Recipients, contractors, subcontractors, and other participants must comply with regulations issued under the labor standards provisions cited in this section, other applicable Federal laws and regulations pertaining to labor standards, and HUD Handbook 1344.1 (Federal Labor Standards Compliance in Housing and Community Development Programs).

§ 1000.18 What environmental review requirements apply?

The environmental effects of each activity carried out with assistance under this part must be evaluated in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321) and the related authorities listed in HUD's implementing regulations at 24 CFR parts 50 and 58. An environmental review does not have to be completed prior to HUD approval of an IHP.

§ 1000.20 Is an Indian tribe required to assume environmental review responsibilities?

(a) No. It is an option an Indian tribe may choose. If an Indian tribe declines to assume the environmental review responsibilities, HUD will perform the environmental review in accordance with 24 CFR part 50. The timing of HUD undertaking the environmental review will be subject to the availability of resources. A HUD environmental review must be completed for any NAHASDA assisted activities not excluded from review under 24 CFR 50.19(b) before a recipient may acquire, rehabilitate, convert, lease, repair or construct property, or commit HUD or local funds used in conjunction with such NAHASDA assisted activities with respect to the property.

(b) If an Indian tribe assumes environmental review responsibilities:

(1) Its certifying officer must certify that he/she is authorized and consents on behalf of the Indian tribe and such officer to accept the jurisdiction of the Federal courts for the purpose of enforcement of the responsibilities of the certifying officer as set forth in section 105(c) of NAHASDA; and

(2) The Indian tribe must follow the requirements of 24 CFR part 58.

(3) No funds may be committed to a grant activity or project before the completion of the environmental review and approval of the request for release of funds and related certification required by sections 105(b) and 105(c) of NAHASDA, except as authorized by 24 CFR part 58 such as for the costs of environmental reviews and other planning and administrative expenses.

(c) Where an environmental assessment (EA) is appropriate under 24 CFR part 50, instead of an Indian tribe assuming environmental review responsibilities under paragraph (b) of this section or HUD preparing the EA itself under paragraph (a) of this section, an Indian tribe or TDHE may prepare an EA for HUD review. In addition to complying with the requirements of 40 CFR 1506.5(a), HUD shall make its own evaluation of the environmental issues and take responsibility for the scope and content of the EA in accordance with 40 CFR 1506.5(b).

§ 1000.22 Are the costs of the environmental review an eligible cost?

Yes, costs of completing the environmental review are eligible.

§ 1000.24 If an Indian tribe assumes environmental review responsibility, how will HUD assist the Indian tribe in performing the environmental review?

As set forth in section 105(a)(2)(B) of NAHASDA and 24 CFR 58.77, HUD will provide for monitoring of environmental reviews and will also facilitate training for the performance for such reviews by Indian tribes.

§ 1000.26 What are the administrative requirements under NAHASDA?

(a) Except as addressed in § 1000.28, recipients shall comply with the requirements and standards of OMB Circular No. A–87, "Principles for Determining Costs Applicable to Grants and Contracts with State, Local and Federally recognized Indian Tribal Governments," and with the following sections of 24 CFR part 85 "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments." For purposes of this part, "grantee" as defined in 24 CFR part 85 has the same meaning as "recipient."

(1) Section 85.3, "Definitions."

(2) Section 85.6, "Exceptions."

(3) Section 85.12, "Special grant or subgrant conditions for 'high risk' grantees."

(4) Section 85.20, "Standards for financial management systems," except paragraph (a).

(5) Section 85.21, "Payment."

(6) Section 85.22, "Allowable costs."

(7) Section 85.26, "Non-federal audits."

(8) Section 85.32, "Equipment," except in all cases in which the equipment is sold, the proceeds shall be program income.

(9) Section 85.33, "Supplies."

(10) Section 85.35, "Subawards to debarred and suspended parties."

(11) Section 85.36, "Procurement," except paragraph (a). There may be circumstances under which the bonding requirements of § 85.36(h) are inconsistent with other responsibilities and obligations of the recipient. In such circumstances, acceptable methods to provide performance and payment assurance may include:

(i) Deposit with the recipient of a cash escrow of not less than 20 percent of the total contract price, subject to reduction during the warranty period, commensurate with potential risk;

(ii) Letter of credit for 25 percent of the total contract price, unconditionally payable upon demand of the recipient, subject to reduction during any warranty period commensurate with potential risk; or

(iii) Letter of credit for 10 percent of the total contract price unconditionally payable upon demand of the recipient subject to reduction during any warranty period commensurate with potential risk, and compliance with the procedures for monitoring of disbursements by the contractor.

(12) Section 85.37, "Subgrants."

(13) Section 85.40, "Monitoring and reporting program performance," except paragraphs (b) through (d) and paragraph (f).

(14) Section 85.41, "Financial reporting," except paragraphs (a), (b), and (e).

(15) Section 85.44, "Termination for convenience."

(16) Section 85.51 "Later disallowances and adjustments."

(17) Section 85.52, "Collection of amounts due."

(b)(1) With respect to the applicability of cost principles, all items of cost listed in Attachment B of OMB Circular A–87 which require prior Federal agency approval are allowable without the prior approval of HUD to the extent that they comply with the general policies and principles stated in Attachment A of this circular and are otherwise eligible under this part, except for the following:

(i) Depreciation methods for fixed assets shall not be changed without specific approval of HUD or, if charged through a cost allocation plan, the Federal cognizant agency.

(ii) Fines and penalties are unallowable costs to the IHBG program.

(2) In addition, no person providing consultant services in an employer-employee type of relationship shall receive more than a reasonable rate of compensation for personal services paid with IHBG funds. In no event, however, shall such compensation exceed the equivalent of the daily rate paid for Level IV of the Executive Schedule.

§ 1000.28 May a self-governance Indian tribe be exempted from the applicability of § 1000.26?

Yes. A self-governance Indian tribe shall certify that its administrative requirements, standards and systems meet or exceed the comparable requirements of § 1000.26. For purposes of this section, a self-governance Indian tribe is an Indian tribe that participates in tribal self-governance as authorized under Public Law 93–638, as amended (25 U.S.C. 450 *et seq.*).

§ 1000.30 What prohibitions regarding conflict of interest are applicable?

(a) *Applicability.* In the procurement of supplies, equipment, other property, construction and services by recipients and subrecipients, the conflict of interest provisions of 24 CFR 85.36 shall apply. In all cases not governed by 24 CFR 85.36, the following provisions of this section shall apply.

(b) *Conflicts prohibited.* No person who participates in the decision-making process or who gains inside information with regard to NAHASDA assisted activities may obtain a personal or financial interest or benefit from such activities, except for the use of NAHASDA funds to pay salaries or other related administrative costs. Such persons include anyone with an interest in any contract, subcontract or agreement or proceeds thereunder, either for themselves or others with whom they have business or immediate family ties. Immediate family ties are determined by the Indian tribe or TDHE in its operating policies.

(c) The conflict of interest provision does not apply in instances where a person who might otherwise be included under the conflict provision is low-income and is selected for assistance in accordance with the recipient's written policies for eligibility, admission and occupancy of families for housing assistance with IHBG funds, provided that there is no conflict of interest under applicable tribal or state law. The recipient must make a public disclosure of the nature of assistance to be provided and the specific basis for the selection of the person. The recipient shall provide the appropriate Area ONAP with a copy of the disclosure before the assistance is provided to the person.

§ 1000.32 May exceptions be made to the conflict of interest provisions?

(a) Yes. HUD may make exceptions to the conflict of interest provisions set forth in § 1000.30(b) on a case-by-case basis when it determines that such an exception would further the primary objective of NAHASDA and the effective and efficient implementation of the recipient's program, activity, or project.

(b) A public disclosure of the conflict must be made and a determination that the exception would not violate tribal laws on conflict of interest (or any applicable state laws) must also be made.

§ 1000.34 What factors must be considered in making an exception to the conflict of interest provisions?

In determining whether or not to make an exception to the conflict of interest provisions, HUD must consider whether undue hardship will result, either to the recipient or to the person affected, when weighed against the public interest served by avoiding the prohibited conflict.

§ 1000.36 How long must a recipient retain records regarding exceptions made to the conflict of interest provisions?

A recipient must maintain all such records for a period of at least 3 years after an exception is made.

§ 1000.38 What flood insurance requirements are applicable?

Under the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4128), a recipient may not permit the use of Federal financial assistance for acquisition and construction purposes (including rehabilitation) in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless the following conditions are met:

(a) The community in which the area is situated is participating in the National Flood Insurance Program in accord with section 202(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106(a)), or less than a year has passed since FEMA notification regarding such flood hazards. For this purpose, the "community" is the governmental entity, such as an Indian tribe or authorized tribal organization, an Alaska Native village, or authorized Native organization, or a municipality or county, that has authority to adopt and enforce flood plain management regulations for the area; and

(b) Where the community is participating in the National Flood Insurance Program, flood insurance on the building is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012(a)); provided, that if the financial assistance is in the form of a loan or an insurance or guaranty of a loan, the amount of flood insurance required need not exceed the outstanding principal balance of the loan and need not be required beyond the term of the loan.

§ 1000.40 Do lead-based paint poisoning prevention requirements apply to affordable housing activities under NAHASDA?

Yes, lead-based paint requirements apply to housing activities assisted under NAHASDA. The applicable requirements for NAHASDA are:

(a) *Purpose and applicability.* (1) The purpose of this section is to implement section 302 of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4822) by establishing procedures to eliminate as far as practicable the hazards of lead-based paint poisoning for rental and homeownership units owned or operated by a recipient. This section is issued under 24 CFR 35.24(b)(4). The requirements of subpart C of 24 CFR part 35 do not apply to the housing covered under this section. Other provisions of part 35 apply, including subpart H, Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property.

(2) The requirements of this section do not apply to housing built after 1977, 0-bedroom units, units that are certified by a qualified inspector to be free of lead-based paint, or units designated exclusively for the elderly or the handicapped unless a child of less than

six years of age resides or is expected to reside in the unit.

(3) Further information on identifying and reducing lead-based paint hazards can be found in the HUD publication, "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing."

(b) *Definitions.*

Chewable surface. Protruding painted surfaces that are readily accessible to children under six years of age; for example, protruding corners, window sills and frames, doors and frames, and other protruding woodwork. Hard metal surfaces are not considered chewable surfaces.

Component. An element of a residential structure identified by type and location, such as a bedroom wall, an exterior window sill, a baseboard in a living room, a kitchen floor, an interior window sill in a bathroom, a porch floor, stair treads in a common stairwell, or an exterior wall.

Defective paint surface. A surface on which the paint is cracking, scaling, chipping, peeling, or loose.

Elevated blood lead level (EBL). Excessive absorption of lead. Excessive absorption is a confirmed concentration of lead in whole blood of 20 μg/dl (micrograms of lead per deciliter) or more for a single test or of 15–19 μg/dl in two consecutive tests 3–4 months apart.

HEPA means a high efficiency particle accumulator as used in lead abatement vacuum cleaners.

Lead-based paint. A paint surface, whether or not defective, identified as having a lead content greater than or equal to 1 milligram per centimeter squared (mg/cm<SUP>2), or 0.5 percent by weight or 5000 parts per million by weight (PPM).

(c) *Requirements for pre-1978 units.* (1) If a dwelling unit was constructed before 1978, it must be visually inspected for defective paint surfaces. If defective paint surfaces are found, such surfaces must be treated in accordance with this section.

(2) Defective paint surfaces that are found in a report by a qualified lead-based paint inspector not to be lead-based paint, as defined in this section, may be exempted from treatment. For purposes of this section, a qualified lead-based paint inspector is a lead-based paint inspector certified, licensed or regulated by a State or Tribal government, the U.S. Environmental Protection Agency, a local health or housing agency, or an organization recognized by HUD.

(3) Treatment of defective paint surfaces required under this section must be completed within 30 calendar days of the visual evaluation. When weather conditions prevent treatment of the defective paint conditions on exterior surfaces within the 30 day period, treatment as required by this section may be delayed for a reasonable time.

(4) The requirements in this paragraph apply to:

(i) All painted interior surfaces within the unit (including ceilings but excluding furniture that is not built in or attached to the property);

(ii) The entrance and hallway providing ingress or egress to a unit in a multi-unit building, and other common areas that are readily accessible to children less than six years of age; and

(iii) Exterior surfaces that are readily accessible to children under six years of age (including walls, stairs, decks, porches, railings, windows and doors, and outbuildings such as garages and sheds that are readily accessible to children of less than six years of age).

(d) *Additional requirements for pre-1978 units with children under six with an EBL.* (1) In addition to the requirements of this section, for a dwelling unit constructed before 1978 that is occupied by a family with a child under the age of six years with an identified EBL condition, chewable surfaces must be tested for lead-based paint. Testing is not required if previous testing of chewable surfaces is negative for lead-based paint or if the chewable surfaces have already been treated.

(2) Testing must be conducted by a qualified lead-based paint inspector, as explained in paragraph (c)(2) of this section. Lead content must be tested by using an X-ray fluorescence analyzer (XRF) or by laboratory analysis of paint samples. Where lead-based paint on chewable surfaces is identified, treatment of the paint surface in accordance with this section is required, and treatment shall be completed within 30 days of the paint testing report.

(3) The requirements of paragraph (d) in this section apply to chewable surfaces:

(i) Within the unit;

(ii) The entrance and hallway providing access to a unit in a multi-unit building; and

(iii) Exterior surfaces (including walls, stairs, decks, porches, railings, windows and doors, and outbuildings such as garages and sheds that are accessible to children of less than six years of age).

(e) *Treatment of chewable surfaces without testing.* The recipient may, at its discretion, waive the testing requirement and require the owner to treat all interior and exterior chewable surfaces in accordance with the methods set out in this section.

(f) *Treatment methods and requirements.* Treatment of defective paint surfaces and chewable surfaces must consist of covering or removal of the paint in accordance with the following requirements:

(1) Surfaces must be covered with durable materials with joints and edges sealed and caulked as needed to prevent the escape of lead contaminated dust. The following are acceptable methods of treatment:

(i) Removal by wet scraping, wet sanding, chemical stripping on or off site;

(ii) Replacing painted components;

(iii) Scraping with infra-red or coil type heat gun with temperatures below 1100 degrees;

(iv) HEPA vacuum sanding;

(v) HEPA vacuum needle gun;

(vi) Contained hydroblasting or high pressure wash with HEPA vacuum; and

(vii) Abrasive sandblasting with HEPA vacuum.

(2) Prohibited methods of removal are: open flame burning or torching; machine sanding or grinding without a HEPA exhaust; uncontained hydroblasting or high pressure wash; and dry scraping except around electrical outlets or except when treating defective paint spots no more than two square feet in any one interior room or space (hallway, pantry, etc.) or totaling no more than 20 square feet on exterior surfaces.

(3) During exterior treatment soil and playground equipment must be protected from contamination.

