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Presidential Documents

Title 3—

The President

Proclamation 7330 of July 14, 2000

Captive Nations Week, 2000

By the President of the United States of America

A Proclamation

When President Eisenhower signed the first Captive Nations Week Proclamation in 1959, the fate of freedom around the world was still far from certain. While the United States and our Allies had defeated Adolf Hitler and the Axis Powers in World War II, a partitioned Berlin stood as a bleak symbol of a divided Europe, and millions throughout Asia, Africa, and South America continued to suffer under communist and authoritarian regimes.

Today, as we embark on a new century, democracy is on the rise across the globe. More than half the world's people live under governments of their own choosing. The Iron Curtain has been lifted, allowing the light of liberty into the nations of Central and Eastern Europe. Democratic rule has swept through the countries of Latin America, replacing abusive military regimes with elected civilian governments. And in Africa and Asia, many nations have finally gained independence.

This rising tide of freedom is no accident of history; it was achieved through the courage, determination, and sacrifice of millions of men and women here in America and in captive nations around the world. Whether speaking out in the halls of the United Nations for those silenced by oppressive regimes, standing guard through frigid nights on the DMZ in Korea, or sharing the fruits of liberty through the Peace Corps, generations of Americans have made sure that our country is an ally and source of hope for all people yearning for freedom and dignity. Around the globe, freedom-loving people have risked and often sacrificed their lives to end oppression, whether uniting against tyranny through the Solidarity movement in Poland or defying intimidation and violence to vote in free elections in El Salvador and Nicaragua.

The tide keeps turning toward democracy, human rights, and free market economies. Yet there remain tyrants who use brutality, ethnic cleansing, guns, and prisons to silence voices of reason and tolerance within their countries. As a Nation born of the ideals of freedom, justice, and human dignity, America has a solemn obligation to continue speaking out on behalf of these still-captive nations and their people and lend them our support. We draw strength for this task from the knowledge that our cause is right and inspiration from the people of former captive nations who are flourishing today.

The Congress, by Joint Resolution approved July 17, 1959 (73 Stat. 212), has authorized and requested the President to issue a proclamation designating the third week in July of each year as "Captive Nations Week."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim July 16 through July 22, 2000, as Captive Nations Week. I call upon the people of the United States to observe this week with appropriate ceremonies and activities and to rededicate ourselves to the principles of freedom, human rights, and self-determination for all the peoples of the world.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of July, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.

William J. Clinton

[FR Doc. 00–18425
Filed 7–18–00; 8:45 am]
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Rules and Regulations

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 550

RIN 3206–AJ16

Pretax Allotments for Health Insurance Premiums

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to enable employees to pay Federal Employees Health Benefits (FEHB) premiums through an allotment from the employee's pay to the employing agency. Use of this allotment mechanism allows FEHB premiums to be paid with pre-tax dollars, as provided under section 125 of the Internal Revenue Code. These allotment regulations are connected to a separate interim rule, published in this issue of the **Federal Register**, which will amend the FEHB regulations to establish the premium conversion program.

DATES: This interim rule is effective September 18, 2000. Comments must be received on or before September 18, 2000.

ADDRESSES: Comments may be sent or delivered to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415–8200 (FAX: (202) 606–0824 or EMAIL: *payleave@opm.gov).*

FOR FURTHER INFORMATION CONTACT: Bryce Baker, (202) 606–2858 or FAX: (202) 606–0824 or EMAIL: *payleave@opm.gov.*

SUPPLEMENTARY INFORMATION: At the President's direction, OPM will implement a health insurance premium conversion plan for employees participating in the FEHB Program. The premium conversion plan is part of a "cafeteria plan" under Section 125 of the Internal Revenue Code.

The premium conversion plan will take effect on October 1, 2000. Under the plan, employees' FEHB premium withholdings are treated as a pre-tax salary reduction. Because premium conversion lowers employees' taxable income, it reduces their tax burden. The reduction in taxable income reduces the base for Federal income tax, Social Security and Medicare taxes, and, in most States and localities, State and local taxes based on income.

Employees in the Executive Branch of the Federal Government who are participating in the Program and whose pay is issued by an Executive Branch agency, will automatically have their salaries reduced and their health benefit premiums paid under the premium conversion plan. Also, individuals enrolled in the FEHB Program who are employed outside the Executive Branch, or whose pay is not issued by an agency of the Executive Branch, will have their salaries reduced and their FEHB premiums paid under our premium conversion plan if their employer, in coordination with their payroll office, agrees to offer participation in the plan. However, any individual enrolled in the FEHB Program who does not want to participate in premium conversion may waive participation, subject to certain limitations.

Premium conversion has no effect on: statutory pay provisions or the General Schedule; the amount of any employee's health insurance premium; or on the amount of the Government share towards the FEHB Program premium on behalf of any employee. Base pay for retirement, life insurance and Thrift Savings Plan purposes is unaffected.

To ensure that the premium conversion plan qualifies for pre-tax treatment of health insurance premiums, OPM is amending its allotment regulations at 5 CFR part 550, subpart C. Each employee participating in premium conversion will make an allotment to his or her employing agency in the amount of the employee share of the FEHB premium. The agency will then use that amount to pay the employee's FEHB premium. The allotment will be automatic unless the employee elects to waive premium conversion.

We are also amending the allotment regulations to make clear that except where there is an authority specific to Federal employees (i.e., a statute, Executive order, Presidential directive, or OPM regulations) agencies may not authorize allotments for the purpose of reducing taxable income. For example, a salary reduction for a transportation fringe benefit under 26 U.S.C. 132(f)(4) is another type of pre-tax allotment that is permitted by 5 U.S.C. 7905(b) and Executive Order 13150.

OPM is issuing a separate interim rule amending its FEHB regulations to establish the premium conversion program effective in October 2000. No FEHB premium may be allotted except as allowed under the premium conversion program. Therefore, no allotment of FEHB premiums is permitted until the first day of the first pay period beginning on or after October 1, 2000.

Waiver of Notice of Proposed Rulemaking

In accordance with section 553(b)(3)(B) of title 5 of the U.S. Code, I find that good cause exists for waiving the general notice of proposed rulemaking. An opportunity for public comment prior to issuing this rule is unnecessary and contrary to the public interest. In developing this regulation, OPM worked extensively with affected stakeholders. OPM followed the Internal Revenue Code to develop a plan document and regulations that comply with tax law and parallel the practices of private sector employers. It is necessary that payroll offices begin work on systems changes so that this benefit will be available at the start of Fiscal Year 2001—a logical time in terms of Federal agency budget and payroll administration.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect tax withholdings for Federal employees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 550

Administrative practice and procedure, Claims, Government employees, Wages.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending 5 CFR part 550 as follows:

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart C—Allotments and Assignments From Federal Employees

1. The authority citation for subpart C of part 550 continues to read as follows:

Authority: 5 U.S.C. 5527; E.O. 10982, 3 CFR 1959–1963 Comp., p. 502.

§ 550.301 [Amended]

2. Section 550.301 is amended by removing the definition of *pay*.

3. In § 550.311:

A. Paragraph (a) is amended by removing the period at the end of paragraph (a)(7) and adding a semicolon in its place;

B. A new paragraph (a)(8) is added; and

C. Paragraph (b) is revised.

The addition and revision read as follows:

§ 550.311 Authority of agency.

(a) * * *

(8) An allotment to the employing Federal agency to pay an employee's share of Federal Employees Health Benefits premiums, consistent with part 892 of this chapter.

(b) In addition to those allotments provided for in paragraph (a) of this section, an agency may permit an employee to make an allotment for any legal purpose deemed appropriate by the head of the agency. This authority does not extend to allotments to the paying agency for the purpose of reducing taxable income, except where there is an authority specific to Federal employees (statute, Executive order, Presidential directive, or OPM regulations) permitting agencies to provide the pretax benefit in question.

* * * * *

4. In § 550.312, paragraph (f) is added to read as follows:

§ 550.312 General limitations.

* * * * *

(f) Notwithstanding the requirements in paragraphs (a) and (c) of this section, an agency may make an allotment for an employee's share of health benefits premiums under § 550.311(a)(8) without specific authorization from the employee, unless the employee specifically waives such allotment. Agency procedures for processing employee waivers must be consistent with procedures established by the Office of Personnel Management. (See part 892 of this chapter.)

5. Section 550.313 is added to read as follows:

§ 550.313 Order of precedence when there is insufficient pay to cover all deductions.

(a) Except as provided in paragraph (b) of this section, an agency must deduct allotments from any net pay remaining after applying all deductions authorized by law, including any deductions for retirement and other benefits, Social Security and income tax withholdings, collection of a debt to the Government via levy or salary offset, and garnishment. If there is insufficient net pay to cover all of the employee's allotments, the agency must deduct allotments in the order specified under its established rules of precedence.

(b) An agency must deduct an allotment for an employee's share of health benefits premiums under § 550.311(a)(8) before deducting any type of tax withholding.

[FR Doc. 00–18232 Filed 7–14–00; 3:19 pm]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 890 and 892

RIN 3206–AJ17

Health Insurance Premium Conversion

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to enable employees to pay Federal Employees Health Benefits (FEHB) premiums with pre-tax dollars, as provided under section 125 of the Internal Revenue Code. These regulations establish the basic rules under which this premium conversion plan will operate, beginning October 2000.

DATES: This interim rule is effective September 18, 2000. Comments must be received on or before September 18, 2000.

ADDRESSES: Send written comments to Abby L. Block, Chief, Insurance Policy and Information Division, Office of Insurance Programs, Retirement and Insurance Service, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415–3666; or deliver to OPM, Room 3425, 1900 E Street NW., Washington, DC; or FAX to (202) 606–0633.

FOR FURTHER INFORMATION CONTACT: Laurie Bodenheimer, (202) 606–0004, or email to *lrbodenh@opm.gov*.

SUPPLEMENTARY INFORMATION:

Background

At the President's direction, OPM will implement a health insurance premium conversion plan for employees participating in the FEHB Program. The premium conversion plan is part of a "cafeteria plan" under Section 125 of the Internal Revenue Code. OPM will execute a separate plan document to comply with Section 125 requirements and will make that document available on OPM's website: *www.opm.gov*. OPM is also issuing separate instructions to personnel and payroll offices.

The premium conversion plan will take effect on October 1, 2000. Under the plan, employees' health benefit premium withholdings are treated as a pre-tax salary deduction. Because premium conversion lowers employees' taxable income, it reduces their tax burden. The reduction in taxable income reduces the base for Federal income tax, Social Security and Medicare taxes, and, in most States and localities, State and local taxes based on income.

While most Federal employees are currently not covered by a premium conversion plan, the Federal Judiciary, the United States Postal Service, and some smaller Executive Branch agencies with independent compensation-setting authority have already implemented their own premium conversion plans. Employees of those entities will not be covered by the premium conversion plan described here.

All other employees in the Executive Branch of the Federal Government who are participating in the FEHB Program, and whose pay is issued by an Executive Branch agency, will automatically have their salary reduced (through a Federal allotment) and their FEHB premiums paid under the premium conversion plan. Also, individuals enrolled in the FEHB Program who are employed outside the Executive Branch, or whose pay is not issued by an agency of the Executive Branch, will have their salaries reduced and their FEHB premiums paid under our premium conversion plan if their employer, in coordination with their payroll office, agrees to offer participation in the plan. However, any individual enrolled in the FEHB

Program who does not want to participate in premium conversion may waive participation, subject to the limitations in these regulations.

Premium conversion has no effect on: statutory pay provisions or the General Schedule; the amount of any employee's health insurance premium; or the amount of the Government share towards the FEHB premium on behalf of any employee. Base pay for retirement, life insurance and Thrift Savings Plan purposes is unaffected.

To ensure that the premium conversion plan qualifies for pre-tax treatment of health insurance premiums, OPM is also amending its allotment regulations at 5 CFR part 550, subpart C in a separate interim rule issued simultaneously with this rule. Each employee participating in premium conversion will make an allotment to his or her employing agency in the amount of the employee share of the FEHB insurance premium. The agency will then use that amount to pay the employee's premium. The allotment will be automatic unless the employee elects to waive premium conversion.

Waiver of Notice of Proposed Rulemaking

In accordance with section 553(b)(3)(B) of title 5 of the U.S. Code, I find that good cause exists for waiving the general notice of proposed rulemaking. An opportunity for public comment prior to issuing this rule is unnecessary and contrary to the public interest. In developing this regulation, OPM worked extensively with affected stakeholders. OPM followed the Internal Revenue Code to develop a plan document and regulations that comply with tax law and parallel the practices of private sector employers. It is necessary that payroll offices begin work on systems changes so that this benefit will be available at the start of Fiscal Year 2001—a logical time in terms of Federal agency budget and payroll administration.

Regulatory Planning and Review

This regulation has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866, "Regulatory Planning and Review." Because this regulation has an economic impact exceeding $100 million annually it is defined by that Executive Order as being "economically significant." It is classified as a major regulation in accordance with the Congressional Review Act because of its economic impact.

Analysis of Costs and Benefits

In OPM's view, the benefits of this regulation substantially outweigh the costs. Under this regulation, Federal employees with health insurance through the FEHB Program will begin paying their insurance premiums with pre-tax dollars, similar to how millions of private sector employees currently pay their health insurance premiums. The benefits of this change in tax status are significant: the Federal Government will become a more competitive employer and the tax liability of Federal employees will decrease.

Costs of this regulation include a start-up cost in the first year to implement the program; a decrease in Medicare, Social Security and income taxes paid by Federal employees; and a decrease in Federal employer payments to the Medicare and Social Security Trust Funds. The benefits and costs of this regulation are described in more detail in the following sections.

Statement of Need for Proposed Action

In his 2001 Budget, the President directed OPM to implement health insurance premium conversion. Premium conversion will bring the Federal Government in line with private sector practices regarding employee payments of health insurance premiums. Over 60 million private sector employees with employment based health insurance pay their premiums with pre-tax dollars. This regulation will take advantage of current law to allow over 1.5 million Federal employees, representing more than 3 million lives including dependents, to have the same benefit as private sector workers. As a result, the Federal Government will become a more competitive employer and health insurance will become more affordable for Federal employees.

Examination of Alternative Approaches

In order to implement the President's premium conversion directive, regulatory action is necessary. In developing this regulation, OPM considered various ways to put premium conversion into operation. OPM also hired a contractor with substantial experience in employee benefits tax compliance to write a plan document that conforms to IRS Section 125 rules.

OPM met with those Federal agencies that have already implemented a premium conversion plan: the U.S. Postal Service, the Federal Judiciary, and some small Executive Branch agencies with independent compensation-setting authority. It studied the range of implementation issues that these organizations encountered, from payroll system changes and educational outreach to complying with the tax code, and identified the key issues that OPM would need to address. OPM has developed these regulations by using the "best practices" of other employers in terms of premium conversion program development and implementation.

Benefits Analysis

Over the last few decades, the U.S. labor market has become increasingly competitive. Unemployment rates have hovered at about 4 percent, the lowest rates since 1970. Labor force participation rates are at all time highs—67 percent in recent months, up from around 60 percent in 1970. Given these tight labor market conditions, the Federal Government, like all employers, must use every means possible to attract and retain high quality employees. Currently, the Federal Government is at a competitive disadvantage in the labor market because its employees pay their health insurance premiums with after-tax dollars. In the private sector, many employees pay their health insurance premiums with pre-tax dollars, resulting in reduced tax liabilities and greater take-home pay. This regulation will eliminate the Federal Government's competitive disadvantage in this area, giving it an additional tool to attract and retain high quality workers and increase employee satisfaction.

Another advantage of this regulation is that it lowers the tax liability of Federal employees. Under this regulation, Federal employees will enjoy the same benefit as private sector employees and no longer will pay income tax, Social Security tax or Medicare tax on their health insurance premium dollars. This tax cut increases the take-home pay of Federal workers; Federal workers enrolled in the FEHB Program can save over $430 per year on average.

Cost Analysis

The costs associated with this regulation are the start-up costs to implement the premium conversion program; the decrease in Medicare, Social Security, and income taxes paid by Federal employees; and the decrease in Federal employer payments to the Medicare and Social Security Trust Funds.

The start-up costs of this regulation will be incurred in the first year of the program as individual Federal Government Agencies update their payroll systems to accommodate

premium conversion and as OPM and individual Agencies educate the Federal employee population, including benefits officers, about the new program. OPM estimates the start-up cost to be $3 million in 2001, with $2.5 million coming from Agency implementation costs and the remaining $.5 million from educational outreach programs such as information pamphlets for employees and benefits officers. The cost estimate is based on an assumption that each of the 164 discrete non-Postal payroll systems would incur $15,000 in spending on systems analysis, programming, testing, and overhead.

In Fiscal Year 2001, the tax benefit to Federal employees caused by premium conversion is estimated to be about $670 million; $550 million in Federal income taxes, $85 million in Social Security taxes, and $35 million in Medicare taxes. The decrease in Federal employer payments to the Medicare and Social Security Trust Funds is estimated to be $85 million and $35 million dollars respectively. Assuming that health insurance premiums will continue to increase at recent rates, the change in tax benefits and Federal employer payments from premium conversion is expected to grow at roughly a proportional rate in each subsequent year.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and which are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a rule is not likely to have a significant economic impact on a substantial number of small entities, the RFA requires that the agency present an initial regulatory flexibility analysis at the time of the publication of the rulemaking describing the impact of the rule on small entities and seeking public comment on such impact. Small entities include small businesses, organizations and governmental jurisdictions.

OPM has determined that this rule will not have a significant economic impact on a substantial number of small entities. The regulation does not impact small entities.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, this interim-final rule does not include any Federal mandate that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more.

Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determine that this final rule will not have any negative impact on the rights, roles, and responsibilities of State, local or Tribal governments.

List of Subjects

5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Reporting and recordkeeping requirements, Retirement.

5 CFR Part 892

Administrative practice and procedure, Government employees, Health insurance, Wages, Taxes.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending 5 CFR part 890 and adding part 892 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.303 also issued under 50 U.S.C. 403 p, 22 U.S.C. 4069c and 4069c-1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; § 890.102 also issued under sections 11202(f), 11232(e), and 11246(b) and (c) of Pub. L. 105–33, 111 Stat. 251; and section 721 of Pub. L. 105–261, 112 Stat. 2061.

2. Amend § 890.301 to revise the heading and paragraph (e)(1) to read as follows:

§ 890.301 Opportunities for employees who are not participants in premium conversion to enroll or change enrollment; effective dates.

* * * * *

(e)(1) *Change to self only.* (1) An employee may change the enrollment from self and family to self only at any time, except that an employee participating in health insurance premium conversion as provided in part 892 of this chapter may make this change only during an open season or on account of and consistent with a qualifying life event as defined in § 892.101 of this chapter that affects eligibility for coverage.

* * * * *

3. Amend § 890.304 to revise paragraph (d)(1) to read as follows:

§ 890.304 Termination of enrollment.

* * * * *

(d)(1) An enrollee may cancel his or her enrollment at any time by filing an appropriate request with the employing office except that an employee participating in health insurance premium conversion as provided in part 892 of this chapter may make this change only during an open season or on account of and consistent with a qualifying life event defined in § 892.101 of this chapter that affects eligibility for coverage. The cancellation takes effect on the last day of the pay period in which the appropriate request canceling the enrollment is received by the employing office.

* * * * *

4. Add part 892 to read as follows:

PART 892—FEDERAL FLEXIBLE BENEFITS PLAN: PRE-TAX PAYMENT OF HEALTH BENEFITS PREMIUMS

Subpart A—Administration and General Provisions

Sec.

Subpart B—Eligibility and Participation

Authority: 5 U.S.C. 8913; 26 U.S.C. 125.

Subpart A—Administration and General Provisions

§ 892.101 Definitions.

Days mean calendar days.

Dependent means a family member who is both eligible for coverage under the FEHB Program and a dependent as defined in section 152 of the Internal Revenue Code.

FEHB Program means the Federal Employees Health BenefitsProgram described in 5 U.S.C. 8901.

Open Season means the period of time each year as described in § 890.301(f) of this chapter when all individuals eligible for FEHB coverage have the opportunity to enroll or change their enrollment. These changes become effective with the first pay period that begins in the following year. For additional open seasons authorized by OPM, the effective date is specified.

OPM means the Office of Personnel Management.

Qualifying life event means events that may permit election changes as described in Treasury regulations at 26 CFR 1.125–4 and includes the following:

(1) Addition of a dependent;
(2) Birth or adoption of a child;
(3) Changes in entitlement to Medicare or Medicaid for you, your spouse or dependent;
(4) Change in work site;
(5) Change in your employment status or that of your spouse or Dependent from either full-time to part-time, or the reverse;
(6) Death of your spouse or Dependent;
(7) Divorce or annulment;
(8) Loss of a Dependent;
(9) Marriage;
(10) Significant change in the health coverage of you or your spouse related to your spouse's employment;
(11) Start or end of an unpaid leave of absence by you or your spouse; or
(12) Start or end of your spouse's employment.

§ 892.102 What is premium conversion and how does it work?

Premium conversion is a method of reducing your taxable income by the amount of your contribution to your FEHB insurance premium. If you are a participant in the premium conversion plan, Section 125 of the Internal Revenue Code allows you to reduce your salary (through an employer allotment) and provide that portion of your salary back to your employer. Instead of being paid to you as taxable income, this allotted amount is used to purchase your FEHB insurance for you. The effect is that your taxable income is reduced. Because taxable income is reduced, the amount of tax you pay is reduced. You save on Federal income tax, Social Security and Medicare tax and in most States and localities, State and local income taxes.

§ 892.103 What can I do if I disagree with my agency's decision about my pre-or post-tax election?

You may use the reconsideration procedure set out at § § 890.104 of this chapter to request an agency to reconsider its initial decision affecting your participation in the premium conversion plan.

Subpart B—Eligibility and Participation

§ 892.201 Who is covered by the premium conversion plan?

(a) All employees in the Executive Branch of the FederalGovernment who are participating in the FEHB Program (as described in 5 U.S.C.8901), and whose pay is issued by an agency of the ExecutiveBranch of the Federal Government, are automatically covered by the premium conversion plan. Certain reemployed annuitants may be considered employees for purposes of premium conversion, as described in subpart D of this part.

(b) Employees of organizations that have established a premium conversion plan under separate authority prior to October 2000 may not participate in the premium conversion plan described here because they are already covered by their employing agency's plan.

(c) Individuals enrolled in FEHB who are not employees of the Executive Branch of the Federal government or are not employees of the Federal government, will be covered by the premium conversion plan if their employer signs an adoption agreement that is accepted by OPM.

(d) Individuals enrolled in FEHB who are appointed by an agency in the Executive Branch, but whose pay is not issued by that agency, will be covered by the premium conversion plan if the entity that makes their FEHB contribution signs an adoption agreement that is accepted by OPM.

(e) Individuals may waive premium conversion by filing a waiver form with their employer in accordance with this part.

§ 892.202 Are retirees eligible for the premium conversion plan?

No, only current employees who are enrolled in the FEHBProgram are covered by the premium conversion plan. Former employees are not eligible. If you are a reemployed annuitant, see subpart D of this part.

§ 892.203 When will my premium conversion begin?

Your salary reduction (through a Federal allotment) and pre-tax benefit become effective with the first day of the first pay period beginning on or after October 1, 2000, if you are employed in a covered Executive Branch agency as described in § 892.201(a). Otherwise, your salary reduction (through a Federal allotment) and pre-tax benefit will be effective on the first day of the first pay period beginning on or after the date that your employer officially adopts the premium conversion plan (see § 892.201(c), (d)).

§ 892.204 How do I waive participation in premium conversion before the benefit first becomes effective?

You must file a waiver form by the date set by your employing office, but not later than the day before the effective date of coverage. The waiver form is available from your employing office.

§ 892.205 May I waive participation in premium conversion after the initial implementation?

Yes, but the opportunity to waive premium conversion is limited. You may waive premium conversion:

(a) During the annual FEHB open season. The effective date of the waiver will be the first day of the first pay period that begins in the following calendar year;

(b) At the same time as you sign up for FEHB when first hired or hired as a reemployed annuitant. Employees who leaveFederal service and are rehired after a three-day break in service or in a different calendar year also may waive;

(c) In conjunction with a change in FEHB enrollment, on account of and consistent with a qualifying life event (see § 892.101); or

(d) When you have a qualifying life event and the waiver is on account of and consistent with that qualifying life event(even if you do not change your FEHB enrollment). You have 60 days after the qualifying life event to file a waiver with your employer. The waiver is effective on the first day of the pay

period following the date your employer receives the waiver.

§ 892.206 Can I cancel my waiver and participate in premium conversion?

Yes, you may cancel a waiver and participate in premium conversion if:

(a) You have a qualifying life event; the change in FEHB coverage is consistent with the qualifying life event; and you complete an election form to participate in premium conversion within 60 days after the qualifying life event; or

(b) You cancel your waiver during an open season, including an extended open season authorized by OPM.

§ 892.207 Can I make changes to my FEHB enrollment while I am participating in premium conversion?

Generally, you can make changes to your FEHB enrollment for the same reasons and with the same effective dates listed in § 890.301 of this chapter. However, if you are participating in premium conversion there are two exceptions: you must have a qualifying life event to change from self-and-family enrollment to self-only enrollment or to drop FEHB coverage entirely. (See § 892.209 and § 892.210.) Your change in enrollment must be consistent with and correspond to your qualifying life event as described in § 892.101. These limitations only apply to changes you may wish to make outside open season.

§ 892.208 Can I change from self-and-family enrollment in FEHB to self-only enrollment at any time?

If you are participating in premium conversion you may change your FEHB enrollment from self-and-family to self-only:

(a) During the annual open season; or

(b) Within 60 days after you have a qualifying life event.Your change in enrollment must be consistent with and correspond to your qualifying life event. For example, if you get divorced, changing to self-only would be consistent with that qualifying life event. If you adopt a child, a change from self-only to self-and-family coverage would also be consistent with that qualifying life event.

§ 892.209 Can I cancel FEHB coverage at any time?

If you are participating in premium conversion you may cancel your FEHB coverage:

(a) During the annual open season; or

(b) Within 60 days after you have a qualifying life event.Your cancellation of coverage must be consistent with and correspond to your qualifying life event. For example, if you get married and your spouse is employed by a company that provides health insurance for you, then canceling FEHB coverage would be consistent with that qualifying life event. If you adopt a child, canceling coverage would not be consistent with that qualifying life event.

§ 892.210 Does premium conversion change the effective date of an FEHB enrollment, change in enrollment, or cancellation of enrollment?

No. If you are participating in premium conversion, the effective date of an FEHB enrollment, change in enrollment, or cancellation of enrollment is the same effective date as provided in § 890.301 of this chapter.

§ 892.211 What happens if I go on leave without pay (LWOP)?

(a) Your commencement of LWOP is a qualifying life event as described in § 892.101. You may change your premium conversion election (waive if you now participate, or participate if you now waive).

(b)(1) You may continue your FEHB coverage by agreeing in advance of LWOP to one of the payment options described in paragraphs (b)(2), (b)(3), or (b)(4) of this section.

(2) *Pre-pay.* Prior to commencement of your LWOP you may pay the amount due for your share of your FEHB premium during your LWOP period, if your employing agency, at its discretion, allows you to do so.Contributions under the pre-pay option may be made through premium conversion on a pre-tax basis. Alternatively, you may pre-pay premiums for the LWOP period on an after-tax basis.

(3) *Direct pay.* Under the direct pay option, you may pay your share of your FEHB premium on the same schedule as payments would be made if you were not on LWOP, as described in § 890.502(b) of this chapter. You must make the premium payments directly to your employing agency. The payments you make under the direct pay option are not subject to premium conversion, and are made on an after-tax basis.

(4) *Catch-up.* Under the catch-up option, you must agree in advance of the LWOP period that: you will continue FEHB coverage while on LWOP; your employer will advance your share of your FEHB premium during your LWOP period; and you will repay the advanced amounts when you return from LWOP. (Described in § 890.502(b) of this chapter.) Your catch-up contributions may be made through premium conversion.

(5) If you remain in FEHB upon your return from LWOP, your catch-up premiums and current premiums will be paid at the same time.

(c) Your return from LWOP constitutes a qualifying life event as described in § 892.101. You may change your premium conversion election (waive if you now participate, or participate if you now waive). The election you choose upon return from LWOP will apply to your current as well as your catch-up premiums.

Subpart C—Contributions and Withholdings

§ 892.301 How do I pay my premium?

As a participant in premium conversion, instead of having your premium withheld from after-tax salary, your salary will be reduced (through a Federal allotment) by the amount equal to yourFEHB premium, which you will allot to your agency. The allotment from salary satisfies the FEHB premium payment requirement of 5U.S.C. 8906. Your employer is authorized to accept this allotment under § 550.311(a)(8) and § 550.312 of this chapter or, for employers not subject to those regulations, a similar mechanism.Your agency will use the allotment to pay your share of your FEHB premium. This will reduce your taxable income as described in § 892.102.

§ 892.302 Will the Government contribution continue?

Yes, your employer will still pay the same share of your premium as provided in the Federal Employees Health Benefits Act, and § 890.501 of this chapter. Employee allotments do not count toward the Government's statutory maximum contribution.

§ 892.303 Can I pay my premiums directly by check under the premium conversion plan?

No, your employer must take your contribution to your FEHB premium from your salary to qualify for pre-tax treatment.

Subpart D—Reemployed Annuitants

§ 892.401 Am I eligible for premium conversion if I retire and then come back to work for the Federal Government?

(a) If you are a retired individual enrolled in FEHB who is receiving an annuity and you are reemployed in a position that conveys FEHB eligibility and is covered by the premium conversion plan, you are automatically covered by premium conversion, unless you waive participation as described in § 892.205.

(b)(1) If you do not waive premium conversion, your FEHB coverage will be transferred to your employing agency, and your employing agency will assume responsibility for contributing the

government share of your FEHB coverage. Your coverage will be based on your status as an active employee and your employing agency will deduct your premiums from your salary.

(2) If you elect to waive participation in premium conversion, you will keep your FEHB coverage as an annuitant, but your contributions towards yourFEHB premiums will be made on an after-tax basis. Your employing agency must receive your waiver no later than 60 days after the date you return to Federal employment. A waiver will be effective at the beginning of the first pay period after your employer receives it.

(c) If you did not carry FEHB into retirement and you are reemployed as an employee in a position covered by the premium conversion plan, you may enroll in the FEHB Program as a new employee as described in § 890.301 of this chapter. Upon enrolling in FEHB, you are automatically covered by the premium conversion plan, unless you waive participation as described in § 892.205.

(d) Your status as an annuitant under the retirement regulations and your right to continue FEHB as an annuitant following your period of reemployment is unaffected.

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 50

RIN 3150 AG38

Antitrust Review Authority: Clarification

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is clarifying its regulations to reflect more clearly its limited antitrust review authority by explicitly limiting the types of applications that must include antitrust information. Specifically, because the Commission is not authorized to conduct antitrust reviews of post-operating license transfer applications, or at least is not required to conduct this type of review and has decided that it no longer will conduct them, no antitrust information is required as part of a post-operating license transfer application. Because the current regulations do not clearly specify which types of applications are not subject to antitrust review, these clarifying amendments will bring the regulations into conformance with the Commission's limited statutory authority to conduct antitrust reviews.

EFFECTIVE DATE: This final rule is effective August 18, 2000.

FOR FURTHER INFORMATION CONTACT: Jack R. Goldberg, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone 301–415–1681; e-mail JRG1@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In a license transfer application filed on October 27, 1998, by Kansas Gas and Electric Company (KGE) and Kansas City Power and Light Company (KCP&L) (Applicants), Commission approval pursuant to 10 CFR 50.80 was sought of a transfer of the Applicants' possession-only interests in the operating license for the Wolf Creek Generating Station, Unit 1, to a new company, Westar Energy, Inc. Wolf Creek is jointly owned by the Applicants, each of which owns an undivided 47 percent interest. The remaining 6 percent interest is owned by Kansas Electric Power Cooperative, Inc. (KEPCo). The Applicants requested that the Commission amend the operating license for Wolf Creek pursuant to 10 CFR 50.90 by deleting KGE and KCPL as licensees and adding Westar Energy in their place. KEPCo opposed the transfer on antitrust grounds, claiming that the transfer would have anticompetitive effects and would result in "significant changes" in the competitive market. KEPCo petitioned the Commission to intervene in the transfer proceeding and requested a hearing, arguing that the Commission should conduct an antitrust review of the proposed transfer under section 105c of the Atomic Energy Act, 42, U.S.C. 2135(c). Applicants opposed the petition and request for a hearing.

By Memorandum and Order dated March 2, 1999, CLI–99–05, 49 NRC 199 (1999), the Commission indicated that although its staff historically has performed a "significant changes" review in connection with certain kinds of license transfers, it intended to consider in the Wolf Creek case whether to depart from that practice and "direct the NRC staff no longer to conduct significant changes reviews in license transfer cases, including the current case." In deciding this matter, the Commission stated that it expected to consider a number of factors, including its statutory mandate, its expertise, and its resources. Accordingly, the Commission directed the Applicants and KEPCo to file briefs on the single question: "whether as a matter of law or policy the Commission may and should eliminate all antitrust reviews in connection with license transfers and therefore terminate this adjudicatory proceeding forthwith." *Id.* at 200.

Because the issue of the Commission's authority to conduct antitrust reviews of license transfers is of interest to, and affects, more than only the parties directly involved in, or affected by, the proposed Wolf Creek transfer, the Commission in that case invited *amicus curiae* briefs from "any interested person or entity." CLI–99–05, 49 NRC at 200, n.1. (Briefs on the issue subsequently were received from a number of nonparties.) In addition, widespread notice of the Commission's intent to decide this matter in the Wolf Creek proceeding was provided by publishing that order on the NRC's web site and in the **Federal Register** (64 FR 11069; March 8, 1999), and also by sending copies to organizations known to be active in or interested in the Commission's antitrust activities. *Id.*

After considering the arguments presented in the briefs, and based on a thorough *de novo* review of the scope of the Commission's antitrust authority, the Commission concluded that the structure, language, and history of the Atomic Energy Act do not support its prior practice of conducting antitrust reviews of post-operating license transfers. The Commission stated:

> It now seems clear to us that Congress never contemplated such reviews. On the contrary, Congress carefully set out exactly when and how the Commission should exercise its antitrust authority, and limited the Commission's review responsibilities to the anticipatory, prelicensing stage, prior to the commitment of substantial licensee resources and at a time when the Commission's opportunity to fashion effective antitrust relief was at its maximum. The Act's antitrust provisions nowhere even mention post-operating license transfers.
>
> The statutory scheme is best understood, in our view, as an implied prohibition against additional Commission antitrust reviews beyond those Congress specified. At the least, the statute cannot be viewed as a requirement of such reviews. In these circumstances, and given what we view as strong policy reasons against a continued expansive view of our antitrust authority, we have decided to abandon our prior practice of conducting antitrust reviews of post-operating license transfers. * * *.
>
> Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit 1), CLI–99–19, 49 NRC 441, 446 (1999) (Wolf Creek).

II. Discussion

The Commission's decision in Wolf Creek was based on a thorough consideration of the documented

purpose of Congress's grant of limited antitrust authority to the NRC's predecessor, the Atomic Energy Commission, the statutory framework of that authority, the carefully-crafted statutory language, and the legislative history of the antitrust amendments to the Atomic Energy Act. The Commission's Wolf Creek decision explained that, in eliminating the theretofore government monopoly over atomic energy, Congress wished to provide incentives for its further development for peaceful purposes but was concerned that the high costs of nuclear power plants could enable the large electric utilities to monopolize nuclear generating facilities to the anticompetitive harm of smaller utilities. Therefore, Congress amended the Atomic Energy Act to provide for an antitrust review in the prelicensing stages of the regulatory licensing process. Congress focused its grant of antitrust review authority on the two steps of the Commission's licensing process: The application for the facility's construction permit and the application for the facility's initial operating license. It is at these early stages of the facility's licensing that the Commission historically was believed by Congress to be in a unique position to remedy a situation inconsistent with the antitrust laws by providing ownership access and related bulk power services to smaller electric systems competitively disadvantaged by the planned operation of the nuclear facility. Congress emphasized that the Commission's review responsibilities were to be exercised at the anticipatory, prelicensing stages prior to the commitment of substantial licensee resources and at a time when the Commission's opportunity to fashion effective relief was at its maximum. See Wolf Creek at 446–448.

The Commission next focused on the structure and language of its antitrust review authority found exclusively in section 105 of the Atomic Energy Act, 42 U.S.C. 2135. Section 105c provides for a mandatory and complete antitrust review at the construction permit phase of the licensing process when all entities who might wish ownership access to the nuclear facility and who are in a position to raise antitrust concerns are able to seek an appropriate licensing remedy from the Commission prior to actual operation of the facility. The construction permit antitrust review contrasts markedly from the only other review authorized by the statute. Specifically, section 105c explicitly provides that the antitrust review provisions "shall not apply" to an application for an operating license unless "significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous review * * * in connection with the construction permit for the facility." Section 105c.(2). Following this more limited and conditional review prior to initial operation of the facility, Section 105 makes clear that traditional antitrust forums are available to consider asserted anticompetitive conduct of Commission licensees, which are not relieved of operation of the antitrust laws. Section 105a, b. Further, if any Commission licensee is found to have violated any antitrust law, the Commission has the authority to take any licensing action it deems necessary. Section 105a. *See id.* at 447–452.

After describing this statutory framework and structure, the Commission then closely examined the language of its statutory antitrust review authority. The Commission found that it focused on only two types of applications, namely those for a construction permit and those for an initial operating license, but not for other types of applications explicitly mentioned in Section 103 of the Atomic Energy Act, such as applications to "acquire" or "transfer" a license. Even if an application to transfer an operating license were considered an application for an operating license for the transferee, the Commission found that the specific "significant changes" review process mandated by Section 105 does not lend itself to an antitrust review of post-operating license transfer applications. The Commission noted that its past practice of conducting "significant changes" reviews of post-operating license transfer applications did not use the construction permit review as the benchmark for comparison as mandated by Section 105, but instead examined whether there were significant changes compared with the previous *operating license review.* Like the statutory framework, the statutory language was found to be inconsistent with authorization to conduct post-operating license antitrust reviews and certainly could not be found to support a required review at that time. See id. at 452–456.

Finally, the Commission reviewed the legislative history of the antitrust amendments. It found that the Joint Committee on Atomic Energy, in its authoritative report on the Commission's prelicensing antitrust authority, explicitly clarified the scope of the terms "license application" and "application for a license" in the language which was enacted as Section 105. The Commission stated:

> In its Report, the Joint Committee [11] made clear that the term "license application" referred only to applications for construction permits or operating licenses filed as part of the "initial" licensing process for a new facility not yet constructed, or for modifications which would result in a substantially different facility:
>
> The committee recognizes that applications may be amended from time to time, that there may be applications to extend or review [sic-renew] a license, and also that the form of an application for construction permit may be such that, from the applicant's standpoint, it ultimately ripens into the application for an operating license. The phrases "any license application", "an application for a license", and "any application" as used in the clarified and revised subsection 105 c. refer to the initial application for a construction permit, the initial application for an operating license, or the initial application for a modification which would constitute a new or substantially different facility, as the case may be, as determined by the Commission. The phrases do not include, for purposes of triggering subsection 105 c., other applications which may be filed during the licensing process.

[11] The Joint Committee Report is the best source of legislative history of the 1970 amendments. *See Alabama Power Co.* v. *NRC*, 692 F.2d, 1362, 1368 (11th Cir. 1982). The Report was considered by both houses in their respective floor deliberations on the antitrust legislation and is entitled to special weight because of the Joint Committee's "peculiar responsibility and place * * * in the statutory scheme." *See Power Reactor Development Co.* v. *International Union*, 367 U.S. 396, 409 (1961).

See id. at 458, quoting Report By The Joint Committee On Atomic Energy: Amending The Atomic Energy Act of 1954, As Amended, To Eliminate The Requirement For A Finding Of Practical Value, To Provide For Prelicensing Antitrust Review Of Production And Utilization Facilities, And To Effectuate Certain Other Purposes Pertaining To Nuclear Facilities, H.R. Rep. No. 91–1470 (also Rep. No. 91–1247), 91st Cong., 2nd Sess., at 29 (1970), 3 U.S. Code and Adm. News 4981 (1970) ("Joint Committee Report") (*quoting* from legislative history of 1954 Act).

In summary, the Commission concluded that neither the language of the Commission's statutory authority to conduct antitrust reviews nor its legislative history support any authority to perform antitrust reviews of post-operating license transfer applications and certainly cannot be interpreted to require such reviews.

The Commission's Wolf Creek decision is published in its entirety at 64 FR 33916, June 24, 1999, and in the NRC Issuances at 49 NRC 441 (1999).

Because of the Commission's past practice of conducting antitrust reviews of license transfer applications, including those at the post-operating license stage of the regulatory process, the Commission in the Wolf Creek case also closely examined its rules of practice to determine whether they required or warranted revision to conform to its decision in the Wolf Creek decision. The Commission concluded that, notwithstanding its past interpretation of its rules as being consistent with an antitrust review of all transfer applications, including those involving post-operating license transfers, the rules themselves do not explicitly mandate such reviews. *Id.* at 462, 467.

The Commission's practice has been to perform a "significant changes" review of applications to directly transfer section 103 construction permit and operating licenses to a new entity, including those applications for post-operating license transfers. While the historical basis for such reviews in the case of post-operating license transfer applications remains cloudy—it does not appear that the Commission ever explicitly focused on the issue of whether such reviews were authorized or required by law, but instead apparently assumed that they were [14]—the reasons, even if known, would have to yield to a determination that such reviews are not authorized by the Act. *See American Telephone & Telegraph Co.* v. *FCC*, 978 F.2d 727, 733 (D.C. Cir. 1992). We now in fact have concluded, upon a close analysis of the Act, that Commission antitrust reviews of post-operating license transfer applications cannot be squared with the terms or intent of the Act and that we therefore lack authority to conduct them. But even if we are wrong about that, and we possess some general residual authority to continue to undertake such antitrust reviews, it is certainly true that the Act nowhere requires them, and we think it sensible from a legal and policy perspective to no longer conduct them.

It is well established in administrative law that, when a statute is susceptible to more than one permissible interpretation, an agency is free to choose among those interpretations. *Chevron*, 467 U.S. at 842–43. This is so even when a new interpretation at issue represents a sharp departure from prior agency views. *Id.* at 862. As the Supreme Court explained in *Chevron*, agency interpretations and policies are not "carved in stone" but rather must be subject to re-evaluations of their wisdom on a continuing basis. *Id.* at 863–64. Agencies "must be given ample latitude to 'adapt its rules and policies to the demands of changing circumstances.'" *Motor Vehicle Mfrs. Assn. of United States, Inc.* v. *State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29, 42 (1983), *quoting Permian Basin Area Rate Cases*, 390 U.S. 747, 784 (1968). An agency may change its interpretation of a statute so long as it justifies its new approach with a "reasoned analysis" supporting a permissible construction. *Rust* v. *Sullivan*, 500 U.S. 173, 186–87 (1991); *Public Lands Council* v. *Babbit*, 154 F.3d 1160, 1175 (10th Cir. 1998); *First City Bank* v. *National Credit Union Admin Bd.*, 111 F.3d 433, 442 (6th Cir. 1997); *see also Atchison, T. & S. F. Ry. Co.* v. *Wichita Bd. of Trade*, 412 U.S. 800, 808 (1973); *Hatch* v. *FERC*, 654 F.2d 825, 834 (D.C. Cir. 1981); *Greater Boston Television Corp.* v. *FCC*, 444 F.2d 841, 852 (D.C. Cir. 1971).

We therefore give due consideration to the Commission's established practice of conducting antitrust reviews of post-operating license transfer applications but appropriately accord little weight to it in evaluating anew the issue of Section 105's scope and whether, even if such reviews are authorized by an interpretation of Section 105, they should continue as a matter of policy. Moreover, as we noted above, the Commission's actual practice of reviewing license transfer applications for significant changes is on its face inconsistent with the statutory requirement regarding how significant changes must be determined. The fact that the statutory method does not lend itself to post-operating license transfer applications, while the different one actually used does logically apply, also must be considered and suggests that such a review is not required by the plain language of the statute and was never intended by Congress.