(4) All treatment procedures must be concluded with a thorough cleaning of all surfaces in the room or area of treatment to remove fine dust particles. Cleanup must be accomplished by wet washing surfaces with a lead solubilizing detergent such as trisodium phosphate or an equivalent solution. Dust clearance testing by a qualified inspector may be done at the discretion of the recipient to ensure that the unit has been cleaned adequately.

(5) Waste and debris must be disposed of in accordance with all applicable Federal, tribal, state and local laws.

(g) *Tenant protection.* The owner must take appropriate action to protect residents and their belongings from hazards associated with treatment procedures. Residents must not enter spaces undergoing treatment until cleanup is completed. Personal belongings that are in work areas must be relocated or otherwise protected from contamination.

§ 1000.42 Are the requirements of section 3 of the Housing and Urban Development Act of 1968 applicable?

(a) *General.* Yes. Recipients shall comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and HUD's implementing regulations in 24 CFR part 135, to the maximum extent feasible and consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). Section 3 provides job training, employment, and contracting opportunities for low-income individuals.

(b) *Threshold requirement.* The requirements of section 3 apply only to those section 3 covered projects or activities for which the amount of assistance exceeds $200,000.

§ 1000.44 What prohibitions on the use of debarred, suspended or ineligible contractors apply?

In addition to any tribal requirements, the prohibitions in 24 CFR part 24 on the use of debarred, suspended or ineligible contractors apply.

§ 1000.46 Do drug-free workplace requirements apply?

Yes. In addition to any tribal requirements, the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*) and HUD's implementing regulations in 24 CFR part 24 apply.

§ 1000.48 Are Indian preference requirements applicable to IHBG activities?

(a) *Applicability.* Grants under this part are subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b). Section 7(b) provides that any contract, subcontract, grant or subgrant pursuant to an act authorizing grants to Indian organizations or for the benefit of Indians shall require that, to the greatest extent feasible:

(1) Preference and opportunities for training and employment shall be given to Indians, and

(2) Preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452).

(b) *Definitions.*

(1) The Indian Self-Determination and Education Assistance Act defines "Indian" to mean a person who is a member of an Indian tribe and defines "Indian tribe" to mean any Indian tribe, band, nation, or other organized group or community including any Alaska Native village or regional or village corporation as defined or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(2) In section 3 of the Indian Financing Act of 1974 "economic enterprise" is defined as any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, except that Indian ownership must constitute not less than 51 percent of the enterprise. This act defines "Indian organization" to mean the governing body of any Indian tribe or entity established or recognized by such governing body.

§ 1000.50 What Indian preference requirements apply to IHBG administration activities?

To the greatest extent feasible, preference and opportunities for training and employment in connection with the administration of grants awarded under this part shall be given to Indians.

§ 1000.52 What Indian preference requirements apply to IHBG procurement?

To the greatest extent feasible, recipients shall give preference in the award of contracts for projects funded under this part to Indian organizations and Indian-owned economic enterprises.

(a) Each recipient shall:

(1) Certify to HUD that the polices and procedures adopted by the recipient will provide preference in procurement activities consistent with the requirements of section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C.450e(b)) (An Indian preference policy which was previously approved by HUD for a recipient will meet the requirements of this section); or

(2) Advertise for bids or proposals limited to qualified Indian organizations and Indian-owned enterprises; or

(3) Use a two-stage preference procedure, as follows:

(i) *Stage 1.* Invite or otherwise solicit Indian-owned economic enterprises to submit a statement of intent to respond to a bid announcement or request for proposals limited to Indian-owned firms.

(ii) *Stage 2.* If responses are received from more than one Indian enterprise found to be qualified, advertise for bids or proposals limited to Indian organizations and Indian-owned economic enterprises.

(b) If the recipient selects a method of providing preference that results in fewer than two responsible qualified organizations or enterprises submitting a statement of intent, a bid or a proposal to perform the contract at a reasonable cost, then the recipient shall:

(1) Re-advertise the contract, using any of the methods described in paragraph (a) of this section; or

(2) Re-advertise the contract without limiting the advertisement for bids or proposals to Indian organizations and Indian-owned economic enterprises; or

(3) If one approvable bid or proposal is received, request Area ONAP review and approval of the proposed contract and related procurement documents, in accordance with 24 CFR 85.36, in order to award the contract to the single bidder or offeror.

(c) Procurements that are within the dollar limitations established for small purchases under 24 CFR 85.36 need not follow the formal bid or proposal procedures of paragraph (a) of this section, since these procurements are governed by the small purchase procedures of 24 CFR 85.36. However, a recipient's small purchase procurement shall, to the greatest extent feasible, provide Indian preference in the award of contracts.

(d) All preferences shall be publicly announced in the advertisement and bidding or proposal solicitation documents and the bidding and proposal documents.

(e) A recipient, at its discretion, may require information of prospective contractors seeking to qualify as Indian organizations or Indian-owned economic enterprises. Recipients may require prospective contractors to provide the following information before submitting a bid or proposal, or at the time of submission:

(1) Evidence showing fully the extent of Indian ownership and interest;

(2) Evidence of structure, management and financing affecting the Indian character of the enterprise, including major subcontracts and purchase agreements; materials or equipment supply arrangements; and management salary or profit-sharing arrangements; and evidence showing the effect of these on the extent of Indian ownership and interest; and

(3) Evidence sufficient to demonstrate to the satisfaction of the recipient that the prospective contractor has the technical, administrative, and financial capability to perform contract work of the size and type involved.

(f) The recipient shall incorporate the following clause (referred to as the section 7(b) clause) in each contract awarded in connection with a project funded under this part:

(1) The work to be performed under this contract is on a project subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)) (the Indian Act). Section 7(b) requires that to the greatest extent feasible:

(i) Preferences and opportunities for training and employment shall be given to Indians; and

(ii) Preferences in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises.

(2) The parties to this contract shall comply with the provisions of section 7(b) of the Indian Act.

(3) In connection with this contract, the contractor shall, to the greatest extent feasible, give preference in the award of any subcontracts to Indian organizations and Indian-owned economic enterprises, and preferences and opportunities for training and employment to Indians.

(4) The contractor shall include this section 7(b) clause in every subcontract in connection with the project, and shall, at the direction of the recipient, take appropriate action pursuant to the subcontract upon a finding by the recipient or HUD that the subcontractor has violated the section 7(b) clause of the Indian Act.

§ 1000.54 What procedures apply to complaints arising out of any of the methods of providing for Indian preference?

The following procedures are applicable to complaints arising out of any of the methods of providing for Indian preference contained in this part, including alternate methods. Tribal policies that meet or exceed the requirements of this section shall apply.

(a) Each complaint shall be in writing, signed, and filed with the recipient.

(b) A complaint must be filed with the recipient no later than 20 calendar days from the date of the action (or omission) upon which the complaint is based.

(c) Upon receipt of a complaint, the recipient shall promptly stamp the date and time of receipt upon the complaint, and immediately acknowledge its receipt.

(d) Within 20 calendar days of receipt of a complaint, the recipient shall either meet, or communicate by mail or telephone, with the complainant in an effort to resolve the matter. The recipient shall make a determination on a complaint and notify the complainant, in writing, within 30 calendar days of the submittal of the complaint to the recipient. The decision of the recipient shall constitute final administrative action on the complaint.

§ 1000.56 How are NAHASDA funds paid by HUD to recipients?

(a) Each year funds shall be paid directly to a recipient in a manner that recognizes the right of Indian self-determination and tribal self-governance and the trust responsibility of the Federal government to Indian tribes consistent with NAHASDA.

(b) Payments shall be made as expeditiously as practicable.

§ 1000.58 Are there limitations on the investment of IHBG funds?

(a) A recipient may invest IHBG funds for the purposes of carrying out affordable housing activities in investment securities and other obligations as provided in this section.

(b) The recipient may invest IHBG funds so long as it demonstrates to HUD:

(1) That there are no unresolved significant and material audit findings or exceptions in the most recent annual audit completed under the Single Audit Act or in an independent financial audit prepared in accordance with generally accepted auditing principles; and

(2) That it is a self-governance Indian tribe or that it has the administrative capacity and controls to responsibly manage the investment. For purposes of this section, a self-governance Indian tribe is an Indian tribe that participates in tribal self-governance as authorized under Public Law 93–638, as amended (25 U.S.C. 450 *et seq.*).

(c) Recipients shall invest IHBG funds only in:

(1) Obligations of the United States; obligations issued by Government sponsored agencies; securities that are guaranteed or insured by the United States; mutual (or other) funds registered with the Securities and Exchange Commission and which invest only in obligations of the United States or securities that are guaranteed or insured by the United States; or

(2) Accounts that are insured by an agency or instrumentality of the United States or fully collateralized to ensure protection of the funds, even in the event of bank failure.

(d) IHBG funds shall be held in one or more accounts separate from other funds of the recipient. Each of these accounts shall be subject to an agreement in a form prescribed by HUD sufficient to implement the regulations in this part and permit HUD to exercise its rights under § 1000.60.

(e) Expenditure of funds for affordable housing activities under section 204(a) of NAHASDA shall not be considered investment.

(f) A recipient may invest its IHBG annual grant in an amount equal to the annual formula grant amount less any formula grant amounts allocated for the operating subsidy element of the Formula Current Assisted Housing Stock (FCAS) component of the formula (see §§ 1000.316(a) and 1000.320) multiplied by the following percentages, as appropriate:

(1) 50% in Fiscal Years 1998 and 1999;

(2) 75% in Fiscal Year 2000; and

(3) 100% in Fiscal Years 2001 and thereafter.

(g) Investments under this section may be for a period no longer than two years.

§ 1000.60 Can HUD prevent improper expenditure of funds already disbursed to a recipient?

Yes. In accordance with the standards and remedies contained in § 1000.538 relating to substantial noncompliance, HUD will use its powers under a depository agreement and take such other actions as may be legally necessary to suspend funds disbursed to the recipient until the substantial noncompliance has been remedied. In taking this action, HUD shall comply with all appropriate procedures, appeals and hearing rights prescribed elsewhere in this part.

§ 1000.62 What is considered program income and what restrictions are there on its use?

(a) Program income is defined as any income that is realized from the disbursement of grant amounts. Program income does not include any amounts generated from the operation of 1937 Act units unless the units are assisted with grant amounts and the income is attributable to such assistance. Program income includes income from fees for services performed from the use of real or rental of real or personal property acquired with grant funds, from the sale of commodities or items developed, acquired, etc. with grant funds, and from payments of principal and interest earned on grant funds prior to disbursement.

(b) Any program income can be retained by a recipient provided it is used for affordable housing activities in accordance with section 202 of NAHASDA. If the amount of income received in a single year by a recipient and all its subrecipients, which would otherwise be considered program income, does not exceed $25,000, such funds may be retained but will not be considered to be or treated as program income.

(c) If program income is realized from an eligible activity funded with both grant funds as well as other funds (i.e.,

funds that are not grant funds), then the amount of program income realized will be based on a percentage calculation that represents the proportional share of funds provided for the activity generating the program income.

(d) Costs incident to the generation of program income shall be deducted from gross income to determine program income.

Subpart B—Affordable Housing Activities

§ 1000.101 What is affordable housing?

Eligible affordable housing is defined in section 4(2) of NAHASDA and is described in title II of NAHASDA.

§ 1000.102 What are eligible affordable housing activities?

Eligible affordable housing activities are those described in section 202 of NAHASDA.

§ 1000.104 What families are eligible for affordable housing activities?

The following families are eligible for affordable housing activities:

(a) Low income Indian families on a reservation or Indian area.

(b) A non-low income Indian family may receive housing assistance in accordance with § 1000.110, except that non low-income Indian families residing in housing assisted under the 1937 Act do not have to meet the requirements of § 1000.110 for continued occupancy.

(c) A non-Indian family may receive housing assistance on a reservation or Indian area if the non-Indian family's housing needs cannot be reasonably met without such assistance and the recipient determines that the presence of that family on the reservation or Indian area is essential to the well-being of Indian families, except that non-Indian families residing in housing assisted under the 1937 Act do not have to meet these requirements for continued occupancy.

§ 1000.106 What families receiving assistance under title II of NAHASDA require HUD approval?

(a) Housing assistance for non low-income Indian families requires HUD approval only as required in §§ 1000.108 and 1000.110.

(b) Assistance under section 201(b)(3) of NAHASDA for non-Indian families does not require HUD approval but only requires that the recipient determine that the presence of that family on the reservation or Indian area is essential to the well-being of Indian families and the non-Indian family's housing needs cannot be reasonably met without such assistance.

§ 1000.108 How is HUD approval obtained by a recipient for housing for non low-income Indian families and model activities?

Recipients are required to submit proposals to operate model housing activities as defined in section 202(6) of NAHASDA and to provide assistance to non low-income Indian families in accordance with section 201(b)(2) of NAHASDA. Assistance to non low-income Indian families must be in accordance with § 1000.110. Proposals may be submitted in the recipient's IHP or at any time by amendment of the IHP, or by special request to HUD at any time. HUD may approve the remainder of an IHP notwithstanding disapproval of a model activity or assistance to non low-income Indian families.

§ 1000.110 Under what conditions may non low-income Indian families participate in the program?

(a) A family who is purchasing housing under a lease purchase agreement and who was low income at the time the lease was signed is eligible without further conditions.

(b) A recipient may provide the following types of assistance to non low-income Indian families under the conditions specified in paragraphs (c), (d) and (e) of this section:

(1) Homeownership activities under section 202(2) of NAHASDA, which may include assistance in conjunction with loan guarantees under the Section 184 program (see 24 CFR part 1005);

(2) Model activities under section 202(6) of NAHASDA; and

(3) Loan guarantee activities under title VI of NAHASDA.

(c) A recipient must determine and document that there is a need for housing for each family which cannot reasonably be met without such assistance.

(d) A recipient may use up to 10 percent of its annual grant amount for families whose income falls within 80 to 100 percent of the median income without HUD approval. HUD approval is required if a recipient plans to use more than 10 percent of its annual grant amount for such assistance or to provide housing for families with income over 100 percent of median income.

(e) Non low-income Indian families cannot receive the same benefits provided low-income Indian families. The amount of assistance non low-income Indian families may receive will be determined as follows:

(1) The rent (including homebuyer payments under a lease purchase agreement) to be paid by a non low-income Indian family cannot be less than: (Income of non low-income family/Income of family at 80 percent of median income) × (Rental payment of family at 80 percent of median income), but need not exceed the fair market rent or value of the unit.

(2) Other assistance, including down payment assistance, to non low-income Indian families, cannot exceed: (Income of family at 80 percent of median income/Income of non low-income family) × (Present value of the assistance provided to family at 80 percent of median income).

(f) The requirements set forth in paragraph (e) of this section do not apply to non low-income Indian families which the recipient has determined to be essential to the well-being of the Indian families residing in the housing area.

§ 1000.112 How will HUD determine whether to approve model housing activities?