In support of the arguments advanced in KEPCo's briefs and some of the amicus briefs that the Commission must conduct antitrust reviews of transfer applications, various NRC regulations and guidance are cited. Just as the Commission's past practices cannot justify continuation of reviews unauthorized by statute, neither can regulations or guidance to the contrary. Before accepting the argument that our regulations require antitrust reviews of post-operating license transfer applications, however, they warrant close consideration.

Section 50.80 of the Commission's regulations, 10 CFR § 50.80, "Transfer of licenses," provides, in relevant part:

(b) An application for transfer of a license shall include [certain technical and financial information described in §§ 50.33 and 50.34 about the proposed transferee] as would be required by those sections if the application were for an initial license, and, if the license to be issued is a class 103 license, the information required by § 50.33a.

Section 50.33a, "Information requested by the Attorney General for antitrust review," which by its terms applies only to applicants for construction permits, requires the submittal of antitrust information in accordance with 10 CFR part 50, Appendix L. Appendix L, in turn, identifies the information "requested by the Attorney General in connection with his review, pursuant to section 105c of the Atomic Energy Act of 1954, as amended, of certain license applications for nuclear power plants." "Applicant" is defined in Appendix L as "the entity applying for authority to construct or operate subject unit and each corporate parent, subsidiary and affiliate." "Subject unit" is defined as "the nuclear generating unit or units for which application for construction or operation is being made." Appendix L does not explicitly apply to applications to transfer an operating license.

KEPCo argues that the § 50.80(b) requirement, in conjunction with the procedural requirements governing the filing of applications discussed below, requires the submittal of antitrust information in support of post-operating license transfer applications and that the Wolf Creek case cannot lawfully be dismissed without a "significant changes" determination. *See* KEPCo Brief at 11. While we agree that § 50.80 may imply that antitrust information is required for purposes of a "significant changes" review, linguistically it need not be read that way. The Applicants plausibly suggest that the phrase "the license *to be* issued" could be interpreted to apply only to entities that have not yet been issued an initial license. *See* App. Brief at 11.[15] Moreover, neither this regulation nor any other states the purpose of the submittal of antitrust information. For applications to construct or operate a proposed facility, it is clear that § 50.80(b), in conjunction with § 50.33a and Appendix L, requires the information specified in Appendix L for purposes of the section 105c antitrust review, for construction permits, and for the "significant changes" review for operating licenses. But for applications to transfer an existing operating license, there are other section 105 purposes which could be served by the information. Such information could be useful, for example, in determining the fate of any existing antitrust license conditions relative to the transferred license, as well as for purposes of the Commission's section 105b responsibility to report to the Attorney General any information which appears to or tends to indicate a violation of the antitrust laws.

While we acknowledge that information submitted under § 50.80(b) has not been used for these purposes in the past, and has instead been used to develop "significant changes" findings, the important point is that § 50.80(b) is simply an information submission rule. It does not, in and of itself, mandate a "significant changes" review of license transfer applications. No Commission rule imposes such a legal requirement. Nonetheless, in conjunction with this decision, we are directing the NRC staff to initiate a rulemaking to clarify the terms and purpose of § 50.80(b).[16]

KEPCo also argues that the Commission's procedural requirements governing the filing of license applications supports its position that antitrust review is required in this case. *See* KEPCo Brief at 11–13. The Applicants disagree, arguing that nothing in those regulations states that transfer applications will be subject to antitrust reviews. *See* App. Reply Brief at 3. For the same reasons we believe that the specific language in section 105c does not support antitrust review of post-operating license transfer applications, we do not read our procedural requirements to indicate that there will be an antitrust review of transfer applications. Indeed, the language in 10 CFR 2.101(e)(1) regarding operating license applications under section 103 tracks closely the process described in section 105c. As stated in 10 CFR 2.101(e)(1), the purpose of the antitrust information is to

[14] ???????

enable the staff to determine "whether significant changes in the licensee's activities or proposed activities have occurred since the completion of the *previous antitrust review in connection with the construction permit.*" (Emphasis added.) As explained above, this description of the process for determining "significant changes" is consistent with an antitrust review of the initial operating license application for a facility but wholly inconsistent with an antitrust review of post-operating license transfer applications.

[14] Until recently, the Commission's staff applied the "significant changes" review process to both "direct" and "indirect" transfers. Indirect transfers involve corporate restructuring or reorganizations which leave the licensee itself intact as a corporate entity and therefore involve no application for a new operating license. The vast majority of indirect transfers involve the purchase or acquisition of securities of the licensee (*e.g.*, the acquisition of a licensee by a new parent holding company). In this type of transfer, existing antitrust license conditions continue to apply to the same licensee. The Commission recently did focus on antitrust reviews of indirect license transfer applications and approved the staff's proposal to no longer conduct "significant changes" reviews for such applications because there is no effective application for an operating license in such cases. *See* Staff Requirements Memorandum (November 18, 1997) on SECY–97–227, Status Of Staff Actions On Standard Review Plans For Antitrust Reviews And Financial Qualifications And Decommissioning-Funding Assurance Reviews.

[15] This reading is consistent with the history of section 50.80(b). Its primary purpose appears to have been to address transfers which were to occur before issuance of the initial (original) operating license, transfers which unquestionably fall within the scope of section 105c. *See Detroit Edison Company* (Enrico Fermi Atomic Power Plant, Unit No. 2), LBP–78–13, 7 NRC 583, 587–88 (1978). When § 50.80(b) was revised in 1973 to require submission of the antitrust information specified in section 50.33a, the stated purpose was to obtain the "*prelicensing* antitrust advice by the Attorney General." 38 FR 3955, 3956 (February 9, 1973) (emphasis added).

[16] In one important respect the language of § 50.80(b), quoted above, in fact supports the Commission's analysis of section 105 and its legislative history. The phrase "if the application were for an *initial license*" certainly demonstrates that, consistent with the clearly intended focus of section 105c on antitrust reviews of applications for initial licenses, the Commission has long distinguished initial operating license applications from license transfer applications. Be that as it may, clarification of § 50.80(b) will be appropriate in the wake of our decision that our antitrust authority does not extend to antitrust reviews of post-operating license transfer applications.

Id. at 459–463 (footnotes in original).

Indeed, after considering the various interpretations of the rules advanced by the parties and *amici curiae* in the Wolf Creek proceeding, the Commission concluded: "Not one comma of the Commission's current regulations need be changed in the wake of a cessation of such reviews, although because of the NRC's past practice of conducting such reviews, we have decided that clarification of our rules is warranted." *Id.* at 467. Therefore, the Commission directed that the rules be clarified "by explicitly limiting which types of applications must include antitrust information," *Id.* at 463, and that Regulatory Guide 9.3, "Information Needed by the AEC Regulatory Staff in Connection with Its Antitrust Review of Operating License Applications for Nuclear Power Plants," and NUREG–1574, "Standard Review Plan on Antitrust Reviews," also be clarified.

On November 3, 1999 (64 FR 59671), the Commission published for comment a proposed rule to clarify its regulations consistent with its Wolf Creek decision. Substantive and timely comments were received from (1) the law firm of Akin, Gump, Strauss, Hauer & Feld, on behalf of the FirstEnergy Nuclear Operating Company (FENOC), the licensed operator of the Perry, Davis-Besse, and Beaver Valley nuclear power plants, for the subsidiary owners of those facilities, namely Ohio Edison Company, The Cleveland Electric Illuminating Company, the Toledo Edison Company, and Pennsylvania Power Company, (2) the Nuclear Energy Institute (NEI), on behalf of the nuclear energy industry, (3) the law firm of ShawPittman on behalf of Western Resources, Inc., Kansas Gas and Electric Company, Wisconsin Electric Power Company, Public Service Electric and Gas Company, and Rochester Gas and Electric Corporation (ShawPittman Utilities), (4) Florida Power & Light Company (FPL), the owner and operator of the St. Lucie and Turkey Point nuclear power plants, (5) the law firm of Spiegel & McDiarmid, on behalf of the American Public Power Association, the City of Cleveland, Ohio, the Florida Municipal Power Agency, the City of Gainesville, Florida, Public Citizen, and the American Antitrust Institute (collectively APPA), and (6) Florida Power Corporation. In addition, late comments were received from (7) Jonathon M. Block on behalf of Citizens Awareness Network, Inc. (CAN).

III. Summary and Analysis of Public Comments

All commenters, except for APPA and CAN, support the Commission's initiative, reflected in the proposed rule, to clarify its regulations regarding the submission of antitrust information so the rules are consistent with the Commission's limited antitrust review authority. All commenters, except for APPA and CAN, endorsed the adoption of the changes to the regulations exactly as proposed. There were no suggestions for different or additional changes. APPA and CAN did not suggest specific alternative rule changes other; they oppose the rule in its entirety.

FENOC emphasized that the Commission's antitrust authority in section 105 of the Atomic Energy Act is specific, not plenary, and that the Commission's Wolf Creek decision appropriately characterized the "progressively diminishing role" that Congress intended for the Commission on antitrust matters from the construction permit phase of licensing to the operating license stage, with no review authority granted for post-operating license transfers. FENOC stated that NRC regulations do not require any antitrust reviews in license transfer cases, and that any such review would be duplicative ("redundant and unnecessary") in light of other express federal governmental antitrust authorities.

NEI believes that the Commission was correct in reconsidering its antitrust authority and that the structure, language and history of the Atomic Energy Act support the Commission's conclusion that antitrust reviews should not be conducted in operating license transfer cases. NEI stated that the approach taken by the Commission to eliminate any ambiguities in its regulations regarding antitrust reviews is sound and should be adopted. NEI also believes that the Commission should initiate a "separate effort" to develop guidelines for the disposition of existing antitrust license conditions in license transfer cases.

The ShawPittman Utilities support the Commission's proposed rule clarifying its antitrust authority and, based on both legal and sound public policy justifications, urged the Commission to adopt the revisions set forth in the proposed rule. The ShawPittman Utilities agree with the Commission that the Atomic Energy Act does not authorize the Commission to perform antitrust reviews of license transfer applications, and that such reviews, if authorized, would be "an inefficient, unnecessary, and duplicative use of the Commission's resources."

FPL agrees with the Commission's Wolf Creek decision that its limited antitrust authority does not extend to operating license transfer applications and urges the Commission to issue a final rule as proposed. FPL further

encouraged the Commission continue its efforts to seek legislation to divest itself from all antitrust authority. FPL commended the Commission for its willingness and open-minded approach to reconsider its antitrust authority and practices and believes that this will contribute to streamlining agency practices and will result in a more efficient NRC, which in turn will improve its mission to protect the public health and safety.

Florida Power Corporation endorses the comments on the proposed rule submitted by the Nuclear Energy Institute.

APPA believes that the Wolf Creek decision is at odds with a prior Commission antitrust decision, Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit No. 2), LBP–78–13, 7 NRC 583, aff'd, ALAB–475, 7 NRC 752 (1978) (Fermi), which held that an antitrust review is required when an applicant is added to a construction permit. APPA believes that there is difficulty interpreting the Atomic Energy Act's antitrust review provisions regarding post-operating license transfers but that the Commission's analysis in Wolf Creek is erroneous. APPA also believes that, even if the Commission's statutory analysis in Wolf Creek is correct, the Commission plainly would err if it eliminates antitrust filing requirements for license transfers involving existing antitrust license conditions and that there is no reasoned basis to eliminate antitrust filings in such circumstances. Finally, APPA believes that if the language of section 105c is sufficiently ambiguous to permit more than one interpretation, the Commission erred by concluding that, considering other federal antitrust authorities, its antitrust review authority is superfluous.

CAN believes that the Commission's proposed rule unlawfully purports to change the substance of the Atomic Energy Act and should be withdrawn in favor of seeking legislative changes from Congress. CAN believes that the purpose of the Commission's antitrust authority in section 105 of the Atomic Energy Act, in conjunction with the inalienability of licenses provided in section 184, is to prevent regulatory gaps in the approval of highly dangerous activities, and that the proposed rule would undermine that purpose. CAN mentions the possibility of multiplied dangers if licensees cannot meet financial obligations, cost cutting by nuclear power plant owners in a competitive environment, potentially serious accidents triggered by overtime patterns, and foreign ownership of nuclear power plants, as well as increased regulatory burdens on the NRC, resulting in an inability of the NRC to inspect large-scale licensees for health and safety violations. CAN asserts that the NRC has failed to evaluate the health and safety and national security consequences of the proposed rule and also has failed to evaluate the environmental impacts of the proposed rule, in violation of the National Environmental Policy Act.

The commenters can be divided into two categories: Those who support a final rule identical to the proposed rule and those who oppose the rule in its entirety and would have the Commission leave in place the current antitrust information reporting requirements (or at least leave them in place for transfers involving nuclear power plants with existing antitrust license conditions). Since no commenter suggested any alternative provisions or language to what was proposed by the Commission, the decision for the Commission is whether the comments opposed to the rule as proposed warrant withdrawal of the proposed rule (or leaving the current reporting requirement in place for transfers involving existing antitrust conditions). For the reasons explained below, the Commission does not believe its analysis of its statutory antitrust review authority is flawed or that, if it has authority but is not required to conduct antitrust reviews of post-operating license transfers, its reasons for discontinuing such reviews are unsound as a matter of law or policy. The Commission therefore agrees with the commenters who support the rule and disagrees with the comments opposing the rule, which are addressed in detail.

Comment: APPA asserts that the Commission's Wolf Creek decision on the limits of its antitrust review authority is wrong and at odds with a prior Commission decision involving the Fermi nuclear plant. See Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit No. 2), LBP–78–13, 7 NRC 583, aff'd, ALAB–475, 7 NRC 752 (1978) (Fermi). APPA states that Fermi "holds that antitrust review is required when an applicant is added to a construction permit. By departing from its Fermi analysis without explanation, the Commission also fails to construe the Atomic Energy Act in light of the express statutory purpose of promoting competition." APPA comments at 3 (emphasis in original).

Response: The Commission was mindful of the Fermi decision when it decided the Wolf Creek case. See, *e.g.*, Wolf Creek at 462 n.15. See also the November 3, 1999, proposed rule, 64 FR 59673. As noted in Wolf Creek, none of the Commission's prior adjudicatory decisions (nor any other Commission issuances) explicitly addressed the Commission's authority to conduct antitrust reviews of post-operating license transfers. *Id.* at 450 n.4. At most, the prior antitrust adjudicatory decisions reflect an assumption on the part of the Commission that it had such authority. In part, for that reason, the Commission carefully focused on its post-operating license antitrust review authority for the first time in Wolf Creek.

The Fermi case involved an application by Detroit Edison Company (the licensee) for an amendment to its *construction permit* for the Fermi nuclear plant to add the Northern Michigan Electric Cooperative, Inc. and the Wolverine Electric Cooperative, Inc. as minority co-owners. The licensee moved to dismiss on the grounds, *inter alia*, that the NRC's Licensing Board had no jurisdiction to conduct an antitrust review of such an application since a construction permit review already had been conducted and no further review was provided by section 105c unless there was a finding of significant changes at the operating license stage. The Licensing Board reasoned that the statutory language in section 105c "does not answer the question as to the effect of a proposed amendment to an original *construction permit* to add new co-owners." Fermi, LBP–78–13, 7 NRC 583, 587 (emphasis added). The Board, relying on the Commission's South Texas decision, Houston Lighting and Power Company (South Texas Project, Unit Nos. 1 and 2), CLI–77–13, 5 NRC 1303 (1977), emphasized the importance of a "'thorough' and 'in-depth' antitrust review at the *construction permit stage*, so that 'once an initial, full antitrust review has been performed, only 'significant changes' warrant reopening." LBP–78–13, 7 NRC at 588 (emphasis added), quoting South Texas, 5 NRC at 1310, 1312, 1317. The Board concluded that the two cooperatives' application to become co-licensees was their initial application for a construction permit and therefore subject to the *construction permit* stage antitrust review.

It is clear beyond any question that the Fermi case did not involve or address in any respect the Commission's antitrust review authority over applications to transfer operating licenses, cases where there already had been a construction permit review and a significant changes review. Fermi involved not the post-operating license time frame but the pre-initial operating license, construction phase, where, as Wolf Creek made clear, Congress

carefully focused the Commission's antitrust authority. Wolf Creek analyzed this limitation on the Commission's antitrust authority from the perspective of both the statutory language and its legislative history. The Board's *holding* in Fermi is consistent with the Wolf Creek *decision*.

A careful reading of APPA's comments suggests that not even APPA disagrees with this, and its comments are instructive as much for what they do not say as for what they do. APPA does not assert (as it reasonably could not) that Fermi addressed and resolved the Commission's post-operating license antitrust review authority, and that the Wolf Creek holding is contrary to that of Fermi. APPA says only that Wolf Creek departs from the Fermi "analysis" (APPA comments at 3) and "rationale" (APPA Comments at 17) without explanation. This refers to the Licensing Board's reasoning that the cooperatives' applications "constitute *their* "initial application for a construction permit." LBP–78–13, 7 NRC at 588 (emphasis in original). APPA criticizes the Wolf Creek decision for departing from this rationale with no explanation. Extrapolating that rationale to post-operating license transfers, of course, would result in considering the prospective transferees as applicants for *their* initial operating licenses and thus subject to the Section 105c "significant changes" review, contrary to the decision in Wolf Creek.

There are two responses to this argument. First, the Commission did not fail to address this reasoning in its Wolf Creek decision. The Commission explicitly considered whether the language of section 105c could accommodate construing the post-operating license transfer application as an application for an operating license and found that it could not. See Wolf Creek at 454–56. So, while the Fermi Licensing Board's reasoning led it to a result for new *construction permit licensees* which was consistent with section 105's language and legislative history, similar reasoning was shown in Wolf Creek to be incompatible with the language and legislative history of section 105's operating license review provisions, and also was shown to be flawed as a practical matter and when measured against the Commission's past practices. Id. at 451–52, 454–59. Second, a rationale suitable to interpreting one provision of a statute—construction permit antitrust reviews—in a manner which is supported by the statutory language and its legislative history cannot be used to interpret another provision—post-operating license antitrust reviews—if it cannot be reconciled with the statutory language and Congressional intent. The Commission's Wolf Creek's decision explains why the rationale used in Fermi does not work for post-operating license transfers (actually a step removed from the initial operating license reviews for the facility contemplated by Congress).

One final comment in response to APPA's comment that Wolf Creek inexplicably departs from the Fermi decision. The Fermi Licensing Board's threshold ruling that it had jurisdiction to consider antitrust issues associated with the addition of new construction permit applicants was affirmed by the Commission's Appeal Board. The Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit No. 2), ALAB–475, 7 NRC 752, 755 n.7 (1978). (The Commission explicitly noted its agreement with this result in Wolf Creek at 362 n.15.) It is not clear, however, that the Appeal Board endorsed the Licensing Board's rationale that APPA urges the Commission now adopt. The Appeal Board in Fermi devoted only one footnote of its opinion to the issue of the Commission's antitrust review authority for the addition of new construction permit applicants and found it "sufficient simply to note our *essential agreement with the decision on this point.*" *Id.* (emphasis added). What this means with respect to the Appeal Board's opinion of the Licensing Board's *reasoning* is and must remain a matter of speculation. It does suggest, however, something less than full agreement with everything the Licensing Board said on the issue and literally may reflect only "essential agreement" with the *decision* and little or no agreement with the *rationale*. Be that as it may, as explained above, the Commission addressed this rationale in its Wolf Creek decision and found it unsound for determining its antitrust review authority over post-operating license transfers.

APPA states that "there is a difficulty in interpreting the statute to require a 'significant changes' review" for post-operating license transfers, but the Commission erred in its analysis and its conclusion that the statute does not require such reviews. APPA Comments at 15. APPA offers this analysis:

> It is obvious that there can be no "significant changes" review of the activities of a transferee that is new to an operating license, because there was no prior review against which to measure changes. With respect to a transfer of a license to a new entity, the Commission rejects a forced interpretation of the statute as require [sic] a significant changes review and concludes that therefore no antitrust review is called for. This is not reasonable. Rather, with respect to a new license, the application for transfer is properly viewed as not falling within the proviso of section 105c(2) *at all*. That is, such a transfer application is *not* an application for a license to operate a facility for which a construction permit was issued, because the applicant in question was never issued a construction permit.
>
> This construction of section 105c(2) as focusing on the *applicant* rather than the *facility* eliminates the difficulty that was fastened upon by the Commission in Wolf Creek. * * *
>
> By the logic of Fermi, then, a transfer of an operating license to an entity that was not previously a licensee is an *initial* application for an operating license not preceded by a construction permit, and therefore an antitrust review is necessary. This avoids the linguistic difficulties that the Commission noted in Wolf Creek.

APPA Comments at 15–17 (emphasis in original). The Commission has several responses to this argument.

First, as the Commission explained in Wolf Creek, the language of the statute, as well as its legislative history, undeniably focuses on *certain applications* for licenses for production or utilization *facilities*. See generally Wolf Creek at 448–59. For a given facility, the applications for which section 105c requires an antitrust review are applications for construction permits and applications for operating licenses. Post-operating license transfers are certainly not applications for a construction permit, so to be within the scope of the antitrust review requirements of section 105c, they must be deemed to be applications for a license to operate the facility. But section 105c(2) clearly states that the antitrust review required by paragraph (1) "shall not apply to an application for a license to operate a utilization or production facility for which a construction permit was issued under section 103 unless the Commission determines such review is advisable on the ground that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous review * * * under this subsection in connection with the construction permit for the facility." APPA's alternative interpretation of this provision cannot be reconciled with its specific language. The heart of APPA's analysis is its characterization of the request for Commission approval of a post-operating license transfer as an application for an initial operating license by the transferee entity. Putting aside for a moment the fact that such approvals do not result in issuing an initial or any other type of operating license, but rather an amendment to a previously-issued operating license, if we consider such a request as seeking

an initial operating license for the transferee, then we must look first to the language of section 105c(2) to determine whether an antitrust review is required. Since we are considering an application for an operating license, we are governed by the proviso, which, absent a determination of significant changes, clearly and unambiguously prohibits ("shall not") a review of an application to operate a "*facility* for which a construction permit *was issued*." Since the transferee's application is for an operating license for a facility for which a construction permit was issued, the plain language of the statute prohibits an antitrust review unless the Commission first determines that there are significant changes, which even APPA concedes as "obvious that there can be no significant changes review." APPA Comments at 15. APPA's reasoning simply cannot be justified by the specific language in the statute.

Neither is APPA's analysis consistent with the legislative history in general, which emphasized the need to conduct the complete antitrust review early in the construction phase of the licensing process and a conditional operating license review only if there are "significant changes in the licensee's activities or proposed activities," and that portion of the legislative history which explicitly addressed the limitation on the Commission's antitrust review authority to certain specified applications for a given facility.

> The committee recognizes that applications may be amended from time to time, that there may be applications to extend or review [sic-renew] a license, and also that the form of an application for construction permit may be such that, from the applicant's standpoint, it ultimately ripens into the application for an operating license. The phrases "any license application", "an application for a license", and "any application" as used in the clarified and revised subsection 105 c. refer to the initial application for a construction permit, the initial application for an operating license, or the initial application for a modification which would constitute a new or substantially different facility, as the case may be, as determined by the Commission. The phrases do not include, for purposes of triggering subsection 105 c., other applications which may be filed during the licensing process.

Joint Committee Report at 29. Just as the language of the statute focuses on certain applications for a given facility, so too does this explanation of which types of applications for a given facility are within the statute's scope of review: "the initial application for a construction permit, the initial application for an operating license, or the initial application for a modification which would constitute a new or substantially different facility." For a post-operating license transfer application to be included, it would have to be deemed "the initial application for an operating license" as that phrase is used in this explanation in the Joint Committee Report. But is it? It may appear to be included at first thought, but only if the last sentence of the Committee's explanation is ignored. The last sentence makes clear that "the initial" applications subject to antitrust review were those filed during the traditional, two-step licensing process eventually leading to the issuance of the initial operating license for the facility: "The phrases do not include, for purposes of triggering subsection 105 c, *other applications which may be filed during the licensing process.*" (Emphasis added.) While APPA might argue that the post-operating license transfer application is an application filed during the licensing process because its review constitutes a "licensing action," such a characterization clearly is not the two-step licensing process which Congress addressed when it provided the antitrust review authority contained in Section 105c and focused that authority on the antitrust situation which existed prior to initial operation of the facility. Post-operating license transfer applications certainly fall outside the two-step licensing process and, therefore, are not applications included in the statute or intended to be included by any explanation in the legislative history.

APPA's construction of the statute amounts to reading three types of applications into the scope of section 105c: (1) Applications for facility construction permits, (2) applications for facility operating licenses for which a construction permit antitrust review had been conducted, and, to use APPA's description, (3) "with respect to a new licensee, the application for transfer is properly viewed as not falling within the proviso of section 105c(2) *at all.* That is, such a transfer application is not an application for a license to operate a facility for which a construction permit was issued, because the applicant in question was never issued a construction permit." It is this third type of application which APPA equates to a post-operating license transfer application in order to avoid the inherent problem it acknowledges exists in treating post-operating license transfer applications as type (2) applications subject to the requirement that "significant changes" be measured from the previous construction permit review. There are two fundamental problems with this construction. First, it literally makes no sense because it treats a post-operating license transfer application as "not an application for a license to operate a *facility for which a construction permit was issued,* because the *applicant* in question was never issued a construction permit." (Emphasis added.) But under the two-step licensing process existing when the statute was passed, every facility issued an operating licenses is a "facility for which a construction permit was issued." Second, this construction in inconsistent with the language of the statute. The statutory language in the section 105c(2) proviso links the issuance of the construction permit to the *facility* ("*facility for which* a construction permit was issued), not to the *applicant*, as APPA's construction requires. And third, this construction would result in an unconditional, full-blown antitrust review perhaps even decades *after* initial operation of the facility, a prospect that is wholly unsupported by the legislative history, which specifically reflects Congress's rejection of a proposal for an unconditional operating license review even *before* initial operation of the facility. See Wolf Creek discussion at 457–58.

Finally, assuming we accept APPA's concession that "there is a difficulty in interpreting the statute," the Commission's interpretation in Wolf Creek certainly is no less reasonable than APPA's has been shown above to be. See *Chevron U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). In this regard, it is important to emphasize that the Commission's decision in Wolf Creek to no longer conduct antitrust reviews of post-operating license transfers rested on two alternative grounds, either one of which is sufficient to support that decision: First, the Commission's analysis of the relevant statutory provisions and their legislative history led it to conclude that the scope of its antitrust authority does not include post-operating license transfer reviews; second, even if its antitrust authority is concluded to be broad enough to include such reviews, no reasonable reading of the statute warrants a conclusion that such reviews are mandatory, and the Commission, therefore, has chosen, for the reasons stated in Wolf Creek, to not conduct such reviews as a matter of sound policy. See Wolf Creek at 463–65.

APPA's final argument that the Commission's Wolf Creek analysis is wrong involves the Commission's statement that, absent section 105, the Commission would have no antitrust

authority. APPA Comments at 21. There is no need to argue this academic point of dicta in Wolf Creek, since the Commission was given very specific and limited antitrust authority in section 105. As noted in Wolf Creek, a statutory duty to act under certain specifically-defined circumstances does not include the discretion to act under different circumstances unless the statute warrants such a reading. Wolf Creek at 454, citing *Railway Labor Executives' Association* v. *National Mediation Board*, 29 F.3d 655, 671 (D.C. Cir. 1994) (en banc). For the reasons explained in Wolf Creek and herein, the Commission has concluded that its specific antitrust authority does not include antitrust reviews of post-operating license transfers.[1]

Comment: APPA believes that, even if the Commission's Wolf Creek statutory analysis is correct for license transfers in general, the Commission would err if it eliminates antitrust filing requirements for license transfers where there are existing antitrust license conditions, since such conditions must be dispositioned in conjunction with the license transfer.

Response: It is true that there may be a number of post-operating license transfers that involve nuclear facilities whose (transferor) licensees are subject to antitrust license conditions imposed by the NRC as a result of the construction permit (or initial operating license) review. In such cases, consideration must be given to the appropriate disposition of the existing license conditions. This was addressed in the Wolf Creek decision. The Commission stated that it would entertain proposals by the parties as to the proper treatment of existing license conditions. Wolf Creek at 466. In fact, that is precisely what the Commission did in the Wolf Creek transfer case itself, although, because the parties reached a settlement, no decision was required by the Commission. The Commission continues to believe that this approach is workable and that retention of the reporting rule for all post-operating license transfer cases where there are existing antitrust conditions is unnecessary. For example, the proper disposition of existing antitrust conditions may be obvious and agreeable to all involved in some cases, or in other cases may be satisfactorily accomplished after considering submissions by the applicants and others much less burdensome than the full scope reporting urged by APPA. In other cases, such reporting might be unnecessary for some transfer applicants, or could be burdensome out of proportion to the benefits. While the possibility cannot be ruled out that the entirety of the information covered by the current rule may be useful or even necessary in some cases to achieve proper disposition of antitrust license conditions, that does not warrant a generally applicable rule that *all* transfer applicants must submit the full scope of information covered by the current rule. Even in cases where it is determined that the current scope of information—or even more—is necessary to dispose of existing antitrust conditions, the Commission is not powerless to obtain and make available the necessary information in the absence of the current rule. The Commission has ample power to require (on its own initiative or at the request of another) whatever information is deemed necessary or appropriate to carry out its responsibility to assure appropriate disposition of existing antitrust license conditions. See, *e.g.*, Atomic Energy Act sections 161b, c, i, o and 182; 10 CFR 2.204, 50.54(f). The Commission need not retain what it considers at best to be an overly broad reporting requirement for the limited purpose of deciding the fate of existing antitrust conditions in certain post-operating license transfer cases. Indeed, in the only case of that nature that has occurred recently—the Wolf Creek case itself—the reporting requirement proved entirely unnecessary when the applicants agreed that the existing antitrust conditions should apply to the entire, post-transfer organization, as APPA has acknowledged (APPA Comments at 9).

Comment: Finally, APPA argues that even if the language of section 105c is sufficiently ambiguous to permit more than one interpretation, the Commission erred in concluding that its antitrust review authority would be superfluous.

Response: As was made clear in the Wolf Creek decision, the Commission has concluded that it has no authority to conduct antitrust reviews of post-operating license transfers. In the absence of statutory authority for such reviews, it is irrelevant whether such reviews would be largely duplicative of others. While the Commission does not believe the statute is sufficiently ambiguous to result in agency discretion to conduct such reviews, the Commission's Wolf Creek decision made clear that if the statute does permit such reviews, it does not mandate them, and therefore the Commission could cease performing them for the policy and practical reasons explained therein. See Wolf Creek at 463–65. Contrary to APPA's assertion that the Commission relied on statutory and regulatory developments which postdate the 1970 amendments to the Atomic Energy Act to reach its conclusion about the scope and intent of those amendments, APPA Comments at 18–19, the Commission considered those developments not in interpreting its statutory authority but rather only in partial support for what would be an appropriate *policy decision* to terminate antitrust reviews of post-operating license transfers *if* it had statutory authority to conduct them but was not required to do so. The Commission recognizes that APPA views the competitive and regulatory climate as being more hostile to the antitrust interests of it and its members. But as explained in Wolf Creek, *id.*, there are other antitrust authorities and forums with far greater antitrust expertise than the Commission to address potential antitrust problems with proposed mergers and acquisitions of owners of nuclear power facilities.

Subsequent to the Wolf Creek decision and the publication of the proposed rule notice, the issue of multijurisdictional merger notification and review in the United States was addressed in the Final Report of the International Competition Policy Advisory Committee to the Attorney General and Assistant Attorney General for Antitrust (February 28, 2000) (ICPAC Report). As stated therein, "[t]he majority of Advisory Committee members believe that the overlapping review in the United States is more often than not a defect of the U.S. system and that a more rational or sensible approach would be to give exclusive federal jurisdiction to determine competition policy and the competitive consequences of mergers in federally regulated industries to the DOJ and FTC." ICPAC Report at 143. In a discussion of the cost implications of multiple reviews remarkably applicable to those conducted of NRC licensees

[1] The Commission's specific antitrust authority does include other authority which applies both to the post-operating license conduct of a licensee and to conduct occurring before issuance of the operating license. Specifically, even after issuance of the facility operating license, the Commission will refer to the Justice Department any information it has suggesting that a licensee is in violation of the antitrust laws and, upon a finding of an antitrust violation, the Commission has clear authority to fashion a license-related remedy if warranted. See sections 105a and b of the Act. This same authority is available should the Commission encounter a situation where an operating license is transferred from antitrust-compliant licensees to a transferee who may be violating the antitrust laws. If such were the case, it would be brought to the attention of the Justice Department (and perhaps other antitrust law enforcement agencies), the aggrieved parties could bring a private antitrust action, and, if any court found a Commission licensee in violation, a Commission-imposed licensing remedy could be sought.

and applicants for post-operating license transfers, the ICPAC Report states:

> From an industry participant's perspective, in theory, such costs might include the uncertainty generated when multiple entities possess the authority to review the competitive effects of a transaction or practice, but reach differing conclusions on the issue; the increased transaction costs flowing from the need to defend a proposed transaction before multiple agencies; and the uncertainty created by agencies' different time frames for review. From the agencies' perspective, agencies suffer when the duplicative expenditure of resources inherent in concurrent jurisdiction creates an inefficient allocation of scarce resources, particularly when the specialized agency is not bound by the recommendations of the competition agencies with respect to an assessment of competitive effects. Further inefficiencies (and perhaps bad policy) can be created when one agency has the ultimate authority to make decisions that fall within another agency's area of comparative advantage.

Id. at 145–46. One expert indicated that the "sector regulators" have a long way to go before they can approximate the skills of the antitrust agencies. Addressing the FCC and FERC, this expert said that "the antitrust agencies remain decidedly preeminent in their capacity to examine competition policy questions in the communications and energy sectors. Only significant increases in resources and experience would enable the FCC and FERC to match the skills of the DOJ and FTC in this field." *Id.* at 153 n.174, citing Kovacic Submission, at 24.

For the similar reasons stated in Wolf Creek and in the proposed rule notice, the Commission has decided that its scarce resources should be focused on its core mission of protecting the public health, safety and environment and the common defense and security. This is not to say that the Commission would ignore those who stand to suffer antitrust injury as a result of an operating license transfer involving existing antitrust conditions. As the Commission made clear in Wolf Creek, they will be heard and their views fully considered. But retaining a generic, "one size fits all" reporting requirement is not the only way to fulfill that responsibility, and the Commission will fulfill that responsibility with other, more narrowly crafted means.

Comment: CAN believes that the Commission's proposed rule unlawfully changes the substance of the Atomic Energy Act and should be withdrawn in favor of the NRC's seeking legislative changes from Congress.

Response: The Commission has not changed the "substance" of the Atomic Energy Act but instead has sought to conform its rules and practices to the authority actually granted it by the Act. The very purpose of the Commission's careful consideration of its antitrust review authority, based on the views of the parties to the Wolf Creek case, the amicus briefs filed therein at the Commission's invitation, and the commenters in this rulemaking, is to ensure that its practices and rules will *conform* to the Act, not depart from it or "change" its substance. CAN provides no discussion or statutory analysis to support its position that the Commission's decision in the Wolf Creek case and this rulemaking are inconsistent with the antitrust authority actually granted by Congress in the Act. CAN merely asserts that the NRC is "attempting to alter a federal statute by agency rulemaking." To the contrary, the Wolf Creek decision and this rulemaking will achieve adherence to the limited antitrust authority provided by the Act. While the Commission agrees with CAN that not acting in accordance with a clear statutory mandate would be a breach of its responsibility, the Commission is equally mindful that it also would be irresponsible to act beyond the scope of its statutory authority. That is precisely what the Commission decided in the Wolf Creek case about its past practice of performing antitrust reviews of post-operating license transfers, and why that practice must cease.

Comment: CAN asserts that the proposed rule would create regulatory gaps in the NRC's approval of highly dangerous activities, citing licensees' financial obligations, cost cutting by nuclear power plant owners in the competitive environment, potentially serious accidents triggered by overtime patterns, foreign ownership of nuclear power plants, and increased regulatory burdens on the NRC resulting in an inability to inspect large-scale licensees for health and safety violations.

Response: This rule will not result in any gaps in the Commission's regulation of its licensees to ensure adequate protection of the public health and safety. This rule, which is narrowly confined to relieving certain applicants of filing antitrust information, will not change one iota the Commission's review of proposed license transfers for all other purposes, such as operational safety, foreign ownership, financial qualifications, and for every other purpose that such reviews are conducted. Commission reviews and oversight in those and all other areas of Commission responsibility will continue unabated and are unaffected by this rule. Neither will this rule affect in any way the Commission's inspection capabilities or practices. In fact, by freeing up resources no longer utilized for unauthorized and unnecessary antitrust reviews, the Commission actually will be better able to perform its core mission of regulating to protect the public health, safety and environment. As far as the Commission's ability to inspect large-scale licensees, that too is unaffected by this narrow rule and, in any event, is being separately addressed as part of the Commission's oversight of the nuclear power industry's deregulation and consolidation. There simply is no basis to believe that this rule could result in any of the consequences identified by CAN.

Comment: CAN asserts that the NRC has failed to evaluate the health and safety and national security consequences of the proposed rule.

Response: This comment seems to be related to CAN's previous comment that this rule will result in gaps in the Commission's regulatory program to protect public health and safety and to review license transfers to ensure that the prohibition on foreign ownership of nuclear power plants is met. As explained above, there will be no such gaps and no health and safety or national security consequences of the rule.

Comment: CAN asserts that the NRC has failed to evaluate the environmental impacts of the proposed rule, in violation of NEPA.

Response: For the same reasons that this rule will have no impact on the Commission's public health and safety responsibilities, it will have no environmental impacts. The rule simply relieves some applicants of the need to submit antitrust information for a review which no longer will be conducted and in no way affects the Commission's environmental obligations or those of its licensees. The Commission has fully complied with the National Environmental Policy Act of 1969, as amended, (NEPA) in promulgating this rule. The proposed rule stated the Commission's determination that this rule, if adopted, falls within the categorical exclusions in 10 CFR 51.22(c)(1), (2) and (3)(i) and (iii) for which neither an Environmental Assessment nor an Environmental Impact Statement is required (64 FR 59671, 59674). No comments were received which disagreed with that determination. CAN's comments do not address that determination but simply assert that the Commission has failed to evaluate the environmental impacts of the rule in violation of NEPA. As stated below, the Commission adheres to that determination.

IV. Summary of Final Revisions

This final rule, which is identical to the proposed rule, makes clear that, consistent with the decision in the Wolf Creek case, no antitrust information is required to be submitted as part of any application for Commission approval of a post-operating license transfer. Because the current regulations do not clearly specify which types of applications are not subject to antitrust review, these clarifying amendments will bring the regulations into conformance with the Commission's limited statutory authority to conduct antitrust reviews and its decision that such reviews of post-operating license transfer applications are not authorized or, if authorized, are not required and not warranted.[2]

Direct transfers of facility licenses which are proposed *prior* to the issuance of the initial operating license for the facility, however, are and continue to be subject to the Commission's antitrust review.[3] In order to make clear that the Commission's regulations do not require antitrust information as part of applications for post-operating license transfers, the amended regulations specify that antitrust information must be submitted only with applications for construction permits and "initial" operating licenses for the facility and applications for transfers of licenses prior to the issuance of the "initial" operating license. Thus, the word "initial" has been inserted to modify "operating license" in appropriate locations and the word "application" has been modified where necessary to make clear that the application must be for a construction permit or initial operating license. Appendix L to 10 CFR part 50, "Information Requested by the Attorney General for Antitrust Review [of] Facility License Applications," similarly is amended and clarified and a new definition is added there to define "initial operation" to mean operation pursuant to the first operating license issued by the Commission for the facility.

[2] The same principle holds in the context of part 52 of the Commission's regulations. Under that part, the operating license is issued simultaneously with the construction permit in a combined license. The application for the combined license is subject to the agency's antitrust review, but antitrust reviews of post-combined license transfer applications are not authorized or, if authorized, are not required and not warranted.

[3] The paragraph speaks only to the historically typical case in which a construction permit (CP) is issued first, and then years later an operating license (OL). Under part 52, a combined operating license that has the attributes of both a CP and OL are issued and the antitrust review is done before issuance. Thus, there could be no direct transfer of the facility CP before issuance of the initial OL.

V. Plain Language

The Presidential Memorandum dated June 1, 1998, entitled, "Plain Language in Government Writing," directed that the government's writing be in plain language. This memorandum was published June 10, 1998 (63 FR 31883). In complying with this directive, editorial changes were made in the proposed revisions to improve the organization and readability of the existing language of paragraphs being revised. No comments were received on these types of changes and they are not discussed further in this notice.

VI. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the NRC is eliminating the submission of antitrust information in connection with post-operating license applications for transfers of facility operating licenses. This rule does not constitute the establishment of a standard that establishes generally-applicable requirements.

VII. Finding of No Significant Environmental Impact and Categorical Exclusion

The Commission has determined under the National Environmental Policy Act (NEPA) of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule falls within the categorical exclusions appearing at 10 CFR 51.22(c)(1), (2), and (3)(i) and (iii) for which neither an Environmental Assessment nor an Environmental Impact Statement is required.

VIII. Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0011.

IX. Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

X. Regulatory Analysis

These revisions to the regulations clarify that antitrust information is required to be submitted only in connection with applications for construction permits and initial operating licenses and not in connection with applications for post-operating license transfers. Therefore, to the extent that, in the past, antitrust information was submitted with applications for post-operating license transfers, these revisions will reduce the burden on such applicants by eliminating the submission of antitrust information and the costs associated with preparing and submitting that information. In short, the revisions will result in no additional burdens or costs on any applicants or licensees and will reduce burdens and costs on others. Clearly, because the revisions only affect when antitrust information need be submitted to the Commission, there will be no effect on the public health and safety or the common defense and security, and they will continue to be adequately protected. The cost savings to applicants resulting from these revisions justify taking this action.

To determine whether the amendments contained in this rule were appropriate, the Commission considered the following options:

1. The No-Action Alternative

This alternative was considered because the current rules are not explicitly inconsistent with the Commission's decision that antitrust reviews of post-operating license transfers are not authorized, or at least are not required and should be discontinued. Because the current rules have been interpreted to be consistent with the Commission's practice of conducting such reviews, however, in that they have been interpreted to require the submission of antitrust information with post-operating license transfer applications, the Commission concluded that clarification of the rules are appropriate. Therefore, the Commission determined that this alternative is not acceptable.

2. Clarification of 10 CFR Parts 2 and 50

For the reasons explained above and in the Commission's Wolf Creek decision, the Commission decided that its rules could and should be made clearer that no antitrust information should be submitted with applications for post-operating license transfers because antitrust reviews of such applications are not authorized or, if

authorized, should be discontinued as a matter of policy. Therefore, to make clear that there is no need to submit antitrust information in connection with post-operating license transfers, and because the revisions would result in cost savings to certain applicants, with no additional costs or burdens on anyone, this option was chosen.

XI. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities that are subject to the requirements of the rule. This rule affects only the licensing and operation of nuclear power plants. The entities that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810). Furthermore, this rule does not subject any entities to any additional requirements, nor does it require any additional information from any entity. Instead, the rule clarifies that certain information is not required to be submitted in connection with applications for post-operating license transfers.

XII. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this rule and a backfit analysis is not required because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109. The rule does not constitute a backfit because it does not propose a change to or additions to requirements for existing structures, systems, components, procedures, organizations or designs associated with the construction or operation of a facility. Rather, this rule eliminates the need for certain applicants to submit antitrust information with their applications.

XIII. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

XIV. Final Rule

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 50

Antitrust, Classified Information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR parts 2 and 50.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

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

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat.1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161 b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201 (b), (i), (o), 2236, 2282); sec. 206, 88 Stat 1246 (42 U.S.C. 5846). Sections 2.205(j) also issued under Pub. L. 101–410, 104 Stat. 890, as amended by section 31001(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135).

2. In § 2.101 paragraphs (e)(1) and (e)(2) are revised to read as follows:

§ 2.101 Filing of application.

* * * * *

(e)(1) Upon receipt of the antitrust information responsive to Regulatory Guide 9.3 submitted in connection with an application for a facility's initial operating license under section 103 of the Act, the Director of Nuclear Reactor Regulation or the Director of Nuclear Material Safety and Safeguards, as appropriate, shall publish in the **Federal Register** and in appropriate trade journals a "Notice of Receipt of Initial Operating License Antitrust Information." The notice shall invite persons to submit, within thirty (30) days after publication of the notice, comments or information concerning the antitrust aspects of the application to assist the Director in determining, pursuant to section 105c of the Act, whether significant changes in the licensee's activities or proposed activities have occurred since the completion of the previous antitrust review in connection with the construction permit. The notice shall also state that persons who wish to have their views on the antitrust aspects of the application considered by the NRC and presented to the Attorney General for consideration should submit such views within thirty (30) days after publication of the notice to: U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Chief, Policy Development and Technical Support Branch.

(2) If the Director of Nuclear Reactor Regulation or the Director of Nuclear Material Safety and Safeguards, as appropriate, after reviewing any comments or information received in response to the published notice and any comments or information regarding the applicant received from the Attorney General, concludes that there have been no significant changes since the completion of the previous antitrust review in connection with the construction permit, a finding of no significant changes shall be published in the **Federal Register**, together with a notice stating that any request for reevaluation of such finding should be

submitted within thirty (30) days of publication of the notice. If no requests for reevaluation are received within that time, the finding shall become the NRC's final determination. Requests for a reevaluation of the no significant changes determination may be accepted after the date when the Director's finding becomes final but before the issuance of the initial operating license only if they contain new information, such as information about facts or events of antitrust significance that have occurred since that date, or information that could not reasonably have been submitted prior to that date.

* * * * *

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

3. The authority section for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955 as amended (42 U.S.C. 2131, 2235), sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Section 50.37 also issued under E.O. 12829, 3 CFR 1993 Comp., p. 570; E.O. 12958, as amended, 3 CFR, 1995 Comp., p. 333; E.O. 12968, 3 CFR 1995 Comp., p. 391. Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80—50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C 2237).

4. In § 50.42 paragraph (b) is revised to read as follows:

§ 50.42 Additional standards for class 103 licenses.

* * * * *

(b) Due account will be taken of the advice provided by the Attorney General, under subsection 105c of the Act, and to any evidence that may be provided during any proceedings in connection with the antitrust aspects of the application for a construction permit or the facility's initial operating license.

(1) For this purpose, the Commission will promptly transmit to the Attorney General a copy of the construction permit application or initial operating license application. The Commission will request any advice as the Attorney General considers appropriate in regard to the finding to be made by the Commission as to whether the proposed license would create or maintain a situation inconsistent with the antitrust laws, as specified in subsection 105a of the Act. This requirement will not apply—

(i) With respect to the types of class 103 licenses which the Commission, with the approval of the Attorney general, may determine would not significantly affect the applicant's activities under the antitrust laws; and

(ii) To an application for an initial license to operate a production or utilization facility for which a class 103 construction permit was issued unless the Commission, after consultation with the Attorney General, determines such review is advisable on the ground that significant changes have occurred subsequent to the previous review by the Attorney General and the Commission.

(2) The Commission will publish any advice it receives from the Attorney General in the **Federal Register**. After considering the antitrust aspects of the application for a construction permit or initial operating license, the Commission, if it finds that the construction permit or initial operating license to be issued or continued, would create or maintain a situation inconsistent with the antitrust laws specified subsection 105a of the Act, will consider, in determining whether a construction permit or initial operating license should be issued or continued, other factors the Commission considers necessary to protect the public interest, including the need for power in the affected area.[1]

[1] As permitted by subsection 105c(8) of the Act, with respect to proceedings in which an application for a construction permit was filed prior to Dec. 19, 1970, and proceedings in which a written request for antitrust review of an application for an operating license to be issued under section 104b has been made by a person who intervened or sought by timely written notice to the Atomic Energy Commission to intervene in the construction permit proceeding for the facility to obtain a determination of antitrust considerations or to advance a jurisdictional basis for such determination within 25 days after the date of publication in the **Federal Register** of notice of filing of the application for an operating license or Dec. 19, 1970, whichever is later, the Commission may issue a construction permit or operating license in advance of consideration of, and findings with respect to the antitrust aspects of the application, provided that the permit or license so issued contains the condition specified in § 50.55b.

5. In § 50.80 paragraph (b) is revised to read as follows:

§ 50.80 Transfer of licenses.

* * * * *

(b) An application for transfer of a license shall include as much of the information described in §§ 50.33 and 50.34 of this part with respect to the identity and technical and financial qualifications of the proposed transferee as would be required by those sections if the application were for an initial license, and, if the license to be issued is a class 103 construction permit or initial operating license, the information required by § 50.33a. The Commission may require additional information such as data respecting proposed safeguards against hazards from radioactive materials and the applicant's qualifications to protect against such hazards. The application shall include also a statement of the purposes for which the transfer of the license is requested, the nature of the transaction necessitating or making desirable the transfer of the license, and an agreement to limit access to Restricted Data pursuant to § 50.37. The Commission may require any person who submits an application for license pursuant to the provisions of this section to file a written consent from the existing licensee or a certified copy of an order or judgment of a court of competent jurisdiction attesting to the person's right (subject to the licensing requirements of the Act and these regulations) to possession of the facility involved.

* * * * *

6. In Appendix L to Part 50, the heading of Appendix L and Definition 1 are revised, Definitions 3 through 6 are redesignated as Definitions 4 through 7, and a new Definition 3 is added, to read:

Appendix L to Part 50—Information Requested by the Attorney General for Antitrust Review of Facility Construction Permits and Initial Operating Licenses

* * * * *

I. Definitions

1. "Applicant" means the entity applying for authority to construct or initially operate subject unit and each corporate parent, subsidiary and affiliate. Where application is made by two or more electric utilities not under common ownership or control, each utility, subject to the applicable exclusions contained in § 50.33a, should set forth separate responses to each item herein.

* * * * *

3. "Initially operate" a unit means to operate the unit pursuant to the first operating license issued by the Commission for the unit.

* * * * *

Dated at Rockville, Maryland, this 13th day of July, 2000.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 00–18250 Filed 7–18–00; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–12–AD; Amendment 39–11818; AD 2000–14–09]

RIN 2120–AA64

Airworthiness Directives; Short Brothers Model SD3–60 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Short Brothers Model SD3–60 series airplanes, that requires affixing a label containing revised engine limitations on the ditching hatch, and revising the airplane flight manual to reflect the revised engine limitations. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent the use of incorrect engine limitations, which could result in an overspeed of the propellers and potential for blade failure.

DATES: Effective August 23, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 23, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Short Brothers Model SD3–60 series airplanes was published in the **Federal Register** on May 19, 2000 (65 FR 31839). That action proposed to require affixing a label containing revised engine limitations on the ditching hatch, and revising the airplane flight manual to reflect the revised engine limitations.

Comments

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

Conclusion

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

Cost Impact

The FAA estimates that 15 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $900, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–14–09 Short Brothers Plc: Amendment 39–11818. Docket 2000–NM–12–AD.

Applicability: Model SD3–60 series airplanes, certificated in any category, serial numbers SH3716 through SH3763 inclusive.

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 the display of incorrect engine limitations, which could result in an overspeed of the propellers and potential for blade failure, accomplish the following:

Label Replacement and AFM Revision

(a) Within 6 months after the effective date of this AD: Replace the existing engine-limitations label with a new label containing revised engine limitations, and revise the Limitations section of the FAA-approved airplane flight manual to reflect the revised engine limitations; in accordance with Shorts Service Bulletin SD360–11–23, dated November 17, 1998.

Alternative Methods of Compliance

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

Note 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.

Special Flight Permits

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

Incorporation by Reference

(d) The actions shall be done in accordance with Shorts Service Bulletin SD360–11–23, dated November 17, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in British airworthiness directive 015–11–98.

Effective Date

(e) This amendment becomes effective on August 23, 2000.

Issued in Renton, Washington, on July 7, 2000.

John J. Hickey,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–17759 Filed 7–18–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–103–AD; Amendment 39–11623; AD 2000–14–13]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–200, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737–200, –300, –400, and –500 series airplanes, that requires replacement of existing door handle mounting hub assemblies with new, improved hub assemblies. This amendment is prompted by reports of cracked or broken mounting hub assemblies for the interior door handles on the cabin doors. The actions specified by thisAD are intended to prevent cracking or breaking of the door handle mounting hub, which could result in the interior door handle breaking off while the door is being opened. In an emergency situation, this could impede evacuation of the airplane.

DATES: Effective August 23, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 23, 2000.

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

FOR FURTHER INFORMATION CONTACT: Keith Ladderud, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2780; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 737–200, –300, –400, and –500 series airplanes was published in the **Federal Register** on May 10, 2000 (65 FR 30019). That action proposed to require replacement of existing door handle mounting hub assemblies with new, improved hub assemblies.

Comments

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

The commenters state no objections to the proposed rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 1,575 airplanes of the affected design in the worldwide fleet. The FAA estimates that 632 airplanes of U.S. registry will be affected by this AD, that it will take approximately 12 work hours per airplane (3 work hours per door) to accomplish the required replacement, and that the average labor rate is $60 per work hour. Required parts will cost approximately $2,150 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $1,813,840, or $2,870 per airplane.

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

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–14–13 Boeing: Amendment 39–11823. Docket 2000–NM–103–AD.

Applicability: Model 737–200, –300, –400, and –500 series airplanes; as listed in Boeing Service Bulletin 737–25–1322, Revision 2, dated February 19, 1998; 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 cracking or breaking of the door handle mounting hub, which could result in the interior door handle breaking off while the door is being opened, and, in an emergency situation, could impede evacuation of the airplane, accomplish the following:

Replacement

(a) Within 18 months after the effective date of this AD, replace existing door handle mounting hub assemblies in the forward and aft entry doors, forward galley door, and aft service door, with new, improved hub assemblies, in accordance with Boeing Service Bulletin 737–25–1322, Revision 2, dated February 19, 1998.

Note 2: Replacements accomplished prior to the effective date of this AD in accordance with Boeing Service Bulletin 737–25–1322, dated January 19, 1995, or Revision 1, dated December 19, 1996, are considered acceptable for compliance with paragraph (a) of this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(d) The replacement shall be done in accordance with Boeing Service Bulletin 737–25–1322, Revision 2, dated February 19, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group,P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on August 23, 2000.

Issued in Renton, Washington, on July 12, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–18126 Filed 7–18–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–64–AD; Amendment 39–11821; AD 2000–14–11]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes equipped with General Electric Model CF6–45 or –50 series engines, that requires repetitive inspections and tests of the thrust reverser control and indication system, and corrective actions, if necessary. This amendment also requires installation of a thrust reverser actuation system (TRAS) lock, repetitive functional tests of that installation, and repair, if necessary. Installation of the TRAS lock terminates the repetitive inspections and certain tests. This amendment is prompted by the results of a safety review, which revealed that in-flight deployment of a thrust reverser could result in a significant reduction in airplane controllability. The actions specified by this AD are intended to ensure the integrity of the fail-safe features of the thrust reverser system by preventing possible failure modes, which could result in inadvertent deployment of a thrust reverser during flight, and consequent reduced controllability of the airplane.

DATES: Effective August 23, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 23, 2000.

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

FOR FURTHER INFORMATION CONTACT: Larry Reising, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind

Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2683; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes equipped with General Electric Model CF6–45 or –50 series engines was published in the **Federal Register** on October 27, 1999 (64 FR 57802). That action proposed to require repetitive inspections and tests of the thrust reverser control and indication system, and corrective actions, if necessary. That action also proposed to require installation of a thrust reverser actuation system (TRAS) lock, repetitive functional tests of that installation, and repair, if necessary. Installation of the TRAS lock would terminate the repetitive inspections and certain tests.

Comments

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

Support for the Proposed Rule

One commenter supports the proposed rule.

Request To Revise Repetitive Interval in Paragraph (a)

One commenter requests that the interval for the repetitive inspections and tests required by paragraph (a) of the proposed rule be extended from 1,300 flight hours to 1,500 flight hours. The commenter states that Work Package I of Boeing Alert Service Bulletin 747–78A2160, dated May 4, 1995 [the service information referenced in paragraph (a) for accomplishment of the inspections and tests] has a repetitive interval of 1,500 flight hours, as specified in the service bulletin. The commenter adds that a 1,400-flight-hour-interval aligns with its "2A" check for the fleet, but the 1,300-flight-hour-interval will require additional downtime and place an undue burden on maintenance personnel. The commenter suggests, as another option, that the interval be changed to, "1,500 flight hours or 450 flight cycles, whichever occurs later." Another commenter requests that the interval be changed to "1,300 flight hours or 450 flight cycles, whichever occurs later." Both commenters state that the deterioration of the entire system is based on flight cycles, rather than flight hours.

The FAA partially concurs. The FAA does not concur with the commenters' requests to revise the repetitive inspection interval to add the option of flight cycles. The FAA agrees that deterioration of certain thrust reverser components is related to flight cycles because the thrust reversers are typically operated once per flight, causing wear of the components of the actuation system and the thrust reverser brake. However, deterioration of the majority of thrust reverser components is related to flight hours. For example, deterioration of wiring, seals, and proximity sensors and switches is more commonly due to damage due to vibration, temperature extremes, and exposure to moisture. Such factors are flight-hour dependent. Based on this flight hour dependency, the FAA has determined that the inspection interval will not be revised to add the option of flight cycles.

However, the FAA concurs with the commenters' request to extend the repetitive interval stated in the final rule to 1,500 flight hours. Based on discussions with the manufacturer, the FAA has determined that an extension of the interval for the repetitive inspections and tests required by paragraph (a) of the final rule will not have an adverse affect on fleet safety. Therefore, paragraph (a) of the final rule has been revised accordingly.

Request To Extend Compliance Time in Paragraph (d)

One commenter requests that the compliance time for accomplishment of the modification required by paragraph (d) of the proposed rule be extended from 36 months to 60 months in order to allow the modification to be accomplished during the time of its regularly scheduled "D" check. The commenter states that the major portion of the modification involves installation of wiring provisions, and this installation requires a downtime of 250 hours. Another commenter requests the compliance time be extended to 84 months in order to allow the modification to be accomplished during the time of its regularly scheduled "D" check. The commenter states that the proposed requirement to accomplish the complete modification within 36 months, including all service bulletins, would create added problems instead of solutions. The commenter notes that the complete modification would require approximately 1,850 man hours to accomplish, and requests the extension to 84 months so airplanes will not be removed from service.

The FAA partially concurs with the commenters' requests. The FAA concurs that the compliance time for accomplishment of the modification required by paragraph (d) of the final rule may be extended beyond 36 months. Based on information supplied by the commenters and the manufacturer, the FAA acknowledges that a compliance time of 48 months corresponds more closely to the operators' normal maintenance schedules. The FAA has determined that this extension will not adversely affect safety. However, the FAA has concluded that a compliance time of 48 months represents the maximum interval in which the affected airplanes could continue to operate without compromising safety. Paragraph (d) of the final rule has been revised to require accomplishment of the modification within 48 months after the effective date of this AD.

Request To Remove Mandatory Terminating Action in Paragraph (d)

One commenter disagrees with the mandatory requirement to incorporate a TRAS lock as specified in paragraph (d) of the proposed rule. The commenter states that an equivalent level of safety is achieved by accomplishing the thrust reverser health checks at the intervals specified in Boeing Alert Service Bulletin 747–78A2160, dated May 4, 1995, including Notice of Status Change 747–78A2160 NSC 1, dated June 8, 1995. The commenter cites fleet statistics that Model 747 series airplanes have flown over 47,212,499 hours to date without any corresponding thrust reverser deployments that have impacted the safety of flight. The commenter further states that the events which triggered regulatory action happened due to thrust reverser deployment of a Model 767 series airplane having two engines and subsequent controllability problems. The commenter also states that there is insufficient documentation from the manufacturer for troubleshooting and correcting operational problems with the TRAS lock. Additionally, there were no adverse operational trends indicated that would impact safety of flight of the Model 747 series airplane; therefore, incorporation of the additional TRAS lock is not justified.

The FAA does not concur with the commenter's request. The FAA recognizes that in-flight thrust reverser deployments have occurred on Model 747 series airplanes in certain flight conditions with no significant airplane controllability problems being reported. However, the manufacturer has been unable to establish that acceptable airplane controllability would be achieved following such a deployment.

The manufacturer acknowledges that, in the event of thrust reverser deployment during high-speed climb using high engine power, or during cruise, these airplanes may not be controllable.

Although the commenter states that there were no adverse operational trends that would impact safety of flight, the safety analyses performed by the manufacturer and reviewed by the FAA has not established that the risks for uncommanded thrust reverser deployment during critical flight conditions are low enough to prevent a thrust-reverser-related incident during the fleet operation of the Model 747 series airplane. This AD addresses an unsafe condition identified as deployment of a thrust reverser during flight, and requires the installation of an additional thrust reverser system locking feature to correct that unsafe condition. The periodic inspections and tests (thrust reverser health checks) contained in paragraphs (a) and (b) of this AD are a means of verifying proper operation of the thrust reverser components. The FAA has determined that the terminating action required by paragraph (d) of this AD is necessary because the repetitive inspections and tests do not provide an adequate level of safety for the remainder of the life of the fleet of Model 747 series airplanes. Regarding the insufficiency of documentation from the manufacturer, the FAA has been advised by the manufacturer that additional documentation is being developed. No change to the final rule is necessary in this regard.

Comment on Repetitive Inspection Interval in Paragraph (e)

One commenter does not fully agree with the repetitive inspection interval required by paragraph (e) of the proposed rule, "since limited data is available." The commenter makes no specific request for a change to the proposed rule.

The FAA infers that the commenter is requesting an extension of the repetitive inspection interval for the functional test required by paragraph (e) of the final rule. The FAA does not concur with the commenter's request. In developing an appropriate repetitive interval for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but accomplishment of the required repetitive functional test within an interval of time that parallels normal scheduled maintenance for the majority of affected operators. However, under the provisions of paragraph (h) of the final rule, the FAA may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety. No change to the final rule is necessary in this regard.

Request To Revise Cost Impact Estimate

One commenter asserts that the proposed rule underestimates the work hours required to accomplish the proposed installation of the TRAS lock. The commenter states that, based upon feedback from operators that have installed the TRAS lock, approximately 1,850 work hours per airplane is needed for accomplishment of the installation; these hours include all pre-requisite service bulletins. The commenter also notes that it uses third party labor and does not agree that $60 per work hour is the industry average labor rate. The commenter estimates that $100 per work hour is more realistic. Using these figures, the commenter estimates its costs for the proposed installation as $185,000 per airplane, or $4,070,000 for its entire fleet. The commenter adds that it would take an additional 40 work hours per airplane to accomplish the proposed repetitive inspections and tests of the overpressure shutoff valve electrical connectors, the flexible shafts, the directional pilot valves, and the microswitch packs, which equates to $4,000 per airplane. The proposed rule estimates 11 work hours for accomplishment of these repetitive inspections and tests.

The FAA infers that the commenter is requesting that the cost impact information in the final rule be revised to reflect the estimate derived from operator feedback. The FAA does not concur with the commenter's request. The cost impact information in AD rulemaking actions describes only the "direct" costs of the specific actions required by this AD. The number of work hours necessary to accomplish the required actions was provided to the FAA by the manufacturer based on the best data available to date. This number represents the time necessary to perform only the actions actually required by this AD. The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur "incidental" costs in addition to the "direct" costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. Because incidental costs may vary significantly from operator to operator, they are almost impossible to calculate. Therefore, no change to the final rule is necessary.

Conclusion

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

Cost Impact

There are approximately 138 airplanes of the affected design in the worldwide fleet. The FAA estimates that 27 airplanes of U.S. registry will be affected by this AD.

It will take approximately 12 work hours per airplane to accomplish the inspections and tests of the thrust reverser stow/deploy switches, the bullnose seals, and the airmotor brakes, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these repetitive inspections and tests required by this AD on U.S. operators is estimated to be $19,440, or $720 per airplane, per inspection and test cycle.

It will take approximately 11 work hours per airplane to accomplish the inspections and tests of the overpressure shutoff valve electrical connectors, the flexible shafts, the directional pilot valves, and the microswitch packs, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these repetitive inspections and tests required by this AD on U.S. operators is estimated to be $17,820, or $660 per airplane, per inspection and test cycle.

It will take approximately 791 work hours per airplane to accomplish the installation of TRAS locks, at an average labor rate of $60 per work hour. Required parts will be provided at no cost by the airplane manufacturer. Based on these figures, the cost impact of the installation required by this AD on U.S. operators is estimated to be $1,281,420, or $47,460 per airplane.

This cost impact figure does not reflect the cost of the modifications described in the service bulletins listed in paragraph I.K.1.h. of Boeing Service Bulletin 747–78–2150, Revision 1, that are required to be accomplished prior to, or concurrently with, the installation of the TRAS lock. (The cost impact figure does reflect the cost of the modifications described in the service bulletins listed in paragraph I.K.1.j. of the service bulletin that are also required to be accomplished prior to, or concurrently with, the installation of the

TRAS lock.) Since some operators may have accomplished certain modifications on some or all of the airplanes in its fleet, while other operators may not have accomplished any of the modifications on any of the airplanes in its fleet, the FAA is unable to provide a reasonable estimate of the cost of accomplishing the terminating actions described in the service bulletins listed in paragraph I.K.1.h. of Boeing Service Bulletin 747–78–2150.

It will take approximately 4 work hours per airplane to accomplish the functional test of the TRAS lock, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the repetitive functional tests required by this AD on U.S. operators is estimated to be $6,480, or $240 per airplane, per test cycle.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–14–11 Boeing: Amendment 39–11821. Docket 99–NM–64–AD.

Applicability: Model 747 series airplanes; certificated in any category; equipped with General Electric Model CF6–45 or –50 series engines.

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 (h) 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 ensure the integrity of the fail-safe features of the thrust reverser system by preventing possible failure modes, which could result in inadvertent deployment of a thrust reverser during flight, and consequent reduced controllability of the airplane, accomplish the following:

Repetitive Inspections and Tests

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(a) Within 90 days after the effective date of this AD, perform the applicable detailed visual inspections and tests to verify proper operation of the thrust reverser stow/deploy switches, the bullnose seals, and the airmotor brake on each engine, in accordance with Work Package I of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–78A2160, dated May 4, 1995, including Notice of Status Change 747–78A2160 NSC 1, dated June 8, 1995. Repeat the applicable inspections and tests thereafter at intervals not to exceed 1,500 flight hours, until accomplishment of paragraph (d) of this AD.

(b) Within 6 months after the effective date of this AD, perform the applicable detailed visual inspections and tests to verify proper operation of the overpressure shutoff valve electrical connectors, the flexible shafts, the directional pilot valve, and the microswitch pack for each engine, in accordance with Work Package II of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–78A2160, dated May 4, 1995, including Notice of Status Change 747–78A2160 NSC 1, dated June 8, 1995. Repeat the applicable inspections and tests thereafter at intervals not to exceed 18 months, until accomplishment of paragraph (d) of this AD.

Corrective Actions

(c) If any of the inspections and tests required by paragraphs (a) and (b) of this AD cannot be successfully performed, or if any discrepancy is detected during the inspections and tests, accomplish paragraphs (c)(1) or (c)(2) of this AD, as applicable.

(1) Prior to further flight, repair in accordance with Boeing Alert Service Bulletin 747–78A2160, dated May 4, 1995. Additionally, prior to further flight, any failed inspection or test required by paragraph (a) or (b) of this AD must be repeated and successfully accomplished.

(2) Accomplish both paragraphs (c)(2)(i) and (c)(2)(ii) of this AD.

(i) Prior to further flight, deactivate the associated thrust reverser in accordance with Section 78–1 of Boeing Document D6–33391, "Boeing 747–100/–200/–300/SPDispatch Deviations Procedures Guide," Revision 22, dated January 30, 1998. No more than one thrust reverser on any airplane may be deactivated under the provisions of this paragraph.

Note 3: The airplane may be operated in accordance with the provisions and limitations specified in the operator's FAA-approved Minimum Equipment List (MEL), provided that no more than one thrust reverser on the airplane is inoperative.

(ii) Within 10 days after deactivation of any thrust reverser in accordance with paragraph (c)(2)(i) of this AD, the affected thrust reverser must be repaired in accordance with Boeing Alert Service Bulletin 747–78A2160, dated May 4, 1995. Additionally, prior to further flight, any failed inspection or test required by paragraph (a) or (b) of this AD must be repeated and successfully accomplished; once such inspections and tests have been successfully accomplished, the thrust reverser may then be reactivated.

Modification

(d) Within 48 months after the effective date of this AD, install a thrust reverser actuation system (TRAS) lock on each thrust reverser half of each engine, in accordance with Boeing Service Bulletin 747–78–2150, Revision 1, dated July 2, 1998. All of the modifications described in the service bulletins listed in paragraphs I.K.1.h. and I.K.1.j. of Boeing Service Bulletin 747–78–2150, Revision 1, must be accomplished, as applicable, in accordance with those service bulletins, prior to, or concurrently with, the accomplishment of the installation of the TRAS lock. Accomplishment of these actions constitutes terminating action for the

repetitive inspections required by paragraphs (a) and (b) of this AD.

Note 4: Accomplishment of the installation specified in Boeing Service Bulletin 747–78–2150, dated March 20, 1997, is acceptable for compliance with the installation required by paragraph (d) of this AD.

Functional Tests

(e) Within 3,000 flight hours after accomplishing the modification required by paragraph (d) of this AD, or within 1,000 flight hours after the effective date of this AD, whichever occurs later, perform a functional test of the TRAS lock on each reverser half, in accordance with Chapter 78–34–00 of the Boeing 747 Maintenance Manual, dated April 25, 1998.

Corrective Actions

(1) If no discrepancy is detected, repeat the functional test thereafter at intervals not to exceed 3,000 flight hours.

(2) If any discrepancy is detected, prior to further flight, repair in accordance with the procedures specified in the Boeing 747 Maintenance Manual. Additionally, prior to further flight, the functional test must be successfully accomplished. Repeat the functional test thereafter at intervals not to exceed 3,000 flight hours.

Spares

(f) If, after incorporation of the modification required by paragraph (d) of this AD on any airplane, it becomes necessary to install a thrust reverser assembly that does not have the TRAS locks installed, dispatch of the airplane is allowed in accordance with the provisions and limitations specified in the operator's FAA-approved MEL, provided that the thrust reverser assembly that does not have the TRAS locks installed is deactivated in accordance with Section 78–1 of Boeing Document D6–33391, "Boeing 747–100/–200/–300/SP Dispatch Deviations Procedures Guide," Revision 22, dated January 30, 1998. No more than one thrust reverser on any airplane may be deactivated under the provisions of this paragraph. Within 10 days after deactivation of the thrust reverser, install a thrust reverser assembly that has the TRAS locks installed and reactivate the thrust reverser.

(g) If, prior to incorporation of the modification required by paragraph (d) of this AD on any airplane, it becomes necessary to install a thrust reverser assembly that has the TRAS locks installed, dispatch of the airplane is allowed in accordance with the provisions and limitations specified in the operator's FAA-approved MEL, provided that the thrust reverser assembly that has the TRAS locks installed is deactivated in accordance with Section 78–1 of Boeing Document D6–33391, "Boeing 747–100/–200/–300/SP Dispatch Deviations Procedures Guide," Revision 22, dated January 30, 1998. No more than one thrust reverser on any airplane may be deactivated under the provisions of this paragraph. Within 10 days after deactivation of the thrust reverser, install a thrust reverser assembly that does not have the TRAS locks installed and reactivate the thrust reverser.

Alternative Methods of Compliance

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

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

Special Flight Permits

(i) 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.

Incorporation by Reference

(j) Except as provided by paragraphs (c)(2)(i), (e), (e)(2), (f), and (g) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 747–78A2160, dated May 4, 1995, including Notice of Status Change 747–78A2160 NSC 1, dated June 8, 1995; and Boeing Service Bulletin 747–78–2150, Revision 1, dated July 2, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(k) This amendment becomes effective on August 23, 2000.

Issued in Renton, Washington, on July 11, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–18037 Filed 7–18–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–228–AD; Amendment 39–11820; AD 2000–14–10]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, –15, –30, and –40 SeriesAirplanes; Model MD–10–10F and MD–10–30F Series Airplanes; and KC–10A (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10 series airplanes and KC–10A (military) airplanes, that currently requires repetitive inspections to detect failure of the attachment fasteners located in the banjo No. 4 fitting of the vertical stabilizer. That AD also requires a one-time inspection to detect cracking of the flanges and bolt holes of the banjo No. 4 fitting, and repair or replacement of the attachment fasteners with new, improved fasteners. This amendment adds a new one-time inspection to determine whether certain fasteners are installed in the banjo No. 4 fitting of the vertical stabilizer, and follow-on actions, if necessary. This amendment is prompted by reports of failure of certain fasteners installed in the banjo No. 4 fitting of the vertical stabilizer. The actions specified by this AD are intended to prevent cracking of the attachment fasteners of the vertical stabilizer, which could result in loss of fail-safe capability of the vertical stabilizer and reduced controllability of the airplane.

DATES: Effective August 23, 2000.

The incorporation by reference of McDonnell Douglas Service Bulletin DC10–55–023, Revision 02, dated October 30, 1996; and McDonnell Douglas Service Bulletin DC10–55–023, Revision 03, dated March 25, 1998; as listed in the regulations, is approved by the Director of the Federal Register as of August 23, 2000.

The incorporation by reference of McDonnell Douglas DC–10 Service Bulletin 55–23, dated December 17, 1992; and McDonnell Douglas DC–10 Service Bulletin 55–23, Revision 1, dated December 17, 1993; as listed in the regulations, was approved previously by the Director of the Federal Register as of April 24, 1997 (61 FR 12015, March 25, 1996).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal

Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ron Atmur, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5224; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 96–07–01, amendment 39–9549 (61 FR 12015, March 25, 1996), which is applicable to certain McDonnell Douglas Model DC–10–10, –15, –30, and –40 series airplanes, and KC–10A (military) airplanes, was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on April 11, 2000 (65 FR 19350). The action proposed to continue to require repetitive inspections to detect any failure of the attachment fasteners located in the banjo No. 4 fitting of the vertical stabilizer, a one-time inspection to detect cracking of the flanges and bolt holes of the banjo No. 4 fitting, and repair or replacement of the attachment fasteners with new, improved fasteners. The action also proposed to add a new one-time inspection to determine whether certain fasteners are installed in the banjo No. 4 fitting of the vertical stabilizer, and follow-on actions, if necessary.

Comments

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

Support for the Proposed AD

Two commenters support the proposed AD.

Request To Eliminate a Certain Inspection Requirement for Certain Airplanes

One commenter requests that the FAA further clarify the requirements of paragraph (b)(2) of the proposed AD. Specifically, the commenter requests that, for airplanes that have repairs previously installed in accordance with paragraph (c)(3)(i) of the proposed AD, the requirement to accomplish an eddy current surface inspection of the forward and aft flanges be removed. The commenter states that paragraph (c)(3)(i) of the proposed AD requires the actions specified in paragraph (b) of the proposed AD to be accomplished on any fastener hole that has part number (P/N) S4931917–8Y fasteners installed. Paragraph (b) of the proposed AD requires an eddy current surface inspection to detect cracking of the forward and aft flanges of the banjo No. 4 fitting. The commenter contends that some airplanes will have repairs previously installed in accordance with paragraph (b)(2) of the proposed AD. Such repairs would prevent accomplishment of the eddy current inspection required by paragraph (b) of the proposed AD.

The FAA concurs. The FAA finds that, for airplanes on which the repair required by paragraph (b)(2) of the AD has been accomplished prior to the effective date of this AD, it is not possible to accomplish the eddy current surface inspection to detect cracking of the forward and aft flanges required by paragraph (b) of the AD. However, it is possible to accomplish the eddy current bolt hole inspection of the bolt holes of the banjo No. 4 fitting required by paragraph (b) of the AD. The FAA also finds that it is not likely that cracking would develop in the repaired area between December 17, 1992 (the issue date of McDonnell Douglas Service Bulletin 55–23, which is referenced in the AD as a source of service information), and April 24, 1996 (the effective date of AD 96–07–01 for accomplishing the inspection of the flanges), and during the compliance time [*i.e.*, within 5 years after April 24, 1996, or within 1,500 landings from the inspection required by paragraph (c)(3) of this AD] for accomplishing the installation of P/N S4931917–8Y Hi-Lok fasteners. Therefore, the FAA has revised paragraph (c)(3)(i)(B) of the final rule to provide an exception for the subject airplanes for accomplishing the requirements of paragraph (b) of the AD. A new paragraph (d) has also been added to the final rule.

Explanation of Change to the Applicability of the Proposed AD

On May 9, 2000 (*i.e.*, after issuance of the supplemental NPRM), the FAA issued a Type Certificate (TC) for McDonnell Douglas Model MD–10–10F and MD–10–30F series airplanes. Model MD–10 series airplanes are Model DC–10 series airplanes that have been modified with an Advanced cockpit. The banjo No. 4 fitting installed on Model MD–10–10F and MD–10–30F series airplanes (before or after the modifications necessary to meet the type design of a Model MD–10 series airplane) are identical to those on the affected Model DC–10–10, –15, –30, and –40 series airplanes, and KC–10A (military) airplanes. Therefore, all of these airplanes may be subject to the same unsafe condition. In addition, the manufacturer's fuselage number and factory serial number are not changed during the conversion from a Model DC–10 to Model MD–10. The FAA finds that Model DC–10–10F and MD–10–30F series airplanes were not specifically identified by model in the applicability of the supplemental NPRM; however, they were identified by manufacturer's fuselage numbers in McDonnell Douglas DC–10 Service Bulletin 55–23, Revision 1, dated December 17, 1993 (which was referenced in the applicability statement of the AD for determining the specific affected airplanes). Therefore, the FAA has revised the applicability throughout the final rule to include Model MD–10–10F and MD–10–30F series airplanes.

Conclusion

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

Cost Impact

There are approximately 420 Model DC–10–10, –15, –30, and –40 series airplanes,Model MD–10–10F and MD–10–30F series airplanes, and KC–10A (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 242 airplanes of U.S. registry will be affected by this AD.

Since the issuance of AD 96–07–01, the manufacturer has revised its estimate of the work hours necessary to perform the actions that are currently required by that AD. McDonnell Douglas Service Bulletin DC10–55–023, Revision 03, reflects the manufacturer's revised estimates; and the cost information, below, also has been revised to refer to the new estimates.

The visual inspection that is currently required by AD 96–07–01, and retained in this AD, takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the visual inspection currently required by that AD on U.S. operators is estimated to be $14,520, or $60 per airplane, per inspection cycle.

The eddy current inspection that is currently required by AD 96–07–01, and retained in this AD, takes approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the eddy current inspection currently required by

that AD on U.S. operators is estimated to be $58,080, or $240 per airplane.

The replacement of the 12 attachment fasteners of the banjo No. 4 fitting that is currently required by AD 96–07–01, and retained in this AD, takes approximately 14 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $250 per airplane. Based on these figures, the cost impact of the replacement currently required by that AD on U.S. operators is estimated to be $263,780, or $1,090 per airplane.

The new inspection that is required by this AD action will take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $14,520, or $60 per airplane.

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

Should an operator that has already completed the replacement of the attachment fasteners of the banjo No. 4 fitting in accordance with AD 96–07–01 be required to repeat the replacement, it will take approximately 14 additional work hours, at an average labor rate of $60 per work hour. Additional parts will cost $150 per airplane. Based on these figures, the cost impact of any necessary repetition of the replacement is estimated to be $990 per airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9549 (61 FR 12015, March 25, 1996), and by adding a new airworthiness directive (AD), amendment 39–11820, to read as follows:

2000–14–10 McDonnell Douglas: Amendment 39–11820. Docket 98–NM–228–AD. Supersedes AD 96–07–01, Amendment 39–9549.

Applicability: Model DC–10–10, –15, –30, and –40 series airplanes, Model MD–10–10F and MD–10–30F series airplanes, and KC–10A (military) airplanes; as listed in McDonnell Douglas DC–10 Service Bulletin 55–23, Revision 1, dated December 17, 1993; 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 (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracking of the attachment fasteners of the vertical stabilizer, which could result in loss of fail-safe capability of the vertical stabilizer and reduced controllability of the airplane, accomplish the following:

External Visual Inspection

(a) Except as required by paragraph (c)(3) of this AD, within 1,500 landings after April 24, 1996 (the effective date of AD 96–07–01, amendment 39–9549): Perform an external visual inspection, using a minimum 5X power magnifying glass, to detect any failure of the 12 attachment fasteners located in the banjo No. 4 fitting of the vertical stabilizer (as specified in McDonnell Douglas DC–10 Service Bulletin 55–23, Revision 1, dated December 17, 1993; or McDonnell Douglas Service Bulletin DC10–55–023, Revision 02, dated October 30, 1996, or Revision 03, dated March 25, 1998). Perform this inspection in accordance with procedures specified in McDonnell Douglas Nondestructive Testing Manual, Chapter 20–10–00, or McDonnell Douglas Nondestructive Testing Standard Practice Manual, Part 09.

No Failure Condition: Repetitive Inspections

(1) If no failure is detected, repeat the external visual inspection thereafter at intervals not to exceed 1,500 landings until the requirements of paragraph (b) of this AD are accomplished.

Any Failure Condition: Corrective Actions

(2) If any failure is detected, prior to further flight, accomplish the requirements of paragraph (b) of this AD.

Eddy Current Surface Inspection and Eddy Current Bolt Hole Inspection

(b) Except as required by paragraphs (a)(2) and (c)(3)(ii) of this AD, within 5 years after April 24, 1996: Perform an eddy current surface inspection to detect cracking of the forward and aft flanges; and an eddy current bolt hole inspection of the bolt holes of the banjo No. 4 fitting; in accordance with McDonnell Douglas DC–10 Service Bulletin 55–23, Revision 1, dated December 17, 1993; or McDonnell Douglas Service Bulletin DC10–55–023, Revision 02, dated October 30, 1996, or Revision 03, dated March 25, 1998.

Note 2: Paragraph (b) of this AD does not require that eddy current bolt hole inspections be accomplished for the bolt holes of the banjo No. 4 fitting if the attachment fasteners were replaced prior to April 24, 1996, in accordance with McDonnell Douglas DC–10 Service Bulletin 55–23, dated December 17, 1992.

No Cracking Condition: Replacement

(1) If no cracking is detected, prior to further flight, replace the 12 attachment fasteners located on the banjo No. 4 fitting with new, improved attachment fasteners, in accordance with McDonnell Douglas DC–10 Service Bulletin 55–23, dated December 17, 1992, or Revision 1, dated December 17, 1993; or McDonnell Douglas Service Bulletin DC10–55–023, Revision 02, dated October 30, 1996, or Revision 03, dated March 25, 1998. After the effective date of this AD, only Revision 03 of the service bulletin shall be used.

(i) Accomplishment of the replacement in accordance with the original issue of the

service bulletin constitutes terminating action for the requirements of paragraph (a) of this AD, provided that the eddy current surface inspection of the forward and aft flanges is accomplished in accordance with McDonnell Douglas DC–10 Service Bulletin 55–23, Revision 1, dated December 17, 1993; or McDonnell Douglas Service Bulletin DC10–55–023, Revision 02, dated October 30, 1996, or Revision 03, dated March 25, 1998.

(ii) Accomplishment of the replacement in accordance with McDonnell Douglas DC–10 Service Bulletin 55–23, Revision 1, dated December 17, 1993; or McDonnell Douglas Service Bulletin DC10–55–023, Revision 02, dated October 30, 1996, or Revision 03, dated March 25, 1998; constitutes terminating action for the requirements of paragraph (a) of this AD, provided that the eddy current surface inspection of the forward and aft flanges, and the eddy current bolt hole inspection of the bolt holes of the banjo No. 4 fitting, are accomplished in accordance with McDonnell Douglas DC–10 Service Bulletin 55–23, Revision 1, or McDonnell Douglas Service Bulletin DC10–55–023, Revision 02, or Revision 03.

Any Cracking Condition: Repair

(2) If any cracking is detected, prior to further flight, repair either in accordance with Figure 6 or Figure 7, as applicable, of Chapter 55–20–00, Volume 1, of the DC–10 Structural Repair Manual; or in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

One-Time Detailed Visual Inspection and Follow-On Actions, If Necessary

(c) For airplanes that have not accomplished the requirements of paragraph (b) in accordance with McDonnell Douglas Service Bulletin DC10–55–023, Revision 03, dated March 25, 1998: Within 1,500 landings after the effective date of this AD, perform a one-time detailed visual inspection to determine whether second oversize fasteners having part number (P/N) S4931917–8Y are installed in the banjo No. 4 fitting of the vertical stabilizer.

Note 3: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) If second oversize fasteners having P/N S4931917–8Y are *not* installed, and the actions required by paragraph (b) of this AD have been accomplished, no further action is required by this AD.

(2) If second oversize fasteners having P/N S4931917–8Y are *not* installed, and the actions required by paragraph (b) of this AD have *not* been accomplished: Within 1,500 landings after the last inspection performed in accordance with paragraph (a) of this AD, repeat that inspection, and perform the follow-on actions specified by paragraph (a) of this AD.

(3) If second oversize fasteners having P/N S4931917–8Y *are* installed, prior to further flight, perform an external visual inspection to detect any failure of the 12 attachment fasteners located in the banjo No. 4 fitting of the vertical stabilizer in accordance with paragraph (a) of this AD.

(i) If no failure is detected, accomplish the actions specified in paragraph (c)(3)(i)(A) and (c)(3)(i)(B) of this AD.

(A) For any hole that has a P/N S4931917–8Y fastener installed: Repeat the external visual inspection thereafter at intervals not to exceed 1,500 landings until the requirements of paragraph (b) of this AD are accomplished.

(B) For any hole that has a P/N S4931917–8Y fastener installed: Within 5 years after April 24, 1996, or within 1,500 landings from the inspection required by paragraph (c)(3) of this AD, whichever occurs later, accomplish the requirements of paragraph (b) of this AD, except as provided in paragraph (d) of this AD.

(ii) If any failure is detected, prior to further flight, accomplish the requirements of paragraph (b) of this AD for the failed fastener and its associated fastener hole only.

(d) For airplanes on which the repair required by paragraph (b)(2) of this AD has been accomplished prior to the effective date of this AD to comply with paragraph (c)(3)(i)(B) of this AD, accomplish only the eddy current bolt hole inspection of the bolt holes of the banjo No. 4 fitting required by paragraph (b) of this AD.

Spares

(e) As of the effective date of this AD, no person shall install a second oversize fastener having P/N S4931917–8Y in the banjo No. 4 fitting of the vertical stabilizer on any airplane.

Alternative Methods of Compliance

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

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

Special Flight Permits

(g) 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.

Incorporation by Reference

(h) Except as provided by paragraphs (a), (b)(2), and (c) of this AD, the actions shall be done in accordance with McDonnell Douglas DC–10 Service Bulletin 55–23, dated December 17, 1992; McDonnell Douglas DC–10 Service Bulletin 55–23, Revision 1, dated December 17, 1993; McDonnell Douglas Service Bulletin DC10–55–023, Revision 02, dated October 30, 1996; or McDonnell Douglas Service Bulletin DC10–55–023, Revision 03, dated March 25, 1998; as applicable.

(1) The incorporation by reference of McDonnell Douglas Service Bulletin DC10–55–023, Revision 02, dated October 30, 1996; and McDonnell Douglas Service Bulletin DC10–55–023, Revision 03, dated March 25, 1998; is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of McDonnell Douglas DC–10 Service Bulletin 55–23, dated December 17, 1992; and McDonnell Douglas DC–10 Service Bulletin 55–23, Revision 1, dated December 17, 1993; was approved previously by the Director of the Federal Register as of April 24, 1996 (61 FR 12015, March 25, 1996).

(3) Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(i) This amendment becomes effective on August 23, 2000.

Issued in Renton, Washington, on July 11, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–18038 Filed 7–18–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–335–AD; Amendment 39–11810; AD 2000–14–01]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that requires replacement of any brake system accumulator that has aluminum end caps with an accumulator that has stainless steel end caps. This

amendment is prompted by reports of fractures of aluminum end caps on brake system accumulators. The actions specified by this AD are intended to prevent high-velocity separation of a brake system accumulator barrel, piston, or end cap, which could result in injury to personnel in the wheel well area, loss of cabin pressurization, loss of certain hydraulic systems, or damage to the fuel line of the auxiliary power unit.

DATES: Effective August 23, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 23, 2000.