HUD will review all proposals with the goal of approving the activities and encouraging the flexibility, discretion, and self-determination granted to Indian tribes under NAHASDA to formulate and operate innovative housing programs that meet the intent of NAHASDA.

§ 1000.114 How long does HUD have to review and act on a proposal to provide assistance to non low-income Indian families or a model housing activity?

Whether submitted in the IHP or at any other time, HUD will have sixty calendar days after receiving the proposal to notify the recipient in writing that the proposal to provide assistance to non low-income Indian families or for model activities is approved or disapproved. If no decision is made by HUD within sixty calendar days of receiving the proposal, the proposal is deemed to have been approved by HUD.

§ 1000.116 What should HUD do before declining a proposal to provide assistance to non low-income Indian families or a model housing activity ?

HUD shall consult with a recipient regarding the recipient's proposal to provide assistance to non low-income Indian families or a model housing activity. To the extent resources are available, HUD shall provide technical assistance to the recipient in amending and modifying the proposal if necessary. In case of a denial, HUD shall give the specific reasons for the denial.

§ 1000.118 What recourse does a recipient have if HUD disapproves a proposal to provide assistance to non low-income Indian families or a model housing activity?

(a) Within thirty calendar days of receiving HUD's denial of a proposal to

provide assistance to non low-income Indian families or a model housing activity, the recipient may request reconsideration of the denial in writing. The request shall set forth justification for the reconsideration.

(b) Within twenty calendar days of receiving the request, HUD shall reconsider the recipient's request and either affirm or reverse its initial decision in writing, setting forth its reasons for the decision. If the decision was made by the Assistant Secretary, the decision will constitute final agency action. If the decision was made at a lower level, then paragraphs (c) and (d) of this section will apply.

(c) The recipient may appeal any denial of reconsideration by filing an appeal with the Assistant Secretary within twenty calendar days of receiving the denial. The appeal shall set forth the reasons why the recipient does not agree with HUD's decision and set forth justification for the reconsideration.

(d) Within twenty calendar days of receipt of the appeal, the Assistant Secretary shall review the recipient's appeal and act on the appeal, setting forth the reasons for the decision.

§ 1000.120 May a recipient use Indian preference or tribal preference in selecting families for housing assistance?

Yes. The IHP may set out a preference for the provision of housing assistance to Indian families who are members of the Indian tribe or to other Indian families if the recipient has adopted the preference in its admissions policy. The recipient shall ensure that housing activities funded under NAHASDA are subject to the preference.

§ 1000.122 May NAHASDA grant funds be used as matching funds to obtain and leverage funding, including any Federal or state program and still be considered an affordable housing activity?

There is no prohibition in NAHASDA against using grant funds as matching funds.

§ 1000.124 What maximum and minimum rent or homebuyer payment can a recipient charge a low-income rental tenant or homebuyer residing in housing units assisted with NAHASDA grant amounts?

A recipient can charge a low-income rental tenant or homebuyer rent or homebuyer payments not to exceed 30 percent of the adjusted income of the family. The recipient may also decide to compute its rental and homebuyer payments on any lesser percentage of adjusted income of the family. This requirement applies only to units assisted with NAHASDA grant amounts. NAHASDA does not set minimum rents or homebuyer payments; however, a recipient may do so.

§ 1000.126 May a recipient charge flat or income-adjusted rents?

Yes, providing the rental or homebuyer payment of the low-income family does not exceed 30 percent of the family's adjusted income.

§ 1000.128 Is income verification required for assistance under NAHASDA?

(a) Yes, the recipient must verify that the family is income eligible based on anticipated annual income. The family is required to provide documentation to verify this determination. The recipient is required to maintain the documentation on which the determination of eligibility is based.

(b) The recipient may require a family to periodically verify its income in order to determine housing payments or continued occupancy consistent with locally adopted policies. When income verification is required, the family must provide documentation which verifies its income, and this documentation must be retained by the recipient.

§ 1000.130 May a recipient charge a non low-income family rents or homebuyer payments which are more than 30 percent of the family's adjusted income?

Yes. A recipient may charge a non low-income family rents or homebuyer payments which are more than 30 percent of the family's adjusted income.

§ 1000.132 Are utilities considered a part of rent or homebuyer payments?

Utilities may be considered a part of rent or homebuyer payments if a recipient decides to define rent or homebuyer payments to include utilities in its written policies on rents and homebuyer payments required by section 203(a)(1) of NAHASDA. A recipient may define rents and homebuyer payments to exclude utilities.

§ 1000.134 When may a recipient (or entity funded by a recipient) demolish or dispose of current assisted stock?

(a) A recipient (or entity funded by a recipient) may undertake a planned demolition or disposal of current assisted stock owned by the recipient or an entity funded by the recipient when:

(1) A financial analysis demonstrates that it is more cost-effective or housing program-effective for the recipient to demolish or dispose of the unit than to continue to operate or own it; or

(2) The housing unit has been condemned by the government which has authority over the unit; or

(3) The housing unit is an imminent threat to the health and safety of housing residents; or

(4) Continued habitation of a housing unit is inadvisable due to cultural or historical considerations.

(b) No action to demolish or dispose of the property other than performing the analysis cited in paragraph (a) of this section can be taken until HUD has been notified in writing of the recipient's intent to demolish or dispose of the housing units consistent with section 102(c)(4)(H) of NAHASDA. The written notification must set out the analysis used to arrive at the decision to demolish or dispose of the property and may be set out in a recipient's IHP or in a separate submission to HUD.

(c) In any disposition sale of a housing unit, a sale process designed to maximize the sale price will be used. However, where the sale is to a low-income Indian family, the home may be disposed of without maximizing the sale price so long as such price is consistent with a recipient's IHP. The sale proceeds from the disposition of any housing unit are program income under NAHASDA and must be used in accordance with the requirements of NAHASDA and these regulations.

§ 1000.136 What insurance requirements apply to housing units assisted with NAHASDA grants?

(a) The recipient shall provide adequate insurance either by purchasing insurance or by indemnification against casualty loss by providing insurance in adequate amounts to indemnify the recipient against loss from fire, weather, and liability claims for all housing units owned or operated by the recipient.

(b) The recipients shall not require insurance on units assisted by grants to families for privately owned housing if there is no risk of loss or exposure to the recipient or if the assistance is in an amount less than $5000, but will require insurance when repayment of all or part of the assistance is part of the assistance agreement.

(c) The recipient shall require contractors and subcontractors to either provide insurance covering their activities or negotiate adequate indemnification coverage to be provided by the recipient in the contract.

(d) These requirements are in addition to applicable flood insurance requirements under § 1000.38.

§ 1000.138 What constitutes adequate insurance?

Insurance is adequate if it is a purchased insurance policy from an insurance provider or a plan of self-insurance in an amount that will protect the financial stability of the recipient's IHBG program. Recipients may purchase the required insurance without regard to

competitive selection procedures from nonprofit insurance entities which are owned and controlled by recipients and which have been approved by HUD.

§ 1000.140 May a recipient use grant funds to purchase insurance for privately owned housing to protect NAHASDA grant amounts spent on that housing?

Yes. All purchases of insurance must be in accordance with §§ 1000.136 and 1000.138.

§ 1000.142 What is the "useful life" during which low-income rental housing and low-income homebuyer housing must remain affordable as required in sections 205(a)(2) and 209 of NAHASDA?

Each recipient shall describe in its IHP its determination of the useful life of each assisted housing unit in each of its developments in accordance with the local conditions of the Indian area of the recipient. By approving the plan, HUD determines the useful life in accordance with section 205(a)(2) of NAHASDA and for purposes of section 209.

§ 1000.144 Are Mutual Help homes developed under the 1937 Act subject to the useful life provisions of section 205(a)(2)?

No.

§ 1000.146 Are homebuyers required to remain low-income throughout the term of their participation in a housing program funded under NAHASDA?

No. The low-income eligibility requirement applies only at the time of purchase. However, families purchasing housing under a lease purchase agreement who are not low-income at the time of purchase are eligible under § 1000.110.

§ 1000.150 How may Indian tribes and TDHEs receive criminal conviction information on adult applicants or tenants?

(a) As required by section 208 of NAHASDA, the National Crime Information Center, police departments, and other law enforcement agencies shall provide criminal conviction information to Indian tribes and TDHEs upon request. Information regarding juveniles shall only be released to the extent such release is authorized by the law of the applicable state, Indian tribe or locality.

(b) For purposes of this section, the term "*tenants*" includes homebuyers who are purchasing a home pursuant to a lease purchase agreement.

§ 1000.152 How is the recipient to use criminal conviction information?

The recipient shall use the criminal conviction information described in § 1000.150 only for applicant screening, lease enforcement and eviction actions. The information may be disclosed only to any person who has a job related need for the information and who is an authorized officer, employee, or representative of the recipient or the owner of housing assisted under NAHASDA.

§ 1000.154 How is the recipient to keep criminal conviction information confidential?

(a) The recipient will keep all the criminal conviction record information it receives from the official law enforcement agencies listed in § 1000.150 in files separate from all other housing records.

(b) These criminal conviction records will be kept under lock and key and be under the custody and control of the recipient's housing executive director/lead official and/or his designee for such records.

(c) These criminal conviction records may only be accessed with the written permission of the Indian tribe's or TDHE's housing executive director/lead official and/or his designee and are only to be used for the purposes stated in section 208 of NAHASDA and these regulations.

§ 1000.156 Is there a per unit limit on the amount of IHBG funds that may be used for dwelling construction and dwelling equipment?

(a) Yes. The per unit amount of IHBG funds that may be used for dwelling construction and dwelling equipment cannot exceed the limit established by HUD except as allowed in the definition below. Other costs associated with developing a project, including all undertakings necessary for administration, planning, site acquisition, water and sewer, demolition, and financing may be eligible NAHASDA costs but are not subject to this limit.

(b) Dwelling construction and equipment (DC&E) costs include all construction costs of an individual dwelling within five feet of the foundation. Excluded from the DC&E are any administrative, planning, financing, site acquisition, site development more than five feet from the foundation, and utility development or connection costs. HUD will publish and update on a regular basis DC&E amounts for appropriate geographic areas.

(c) DC&E amounts will be based on a moderately designed house or multi-family structure and will be determined by averaging the current construction costs, as listed in not less than two nationally recognized residential construction cost indices, for publicly bid construction of a good and sound quality. If a recipient determines that published DC&E amounts are not representative of construction costs in its area, it may request a re-evaluation of DC&E amounts and provide HUD with relevant information for this re-evaluation.

Subpart C—Indian Housing Plan (IHP)

§ 1000.201 How are funds made available under NAHASDA?

Every fiscal year HUD will make grants under the IHBG program to recipients who have submitted to HUD for that fiscal year an IHP in accordance with § 1000.220 to carry out affordable housing activities.

§ 1000.202 Who are eligible recipients?

Eligible recipients are Indian tribes, or TDHEs when authorized by one or more Indian tribes.

§ 1000.204 How does an Indian tribe designate itself as recipient of the grant?

(a) By resolution of the Indian tribe; or

(b) When such authority has been delegated by an Indian tribe's governing body to a tribal committee(s), by resolution or other written form used by such committee(s) to memorialize the decisions of that body, if applicable.

§ 1000.206 How is a TDHE designated?

(a)(1) By resolution of the Indian tribe or Indian tribes to be served; or

(2) When such authority has been delegated by an Indian tribe's governing body to a tribal committee(s), by resolution or other written form used by such committee(s) to memorialize the decisions of that body, if applicable.

(b) In the absence of a designation by the Indian tribe, the default designation as provided in section 4(21) of NAHASDA shall apply.

§ 1000.208 What happens if an Indian tribe had two IHAs as of September 30, 1996?

Indian tribes which had established and were operating two IHAs as of September 30, 1996, under the 1937 Act shall be allowed to form and operate two TDHEs under NAHASDA. Nothing in this section shall affect the allocation of funds otherwise due to an Indian tribe under the formula.

§ 1000.210 What happens to existing 1937 Act units in those jurisdictions for which Indian tribes do not or cannot submit an IHP?

NAHASDA does not provide the statutory authority for HUD to grant NAHASDA grant funds to an Indian housing authority, Indian tribe or to a default TDHE which cannot obtain a tribal certification, if the requisite IHP is not submitted by an Indian tribe or is determined to be out of compliance by

HUD. There may be circumstances where this may happen, and in those cases, other methods of tribal, Federal, or private market support may have to be sought to maintain and operate those 1937 Act units.

§ 1000.212 Is submission of an IHP required?

Yes. An Indian tribe or, with the consent of its Indian tribe(s), the TDHE, must submit an IHP to HUD to receive funding under NAHASDA, except as provided in section 101(b)(2) of NAHASDA. If a TDHE has been designated by more than one Indian tribe, the TDHE can submit a separate IHP for each Indian tribe or it may submit a single IHP based on the requirements of § 1000.220 with the approval of the Indian tribes.

§ 1000.214 What is the deadline for submission of an IHP?

IHPs must be initially sent by the recipient to the Area ONAP no later than July 1. Grant funds cannot be provided until the plan is submitted and determined to be in compliance with section 102 of NAHASDA and funds are available.

§ 1000.216 What happens if the recipient does not submit the IHP to the Area ONAP by July 1?

If the IHP is not initially sent by July 1, the recipient will not be eligible for IHBG funds for that fiscal year. Any funds not obligated because an IHP was not received before the deadline has passed shall be distributed by formula in the following year.

§ 1000.218 Who prepares and submits an IHP?

An Indian tribe, or with the authorization of a Indian tribe, in accordance with section 102(d) of NAHASDA a TDHE may prepare and submit a plan to HUD.

§ 1000.220 What are the minimum requirements for the IHP?

The minimum IHP requirements are set forth in sections 102(b) and 102(c) of NAHASDA. In addition, §§ 1000.56, 1000.108, 1000.120, 1000.134, 1000.142, 1000.238, 1000.328, and 1000.504 require or permit additional items to be set forth in the IHP for HUD determinations required by those sections. Recipients are only required to provide IHPs that contain these minimum elements in a form prescribed by HUD. If a TDHE is submitting a single IHP that covers two or more Indian tribes, the IHP must contain a separate certification in accordance with section 102(d) of NAHASDA and IHP Tables for each Indian tribe when requested by such Indian tribes. However, Indian tribes are encouraged to perform comprehensive housing needs assessments and develop comprehensive IHPs and not limit their planning process to only those housing efforts funded by NAHASDA. An IHP should be locally driven.

§ 1000.222 Are there separate IHP requirements for small Indian tribes and small TDHEs?

No. HUD requirements for IHPs are reasonable.

§ 1000.224 Can any part of the IHP be waived?

Yes. HUD has general authority under section 101(b)(2) of NAHASDA to waive any IHP requirements when an Indian tribe cannot comply with IHP requirements due to circumstances beyond its control. The waiver authority under section 101(b)(2) of NAHASDA provides flexibility to address the needs of every Indian tribe, including small Indian tribes. The waiver may be requested by the Indian tribe or its TDHE (if such authority is delegated by the Indian tribe).