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

FOR FURTHER INFORMATION CONTACT: Don Kurle, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2798; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes was published in the **Federal Register** on January 5, 2000 (65 FR 401). That action proposed to require replacement of any brake system accumulator that has aluminum end caps with an accumulator that has stainless steel end caps.

Comments

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

Support for the Proposed Rule

One commenter supports the proposed rule.

Request to Reference Corresponding Supplier Part Numbers in Spares Paragraph

One commenter, the airplane manufacturer, requests that the FAA revise paragraph (b) of the proposed rule (the "Spares" paragraph) to reference the supplier's part numbers for the brake system accumulator that correspond to the airplane manufacturer's part numbers listed in paragraph (b) of the proposed rule. The commenter states that including the supplier's part numbers in this AD will assist operators in identifying affected parts. The FAA concurs with the commenter's request, and has revised paragraph (b) of this final rule to reference the applicable supplier's part numbers that correspond to the airplane manufacturer's part numbers.

Request To Extend Compliance Time

Three commenters request that the FAA extend the compliance time for the actions in paragraph (a) of the proposed rule. The FAA proposed a compliance time of 3,000 flight hours after the effective date of this AD. The commenters' suggestions for extending the compliance time range from 10 months to 2 years or 6,000 flight hours. One commenter's justification for its request is the number of affected airplanes (estimated at 70 airplanes), the lead-time for modification kits (estimated at 10 months), and the lead-time for new parts (estimated at 4 months). Another commenter notes that the lead-time for new accumulators or modifications parts is 90 days for the initial production order; however, it will take two years to produce the quantity of new accumulators or modifications kits that will be necessary to accomplish the proposed replacement throughout the fleet. Another commenter states that the proposed actions are appropriate for accomplishment in a hangar environment and, with the proposed compliance time of 3,000 flight hours, special maintenance visits would be necessary to accomplish the proposed actions within that compliance time. That commenter suggests that a compliance time of 18 months would allow the proposed actions to be accomplished at a "C"-check for most affected airplanes.

The FAA concurs that the compliance time for accomplishment of the replacement described in this AD may be extended somewhat, and that accomplishment of the required actions during a "C"-check is appropriate. In developing an appropriate compliance time for this AD, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the availability of required parts and the normal intervals for operators' "C"-checks (as stated in Maintenance Review Board documents). The FAA has determined that 6,000 flight hours represents an appropriate interval of time wherein an ample number of required parts will be available for modification of the U.S. fleet, and wherein operators will be able to accomplish the replacement during a "C"-check. The FAA also finds that such a compliance time will not adversely affect the safety of the affected airplanes. Paragraph (a) of this final rule has been revised accordingly.

Conclusion

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

Cost Impact

There are approximately 1,217 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 324 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per accumulator (airplanes may have three, four, or five accumulators of various types) to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately between $7,650 and $13,418 per airplane (depending on the number and type of affected accumulators). Based on these figures, the cost impact of the AD on U.S. operators is estimated to be between $7,830 and $13,718 per airplane.

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

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT

Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–14–01 Boeing: Amendment 39–11810. Docket 99–NM–335–AD.

Applicability: Model 747 series airplanes; as listed in Boeing Special Attention Service Bulletin 747–32–2461, dated August 19, 1999; 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 high velocity separation of a brake system accumulator barrel, piston, or end cap; which could result in injury to personnel in the wheel well area, loss of cabin pressurization, loss of certain hydraulic systems, or damage to the fuel line of the auxiliary power unit; accomplish the following:

Replacement

(a) At the next "C"-check, not to exceed 6,000 flight hours after the effective date of this AD, replace any brake system accumulator that has aluminum end caps with an accumulator that has stainless steel end caps in accordance with Boeing Special AttentionService Bulletin 747–32–2461, dated August 19, 1999.

Spares

(b) As of the effective date of this AD, no person shall install a brake system accumulator having part number (P/N) BACA11E1 (Parker P/N 2660472–1 or 2660472M1) or BACA11E5 (Parker P/N 2660472–5 or 2660472M5) on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

Special Flight Permits

(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.

Incorporation by Reference

(e) The actions shall be done in accordance with Boeing Special Attention Service Bulletin 747–32–2461, dated August 19, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington,DC.

Effective Date

(f) This amendment becomes effective on August 23, 2000.

Issued in Renton, Washington, on July 11, 2000.

Donald L. Riggin,

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

[FR Doc. 00–18039 Filed 7–18–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–246–AD; Amendment 39–11822; AD 2000–14–12]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes, that requires replacement of the upper and lower reading lights in the forward crew rest area with a redesigned light fixture. This amendment is prompted by reports of burning and smoldering blankets in the forward crew rest area due to a reading light fixture that came into contact with the blankets after the light was inadvertently left on. The actions specified by this AD are intended to prevent a possible flammable condition, which could result in smoke and fire in the forward crew rest area.

DATES: Effective August 23, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 23, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Albert Lam, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California

90712–4137; telephone (562) 627–5346; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas MD–11 series airplanes was published in the **Federal Register** on November 22, 1999 (64 FR 63764). That action proposed to require replacement of the upper and lower reading lights in the forward crew rest area with a redesigned light fixture.

Comments

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

One commenter states that it is not affected by the proposed rule.

Recommendation for a Smoke Detection System

One commenter recommends that the proposed AD require a smoke detection system for the forward crew rest compartment, since there will still be conditions existing that could cause a fire which could clearly be a hazard to flight safety. The commenter further states that the FAA should require a smoke detection system in any area where there are combustible materials and ignition sources, to ensure that any fire event is rapidly communicated to the crew.

The FAA does not concur with the commenter's suggestion. The final rule requires replacement of the upper and lower reading lights of the affected crew rest area with a redesigned light fixture to preclude a possible flammable condition as stated previously in the preamble. In addition, due to the current design of the forward crew rest area and its close proximity to the cockpit, the flight crew would detect smoke or fire in the forward crew rest compartment. Therefore, no change to the final rule is necessary in this regard.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 71 airplanes of the affected design in the worldwide fleet. The FAA estimates that 14 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required replacement, and that the average labor rate is $60 per work hour. Required parts will cost approximately $238 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $4,172, or $298 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–14–12 **McDonnell Douglas:** Amendment 39–11822. Docket 99-NM–246-AD.

Applicability: Model MD–11 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–25A233, dated June 9, 1999; 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 a possible flammable condition, which could result in smoke and fire in the forward crew rest area, accomplish the following:

Replacement

(a) Within 6 months after the effective date of this AD, replace the upper and lower reading lights in the forward crew rest area with a redesigned light fixture, in accordance with McDonnell Douglas Alert Service Bulletin MD11–25A233, dated June 9, 1999.

Note 2: McDonnell Douglas Alert Service Bulletin MD11–25A233 refers to AIM Aviation Service Incorporated Service Bulletin AIM-MD11–25–2, Revision C, datedMarch 8, 1999; as an additional source of service information for accomplishment of the replacement of the upper and lower reading lights in the forward crew rest area.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(d) The replacement shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11–25A233, dated June

9, 1999. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1-L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on August 23, 2000.

Issued in Renton, Washington, on July 11, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–18040 Filed 7–18–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1300, 1301, 1304, and 1307

[DEA–143F]

RIN 1117–AA36

Establishment of Freight Forwarding Facilities for DEA Distributing Registrants

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Final rule.

SUMMARY: This rule defines the term freight forwarding facility and establishes storage, security, and recordkeeping requirements for controlled substances that transit such facilities. It also provides a waiver to a freight forwarding facility from the requirement for registration with the Drug Enforcement Administration. This rule will afford a registrant who is authorized to engage in the general distribution of controlled substances a more efficient and competitive means to distribute controlled substances and should minimize in-transit losses.

EFFECTIVE DATE: August 18, 2000.

FOR FURTHER INFORMATION CONTACT: Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION:

Why Is DEA Taking This Action and Whom Does It Affect?

On December 18, 1996, DEA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (61 FR 66637) entitled Establishment of Freight Forwarding Facilities for DEA Distributor Registrants. The NPRM was published in response to requests by registrants within the controlled substances distribution industry that registrant-operated freight forwarding facilities be exempted from the registration requirement. (Currently there is no provision in the regulations that would allow the storage and distribution of controlled substances from such a location without a DEA registration.) Following discussion with registrants and trade association representatives within the affected industries, DEA determined that such a waiver could be provided to registrants within the controlled substances distribution industry, pursuant to 21 U.S.C. 822(d), subject to certain requirements with respect to the activity conducted, security, and recordkeeping.

What Requirements Were Proposed in the NPRM?

The NPRM proposed to define freight forwarding facility as a separate facility operated by a DEA distributor registrant through which sealed, packaged controlled substances, in unmarked (*i.e.*, without indication of the contents) containers, are stored for less than 24 hours while being routed to the ultimate DEA registrant consignee. The proposed definition specifically excluded a facility through which controlled substance returns are processed. Freight forwarding facilities would be granted a waiver from the registration requirement, provided that the registrant operating the facility gave required notice to DEA of the intent to operate such a facility and DEA issued no objection.

With respect to security, the NPRM proposed that during temporary storage at the facility, all Schedule II–V controlled substances must be under constant observation by designated responsible individuals in a segregated area, or, if not under constant observation, stored in a caged and alarmed area that meets the requirements set forth in Title 21, Code of Federal Regulations (CFR), Section 1301.72(b). Proposed recordkeeping consisted of the requirement that the registrant maintain records documenting the transfer of the controlled substances from the long-distance conveyance to the local conveyance, reflecting the date, time of transfer, the number of cartons, crates, drums, or other packages in which commercial containers of controlled substances were shipped and authorized signatures for each transfer.

What Comments Were Received in Response to the NPRM?

Six comments were received in response to the NPRM: three from DEA pharmacy registrants, two from trade associations representing the affected industries, and one from a state regulatory agency. While the comments expressed general support for the changes, concerns were raised regarding each specific facet of the proposed rule. With regard to several of the matters, DEA adopted changes suggested by the commenters to make the rule more flexible and the waiver from registration for a freight forwarding facility more broadly available.

1. Use of the Freight Forwarding Facility by More Than One Registrant

Four commenters objected to the proposed requirement that a freight forwarding facility be for the exclusive use of the named DEA distributor registrant, precluding its use by another DEA registrant. The commenters suggested that the new regulations allow multiple registrants to utilize a single freight forwarding facility. Two of the four commenters addressed the issue in terms of multiple registrants of the same company, while the other two addressed the use of a single freight forwarding facility by multiple unrelated registrants. Another commenter questioned whether it would be possible for a non-DEA registrant to lease space at a freight forwarding facility to more than one DEA registered distributor.

The proposal to exempt a freight forwarding facility from the DEA registration requirement was based upon the facility being an extension of a specific distributing registrant, thus simplifying the issue of responsibility for any diversion or lack of compliance with the regulations at the facility. However, taking such a simplified approach does limit use of the facility to only that one distributing registrant.

DEA acknowledges the comments that limiting the definition to such as extent, while simplifying the issue of responsibility under the law and regulations, could result in complex, inefficient, and duplicative efforts for a company that operates multiple distributing registrations. The company would be required to maintain and operate a separate freight forwarding facility for each registered distributing location. Therefore, the proposal is

being amended to allow a corporate entity that maintains multiple distributing registrations the ability to operate a single freight forwarding facility for shipments in transit from any of its registered distributing locations. Such a provision remains consistent with the existing framework of DEA's requirements because the controlled substances remain in the custody and control of the corporate entity who maintains both the freight forwarding facility and the various registrations with DEA. That corporate entity is responsible for ensuring that the laws and regulations are adhered to and for the safekeeping of the controlled substances transiting the facility. The ultimate responsibility for compliance would, of course, rest with the DEA registered location making the shipment, should there be any violations or thefts or losses of controlled substances from the shipment.

The exemption of a freight forwarding facility is based on the premise that Company A ships controlled substances to its customers utilizing an in-transit location owned or leased by Company A. In this instance the controlled substances remain the legal responsibility of Company A until they are actually received by the customers. If, on the other hand, Company A were to ship controlled substances to its customers utilizing a freight forwarding facility which is owned by Company B, the custody and control of the shipment, as well as the legal responsibility, shifts from Company A to Company B at the freight forwarding facility. DEA is waiving the registration requirement only with respect to freight forwarding facilities operated by the distributing registrant; a transfer of custody, control, and legal responsibility of controlled substances between two different companies remains subject to the registration requirements set forth in 21 U.S.C. 822 and may only occur between registered locations of the two companies. Additionally, all applicable records, reports, and security required for controlled drug transactions would continue to apply to such transactions.

With respect to the question of whether a non-registrant could lease space at a freight forwarding facility to more than one DEA registrant, it should be noted that the definition of a freight forwarding facility refers to a facility operated by the company that maintains one or more distributing registrations with DEA. It is expected that the facility will be under the full direction and control of that company and will be staffed by employees of that company. Therefore, the sharing of the same freight forwarding facility by more than one company would not be possible. However, this does not preclude different companies from operating separate freight forwarding facilities within a single building, provided that each is maintained as a physically separate facility from the others.

One commenter suggested that registrants other than distributors may wish to operate a freight forwarding facility. DEA recognizes that, in addition to distributors, there are other registrants (*i.e.* manufacturers and importers) who are authorized to distribute controlled substances under their registration. Therefore, DEA is amending the proposal to include controlled substances distributors, manufacturers, and importers.

2. Storage and Security of Controlled Substances

Four commenters expressed concerns with the proposed requirement that controlled substance storage at a freight forwarding facility be limited to less than 24 hours. Questions were raised about dealing with emergency circumstances (bad weather, natural disaster, and other unforeseen circumstances) that may require the temporary storage of controlled substances at the freight forwarding facility for more than the allowable 24 hour time limit. One commenter suggested that a plan for unforeseen emergencies be submitted at the time of application.

One of the factors in DEA's decision to establish the waiver of the registration requirement for freight forwarding facilities was that in the normal course of freight forwarding activities, shipments of controlled substances will transit a facility with minimal delay. As one commenter noted, "* * * Product arrives at the facility via the long distance conveyance and is transferred to the appropriate short distance conveyance, typically within a matter of 2 hours or less * * *" However, recognizing that there are a variety of factors, such as bad weather, mechanical breakdowns, scheduling errors, etc., that may interfere with the timely transit of shipments through the facility, DEA included in the definition of a freight forwarding facility the provision that controlled substances may be stored for less than 24 hours. DEA expects that any registrant operating a freight forwarding facility will ensure that any controlled substances transiting the facility will remain there for less than 24 hours.

DEA does recognize that there may be emergency circumstances that may temporarily prevent full compliance with the regulations.

In such a case, the registrant operating the facility must take the necessary steps to safeguard the controlled substances and effect a return to normal operations as quickly as possible. Additionally, the registrant must notify the local DEA office of the circumstances and what actions are being taken to address the situation. DEA will not penalize a registrant for non-compliance with the requirements in such emergency circumstances, provided the registrant has taken appropriate steps to safeguard the controlled substances and to return to normal operations as soon as possible.

With respect to what constitutes emergency circumstances, DEA wishes to note that the commenters included in their description of emergency circumstances such events as late delivery before a holiday weekend and inclement weather. These are not, in and of themselves, emergency circumstances that would warrant allowing the storage of controlled substances at a freight forwarding location in excess of the 24 hour time limit. Certainly unpredictable circumstances that are entirely beyond a registrant's control (fire, earthquake, flash flood, tornado, etc.) would be emergency events that may require storage for 24 hours or more. However, where an event can be predicted or anticipated (winter storm, hurricane, mechanical breakdowns, labor disturbances, etc.), DEA expects that a registrant will have in place contingency plans (rescheduling or re-routing shipments, emergency backup transportation or labor arrangements, etc.) to try to insure that controlled substances are not stored at the facility for 24 hours or more.

DEA is not going to attempt to define in these regulations what would constitute an emergency. Any attempt to do so would inevitably fall short of its intended purpose. There are simply too many variables that could influence whether an event would, or would not, qualify as an emergency. Each event will have to be looked at individually, not only in terms of what has occurred, but also in terms of what efforts the registrant had taken prior to the event to anticipate and prevent any disruption of operations and what efforts are taken following the event to safeguard the controlled substances and return to normal operations. Registrants should approach this issue from the perspective of taking all possible steps to anticipate unusual events and ensure that these events do not prevent compliance with the regulations.

Two commenters objected to the proposed security requirement that controlled substances be stored in accordance with 21 CFR 1301.72(b) whenever they are not under continuous observation by designated individuals.

DEA believes that in the normal course of freight forwarding activities, shipments of controlled substances will transit a facility with minimal delay and there would be no need for the distributing registrant to implement specific physical security measures to guard against losses since the loading/unloading areas would be continuously attended and under the general observation of employees. However, when circumstances arise requiring temporary storage of controlled substances, the distributing registrant must either maintain continuous observation of the controlled substances or implement physical security measures that meet the requirements of 21 CFR 1301.72(b) in order to guard against losses.

As an alternative to continuous observation of controlled substances, two commenters suggested a "lock down" of the facility.

DEA believes that a distributing registrant who has the ability to "lock down" a freight forwarding facility equipped with the appropriate alarm system or kept under constant visual surveillance by security patrols would, in effect, secure the controlled substances in a manner equivalent to the security requirements stated in 21 CFR 1301.72(b)(3), thus satisfying the requirement in the new 21 CFR 1301.77(a)(2).

Two commenters noted that controlled substance containers are required to be unmarked, this making identification of those containers in a large shipment extremely difficult, if not impossible, and requiring that the entire facility be subject to the security requirements of 21 CFR 1301.72(b) or that all containers in the facility be kept under constant observation. One commenter suggested that discrete marking or coding of the containers of controlled substances should be allowed.

In evaluating these comments, the presumption exists that all containers transiting a freight forwarding facility have a certain amount of controlled substances in them. As noted earlier in this document, DEA believes that specific security measures should not be necessary in the normal course of operations since the loading/unloading areas would be continuously attended and under the general observation of employees. It is only when circumstances require the temporary (less than 24 hours) storage of these containers that they must be maintained in a segregated area of the facility under continuous observation in order to prevent access by unauthorized individuals (*i.e.* maintenance personnel, non-employee service personnel). Whether continuous observation is performed by an authorized employee of the facility or by contracted security personnel is the responsibility of the distributing registrant. If there is not continuous observation of these containers, the distributing registrant would be required to have the appropriate physical security measures in place that are consistent with the requirements of 21 CFR 1301.72(b).

With respect to the issue of discrete marking or coding of containers of controlled substances, the intent of unmarked containers is to prevent the identification of those that contain controlled substances, thus helping to prevent diversion of the controlled substances. As the commenters noted, the identification of such containers in a large shipment would be extremely difficult, if not impossible. The act of segregating, during temporary storage, only the marked or coded containers would defeat this basic security measure by specifically identifying the containers with controlled substances, making them easier targets for diversion. Under the circumstances, DEA will hold with the requirement that the controlled substances be in unmarked containers.

3. Recordkeeping

Four commenters suggested that DEA allow a person the ability to store controlled substance records for freight forwarding facilities at a central location.

A distributing registrant who operates a freight forwarding facility must maintain complete records of controlled substance activity including a clearly defined audit trail for all controlled substances transferred through the facility. Records of controlled substances must contain the dates, times of transfer, authorized signatures and the number of cartons, crates, drums or other packages in which commercial containers of controlled substances are shipped. This will enable the distributing registrant to trace the flow of controlled substances from the long distance conveyance through the freight forwarding facility to the local conveyance or from the long distance conveyance directly to the local conveyance.

Records are required to be maintained at the freight forwarding facility, however, a distributing registrant may request central recordkeeping authority with the initial facility exemption request. Approval of this request will be granted as part of the approval of the waiver by DEA. Subsequent requests for maintaining records at a central location would be handled in accordance with 21 CFR 1304.04.

4. Returns

One commenter suggested that controlled substance returns should be allowed to transit a freight forwarding facility.

The NPRM prohibited the use of a freight forwarding facility for handling the transit of controlled substance returns due to concerns that the custody and control of the controlled substance returns would be transferred from the registered customer at a non-registered location. DEA is amending its proposal to allow controlled substance returns within a single corporate structure to be routed through the corporate owned or operated freight forwarding facility only when the distributing registrant provides the same transfer, storage, security, and recordkeeping controls as outlined in this regulation for controlled substance distributions through a freight forwarding facility. In other words, a distributing registrant may pick up a pre-authorized customer return in the same manner it makes deliveries. DEA is amending Section 1307.12 of the regulations to acknowledge the fact that a person may return controlled substances to a supplier either directly or through a freight forwarding facility provided that the return is pre-arranged and the returning registrant delivers the controlled substance(s) directly to an agent on employee of the receiving registrant. DEA is also making a technical correction in this section to the U.S. Code citation which should read "21 U.S.C. 822(c)" rather than "21 U.S.C. 823(c)".

In order to accept transfer of controlled substance returns, a distributing registrant must have received advance notification from the customer of its intent to return controlled substances. Controlled substance returns can only be transferred from a customer to an authorized representative of a distributing registrant in sealed, packaged, unmarked containers. The transfer of controlled substance returns from the customer to the authorized representative must be properly documented by both parties to the transaction so that there is an ability to track the flow of the returns from the customer back through the freight forwarding facility to the distributing registrant. Controlled substance returns cannot be shipped by a customer

directly to a freight forwarding facility nor can controlled substance returns be distributed from the freight forwarding facility to any other registrant except the original seller since the freight forwarding facility is a non-registered entity. Further, returns must transit the freight forwarding facility in less than 24 hours.

The distributing registrant is to submit, along with the required notification requesting exemption from registration for a freight forwarding facility, specific procedures for the processing of controlled substance returns.

5. Miscellaneous Comments

Three commenters suggested that a denial of an application(s) should be communicated to the applicant.

DEA has addressed this issue by indicating in the final regulations that written approval or disapproval will be provided to the distributing registrant within thirty days after confirmed receipt of the notice of intent to operate a freight forwarding facility. If a request to operate a facility is disapproved, the reasons for disapproving the request will be provided in writing to the requesting registrant.

Two commenters suggested that facilities operating under current agreements with the DEA should be grandfathered.

With the publication of this final rule, a person who is operating or desiring to operate a freight forwarding facility is required to notify DEA of both the location(s) of the facility and the registrant(s) who will utilize the facility and fully abide by the regulations set forth in this publication. Those freight forwarding facilities currently operating pursuant to Memoranda of Understanding (MOU) with the DEA must initiate the approval process within thirty days of the effective date of this final rule. Failure to initiate the approval process within the specified time period will void the existing MOU.

One commenter questioned whether DEA would coordinate with the appropriate State authorities regarding freight forwarding facilities. The waiver of the registration requirement by DEA does not imply similar exemption at the state level. The appropriate state agency should be contacted by the requesting registrant prior to obtaining authorization from the DEA to determine whether state licensure is required. Notice regarding whether state licensure is, or is not, required should be provided to DEA as part of the request to operate a freight forwarding facility. DEA will coordinate with the appropriate state authorities to ensure that freight forwarding operations within their states are in full compliance with state requirements.

What Do These Final Regulations Allow?

Under these final regulations, a distributing registrant (*i.e.*, a distributor, manufacturer, and/or importer) may establish a freight forwarding facility through which the distributing registrant may transfer controlled substances in the course of delivery to customers. If the distributing registrant maintains multiple registrations as a distributor, manufacturer, and/or importer, all of those registered locations may transfer controlled substances through the facility. The distributing registrant and the freight forwarding facility must be part of the same corporate entity; a distributing registrant from a different corporate entity may not transfer controlled substances through the facility.

The registration requirement for a freight forwarding facility will be waived provided that the distributing registrant submits proper notice to DEA of their intent to operate the facility.

Controlled substances that are being transferred through a freight forwarding facility may be stored in the facility for less than 24 hours. During storage, containers with controlled substances must be kept under continuous observation by designated individuals or maintained in a secured area that meets the present requirements for storage of Schedule III through V controlled substances. 'Locking down' a facility that also has a monitored alarm system or is subject to continuous monitoring by security personnel is consistent with the security requirements under 21 CFR 1301.72(b)(3) and 1301.77(a)(2).

If controlled substances are stored in the facility for 24 hours or more, then the facility does not meet the definition of freight forwarding facility and does not qualify for waiver of the registration requirement.

Records are required to be maintained by the distributing registrant at the freight forwarding facility regarding the transfer of controlled substances through the facility. The records must reflect the date; time of transfer; number of cartons, crates, drums, or other packages in which controlled substances are shipped; and authorized signatures for each transfer. The records may be maintained centrally, provided that the registrant operating the facility has been approved to maintain central records. In addition, each shipment should contain the usual documentation of controlled substances in the shipment, *i.e.*, invoices, packing slips, etc.

Customer returns may be transferred through a freight forwarding facility, provided that the returns are pre-authorized, the official transfer from the customer to the distributor takes place upon pick-up at the customer's registered location, and the returns are treated in the same manner as distributions to customers through the facility.

These final regulations represent the best possible provisions that could be established while remaining consistent with the requirements of the CSA. Certain other provisions were considered in the establishment of these regulations, such as inter-company freight forwarding; however, the difficulties associated with the assignment of responsibility under the law and regulations that such activities would present, prevents their adoption.

OMB Information Collection Requirements

This final rule contains a new information collection requirement, Notice of Intent to Operate a Freight Forwarding Facility, that has been reviewed and approved by OMB and assigned the OMB approval number 1117–0035.

Plain English

The Drug Enforcement Administration makes every effort to write clearly. If you have suggestions as to how to improve the clarity of this regulation, call or write Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, Telephone (202) 307–7297.

Certifications

Regulatory Flexibility Act

The Deputy Assistant Administrator, Office of Diversion Control has reviewed this rule in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) and certifies that it will not have a significant economic impact on a substantial number of small entities. This final rule provides an alternative system that may allow certain person(s) authorized to distribute controlled substances a more efficient means of delivering controlled substances. In fact, the regulated industry has represented that this procedure will benefit the industry by allowing it to lower costs associated with shipping controlled substances.

Executive Order 12866

This final rule has been drafted and reviewed in accordance with Executive Order 12866, § 1(b), Principles of Regulation. The Deputy Assistant Administrator, Office of Diversion Control, has determined that this rule is not a significant regulatory action under Executive Order 12866, § 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget. This regulation provides an exemption for freight forwarding facilities operated by a person from certain requirements of the CSA, thus allowing them a more efficient and cost effective means of doing business.

Executive Order 13132

This action has been analyzed in accordance with the principles and criteria in Executive Order 13132 and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act

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 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

This rule is not a major rule as defined by Section 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.

It should be noted that due to earlier amendments to the regulations, certain section designations in the NPRM have changed. The appropriate adjustments have been made in the final rule to reflect the new section designations.

List of Subjects

21 CFR Part 1300

Definitions, Drug traffic control.

21 CFR Part 1301

Administrative practice and procedure, Drug traffic control, Security measures.

21 CFR Part 1304

Drug traffic control, Reporting requirements.

21 CFR Part 1307

Drug traffic control.

For reasons set out above, DEA is amending 21 CFR Parts 1300, 1301, 1304 and 1307 to read as follows:

PART 1300—[AMENDED]

1. The authority citation for Part 1300 continues to read as follows:

Authority: 21 U.S.C. 802, 871(b), 951, 958(f)

2. Section 1300.01 is amended by adding a new paragraph (b) (42) to read as follows:

§ 1300.01 Definitions.

* * * * *

(b) * * *

(42) The term *freight forwarding facility* means a separate facility operated by a distributing registrant through which sealed, packaged controlled substances in unmarked shipping containers (i.e., the containers do not indicate that the contents include controlled substances) are, in the course of delivery to, or return from, customers, transferred in less than 24 hours. A distributing registrant who operates a freight forwarding facility may use the facility to transfer controlled substances from any location the distributing registrant operates that is registered with the Administration to manufacture, distribute, or import controlled substances, or, with respect to returns, registered to dispense controlled substances, provided that the notice required by § 1301.12(b)(4) of Part 1301 of this chapter has been submitted and approved. For purposes of this definition, a distributing registrant is a person who is registered with the Administration as a manufacturer, distributor, and/or importer.

PART 1301—[AMENDED]

1. The authority citation for Part 1301 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 871(b), 875, 877, unless otherwise noted.

2. Section 1301.12 is amended by adding a new paragraph (b)(4) to read as follows:

§ 1301.12 Separate registrations for separate locations.

* * * * *

(b) * * *

(4) A freight forwarding facility, as defined in § 1300.01 of this part, provided that the distributing registrant operating the facility has submitted written notice of intent to operate the facility by registered mail, return receipt requested (or other suitable means of documented delivery) and such notice has been approved. The notice shall be submitted to the Special Agent in Charge of the Administration's offices in both the area in which the facility is located and each area in which the distributing registrant maintains a registered location that will transfer controlled substances through the facility. The notice shall detail the registered locations that will utilize the facility, the location of the facility, the hours of operation, the individual(s) responsible for the controlled substances, the security and recordkeeping procedures that will be employed, and whether controlled substances returns will be processed through the facility. The notice must also detail what state licensing requirements apply to the facility and the registrant's actions to comply with any such requirements. The Special Agent in Charge of the DEA Office in the area where the freight forwarding facility will be operated will provide written notice of approval or disapproval to the person with thirty days after confirmed receipt of the notice. Registrants that are currently operating freight forwarding facilities under a memorandum of understanding with the Administration must provide notice as required by this section no later than September 18, 2000 and receive written approval from the Special Agent in Charge of the DEA Office in the area in which the freight forwarding facility is operated in order to continue operation of the facility.

3. Part 1301 is amended by adding a new § 1301.77 to read as follows:

§ 1301.77 Security controls for freight forwarding facilities.

(a) All Schedule II–V controlled substances that will be temporarily stored at the freight forwarding facility must be either:

(1) stored in a segregated area under constant observation by designated responsible individual(s); or

(2) stored in a secured area that meets the requirements of Section 1301.72(b) of this Part. For purposes of this requirement, a facility that may be locked down (*i.e.*, secured against physical entry in a manner consistent

with requirements of Section 1301.72(b)(3)(ii) of this part) and has a monitored alarm system or is subject to continuous monitoring by security personnel will be deemed to meet the requirements of Section 1301.72(b)(3) of this Part.

(b) Access to controlled substances must be kept to an absolute minimum number of specifically authorized individuals. Non-authorized individuals may not be present in or pass through controlled substances storage areas without adequate observation provided by an individual authorized in writing by the registrant.

(c) Controlled substance being transferred through a freight forwarding facility must packed in sealed, unmarked shipping containers.

PART 1304—[AMENDED]

1. The authority citation for Part 1304 continues to read as follows:

Authority: 21 U.S.C. 821, 827, 871(b), 958(e), 965, unless otherwise noted.

2. Section 1304.03 is proposed to be amended by adding a new paragraph (g) to read as follows:

§ 1304.03 Persons required to keep records and file reports.

* * * * *

(g) A distributing registrant who utilizes a freight forwarding facility shall maintain records to reflect transfer of controlled substances through the facility. These records must contain the date, time of transfer, number of cartons, crates, drums or other packages in which commercial containers of controlled substances are shipped and authorized signatures for each transfer. A distributing registrant may, as part of the initial request to operate a freight forwarding facility, request permission to store records at a central location. Approval of the request to maintain central records would be implicit in the approval of the request to operate the facility. Otherwise, a request to maintain records at a central location must be submitted in accordance with § 1304.04 of this part. These records must be maintained for a period of two years.

PART 1307—[AMENDED]

1. The authority citation for Part 1307 continues to read as follows:

Authority: 21 U.S.C. 821, 822(d), 871(b), unless otherwise noted.

2. Section 1307.12 is revised to read as follows:

§ 1307.12 Distribution to supplier.

(a) Any person lawfully in possession of a controlled substance listed in any schedule may distribute (without being registered to distribute) that substance to the person from whom he obtained it or to the manufacturer of the substance, provided that a written record is maintained which indicates the date of the transaction, the name, form, and quantity of the substance, the name, address, and registration number, if any, of the person making the distribution, and the name, address, and registration number, if known, of the supplier or manufacturer. In the case of returning a controlled substance in Schedule I or II, an order form shall be used in the manner prescribed in part 1305 of this chapter and be maintained as the written record of the transaction. Any person not required to register pursuant to sections 302(c) or 1007(b)(1) of the Act (21 U.S.C. 822(c) or 957(b)(1) shall be exempt from maintaining the records required by this section.

(b) Distributions referred to in paragraph (a) may be made through a freight forwarding facility operated by the person to whom the controlled substance is being returned provided that prior arrangement has been made for the return and the person making the distribution delivers the controlled substance directly to an agent or employee of the person to whom the controlled substance is being returned.

Dated: July 13, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 00–18147 Filed 7–18–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 31

[TD 8891]

RIN 1545–AW59

Increase In Cash-Out Limit Under Sections 411(a)(7), 411(a)(11), and 417(e)(1) for Qualified Retirement Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the increase from $3,500 to $5,000 of the limit on distributions from qualified retirement plans that can be made without participant or spousal consent. This increase is contained in the Taxpayer Relief Act of 1997. In addition, these regulations eliminate the "lookback rule" pursuant to which certain qualified plan benefits are deemed to exceed this limit on involuntary distributions. The final regulations affect sponsors and administrators of qualified retirement plans, and participants in those plans.

DATES: *Effective Date:* These regulations are effective October 17, 2000.

Applicability Date: These regulations generally apply to distributions made on or after October 17, 2000.

FOR FURTHER INFORMATION CONTACT: Robert Walsh, (202) 622–6090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 21, 1998, a notice of proposed rulemaking (REG–113694–98) was published in the **Federal Register** (63 FR 70356) regarding the "cash-out limit" under sections 411(a)(7), 411(a)(11), and 417(e)(1) of the Internal Revenue Code. That same day, temporary and final regulations (TD 8794) were published in the **Federal Register** (63 FR 70335) which amended the Income Tax Regulations and the Employment Tax Regulations (26 CFR parts 1 and 31) relating to the increase in the cash-out limit enacted by section 1071 of the Taxpayer Relief Act of 1997, Public Law 105–34, 111 Stat. 788 (1997) (TRA '97). The text of the temporary regulations served as a portion of the text of the proposed regulations. Very few comments were submitted on the proposed regulations; no hearing was requested or held. After consideration of the comments, these final regulations adopt the provisions of the proposed regulations.

Explanation of Provisions

The temporary regulations made several changes to the cash-out rules under sections 411(a)(7), 411(a)(11), and 417(e)(1). In accordance with section 1071 of TRA '97, the temporary regulations increased the cash-out limit from $3,500 to $5,000. Thus, a qualified plan can generally distribute vested accrued benefits valued at $5,000 or less without participant or spousal consent. The temporary regulations also provided that, for purposes of section 411(a)(7)(B)(i), an involuntary distribution of an employee's vested accrued benefit valued at $5,000 or less could be treated as made due to termination of the employee's participation if the distribution could have been made at termination of

participation but for the fact that the benefit was then valued at more than $3,500. Finally, the temporary regulations amended § 1.411(a)–11(c)(3) to eliminate the "lookback rule" for distributions other than those made pursuant to an optional form of benefit under which at least one scheduled periodic distribution remained payable. Prior to this amendment, the lookback rule in § 1.411(a)–11(c)(3) provided that the present value of a vested accrued benefit was deemed to exceed the cash-out limit if it had exceeded the cash-out limit at the time of any previous distribution. The temporary regulations did not change the parallel lookback rule under § 1.417(e)–1(b)(2)(i).

The proposed regulations generally included the provisions of the temporary regulations, but they also proposed the complete removal (on a prospective basis) of the lookback rule under both §§ 1.411(a)–11(c)(3) and 1.417(e)–1(b)(2)(i). Thus, under the proposed regulations, the lookback rule would be eliminated both for plans subject to the spousal-consent provisions of sections 401(a)(11) and 417 and for plans not subject to those provisions. Under this removal of the lookback rule, a participant's vested accrued benefit valued at $5,000 or less could be distributed without consent even if the benefit had been valued at more than $5,000 at the time of a previous distribution. However, in accordance with section 417(e)(1), the proposed regulations also provided that, in the case of plans subject to sections 401(a)(11) and 417, consent would be required after the annuity starting date for the immediate distribution of the present value of an accrued benefit being distributed in any form, including a qualified joint and survivor annuity or a qualified preretirement survivor annuity, regardless of the amount of that present value.

Very few comments were received on the proposed regulations. One commentator inquired whether a cash-out could be made of a benefit presently valued at $4,500 that had been valued at $4,000 upon termination of the employee's employment more than two years earlier. As indicated in the preamble to the final and temporary regulations published with the proposed regulations, that benefit could be cashed out.

Another commentator indicated support for the content of the proposed regulations but expressed concern about the rule, derived from section 417(e)(1), prohibiting a cashout after the annuity starting date of a benefit being distributed in any form by a plan subject to sections 401(a)(11) and 417. The commentator observed that, under section 417(f)(2)(A), the annuity starting date for a benefit payable upon termination of employment in non-annuity form could be the date of termination. The commentator argued that the rule in the proposed regulations prohibiting a cashout after the annuity starting date could be read to preclude a cashout of a non-annuity benefit payable at termination, regardless of the present value of that benefit. To address this, the commentator urged the IRS and Treasury to redefine "annuity starting date" such that a cashout would be permitted as long as a benefit remains immediately distributable (that is, until the later of normal retirement age or age 62).

The provision in the proposed regulations prohibits a cashout after the annuity starting date of a benefit "being distributed in any form." The rule does not apply to any benefit that is not yet "being distributed"—that is, to any benefit with respect to which no payment has been made. If the present value of a benefit payable on or after termination of employment does not exceed the cashout limit, the rule of section 417(e)(1), as set forth in the proposed regulations, would not prohibit a cashout prior to the date on which a payment is first made (disregarding, obviously, the cashout payment itself). Thus, no change has been made to the regulations on this point.

Another commentator objected to the complete elimination of the lookback rule under the proposed regulations. The commentator cited three reasons for its opposition: first, that an amount distributed in a hardship or other type of distribution remains part of a participant's benefit; second, that a participant could manipulate a distribution in order to evade the spousal-consent requirements; and, third, that permitting cash-outs after a hardship or other distribution is contrary to the policy of discouraging non-retirement distributions.

In contrast, a comment received prior to the issuance of the proposed regulations noted problems faced by plan administrators due to the lookback rule. The commentator noted, for example, that if a plan provides for hardship distributions, the plan administrator must review its records to determine the value of the participant's benefits at the time of any prior distribution. The commentator added that this can be particularly difficult and costly where plans sponsored by other employers have merged into the plan. The commentator further stated that the cash-out provisions are designed to allow plans to reduce their administrative costs by making lump sum payments to participants with small benefits and that the lookback rule is contrary to that design because the rule (1) makes it more costly for administrators to determine whether the provisions apply and (2) can prevent a plan from relying on the provisions in many cases where the value of the participant's current benefit is well below $5,000.

After consideration of the comments, the IRS and Treasury have decided to adopt the regulation eliminating the lookback rule as proposed. The IRS and Treasury believe that the statutory cash-out provisions represent a balancing of the interests of participants in maintaining their benefits in qualified plans with the reasonable administrative needs of plan sponsors and administrators. The lookback rule prevents plans from cashing out a benefit currently valued below the cash-out limit simply because it had been valued above the cash-out limit at the time of an earlier distribution. This creates disparity in the treatment of benefits of equivalent value and requires plans to incur additional recordkeeping and other administrative costs.

The IRS and Treasury note that removal of the lookback rule is unlikely to present significant opportunities for participants to evade the spousal-consent rules. In the case of any plan subject to the spousal-consent provisions of sections 401(a)(11) and 417, a distribution that draws a participant's accrued benefit from a value above the cash-out limit to a value at or below the cash-out limit will itself require spousal consent. Furthermore, these final regulations strengthen the spousal-consent rules by clarifying that a plan subject to sections 401(a)(11) and 417 may not distribute a benefit after the annuity starting date without consent. This prohibition on cash-outs after the annuity starting date, which is statutory in source, applies without regard to the value of the benefit at the annuity starting date and without regard to the distribution form.

Finally, the IRS and Treasury note that concerns about non-retirement distributions of benefits are mitigated by the availability of rollovers. In almost all cases, an amount distributed from a qualified plan in a cash-out distribution will be an eligible rollover distribution that can be paid directly (or indirectly, through a 60-day rollover) to another qualified retirement plan or individual retirement arrangement.

Special Analyses

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

Drafting Information

The principal author of these regulations is Robert M. Walsh, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 31 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for § 1.411(a)–7T and by adding a new entry in numerical order to read in part as follows:

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

§ 1.411(a)–7 also issued under 26 U.S.C. 411(a)(7)(B)(i). * * *

Par. 2. Section 1.411(a)–7 is amended as follows:

1. Paragraph (d)(4)(i) is revised;

2. Paragraphs (d)(4)(vi) and (d)(4)(vii) are added.

The revision and additions read as follows:

§ 1.411(a)–7 Definitions and special rules.

* * * * *

(d) * * *

(4) *Certain cash-outs of accrued benefits*—(i) *Involuntary cash-outs.* For purposes of determining an employee's right to an accrued benefit derived from employer contributions under a plan, the plan may disregard service performed by the employee with respect to which—

(A) The employee receives a distribution of the present value of his entire nonforfeitable benefit at the time of the distribution;

(B) The requirements of section 411(a)(11) are satisfied at the time of the distribution;

(C) The distribution is made due to the termination of the employee's participation in the plan; and

(D) The plan has a repayment provision which satisfies the requirements of paragraph (d)(4)(iv) of this section in effect at the time of the distribution.

* * * * *

(vi) For purposes of paragraph (d)(4)(i) of this section, a distribution shall be deemed to be made due to the termination of an employee's participation in the plan if it is made no later than the close of the second plan year following the plan year in which such termination occurs, or if such distribution would have been made under the plan by the close of such second plan year but for the fact that the present value of the nonforfeitable accrued benefit then exceeded the cash-out limit in effect under § 1.411(a)–11(c)(3)(ii). For purposes of determining the entire nonforfeitable benefit, the plan may disregard service after the distribution, as illustrated in paragraph (d)(2)(i) of this section.

(vii) *Effective date.* Paragraphs (d)(4)(i) and (vi) of this section apply to distributions made on or after March 22, 1999. However, an employer is permitted to apply paragraphs (d)(4)(i) and (vi) of this section to plan years beginning on or afterAugust 6, 1997. Otherwise, for distributions prior to March 22, 1999, §§ 1.411(a)–7 and 1.411(a)–7T, in effect prior to October 17, 2000 (as contained in 26 CFR part 1, revised as of April 1, 2000) apply.

* * * * *

§ 1.411(a)–7T [Removed]

Par. 3. Section 1.411(a)–7T is removed.

Par. 4. Section 1.411(a)–11 is amended by revising paragraph (c)(3) to read as follows:

§ 1.411(a)–11 Restriction and valuation of distributions.

* * * * *

(c) * * *

(3) *Cash-out limit.* (i) Written consent of the participant is required before the commencement of the distribution of any portion of an accrued benefit if the present value of the nonforfeitable total accrued benefit is greater than the cash-out limit in effect under paragraph (c)(3)(ii) of this section on the date the distribution commences. The consent requirements are deemed satisfied if such value does not exceed the cash-out limit, and the plan may distribute such portion to the participant as a single sum. Present value for this purpose must be determined in the same manner as under section 417(e); see § 1.417(e)–1(d).

(ii) The cash-out limit in effect for a date is the amount described in section 411(a)(11)(A) for the plan year that includes that date. The cash-out limit in effect for dates in plan years beginning on or after August 6, 1997, is $5,000. The cash-out limit in effect for dates in plan years beginning before August 6, 1997, is $3,500.

(iii) *Effective date.* Paragraphs (c)(3)(i) and (ii) of this section apply to distributions made on or after October 17, 2000. However, an employer is permitted to apply the $5,000 cash-out limit described in paragraph (c)(3)(ii) of this section to plan years beginning on or after August 6, 1997. Otherwise, for distributions prior to October 17, 2000, §§ 1.411(a)–11 and 1.411(a)–11T in effect prior to October 17, 2000 (as contained in 26 CFR Part 1 revised as of April 1, 2000) apply.

* * * * *

§ 1.411(a)–11T [Removed]

Par. 5. Section 1.411(a)–11T is removed.

Par. 6. Section 1.417(e)–1 is amended by revising the last sentence of paragraph (b)(2)(i) and by adding new paragraph (b)(2)(iii) to read as follows:

§ 1.417(e)-1 Restrictions and valuations of distributions from plans subject to sections 401(a)(11) and 417.

* * * * *

(b) * * *

(2) * * * (i) * * * After the annuity starting date, consent is required for the immediate distribution of the present value of the accrued benefit being distributed in any form, including a qualified joint and survivor annuity or a qualified preretirement survivor annuity, regardless of the amount of such present value.

* * * * *

(iii) Paragraph (b)(2)(i) of this section applies to distributions made on or after October 17, 2000. For distributions prior to October 17, 2000, § 1.417(e)–1(b)(2)(i) in effect prior to October 17, 2000 (as

contained in 26 CFR part 1 revised as of April 1, 2000) applies.

* * * * *

PARTS 1 AND 31—[AMENDED]

Par. 7. In the table below, for each section indicated in the left column, remove the language in the middle column and add the language in the right column:

Section	Remove	Add
1.401(a)–20, Q&A–8, paragraph (d), first sentence.	§ 1.411(a)–11T(c)(3)(ii)	§ 1.411(a)–11(c)(3)(ii).
1.401(a)–20, Q&A–24, paragraph (a)(1), fourth sentence.	§ 1.411(a)–11T(c)(3)(ii)	§ 1.411(a)–11(c)(3)(ii).
1.401(a)(4)–4, paragraph (b)(2)(ii)(C)	§ 1.411(a)–11T(c)(3)(ii)	§ 1.411(a)–11(c)(3)(ii).
1.401(a)(26)–4, paragraph (d)(2), last sentence	§ 1.411(a)–11T(c)(3)(ii)	§ 1.411(a)–11(c)(3)(ii).
1.401(a)(26)–6, paragraph (c)(4), first sentence	§ 1.411(a)–11T(c)(3)(ii)	§ 1.411(a)–11(c)(3)(ii).
1.411(a)–11, paragraph (b), first sentence	§ 1.411(a)–11T(c)(3)(ii)	paragraph (c)(3)(ii) of this section.
1.411(a)–11, paragraph (c)(7), third sentence	§ 1.411(a)–11T(c)(3)(ii)	paragraph (c)(3)(ii) of this section.
1.411(d)–4, Q&A–2, paragraph (b)(2)(v), second, third, and fourth sentences.	§ 1.411(a)–11T(c)(3)(ii)	§ 1.411(a)–11(c)(3)(ii).
1.411(d)–4, Q&A–4, paragraph (a), eighth sentence.	§ 1.411(a)–11T(c)(3)(ii)	§ 1.411(a)–11(c)(3)(ii).
1.417(e)–1, paragraph (b)(2)(i), first, fourth, and fifth sentences.	§ 1.411(a)–11T(c)(3)(ii)	§ 1.411(a)–11(c)(3)(ii).
31.3121(b)(7)–2, paragraph (d)(2)(i), last sentence.	§ 1.411(a)–11T(c)(3)(ii)	§ 1.411(a)–11(c)(3)(ii).

Approved: July 10, 2000.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Jonathan Talisman,

Deputy Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 00–18119 Filed 7–18–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF JUSTICE

28 CFR Part 0

[Order No. 2314–2000]

Delegation of Authority: Settlement Authority

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This rule delegates authority to the Director of the Federal Bureau of Investigation (FBI) to settle administrative claims presented pursuant to the Federal Tort Claims Act (FTCA), where the amount of the settlement does not exceed $50,000. Currently, the Director of the FBI has authority to settle FTCA claims not exceeding $10,000. This rule will alert the general public to the Federal Bureau of Investigation's new authority and is being codified in the Code of Federal Regulations to provide a permanent record of this delegation.

EFFECTIVE DATE: July 19, 2000.

FOR FURTHER INFORMATION CONTACT: Larry R. Parkinson, General Counsel, Federal Bureau of Investigation, U.S. Department of Justice, 935 Pennsylvania Ave. NW, Washington, DC 20535; (202) 324–3000.

SUPPLEMENTARY INFORMATION: This rule has been issued to delegate settlement authority and is a matter solely related to the division of responsibility within the Department of Justice. It relates to matters of agency policy, management, or personnel, and is therefore exempt from the usual requirements of prior notice and comment, and a 30-day delay in the effective date. *See* 5 U.S.C. 553(a)(2), (b)(A).

Executive Order 12866

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute "significant regulatory actions" under section 3(f) of Executive Order 12866 and, accordingly, was not reviewed by OMB.

Executive Order 13132

This regulation 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 13132 the Department of Justice has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this regulation and, by approving it, certifies that this regulation will not have a significant economic impact upon a substantial number of small entities. This rule pertains to delegations of authority within the Department of Justice and does not affect the Department of Justice's overall authority to act on tort claims.

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 section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. 804. 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.

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Larry R. Parkinson at the address and telephone number given above.

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Government employees,

Organization and functions (Government agencies), Whistleblowing.

Accordingly, part 0 of title 28 of the Code of Federal Regulations is amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

1. The authority for part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

2. Section 0.89a of part 0, subpart P, is amended by revising paragraph (a) to read as follows:

§ 0.89a Delegations respecting claims against the FBI.

(a) The Director of the Federal Bureau of Investigation is authorized to exercise the power and authority vested in the Attorney General Under 28 U.S.C. 2672 to consider, ascertain, adjust, determine, and settle any claim thereunder not exceeding $50,000 in any one case caused by the negligent or wrongful act or omission of any employee of the Federal Bureau of Investigation.

* * * * *

Dated: July 11, 2000.

Janet Reno,

Attorney General.

[FR Doc. 00–18213 Filed 7–18–00; 8:45 am]

BILLING CODE 4410–02–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA099–5048; FRL–6837–5]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Approval of Revision to Opacity Limit for Drier Stacks at Georgia-Pacific Corporation Softboard Plant in Jarratt, VA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a revised opacity limit for drier zone stacks #1 and #2 associated with the softboard drier at the Jarratt Softboard Plant. The plant is owned by Georgia-Pacific Corporation (GP) and is located in Jarratt, VA. The new opacity limit is contained in a consent agreement between the Commonwealth of Virginia and GP. The consent agreement was submitted by the Department of Environmental Quality of the Commonwealth of Virginia (VADEQ) as a revision to its State Implementation Plan (SIP) on February 3, 1999. The increased opacity limit only applies to the drier zone stacks which emit particulate emissions while drying the softboard. Mass emission limits from the drier are not being changed.

DATES: This rule is effective on September 18, 2000 without further notice, unless EPA receives adverse written comment by August 18, 2000. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to Ms. Makeba A. Morris, Chief, Technical Assessment Branch, Mailcode 3AP22, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Ruth E. Knapp, (215) 814–2191, or by e-mail at knapp.ruth@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we", "us" or "our" are used we mean EPA.

Table of Contents

I. What Is the EPA Approving?

We are approving Consent Order No. 50253 (effective September 28, 1998) signed by John M. Daniels for Dennis H. Treacy, Director of the Department of Environmental Quality of the Commonwealth of Virginia and Mr. John Masaschi, Vice President, Industrial Wood Products, Georgia-Pacific Corporation, as a SIP revision. The consent order was submitted, as a SIP revision, to EPA on February 3, 1999. The consent order provides a revised opacity limit for the two drier zone stacks from the drier located at the Jarratt Softboard Plant located in Jarratt, Virginia. The revised limit allows for a higher opacity limit; however, mass emission rates are not being changed.

II. What Facilities/Operations Does This Action Apply To?

We are approving a revised opacity limit for a process at a GP Softboard plant. The plant manufactures softboard used in construction. Manufacturing begins with refining wood chips from pine and hardwood to produce wood fiber. Wax is added to the fiber to give it water resistance and then asphalt slurry is added as a binder. A continuous ribbon of wet mat is formed and conveyed through a press to remove water. The mat is then cut and placed into the drier. Dried mats are then re-sawn to construction dimensions. Particulate emissions from the drier are emitted from two drier zone stacks and nine roof vents. The revised opacity limit applies to emissions from drier zone stack #1 and drier zone stack #2 only.

III. What Are the Provisions of the New Opacity Limit?

The new limit is contained in the consent agreement which states "GP shall not exceed 50% opacity from the Softboard drier zone stacks one and two except for one six-minute period in any one hour of not more than 60% opacity * * *" Although the language of the Commonwealth's consent order provides that the source may also have an exemption from the opacity limit during startup, shutdown and malfunction, the Commonwealth of Virginia has not included these provisions as part of its SIP revision request. Therefore, the portion of the text of Provision 1 of Section E of Consent Order No. 50253 which reads "* * * and during periods of start-up, shutdown and malfunction." are not being approved or incorporated into the Virginia SIP. GP must conduct quarterly visible emission evaluations of drier zone stacks #1 and #2. Stack tests must be performed on drier zone stacks #1 and #2 every two years. GP must provide stack tests results to VADEQ in addition to maintaining visible emission records.

IV. What Are the Current Limits on These Sources?

The drier zone stacks #1 and #2 are currently subject to Virginia Regulations 9 VAC 5–40–80 Standard for Visible Emissions which provides for visible emissions up to 20% opacity except for one six-minute period in any one hour of not more than 60% opacity. The mass

emission limit for the drier is found in 9 VAC 5–40–260. This regulation provides for a mass particulate limit based on the process weight rate which varies depending on how much softboard is being processed.

V. What Supporting Material Did Virginia Provide?

Virginia provided information on emissions from the drier vents and the stacks along with opacity readings. Stack testing and visible emissions readings were performed in July 1997 and September 1997. Stack test data indicates that the drier is within its allowable emission limit while visible emissions data indicates that one of the drier zone stacks is out of compliance with the 20% opacity limit. The average opacity observed during July testing was 38% with some individual 15 second readings as high as 55%. The average opacity during the September testing was 50%.

VI. What Are the Environmental Effects of This Action?

The revised opacity limit will allow darker smoke to be emitted from specific stacks at the facility, then does the current SIP. No mass emission limits are being revised and the revised opacity limit is protective of the existing mass emission limit.

VII. Special Provisions Pertaining to Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties asserting either the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) That are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1997, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by federal law to maintain program delegation, authorization or approval," since Virginia must "enforce federally authorized environmental programs in a manner that is no less stringent than their federal counterparts. * * *" The opinion concludes that "[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by federal law to maintain program delegation, authorization or approval."

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1997 opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with federal law, which is one of the criteria for immunity."

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities, EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

VIII. EPA Rulemaking Action

We are approving, through direct final rulemaking, Consent Order No. 50253, except as noted above, submitted by the Commonwealth of Virginia as a SIP revision on February 3, 1999. The revision consists of a revised opacity limit for drier zone stack #1 and #2 located at the Georgia-Pacific softboard facility in Jarratt, VA.

We are publishing this action without prior proposal because we view this as a noncontroversial revision and anticipate no adverse comments. However, in a separate document in the "Proposed Rules" section of today's **Federal Register**, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on September 18, 2000 without further notice unless we receive adverse comment by August 18, 2000. Should we receive such comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action must do so at this time.

IX. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will

not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties (5 U.S.C. 804(3)). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability that only effects the Georgia-Pacific Corporation Softboard plant located in Jarratt, VA.

C. 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 September 18, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action related to the Georgia-Pacific Corporation Softboard plant located in Jarratt, VA may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: June 30, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart VV—Virginia

2. In § 52.2420, the table in paragraph (d) is amended by adding an entry for "Georgia-Pacific Corporation—Jarratt Softboard Plant" to the end of the table to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(d) * * *

EPA—APPROVED VIRGINIA SOURCE-SPECIFIC REQUIREMENTS

Source Name	Permit/order or registration No.	State effective date	EPA approval date	40 CFR part 52 citation
*	*	*	*	*
Georgia-Pacific Corporation—Jarratt Softboard Plant.	Registration No. 50253	September 28, 1998	[Insert 7/19/2000 and page cite].	In Section E, Provision 1, the portion of the text which reads "* * * and during periods of start-up, shutdown, and malfunction." is not part of the SIP.

[FR Doc. 00–18105 Filed 7–18–00; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIPTRAX NO. MD097–3050a; FRL–6735–4]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Revised 15% Plan for the Metropolitan Washington, DC Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is converting its conditional approval of a State Implementation Plan (SIP) revision submitted by the State of Maryland to a full approval. This revision satisfies the 15 percent reasonable further progress implementation plan (15% plan) requirements of the Clean Air Act (the Act) for Maryland's portion of the Metropolitan Washington, DC ozone nonattainment area (the Washington, DC area). EPA is converting its conditional approval to a full approval because the State has fulfilled the conditions listed in the conditional approval of the original 15% plan for the Maryland portion of the Washington, DC area. The intended effect of this action is to covert our conditional approval of the 15% plan submitted by the State of Maryland to a full approval.

DATES: This direct final rule is effective on September 18, 2000 without further notice, unless EPA receives adverse comment by August 18, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency—Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224. Persons interested in examining these documents should schedule an appointment with the contact person (listed below) at least 24 hours before the visiting day. Copies of the documents relevant to this action are also available at the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland 21224.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps, (215) 814–2179, at the EPA Region III address above, or by e-mail at cripps.christopher@epa.gov. Please note that while questions may be submitted via e-mail, comments on the rulemaking action must be submitted, in writing, to the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background

On May 5, 1998 the Maryland Department of the Environment (MDE) submitted a revision to its SIP for the Washington, DC area. The revision consists of an amended plan to achieve a 15% reduction from 1990 base year levels in volatile organic compound (VOC) emissions. Maryland's original 15% plan for the Maryland portion of the Washington, DC area was conditionally approved on September 23, 1997 (62 FR 49611). Maryland's revisions to its 15% plan were made to satisfy the conditions imposed in the September 23, 1997 conditional approval.

The Washington, DC ozone nonattainment area consists of the District of Columbia, five counties in Northern Virginia and Calvert, Charles, Frederick, Montgomery, and Prince George's Counties in Maryland.

Virginia, Maryland and the District all must demonstrate reasonable further progress for the Washington, DC nonattainment area. The Commonwealth of Virginia, State of Maryland and the District of Columbia in conjunction with municipal planning organizations collaborated on a coordinated 15% plan for the entire Washington, DC area (regional 15% plan). This was done under the auspices of the regional air quality planning committee, the Metropolitan Washington Air Quality Committee (MWAQC), and with the assistance of the local municipal planning organization, the Metropolitan Washington Council of Governments (MWCOG), to ensure coordination of air quality and transportation planning. Although the plan was developed by a regional approach, each jurisdiction is required to submit the 15% plan to EPA for approval as a revision to its SIP.

Because the reasonable further progress requirements such as the 15% plan affect transportation improvement plans, municipal planning organizations have historically been heavily involved in air quality planning in the Washington, DC area. As explained in further detail below, the regional 15% plan determined the regional target level, regional projections of growth and finally the total amount of creditable reductions required under the reasonable further progress requirement in the entire Washington, DC area. Maryland, Virginia and the District agreed to apportion this total amount of required creditable reductions among the three jurisdictions. EPA is taking action today only on Maryland's revised 15% plan submittal for the Washington, DC area. This rulemaking is being taken to convert the September 23, 1997 conditional approval of Maryland's 15% plan for the Washington, DC area to a full approval based upon EPA's determination that Maryland has fulfilled the conditions imposed in the conditional approval.

A. Base Year Emission Inventory

The baseline from which states must determine the required reductions for 15% planning is the 1990 base year emission inventory. The inventory is broken down into several emissions source categories: stationary point, area, on-road mobile sources, and off-road mobile sources. The base year inventory includes emissions of all sources within the nonattainment area and certain large point sources within twenty-five miles of the boundary. A subset of the 1990 base year inventory is the 1990 rate-of-progress (ROP) inventory which includes only anthropogenic (man-made) emissions actually within the nonattainment area boundaries. EPA approved this base year inventory SIP revision for the entire Washington, DC area on July 8, 1998 (63 FR 36854).

B. Growth in Emissions Between 1990 and 1996

EPA has interpreted the Act to require that reasonable further progress towards attainment of the ozone standard must be obtained after offsetting any growth expected to occur over that period. Therefore, to meet the 15% reasonable further progress requirement, a state must enact measures achieving sufficient emissions reductions to offset projected growth in VOC emissions, in addition to a 15% reduction of VOC emissions. For a detailed description of the growth methodologies used by the State, please refer to EPA's conditional

approval of Maryland's 15% plan (62 FR 49611, September 23, 1997) and the Technical Support Document (TSD) for that action.

The one area of concern relating to growth projections in the original 15% plan was that of the point source inventory. Condition 1 of the September 23, 1997 (62 FR 49611) conditional approval required that Maryland revise its plan to properly account for growth in point sources between 1990 and 1996. EPA's analysis of the revised 15% plan supports removal of this condition, since Maryland used the appropriate methodology in reappraising its point source inventory growth between 1990 and 1996.

EPA here notes that the revised 15% plan has a point source inventory number that differs from Maryland's SIP approved inventory—5.3 tons per day (tpd) in the revised 15% plan submittal versus 5.5 tpd in the approved inventory. EPA is not revising the SIP approved inventory by this action. The 5.3 tpd number is acceptable for use in the revised 15% plan, since the discrepancy serves to lower the 15% plan's target level, thus making the plan's VOC reductions more restrictive than required if one were to use the approved inventory numbers. EPA is approving the State of Maryland's 1990–1996 emissions growth projections in this revised 15% plan.

C. Enhanced Vehicle Inspection and Maintenance (I/M) Program

Condition 2 of EPA's conditional approval of the original 15% plan required Maryland to meet the conditions EPA imposed in its October 31, 1996 conditional approval of Maryland's enhanced motor vehicle inspection and maintenance (I/M) program. Maryland was also required to remodel the I/M benefits claimed in the 15% plan using the following two EPA guidance memoranda: "Date by which States Need to Achieve all the Reductions Needed for the 15 Percent Plan from I/M and Guidance for Recalculation," from John Seitz and Margo Oge dated August 13, 1996, and "Modeling 15% VOC Reductions from I/M in 1999—Supplemental Guidance," from Gay MacGregor and Sally Shaver dated December 23, 1996.

Maryland has remedied condition 2 imposed on its original 15% plan. On October 29, 1999 (64 FR 58340), EPA published a direct final rule converting its October 31, 1996 conditional approval of the Maryland Enhanced I/M SIP revision to a full approval. This was done because EPA determined that all of the conditions of the October 31, 1996 conditional approval of the enhanced I/M SIP had been satisfied by the State of Maryland. Further, EPA has determined that Maryland has appropriately remodeled the I/M benefits of the program, and that there are no adverse affects on the 15% plan due to this remodeling.

D. Target Level Emissions/Emission Reductions Needs

As part of the conditional approval of its original 15% plan, Maryland was required to remodel to determine affirmatively the creditable reductions from reformulated gasoline (RFG) and the Tier 1 FMVCP in accordance with EPA guidance. Maryland was required to remodel the benefits of enhanced I/M, RFG and Tier 1 under the revised plan. This remodeling demonstration was to compare the mobile source target level in 1999 versus the target level for mobile sources which was created for the original plan.

EPA concurs with the remodeling demonstration submitted as part of the revised 15% plan, and with the revised mobile source target level calculation. Maryland's portion of the corrected target level is 178.6 tpd.

The regional 15% plan calculates a target level of emissions to meet the 15% reasonable further progress requirement over the entire nonattainment area. The regional 15% plan contains a projection of emissions growth from 1990 to 1996 and, in effect, apportions among Maryland, Virginia and the District of Columbia (the three jurisdictions) the amount of creditable emission reductions that each jurisdiction must achieve in order for the entire nonattainment area to achieve a 15% reduction in VOC emissions net of growth. Each jurisdiction then adopted the regional plan, which identified the amount of creditable emission reductions which that jurisdiction must achieve for the regional plan to get a 15% reduction accounting for any growth. The regional plan calculated the "target level" of 1996 VOC emissions, in accordance with applicable EPA guidance.

EPA has interpreted section 182(b) of the Act to require that the base year VOC emission inventory be adjusted to account for reductions in VOC emissions that would have occurred from the pre-1990 FMVCP and RVP programs. To meet EPA's applicable guidance on this requirement, the regional plan contains a calculation of the reductions occurring between 1990 and 1996 from the pre-1990 Tier 0 FMVCP and RVP programs and the result of subtracting these reductions from the 1990 ROP inventory. The net result of this calculation yielded the "1990 base year inventory adjusted to 1996".

Maryland's 15% plan relies upon reductions from Maryland's revised, enhanced I/M program to achieve the required 15% level as soon after November 15, 1996 as practicable, but not later than 1999. Under EPA's applicable guidance for 15% plans that rely upon reductions from enhanced I/M after 1996, the target level must also take into account the effects of the pre-1990 Tier 0 FMVCP on 1990 emissions due to turnover in vehicles between 1996 and 1999. Therefore, to meet EPA's applicable guidance for this requirement, Maryland's 15% plan contains a calculation of the non-creditable reductions from the pre-1990 Tier 0 FMVCP and RVP programs between 1990 and 1999 and the result of subtracting these reductions from the 1990 ROP inventory. The result of this calculation yielded the "1990 base year inventory adjusted to 1999." Maryland's 15% plan clearly identifies the difference between the "1990 base year inventory adjusted to 1996" and "1990 base year inventory adjusted to 1999" as the "fleet turnover correction" (FTC) necessary to meet EPA's guidance.

In its plan, Maryland calculates a "base" 1996 VOC target level as 85% of the "1990 adjusted base year inventory for 1996." In accordance with EPA's guidance discussed in the preceding paragraph, Maryland subtracts the FTC from the "base" 1996 VOC target level to yield a "final" 1996 VOC target level for the 15% plan. In Table 1 below, we have provided a summary of the calculations for the 1996 VOC target level for the entire Washington, DC area.

Metropolitan Washington, DC Nonattainment Area Target Level Calculation

TABLE 1.—REQUIRED REDUCTIONS FOR THE METROPOLITAN WASHINGTON, DC NONATTAINMENT AREA 15% PLAN

[Tons/day]

	Item	District of Columbia	Maryland	Virginia	Washington DC area totals
1	1990 ROP Inventory	60.3	241.7	226.5	528.5
2	1990 Adjusted Base Year Inventory adjusted to 1996	51.2	215.1	196.8	463.1
3	1990 Adjusted Base Year Inventory adjusted to 1999	49.9	210.9	193.3	454.1
4	FTC Adjustment (Line 2 minus Line 3)	1.3	4.2	3.5	9.0
5	Base 1996 target Level = 85% of Line 2 (0.85 × Line 2)	43.5	182.8	167.3	393.6
6	Final 1996 Regional Target Level (Line 5 minus Line 4)	42.2	178.6	163.8	384.6
7	Projected 1996 Uncontrolled Emissions	48.5	234.7	219.4	502.4
8	Required Regional Emission Reductions (Line 8 minus Line 7)*				117.8
9	Apportioned State Emission Reductions*	8.5	57.5	51.7	117.7
10	Total Reductions Claimed in Maryland's15% Plan		61.9		

*The small discrepancy between values is due to rounding the apportioned emission reductions to the nearest tenth.

The emission reductions required to meet the 15% reasonable further progress requirement equals the difference between the projected 1996 emissions under the current control strategy (the 1996 uncontrolled emissions) and the target level. This amount of emission reductions reflects a 15% reduction from the adjusted base year inventory and any reductions necessary to offset emissions growth projected to occur between 1990 and 1996. The Washington, DC area's regional VOC target level is 384.8 tpd. EPA has determined that this regional target level and emission reduction needed for the Washington, DC area have been properly calculated in accordance with EPA guidance.

The three Washington, DC area jurisdictions have agreed to apportion the amount of emisson reductions needed for the entire area to achieve the 15% reduction among themselves. This apportionment is also shown in Table 1 above. Maryland's share is 57.5 tpd.

E. Reasonable Further Progress

The final condition for full approval of the 15 % plan was for Maryland to demonstrate, using appropriate documentation methodologies and credit calculations, that it had satisfied the 15 % plan requirement for the Washington, DC area. As part of the revised 15% plan, recalculations to the inventory, target level and 15 % reduction amounts were adjusted. Under the new plan, Maryland's portion of the 15% plan requirement increased from 56.4 tpd to 57.5 tpd.

EPA agrees with the credit calculation methodology used in the revised plan to justify this number. As demonstrated in Chapter 5 of the revised plan SIP submittal, appropriate assumptions and calculation methodologies were employed, as per EPA guidance, in calculating the new figures. EPA therefore concurs that Maryland must achieve at least 57.5 tpd in creditable emission reductions to demonstrate that Maryland has met its 15% VOC reduction requirement for the Washington, DC area.

EPA believes that Maryland's revised plan has made all the necessary corrections to establish the creditability of sufficient control measures to met the 15% VOC reduction requirement. Maryland has demonstrated there are sufficient creditable measures in the revised 15% plan to achieve at least 60.1 tpd of reductions. This 60.1 tpd reduction results from either rules promulgated by EPA or measures contained in the approved Maryland SIP.

Table 2 below summarizes the creditable measures from Maryland's 15% plan for the Washington, DC area.

TABLE 2.—CREDITABLE REDUCTIONS IN MARYLAND'S 15% PLAN FOR THE METROPOLITAN WASHINGTON, DC NONATTAINMENT AREA

[Tons VOC per day]

Creditable reductions	
Enhanced Inspection and Maintenance	19.0
Tier 1 FMVCP	6.3
Phase II Gasoline Volatility Controls	0.1
Stage II Recovery Nozzles	7.9
Reformulated Gasoline:	
On-Road	4.1
Off-Road	1.0
Auto Refinishing	3.8
AIM—Reformulated Surface Coating	7.6
Reformulated Consumer/Commercial Products	2.1
Stage I Enhancement	0.9
Surface Cleaning and Degreasing	2.6
Graphic Arts	1.0
Seasonal Open Burning Ban	3.7

TABLE 2.—CREDITABLE REDUCTIONS IN MARYLAND'S 15% PLAN FOR THE METROPOLITAN WASHINGTON, DC NONATTAINMENT AREA—Continued

[Tons VOC per day]

Creditable reductions	
Total Fully Creditable Reductions	60.1

F. Transportation Conformity Budgets

As is the case with any 15% plan, Maryland's 15% plan for the Washington, DC area contains a budget for VOC emissions from on-road mobile sources. By approving Maryland's 15% plan, EPA is granting a de facto approval of the budget in this plan. However, EPA wishes to clarify that the budget in Maryland's 15% plan will not be the applicable budget for any future conformity determinations because there are budgets for the Washington, DC area that apply in 1999 and all subsequent years. To verify which budgets apply in the Washington, DC area, please contact the EPA Regional office listed in the **ADDRESSES** section above or consult EPA's "Adequacy Review of SIP Submissions for Conformity" web page at http://www.epa.gov/oms/transp/conform/adequacy.htm.

EPA's review of this material indicates that Maryland's revised 15% plan SIP revision meets the requirements of the Act and applicable EPA guidance. EPA is therefore converting its conditional approval of Maryland's 15% plan to a full approval.

EPA is converting its conditional approval of Maryland 15% plan to a full approval by this rule without prior proposal because the Agency views this

as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to convert the conditional approval to a full approval should adverse or critical comments be filed. This rule will be effective September 18, 2000 without further notice unless the Agency receives adverse comments by August 18, 2000. If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on the proposed rule. Only parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this rule will be effective on September 18, 2000 and no further action will be taken on the proposed rule.

II. Final Action

EPA is converting its conditional approval of Maryland's 15% plan for its portion of the Metropolitan Washington, DC ozone nonattainment area to a full approval based upon the evaluation of the SIP revision submittal made by Maryland on May 5, 1998 consisting of its revised 15% plan.

III. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

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

C. 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 September 18, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action converting EPA's conditional approval of Maryland's 15% plan for Metropolitan Washington, DC ozone nonattainment area to a full approval may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: June 30, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

40 CFR part 52 of chapter I, title 40 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart V—Maryland

2. Section 52.1072(b) is removed and reserved.

§ 52.1072 Conditional approval.

(a) * * *

(b) [Reserved.]

3. Section 52.1076 is amended by revising the title and adding paragraph (d) to read as follows:

§ 52.1076 Control strategy and rate-of-progress plans: ozone.

* * * * *

(d) EPA approves the Maryland's 15 Percent Rate of Progress Plan for the Maryland portion of the Metropolitan Washington, D.C. ozone nonattainment area, submitted by the Secretary of the

Maryland Department of the Environment on May 5, 1998.

[FR Doc. 00–18110 Filed 7–18–00; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301016; FRL–6593–9]

RIN 2070–AB78

Butyl Acrylate-Vinyl Acetate-Acrylic Acid Copolymer; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of butyl acrylate-vinyl acetate-acrylic acid copolymer when used as an inert ingredient in pesticide formulations applied to growing crops, raw agricultural commodities after harvest, or to animals. Rohm and Haas submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996 requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of butyl acrylate-vinyl acetate-acrylic acid copolymer.

DATES: This regulation is effective July 19, 2000, Objections and requests for hearings, identified by docket control number OPP–301016, must be received by EPA on or before September 18, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301016 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Treva Alston, Minor Use, Inerts and Emergency Response Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8373; e-mail address: alston.treva@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

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

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

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

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301016. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of March 16, 2000 (65 FR 14278) (FRL–6494–9), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act (FQPA) (Public Law 104–170) announcing the filing of a pesticide tolerance petition by Rohn and Haas Company, 100 Independence Mall West, Philadelphia, PA 19106–2399. This notice included a summary of the petition prepared by the petitioner. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.1001(c) and (e) be amended by establishing an exemption from the requirement of a tolerance for residues of butyl acrylate-vinyl acetate-acrylic acid copolymer (CAS Reg. No. 65405–40–5).

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

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers that should present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b). The following exclusion criteria for identifying these low risk polymers are described in 40 CFR 723.250(d).

1. The polymer, butyl acrylate-vinyl acetate-acrylic acid copolymer, is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer does contain as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.

3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

Additionally, the polymer, butyl acrylate-vinyl acetate-acrylic acid copolymer, also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

7. The polymer's number average MW of 18,000 daltons is greater than or equal to 10,000 daltons. The polymer contains less than 2% oligomeric material below MW 500 and less than 5% oligomeric material below MW 1,000.

Thus, butyl acrylate-vinyl acetate-acrylic acid copolymer meets all the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the above criteria, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to butyl acrylate-vinyl acetate-acrylic acid copolymer.

V. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that butyl acrylate-vinyl acetate-acrylic acid copolymer could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of butyl acrylate-vinyl acetate-acrylic acid copolymer is 18,000 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since butyl acrylate-vinyl acetate-acrylic acid copolymer conforms to the criteria that identify a low risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. Since the Agency has determined that there is a reasonable certainty that no harm will result from aggregate exposure to butyl acrylate-vinyl acetate-acrylic acid copolymer a tolerance is not necessary.

VI. Cumulative Effects

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance or tolerance exemption, the Agency consider "available information" concerning the cumulative effects of a particular chemical's residues and "other substances that have a common mechanism of toxicity." The Agency has not made any conclusions as to whether or not butyl acrylate-vinyl acetate-acrylic acid copolymer share a common mechanism of toxicity with any other chemicals. However, butyl acrylate-vinyl acetate-acrylic acid copolymer conforms to the criteria that identify a low risk polymer. Due to the expected lack of toxicity based on the above conformance, the Agency has determined that a cumulative risk assessment is not necessary.

VII. Determination of Safety for U.S. Population

Based on the conformance to the criteria used to identify a low risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population from aggregate exposure to residues of butyl acrylate-vinyl acetate-acrylic acid copolymer.

VIII. Determination of Safety for Infants and Children

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of butyl acrylate-vinyl acetate-acrylic acid copolymer, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

IX. Other Considerations

A. Endocrine Disruptors

There is no available evidence that butyl acrylate-vinyl acetate-acrylic acid copolymer is an endocrine disruptor.

B. Existing Exemptions from a Tolerance

There are no existing exemptions from a tolerance.

C. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

D. International Tolerances

The Agency is not aware of any country requiring a tolerance for butyl acrylate-vinyl acetate-acrylic acid copolymer nor have any CODEX Maximum Residue Levels been established for any food crops at this time.

X. Conclusion

Accordingly, EPA finds that exempting butyl acrylate-vinyl acetate-acrylic acid copolymer from the requirement of a tolerance will be safe.

XI. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301016 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 18, 2000.

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

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

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

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

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

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VIII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301016, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

XII. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et*

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

XIII. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: July 3, 2000.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.1001, the tables in paragraphs (c) and (e) are amended by adding alphabetically the following inert ingredient to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c)* * *

Inert ingredients	Limits	Uses
* * * * * * *		
Butyl acrylate-vinyl acetate-acrylic acid copolymer (CAS Reg. No. 65405–40–5), minimum number average molecular weight 18,000 daltons.	.....	Surfactants, related adjuvants of surfactants
* * * * * * *		

* * * * *

(e)* * *

Inert ingredients	Limits	Uses
* * * * * * *		
Butyl acrylate-vinyl acetate-acrylic acid copolymer (CAS Reg. No. 65405–40–5), minimum number average molecular weight 18,000 daltons.	.....	Surfactants, related adjuvants or surfactants
* * * * * * *		

* * * * *

[FR Doc. 00–18095 Filed 7–18–00; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301020; FRL–6596–5]

RIN 2070–AB78

Pendimethalin; Re-establishment of Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation re-establishes time-limited tolerances for combined residues of the herbicide pendimethalin and its metabolites in or on fresh mint hay and mint oil at 0.1 part per million (ppm) and 5.0 ppm, respectively, for an additional 19–month period. These tolerances will expire and are revoked on December 31, 2001. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on mint. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

DATES: This regulation is effective July 19, 2000. Objections and requests for hearings, identified by docket control number OPP–301020, must be received by EPA on or before September 18, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301020 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Stephen Schaible, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9362; and e-mail address: schaible.stephen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

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

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

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

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301020. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA issued a final rule, published in the **Federal Register** of May 23, 1997 (62 FR 28355) (FRL–5718–5), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established time-limited tolerances for the combined residues of pendimethalin and its metabolites in or on fresh mint hay and mint oil at 0.1 ppm and 5.0 ppm, respectively, with an expiration date of May 31, 1998. EPA established these tolerances because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of pendimethalin on mint for this year's growing season due to the continued emergency situation for Idaho, Oregon, South Dakota, Utah, and Washington mint growers. Due to the potential spread of Verticillium wilt by tillage equipment, mechanical control of kochia and redroot pigweed is no longer considered a viable option. The continuous use of terbacil in past years has resulted in development of resistance to this chemical in kochia and pigweed, resulting in inadequate control of this pest by registered alternatives. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of pendimethalin on mint for control of kochia and redroot pigweed in the states listed above.

EPA assessed the potential risks presented by residues of pendimethalin in or on mint commodities. In doing so,

EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of May 23, 1997 (62 FR 28355). Based on that data and information considered, the Agency reaffirms that re-establishment of the time-limited tolerances will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerances are extended for an additional 19–month period. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations (CFR). Although these tolerances will expire and are revoked on December 31, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on fresh mint hay and mint oil after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerances. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

III. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301020 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 18, 2000.

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

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

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

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

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

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301020, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

IV. Regulatory Assessment Requirements

This final rule re-establishes a time-limited tolerance under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections

subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

V. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: July 5, 2000.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

§ 180.361 [Amended]

2. In § 180.361, amend the table in paragraph (b) by revising the expiration/revocation date "5/31/00" to read "12/31/01" each place it occurs.

[FR Doc. 00–18094 Filed 7–18–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301012; FRL–6594–1]

RIN 2070–AB78

Azoxystrobin or Methyl (E)-2-[2-[6-(-cyanophenoxy)pyrimidin-4-yloxy]phenyl]-3-; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends time-limited tolerances forcombined residues of the fungicide azoxystrobin or methyl (E)-2-[2-[6-(-cyanophenoxy)pyrimidin-4-yloxy]phenyl]-3- and its metabolites in or on strawberries at 10.0 parts per million (ppm), soybean forage at 0.2 ppm, soybean hay at 1.0 ppm, soybean hulls at 2.0 ppm, soybean meal at 0.3 ppm, soybean oil at 2.0 ppm, soybean seed at 0.1 ppm, soybean silage at 2.0 ppm, and sugar beet roots at 0.05 ppm, sugar beet, molasses at 0.70 ppm, and sugar beet, pulp, dried at 1.0 ppm, and sugar beet refined sugar at 0.70 ppm for an additional 18 month period. These tolerances will expire and are revoked on December 30, 2001. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on strawberries, soybeans, and sugar beets. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemptionfrom the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act.

DATES: This regulation is effective July 19, 2000. Objections and requests for hearings, identified by docket control number OPP–301012, must be received by EPA on or before September 18, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301012 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Jackie Mosby-Gwaltney, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6792; and e-mail address: gwaltney.jackie@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

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

Categories	NAICScodes	Examples of potentially affectedentities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

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

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

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

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301012. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA issued a final rule, published in the **Federal Register** ofJanuary 29, 1999 (64 FR 4572) (FRL–6050–6), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established a time-limited tolerance for the combined residues of azoxystrobin or methyl (E)-2-[2-[6-(-cyanophenoxy)pyrimidin-4-yloxy]phenyl]–3- and its metabolites inor on strawberries at 10.0 ppm, soybean forage at 0.2 ppm, soybean hay at1.0 ppm, soybean hulls at 2.0 ppm, soybean meal at 0.3 ppm, soybean oil at 2.0 ppm, soybean seed at 0.1 ppm, soybean silage at 2.0 ppm, and sugar beet roots at 0.05 ppm, sugar beet, molasses at 0.70 ppm, and sugar beet, pulp, dried at 1.0 ppm, and sugar beet refined sugar at 0.70 ppm with an expiration date of December 30, 2001. EPA established these tolerances because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues infood that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of azoxystrobin or methyl (E)-2-[2-[6-(-cyanophenoxy)pyrimidin-4-yloxy]phenyl]-3- on strawberries for this year's growing season because the Florida Department of Agriculture and Consumer Services requested an emergency exemption on September 28, 1998, for the control of anthracnose on strawberries. Anthracnose adversely affect the plants in a variety of ways. It can cause plant losses (crown rot, root rot, anthracnose of the stolon and petiole, but rot, and leaf spots) and fruit losses (anthracnose fruit rot and flower blight). There are several fungicides currently labeled for use on Florida grown strawberries. These include:Ridomil, Rovral, Captan, Sulfur, Aliette, Copper, Benlate, and Topsin. Of all these products, only two have demonstrated efficacy toward anthracnose: Benlalte and Captan. An experiment conducted by the University of Florida demonstrates the lack of efficacy of both products last season. Thus, both products have only limited utility against anthracnose.

The two factors that have brought about this emergency condition include variety shift and lack of efficacy of previously effective fungicides. No single variety has all the desirable characteristics. Among these desirable characteristics important to Florida growers are: season-long production, early and late production, disease resistance, insect and mite resistance, etc. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of azoxystrobin or methyl (E)-2-[2-[6-(-cyanophenoxy)pyrimidin-4-yloxy]phenyl]-3- on strawberries for control of anthracnose disease in strawberries.

EPA also received requests to extend the use of azoxystrobin or methyl (E)-2-[2-[6-(-cyanophenoxy)pyrimidin-4-yloxy]phenyl]-3- on soybean, and sugar beets for this year's growing season because the Minnesota Department of Agriculture requested an emergency exemption in April of 1998, for the control of cercospora leafspots on sugar beets. The registered alternative fungicides benomyl, thiabendazole thiophanate methyl, triphenyltin hydroxide, EBDCs (Mancozeb and Meneb), and copper hydroxide for controlling cercospora leaf spots do not control the disease effectively because of resistance and/ortolerance in the pathogen. Moderately resistant cultivars of sugar beet are available, but their yield potentials are lower than the susceptible. Cultural practices are not very effective in managing the disease. During 1998, the disease severity is expected to be higher and yield losses significant due to mild winter temperature (El Nino effects).

Minnesota also claims that triphenyl tin hydroxide (TPTH) is still used in controlling the disease, but it is significantly less effective than in the past.

In August 1998, the Arkansas Department of Agriculture also requested anemergency exemption for the control of aerial blight on soybeans. The disease is particularly aggressive in years of above-normal night temperatures, high humidity, and

frequent rainfall. Conditions in 1998, have been near perfect for development of sheath blight of rice, with night temperatures in the 78–82 range and oppressively high relative humidity within crop canopies. Rainfall in northeast Arkansas has also contributed to theproblem. Soybean has just entered the most susceptible flowering and early pod formation stages and aerial blight has become exceptionally aggressive as weather conditions continue to favor its development. Damage to soybean yield is through destruction of foliage, and to a greater extent-flowers, pods and seeds. Yield losses in some Arkansas field in the past have been estimated as high as 50%, however, this is a very rare occurrence most years.

EPA assessed the potential risks presented by residues of azoxystrobin ormethyl (E)-2-[2-[6-(-cyanophenoxy)pyrimidin-4-yloxy]phenyl]-3- in or on strawberries,soybeans, and sugar beets. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of January 29, 1999 (64 FR 4572) for strawberries, and November 25, 1998 (63 FR 65078) (FRL–6045–4) for soybeans, and sugar beets. Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 18–month period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on December 30, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on strawberries, soybeans, and sugar beets after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

III. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301012 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 18, 2000.

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

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

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

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

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

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301012, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

IV. Regulatory Assessment Requirements

This final rule establishes a time-limited exemption from the tolerance requirement under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

V. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: June 29, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

§ 180.507 [Amended]

2. In § 180.507, by amending the table in paragraph (b), by revising the expiration/revocation date for the following commodities: "Strawberries" from "7/30/00" to read "12/30/01" and "Soybean forage," "Soybean hay," "Soybean hulls," "Soybean meal," "Soybean oil," "Soybean seed," "Soybean silage," "Sugar beet roots," "Sugar beet tops," "Sugar beets molasses", "Sugar beet, pulp, dried" and "Sugar beet, refined sugar" from "6/30/00" to read "12/30/01".

[FR Doc. 00–18096 Filed 7–18–00; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 51 and 54

[CC Docket No. 98–121, FCC 00–173]

Applications of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services In Louisiana .

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: This document denies to reconsider the Commission's Second BellSouth Louisiana Order with respect to the issues on which reconsideration is sought, no petitioner raises arguments that would cause us to change our decision to deny BellSouth's application to provide long distance service in the state of Louisiana.

DATES: Effective July 19, 2000.

FOR FURTHER INFORMATION CONTACT: Janice M. Myles, Paralegal Specialist; Johanna Mikes; and/or Ann Stevens, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580. Further information may also be obtained by calling the Common Carrier Bureau's TTY number: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration adopted May 15, 2000, and released June 19, 2000. The full text of this Order is available for inspection and copying during normal business

hours in the FCC Reference Center, 445 12th Street SW, Room CY–A257, Washington, DC. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/CommonCarrier/Orders/fcc00–173.wp, or may be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street NW, Washington, DC 20036.

Regulatory Flexibility Certification

In this present Order, the Commission promulgates no additional final rules, and our action does not affect the previous analysis.

Synopsis of Order on Reconsideration

1. BellSouth Corporation (BellSouth), AT&T Corp. (AT&T), and Sprint Communications Company (Sprint) filed petitions for reconsideration and/or clarification of the Commission's order denying BellSouth's application for authority to provide in-region, interLATA services in the state of Louisiana pursuant to section 271 of the Communications Act of 1934, as amended (Act). For the reasons discussed below, we deny these petitions.

2. With respect to the issues on which reconsideration is sought, no petitioner raises arguments that would cause us to change our decision to deny BellSouth's application to provide long distance service in the state of Louisiana. Section 271's statutory framework requires the Commission to evaluate complex issues arising in the relevant state's local telecommunications market as it transitions to competitive market conditions. In this context, the Commission frequently relies upon its specialized judgment and expertise to render informed decisions and predictions about market conditions. Having done so in this case, the Commission finds that the petitioners have not raised any new facts or arguments that warrant reconsideration of the Second BellSouth Louisiana Order. Therefore, there is no reason to reconsider our initial analysis.