§ 1000.226 Can the certification requirements of section 102(c)(5) of NAHASDA be waived by HUD?

Yes. HUD may waive these certification requirements as provided in section 101(b)(2) of NAHASDA.

§ 1000.228 If HUD changes its IHP format will Indian tribes be involved?

Yes. HUD will first consult with Indian tribes before making any substantial changes to HUD's IHP format.

§ 1000.230 What is the process for HUD review of IHPs and IHP amendments?

HUD will conduct the IHP review in the following manner:

(a) HUD will conduct a limited review of the IHP to ensure that its contents:

(1) Comply with the requirements of section 102 of NAHASDA which outlines the IHP submission requirements;

(2) Are consistent with information and data available to HUD;

(3) Are not prohibited by or inconsistent with any provision of NAHASDA or other applicable law; and

(4) Include the appropriate certifications.

(b) If the IHP complies with the provisions of paragraphs (a)(1), (a)(2), and (a)(3) of this section, HUD will notify the recipient of IHP compliance within 60 days after receiving the IHP. If HUD fails to notify the recipient, the IHP shall be considered to be in compliance with the requirements of section 102 of NAHASDA and the IHP is approved.

(c) If the submitted IHP does not comply with the provisions of paragraphs (a)(1), and (a)(3) of this section, HUD will notify the recipient of the determination of non-compliance. HUD will provide this notice no later than 60 days after receiving the IHP. This notice will set forth:

(1) The reasons for noncompliance;

(2) The modifications necessary for the IHP to meet the submission requirements; and

(3) The date by which the revised IHP must be submitted.

(d) If the recipient does not submit a revised IHP by the date indicated in the notice provided under paragraph (c) of this section, the IHP will be determined by HUD to be in non-compliance unless a waiver is requested and approved under section 101(b)(2) of NAHASDA. If the IHP is determined by HUD to be in non-compliance and no waiver is granted, the recipient may appeal this determination following the appeal process in § 1000.234.

(e)(1) If the IHP does not contain the certifications identified in paragraph (a)(4) of this section, the recipient will be notified within 60 days of submission of the IHP that the plan is incomplete. The notification will include a date by which the certification must be submitted.

(2) If the recipient has not complied or cannot comply with the certification requirements due to circumstances beyond the control of the Indian tribe(s), within the timeframe established, the recipient can request a waiver in accordance with section 101(b)(2) of NAHASDA. If the waiver is approved, the recipient is eligible to receive its grant in accordance with any conditions of the waiver.

§ 1000.232 Can an Indian tribe or TDHE amend its IHP?

Yes. Section 103(c) of NAHASDA specifically provides that a recipient may submit modifications or revisions of its IHP to HUD. Unless the initial IHP certification provided by an Indian tribe allowed for the submission of IHP amendments without further tribal certifications, a tribal certification must accompany submission of IHP amendments by a TDHE to HUD. HUD's review of an amendment and determination of compliance will be limited to modifications of an IHP which adds new activities or involve a decrease in the amount of funds provided to protect and maintain the viability of housing assisted under the 1937 Act. HUD will consider these modifications to the IHP in accordance

with § 1000.230. HUD will act on amended IHPs within 30 days.

§ 1000.234 Can HUD's determination regarding the non-compliance of an IHP or a modification to an IHP be appealed?

(a) Yes. Within 30 days of receiving HUD's disapproval of an IHP or of a modification to an IHP, the recipient may submit a written request for reconsideration of the determination. The request shall include the justification for the reconsideration.

(b) Within 21 days of receiving the request, HUD shall reconsider its initial determination and provide the recipient with written notice of its decision to affirm, modify, or reverse its initial determination. This notice will also contain the reasons for HUD's decision.

(c) The recipient may appeal any denial of reconsideration by filing an appeal with the Assistant Secretary within 21 days of receiving the denial. The appeal shall set forth the reasons why the recipient does not agree with HUD's decision and include justification for the reconsideration.

(d) Within 21 days of receipt of the appeal, the Assistant Secretary shall review the recipient's appeal and act on the appeal. The Assistant Secretary will provide written notice to the recipient setting forth the reasons for the decision. The Assistant Secretary's decision constitutes final agency action.

§ 1000.236 What are eligible administrative and planning expenses?

(a) Eligible administrative and planning expenses of the IHBG program include, but are not limited to:

(1) Costs of overall program and/or administrative management;

(2) Coordination monitoring and evaluation;

(3) Preparation of the IHP including data collection and transition costs;

(4) Preparation of the annual performance report; and

(5) Challenge to and collection of data for purposes of challenging the formula.

(b) Staff and overhead costs directly related to carrying out affordable housing activities can be determined to be eligible costs of the affordable housing activity or considered administration or planning at the discretion of the recipient.

§ 1000.238 What percentage of the IHBG funds can be used for administrative and planning expenses?

The recipient can use up to 20 percent of its annual grant amount for administration and planning. The recipient shall identify the percentage of grant funds which will be used in the IHP. HUD approval is required if a higher percentage is requested by the recipient. When HUD approval is required, HUD must take into consideration any cost of preparing the IHP, challenges to and collection of data, the recipient's grant amount, approved cost allocation plans, and any other relevant information with special consideration given to the circumstances of recipients receiving minimal funding.

§ 1000.240 When is a local cooperation agreement required for affordable housing activities?

The requirement for a local cooperation agreement applies only to rental and lease-purchase homeownership units assisted with IHBG funds which are owned by the Indian tribe or TDHE.

§ 1000.242 When does the requirement for exemption from taxation apply to affordable housing activities?

The requirement for exemption from taxation applies only to rental and lease-purchase homeownership units assisted with IHBG funds which are owned by the Indian tribe or TDHE.

Subpart D—Allocation Formula

§ 1000.301 What is the purpose of the IHBG formula?

The IHBG formula is used to allocate equitably and fairly funds made available through NAHASDA among eligible Indian tribes. A TDHE may be a recipient on behalf of an Indian tribe.

§ 1000.302 What are the definitions applicable for the IHBG formula?

Allowable Expense Level (AEL) factor. In rental projects, AEL is the per-unit per-month dollar amount of expenses which was used to compute the amount of operating subsidy used prior to October 1, 1997 for the Low Rent units developed under the 1937 Act. The "AEL factor" is the relative difference between a local area AEL and the national weighted average for AEL.

Date of Full Availability (DOFA) means the last day of the month in which substantially all the units in a housing development are available for occupancy.

Fair Market Rent (FMR) factors are gross rent estimates; they include shelter rent plus the cost of all utilities, except telephones. HUD estimates FMRs on an annual basis for 354 metropolitan FMR areas and 2,355 non-metropolitan county FMR areas. The "FMR factor" is the relative difference between a local area FMR and the national weighted average for FMR.

Formula Annual Income. For purposes of the IHBG formula, annual income is a household's total income as currently defined by the U.S. Census Bureau.

Formula area. (1) Formula area is the geographic area over which an Indian tribe could exercise court jurisdiction or is providing substantial housing services and, where applicable, the Indian tribe or TDHE has agreed to provide housing services pursuant to a Memorandum of Agreement with the governing entity or entities (including Indian tribes) of the area, including but not limited to:

(i) A reservation;

(ii) Trust land;

(iii) Alaska Native Village Statistical Area;

(iv) Alaska Native Claims Settlement Act Corporation Service Area;

(v) Department of the Interior Near-Reservation Service Area;

(vi) Former Indian Reservation Areas in Oklahoma as defined by the Census as Tribal Jurisdictional Statistical Area;

(vii) Congressionally Mandated Service Area; and

(viii) State legislatively defined Tribal Areas as defined by the Census as Tribal Designated Statistical Areas.

(2) For additional areas beyond those identified in the above list of eight, the Indian tribe must submit on the Formula Response Form the area that it wishes to include in its Formula Area and what previous and planned investment it has made in the area. HUD will review this submission and determine whether or not to include this area. HUD will make its judgment using as its guide whether this addition is fair and equitable for all Indian tribes in the formula.

(3) In some cases the population data for an Indian tribe within its formula area is greater than its tribal enrollment. In general, for those cases to maintain fairness for all Indian tribes, the population data will not be allowed to exceed twice an Indian tribe's enrolled population. However, an Indian tribe subject to this cap may receive an allocation based on more than twice its total enrollment if it can show that it is providing housing assistance to substantially more non-member Indians and Alaska Natives who are members of another Federally recognized Indian tribe than it is to members.

(4) In cases where an Indian tribe is seeking to receive an allocation more than twice its total enrollment, the tribal enrollment multiplier will be determined by the total number of Indians and Alaska Natives the Indian tribe is providing housing assistance (on July 30 of the year before funding is sought) divided by the number of members the Indian tribe is providing housing assistance. For example, an

Indian tribe which provides housing to 300 Indians and Alaska Natives, of which 100 are members, would then be able to receive an allocation for up to three times its tribal enrollment if the Indian and Alaska Native population in the area is three or more times the tribal enrollment.

Formula Median Income. For purposes of the formula median income is determined in accordance with section 567 of the Housing and Community Development Act of 1987 (42 U.S.C. 1437a note).

Formula Response Form is the form recipients use to report changes to their Formula Current Assisted stock, formula area, and other formula related information before each year's formula allocation.

Indian Housing Authority (IHA) financed means a homeownership program where title rests with the homebuyer and a security interest rests with the IHA.

Mutual Help Occupancy Agreement (MHOA) means a lease with option to purchase contract between an IHA and a homebuyer under the 1937 Act.

Overcrowded means households with more than 1.01 persons per room as defined by the U.S. Decennial Census.

Section 8 means the making of housing assistance payments to eligible families leasing existing housing pursuant to the provisions of the 1937 Act.

Section 8 unit means the contract annualized housing assistance payments (certificates, vouchers, and project based) under the Section 8 program.

Total Development Cost (TDC) is the sum of all costs for a project including all undertakings necessary for administration, planning, site acquisition, demolition, construction or equipment and financing (including payment of carrying charges) and for otherwise carrying out the development of the project, excluding off site water and sewer. Total Development Cost amounts will be based on a moderately designed house and will be determined by averaging the current construction costs as listed in not less than two nationally recognized residential construction cost indices.

Without kitchen or plumbing means, as defined by the U.S. Decennial Census, an occupied house without one or more of the following items:

(1) Hot and cold piped water;
(2) A flush toilet;
(3) A bathtub or shower;
(4) A sink with piped water;
(5) A range or cookstove; or
(6) A refrigerator.

§ 1000.304 May the IHBG formula be modified?

Yes, as long as any modification does not conflict with the requirements of NAHASDA.

§ 1000.306 How can the IHBG formula be modified?

(a) The IHBG formula can be modified upon development of a set of measurable and verifiable data directly related to Indian and Alaska Native housing need. Any data set developed shall be compiled with the consultation and involvement of Indian tribes and examined and/or implemented not later than 5 years from the date of issuance of these regulations and periodically thereafter.

(b) Furthermore, the IHBG formula shall be reviewed within five years to determine if subsidy is needed to operate and maintain NAHASDA units or any other changes are needed in respect to funding under the Formula Current Assisted Stock component of the formula.

(c) During the five year review of housing stock for formula purposes, the Section 8 units shall be reduced by the same percentage as the current assisted rental stock has diminished since September 30, 1999.

§ 1000.308 Who can make modifications to the IHBG formula?

HUD can make modifications in accordance with § 1000.304 and § 1000.306 provided that any changes proposed by HUD are published and made available for public comment in accordance with applicable law before their implementation.

§ 1000.310 What are the components of the IHBG formula?

The IHBG formula consists of two components:

(a) Formula Current Assisted Housing Stock (FCAS); and

(b) Need.

§ 1000.312 What is current assisted stock?

Current assisted stock consists of housing units owned or operated pursuant to an ACC. This includes all low rent, Mutual Help, and Turnkey III housing units under management as of September 30, 1997, as indicated in the Formula Response Form.

§ 1000.314 What is formula current assisted stock?

Formula current assisted stock is current assisted stock as described in § 1000.312 plus 1937 Act units in the development pipeline when they become owned or operated by the recipient and are under management as indicated in the Formula Response Form. Formula current assisted stock also includes Section 8 units when their current contract expires and the Indian tribe continues to manage the assistance in a manner similar to the Section 8 program, as reported on the Formula Response Form.

§ 1000.316 How is the Formula Current Assisted Stock (FCAS) Component developed?

The Formula Current Assisted Stock component consists of two elements. They are:

(a) *Operating subsidy.* The operating subsidy consists of three variables which are:

(1) The number of low-rent FCAS units multiplied by the FY 1996 national per unit subsidy (adjusted to full funding level) multiplied by an adjustment factor for inflation;

(2) The number of Section 8 units whose contract has expired but had been under contract on September 30, 1997, multiplied by the FY 1996 national per unit subsidy adjusted for inflation; and

(3) The number of Mutual Help and Turnkey III FCAS units multiplied by the FY 1996 national per unit subsidy (adjusted to full funding level) multiplied by an adjustment factor for inflation.

(b) *Modernization allocation.* Modernization allocation consists of the number of Low Rent, Mutual Help, and Turnkey III FCAS units multiplied by the national per unit amount of allocation for FY 1996 modernization multiplied by an adjustment factor for inflation.

§ 1000.317 Who is the recipient for funds for current assisted stock which is owned by state-created Regional Native Housing Authorities in Alaska?

If housing units developed under the 1937 Act are owned by a state-created Regional Native Housing Authority in Alaska, and are not located on an Indian reservation, then the recipient for funds allocated for the current assisted stock portion of NAHASDA funds for the units is the regional Indian tribe.

§ 1000.318 When do units under Formula Current Assisted Stock cease to be counted or expire from the inventory used for the formula?

(a) Mutual Help and Turnkey III units shall no longer be considered Formula Current Assisted Stock when the Indian tribe, TDHE, or IHA no longer has the legal right to own, operate, or maintain the unit, whether such right is lost by conveyance, demolition, or otherwise, provided that:

(1) Conveyance of each Mutual Help or Turnkey III unit occurs as soon as

practicable after a unit becomes eligible for conveyance by the terms of the MHOA; and

(2) The Indian tribe, TDHE, or IHA actively enforce strict compliance by the homebuyer with the terms and conditions of the MHOA, including the requirements for full and timely payment.

(b) Rental units shall continue to be included for formula purposes as long as they continue to be operated as low income rental units by the Indian tribe, TDHE, or IHA.

(c) Expired contract Section 8 units shall continue as rental units and be included in the formula as long as they are operated as low income rental units as included in the Indian tribe's or TDHE's Formula Response Form.

§ 1000.320 How is Formula Current Assisted Stock adjusted for local area costs?

There are two adjustment factors that are used to adjust the allocation of funds for the Current Assisted Stock portion of the formula. They are:

(a) Operating Subsidy as adjusted by the greater of the AEL factor or FMR factor (AELFMR); and

(b) Modernization as adjusted by TDC.