3. As to the range of issues for which the petitioners seek further guidance for future section 271 applications, we believe that we have provided sufficient guidance on the requirements of section 271. The Second BellSouth Louisiana Order followed four prior orders addressing section 271 applications, including a prior application by BellSouth for Louisiana. Each of these orders informed parties of the requirements of section 271. Moreover, the Commission recently approved Bell Atlantic's section 271 application to provide long distance services in New York. In the order approving that application, the Commission included a comprehensive recitation of the requirements for in-region, interLATA entry under section 271.

4. The petitions for reconsideration and/or clarification filed in the captioned docket *are Denied.*

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–18187 Filed 7–18–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211039–0039–01; I.D. 071400B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Central Regulatory Area of the Gulf of Alaska (GOA). This is action is necessary to prevent exceeding the 2000 total allowable catch (TAC) of Pacific ocean perch in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 15, 2000, through 2400 hrs, A.l.t., December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–481–1780, fax 907–481–1781 or tom.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2000 TAC of Pacific ocean perch for the Central Regulatory Area was established as 9,240 metric tons (mt) in the Final 2000 Harvest Specifications of Groundfish for the GOA (65 FR 8298, February 18, 2000). See § 679.20(c)(3)(ii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2000 TAC for Pacific ocean perch in the Central Regulatory Area will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 8,240 mt, and is setting aside the remaining 1000 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Central Regulatory Area of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 2000 TAC of Pacific ocean perch for the Central Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

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

Dated: July 14, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–18257 Filed 7–14–00; 4:10 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211039–0039–01; I.D. 071400D]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the West Yakutat District of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the West Yakutat District of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2000 total allowable catch (TAC) of Pacific ocean perch in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 14, 2000, through 2400 hrs, A.l.t., December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–481–1780, fax 907–481–1781 or tom.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2000 TAC of Pacific ocean perch for the West Yakutat District was established as 840 metric tons (mt) in the Final 2000 Harvest Specifications of Groundfish for the GOA (65 FR 8298, February 18, 2000). See § 679.20(c)(3)(ii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2000 TAC for Pacific ocean perch in the West Yakutat District will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 790 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pelagic shelf rockfish in the West Yakutat District of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 2000 TAC of Pacific ocean perch for the West Yakutat District of the GOA. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

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

Dated: July 14, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–18258 Filed 7–14–00; 4:10 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211040–0040–01; I.D. 071400C]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Central Aleutian District of the Bering Sea and Aleutian Islands

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Central Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2000 total allowable catch (TAC) of Pacific ocean perch in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 15, 2000, through 2400 hrs, A.l.t., December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2000 TAC of Pacific ocean perch for the Central Aleutian District was established as 3,247 metric tons (mt) in the Final 2000 Harvest Specifications of Groundfish for the BSAI (65 FR 8282, February 18, 2000). See § 679.20(c)(3)(iii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2000 TAC for Pacific ocean perch in the Central Aleutian District will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,947 mt, and is setting aside the remaining 300 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Central Aleutian District of the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 2000 TAC of Pacific ocean perch for the Central Aleutian District of the BSAI. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

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

Dated: July 14, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–18259 Filed 7–14–00; 4:10 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991228352–0182–03–03; I.D. 121099C, 011100D]

RIN 0648–AM83

Fisheries of the Exclusive Economic Zone Off Alaska;Emergency Interim Rules to Implement Major Provisions of the American Fisheries Act; Extension of Expiration Dates; Correction

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

ACTION: Emergency interim rules; correction.

SUMMARY: This document corrects Table 1 of the extension of expiration dates for the emergency interim rules to implement major provisions of the American Fisheries Act, which in part revises 2000 final harvest specifications.

DATES: The correction for the interim final rule published January 28, 2000, (65 FR 4520) is effective July 20, 2000, through January 16, 2001.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: This document contains corrections to the interim final rule for the extension of the expiration dates of emergency interim rules to implement the American Fisheries Act. The extension of the effective date of an interim final rule provides inshore pollock cooperatives with allocations of pollock for the second half of the 2000 fishing year and maintains sideboard restrictions to protect participants in other Alaska fisheries from negative impacts as a result of fishery cooperatives formed under the AFA.

Correction

In the interim final rule, Fisheries of the Exclusive Economic Zone Off Alaska, Emergency Interim Rules to Implement the American Fisheries Act: Extension of Expiration Dates, published on June 23, 2000 (65 FR 39107), FR Doc. 00–15857,corrections are made as follows:

1. In the document, Emergency Interim Rules to Implement the American Fisheries Act: Extension of Expiration Dates, published on June 23, 2000 (65 FR 39107), FR DOC 00–15857, on page 39109, mathematical errors were made in Table 1. Table 1 is corrected to read as follows:

* * * * *

TABLE 1.—FINAL C/D SEASON BERING SEA SUBAREA POLLOCK ALLOCATIONS TO THE COOPERATIVE AND OPEN ACCESS SECTORS OF THE INSHORE POLLOCK FISHERY. AMOUNTS ARE EXPRESSED IN METRIC TONS

	C/D season TAC	C season inside SCA [1]	D season inside SCA
Cooperative sector			
Vessels > 99 ft	n/a	n/a	53,502
Vessels ≤ 99 ft	n/a	n/a	8,192
Total	274,200	37,016	61,695
Open access sector	17,953	2,424	4,039[2]
Total inshore	292,153	39,440	65,734

[1] Steller sea lion conservation area established at § 679.22(a)(11)(iv).

[2] SCA limitations for vessels less than or equal to 99 ft LOA that are not participating in a cooperative will be established on an inseason basis in accordance with § 679.22(a)(11)(iv)(D)(*2*) which specifies that "the Regional Administrator will prohibit directed fishing for pollock by vessels catching pollock for processing by the inshore component greater than 99 ft (30.2 m) LOA before reaching the inshore SCA harvest limit during the A, B and D seasons to accommodate fishing by vessels less than or equal to 99 ft (30.2 m) inside the SCA for the duration of the inshore seasonal opening."

* * * * *

Dated: July 13, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–18260 Filed 7–18–00; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 139
Wednesday, July 19, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Dive Sticks; Notice of Proposed Rulemaking

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing a rule to ban certain dive sticks under the authority of the Federal Hazardous Substances Act. Dive sticks are used for underwater activities, such as retrieval games and swimming instruction. They are typically made of rigid plastic and stand upright at the bottom of a swimming pool. Due to these characteristics, if a child jumps onto a dive stick in shallow water he or she may suffer severe injuries.

DATES: Written comments in response to this notice must be received by October 2, 2000.

ADDRESSES: Comments should be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207–0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland; telephone (301) 504–0800. Comments also may be filed by telefacsimile to (301) 504–0127 or by email to cpsc-os@cpsc.gov. Comments should be captioned "NPR for DiveSticks."

FOR FURTHER INFORMATION CONTACT: Scott R. Heh, Directorate for Engineering Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0494, ext. 1308.

SUPPLEMENTARY INFORMATION:

A. Background

As of October 1999, the Commission is aware of eight confirmed impalement incidents involving dive sticks that were submerged and standing vertically. These incidents resulted in injuries to the perineal region of young children. The products were cylindrical batons, approximately 7⅞ to 8⅝ inches long and ⅞ to one inch in diameter. They were all constructed of rigid plastic.

In early 1999, when the Commission staff first learned of incidents involving dive sticks, the staff worked with product manufacturers to recall hazardous dive sticks. On June 24, 1999, the Commission announced that it had reached agreements with 15 manufacturers and importers to voluntarily recall their dive sticks. The recalls have removed most dive sticks from the market.[1][1] However, because the hazard posed by dive sticks appeared to be inherent to the product and not related to any specific model or manufacturer, the Commission began a proceeding to ban all dive sticks with hazardous characteristics.

On July 16, 1999, the Commission issued an advance notice of proposed rulemaking ("ANPR") announcing the Commission's intent to issue a rule addressing the risk of injury presented by dive sticks. 64 FR 38387 (1999). One alternative discussed in the ANPR was a rule declaring certain dive sticks to be banned hazardous substances. The Commission received one comment on the ANPR from the Department of Fair Trading, New South Wales ("NSW"), Australia. Although the NSW Department of Fair Trading states that it is unaware of any similar incidents in Australia, NSW is taking certain steps to protect against such injuries occurring, including issuing a design guide requiring that underwater toys be designed to reduce the hazard of impalement.[3]

B. Statutory Authority

This proceeding is conducted pursuant to the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261 *et seq.* Section 2(f)(1)(D) of the FHSA defines "hazardous substance" to include any toy or other article intended for use by children that the Commission determines, by regulation, presents an electrical, mechanical, or thermal hazard. 15 U.S.C. 1261(f)(1)(D). An article may present a mechanical hazard if its design or manufacture presents an unreasonable risk of personal injury or illness during normal use or when subjected to reasonably foreseeable damage or abuse. Among other things, a mechanical hazard could include a risk of injury or illness "(3) from points or other protrusions, surfaces, edges, openings, or closures, * * * or (9) because of any other aspect of the article's design or manufacture." 15 U.S.C. 1261(s).

Under section 2(q)(1)(A) of the FHSA, a toy, or other article intended for use by children, which is or contains a hazardous substance accessible by a child is a "banned hazardous substance." 15 U.S.C. 1261(q)(1)(A).

Section 3(f) through 3(i) of the FHSA, 15 U.S.C. 1262(f)–(i), governs a proceeding to promulgate a regulation determining that a toy or other children's article presents an electrical, mechanical, or thermal hazard. As provided in section 3(f), this proceeding began with an ANPR. 64 FR 38387 (1999). After considering the comment submitted in response to the ANPR, the Commission is now issuing a proposed rule and a preliminary regulatory analysis in accordance with section 3(h) of the FHSA. The Commission will then consider the comments received in response to the proposed rule and decide whether to issue a final rule and a final regulatory analysis. 15 U.S.C. 1262(i)(1). Before the Commission can issue a final rule it must find (1) if an applicable voluntary standard has been adopted and implemented, that compliance with the voluntary standard is not likely to adequately reduce the risk of injury, or compliance with the voluntary standard is not likely to be substantial; (2) that benefits expected from the regulation bear a reasonable relationship to its costs; and (3) that the regulation imposes the least burdensome alternative that would adequately reduce the risk of injury. *Id.* 1261(i)(2).

C. The Product

Dive sticks are used in swimming pools for underwater retrieval activities, such as retrieval games and swimming instruction. They are made of rigid plastic. They are often cylindrical in shape, typically ten inches or less in length with a diameter one inch or less, but some have novelty shapes such as shark silhouettes. They are or can be weighted so that when dropped into water they sink and stand upright on the bottom. Dive sticks are sold under a variety of names such as dive sticks,

[1] Numbers in brackets refer to documents listed at the end of this notice.

diving sticks, fish sticks, sticks, and batons. The Commission believes that the characteristics most important to creating the risk of impalement injury are that dive sticks (1) are rigid, (2) submerge and come to rest at the bottom of a pool of water, and (3) stand upright once submerged. [5]

Before the June 1999 recalls, dive sticks were usually sold in sets of 3 to 6 sticks. They were often sold as part of a package that contained other toys, such as dive disks, eggs, and rings (*e.g.*, a package may include 3 dive sticks, 3 dive rings, and 3 dive disks). Retail prices usually ranged from $4 to $7 per set or about $1 per individual stick. Retail prices were almost always less than $10, even when sold with other products such as disks, rings, and snorkels. [8]

An estimated 4 to 5 million dive sticks were sold in both 1997 and 1998. Altogether, about 20 million dive sticks have been sold since 1990. Sales of dive sticks increased substantially during the 1990's. About 1 million households may have owned dive sticks during any given year. [8]

In 1997, retail sales of water/pool/sand toys exceeded $450 million. Since dive sticks retail for approximately $1 per stick, dive sticks likely made up less than 1.0 percent of retail sales in this category. Before the June 1999 recalls, the CPSC staff identified at least 15 firms that manufactured or imported dive sticks into the United States. Most of the importers obtained their products from China, Hong Kong, or Taiwan. Since the product is inexpensive and simple to manufacture, it is relatively easy for firms to enter or leave the dive stick market. Therefore, firms that have not supplied dive sticks in the past, and were not part of the June 1999 recalls, could begin or renew producing or supplying dive sticks. [8]

D. The Risk of Injury

1. *Description of Injury.* Impalement injuries have occurred when a child accidently fell or jumped buttocks-first into shallow water and landed on a dive stick. Serious rectal or vaginal injuries can result. Less serious injuries such as facial and eye injuries are also possible when a child attempts to retrieve a dive stick under the water. [2]

Falls on vertical objects may result in traumatic injuries to the perineum. The severity of injuries depends on the degree of penetration by the object. This in turn is dependent on the force of impact and the physical properties of the dive stick (size and surface characteristics). The injuries could range from laceration of the rectum and sphincter, to puncture wounds and tears of the colon. High impact forces may also cause injuries to the vulva, vaginal canal, and blood vessels beneath the perineal skin in females. In males, such impacts may cause perforation injuries to the genitalia, urethra, ureter and bladder. All these types of perforation and impalement injuries in males and females require hospitalization and surgery.

Because of the nature of the area, the main complication after perineum injuries is lesion infection, which may lead to abscess and possible sepsis in extreme cases. To avoid subsequent septic complications, surgery may be necessary. Perineal injuries (with or without rectal injury) often require fecal diversion (proximal colostomy), wound drainage, and the use of a broad-spectrum antibiotic in pre- and post-operative stages. The damage caused by deep penetration into the rectal or vaginal area may have devastating effects on a child's health. In addition to long-term physiological effects, these types of injuries have the potential to cause long-lasting emotional trauma.

2. *Impalement Injury data.* As of October 1999, the Commission is aware of eight confirmed impalement injuries involving submerged vertically-standing dive sticks, including three since the Commission issued its ANPR. All the victims were children ranging in age from five to nine years old. [2]

Four females (ages 7 to 9) sustained injuries when the dive stick penetrated the vagina. One male (age 7) and two females (ages 5 and 6) suffered injuries when the dive stick penetrated the rectum. In the remaining incident, a seven year-old female received external lacerations around the rectum after landing on a dive stick. Medical attention was sought after each incident, and five of the injuries required surgery to address multiple internal and external injuries. [2]

These eight incidents involved vertical-standing dive sticks. The products were cylindrical batons, approximately 7⅞ to 8⅝ inches long and ⅞ to one inch in diameter.[2] One of the dive sticks was white in color, another was blue; the colors of the remaining dive sticks are unknown. In one incident, it was reported that the victim could not see the dive stick because of the white color and the faded blue numbers. [2]

The victims in seven of these eight confirmed incidents were injured while playing in shallow depths of water. Of these, four occurred in small wading pools with water levels between 12 and 24 inches. Of the remaining three incidents, one occurred in a spa with unknown water depth, one occurred in a pool measuring three feet in height with approximately 27 inches of water, and the final incident occurred in a bathtub with approximately 6 inches of water. The eighth incident reportedly took place in a pool; however, neither the type of pool nor the water depth is known.[3] [2]

The July ANPR provided summaries of impalement incidents reported at that time. Below are summaries of the impalement injuries reported since the ANPR was published.

a. June 9, 1999—The five year-old female victim was playing in an inflatable wading pool. The victim was jumping up and down in the pool when she slipped and fell directly on top of one of four vertically standing dive sticks in the pool. The victim was impaled rectally by the dive stick. She was hospitalized overnight for observation. She was treated for an anal tear and an internal laceration to her rectum.

b. April 1999—The seven year-old female was taking a bath under the supervision of her mother. The dive stick was in the bathtub, standing vertically in the water. The child stood up to lather her legs, sat back down to rinse off and sat on a dive stick which went into her vagina. The victim was hospitalized overnight and underwent surgery for vaginal lacerations. Long term prognosis was unavailable. [2]

3. *Non-impalement injury data.* In addition to genital and rectal injuries, the Commission received reports of four injuries to other body parts that occurred when the victim submerged onto the vertical-standing dive stick. The injuries occurred when the children attempted to retrieve the dive sticks from the bottom of the pool. A female victim, age 6, received a facial laceration when she stuck her face in the water and contacted the product. One boy, age 8, dived head first into the pool and hit his forehead on the product. The third victim, a 7 year-old male, jumped into the pool feet first and punctured his foot on the sharp edge of the dive stick after it broke from the initial contact. The fourth victim, a 9 year-old male, lacerated his back on the sharp edge of a dive stick when he dived into the pool to retrieve the product. [2]

The Commission has also received reports of six incidents of victims struck by a thrown dive stick. Three of the

[2] Two incident reports approximated the length between 6 and 8 inches; however, the products were not available for measurement.

[3] A ninth unconfirmed incident was reported to CPSC, but many details of the incident remain unclear.

injuries were facial lacerations, two resulted in an eye injury and one child broke a tooth. Two other children were reportedly injured when they fell while carrying dive sticks. [2]

E. The Proposed Ban

The Commission is proposing to ban dive sticks with certain hazardous characteristics. Although voluntary recalls have removed most, if not all, of these products from the market for the present time, the Commission is concerned that, without a rule banning them, they could reappear on the market.

The proposed rule would ban dive sticks that (1) are rigid, (2) submerge to the bottom of a pool of water, and (3) stand upright in water. After considering the reported impalement injuries, the Commission believes that these are the essential characteristics that create the impalement hazard. Dive sticks and similar articles that do not have these characteristics, as well as dive rings and dive discs, would still be allowed.

All dive stick impalement incidents and other rectal or vaginal impalement cases reported in the medical literature involved objects that were rigid. The staff is not aware of any impalement injuries to the perineum that involved a flexible object. In order to prevent serious injuries, the dive stick should be of sufficient flexibility that it would bend to a degree that prevents penetration when impact occurs with the perineal area. The staff developed a test to distinguish dive sticks that are sufficiently flexible so as to effectively limit the potential for serious impalement injury.

The Commission believes that it is appropriate to base a rigidity test on a fraction of the weight of a child who is first beginning to walk. Although the youngest child involved in a reported impalement incident was five years old, if a child can walk independently it is possible that he or she might be playing in a shallow body of water and fall onto a dive stick in the same manner that occurred in the impalement incidents. Children begin to walk on their own at about 11½ months. Therefore, the test uses the weight of a 10 to 12 month-old child. The weight of a 5th percentile 10 to 12 month-old child is 16.5 pounds (7.5 kg). The Commission believes that a failure criterion of 5-lbf (approximately ⅓ of the weight of a 10 to 12 month-old child) will provide a margin of safety to effectively limit the potential for a serious impalement injury.

The proposed performance test applies a gradual compression load to the top of the dive stick for a period of 40 seconds. If the force reaches 5 lbf the dive stick is too rigid and fails the test. The Commission is aware that some manufacturers are developing dive sticks that are constructed of flexible material that would pass this test. The Commission believes that such flexible articles would not pose an impalement hazard. [5, 7]

All confirmed impalement injuries occurred with dive sticks that had submerged to the bottom of a pool of water. It is unlikely that a child falling onto a dive stick floating on the water would suffer impalement. A floating dive stick is likely to move away before the child's body strikes the bottom of the pool. [3, 6]

The vertical orientation of a submerged dive stick is a key factor in these impalement incidents. The Commission's Human Factors staff examined the reported incidents and concluded that when force is applied in line with the long axis of the dive sticks (as it is when a child lands on it in a vertical position), the sticks do not move. "Because the stick is braced against the floor, the impact causes a relatively rapid deceleration of the body part which is struck, with the force of the impact concentrated on the small area at the end of the stick." The Human Factors staff believes that the potential for impalement injury declines as the angle of impact moves away from the vertical. However, the orientation of a child landing on a stick is variable, and impact at precisely the wrong angle may reorient the stick perpendicular to the bottom surface. Thus, slight deviations of the stick's position from vertical may not be adequate to avoid impalement. If the angle of the stick is sufficiently away from vertical, both impact in line with the axis and impact at an angle to the axis would tend to move the stick and limit the possibility of impalement. The Commission believes that a position at least 45 degrees from vertical would provide a sufficient safety margin to effectively limit the potential for impalement injuries. [3, 6]

F. Alternatives

The Commission has considered other alternatives to reduce the risk of impalement injury related to dive sticks. However, as discussed below, the Commission does not believe at this point that any of these would adequately reduce the risk of injury.

Voluntary Recalls. Before beginning this proceeding the Commission negotiated voluntary recalls with many companies that manufactured or imported dive sticks, and many other firms voluntarily removed their dive sticks from the market. One alternative to the banning rule is for the Commission to continue pursuing recalls on a case-by-case basis. However, it appears that the impalement hazard is present in all dive sticks that have the hazardous characteristics the staff has identified. The hazard is not limited to one particular model or brand. Therefore, a rule banning all dive sticks with the identified characteristics is more efficient. While the recalls have removed hazardous dive sticks from the market for now, proceeding with future recalls in the absence of a banning rule would allow hazardous dive sticks to return to the market until the Commission had a chance to act on the new dive sticks. [8]

Voluntary Standard. Currently, there is no applicable voluntary standard, nor was one submitted in response to the ANPR. Moreover, because dive sticks are relatively inexpensive and easy to manufacture, compliance with a voluntary standard may be low.[8]

Labeling. One alternative to a banning rule would be to require cautionary labeling for dive sticks. Most dive sticks carry some warnings regarding small parts (in reference to the end caps); use only under the supervision of a competent swimmer, and/or against diving in shallow water. In order for a label warning of the impalement hazard to be fully effective, consumers must notice, read, and understand it, then comply with it 100% of the time. People are less likely to comply with a warning if the connection between the product and the injury potential is not clear, if they cannot imagine what the injury is, or if they do not fully understand how to avoid the hazard. As the impalement hazard presented by dive sticks is not apparent, the label would have to convey clearly that severe rectal or genital injuries can result if children jump into the water and land on the sticks. Further, a "safe" water depth would have to be identified to give consumers adequate information on which to base their purchasing decision. A label that meets these criteria could have a significant impact at the point of purchase, but would need to be reinforced with an on-product warning. It would be difficult, however, to develop a label that is highly noticeable and easy to read because of the small and typically curved surface area of the dive stick. Moreover, a label may not last the life of the product because it is used in water. In contrast, the effectiveness of banning hazardous dive sticks is not in question, because the impalement hazard would be minimized or eliminated.[3,8]

Change in Scope. A final alternative considered was to modify the scope of the rule so that it would apply only to pre-weighted dive sticks. However, it is easy to add weight to certain unweighted dive sticks with water, sand or similar materials so that they too can stand vertically at the bottom of a pool. Because such unweighted dive sticks can pose the same risk as pre-weighted ones, the Commission is including them in the rule.

G. Preliminary Regulatory Analysis

Introduction

The Commission has preliminarily determined to ban dive sticks with certain hazardous characteristics. Section 3(h) of the FHSA requires the Commission to prepare a preliminary regulatory analysis containing a preliminary description of the potential benefits and costs of the proposed rule, including any benefits or costs that cannot be quantified in monetary terms; an identification of those likely to be affected; discussion of existing or developing standards submitted in response to the ANPR; and a description of reasonable alternatives. 15 U.S.C. 1261(h). The following discussion addresses these requirements.[8]

Potential Benefits of a Rule Banning Certain Dive Sticks

The purpose of the proposed rule is to prevent serious impalement injuries that can result when children jump or fall on dive sticks that are being used in shallow water. The benefits of the proposed rule would therefore be the resulting reduction in injuries.

The CPSC is aware of eight confirmed impalement injuries (to the perineum) since 1990 involving dive sticks that were standing upright on the bottom of a pool.[4] All of the victims received medical attention after the injury and at least five required surgery. In one case a temporary colostomy was performed. No fatalities are known to CPSC.

The societal costs of these eight impalement injuries, based on estimates from the CPSC Injury Cost Model, range from about $8,000 for injuries that do not require hospitalization to about $90,000 for injuries that do require hospitalization. These estimates are based on the costs of injuries involving punctures or lacerations to the victims' lower trunk or pubic region for children 5 to 11 years-of-age. These cost estimates include the cost of medical treatment, pain and suffering, and legal and liability costs.

If we assume that the only cases that required hospitalization were the five incidents that required surgery, the total societal costs of the known incidents is about $474,000 (5 cases × $90,000 and 3 cases × $8,000) or an average of $47,400 a year since 1990. This is a low estimate of the total societal cost of dive stick impalement injuries because it is based only on the cases known to CPSC. There may have been other injuries of which CPSC is not aware.

The potential benefit of a standard that would prevent dive stick impalement injuries is the expected societal costs of the injuries prevented. To compare the benefits of a proposed rule to the costs (which will be discussed in the next section) it is useful to estimate the expected societal costs of dive stick injuries (and hence, the potential benefits) on a per dive stick in use basis.

The average number of dive sticks in use since 1990 probably ranged from about 3 million units (assuming a one-year product life) to about 5.5 million units (assuming a 4-year product life). Therefore, the annual societal costs of dive stick injuries may range from about one cent per dive stick in use ($47,400 ÷ 5.5 million sticks) to about 2 cents per dive stick in use ($47,400 ÷ 3 million sticks).

Since dive sticks may last for one to four years, the potential benefits of the rule per dive stick (if it eliminates all impalements) may range from about 2 cents per dive stick ($0.02 × 1 year) to about 4 cents per dive stick ($0.01 × 4 years). The potential benefits would be higher if there have been dive stick injuries of which the Commission is not aware. Therefore, the 2 to 4 cents per dive stick probably represents a minimum estimate of the potential benefits, if all injuries can be prevented.

The benefits would accrue primarily to households with children, since all victims have been 11 years old or younger. However, since medical costs are generally pooled through insurance, the monetary benefits of the proposed rule would be diffused through society as a whole.

Potential Costs of the Proposed Rule

If the rule under consideration is adopted, manufacturers that continue to produce and sell dive sticks will have to modify their product to conform to the requirements of the proposed rule. Some manufacturers may be able to continue using the molds and production processes they use now, but with a softer or more flexible plastic. Other manufacturers may be able to adjust the weight or center of gravity of the dive sticks so that they do not stand upright when submerged.

The costs of these alternatives are not known, but the CPSC staff believes that these changes can be made with minimal impact on tooling and other production processes. Consequently, it seems reasonably likely that when the incremental costs of the proposed rule are spread over large production runs, the cost will be no more than the benefits of the rule—2 to 4 cents per dive stick manufactured.

Moreover, the production of dive sticks does not require much in the way of specialized facilities or dedicated equipment, other than certain product molds. Therefore, even if a manufacturer opted not to redesign the dive sticks, the cost to the manufacturer would be limited to the premature disposal of certain dedicated equipment, such as molds. However, for the most part, the manufacturers' facilities and equipment could be used for manufacturing other products.

The proposed rule could reduce consumer utility if consumers prefer the banned dive sticks to the substitute products (*i.e.,* dive sticks and eggs that do not stand upright, dive rings, dive disks, and so on). However, because these substitute products serve essentially the same purposes and would cost about the same, negative impact on consumer utility, if any, is unlikely to be significant.

Existing or Developing Standards Submitted in Response to the ANPR

No existing voluntary standards were submitted in response to the ANPR. Nor were any proposals to develop such a standard submitted to the Commission. As stated above, the Commission is not aware of any voluntary standards applicable to dive sticks.

Alternatives Considered

As discussed above, the Commission considered the other alternatives of pursuing voluntary recalls, following a voluntary standard, requiring labeling, or changing the scope. Because the hazard affects all dive sticks with the hazardous characteristics the Commission has identified, a banning rule would be more effective than case-by-case recalls. No applicable voluntary standard exists and compliance may be low if one did. As discussed above, labeling could help reduce the risk of injuries from dive sticks, but would be less effective than a banning rule. Finally, the Commission is including non-weighted dive sticks that can be weighted because they pose the same risk of injury as weighted ones.

[4] An additional incident was reported to CPSC, but there are some questions surrounding the nature of the incident and whether or not it is the result of the hazard that the rule under consideration would address.

H. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act ("RFA"), when an agency issues a proposed rule it generally must prepare an initial regulatory flexibility analysis describing the impact the proposed rule is expected to have on small entities. 5 U.S.C. 603. The RFA does not require a regulatory flexibility analysis if the head of the agency certifies that the rule will not have a significant effect on a substantial number of small entities. 5 U.S.C. 605(b).

Most of the firms that manufactured or imported dive sticks are small businesses according to the Small Business Administration guidelines since they have fewer than 100 employees for importers or 500 employees for manufacturers. However, staff analysis suggests that the rule is unlikely to have a significant effect on any businesses, large or small.[8]

The Commission has previously worked with companies to recall hazardous dive sticks. Most manufacturers removed their dive sticks from the market in response to the recalls. Some manufacturers have already taken steps to redesign their products. If the redesigned products conform to the proposed rule, the manufacturers would not incur any additional costs.[8]

In addition, as discussed above, the costs of the rule are likely to be small. To the extent that the costs of the product increase, they are likely to be passed on to consumers in the form of higher retail prices.[8]

Finally, dive sticks probably account for only a small percentage of any individual firm's sales. Several dive stick manufacturers market various types of pool or other toys. Others have additional product lines such as pool supplies and equipment. Additionally, most of the firms that manufactured or imported dive sticks also distribute similar toys (such as dive rings and disks and certain dive eggs that do not rest vertically on the bottom) that would not be covered by the ban. If firms stopped producing and selling dive sticks, sales of these substitute products may increase, offsetting any loss due to a ban on dive sticks.[8]

For the reasons stated above, the Commission certifies that the proposed rule banning dive sticks would not have a significant effect on a substantial number of small entities.

I. Environmental Considerations

Pursuant to the National Environmental Policy Act, and in accordance with the Council on Environmental Quality regulations and CPSC procedures for environmental review, the Commission has assessed the possible environmental effects associated with the proposed rule banning certain dive sticks.

The Commission's regulations state that rules providing design or performance requirements for products normally have little or no potential for affecting the human environment. 16 CFR 1021.5(c)(1). Nothing in this proposed rule alters that expectation. Therefore, because the rule would have no adverse effect on the environment, neither an environmental assessment nor an environmental impact statement is required.[8]

J. Executive Orders

According to Executive Order 12988 (February 5, 1996), agencies must state the preemptive effect, if any, of new regulations.

The FHSA provides that, generally, if the Commission issues a banning rule under section 2(q) of the FHSA to protect against a risk of illness or injury associated with a hazardous substance, "no State or political subdivision of a State may establish or continue in effect a requirement applicable to such substance and designed to protect against the same risk of illness or injury unless such requirement is identical to the requirement established under such regulations." 15 U.S.C. 1261n(b)(1)(B). Upon application to the Commission, a State or local standard may be excepted from this preemptive effect if the State or local standard (1) provides a higher degree of protection from the risk of injury or illness than the FHSA standard and (2) does not unduly burden interstate commerce. In addition, the Federal government, or a State or local government, may establish and continue in effect a non-identical requirement that provides a higher degree of protection than the FHSA requirement for the hazardous substance for the Federal, State or local government's own use. 15 U.S.C. 1261n(b)(2).

Thus, with the exceptions noted above, the proposed rule banning certain dive sticks would preempt non-identical state or local requirements applicable to dive sticks designed to protect against the same risk of injury.

The Commission has also evaluated this proposed rule in light of the principles stated in Executive Order 13132 concerning federalism, even though that Order does not apply to independent regulatory agencies such as CPSC. The Commission does not expect that the proposed rule will have any substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among various levels of government.

K. Effective Date

The rule would become effective 30 days from publication of a final rule in the **Federal Register** and would apply to dive sticks entering the chain of distribution on or after that date. The Commission believes a 30-day effective date is appropriate because (1) due to the 1999 recalls, few, if any, dive sticks should be currently on the market; (2) redesigning products to comply with the rule should be fairly simple; and (3) substitute products are readily available.[1,8]

L. Proposed Findings

For the Commission to issue a rule under section 2(q)(1) of the FHSA classifying a substance or article as a banned hazardous substance, the Commission must make certain findings and include these findings in the regulation. 15 U.S.C. 1262(i)(2). The Commission proposes the following findings.

Voluntary standard. The FHSA requires the Commission to make certain findings concerning compliance with and adequacy of a voluntary standard if a relevant voluntary standard has been adopted and implemented. *Id.* The Commission is not aware of any voluntary standards addressing the risk of injury posed by dive sticks. Therefore, no findings concerning voluntary standards are necessary.

Relationship of benefits to costs. The FHSA requires the Commission to find that the benefits expected from a regulation bear a reasonable relationship to its costs. The Commission estimates the potential benefits of removing hazardous dive sticks from the market to be 2 to 4 cents per dive stick. With the availability of substitutes and the expected low cost of modifying dive sticks to conform to the proposed rule, the Commission anticipates that necessary changes will be minimal. The Commission estimates that the costs of the rule will be no more than 2 to 4 cents per dive stick. Thus, the Commission proposes to find that there is a reasonable relationship between the expected benefits of the rule and its costs.

Least burdensome requirement. The FHSA requires the Commission to find that a regulation imposes the least burdensome alternative that would adequately reduce the risk of injury. *Id.* The Commission considered pursuing voluntary recalls, following a voluntary standard, or requiring labeling. A

banning rule would be more effective than case-by-case recalls because the impalement hazard affects all dive sticks, not a specific brand or model. Awaiting recalls would allow these hazardous items on the market until the Commission obtained recalls. As explained above, no applicable voluntary standard exists, and compliance may be low if one did. Although labeling could help reduce the risk of injuries from dive sticks, it would be less effective than a banning rule. It may be difficult for a label to convey the necessary information at the time of use. Thus, the Commission proposes that a ban of dive sticks with the hazardous characteristics it has identified is the least burdensome alternative that would adequately reduce the risk of injury.

Conclusion

For the reasons stated above, the Commission preliminarily concludes that the dive sticks described in the proposed rule are hazardous substances under section 2(f)(1)(D) of the FHSA. They are intended for children and present a mechanical hazard because their design or manufacture presents an unreasonable risk of injury. 15 U.S.C. 1261(s).

List of Subjects in 16 CFR Part 1500

Consumer protection, Hazardous materials, Hazardous substances, Imports, Infants and children, Labeling, Law enforcement, and Toys.

Therefore, the Commission proposes to amend title 16 of the Code of Federal Regulations as follows:

PART 1500—HAZARDOUS SUBSTANCES AND ARTICLES: ADMINISTRATION AND ENFORCEMENT REGULATIONS

1. The authority for part 1500 continues to read as follows:

Authority: 15 U.S.C. 1261–1278.

2. Section 1500.18 is amended by adding a new paragraph (a)(19) to read as follows:

§ 1500.18 Banned toys and other banned articles intended for use by children.

(a) * * *

(19) Dive sticks, and other similar articles, that are used in swimming pools or other water environments for such activities as underwater retrieval games or swimming instruction, and which, when placed in the water, submerge and rest at the bottom of the pool. This includes products that are pre-weighted to sink to the bottom and products that are designed to allow the user to adjust the weight. Dive sticks and similar articles that come to rest underwater at an angle greater than 45 degrees from vertical when measured under the test at § 1500.86(a)(7) and dive sticks and similar articles that maintain a compressive force of less than 5-lbf under the test at § 1500.86(a)(8) are exempt from this banning rule. Articles that have a continuous circular shape, such as dive rings and dive disks are also exempt.

3. Section 1500.86 is amended by adding new paragraphs (a)(7) and (a)(8) to read as follows:

§ 1500.86 Exemptions from classification as a banned toy or other banned article for use by children.

(a) * * *

(7) Dive sticks and similar articles described in § 1500.18(a)(19) that come to rest at the bottom of a container of water in a position in which the long axis of the article is greater than 45 degrees from vertical when measured in accordance with the following test method:

(i) *Test equipment.* (A) A container that is filled with tap water to a depth at least 3 inches [76 mm] greater than the longest dimension of the dive stick. The container shall: be sufficiently wide to allow the dive stick to lie along the bottom with its long axis in a horizontal position; have clear side walls to permit observation of the dive stick under water; and be placed on a level surface and have a flat bottom.

(B) A protractor or other suitable angle measurement device that has an indicator for 45 degrees from vertical.

(ii) *Testing procedure.* (A) If the dive stick is sold such that the consumer is required to attach an additional component(s) to the dive stick, then the product shall be tested both with and without the attachment(s).

(B) From just above the water surface, drop the dive stick into the container.

(C) Let the dive stick sink and come to rest at the bottom of the container. If the dive stick is designed so that the weight can be adjusted by adding water or other substance, adjust the weight so that the dive stick sinks and comes to rest with its long axis positioned as close to vertical as possible.

(D) Align the angle measurement device alongside the dive stick underwater and wait for the dive stick to come to rest if there is any water disturbance. Determine whether the long axis of the dive stick is greater than or less than 45 degrees from vertical.

(8) Dive sticks and similar articles described in § 1500.18(a)(19) in which the maximum force measured in the following test method is less than 5-lbf [22N]. The test shall be conducted in the ambient environment of the laboratory and not under water.

(i) *Test equipment.* (A) A compression rig that has a force gauge or equivalent device that is calibrated for force measurements within a minimum range of 0 to 5 lbf [0–22 N] and with an accuracy of ±0.1 lbf [±0.44 N] or better. The test rig shall have a system to guide this force application in the vertical direction and shall have a means to adjust the rate of load application.

(B) Compression disk—the loading device that is attached to the force gauge shall be a rigid metal disk with a minimum diameter of 1.125 inches[29 mm].

(C) Vise or other clamping device.

(ii) *Testing procedure.* (A) Position the bottom of the dive stick in the clamping device so that the longest axis of the dive stick is vertical. The bottom end of the dive stick is the end that sinks to the bottom of a pool of water. Secure the bottom of the dive stick in the clamp such that the clamping mechanism covers no more than the bottom ½ inch [13 mm] of the dive stick.

(B) Apply a downward force at a rate of 0.05 in/sec (±0.01 in/sec) [1.3 mm.sec ±0.3 mm/sec] at the top of the dive stick with the compression disk positioned so that the plane of the disk contact surface is perpendicular to the long axis of the dive stick.

(C) Apply the load for a period of 40 seconds or until the maximum recorded force exceeds 5-lbf [22 N].

(D) Record the maximum force that was measured during the test.

Dated: July 11, 2000.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

List of Relevant Documents

1. Briefing memorandum from Ronald Medford, AED, Office of Hazard Identification and Reduction and Scott Heh, Project Manager, Directorate for Engineering Sciences, to the Commission, "Dive Sticks," June 8, 2000.

2. Memorandum from Debra Sweet, Directorate for Epidemiology, to Scott Heh, Project Manager, "Injury Data Related to Dive Sticks," March 21, 2000.

3. Memorandum from Catherine A. Sedney, Division of Human Factors, to Scott Heh, Project Manager, "Human Factors Assessment of Dive Sticks," April 10, 2000.

4. Comment Received in Response to the ANPR, Steve Hutchison, Department of Fair Trading, NSW Consumer Protection Agency, Australia, dated August 30, 1999.

5. Memorandum from Scott Heh, Project Manager, to File, "Banning Definition and Test Methods for Dive Sticks," May 3, 2000.

6. Memorandum from Catherine A. Sedney, Division of Human Factors, to Scott Heh, Project Manager, "Prevention of

Impalement Injuries: Specification of the Position of Dive Sticks in Water," January 27, 2000.

7. Memorandum from Suad Nakamura, Ph.D., Physiologist, Division of Health Sciences, and Scott Heh, Mechanical Engineer, Directorate for Engineering Sciences, to File, "Development of an Exemption for Non-rigid Dive Sticks," May 3, 2000.

8. Memorandum from Robert Franklin, Economist, Directorate for Economic Analysis, to Scott Heh, Project Manager, "Preliminary Regulatory Analysis: Dive Sticks," May 18, 2000.

[FR Doc. 00–18058 Filed 7–18–00; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–107644–98]

RIN 1545–AX20

Dollar-Value LIFO Regulations; Inventory Price Index Computation Method; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to a notice of proposed rulemaking which was published in the **Federal Register** on May 19, 2000 (65 FR 31841) relating to the dollar-value LIFO regulations.

FOR FURTHER INFORMATION CONTACT: Jeffery G. Mitchell at (202) 622–4970 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations that are the subject of these corrections are under section 472 of the Internal Revenue Code.

Need for Correction

As published, this notice of proposed rulemaking contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG–107644–98), which was subject to FR. Doc. 00–12174, is corrected as follows:

1. On page 31844, column 1, in the preamble under the paragraph heading "*New Base Year for IPIC Method Changes*", line 1, the language "Section 1.472–8(e)(vi) requires a" is corrected to read "Section 1.472–8(e)(3)(vi) requires a".

2. On page 31849, column 1, § 1.472–8(e)(3)(iii)(F), paragraph (xii) of *Example 1.*, line 2, in the paragraph heading, the language "*the 1997 taxable year.* R computes the" is corrected to read "*the 1998 taxable year.* R computes the".

3. On page 31849, column 2, § 1.472–8(e)(3)(iii)(F), paragraph (xiii) of *Example 1.*, fourth line from the bottom of paragraph, the language "inventory at the end of the 1997 taxable year" is corrected to read "inventory at the end of the 1998 taxable year".

4. On page 31850, column 1, § 1.472–8(e)(3)(iii)(F), paragraph (vi) of *Example 2.*, line 2, in the paragraph heading, the language "*the 1997 taxable year.* R computes the" is corrected to read "*the 1998 taxable year.* R computes the".

5. On page 31850, column 2, § 1.472–8(e)(3)(iv)(A), second line from the bottom of column, the language "election of an appropriate representative" is corrected to read "election of a representative appropriate".

6. On page 31852, column 1, § 1.472–8(e)(3)(iv)(C)(*2*)(*ii*), paragraph (ii) of *Example.*, sixth line from the bottom of the paragraph, the language "($241,980.60 * 1.438793). Finally, the" is corrected to read "($124,180.60 * 1.438793). Finally, the".

7. On page 31852, column 1, § 1.472–8(e)(3)(iv)(C)(*2*)(*ii*), paragraph (ii) of *Example.*, fourth line from the bottom of the paragraph, the language "sold and increases Y's gross income for the" is corrected to read "sold and increase Y's gross income for the".

Cynthia E. Grigsby,

Chief, Regulations Unit, Office of Special Counsel(Modernization and Strategic Planning).

[FR Doc. 00–18139 Filed 7–18–00; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA099–5048b; FRL–6837–6]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Approval of Revision to Opacity Limit for Drier Stacks at Georgia-Pacific Corporation Softboard Plant in Jarratt, VA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia for the purpose of establishing a higher opacity limit for drier zone stacks #1 and #2 located at the Georgia-Pacific Softboard plant in Jarratt, Virginia. In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by August 18, 2000.

ADDRESSES: Written comments should be addressed to Ms. Makeba A. Morris, Chief, Technical Assessment Branch, Mailcode 3AP22, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and; Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Ruth E. Knapp, (215) 814–2191, at the EPA Region III address above, or by e-mail at knap.ruth@epa.gov.

SUPPLEMENTARY INFORMATION: For further information on this source specific revision related to the drier stacks at the Georgia-Pacific softboard facility in Jarratt, VA. please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: June 30, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

[FR Doc. 00–18104 Filed 7–19–00; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD097–3050b; FRL–6735–5]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; 15 Percent Plan for the Metropolitan Washington, D.C. Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We are proposing to convert our conditional approval of the Maryland State Implementation Plan (SIP) revision to achieve a 15 percent reduction in volatile organic compound emissions (15% plan SIP revision) in the Metropolitan Washington, D.C. ozone nonattainment area to a full approval. In the "Rules and Regulations" section of this **Federal Register**, we are converting our conditional approval of Maryland's 15% plan SIP revision to a full approval as a direct final rule because we view this as a noncontroversial amendment and because we anticipate no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If we receive no adverse comments, we will not undertake further action on this proposed rule. If we receive adverse comments, we will withdraw the direct final rule, and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Anyone interested in providing comments on this action should do so at this time.

DATES: Comments must be received in writing by August 18, 2000.

ADDRESSES: Written comments should be addressed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland 21224.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps, (215) 814–2179, at the EPA Region III address above, or by e-mail at cripps.christopher@epa.gov.

SUPPLEMENTARY INFORMATION: For further information, please see the direct final rule, with the same title, located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: June 30, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

[FR Doc. 00–18111 Filed 7–18–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

48 CFR Part 30

Cost Accounting Standards Administration

AGENCY: Department of Defense (DoD).

ACTION: Notice of public meeting.

SUMMARY: The Director of Defense Procurement is sponsoring a public meeting to discuss the proposed Federal Acquisition Regulation rule on Cost Accounting Standards Administration published in the **Federal Register** at 65 FR 20854 on April 18, 2000. The Director of Defense Procurement would like to hear the views of interested parties on what they believe to be the key issues pertaining to the proposed rule. A listing of some of the possible issues is included on the Internet Home Page of the Office of Cost, Pricing, and Finance at http://www.acq.osd.mil/dp/cpf.

Upon identification of the key issues, subsequent public meetings will be held to hear views of interested parties regarding specific proposed language and/or recommendations. The dates and times of those meetings will be published on the Internet Home Page of the Office of Cost, Pricing, and Finance.

DATE: The first meeting will be held on August 2, 2000, from 9 a.m. until 1 p.m.

ADDRESSES: The meeting will be held at the National Contract Management Association, 1912 Woodford Drive, Vienna, VA 22182. Directions may be found on the Internet at http://www.acq.osd.mil/dp/cpf.

FOR FURTHER INFORMATION CONTACT: David Capitano, Office of Cost, Pricing, and Finance, by telephone at (703) 695–9764, by FAX at (703) 693–9616, or by e-mail at capitadj@acq.osd.mil.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 00–18252 Filed 7–18–00; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2000–7066]

RIN 2127–AH50

Federal Motor Vehicle Safety Standards: Glazing Materials

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for comments.

SUMMARY: This document is intended to inform the public about NHTSA's research findings to date on advanced glazing materials that may prevent ejection of vehicle occupants through motor vehicle windows during crashes. The agency has published a report titled "Ejection Mitigation Using Advanced Glazing: Status Report II." The agency invites the public to comment on the report and share information and views with the agency.

DATES: Comments must be received by November 16, 2000.

ADDRESSES: Comments should refer to the docket and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC. 20590 (Docket hours are from 10:00 a.m. to 5:00 p.m. Monday through Friday).

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC. 20590:

For non-legal issues: Mr. John Lee, Office of Crashworthiness Standards, NPS–11, telephone (202) 366–2264, facsimile (202) 493–2739, electronic mail "jlee@nhtsa.dot.gov"

For legal issues: Mr. Stephen P. Wood, Office of the Chief Counsel, telephone (202) 366–2992, facsimile (202) 366–3820, electronic mail "swood@nhtsa.dot.gov"

SUPPLEMENTARY INFORMATION:

I. Background

In response to the National Highway Traffic Safety Administration (NHTSA)

Authorization Act of 1991 and ongoing research into the overall issues of rollover and ejection mitigation, NHTSA initiated a specific research program concerning occupant protection in motor vehicle rollover crashes. NHTSA is addressing this occupant protection issue from two perspectives: (1) Preventing a rollover from occurring; and (2) protecting vehicle occupants if a rollover occurs, including reducing the likelihood of ejections. Almost 60 percent of rollover fatalities occur in the 10 percent of rollovers involving either complete or partial ejection of vehicle occupants. Occupant ejections occur either through structural failures, such as door openings, or through window openings. NHTSA is evaluating the potential of improved door latches, side head air bags, and advanced glazing systems [1] to reduce occupant ejection.

These activities are detailed in the report "Ejection Mitigation Using Advanced Glazing: Status Report II." This report has been placed in docket NHTSA–1996–1782.

This report evaluates the progress of research since NHTSA issued its November 1995 report on occupant protection research to mitigate ejection through window openings. Each year, on average, about 7,300 people are killed and 7,800 people are seriously injured because of partial or complete ejection through glazing openings such as windows and moon roofs. Of the fatalities, more than 4,400 are associated with vehicle rollovers. The majority of these rollover victims were not using seat belts. In fact, 98 percent of occupants completely ejected and killed during rollover crashes were unbelted.

It is estimated that advanced glazing systems could save between 500 and 1,300 lives per year. This estimate assumes a national seat belt use rate of about 66 percent (the yearly average and effectiveness percentages are based on data from 1992–1996 National Automotive Sampling System (NASS) Crashworthiness Data System (CDS)) and a 20 to 51 percent range of effectiveness for advanced glazing systems in preventing ejection. Higher seat belt use rates directly reduce the estimated benefits of advanced glazing systems. For example, a 71 percent seat belt use rate would reduce likely glazing benefits by 11 percent. An 81 percent use rate would reduce glazing benefits by 34 percent. As of the end of 1999, the U.S. national average seat belt use rate was 67 percent.

In NHTSA's research program, four types of advanced glazing systems were evaluated: a high-penetration resistant (HPR) trilaminate (glass-plastic-glass), a non-HPR trilaminate (a thinner glass-plastic-glass sandwich than the HPR window), a bilaminate (glass-plastic), and a polycarbonate (rigid plastic). Pilkington/Libbey-Owens-Ford assisted the agency in manufacturing prototype window systems for a General Motors C/K pickup side door. The original equipment window encapsulation (rigid plastic around the outer edge of the side window) was modified and replaced with advanced glazing design systems. Modifications were also made to the front door window frames to better retain the window during impact, while maintaining the window's ability to be raised and lowered. To date, this research has not evaluated the practicability or suitability of the proposed glazing systems in actual production vehicles. One known problem with the proposed designs is that they do not work on vehicles with frameless side windows. The proposed door modifications would either require significant redesign or not be suitable for these vehicles. Even for framed windows, some additional work (laceration, entrapment, test speeds, etc.) is needed to further examine the appropriate depth of the proposed designs. Although facial lacerations injuries are relative minor (AIS 1 or 2), they are very common and can be disfiguring. The agency plans to assess whether advanced glazings are more likely to cause lacerations than current glass. In regards to entrapment, analysis on the extracting of trapped occupants in vehicles with advanced glazing needs to be conducted. The agency plans to evaluate the ability of emergency rescue squad tools to cut through advanced glazing. In regards to test speeds, the advanced glazing systems were evaluated for their occupant retention potential at speeds of 24 kmph (15 mph). Additional tests and benefit analyses will be conducted at lower impact speeds.

The previous status report ("Ejection Mitigation Using Advanced Glazing A Status Report," November 1995. Docket NHTSA 1996–1782 had estimated incremental production costs of $48 per vehicle for front side windows if trilaminate glazing were used and $79 per vehicle for front side windows if rigid plastic were used. The projected lead-time estimated in the previous status report was about 3 years. The cost, weight, and lead-time estimates are only applicable to vehicles with framed windows. The designs tested in this report should have incremental costs similar to the previous estimates.

Three series of tests were performed on the advanced side glazing systems. First, NHTSA used an 18 kg (40 lb.) impactor (simulating upper body/head impacts) to evaluate potential occupant retention capabilities. Second, the agency used the free motion headform (FMH)(a 4.5 kg (10 lb) device) specified for testing to the requirements of Federal Motor Vehicle Safety Standard No. 201 "Occupant Protection in Interior Impact" to evaluate the glazing systems' potential for causing head injuries. Third, the agency conducted sled tests with a full-sized 50th percentile adult male Side Impact Dummy (SID)/Hybrid III dummy to further evaluate the glazing systems' potential for causing head injuries and to evaluate neck injuries. Since ejection mitigation glazings will generally allow for greater contact time between the head and glazing than conventional side windows, the agency was concerned that there may be an increased risk of serious, head and neck injuries from contact with these new systems.

The results indicated that all but the non-HPR trilaminate had good potential for providing adequate occupant retention. Impact with the advanced glazings with the FMH produced similar potential for head injuries as impacts with tempered glass in the current side windows. In the sled tests, the neck injury measurements from dummy impacts into glazings were not repeatable, especially for impacts into current production tempered side glass. Despite this wide variability of test results, impacts with tempered glass resulted in lower neck shear loads and moments than those with advanced glazings. In each case, tempered glass impacts produced the lowest neck injury measurements.

Advanced glazing systems may yield significant safety benefits by reducing partial and complete ejections through side windows, particularly in rollover crashes. However, to ascertain the efficacy and safety of advanced glazing systems more fully, more research will be conducted into both the practicability of the prototype systems and the risk of negative, unintended consequences. Research needed to make a regulatory decision will be completed by the end of 2000. This additional research will include evaluation of the repeatability of the test procedures, refinement of the test procedures, evaluation of the likelihood of increased injuries due to partially opened windows, evaluation of impact speed, evaluation of the necessary door modifications, and development of performance criteria.

[1] Glazing systems is an automotive industry term for transparent openings.

Future and ongoing research, beyond the regulatory decision point, will include full vehicle testing conducted for both rollover and side impact crash scenarios. Evaluations will be conducted on the likelihood of increased injuries to belted occupants, the potential reduction in driving visibility due to thicker window frames and smaller windows, the potential for entrapment due to more rigid side windows.

Standard test for laceration, window clarity and glass durability will be redone. As stated earlier, lacerations injuries are relative minor. Lacerations tests will be performed on available technology. The advanced glazing must still be clear for driving visibility. They will need to meet the light stability and luminous transmittance requirements of FMVSS 205 for driver visibility. Durability will still be required as with glass. The fleet field test results from the cooperative research agreement with PPG on daily wear of advanced glazing in GSA vehicles will be analyzed.

Additionally, advanced glazing systems will be evaluated against other ejection prevention and mitigation strategies. These alternate ejection countermeasures, such as the recently introduced inflatable head protection systems, will also be evaluated at the same time in making a regulatory decision. General Motors has said that side head air bags will be standard equipment on all its vehicles by 2003. Ford Motor Company will make side head air bags available in some of its 2001 sport utility vehicles.

In a highway special investigation "Bus Crashworthiness Issues" from the National Transportation Safety Board in September 1999, NHTSA has received a safety recommendation to expand its research on current advanced glazing to include its applicability to motorcoach occupant ejection prevention, and revise window glazing requirements for newly manufactured motorcoaches based on the results of this research.

For several years, NHTSA has conducted research on ejection mitigating glazing systems for use in light passenger vehicle side windows. Many of the advanced glazing systems and test procedures identified and developed in this research are probably applicable to motorcoach passenger side windows. However, because the crash environment that produces ejections in motorcoaches may be different from that for light passenger vehicles, some specific aspects of the test procedures may need to be modified.

The agency has expanded its research plan on advanced glazing to include motorcoach passenger side windows. The first task in this new research is to identify the crash environment that produces occupant ejections in motorcoach crashes, and based on that, analytically determine the occupant-to-glazing impact conditions. Other important first steps in this research are to identify the types of glazing systems currently used in motorcoaches, and to determine if some of these have ejection mitigating capabilities. The agency will seek cooperation from outside sources in obtaining the glazing systems required for this research. These systems will be evaluated for their ability to mitigate ejections, while limiting increases to head, neck, and laceration injuries. Practicability and cost issues will also be examined. We expect to begin our evaluation of the glazing systems and test procedures in the fall of 2000.

II. Questions for the Public

To assist the agency in acquiring the information it needs, NHTSA is including a list of questions and requests for data in this notice. For easy reference, the questions are numbered consecutively. NHTSA encourages commenters to provide specific responses for each question for which they have information or views. In order, to facilitate tabulation of the written comments in sequence, please identify the number of each question to which you are responding.

NHTSA requests that the rationale for positions taken by commenters be very specific, including analysis of safety consequences. NHTSA encourages commenters to provide scientific analysis and data relating to materials, designs, testing, manufacturing and field experience.

The following is a list of questions for which the agency would like to have answers. However, it does not purport to be an all-inclusive list of subjects relevant to this research. NHTSA encourages commenters to provide any other data, analysis, argument or views they believe are relevant.

1. Is the technology available for encapsulating windows in vehicles with frameless windows and for convertibles? Is it cost effective?
2. How much crash damage could be done to the new encapsulated window frame and modified door frame designs and still have them be effective in preventing occupant ejection?
3. Are there any known disadvantages of encapsulation and modified door frame design in vehicles with inflatable side impact air bags?
4. Are there any known safety disadvantages of the encapsulation glazing and modified door frame design, such as entrapment?
5. Is any work being done on human facial laceration measurement? If so, please describe that work and its results to date.
6. Are the neck injury criteria discussed in this report sufficient? Can you recommend others? Do you have test data? If so, please provide them.
7. Are the side head injury criteria discussed in this report sufficient? Can you recommend others? Do you have test data? If so please provide them.
8. Do you have any information that addresses the repeatability of glazing impact tests? If so, please provide it.
9. NHTSA used 24 kmph test speeds, simulating rollover. Are the glazing impact test speeds used by NHTSA in its testing adequate? If not why? What test speed is recommended and why?
10. Please provide any comments and supporting material on the cost, weight increase, and lead-time to manufacture advanced glazing systems.
11. Are side head airbags an alternative solution for reducing occupant ejection out of windows?
12. Would side head air bags provide any benefits that would not be provided by advanced glazing?
13. What benefits would advanced glazings offer that would not be derived from side head air bags?
14. Beyond glazing and air bags are there other alternatives that might also be effective in reducing window ejections?
15. Should the agency be working on both the advanced glazing and inflatable head restraint systems as viable, complementary technologies to solve the window ejection problem?
16. Would the test procedures being considered for evaluating the retention capability of side glazings, as described in the report, also be suitable for evaluating this capability for inflatable retention devices?
17. Based on the outcome of this research project, should the research show that the prevent of ejection can be mitigated without substantially increasing the potential for injury, should the agency require advanced glazing for passenger windows on motorcoaches and passenger windows on all types of buses categories?

III. Submission of Written Comments

How do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long (49 CFR 553.21). We established this limit to encourage the preparation of comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

In addition, for those comments of 4 or more pages in length, we request that you send 2 additional copies, as well as one copy on computer disc, to: Mr. John Lee, Light Duty Vehicle Division, NPS–11, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

We emphasize that this is not a requirement. However, we ask that you do this to aid us in expediting our review of all comments. The copy on computer disc may be in any format, although we would prefer that it be in WordPerfect 8.

Comments may also be submitted to the docket electronically by logging onto the Dockets Management System website at http://dms.dot.gov. Click on "Help & Information" or "Help/Info" to obtain instructions for filing the document electronically.

How Can I be Sure That my Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT.** In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES.** To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider in developing a proposal (assuming that one is issued), we will consider that comment on that proposal.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES.** The hours of the Docket are indicated above in the same location.

You may also review the comments on the Internet. To access the comments on the Internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (http://dms.dot.gov/).

(2) On that page, click on "search."

(3) On the next page (http://dms.dot.gov/search/), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were "NHTSA–1998–1234," you would type "1234." After typing the docket number, click on "search."

(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You can then download the comments.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

Issued: July 13, 2000.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 00–18245 Filed 7–18–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 594

[Docket No. NHTSA 2000–7629; Notice 1]

RIN 2127–AI11

Schedule of Fees Authorized by 49 U.S.C. 30141

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes fees for Fiscal Year 2001 and until further notice, as authorized by 49 U.S.C. 30141, relating to the registration of importers and the importation of motor vehicles not certified as conforming to the Federal motor vehicle safety standards (FMVSS). These fees are needed to maintain the registered importer (RI) program.

DATES: Comments are due on the proposed rule August 18, 2000.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590 (Docket hours are from 10 a.m. to 5 p.m.)

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, Office of Safety Assurance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Introduction

On June 24, 1996, at 61 FR 32411, we published a notice that discussed in full the rulemaking history of 49 CFR part 594 and the fees authorized by the Imported Vehicle Safety Compliance Act of 1988, Pub. L. 100–562, since recodified as 49 U.S.C. 30141–47. The reader is referred to that notice for background information relating to this rulemaking action. Certain fees were initially established to become effective January 31, 1990, and have been in effect and occasionally modified since then.

The fees applicable in any fiscal year are to be established before the beginning of such year. We are proposing fees that would become effective on October 1, 2000, the beginning of FY 2001. The statute authorizes fees to cover the costs of the importer registration program, to cover the cost of making import eligibility determinations, and to cover the cost of processing the bonds furnished to the Customs Service. We last amended the fee schedule in 1998; it has applied in Fiscal Years 1999–2000.

The fees are based on actual time and costs associated with the tasks for which the fees are assessed and reflect the slight increase in hourly costs in the past two fiscal years attributable to the approximately 3.68 and 4.94 percent raise (including the locality adjustment for Washington, DC) in salaries of employees on the General Schedule that became effective on January 1 each year in the years 1999 and 2000.

Requirements of the Fee Regulation

Section 594.6—Annual Fee for Administration of the Importer Registration Program

Section 30141(a)(3) of Title 49 U.S.C. provides that RIs must pay "the annual fee the Secretary of Transportation establishes * * * . to pay for the costs of carrying out the registration program for importers * * *." This fee is payable both by new applicants and by existing RIs. In order for it to maintain its registration, at the time it submits its annual fee, each RI must also file a statement affirming that the information it previously furnished in its registration application (or as later amended) remains correct (49 CFR 592.5(e)).

In accordance with the statutory directive, we reviewed the existing fees and their bases in an attempt to establish fees which would be sufficient to recover the costs of carrying out the registration program for importers for at least the next two fiscal years. The initial component of the Registration Program Fee is the fee attributable to processing and acting upon registration applications. We have tentatively determined that this fee should be increased from $290 to $345 for new applications. We have also tentatively determined that the fee representing the review of the annual statement should be increased from $149 to $177. The adjustments proposed reflect our recent experience in time spent reviewing both new applications and annual statements with accompanying documentation, as well as the inflation factor attributable to Federal salary increases and locality adjustments in the past two years since the regulation was last amended.

We must also recover costs attributable to maintenance of the registration program which arise from our need to review a registrant's annual statement and to verify the continuing validity of information already submitted. These costs also include anticipated costs attributable to possible revocation or suspension of registrations.

Based upon our review of the costs associated with this program, the portion of the fee attributable to the maintenance of the registration program is approximately $239 for each RI, an increase of $38. When this $239 is added to the $345 representing the registration application component, the cost to an applicant equals $584, which is the fee we propose. This represents an increase of $93 from the existing fee. When the $239 is added to the $177 representing the annual statement component, the total cost to the RI is $416, which represents an increase of $66.

Sec. 594.6(h) recounts indirect costs that were previously estimated at $12.12 per man-hour. This should be raised $1.78, to $13.90, based on the agency costs discussed above.

Sections 594.7, 594.8—Fees To Cover Agency Costs in Making Importation Eligibility Determinations

Section 30141(a)(3) also requires registered importers to pay "other fees the Secretary of Transportation establishes to pay for the costs of * * * (B) making the decisions under this subchapter." This includes decisions on whether the vehicle sought to be imported is substantially similar to a motor vehicle originally manufactured for import into and sale in the United States, and certified as meeting the FMVSS, and whether it is capable of being readily altered to meet those standards. Alternatively, where there is no substantially similar U.S. motor vehicle, the decision is whether the safety features of the vehicle comply with or are capable of being altered to comply with the FMVSS. These decisions are made in response to petitions submitted by RIs or manufacturers, or pursuant to the Administrator's initiative.

The fee for a vehicle imported under an eligibility decision made pursuant to a petition is payable in part by the petitioner and in part by other importers. The fee to be charged for each vehicle is the estimated *pro rata* share of the costs in making all the eligibility determinations in a fiscal year.

Inflation and the small raises under the General Schedule also must be taken into account in the computation of costs. However, we have been able to reduce our processing costs through combining several decisions in a single **Federal Register** notice as well as achieving efficiencies through improved word processing techniques. Accordingly, we propose to reduce the fee of $199 presently required to accompany a "substantially similar" petition to $175, but to increase from $721 to $800 the fee for petitions for vehicles that are not substantially similar and that have no certified counterpart. In the event that a petitioner requests an inspection of a vehicle, the fee for such an inspection will remain at $550 for each of those types of petitions.

The importer of each vehicle determined to be eligible for importation pursuant to a petition currently must pay $125 upon its importation, the same fee applicable to those whose vehicles covered by an eligibility determination on the agency's initiative (other than vehicles imported from Canada that are covered by code VSA 80–83, for which no eligibility determination fee is assessed). This fee will change due to the different costs associated with petitions. For petitions based on non-substantially similar vehicles, the fee would remain at $125. For petitions based on substantially similar vehicles, the fee would be reduced from $125 to $105. Costs associated with previous eligibility determinations on the agency's own initiative will have been recovered by October 1, 2000. We would apply the fee of $125 per vehicle only to vehicles covered by determinations made by the agency on its own initiative on and after October 1, 2000.

Section 594.9—Fee To Recover the Costs of Processing the Bond

Section 30141(a)(3) also requires a registered importer to pay "any other fees the Secretary of Transportation establishes * * * to pay for the costs of—(A) processing bonds provided to the Secretary of the Treasury" upon the importation of a nonconforming vehicle to ensure that the vehicle will be brought into compliance within a reasonable time or if the vehicle is not brought into compliance within such time, that it is exported, without cost to the United States, or abandoned to the United States.

The statute contemplates that we will make a reasonable determination of the cost to the United States Customs Service of processing the bond. In essence, the cost to Customs is based upon an estimate of the time that a GS–9, Step 5 employee spends on each entry, which Customs has judged to be 20 minutes.

Because of the modest salary and locality raises in the General Schedule that were effective at the beginning of 1999 and 2000, we propose that the current processing fee be increased by $0.35, from $5.40 per bond to $5.75.

Section 594.10—Fee for Review and Processing of Conformity Certificate

This fee currently requires each RI to pay $16 per vehicle to cover the cost of the agency's review of the certificate of conformity furnished to the Administrator. However, if a RI enters a vehicle with the U.S. Customs Service through the Automated Broker Interface (ABI), has an e-mail address to receive communications from NHTSA, and pays the fee by credit card, the fee is $13. Based upon an analysis of the direct and indirect costs for the review and processing of these certificates, we find that the costs continue to average $16 per vehicle for non-automated entries, and we therefore are not proposing a change in this fee. We estimate that there has been a reduction in cost to the agency for automated entries of approximately $7, and this would be passed on to the RI by reducing the fee from $13 to $6 per vehicle if all the information in the ABI entry is correct. Because errors in ABI entries eliminate the time-saving advantages of electronic entry, the processing cost will remain at $16 for certificates of conformity or ABI entries containing incorrect information.

Effective Date

The proposed effective date of the final rule is October 1, 2000.

Rulemaking Analyses

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking action was not reviewed under Executive Order 12886. Further, NHTSA has determined that the action is not significant under Department of Transportation regulatory policies and procedures. Based on the level of the fees and the volume of affected vehicles, NHTSA currently anticipates that the costs of the final rule will be so minimal as not to warrant preparation of a full regulatory evaluation. The action does not involve any substantial public interest or controversy. There will be no substantial effect upon State and local governments. There will be no substantial impact upon a major transportation safety program. Both the number of registered importers and determinations are estimated to be comparatively small. A regulatory evaluation analyzing the economic impact of the final rule adopted on September 29, 1989, was prepared, and is available for review in the docket.

B. Regulatory Flexibility Act

The agency has also considered the effects of this action in relation to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I certify that this action will not have a substantial economic impact upon a substantial number of small entities.

The following is NHTSA's statement providing the factual basis for the certification (5 U.S.C. 605(b)). The proposed amendment would primarily affect entities that currently modify nonconforming vehicles and which are small businesses within the meaning of the Regulatory Flexibility Act; however, the agency has no reason to believe that a substantial number of these companies cannot pay the fees proposed by this action which are only modestly increased (and in some instances decreased) from those now being paid by these entities, and which can be recouped through their customers. The cost to owners or purchasers of altering nonconforming vehicles to conform with the FMVSS may be expected to increase (or decrease) to the extent necessary to reimburse the registered importer for the fees payable to the agency for the cost of carrying out the registration program and making eligibility decisions, and to compensate Customs for its bond processing costs.

Governmental jurisdictions will not be affected at all since they are generally neither importers nor purchasers of nonconforming motor vehicles.

C. Executive Order 13132 (Federalism)

Executive Order 13132 (64 FR 43255, August 10, 1999), revokes and replaces Executive Orders 12612 "Federalism" and 12875 "Enhancing the Intergovernmental Partnership." Executive Order 13132 requires NHTSA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." Executive Order 13132 defines the term "Policies that have federalism implications" to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, NHTSA may not issue a regulation that has federalism implication, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or NHTSA consults with State and local officials early in the process of developing the proposed regulation.

The proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rulemaking action.

D. National Environmental Policy Act

NHTSA has analyzed this action for purposes of the National Environmental Policy Act. The action will not have a significant effect upon the environment because it is anticipated that the annual volume of motor vehicles imported through registered importers will not vary significantly from that existing before promulgation of the rule.

E. Civil Justice

This proposed rule does not have a retroactive or preemptive effect. Judicial review of a rule based on this proposal may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

F. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the cost, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by state, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. Because a final rule based on this proposal would not have an effect of $100 million, no Unfunded Mandates assessment has been prepared.

G. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language include consideration of the following questions:

—Have we organized the material to suit the public's needs?
—Are the requirements in the proposed rule clearly stated?
—Does the proposed rule contain technical language or jargon that is unclear?
—Would a different format (grouping and order of sections, use of heading, paragraphing) make the rule easier to understand?

—Would more (but shorter) sections be better?

—Could we improve clarity by adding tables, lists, or diagrams?

—What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this document.

Request for Comments

How Do I Prepare and Submit Comments?

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If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given at the beginning of this document under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies from which you have deleted the claimed confidential business information, to Docket Management at the address given at the beginning of this document under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation, 49 CFR part 512.

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated at the beginning of this notice under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address and times given near the beginning of this document under **ADDRESSES**.

You may also see the comments on the internet. To read the comments on the internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation *(http://dms.dot.gov/)*.

(2) On that page, click on "search."

(3) On the next page *(http://dms.dot.gov/search/)*, type in the four-digit docket number shown at the heading of this document. Example: if the docket number were "NHTSA–2000–1234," you would type "1234."

(4) After typing the docket number, click on "search."

(5) The next page contains docket summary information for the docket you selected. Click on the comments you wish to see.

You may download the comments. Although the comments are imaged documents, instead of the word processing documents, the "pdf" versions of the documents are word searchable. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

List of Subjects in 49 CFR Part 594

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR part 594 would be amended as follows:

PART 594—SCHEDULE OF FEES AUTHORIZED BY 49 U.S.C. 30141

1. The authority citation for part 594 would remain to read as follows:

Authority: 49 U.S.C. 30141, 31 U.S.C. 9701; delegation of authority at 49 CFR 1.50.

2. Section 594.6 would be amended by;

(a) Revising the introductory text of paragraph (a),

(b) Revising paragraph (b),

(c) Revising the year "1998" in paragraph (d) to read "2000,"

(d) Revising the final sentence of paragraph (h); and

(e) Revising paragraph (i) to read as follows:

§ 594.6 Annual fee for administration of the registration program.

(a) Each person filing an application to be granted the status of a Registered Importer pursuant to part 592 of this chapter on or after October 1, 2000, must pay an annual fee of $584, as calculated below, based upon the direct and indirect costs attributable to: * * *

* * * * *

(b) That portion of the initial annual fee attributable to the processing of the application for applications filed on and after October 1, 2000, is $345. The sum of $345, representing this portion, shall not be refundable if the application is denied or withdrawn.

* * * * *

(h) * * * This cost is $13.90 per man-hour for the period beginning October 1, 2000.

(i) Based upon the elements, and indirect costs of paragraphs (f), (g), and (h) of this section, the component of the initial annual fee attributable to administration of the registration program, covering the period beginning October 1, 2000, is $239. When added to the costs of registration of $345, as set forth in paragraph (b) of this section, the costs per applicant to be recovered through the annual fee are $584. The annual renewal registration fee for the period beginning October 1, 2000, is $416.

* * * * *

3. Section 594.7 would be amended by revising paragraph (e) to read as follows:

§ 594.7 Fee for filing petitions for a determination whether a vehicle is eligible for importation.

* * * * *

(e) For petitions filed on and after October 1, 2000, the fee payable for seeking a determination under paragraph (a)(1) of this section is $175. The fee payable for a petition seeking a determination under paragraph (a)(2) of this section is $800. If the petitioner requests an inspection of a vehicle, the sum of $550 shall be added to such fee. No portion of this fee is refundable if the petition is withdrawn or denied.

4. Section 594.8 would be amended by revising paragraph (c) to read as follows:

§ 594.8 Fee for importing a vehicle pursuant to a determination by the Administrator.

* * * * *

(c) If a determination has been made on or after October 1, 2000, pursuant to the Administrator's initiative, the fee for each vehicle is $125. * * *

5. Section 594.9 would be amended by revising paragraph (c) to read as follows:

§ 594.9 Fee for reimbursement of bond processing costs.

* * * * *

(c) The bond processing fee for each vehicle imported on and after October 1, 2000, for which a certificate of conformity is furnished, is $5.75.

5. Section 594.10 would be amended by adding two new sentences at the end of paragraph (d) to read as follows:

§ 594.10 Fee for review and processing of conformity certificate.

* * * * *

(d) * * * However, if the vehicle covered by the certificate has been entered electronically with the U.S. Customs Service through the Automated Broker Interface and the registered importer submitting the certificate has an e-mail address, the fee for the certificate is $6, provided that the fee is paid by a credit card issued to the registered importer. If NHTSA finds that the information in the entry or the certificate is incorrect, requiring further processing, the processing fee shall be $16.

Issued on: July 7, 2000.

Kenneth N. Weinstein,

Associate Administrator for Safety Assurance.

[FR Doc. 00–18012 Filed 7–18–00; 8:45 am]

BILLING CODE 4910–52–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG24

Endangered and Threatened Wildlife and Plants; ProposedDesignation of Critical Habitat for the Plant Lesquerella thamnophila (Zapata Bladderpod)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; availability of supplementary information.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose designation of critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for the plant Lesquerella thamnophila (Rollins & Shaw) (Zapata bladderpod). Proposed critical habitat includes approximately 2,157 hectares (ha) (5,330 acres(ac)) of the Lower Rio Grande Valley National Wildlife Refuge property in Starr County, Texas, a 402 meter (m) (0.25 mile (mi)) length of highway right-of-way at each of two sites located along Highway 83, in Zapata County, Texas, and a 0.55 ha (1.36 ac) site on private land in Starr County, Texas. If this proposal is made final, section 7 of the Act would prohibit destruction or adverse modification of the critical habitat by any activity funded, authorized, or carried out by any Federal agency. Section 4 of the Act requires us to consider economic and other relevant impacts of specifying any particular area as critical habitat. We are preparing an economic analysis of this action and will announce its availability for public review and comment at a later date. In addition, we are preparing an Environmental Assessment of this action pursuant to the National Environmental Policy Act. The draft Environmental Assessment may be obtained for review and comment by contacting us (see **ADDRESSES**). We solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the designation. We may revise this proposal to incorporate or address new information received during the comment period.

DATES: We will accept comments until September 18, 2000. We will hold a public meeting and hearing in Rio Grande City on August 24, 2000, regarding this proposal. We will hold the meeting from 5:00 p.m. to 7:00 p.m., and, immediately following the meeting, we will hold the hearing from 7:00 p.m. to 9:00 p.m.

ADDRESSES: Send comments and materials to: Field Supervisor,U.S. Fish and Wildlife Service, Ecological Services Field Office, c/o Texas A&M University-Corpus Christi, Campus Box 338, 6300 Ocean Drive, Corpus Christi, TX 78412. We will make comments and materials received available for public inspection, by appointment, during normal business hours at the above address. We will hold the public meeting and public hearing at the Rio Grande City Activity Center, Fort Ringgold Highway (Highway 83), Rio Grande City, Texas.

FOR FURTHER INFORMATION CONTACT: Loretta Pressly, Corpus Christi Ecological Services Field Office, at the address above (Telephone 361/994–9005; facsimile 361/994–8262).

SUPPLEMENTARY INFORMATION:

Background

Lesquerella thamnophila is a pubescent (covered with short hairs), somewhat silvery-green herbaceous perennial plant, with sprawling stems 43–85 centimeters (cm) (17–34 inches (in)) long. The plant exhibits a taproot system demonstrating a perennial life habit. It possesses narrow basal leaves 4–12 cm (1.5–4.8 in) long, and 7–15 millimeters (mm) (0.3–0.6 in) wide, with entire (undivided) to wavy or slightly toothed margins. Stem leaves are 3–4 cm (1–1.5 in) long and 2–8 mm (0.1–0.3 in) wide, with margins similar to basal leaves. The bright yellow-petaled flowers are bunched loosely on a single stem. The flowers appear at different seasons of the year depending upon timing of rainfall, with the lower flowers maturing first. Fruits are round, 4.5–6.5 mm (0.2–0.8 in) in diameter, and located on short, downward curving pedicels (slender stalks) (Poole 1989). Little is known of the population genetics, structure, or dynamics of the species.

Lesquerella thamnophila, a member of the Brassicaceae (Cruciferae-Mustard) Family, was first collected in Zapata County, Texas, by R. C. Rollins in 1959. The species was named *Lesquerella thamnophila* in 1973 by R. C. Rollins and E. A. Shaw in their review of the genus *Lesquerella* (Rollins and Shaw 1973). The few collected specimens of *Lesquerella thamnophila* have all come from Starr and Zapata Counties in Southern Texas, except for one specimen that has been identified from Tamaulipas, Mexico.

Habitat Characteristics

All known populations of *Lesquerella thamnophila* in the United States occur in Starr and Zapata Counties, Texas, within approximately 3.22 kilometers (km) (2 mi) of the Rio Grande. These populations are found on upland sites that have not had previous soil disruption and are relatively free of nonnative species. Soil types sites suggest that the species is not closely tied to a specific soil texture; but the soil textures ranges from clay (Catarina soils) to fine sandy loam (Copita soils). Many of the known populations occur on soils with moderate alkalinity

Lesquerella thamnophila can occur on graveled to sandy-loam upland terraces above the Rio Grande floodplain. The known populations are associated with

three Eocene-age geologic formations, Jackson, Laredo, and Yegua, which have yielded fossiliferous (containing fossils) and highly calcareous (composed of calcium carbonate) sandstones and clays.

Known Starr County populations occur within the Jimenez-Quemado soil association and on Catarina series soils. Jimenez-Quemado soils are well-drained, shallow, and gravelly to sandy loam underlain by caliche (a hard soil layer cemented by calcium carbonate). This soil association is broad, dissected, and irregularly shaped, and occurs on huge terraces 6–15 m (20–50 feet (ft)) above the floodplains of the Rio Grande. In most areas, the Jimenez soils occupy the slope breaks extending from the tops of ridges to the bottoms of the slopes, and in the narrow valleys between them. Quemado soils occur as narrow areas on ridge tops, where the slope ranges from 3 to 20 percent. Steep escarpments can be present with rocky outcrops adjacent to the river floodplain.

The Catarina series consists of clayey, saline upland soils developed from calcareous, gypsiferous (containing gypsum), or saline clays; areas dominated by Catarina series soils usually contain many drainages and other erosional features. The underlying material contains calcareous concretions (rounded masses of mineral matter), gypsum crystals, and marine shell fragments (Thompson *et al.* 1972).

Bladderpod populations in Zapata County occur within the Zapata-Maverick soil association. Zapata soils are shallow, loamy or mixed, hyperthermic (high temperature), well-drained, and nearly level with undulating slopes ranging from 0 to18 percent, primarily on uplands occurring over caliche. The upper portion of the soil horizon ranges from 5 to 25 cm (2 to 10 in) thick, with chert gravel and course fragments consisting of a few to 25 percent of angular caliche 2.5 to 20 cm (1 to 8 in) long.

Maverick soils consist of upland clayey soils occurring over caliche with underlying calcareous material containing shale and gypsum crystals (Thompson, et al. 1972). The upper zone consists of well-drained, moderately deep soft shale bedrock, sloping 1 to 10 percent and forming clayey sediments. Ancient deposition of rock material from the Rio Grande can be found in portions of these soils, and rock and Indian artifact collecting has become a pastime for residents and visitors in the area.

Lesquerella thamnophila grows opportunistically; that is, the density of *Lesquerella* thamnophila plants and the sizes of populations fluctuate in response to rainfall during the growing season. Populations can respond dramatically to rainfall events, going from barely detectable to a substantial assemblage of thousands of individuals.

Lesquerella thamnophila occurs as an herbaceous component of an open *Leucophyllum* frutescens (cenizo) shrub community that grades into an *Acacia rigidula* (blackbrush) shrub community. Both plant communities dominate upland habitats on shallow soils near the Rio Grande (Diamond 1990). These shrublands are sparsely vegetated due to the shallow, fast-draining, highly erosional soils and semi-arid climate (Poole 1989). Other related plant species in the cenizo and blackbrush communities include *Acacia berlandieri* (guajillo), *Prosopis* sp. (mesquite), *Celtis pallida* (granjeno), *Yucca treculeana* (Spanish dagger), *Zizyphus obtusifolia* (lotebush), and *Guaiacum angustifolium* (guayacan).

The coverage of an aggressively invasive, nonnative grass, *Cenchrus ciliaria* (buffelgrass), is extensive at three of the four extant sites (see below) and present at the fourth. *Dichanthium annulatum* (Kleberg bluestem grass), which is used for erosion control on roadways, has also begun to invade natural areas and is present at all four *Lesquerella thamnophila* sites; although not as extensively as buffelgrass.

Biologists have located a total of 10 populations of *Lesquerella thamnophila*, including the type locality (the area from which the specimens that were used to first describe the species were taken) discovered by Rollins and Correll in Zapata County in 1959. Of the 10 total populations found, 4 sites either are known to still support or have recently supported live plants, including one on private land in Starr County, one on Service refuge property in Starr County, one on the Highway 83 right-of-way (ROW) near the Tigre Chiquito Bridge in Zapata County, and a fourth site discovered in March 2000 on a bluff on private land.

The site located on refuge property supports the largest known population. Biologists confirmed, through multiple site visits performed since 1994, that the plant's vegetational growth is highly dependent upon rainfall. The Texas Parks and Wildlife Department (TPWD) discovered this site initially, finding approximately 50 plants. During subsequent surveys, TPWD and Service personnel found 131 plants in 1996 and up to 8,000 plants in 1997. Few individuals were found in 1998 when drought conditions were severe. In June of 1999, after 4–6 inches of rain fell in the area, we observed a large number of plants flowering and producing fruit. In March of 2000, we found numerous rosettes, but few plants reproducing.

Plants have not been observed on the Highway 83 ROW site near the Tigre Chiquito bridge since 1998. Although this site may still support the plant, drought conditions have prevented above-ground vegetative growth, making observation impossible. This site also has been invaded by buffelgrass. The Texas Department of Transportation (TxDOT) and TPWD had developed a management agreement to protect the site by excluding mowing practices, but, due to the almost complete coverage of buffelgrass at the site, management plans at the area may have to be modified.

One population in a subdivision near Falcon Lake supported up to 1,000 plants in the past. When this site was visited in 1999, only one plant was found. Extensive housing construction, invasion of buffelgrass, and continued soil erosion from land disturbance may have completely eliminated this population.

Three other populations are believed extirpated, including the type locality in Zapata County. The remaining two populations have not been re-verified due to inaccessibility on private land. While the extent of occupied habitat can be estimated, access to private land has curtailed survey efforts by various State and Federal biologists. The plant likely occurs in other areas within its historical range in Texas, and recent reports provide reliable evidence of the plant in the State of Tamaulipas, Mexico.

Previous Federal Action

Federal action involving this species began with section 12 of the Act (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct. The Smithsonian Institution presented the report, designated as House Document No. 94–51, to Congress on January 9, 1975. On July 1, 1975, we published a notice in the **Federal Register** (40 FR 27823) accepting the Smithsonian report as a petition to list the species within the context of section 4(c)(2) of the Act, now section 4(b)(3)(A), and announcing that we would initiate a review of the status of those plants. *Lesquerella thamnophila* was included as threatened in the Smithsonian report and in our notice.

On June 16, 1976 (41 FR 24523), we published a proposed rule to list approximately 1,700 species of vascular plants as endangered. *Lesquerella thamnophila* was included in this

proposal. However, the 1978 amendments to the Act required the withdrawal of all proposals over 2 years old (although a 1-year grace period was allowed for those proposals already over 2 years old). On December 10, 1979 (44 FR 70796), we published a notice withdrawing that portion of the June 16, 1976, proposal that had not been made final, which included *Lesquerella thamnophila*.

On December 15, 1980 (45 FR 82823), we published a list of plants under review for listing as threatened or endangered, which included *Lesquerella thamnophila* as a category 2 candidate. "Category 2 candidates" were those species for which available information indicated listing as threatened or endangered may have been appropriate, but for which substantial data were not available to support preparation of a proposed rule.

Section 4(b)(3)(B) of the Act requires that we make findings on petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments to the Act required that all petitions pending as of October 13, 1982, be treated as having been submitted on that date. The 1975 Smithsonian report was again accepted as a petition, and all the plants noted within the report, including *Lesquerella thamnophila*, were treated as being newly petitioned on October 13, 1982. In each subsequent year from 1983 to 1993, we determined that listing *Lesquerella thamnophila* was warranted, but precluded by other listing actions of higher priority, and that we were still compiling additional data on vulnerability and threats.

A status report on *Lesquerella thamnophila* was completed on August 8, 1989 (Poole 1989). That report provided sufficient information on biological vulnerability and threats to warrant designating the species as a category 1 candidate and to support preparation of a proposed rule to list *Lesquerella thamnophila* as endangered. "Category 1 candidates" were those species for which we had substantial information indicating that listing under the Act was warranted.

Notices revising the 1980 list of plants under review for listing as endangered or threatened were published in the **Federal Register** on September 27, 1985 (50 FR 39626), February 21, 1990(55 FR 6184), and September 30, 1993 (58 FR 51171). *Lesquerella thamnophila* was included in the September 30, 1993, notice as a category 1 candidate.

Upon publication of the February 28, 1996, Notice of Review(61 FR 7605), we ceased using category designations for candidate species and included *Lesquerella thamnophila* simply as a candidate species. Candidate species are those species for which we have on file sufficient information on biological vulnerability and threats to support proposals to list them as threatened or endangered. We retained *Lesquerella thamnophiia* as a candidate species in the September 19, 1997, Review of Plant and Animal Taxa (62 FR 49398).

On January 22, 1998, we published a proposed rule to list *Lesquerella thamnophila* as endangered, without critical habitat(63 FR 3301). We invited the public and State and Federal agencies to comment on the proposed listing.

Section 4(a)(3) of the Act requires that, to the maximum extent prudent and determinable, we designate critical habitat at the time we determine a species to be endangered or threatened. Regulations at 50 CFR 424.12 state that critical habitat designation is not prudent when one or both of the following situations exist:

(i) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or

(ii) Such designation of critical habitat would not be beneficial to the species.

In the proposed rule we indicated that designation of critical habitat was not prudent for *Lesquerella thamnophila* because of a concern that publication of precise maps and descriptions of critical habitat in the **Federal Register** could increase the vulnerability of this species to incidents of collection and vandalism. We also indicated that designation of critical habitat was not prudent because we believed it would not provide any additional benefit beyond that provided through listing as endangered. However, after consideration of recent court decisions overturning "not prudent" determinations for other species (see discussion below), we reconsidered the issue. We published a final rule listing *Lesquerella thamnophila* as endangered on November 22, 1999, (64 FR 63745), and stated that, based on limited funding for our listing program, we would defer critical habitat designation until other higher-priority listing actions were completed.

Subsequent to the final rule listing the species as endangered, the Southwest Center for Biological Diversity filed suit to compel us to designate critical habitat for several species, including *Lesquerella thamnophila* (Southwest Center for Biological Diversity *et al.* v. *Babbitt* Civil No. 99–D–1118). We entered into settlement negotiations with the plaintiff and agreed to propose critical habitat by July 14, 2000, with a final determination to be made no later than December 15, 2000.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered species or a threatened species to the point at which listing under Act is no longer necessary.

Section 4(b)(2) of the Act requires that we base critical habitat designations upon the best scientific and commercial data available, taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in the extinction of the species.

Designation of critical habitat can help focus conservation activities for a listed species by identifying areas, both occupied and unoccupied, that contain or could develop the physical and biological features that are essential for the conservation of a listed species. Designation of critical habitat alerts the public as well as land-managing agencies to the importance of these areas.

Critical habitat also identifies areas that may require special management considerations or protection, and may provide additional protection to areas where significant threats to the habitat have been identified. Critical habitat receives protection from the prohibition against destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the adverse modification or destruction of proposed critical habitat. Aside from the protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat.