§ 1000.322 Are IHA financed units included in the determination of Formula Current Assisted Stock?

No. If these units are not owned or operated at the time (September 30, 1997) pursuant to an ACC then they are not included in the determination of Formula Current Assisted Stock.

§ 1000.324 How is the need component developed?

After determining the FCAS allocation, remaining funds are allocated by need component. The need component consists of seven criteria. They are:

(a) American Indian and Alaskan Native (AIAN) Households with housing cost burden greater than 50 percent of formula annual income weighted at 22 percent;

(b) AIAN Households which are overcrowded or without kitchen or plumbing weighted at 25 percent;

(c) Housing Shortage which is the number of AIAN households with an annual income less than or equal to 80 percent of formula median income reduced by the combination of current assisted stock and units developed under NAHASDA weighted at 15 percent;

(d) AIAN households with annual income less than or equal to 30 percent of formula median income weighted at 13 percent;

(e) AIAN households with annual income between 30 percent and 50 percent of formula median income weighted at 7 percent;

(f) AIAN households with annual income between 50 percent and 80 percent of formula median income weighted at 7 percent;

(g) AIAN persons weighted at 11 percent.

§ 1000.325 How is the need component adjusted for local area costs?

The need component is adjusted by the TDC.

§ 1000.326 What if a formula area is served by more than one Indian tribe?

(a) If an Indian tribe's formula area overlaps with the formula area of one or more other Indian tribes, the funds allocated to that Indian tribe for the geographic area in which the formula areas overlap will be divided based on:

(1) The Indian tribe's proportional share of the population in the overlapping geographic area; and

(2) The Indian tribe's commitment to serve that proportional share of the population in such geographic area.

(3) In cases where a State recognized Indian tribe's formula area overlaps with a Federally recognized Indian tribe, the Federally recognized Indian tribe receives the allocation for the overlapping area.

(b) Tribal membership in the geographic area (not to include dually enrolled tribal members) will be based on data that all Indian tribes involved agree to use. Suggested data sources include tribal enrollment lists, Indian Health Service User Data, and Bureau of Indian Affairs data.

(c) If the Indian tribes involved cannot agree on what data source to use, HUD will make the decision on what data will be used to divide the funds between the Indian tribes by August 1.

§ 1000.327 What is the order of preference for allocating the IHBG formula needs data for Indian tribes in Alaska not located on reservations due to the unique circumstances in Alaska?

(a) Data in areas without reservations. The data on population and housing within an Alaska Native Village is credited to the Alaska Native Village. Accordingly, the village corporation for the Alaska Native Village has no needs data and no formula allocation. The data on population and housing outside the Alaska Native Village is credited to the regional Indian tribe, and if there is no regional Indian tribe, the data will be credited to the regional corporation.

(b) Deadline for notification on whether an IHP will be submitted. By September 15 of each year, each Indian tribe in Alaska not located on a reservation, including each Alaska Native village, regional Indian tribe, and regional corporation, or its TDHE must notify HUD in writing whether it or its TDHE intends to submit an IHP. If an Alaska Native village notifies HUD that it does not intend either to submit an IHP or to designate a TDHE to do so, or if HUD receives no response from the Alaska Native village or its TDHE, the formula data which would have been credited to the Alaska Native village will be credited to the regional Indian tribe, or if there is no regional Indian tribe, to the regional corporation.

§ 1000.328 What is the minimum amount an Indian tribe can receive under the need component of the formula?

In the first year of NAHASDA participation, an Indian tribe whose allocation is less than $50,000 under the need component of the formula shall have its need component of the grant adjusted to $50,000. An Indian tribe's IHP shall contain a certification of the need for the $50,000 funding. In subsequent years, but not to extend beyond Federal Fiscal Year 2002, an Indian tribe whose allocation is less than $25,000 under the need component of the formula shall have its need component of the grant adjusted to $25,000. The need for § 1000.328 will be reviewed in accordance with § 1000.306.

§ 1000.330 What are data sources for the need variables?

The sources of data for the need variables shall be data available that is collected in a uniform manner that can be confirmed and verified for all AIAN households and persons living in an identified area. Initially, the data used are U.S. Decennial Census data.

§ 1000.332 Will data used by HUD to determine an Indian tribe's or TDHE's formula allocation be provided to the Indian tribe or TDHE before the allocation?

Yes. HUD shall provide notice to the Indian tribe or TDHE of the data to be used for the formula and projected allocation amount by August 1.

§ 1000.334 May Indian tribes, TDHEs, or HUD challenge the data from the U.S. Decennial Census or provide an alternative source of data?

Yes. Provided that the data are gathered, evaluated, and presented in a manner acceptable to HUD and that the standards for acceptability are consistently applied throughout the Country.

§ 1000.336 How may an Indian tribe, TDHE, or HUD challenge data?

(a) An Indian tribe, TDHE, or HUD may challenge data used in the IHBG formula. The challenge and collection of data for this purpose is an allowable cost for IHBG funds.

(b) An Indian tribe or TDHE that has data in its possession that it contends are more accurate than data contained in the U.S. Decennial Census, and the data were collected in a manner acceptable to HUD, may submit the data and proper documentation to HUD. Beginning with the Fiscal Year 1999 allocation, in order for the challenge to be considered for the upcoming Fiscal Year allocation, documentation must be submitted by June 15. HUD shall respond to such data submittal not later than 45 days after receipt of the data and either approve or challenge the validity of such data. Pursuant to HUD's action, the following shall apply:

(1) In the event HUD challenges the validity of the submitted data, the Indian tribe or TDHE and HUD shall attempt in good faith to resolve any discrepancies so that such data may be included in formula allocation. Should the Indian tribe or TDHE and HUD be unable to resolve any discrepancy by the date of formula allocation, the dispute shall be carried forward to the next funding year and resolved in accordance with the dispute resolution procedures set forth in this part for model housing activities (§ 1000.118).

(2) Pursuant to resolution of the dispute:

(i) If the Indian tribe or TDHE prevails, an adjustment to the Indian tribe's or TDHE's subsequent allocation for the subsequent year shall be made retroactive to include only the disputed Fiscal Year(s); or

(ii) If HUD prevails, no further action shall be required.

(c) In the event HUD questions that the data contained in the formula does not accurately represent the Indian tribe's need, HUD shall request the Indian tribe to submit supporting documentation to justify the data and provide a commitment to serve the population indicated in the geographic area.

§ 1000.340 What if an Indian tribe is allocated less funding under the block grant formula than it received in Fiscal Year 1996 for operating subsidy and modernization?

If an Indian tribe is allocated less funding under the formula than an IHA received on its behalf in Fiscal Year 1996 for operating subsidy and modernization, its grant is increased to the amount received in Fiscal Year 1996 for operating subsidy and modernization. The remaining grants are adjusted to keep the allocation within available appropriations.

Subpart E—Federal Guarantees for Financing of Tribal Housing Activities

§ 1000.401 What terms are used throughout this subpart?

As used throughout title VI of NAHASDA and in this subpart:

Applicant means the entity that requests a HUD guarantee under the provisions of this subpart.

Borrower means an Indian tribe or TDHE that receives funds in the form of a loan with the obligation to repay in full, with interest, and has executed notes or other obligations that evidence that transaction.

Issuer means an Indian tribe or TDHE that issues or executes notes or other obligations. An issuer can also be a borrower.

§ 1000.402 Are State recognized Indian tribes eligible for guarantees under title VI of NAHASDA?

Those State recognized Indian tribes that meet the definition set forth in section 4(12)(C) of NAHASDA are eligible for guarantees under title VI of NAHASDA.

§ 1000.404 What lenders are eligible for participation?

Eligible lenders are those approved under and meeting the qualifications established in this subpart, except that loans otherwise insured or guaranteed by an agency of the United States, or made by an organization of Indians from amounts borrowed from the United States, shall not be eligible for guarantee under this part. The following lenders are deemed to be eligible under this subpart:

(a) Any mortgagee approved by HUD for participation in the single family mortgage insurance program under title II of the National Housing Act;

(b) Any lender whose housing loans under chapter 37 of title 38, United States Code, are automatically guaranteed pursuant to section 1802(d) of such title;

(c) Any lender approved by the Department of Agriculture to make guaranteed loans for single family housing under the Housing Act of 1949;

(d) Any other lender that is supervised, approved, regulated, or insured by any agency of the United States; and

(e) Any other lender approved by the Secretary.

§ 1000.406 What constitutes tribal approval to issue notes or other obligations under title VI of NAHASDA?

Tribal approval is evidenced by a written tribal resolution that authorizes the issuance of notes or obligations by the Indian tribe or a TDHE on behalf of the Indian tribe.

§ 1000.408 How does an Indian tribe or TDHE show that it has made efforts to obtain financing without a guarantee and cannot complete such financing in a timely manner?

The Indian tribe or TDHE shall submit a certification that states that the Indian tribe has attempted to obtain financing and cannot complete such financing consistent with the timely execution of the program plans without such guarantee. Written documentation shall be maintained by the Indian tribe or TDHE to support the certification.

§ 1000.410 What conditions shall HUD prescribe when providing a guarantee for notes or other obligations issued by an Indian tribe?

HUD shall provide that:

(a) Any loan, note or other obligation guaranteed under title VI of NAHASDA may be sold or assigned by the lender to any financial institution that is subject to examination and supervision by an agency of the Federal government, any State, or the District of Columbia without destroying or otherwise negatively affecting the guarantee; and

(b) Indian tribes and housing entities are encouraged to explore creative financing mechanisms and in so doing shall not be limited in obtaining a guarantee. These creative financing mechanisms include but are not limited to:

(1) Borrowing from private or public sources or partnerships;

(2) Issuing tax exempt and taxable bonds where permitted; and

(3) Establishing consortiums or trusts for borrowing or lending, or for pooling loans.

(c) The repayment period may exceed twenty years and the length of the repayment period cannot be the sole basis for HUD disapproval; and

(d) Lender and issuer/borrower must certify that they acknowledge and agree to comply with all applicable tribal laws.

§ 1000.412 Can an issuer obtain a guarantee for more than one note or other obligation at a time?

Yes. To obtain multiple guarantees, the issuer shall demonstrate that:

(a) The issuer will not exceed a total for all notes or other obligations in an amount equal to five times its grant amount, excluding any amount no

longer owed on existing notes or other obligations; and

(b) Issuance of additional notes or other obligations is within the financial capacity of the issuer.

§ 1000.414 How is an issuer's financial capacity demonstrated?

An issuer must demonstrate its financial capacity to:

(a) Meet its obligations; and

(b) Protect and maintain the viability of housing developed or operated pursuant to the 1937 Act.

§ 1000.416 What is a repayment contract in a form acceptable to HUD?

(a) The Secretary's signature on a contract shall signify HUD's acceptance of the form, terms and conditions of the contract.

(b) In loans under title VI of NAHASDA, involving a contract between an issuer and a lender other than HUD, HUD's approval of the loan documents and guarantee of the loan shall be deemed to be HUD's acceptance of the sufficiency of the security furnished. No other security can or will be required by HUD at a later date.

§ 1000.418 Can grant funds be used to pay costs incurred when issuing notes or other obligations?

Yes. Other costs that can be paid using grant funds include but are not limited to the costs of servicing and trust administration, and other costs associated with financing of debt obligations.

§ 1000.420 May grants made by HUD under section 603 of NAHASDA be used to pay net interest costs incurred when issuing notes or other obligations?

Yes. Other costs that can be paid using grant funds include but are not limited to the costs of servicing and trust administration, and other costs associated with financing of debt obligations, not to exceed 30 percent of the net interest cost.

§ 1000.422 What are the procedures for applying for loan guarantees under title VI of NAHASDA?

(a) The borrower applies to the lender for a loan using a guarantee application form prescribed by HUD.

(b) The lender provides the loan application to HUD to determine if funds are available for the guarantee. HUD will reserve these funds for a period of 90 days if the funds are available and the applicant is otherwise eligible under this subpart. HUD may extend this reservation period for an extra 90 days if additional documentation is necessary.

(c) The borrower and lender negotiate the terms and conditions of the loan in consultation with HUD.

(d) The borrower and lender execute documents.

(e) The lender formally applies for the guarantee.

(f) HUD reviews and provides a written decision on the guarantee.

§ 1000.424 What are the application requirements for guarantee assistance under title VI of NAHASDA?

The application for a guarantee must include the following:

(a) An identification of each of the activities to be carried out with the guaranteed funds and a description of how each activity qualifies as an affordable housing activity as defined in section 202 of NAHASDA.

(b) A schedule for the repayment of the notes or other obligations to be guaranteed that identifies the sources of repayment, together with a statement identifying the entity that will act as the borrower.

(c) A copy of the executed loan documents, if applicable, including, but not limited to, any contract or agreement between the borrower and the lender.

(d) Certifications by the borrower that:

(1) The borrower possesses the legal authority to pledge and that it will, if approved, make the pledge of grants required by section 602(a)(2) of NAHASDA.

(2) The borrower has made efforts to obtain financing for the activities described in the application without use of the guarantee; the borrower will maintain documentation of such efforts for the term of the guarantee; and the borrower cannot complete such financing consistent with the timely execution of the program plans without such guarantee.

(3) It possesses the legal authority to borrow or issue obligations and to use the guaranteed funds in accordance with the requirements of this subpart.

(4) Its governing body has duly adopted or passed as an official act a resolution, motion, or similar official action that:

(i) Identifies the official representative of the borrower, and directs and authorizes that person to provide such additional information as may be required; and

(ii) Authorizes such official representative to issue the obligation or to execute the loan or other documents, as applicable.

(5) The borrower has complied with section 602(a) of NAHASDA.

(6) The borrower will comply with the requirements described in subpart A of this part and other applicable laws.

§ 1000.426 How does HUD review a guarantee application?

The procedure for review of a guarantee application includes the following steps:

(a) HUD will review the application for compliance with title VI of NAHASDA and these implementing regulations.

(b) HUD will accept the certifications submitted with the application. HUD may, however, consider relevant information that challenges the certifications and require additional information or assurances from the applicant as warranted by such information.

§ 1000.428 For what reasons may HUD disapprove an application or approve an application for an amount less than that requested?

HUD may disapprove an application or approve a lesser amount for any of the following reasons:

(a) HUD determines that the guarantee constitutes an unacceptable risk. Factors that will be considered in assessing financial risk shall include, but not be limited to, the following:

(1) The ratio of the expected annual debt service requirements to the expected available annual grant amount, taking into consideration the obligations of the borrower under the provisions of section 203(b) of NAHASDA;

(2) Evidence that the borrower will not continue to receive grant assistance under this part during the proposed repayment period;

(3) The borrower's inability to furnish adequate security pursuant to section 602(a) of NAHASDA; and

(4) The amount of program income the proposed activities are reasonably estimated to contribute toward repayment of the guaranteed loan or other obligations.

(b) The loan or other obligation for which the guarantee is requested exceeds any of the limitations specified in sections 601(d) or section 605(d) of NAHASDA.

(c) Funds are not available in the amount requested.

(d) Evidence that the performance of the borrower under this part has been determined to be unacceptable pursuant to the requirements of subpart F of this part, and that the borrower has failed to take reasonable steps to correct performance.

(e) The activities to be undertaken are not eligible under section 202 of NAHASDA.

(f) The loan or other obligation documents for which a guarantee is requested do not meet the requirements of this subpart.

§ 1000.430 When will HUD issue notice to the applicant if the application is approved at the requested or reduced amount?

(a) HUD shall make every effort to approve a guarantee within 30 days of receipt of a completed application including executed documents and, if unable to do so, will notify the applicant within the 30 day timeframe of the need for additional time and/or if additional information is required.

(b) HUD shall notify the applicant in writing that the guarantee has either been approved, reduced, or disapproved. If the request is reduced or disapproved, the applicant will be informed of the specific reasons for reduction or disapproval.

(c) HUD shall issue a certificate to guarantee the debt obligation of the issuer subject to compliance with NAHASDA including but not limited to sections 105, 601(a), and 602(c) of NAHASDA, and such other reasonable conditions as HUD may specify in the commitment documents in a particular case.

§ 1000.432 Can an amendment to an approved guarantee be made?

(a) Yes. An amendment to an approved guarantee can occur if an applicant wishes to allow a borrower/issuer to carry out an activity not described in the loan or other obligation documents, or substantially to change the purpose, scope, location, or beneficiaries of an activity.

(b) Any changes to an approved guarantee must be approved by HUD.

§ 1000.434 How will HUD allocate the availability of loan guarantee assistance?

(a) Each fiscal year HUD may allocate a percentage of the total available loan guarantee assistance to each Area ONAP equal to the percentage of the total NAHASDA grant funds allocated to the Indian tribes in the geographic area of operation of that office.

(b) These allocated amounts shall remain exclusively available for loan guarantee assistance for Indian tribes or TDHEs in the area of operation of that office until committed by HUD for loan guarantees or until the end of the second quarter of the fiscal year. At the beginning of the third quarter of the fiscal year, any residual loan guarantee commitment amount shall be made available to guarantee loans for Indian tribes or TDHEs regardless of their location. Applications for residual loan guarantee money must be submitted on or after April 1.

(c) In approving applications for loan guarantee assistance, HUD shall seek to maximize the availability of such assistance to all interested Indian tribes or TDHEs. HUD may limit the proportional share approved to any one Indian tribe or TDHE to its proportional share of the block grant allocation based upon the annual plan submitted by the Indian tribe or TDHE indicating intent to participate in the loan guarantee allocation process.

§ 1000.436 How will HUD monitor the use of funds guaranteed under this subpart?

HUD will monitor the use of funds guaranteed under this subpart as set forth in section 403 of NAHASDA, and the lender is responsible for monitoring performance with the documents.

Subpart F—Recipient Monitoring, Oversight and Accountability

§ 1000.501 Who is involved in monitoring activities under NAHASDA?

The recipient, the grant beneficiary and HUD are involved in monitoring activities under NAHASDA.

§ 1000.502 What are the monitoring responsibilities of the recipient, the grant beneficiary and HUD under NAHASDA?

(a) The recipient is responsible for monitoring grant activities, ensuring compliance with applicable Federal requirements and monitoring performance goals under the IHP. The recipient is responsible for preparing at least annually: a compliance assessment in accordance with section 403(b) of NAHASDA; a performance report covering the assessment of program progress and goal attainment under the IHP; and an audit in accordance with the Single Audit Act, as applicable. The recipient's monitoring should also include an evaluation of the recipient's performance in accordance with performance objectives and measures. At the request of a recipient, other Indian tribes and/or TDHEs may provide assistance to aid the recipient in meeting its performance goals or compliance requirements under NAHASDA.

(b) Where the recipient is a TDHE, the grant beneficiary (Indian tribe) is responsible for monitoring programmatic and compliance requirements of the IHP and NAHASDA by requiring the TDHE to prepare periodic progress reports including the annual compliance assessment, performance and audit reports.

(c) HUD is responsible for reviewing the recipient as set forth in § 1000.520.

(d) HUD monitoring will consist of on-site as well as off-site review of records, reports and audits. To the extent funding is available, HUD or its designee will provide technical assistance and training, or funds to the recipient to obtain technical assistance and training. In the absence of funds, HUD shall make best efforts to provide technical assistance and training.

§ 1000.504 What are the recipient performance objectives?

Performance objectives are developed by each recipient. Performance objectives are criteria by which the recipient will monitor and evaluate its performance. For example, if in the IHP the recipient indicates it will build new houses, the performance objective may be the completion of the homes within a certain time period and within a certain budgeted amount.

§ 1000.506 If the TDHE is the recipient, must it submit its monitoring evaluation/results to the Indian tribe?

Yes. The Indian tribe as the grant beneficiary must receive a copy of the monitoring evaluation/results so that it can fully carry out its oversight responsibilities under NAHASDA.

§ 1000.508 If the recipient monitoring identifies programmatic concerns, what happens?

If the recipient's monitoring activities identify areas of concerns, the recipient will take corrective actions which may include but are not limited to one or more of the following actions:

(a) Depending upon the nature of the concern, the recipient may obtain additional training or technical assistance from HUD, other Indian tribes or TDHEs, or other entities.

(b) The recipient may develop and/or revise policies, or ensure that existing policies are better enforced.

(c) The recipient may take appropriate administrative action to remedy the situation.

(d) The recipient may refer the concern to an auditor or to HUD for additional corrective action.

§ 1000.510 What happens if tribal monitoring identifies compliance concerns?

The Indian tribe shall have the responsibility to ensure that appropriate corrective action is taken.

§ 1000.512 Are performance reports required?

Yes. An annual report shall be submitted by the recipient to HUD and the Indian tribe being served in a format acceptable by HUD. Annual performance reports shall contain:

(a) The information required by sections 403(b) and 404(b) of NAHASDA;

(b) Brief information on the following:

(1) A comparison of actual accomplishments to the objectives established for the period;

(2) The reasons for slippage if established objectives were not met; and

(3) Analysis and explanation of cost overruns or high unit costs; and

(c) Any information regarding the recipient's performance in accordance with HUD's performance measures, as set forth in section § 1000.524.

§ 1000.514 When must the annual performance report be submitted?

The annual performance report must be submitted within 60 days of the end of the recipient's program year. If a justified request is submitted by the recipient, the Area ONAP may extend the due date for submission of the performance report.

§ 1000.516 What reporting period is covered by the annual performance report?

For the first year of NAHASDA, the period to be covered by the annual performance report will be October 1, 1997 through September 30, 1998. Subsequent reporting periods will coincide with the recipient's program year.

§ 1000.518 When must a recipient obtain public comment on its annual performance report?

The recipient must make its report publicly available to tribal members, non-Indians served under NAHASDA, and other citizens in the Indian area, in sufficient time to permit comment before submission of the report to HUD. The recipient determines the manner and times for making the report available.

The recipient shall include a summary of any comments received by the grant beneficiary or recipient from tribal members, non-Indians served under NAHASDA, and other citizens in the Indian area.

§ 1000.520 What are the purposes of HUD review?

At least annually, HUD will review each recipient's performance to determine whether the recipient:

(a) Has carried out its eligible activities in a timely manner, has carried out its eligible activities and certifications in accordance with the requirements and the primary objective of NAHASDA and with other applicable laws and has a continuing capacity to carry out those activities in a timely manner;

(b) Has complied with the IHP of the grant beneficiary; and

(c) Whether the performance reports of the recipient are accurate.

§ 1000.521 After the receipt of the recipient's performance report, how long does HUD have to make recommendations under section 404(c) of NAHASDA?

60 days.

§ 1000.522 How will HUD give notice of on-site reviews?

HUD shall generally provide a 30 day written notice of an impending on-site review to the Indian tribe and TDHE. Prior written notice will not be required in emergency situations. All notices shall state the general nature of the review.

§ 1000.524 What are HUD's performance measures for the review?

HUD has the authority to develop performance measures which the recipient must meet as a condition for compliance under NAHASDA. The performance measures are:

(a) Within 2 years of grant award under NAHASDA, no less than 90 percent of the grant must be obligated.

(b) The recipient has complied with the required certifications in its IHP and all policies and the IHP have been made available to the public.

(c) Fiscal audits have been conducted on a timely basis and in accordance with the requirements of the Single Audit Act, as applicable. Any deficiencies identified in audit reports have been addressed within the prescribed time period.

(d) Accurate annual performance reports were submitted to HUD within 60 days after the completion of the recipient's program year.

(e) The recipient has met the IHP goals and objectives in the 1-year plan and demonstrated progress on the 5-year plan goals and objectives.

(f) The recipient has substantially complied with the requirements of 24 CFR part 1000 and all other applicable Federal statutes and regulations.

§ 1000.526 What information will HUD use for its review?

In reviewing each recipient's performance, HUD may consider the following:

(a) The approved IHP and any amendments thereto;

(b) Reports prepared by the recipient;

(c) Records maintained by the recipient;

(d) Results of HUD's monitoring of the recipient's performance, including on-site evaluation of the quality of the work performed;

(e) Audit reports;

(f) Records of drawdown(s) of grant funds;

(g) Records of comments and complaints by citizens and organizations within the Indian area;

(h) Litigation; and

(i) Any other reliable relevant information which relates to the performance measures under § 1000.524.

§ 1000.528 What are the procedures for the recipient to comment on the result of HUD's review when HUD issues a report under section 405(b) of NAHASDA?

HUD will issue a draft report to the recipient and Indian tribe within thirty (30) days of the completion of HUD's review. The recipient will have at least thirty (30) days to review and comment on the draft report as well as provide any additional information relating to the draft report. HUD shall consider the comments and any additional information provided by the recipient. HUD may also revise the draft report based on the comments and any additional information provided by the recipient. HUD shall make the recipient's comments and a final report readily available to the recipient, grant beneficiary, and the public not later than thirty (30) days after receipt of the recipient's comments and additional information.

§ 1000.530 What corrective and remedial actions will HUD request or recommend to address performance problems prior to taking action under §§ 1000.532 or 1000.538?

(a) The following actions are designed, first, to prevent the continuance of the performance problem(s); second, to mitigate any adverse effects or consequences of the performance problem(s); and third, to prevent a recurrence of the same or similar performance problem. The following actions, at least one of which must be taken prior to a sanction under paragraph (b), may be taken by HUD singly or in combination, as appropriate for the circumstances:

(1) Issue a letter of warning advising the recipient of the performance problem(s), describing the corrective actions that HUD believes should be taken, establishing a completion date for corrective actions, and notifying the recipient that more serious actions may be taken if the performance problem(s) is not corrected or is repeated;

(2) Request the recipient to submit progress schedules for completing activities or complying with the requirements of this part;

(3) Recommend that the recipient suspend, discontinue, or not incur costs for the affected activity;

(4) Recommend that the recipient redirect funds from affected activities to other eligible activities;

(5) Recommend that the recipient reimburse the recipient's program account in the amount improperly expended; and

(6) Recommend that the recipient obtain appropriate technical assistance using existing grant funds or other

available resources to overcome the performance problem(s).

(b) Failure of a recipient to address performance problems specified in paragraph (a) above may result in the imposition of sanctions as prescribed in § 1000.532 (providing for adjustment, reduction, or withdrawal of future grant funds, or other appropriate actions), or § 1000.538 (providing for termination, reduction, or limited availability of payments, or replacement of the TDHE).

§ 1000.532 What are the adjustments HUD makes to a recipient's future year's grant amount under section 405 of NAHASDA?

(a) HUD may, subject to the procedures in paragraph (b) below, make appropriate adjustments in the amount of the annual grants under NAHASDA in accordance with the findings of HUD pursuant to reviews and audits under section 405 of NAHASDA. HUD may adjust, reduce, or withdraw grant amounts, or take other action as appropriate in accordance with the reviews and audits, except that grant amounts already expended on affordable housing activities may not be recaptured or deducted from future assistance provided on behalf of an Indian tribe.

(b) Before undertaking any action in accordance with paragraphs (a) and (c) of this section, HUD will notify the recipient in writing of the actions it intends to take and provide the recipient an opportunity for an informal meeting to resolve the deficiency. In the event the deficiency is not resolved, HUD may take any of the actions available under paragraphs (a) and (c) of this section. However, the recipient may request, within 30 days of notice of the action, a hearing in accordance with § 1000.540. The amount in question shall not be reallocated under the provisions of § 1000.536, until 15 days after the hearing has been held and HUD has rendered a final decision.

(c) Absent circumstances beyond the recipient's control, when a recipient is not complying significantly with a major activity of its IHP, HUD shall make appropriate adjustment, reduction, or withdrawal of some or all of the recipient's subsequent year grant in accordance with this section.

§ 1000.534 What constitutes substantial noncompliance?

HUD will review the circumstances of each noncompliance with NAHASDA and the regulations on a case-by-case basis to determine if the noncompliance is substantial. This review is a two step process. First, there must be a noncompliance with NAHASDA or these regulations. Second, the noncompliance must be substantial. A noncompliance is substantial if:

(a) The noncompliance has a material effect on the recipient meeting its major goals and objectives as described in its Indian Housing Plan;

(b) The noncompliance represents a material pattern or practice of activities constituting willful noncompliance with a particular provision of NAHASDA or the regulations, even if a single instance of noncompliance would not be substantial;

(c) The noncompliance involves the obligation or expenditure of a material amount of the NAHASDA funds budgeted by the recipient for a material activity; or

(d) The noncompliance places the housing program at substantial risk of fraud, waste or abuse.

§ 1000.536 What happens to NAHASDA grant funds adjusted, reduced, withdrawn, or terminated under § 1000.532 or § 1000.538?

Such NAHASDA grant funds shall be distributed by HUD in accordance with the next NAHASDA formula allocation.

§ 1000.538 What remedies are available for substantial noncompliance?

(a) If HUD finds after reasonable notice and opportunity for hearing that a recipient has failed to comply substantially with any provisions of NAHASDA, HUD shall:

(1) Terminate payments under NAHASDA to the recipient;

(2) Reduce payments under NAHASDA to the recipient by an amount equal to the amount of such payments that were not expended in accordance with NAHASDA;

(3) Limit the availability of payments under NAHASDA to programs, projects, or activities not affected by the failure to comply; or

(4) In the case of noncompliance described in § 1000.542, provide a replacement TDHE for the recipient.

(b) HUD may, upon due notice, suspend payments at any time after the issuance of the opportunity for hearing pending such hearing and final decision, to the extent HUD determines such action necessary to preclude the further expenditure of funds for activities affected by such failure to comply.

(c) If HUD determines that the failure to comply substantially with the provisions of NAHASDA is not a pattern or practice of activities constituting willful noncompliance, and is a result of the limited capability or capacity of the recipient, HUD may provide technical assistance for the recipient (directly or indirectly) that is designed to increase the capability or capacity of the recipient to administer assistance under NAHASDA in compliance with the requirements under NAHASDA.

(d) In lieu of, or in addition to, any action described in this section, if HUD has reason to believe that the recipient has failed to comply substantially with any provisions of NAHASDA, HUD may refer the matter to the Attorney General of the United States, with a recommendation that appropriate civil action be instituted.

§ 1000.540 What hearing procedures will be used under NAHASDA?

The hearing procedures in 24 CFR part 26 shall be used.

§ 1000.542 When may HUD require replacement of a recipient?

(a) In accordance with section 402 of NAHASDA, as a condition of HUD making a grant on behalf of an Indian tribe, the Indian tribe shall agree that, notwithstanding any other provisions of law, HUD may, only in the circumstances discussed below, require that a replacement TDHE serve as the recipient for the Indian tribe.

(b) HUD may require a replacement TDHE for an Indian tribe only upon a determination by HUD on the record after opportunity for hearing that the recipient for the Indian tribe has engaged in a pattern or practice of activities that constitute substantial or willful noncompliance with the requirements of NAHASDA.

§ 1000.544 What audits are required?

The recipient must comply with the requirements of the Single Audit Act and OMB Circular A–133 which require annual audits of recipients that expend Federal funds equal to or in excess of an amount specified by the U.S. Office of Management and Budget, which is currently set at $300,000.

§ 1000.546 Are audit costs eligible program or administrative expenses?

Yes, audit costs are an eligible program or administrative expense. If the Indian tribe is the recipient then program funds can be used to pay a prorated share of the tribal audit or financial review cost that is attributable to NAHASDA funded activities. For a recipient not covered by the Single Audit Act, but which chooses to obtain a periodic financial review, the cost of such a review would be an eligible program expense.

§ 1000.548 Must a copy of the recipient's audit pursuant to the Single Audit Act relating to NAHASDA activities be submitted to HUD?

Yes. A copy of the latest recipient audit under the Single Audit Act relating to NAHASDA activities must be submitted with the Annual Performance Report.

§ 1000.550 If the TDHE is the recipient, does it have to submit a copy of its audit to the Indian tribe?

Yes. The Indian tribe as the grant beneficiary must receive a copy of the audit report so that it can fully carry out its oversight responsibilities with NAHASDA.

§ 1000.552 How long must the recipient maintain program records?

(a) This section applies to all financial and programmatic records, supporting documents, and statistical records of the recipient which are required to be maintained by the statute, regulation, or grant agreement.

(b) Except as otherwise provided herein, records must be retained for three years from the date the recipient submits to HUD the annual performance report that covers the last expenditure of grant funds under a particular grant.

(c) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

§ 1000.554 Which agencies have right of access to the recipient's records relating to activities carried out under NAHASDA?

(a) HUD and the Comptroller General of the United States, and any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of recipients which are pertinent to NAHASDA assistance, in order to make audits, examinations, excerpts, and transcripts.

(b) The right of access in this section lasts as long as the records are maintained.

§ 1000.556 Does the Freedom of Information Act (FOIA) apply to recipient records?

FOIA does not apply to recipient records. However, there may be other applicable State and tribal access laws or recipient policies which may apply.

§ 1000.558 Does the Federal Privacy Act apply to recipient records?

The Federal Privacy Act does not apply to recipient records. However, there may be other applicable State and tribal access laws or recipient policies which may apply.

PART 1005—LOAN GUARANTEES FOR INDIAN HOUSING

4. The authority citation for newly designated 24 CFR part 1005 continues to read as follows:

Authority: 25 U.S.C. 4101 *et seq.*; 42 U.S.C. 1715z–13a and 3535(d).

5. Newly designated § 1005.101 is revised to read as follows:

§ 1005.101 What is the applicability and scope of these regulations?

Under the provisions of section 184 of the Housing and Community Development Act of 1992, as amended by the Native American Housing Assistance and Self-Determination Act of 1996 (12 U.S.C. 1515z–13a), the Department of Housing and Urban Development (the Department or HUD) has the authority to guarantee loans for the construction, acquisition, or rehabilitation of 1- to 4-family homes that are standard housing located on trust land or land located in an Indian or Alaska Native area, and for which an Indian Housing Plan has been submitted and approved under 24 CFR part 1000. This part provides requirements that are in addition to those in section 184.

6. Newly designated § 1005.103 is amended by revising the section heading and by adding the definitions of the terms "Holder" and "Mortgagee" in alphabetical order, to read as follows:

§ 1005.103 What definitions are applicable to this program?

* * * * *

Holder means the holder of the guarantee certificate and in this program is variously referred to as the lender holder, the holder of the certificate, the holder of the guarantee, and the mortgagee.

* * * * *

Mortgagee means the same as "Holder."

* * * * *

7. A new § 1005.104 is added to read as follows:

§ 1005.104 What lenders are eligible for participation?

Eligible lenders are those approved under and meeting the qualifications established in this subpart, except that loans otherwise insured or guaranteed by an agency of the United States, or made by an organization of Indians from amounts borrowed from the United States, shall not be eligible for guarantee under this part. The following lenders are deemed to be eligible under this part:

(a) Any mortgagee approved by HUD for participation in the single family mortgage insurance program under title II of the National Housing Act;

(b) Any lender whose housing loans under chapter 37 of title 38, United States Code are automatically guaranteed pursuant to section 1802(d) of such title;

(c) Any lender approved by the Department of Agriculture to make guaranteed loans for single family housing under the Housing Act of 1949;

(d) Any other lender that is supervised, approved, regulated, or insured by any agency of the United States; or

(e) Any other lender approved by the Secretary.

8. Newly designated § 1005.105 is amended by:

a. Revising the section heading;

b. Revising paragraphs (b) and (d)(3); and

c. Adding a new paragraph (f), to read as follows:

§ 1005.105 What are eligible loans?

* * * * *

(b) *Eligible borrowers.* A loan guarantee under section 184 may be made to:

(1) An Indian family who will occupy the home as a principal residence and who is otherwise qualified under section 184;

(2) An Indian Housing Authority or Tribally Designated Housing Entity; or

(3) An Indian tribe.

* * * * *

(d) * * *

(3) The principal amount of the mortgage is held by the mortgagee in an interest bearing account, trust, or escrow for the benefit of the mortgagor, pending advancement to the mortgagor's creditors as provided in the loan agreement; and

* * * * *

(f) *Lack of access to private financial markets.* In order to be eligible for a loan guarantee if the property is not on trust or restricted lands, the borrower must certify that the borrower lacks access to private financial markets. Borrower certification is the only certification required by HUD.

9. Newly designated § 1005.107 is amended by:

a. Revising the section heading;

b. Revising paragraph (a) introductory text;

c. Revising paragraph (a)(2);

d. Revising paragraph (b) introductory text;

e. Redesignating paragraphs (b)(3) and (b)(4) as paragraphs (b)(4) and (b)(5), respectively; and

f. Adding a new paragraph (b)(3), to read as follows:

§ 1005.107 What is eligible collateral?

(a) A loan guaranteed under section 184 may be secured by any collateral authorized under and not prohibited by Federal, state, or tribal law and determined by the lender and approved by the Department to be sufficient to cover the amount of the loan, and may include, but is not limited to, the following:

* * * * *

(2) A first and/or second mortgage on property other than trust land;

* * * * *

(b) If trust land or restricted Indian land is used as collateral or security for the loan, the following additional provisions apply:

* * * * *

(3) The mortgagee or HUD shall only pursue liquidation after offering to transfer the account to an eligible tribal member, the Indian tribe, or the Indian housing authority servicing the Indian tribe or the TDHE servicing the Indian tribe. The mortgagee or HUD shall not sell, transfer, or otherwise dispose of or alienate the property except to one of these three entities.

* * * * *

§ 1005.109 [Amended].

10. Newly designated § 1005.109 is amended by revising the section heading to read "*§ 1005.109 What is a guarantee fee?*"

§ 1005.111 [Amended].

11. Newly designated § 1005.111 is amended by revising the section heading to read "*§ 1005.111 What safety and quality standards apply?*"

12. Newly designated § 1005.112 is added to read as follows:

§ 1005.112 How do eligible lenders and eligible borrowers demonstrate compliance with applicable tribal laws?

The lender/borrower will certify that they acknowledge and agree to comply with all applicable tribal laws. An Indian tribe with jurisdiction over the dwelling unit does not have to be notified of individual section 184 loans unless required by applicable tribal law.

13. Section 1005.113 is added to read as follows:

§ 1005.113 How does HUD enforce lender compliance with applicable tribal laws?

Failure of the lender to comply with applicable tribal law is considered to be a practice detrimental to the interest of the borrower and may be subject to enforcement action(s) under section 184(g) of the statute.

Appendix A TO PART 1000—Indian Housing Block Grant Formula Mechanics

This appendix shows the different components of the IHBG formula. The following text explains how each component of the IHBG formula works.

1. The Indian Housing Block Grant (IHBG) formula is calculated by initially determining the amount a tribe receives for Formula Current Assisted Stock (FCAS) (See §§ 1000.310 and 1000.312. FCAS funding is comprised of two components, operating subsidy (§ 1000.316(a)) and modernization (§ 1000.316(b)). The operating subsidy component is calculated based on the national per unit subsidy provided in FY 1996 (adjusted to a 100 percent funding level) for each of the following types of programs—Low Rent, Homeownership (Mutual Help and Turnkey III), and Section 8. A tribe's total units in each of the above categories is multiplied times the relevant national per unit subsidy amount. That amount is summed and multiplied times a local area cost adjustment factor for management.

2. The local area cost adjustment factor for management is called AELFMR. AELFMR is the greater of a tribe's Allowable Expense Level (AEL) or Fair Market Rent (FMR) factor, where the AEL and FMR factors are determined by dividing each tribe's AEL and FMR by their respective national weighted average (weighted on the unadjusted allocation under FCAS operating subsidy). The adjustment made to the FCAS component of the IHBG formula is then the new AELFMR factor divided by the national weighted average of the AELFMR (See § 1000.320).

3. The modernization component of FCAS is based on the national per unit modernization funding provided in FY 1996 to Indian Housing Authorities (IHAs). The per unit amount is determined by dividing the modernization funds by the total Low Rent, Mutual Help, and Turnkey III units operated by IHAs in 1996. A tribe's total Low Rent, Mutual Help, and Turnkey III units are multiplied times the per unit modernization amount. That amount is then multiplied times a local area cost adjustment factor for construction (e.g. the Total Development Cost) (See § 1000.320).

4. The construction adjustment factor is Total Development Cost (TDC) for the area divided by the weighted national average for TDC (weighted on the unadjusted allocation for modernization) (See § 1000.320).

5. After determining the total amount allocated under FCAS for each tribe, it is summed for every tribe. The national total amount for FCAS is subtracted from the Fiscal Year appropriation to determine the total amount to be allocated under the Need component of the IHBG formula.

6. The Need component of the IHBG formula is calculated using seven factors weighted as set forth in § 1000.324 as follows: 22 percent of the allocated funds will be allocated by a tribe's share of the total Native American households paying more than 50 percent of their income for housing living in the Indian tribe's formula area, 25 percent of the funds allocated under Need will be allocated by a tribe's share of the total Native American households overcrowded and or without kitchen or plumbing living in their formula area, and so on. The current national totals for each of the need variables will be distributed annually by HUD with the Formula Response Form (See § 1000.332). The national totals will change as tribes update information about their formula area and data for individual areas are challenged (See §§ 1000.334 and 1000.336). The Need component is then calculated by multiplying a tribe's share of housing need by a local area cost adjustment factor for construction (the Total Development Cost) (See § 1000.338).

7. No tribe in its first year of funding will receive less than $50,000 under the Need component of the formula. In subsequent allocations to a tribe, it will receive no less than $25,000 under the Need component of the formula. This increase in funding for the tribes receiving the minimum Need allocation is funded by a reallocation from all tribes receiving more than $50,000 under their Need component. This is necessary in order to keep the total allocation within the appropriation level. Such minimum Need allocations will only continue through FY 2002 (See § 1000.328).

8. A tribe's total grant is calculated by summing the FCAS and Need allocations. This preliminary grant is compared to how much a tribe received in FY 1996 for operating subsidy and modernization. If a tribe received more in FY 1996 for operating subsidy and modernization than they do under the IHBG formula, their grant is adjusted up to the FY 1996 level (See § 1000.340). Indian tribes receiving more under the IHBG formula than in FY 1996 "pay" for the upward adjustment for the other tribes by having their grants adjusted downward. Because many more Indian tribes have grant amounts above the FY 1996 level than those with grants below the FY 1996 level, each tribe contributes very little relative to their total grant to fund the adjustment.

Appendix B to Part 1000—IHBG Block Grant Formula Mechanisms

1. The Indian Housing Block Grant Formula consists of two components, the Formula Current Assisted Stock (FCAS) and Need. Therefore, the formula allocation before adjusting for the statutory requirement that a tribe's minimum grant will not be less than the tribe's FY 1996 Operating Subsidy and Modernization funding, can be represented by:

unadjGRANT = FCAS + NEED.

2. NAHASDA requires the current assisted stock be provided for before allocating funds based on need. Therefore, FCAS must be calculated first. FCAS consists to two components, Operating Subsidy (OPSUB) and Modernization (MOD) such that:

FCAS = OPSUB + MOD.

3. OPSUB consists of three main parts: Number of Low-Rent units; Number of Section 8 units; and Number of Mutual Help and Turnkey III units. Each of these main parts are adjusted by the FY 1996 national per unit subsidy, an inflation factor, and local area costs as reflected by the greater of the AEL factor or FMR factor. The AEL factor

as defined in § 1000.302 as the difference between a local area Allowable Expense Level (AEL) and the national weighted average for AEL. The FMR factor is also defined in § 1000.302 as the difference between a local area Fair Market Rent (FMR) and the national weighted average for FMR. So, expanding OPSUB gives:

OPSUB = [LR * LRSUB + (MH+TK) * HOSUB + S8 * S8SUB] * INF * AELFMR

Where:

LR = number of Low-Rent units.
LRSUB = FY 1996 national per unit average subsidy for Low-Rent units = $2,440.
MH+TK = number of Mutual Help and Turnkey III units.
HOSUB = FY 1996 national per unit average subsidy for Homeownership units = $528.
S8 = number of Section 8 units.
S8SUB = FY 1996 national per unit average subsidy for Section 8 units = $3,625.
INF = inflation adjustment determined by the Consumer Price Index for housing.
AELFMR = greater of AEL Factor or FMR Factor weighted by national average of AEL Factor and FRM Factor.
AEL FACTOR = AEL/NAAEL.
AEL = local Allowable Expense Level.
NAAEL = national weighted average for AEL.
FMR FACTOR = FMR/NAFMR.
FMR = local Fair Market Rent.
NAFMR = national weighted average for FMR.
NAAELFMR = national weighted average for greater of AEL Factor or FMR factor.

For estimating FY 1998 allocations:

NAAEL = 240.224.
NAFMR = 459.437.
NAAELFMR = 1.144.

4. MOD considers only the number of Low-Rent, and Mutual Help and Turnkey III units. Each of these are adjusted by the FY 1996 national per unit subsidy for modernization, an inflation factor and the local Total Development Costs relative to the weighted national average for TDC. So, expanding MOD gives us:

MOD = [LR + (MH+TK)] * SUB * INF * TDC/NATDC.

Where:

LR = number of Low-Rent units.
MH+TK = number of Mutual Help and Turnkey III units.
SUB = FY 1996 national per unit average subsidy for modernization.
INF = inflation adjustment determined by the Consumer Price Index for housing.
TDC = Local Total Development Costs defined in § 1000.302.
NATDC = weighted national average for TDC.

For estimating FY 1998 allocations:

SUB = $1,974.
NATDC = $103,828.

5. Now that calculation for FCAS is complete, we can determine how many funds will be available to allocate over the NEED component of the formula by calculating:

NEED FUNDS = APPROPRIATION—NATCAS.

Where:

APPROPRIATION = dollars provided by Congress for distribution by the IHBG formula.
NATCAS = summation of CAS allocations for all tribes.

For estimating FY 1998 allocations:

APPROPRIATION = $590 million.
NATCAS = $236,147,110.

6. Two iterations are necessary to compute the final Need allocation. The first iteration consists of seven weighted criteria that allocate need funds based on a tribe's population and housing data. This allocation is then adjusted for local area cost differences based on TDC relative to the national weighted average. This can be represented by:

NEED1 = [(0.11 * PER / NPER) + (0.13 * HHLE30 / NHHLE30)
+ (0.07 * HH30T50 / NHH30T50) + (0.07 * HH50T80 / NHH50T80)
+ (0.25 * OCRPR / NOCRPR) + (0.22 * SCBTOT / NSCBTOT)
+ (0.15 * HOUSHOR / NHOUSHOR)] * NEED FUNDS * (TDC/NATDC).

Where:

PER = American Indian and Alaskan Native (AIAN) persons.
NPER = national total of PER.
HHLE30 = AIAN households less than 30% of median income.
NHHLE30 = national total of HHLE30.
HH30T50 = AIAN households 30% to 50% of median income.
NHH30T50 = national total of HH30T50.
HH50T80 = AIAN households 50% to 80% of median income.
NHH50TO80 = national total of HH50T80.
OCRPR = AIAN households crowded or without complete kitchen or plumbing.
NOCRPR = national total of OCRPR.
SCBTOT = AIAN households paying more than 50% of their income for housing.
NSCBTOT = national total SCBTOT.
HOUSHOR = AIAN households with an annual income less than or equal to 80% of formula median income reduced by the combination of current assisted stock and units developed under NAHASDA.
NHOUSHOR = national total of HOUSHOR.
TDC = Local Total Development Costs defined in § 1000.302.
NATDC = weighted national average for TDC.

For estimating FY 1998 allocations:

NPER = 953,254.
NHHLE30 = 78,496.
NHH30T50 = 52,514.
NHH50T80 = 59,793.
NOCPR = 80,581.
NSCBTOT = 34,080.
NHOUSHOR = 23,840.
NEEDFUNDS = $353,852,890.
NATDC = $104,956.

7. The second iteration in computing Need allocation consists of adjusting the Need allocation computed above to take into account the $50,000 baseline funding for the first year only and then $25,000 per year for each year thereafter through FY 2002. So, if in the first Need computation you have less than the minimum Needs funding level, your Need allocation will go up. But, if you have more than the minimum Needs funding level, your Need allocation will go down to adjust for the other Need allocations going up. We can represent this by:

If NEED1 is less than MINFUNDING, then NEED = MINFUNDING.
If NEED1 is greater than or equal to MINFUNDING, then NEED = NEED1—{UNDERMIN$ * [(NEED1—MINFUNDING) / OVERMIN$]}.

Where:

MINFUNDING = minimum needs funding level.
UNDERMIN$ = for all tribes with NEED1 less than MINFUNDING, sum of the differences between MINFUNDING and NEED1.
OVERMIN$ = for all tribes with NEED1 greater than or equal to MINFUNDING, sum of the difference between NEED1 and MINFUNDING.

For estimating FY 1998 allocations:

MINFUNDING = $50,000.
UNDERMIN$ = $4,919,224.
OVERMIN$ = $335,022,114.

8. Now we have computed values for FCAS and NEED. This final step in computing the grant allocation is to adjust the sum of FCAS and NEED to reflect the statutory requirement that a tribe's minimum grant will not be less than that tribe's FY 1996 Operating Subsidy and Modernization funding. So, before adjusting for the minimum grant compute:

unadjGRANT = FCAS + NEED

where both FCAS and NEED are calculated above.

9. Now, apply test to determine if the GRANT (unadjusted for FY 1996) levels is greater than or equal to FY 1996 Operating Subsidy and Modernization funding.

Let TEST = unadjGRANT—OPMOD96 .
If TEST is less than 0, then GRANT = OPMOD96.
If TEST is greater than or equal to 0, then GRANT = unadjGRANT—[UNDER1996 * (TEST / OVER1996)].

Where:

OPMOD96 = funding received by tribe in FY 1996 for Operating Subsidy and Modernization
UNDER1996 = for all tribes with TEST less than 0, sum of the absolute value of TEST.
OVER1996 = for all tribes with TEST greater than or equal to 0, sum of TEST.

For estimating FY 1998 allocations:

UNDER1996 = $5,378,558.
OVER1996 = $326,095,837.
GRANT is the approximate grant amount in any given year for any given tribe.

Dated: March 6, 1998.

Kevin Emanuel Marchman,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 98–6283 Filed 3–11–98; 8:45 am]

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federal register

Thursday
March 12, 1998

Part VII

The President

Memorandum of March 5, 1998—Delegation of Authority With Respect to Reporting Obligations Regarding Counterterrorism and Antiterrorism Programs and Activities

Federal Register
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Title 3—

The President

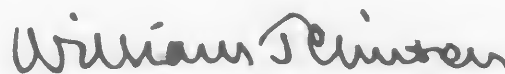
Memorandum of March 5, 1998

Delegation of Authority With Respect to Reporting Obligations Regarding Counterterrorism and Antiterrorism Programs and Activities

Memorandum for the Director of the Office of Management and Budget

By the authority vested in me by the Constitution and laws of the United States of America, including section 301 of title 3 of the United States Code, and section 1051(b) of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85), I hereby delegate to you the reporting function vested in me by section 1051(b) of that Act.

You are authorized and directed to publish this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington, March 5, 1998.

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Thursday
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Part VIII

The President

Executive Order 13077—Further Amendment to Executive Order 13010, Critical Infrastructure Protection

Federal Register
Vol. 63, No. 48
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Presidential Documents

Title 3—

The President

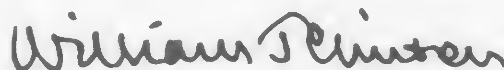
Executive Order 13077 of March 10, 1998

Further Amendment to Executive Order 13010, Critical Infrastructure Protection

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to provide for the review of the report by the President's Commission on Critical Infrastructure Protection, and appropriate implementation, it is hereby ordered that Executive Order 13010, as amended, is further amended as follows:

Section 6. Section 6(f), as amended, shall be further amended by deleting "March 15, 1998" and inserting "September 30, 1998" in lieu thereof.

Section 7. Section 7(a) shall be amended by deleting "March 15, 1998" and inserting "September 30, 1998" in lieu thereof.



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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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LIST OF PUBLIC LAWS

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The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/su_docs/. Some laws may not yet be available.

S. 916/P.L. 105–161

To designate the United States Post Office building located at 750 Highway 28 East in Taylorsville, Mississippi, as the "Blaine H. Eaton Post Office Building". (Mar. 9, 1998; 112 Stat. 28)

S. 985/P.L. 105–162

To designate the post office located at 194 Ward Street in Paterson, New Jersey, as the "Larry Doby Post Office". (Mar. 9, 1998; 112 Stat. 29)

Last List March 10, 1998

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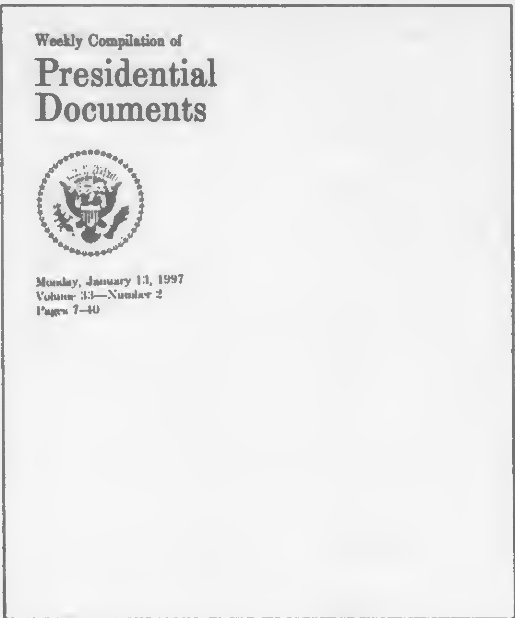
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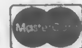
Charge your order. It's Easy! 

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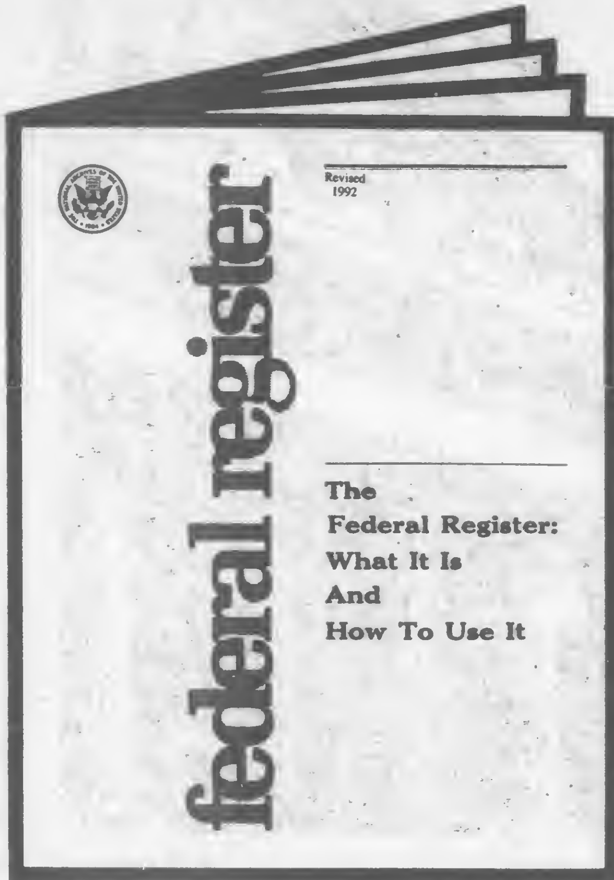

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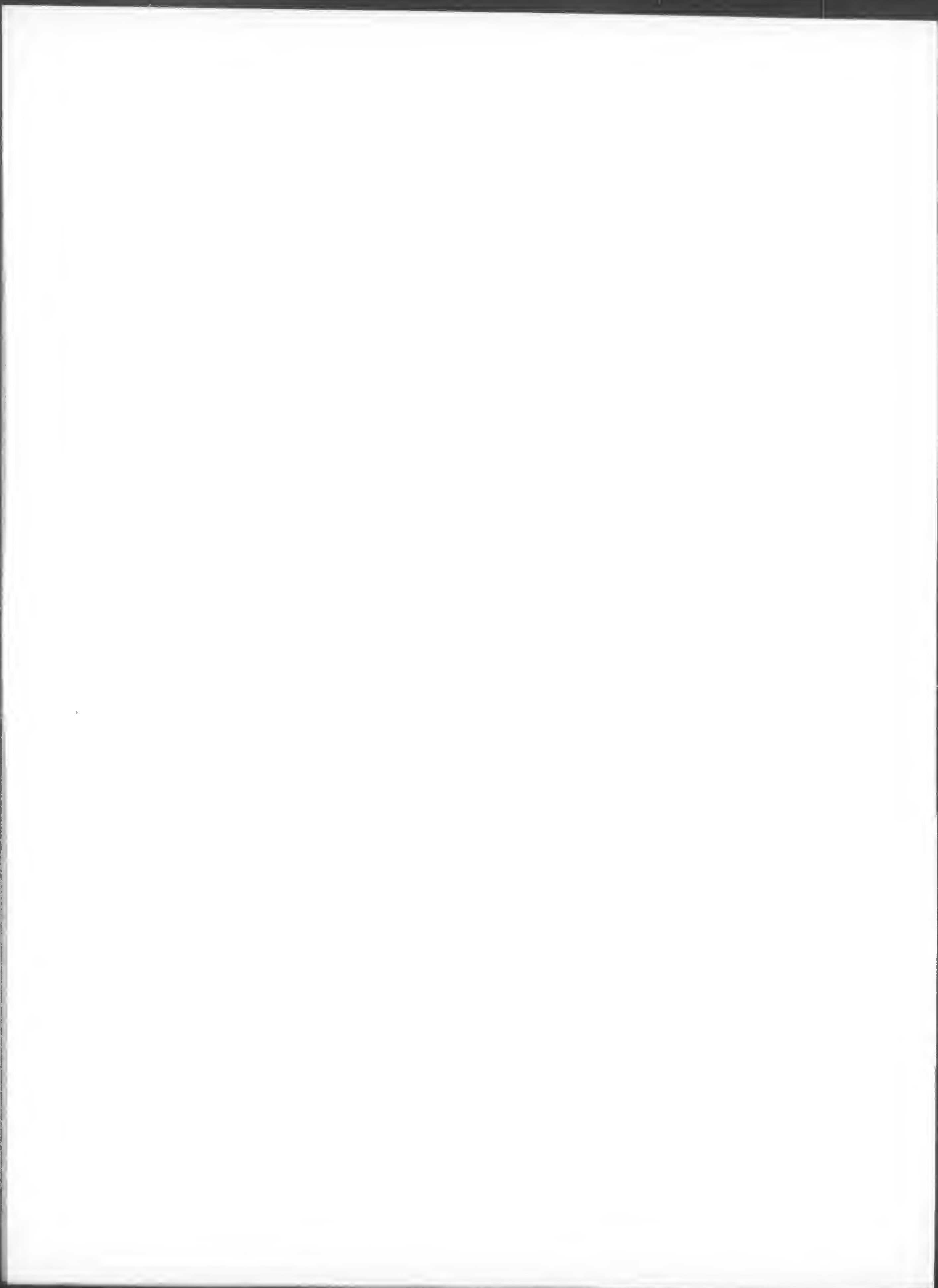

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