Section 7(a)(2) of the Act prohibits Federal agencies from funding, authorizing, or carrying out actions likely to jeopardize the continued existence of a threatened or endangered species, or that are likely to destroy or adversely modify critical habitat. "Jeopardize the continued existence" (of a species) is defined as an appreciable reduction in the likelihood of survival and recovery of a listed species. "Destruction or adverse modification" (of critical habitat) occurs when a Federal action significantly reduces the value of critical habitat for the survival and recovery of the listed species for which critical habitat was designated. Thus, the definitions of "jeopardy" to the species and "adverse modification" of critical habitat are similar.

Designating critical habitat does not, in itself, lead to recovery of a listed species. Designation does not create a management plan, establish numerical population goals or prescribe specific management actions (inside or outside of critical habitat). Specific management recommendations for critical habitat are most appropriately addressed in recovery plans and management plans, and through section 7 consultations.

Critical habitat identifies specific areas that have the features that are essential to the conservation of a listed species and that may require special management considerations or protection. Unoccupied areas that we determine are essential to the conservation of the species may also be designated as critical habitat.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These include, but are not limited to, the following:

(1) Space for individual and population growth, and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, germination, or seed dispersal; and

(5) Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The primary constituent elements of critical habitat for *Lesquerella thamnophila* are:

(1) Arid upland habitats of various soil types, including highly calcareous sandy loam to loamy sand, with low to moderate salinity levels on low, sloping hills;

(2) Absence of substantial previous soil disturbance and seeding or sodding of exotic grasses; and

(3) A sparse overstory of shrub species typical of the Tamaulipian biotic province, but lacking a complete canopy as might be provided by a continuous overstory dominated by mesquite (*Prosopis glandulosa*).

Proposed Critical Habitat Designation

We are proposing critical habitat to provide for the conservation of *Lesquerella thamnophila* within a large portion of its geographic range in the United States. One segment of the proposed critical habitat contains the largest known population of the species. Another proposed area is known to have had an extant population as recently as 1998. The additional proposed segments contain the necessary primary constituent elements and are believed capable of supporting the species, although it has not been documented on these sites. These areas are within the historical range of the species, contain habitats that are protected from disturbance, support the ecological requirements of *Lesquerella thamnophila*, and are essential to the conservation of the species.

Because of this species' precarious status, mere stabilization of *Lesquerella thamnophila* populations at their present levels will not achieve conservation. Maintenance and enhancement of the existing populations, plus reestablishment of populations in suitable areas within the historical range, are necessary for the species' survival and recovery. One of the most important conservation actions will be establishment of secure, self-reproducing populations in suitable habitats. Thus, we find that it is essential for the conservation of the species that critical habitat for *Lesquerella thamnophila* include both areas known to currently sustain the species and other areas where *Lesquerella thamnophila* is not currently present but support the primary constituent elements where additional populations can be established for the recovery of the species.

We are proposing to not include one site, in a subdivision near Falcon Lake, which has undergone significant development in recent years and has been invaded by buffelgrass. This site does not contain and is unlikely to develop, the primary constituent elements that are essential to the conservation of the species. This population may have already been eliminated, and we have little hope that the site can contribute to the species' recovery. Therefore, this site is not essential to the conservation of *Lesquerella thamnophila* and thus, does not meet the definition of critical habitat.

The proposed critical habitat areas described below constitute our best assessment at this time of the areas needed for the species' conservation. However, we seek additional information regarding the importance of areas proposed for critical habitat as well as identification of additional areas.

We are proposing seven Lower Rio Grande National Wildlife Refuge tracts in Starr County for critical habitat designation, including the Cuellar, Chapeno, and Arroyo Morteros Tracts located south/southwest of the Falcon Heights subdivision; the Las Ruinas, Los Negros, and Arroyo Ramirez tracts located west and northwest of the City of Roma; and the La Puerta Tract located southeast of Rio Grande City. We are also proposing to designate one currently populated and one historically populated area (i.e. currently unoccupied) owned by the State of Texas along the Highway 83 ROW in Zapata County. One of these areas is located near the Siesta Shores subdivision on the east side of Highway 83, and the other is located farther south, also on the east side of Highway 83, near the Tigre Chiquito bridge. Additionally, we are proposing to designate one of the known populations that occur on private land. This area, located on a high bluff, is less than 1.6 km (1.0 mi) northeast of the Rio Grande, and approximately 3.44 km (2.136 mi) northeast of the town of Salineno.

Table 1 shows land ownership for areas of critical habitat that are currently occupied and unoccupied.

TABLE 1.—ACRES/HECTARES OF PROPOSED OCCUPIED AND UNOCCUPIED CRITICAL HABITAT FOR FEDERAL AND STATE PROPERTIES.

County	State occupied acres/ hectares	State unoccupied acres/ hectares	Federal occupied acres/ hectares	Federal unoccupied acres/ hectares	Private occupied acres/ hectares	Private unoccupied acres/ hectares	Total acres/ hectares
Starr	0.0/0.0	0.0/0.0	45.0/18.2	5,284.0/ 2,138.0	1.36/0.552	0.0/0.0	5,330.36/ 2,156.75
Zapata	1.51/0.60	1.51/0.60	0.0/0.0	0.0/0.0	0.0/0.0	0.0/0.0	3.02/1.2

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. In 50 CFR 402.02, "jeopardize the continued existence" (of a species) is defined as engaging in an activity likely to result in an appreciable reduction in the likelihood of survival and recovery of a listed species. "Destruction or adverse modification" (of critical habitat) is defined as a direct or indirect alteration that appreciably diminishes the value of critical habitat for the survival and recovery of the listed species for which critical habitat was designated. Thus, the definitions of "jeopardy" to the species and "adverse modification" of critical habitat are nearly identical.

Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain a biological opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as a biological opinion if the critical habitat is designated, if no significant new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

Under section 7(a)(2), if a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us. Through this consultation, we would advise the agencies whether the permitted actions would likely jeopardize the continued existence of the species or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in jeopardy or the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid the likelihood of jeopardizing the continued existence of listed species or resulting in the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conferencing with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Activities on Federal lands that may affect *Lesquerella thamnophila* or its critical habitat will require section 7 consultation. Activities on non-Federal lands requiring a permit or utilizing funding from a Federal agency, such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act or Federal funding of a highway project, would also be subject to the section 7 consultation process. Federal actions not affecting the species, as well as actions on non-Federal lands that are not federally funded or permitted, would not require section 7 consultation.

Section 4(b)(8) of the Act requires us to describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to the extent that the value of critical habitat for both the survival and recovery of *Lesquerella thamnophila* is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species when affecting areas currently occupied by the species. When determining whether any of these activities may adversely modify critical habitat, we base our analysis on the effects of the action on the entire critical habitat area and not just on the portion where the activity will occur. Adverse effects on constituent elements or segments of critical habitat generally do not result in an adverse modification determination unless that loss, when added to the environmental baseline, is likely to appreciably diminish the

capability of the critical habitat to satisfy essential requirements of the species. For *Lesquerella thamnophila,* activities that appreciably degrade or destroy native Tamaulipan thornscrub communities, such as road building, land clearing for oil or gas exploration and other purposes, soil disturbance for pasture improvement, livestock overgrazing, introducing or encouraging the spread of nonnative species, and heavy recreational use may destroy or adversely modify critical habitat.

Critical habitat on the National Wildlife Refuge tracts could be affected directly by actions on the refuge, as well as indirectly by actions taken on surrounding lands. These actions include, but are not limited to, recreation management, road construction, granting of utility rights of way, and habitat restoration projects by the Fish and Wildlife Service; oil and gas exploration, extraction, and/or transportation permitted by Bureau of Land Management and the Federal Energy Regulatory Commission; road construction and brush clearing by the Immigration and Naturalization Service; and range improvement projects, including establishment of nonnative grasses, by the Natural Resource Conservation Service.

On the TxDOT tracts, actions, when carried out, funded, or authorized by a Federal agency, that may destroy or adversely modify critical habitat include highway construction projects funded by the Federal Highway Administration.

On the private land site, indirect as well as direct actions such as road construction and brush clearing by the Immigration and Naturalization Service, and range improvement projects, including establishment of nonnative grasses by the Natural Resource Conservation Service may adversely affect the population of Zapata bladderpod.

If you have questions regarding whether specific activities will likely constitute adverse modification of critical habitat, contact the Field Supervisor, Ecological Services Field Office, in Corpus Christi, Texas (see **ADDRESSES** section). If you want copies of the regulations on listed wildlife or have inquiries about prohibitions and permits, contact the U.S. Fish and Wildlife Service, Branch of Endangered Species/Permits, P.O. Box 1306, Albuquerque, New Mexico 87103 (telephone (505) 248–6920, facsimile (505) 248–6922).

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of designating these areas as part of critical habitat. We cannot exclude areas from critical habitat if the exclusion would result in the extinction of the species concerned. We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to a final determination. The economic analysis will be available for public review and comment; when completed, we will announce its availability in the **Federal Register** and local newspapers, and we will open a 30-day comment period at that time.

American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act

In accordance with the Presidential Memorandum of April 29, 1994, we are required to assess the effects of critical habitat designation on tribal lands and tribal trust resources. No tribal lands are proposed for designation as critical habitat, and no effects on tribal trust resources are anticipated if this proposal is made final.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, the Republic of Mexico, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designating areas as critical habitat will outweigh the benefits of excluding those areas from the designation;

(2) Specific information on the amount and distribution of *Lesquerella thamnophila* habitat, and what habitat is essential to the conservation of the species and why;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families; and

(5) Economic and other values associated with designating critical habitat for *Lesquerella thamnophila,* such as those derived from non-consumptive uses (*e.g.,* hiking, camping, bird-watching, enhanced watershed protection, improved air quality, increased soil retention, "existence values," and reductions in administrative costs);

Executive order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this document easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the proposed rule easier to understand?

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this request prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Peer Review

In accordance with our policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of this peer review is to ensure that listing decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite

them to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final determination may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal. We will hold a public meeting in the Rio Grande City Activities Center (see **ADDRESSES**) from 5 p.m. to 7 p.m. on August 24, 2000, to share information on this proposal and answer questions from interested persons. Immediately following the meeting, we will hold a public hearing from 7 p.m. to 9 p.m., to provide the public with the opportunity to provide formal testimony on this proposal.

Written comments submitted during the comment period receive equal consideration with those comments presented at a public hearing.

Required Determinations

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, this rule is a significant regulatory action and has been reviewed by the Office of Management and Budget (OMB). We will prepare a draft economic analysis of this proposed action to determine the economic consequences of designating the specific areas as critical habitat. We will announce in the **Federal Register** the availability of the draft economic analysis for public review and comment.

(a) We do not anticipate that this rule will have an annual economic effect of $100 million or more, or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. We will conduct an analysis of the economic impact of this proposed designation prior to making a final determination. Under the Act, critical habitat may not be adversely modified by a Federal agency action; critical habitat does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency (see Table 2 below). Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based upon our experience with the species and its needs, we believe that anyFederal action or federally authorized action that could potentially cause an adverse modification of the proposed critical habitat would currently be considered as "jeopardy" under the Act. Accordingly, the designation of currently occupied areas as critical habitat does not have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons who receive Federal authorization or funding. Non-Federal persons who do not have a Federal "sponsorship" of their actions are not restricted by the designation of critical habitat (however, they continue to be bound by the provisions of the Act concerning "take" of the species). Designation of unoccupied areas as critical habitat may have impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons who receive Federal authorization or funding. We will evaluate any impact through our economic analysis (under section 4 of the Act; see Economic Analysis section of this rule).

(b) This rule will not create inconsistencies with other agencies' actions. Table 2 shows a comparison of the effects on Federal actions resulting from the species' listing versus those expected to result from critical habitat designation. For areas currently occupied by *Lesquerella thamnophila,* Federal agencies have already been required to consult with us through section 7 of the Act to ensure that their actions do not jeopardize the continued existence this species since it was listed. Designation of critical habitat in these areas will not change or add to this requirement. We will continue to review this proposed action for any inconsistencies with other Federal agency actions.

(c) The proposed rule, if made final, will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and we do not anticipate that the adverse modification prohibition (resulting from critical habitat designation) will have significant incremental effects.

(d) This rule will not raise novel legal or policy issues.

The proposed rule follows the requirements for determining critical habitat contained in the Endangered Species Act.

TABLE 2.—IMPACTS OF DESIGNATING CRITICAL HABITAT FOR LESQUERELLA THAMNOPHILA

Categories of activities	Activities potentially affected by species listing only [1]	Additional activities potentially affected by critical habitat designation [2]
Federal Activities Potentially Affected [3].	Activities that remove or destroy occupied habitat whether by mechanical, chemical, or other means (*e.g.,* soil disturbance for purposes including pasture improvement, heavy recreational use, inappropriate application of herbicides, etc.); sale, exchange, or lease of Federal land that contains occupied habitat that is likely to result in the habitat being destroyed or appreciably degraded.	Same activities, except for herbicide application, which appreciably degrade or destroy unoccupied critical habitat.

TABLE 2. IMPACTS OF DESIGNATING CRITICAL HABITAT FOR LESQUERELLA THAMNOPHILA—Continued

Categories of activities	Activities potentially affected by species listing only [1]	Additional activities potentially affected by critical habitat designation [2]
Private and other non-Federal Activities Potentially Affected [4].	Activities that require a Federal action (permit, authorization, or funding) and which: (1) Remove or destroy occupied habitat, whether by mechanical, chemical, or other means (*e.g.*, road building and other construction projects, inappropriate application of herbicides, land clearing for purposes including oil and gas exploration, soil disturbance for purposes including pasture improvement, significant overgrazing, etc.); or (2) appreciably decrease habitat value or quality through indirect effects (*e.g.*, introducing or encouraging the spread of nonnative species).	Same activities, except herbicide application, which appreciably degrade or destroy unoccupied critical habitat.

[1] This column represents the activities potentially affected by listing the Zapata bladderpod as an endangered species on November 22, 1999, under the Endangered Species Act (64 F 63745).
[2] This column represents the activities potentially affected by the critical habitat designation beyond the effects resulting from the species' listing.
[3] Activities initiated by a Federal agency.
[4] Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

In the economic analysis, (under section 4 of the Act), we will determine whether designation of critical habitat will have a significant economic effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above, this rule is not expected to result in any significant restrictions in addition to those currently in existence.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. No land is being designated that is under the jurisdiction of any small governments.

b. This rule will not produce a Federal mandate on State, local, or tribal governments or the private sector of $100 million or greater in any year, *i.e.*, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications, and a takings implication assessment is not required. This proposed rule, if made final, will not "take" private property. The designation of critical habitat affects only Federal agency actions. The rule will not increase or decrease the current restrictions on private property concerning take of *Lesquerella thamnophila*. Additionally, critical habitat designation does not preclude development of habitat conservation plans and issuance of incidental take permits. Landowners in areas that are included in the designated critical habitat will continue to have opportunity to utilize their property in ways consistent with the survival of *Lesquerella thamnophila*.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required.

In keeping with Department of the Interior policy, we requested information from and coordinated development of this critical habitat proposal with appropriate State resource agencies in Texas. We will continue to coordinate any future designation of critical habitat for *Lesquerella thamnophila* with the appropriate State agencies. The designation of critical habitat will impose few additional restrictions beyond those currently in place and, therefore, will have little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified.

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The Office of the Solicitor will review the final determination for this proposal. We will make every effort to ensure that the final determination contains no drafting errors, provides clear standards, simplifies procedures, reduces burden, and is clearly written such that litigation risk is minimized.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act is required.

National Environmental Policy Act

Our position is that, outside the U.S. Tenth Circuit, we do not need to prepare an environmental analysis as defined by the National Environmental Policy Act (NEPA) in connection with designating critical habitat. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt*, 48F.3d 1495 (Ninth Circuit Oregon 1995), *cert. denied* 116 S. Ct.698 (1996). However, when critical

habitat involves States within the Tenth Circuit, pursuant to the ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service*,75 F.3d 1429 (10th Circuit 1996), we undertake a NEPA analysis for critical habitat designation. Although *Lesquerella thamnophila* does not occur in any 10th Circuit States, this designation is subject to 10th Circuit review because the case compelling the settlement agreement was filed in New Mexico. Thus, we are preparing an environmental assessment of this action. Send your request for copies of the draft environmental assessment for this proposal to the Field Supervisor, Corpus Christi Ecological Services Field Office (see **ADDRESSES**).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we understand that Federally recognized Tribes must be related to on a Government-to-Government basis.

We determined that no Tribal lands are essential for the conservation of *Lesquerella thamnophila* because no Tribal lands support populations of this plant or suitable habitat. Therefore, we are not proposing to designate critical habitat for *Lesquerella thamnophila* on Tribal lands.

References Cited

Diamond, D. 1990. Plant Communities of Texas (series level). Texas Parks and Wildlife Department. Austin, Texas.

Poole, J. 1989. Status Report on *Lesquerella thamnophila*. U.S. Fish and Wildlife Service, Albuquerque, New Mexico.

Rollins, R. C. and E. A. Shaw. 1973. The Genus *Lesquerella*. Harvard University Press, Cambridge, Massachusetts.

Thompson, C.M., R.R. Sanders, and D. Williams. 1972. Soil Survey of Starr County, Texas. U.S. Department of Agriculture. Soil Conservation Service, Temple, Texas.

Authors

The authors of this notice are Loretta Pressly and Lee Elliott (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend 50 CFR part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h), by revising the entry for *"Lesquerella thamnophila"* under "FLOWERING PLANTS" to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*	*	
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Lesquerella thamnophila	Zapata bladderpod	U.S.A (TX), Mexico.	Brassicaceae	E	671	17.96(a)	N/A
*	*	*	*	*	*	*	

3. Amend § 17.96 by adding critical habitat for *Lesquerella thamnophila,* Zapata bladderpod, in alphabetical order by scientific name under Family Brassicaceae to read as follows:

§ 17.96 Critical habitat-plants.

(a) *Flowering plants.*

* * * * *

Family Brassicaceae * * *

Lesquerella thamnophila (Zapata bladderpod).

1. Critical habitat units are depicted for Starr and Zapata

Counties, Texas, on the maps below. Critical habitat includes

National Wildlife Refuge tracts, highway right-of-way sites, and one site on private land.

2. Within these areas, the primary constituent elements are:

(1) Arid upland habitats of various soil types, including highly calcareous sandy loam to loamy sand, with low to moderate salinity levels on low, sloping hills;

(2) Absence of substantial previous soil disturbance and seeding or sodding of exotic grasses; and

(3) A sparse overstory of shrub species typical of the Tamaulipian biotic province, but lacking a complete canopy as might be provided by a continuous overstory dominated by mesquite (*Prosopis glandulosa*).

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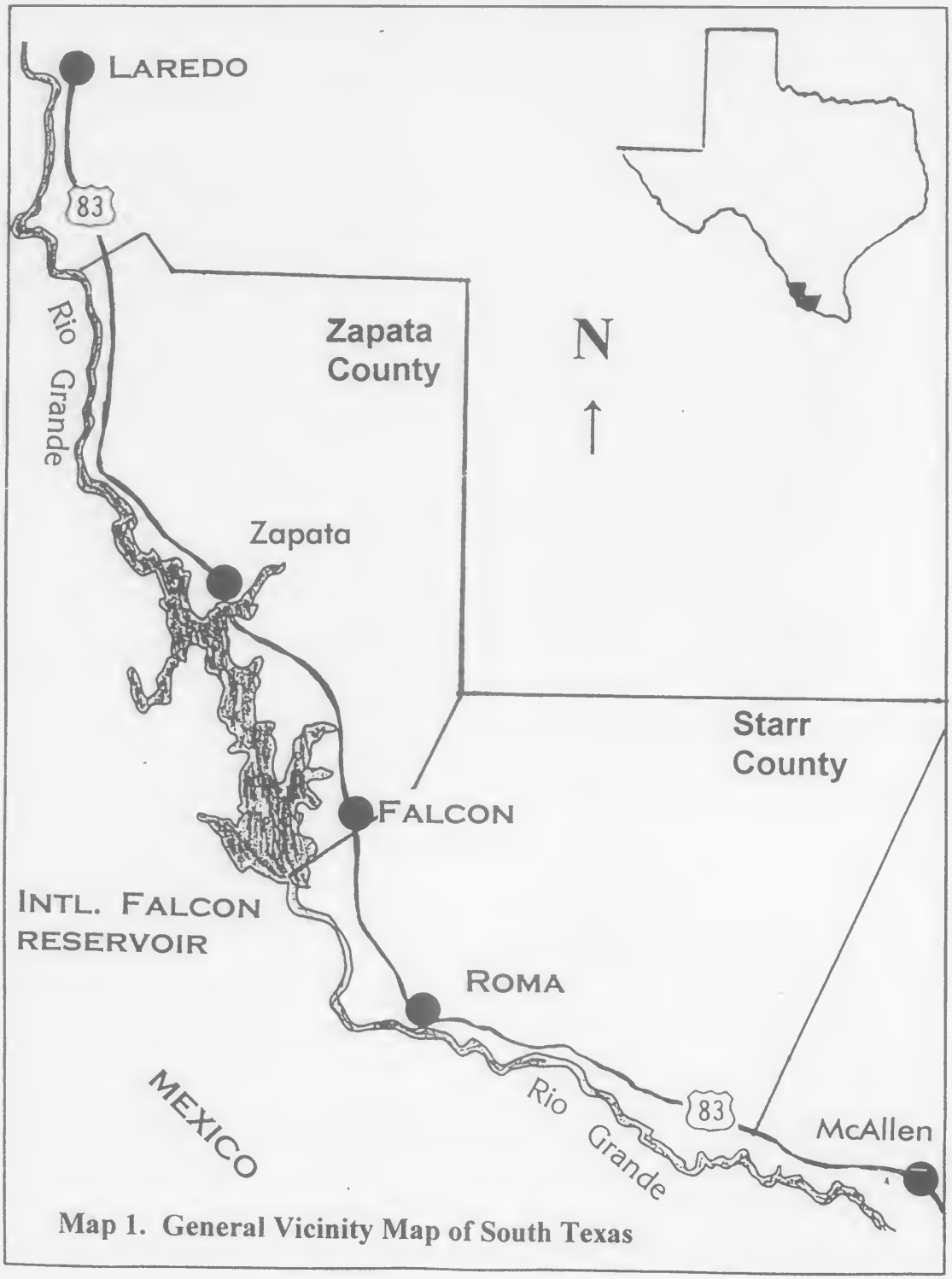
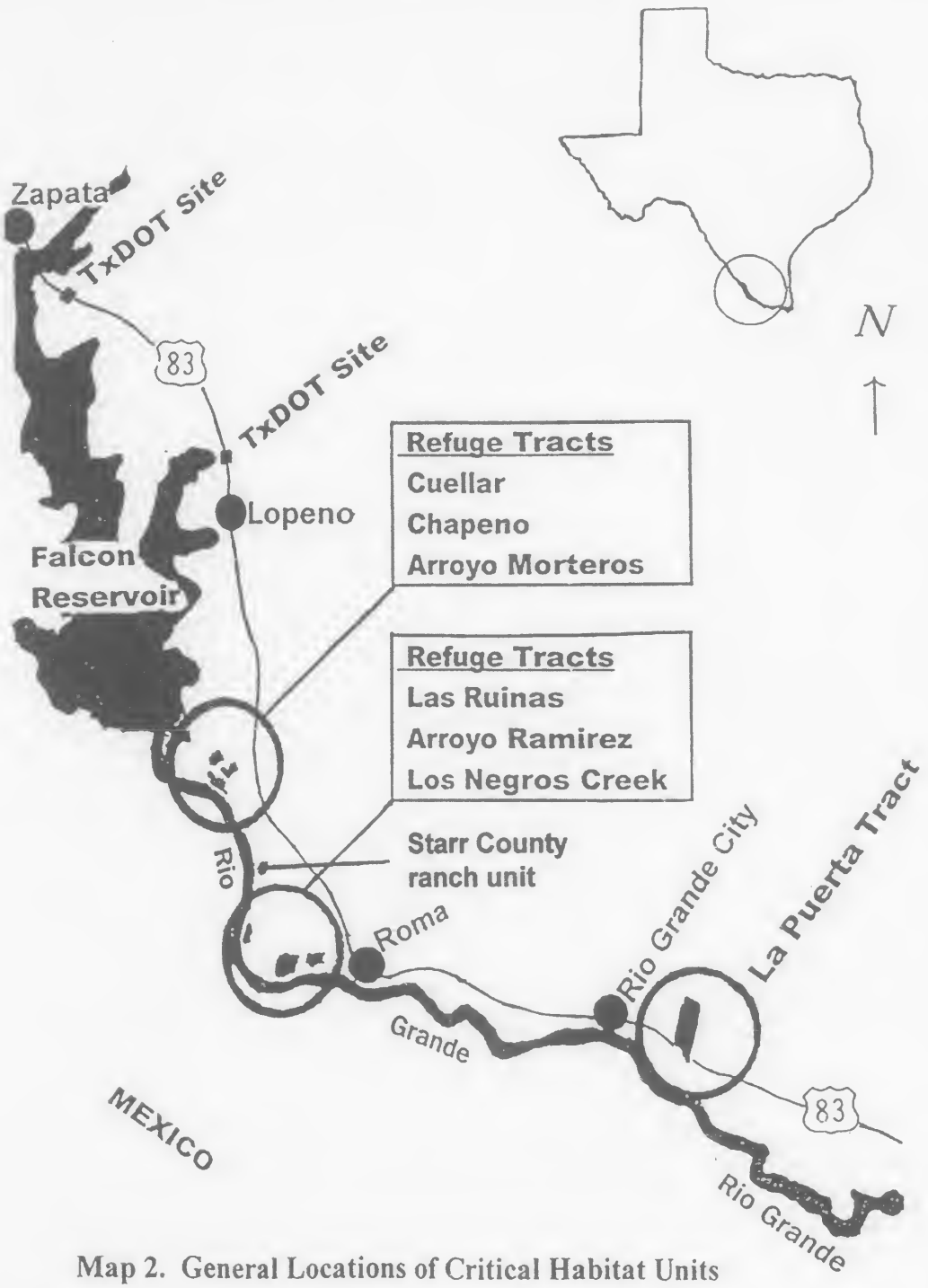
Map 1. General Vicinity Map of South Texas



Map 1. General Vicinity Map of South Texas

Map 2. General Locations of Critical Habitat Units



Map 2. General Locations of Critical Habitat Units

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Critical Habitat on Lower Rio Grande Valley National Wildlife Refuge Tracts, Starr County, Texas (Area measurements are approximate.):

Unit 1, Cuellar Tract (18 hectares (ha); 45 acres (ac))—(Segment 669). Note: All bearings are based on the Texas State Plane Coordinate System, South Zone, as referenced by the National Geodetic Survey Triangulation Station "LABRA" (not found) having State plane coordinates of N=331,881.065, E=1,794,777.75. The scale factor used is *0.9999252,* and the theta angle is *−00°37′32″*. All areas and distances are true surface measurements. Beginning at a standard U.S. Fish and Wildlife Service (FWS) aluminum monument set for corner on the southeasterly line of Porcion No. 59 and the northeast corner of Share 35 and stamped "Tract 669, COR No. 1, R.P.L.S. #4303" and having a State plane coordinate value of N=320,083.51, E=1,799,578.77, from which triangulation station "LABRA", bears N 22° 08′38″W, 12,737.98 feet; thence, in a southwesterly direction along the common line of Porcion 59 and 60, S 54°32′24″W, 2,290.19 feet, to a standard FWS aluminum monument set for corner, being the common corner of Shares 35 and 26 and stamped "Tract 669, COR No. 2, R.P.L.S. No. 4303; thence, in a northwesterly direction along the common line of Share 35 with Shares 26 and 27, N 35°27′36″W, 640.00 feet to a standard FWS aluminum monument set for corner, being the most southerly common corner of Shares 35 and 34 and stamped "Tract 669, COR. No. 3, R.P.L.S. No. 4303"; thence, in a northeasterly direction along the common line of Shares 35 and 34; N 54°32″24″E, 2,290.19 feet to a standard FWS aluminum monument set for corner, being the most northerly common corner of shares 35 and 34 and stamped "Tract 669, COR No. 4, R.P.L.S. No. 4303; thence, in a southeasterly direction along the common line of Shares 35 and 36 Parcel–A; S 35°27′36″ E, 640.00 feet to the point of beginning and containing 33.648 acres of land.

(Cuellar Tract—Segment 672). Note: All bearings are based on the Texas State Plane Coordinate System, South Zone, as referenced by U.S. Fish and Wildlife Service GPS Monument No. 105 having State plane coordinates (NAD 27) of N=311,099.90, E=1,799,824.45. The scale factor used is *0.9999252,* and the theta angle is −00°37′32″. All areas and distances are true surface measurements. Beginning at a standard FWS aluminum monument set for corner on the common line between Porcions 59 and 60, and being the northeast corner of Share 26 and stamped "Tract 672, COR. No. 1, R.P.L.S. No. 3680" and having a State plane coordinate value of N=318,737.64, E=1,797,725.36, from which FWS GPS Monument No. 105 bears S 15°22′02″E, 7,920.94 feet; thence, in a southeasterly direction along the common line of Porcion 59 and 60, S 54°27prime 12″W, 806.50 feet to a standard FWS aluminum monument set for corner, being the southeast corner of said north one-half (½) of Share 26, same being the northeast corner of the south one-half (½) of Share 26 and stamped "Tract 672, COR. No. 2, R.P.L.S. No. 3680"; thence, in a northwesterly direction along the common line of said north and south one-half (½) of Share 26; N 35°27″36″W, 463.31 feet to a standard FWS aluminum monument set for corner in the common line between Shares 26 and 27 and stamped "Tract 672, COR. No. 3, R.P.L.S. No. 3680"; thence, in a northeast direction along the common line of Shares 26 and 27; N 54°32′24″E, 806.50 feet to a standard FWS aluminum monument set for corner, being the most northerly common corner of Shares 26 and 27 in the south line of Share 35 and stamped "Tract 672, COR. No. 4, R.P.L.S. No 3680"; thence, in a southeasterly direction along the common line of Shares 35 and 26; S 35°27′36″E, 462.09 feet to the point of beginning and containing 8.567 acres of land.

(Cuellar Tract—Segment 673). Note: All bearings are based on the Texas State Plane Coordinate System, South Zone, as referenced by FWS GPS Monument No. 105 having State plane coordinates (NAD 27) of N = 311,099.90, E = 1,799,824.45. The scale factor used is *0.9999252,* and the theta angle is *−00° 37′ 32″*. All areas and distances are true surface measurements. Beginning at a standard FWS aluminum monument set for the common north corner of Shares 26 and 27, in the south line of Share 35 and stamped "Tract 672, COR. No. 4, R.P.L.S. No. 3680" and having a state plane coordinate value of N = 319,114.02, E = 1,797,457.29, from which FWS GPS Monument No. 105 bears S 16° 27′ 21″ E, 8,356.40 feet; thence, in a southwesterly direction along the common line of Shares 26 and 27, S 54° 32′ 24″ N, 806.50 feet to a standard FWS aluminum monument set for corner, being the southeast corner of said north one-half (½) of Share 27, same being the northeast corner of the south one-half (½) of Share 27 and stamped "Tract 672, COR. No. 3, R.P.L.S. No. 3680"; thence, in a northwesterly direction along the common line of said north and south one-half (½) of Share 27; N 35° 27′ 36″ W, 592.30 feet to a standard FWS aluminum monument set for corner in the common line between Shares 27 and 28 and stamped "Tract 674, COR. No. 3, R.P.L.S. No. 3680"; thence, in a northeasterly direction along the common line of Shares 27 and 28, N 54° 32′ 24″ E, 806.50 feet to a standard FWS aluminum monument set for corner, being the most northerly common corner of Shares 27 and 28 in the south line of Share 34 and stamped "Tract 674, COR. No. 2, R.P.L.S. No. 3680"; thence, in a southeasterly direction along the common line of Shares 34 and 27, S 35° 27′ 36″ E, 592.30 feet to the point of beginning and containing 10.966 acres of land.

(Cuellar Tract—Segment 674). Note: All bearings are based on the Texas State Plane Coordinate System, South Zone, as referenced by FWS GPS Monument No. 105 having State plane coordinates (NAD 27) of N = 311,099.90, E = 1,799,824.45. The scale factor used is *0.9999252*, and the theta angle is *−00° 37′ 32″*. All areas and distances are true surface measurements. Beginning at a standard FWS aluminum monument set replacing a 1-inch iron pipe found for the common north corner of Shares 28 and 29, in the south line of Share 33 and stamped "Tract 674, COR. No. 1, R.P.L.S. No. 3680" and having a state plane coordinate value of N = 320,078.90, E = 1,796,770.06, from which FWS GPS Monument No. 105 bears S 18° 47′ 11″ E, 9,484.36 feet; thence, in a southeasterly direction along the common line of Share 28 and Shares 33 and 34, S 35° 27′ 36″ E, 592.30 feet to a standard FWS aluminum monument set for corner, being the common northerly corner of Shares 28 and 27 and stamped "Tract 674, COR. No. 2, R.P.L.S. No. 3680"; thence, in a southwesterly direction along the common line of said Share 28 and 27; S 54° 32′ 24″ W, 806.50 feet to a standard FWS aluminum monument set for the southeasterly corner of said north one-half (½) of Share 28, same being the northeasterly corner of the south one-half (½) of Share 28 and stamped "Tract 674, COR. No. 3, R.P.L.S. No. 3680"; thence, in a northwesterly direction along the common line of the north and south one-half (½) of Share 28, N 35° 27′ 36″ W, 592.30 feet to a standard FWS aluminum monument set for corner in the common line between Shares 28 and 29 and stamped "Tract 674, COR. No. 4, R.P.S. No. 3680"; thence, in a northeasterly direction along the common line of Shares 28 and 29; N 54° 32′ 24″ E, 806.50 feet to the point of beginning and containing 10.966 acres of land.

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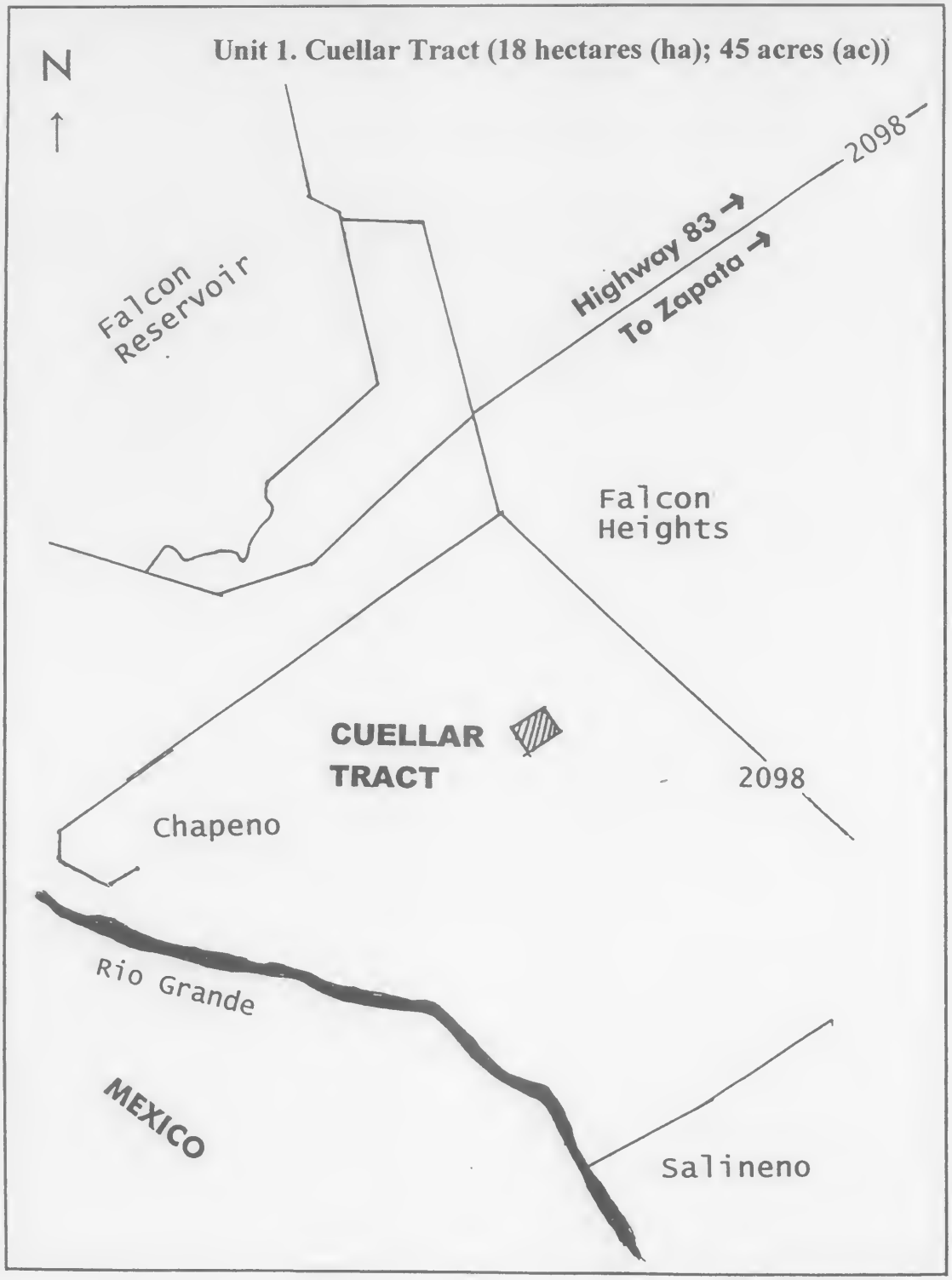

BILLING CODE 4310–55–C

Unit 2, Chapeno Tract (28 ha; 69 ac)—(Chapeno Tract—Segment 660). Note: All bearings and distances are based on the International Boundary Commission Monuments as referenced by the U.S.C. & G. S. Triangulation Station "LABRA." The scale factor used is *0.9999252*, and the theta angle is *− 00° 37′ 32″* (NAD 1927). All areas shown are true ground areas. Commencing for reference at the U. S. C. & G. S. triangulation station "LABRA," having coordinate values: x = 1,794,777.75, y = 331,881.06; thence, S 02° 08′ 43″ W, a distance of 9,020.47 feet to the northwesterly boundary line of said 44.900-acre tract for the northmost corner of said Share No. 17 and being corner No. 1 and the northernmost corner and place of beginning of the tract herein-described; thence, along the northeasterly boundary line of Share No. 17 and the southwesterly boundary line of a 35-foot perpetual easement, S 32° 11′ 36″ E, 840.62 feet to the easternmost corner of said Share No. 17 and being corner No. 2 of this tract; thence, along the southeasterly boundary line of Share No. 17 and the northwesterly boundary line of Share No. 18, S 47° 29′ 30″ W, 293.59 feet to a said point on a fence line along the southwesterly boundary line of said 44.900-acre tract for the southernmost corner of said Share No. 17 and being corner No. 3 of this tract; thence, following said fence line along the southwesterly boundary line of Share No. 17 and the southwesterly boundary line of said 44.900-acre tract, N 30° 16′ 28″ W, 166.16 feet to a standard FWS aluminum monument stamped "Tract (660), R.P.S. No. 4731" set for a corner of said 44.900-acre tract and being corner No. 4 of this tract; thence, continuing along said fence line along the southwesterly boundary line of Share No. 17 and the southwesterly boundary line of said 44.900-acre tract, N 31° 04′ 59″ W, 684.02 feet to a standard FWS aluminum monument stamped "Tract (660), R. P. S. No. 4731" set for the westernmost corner of said 44.900-acre tract and being corner No. 5 of this tract, thence, following a fence line along the northwesterly boundary line of Share No. 17 and the northwesterly boundary line of said 44.900-acre tract, N 48° 42′ 36″ E, 273.46 feet to the place of beginning and containing 5.396 acres of land.

(Chapeno Tract—Segment 661). Note: All bearings and distances are based on the International Boundary Commission Monuments as referenced by the U. S. C. & G. S. triangulation station "LABRA." The scale factor used is *00.9999252*, and the theta angle is *− 00° 37′ 32″* (NAD 1927). All areas shown are true ground areas. Commencing for reference at the U. S. C. & G. S. triangulation station "LABRA," having coordinate values: x = 1,794,777.75, y = 331,881.06; thence, S 00° 48′ 20″ E, a distance of 9,702.45 feet to the northernmost corner of said Share No. 18 and being corner No. 1 and the northernmost corner and place of beginning of the tract herein-described; thence, along the northeasterly boundary line of Share No. 18 and the southwesterly boundary line of Share No. 19, S 42° 40′ 05″ E, 623.01 feet to a point on a fence line along the southeasterly boundary line of said 44.900-acre tract for the easternmost corner of said Share No. 18 and being corner No. 2 of this tract; thence, following said fence line along the southeasterly boundary line of Share No. 18 and the southeasterly boundary line of said 44.900-acre tract, S 54° 58′ 43″ W, 14.82 feet to a standard FWS aluminum monument stamped "Tract (661), R. P. S. No. 4731" set for a corner of said 44.900-acre tract and being corner No. 3 of this tract; thence, continuing along said fence line along the southeasterly boundary line of Share No. 18 and the southeasterly boundary line of said 44.900-acre tract, S 54° 17′ 40″ W, 442.61 feet to a standard FWS aluminum monument stamped "Tract (661), R. P. S. No. 4731" set for the southernmost corner of said 44.900-acre tract and being corner No. 4 of this tract; thence, following a fence line along the southwesterly boundary line of Share No. 18 and the southwesterly boundary line of said 44.900-acre tract, N 30° 16′ 28″ W, 581.86 feet to a point for the westernmost corner of said Share No. 18 and being corner No. 5 of this tract; thence, along the southeasterly boundary line of Share No. 17 and the northwesterly boundary line of Share No.18, N 47° 29′ 30″ E, 329.16 feet to the place of beginning and containing 5.396 acres of land.

(Chapeno Tract—Segment 662). Note: All bearings and distances are based on the International Boundary Commission Monuments as referenced by the U.S.C. & G.S. triangulation station "LABRA." The scale factor used is 00.9999252, and the theta angle is − 00° 37′ 32″; (NAD 1927). All areas shown are true ground areas. Commencing for reference at the U. S. C. & G. S. triangulation station "LABRA," having coordinate values: x = 1,794,777.75, y = 331,881.06; thence, S 00° 53′ 22″ E, a distance of 9,308.09 feet to the northernmost corner of said Share No. 19 and being corner No.1 and the northernmost corner and the place of beginning of the tract herein-described; thence, along the northeasterly boundary line of Share No. 19 and the southwesterly boundary line of Share No. 20, S 41° 14′ 45″ E, 941.54 feet to a point on a fence line along the southeasterly boundary line of said 44.900-acre tract for the easternmost corner of said Share No. 19 and being corner No. 2 of this tract; thence, following said fence line along the southeasterly boundary line of Share No. 19 and the southeasterly boundary line of said 44.900-acre tract, S 55° 22′ 51″ W, 8.49 feet to a standard FWS aluminum monument stamped "Tract (662), R. P. S. No. 4731" set for a corner of said 44.900-acre tract and being corner No. 3 of this tract; thence, continuing along said fence line along the southeasterly boundary line of Share No. 19 and the southeasterly boundary line of said 44.900-acre tract, S 54° 58′ 43″ W, 243.72 feet to the southernmost corner of Share No. 19 and being corner No. 4 of this tract; thence, along the northeasterly boundary line of Share No. 18 and the southwesterly boundary line of Share No. 19, N 42° 40′ 05″ W, 623.01 feet to a corner of Share No. 19 and being corner No. 5 of this tract; thence, along the northeasterly boundary line of a 35-foot perpetual easement and the southwesterly boundary line of Share No. 19, N 32° 08′ 41″ W, 293.64 feet to the westernmost corner of said Share No. 19 and being corner No. 6 of this tract; thence, along the southeasterly boundary line of a 35-ft. perpetual easement and the northwesterly boundary line of Share No. 19, N 48° 23′ 35″ E, 219.73 feet to the place of beginning and containing 5.396 acres of land.

(Chapeno Tract—Segment 663). Note: All bearings and distances are based on the International Boundary Commission Monuments as referenced by the U.S.C. & G.S. triangulation station "LABRA." The scale factor used is *00.9999252*, and the theta angle is *− 00° 37′ 32″* (NAD 1927). All areas shown are true ground areas. Commencing for reference at the U. S. C. & G. S. triangulation station "LABRA," having coordinate values: x = 1,794,777.75, y = 331,881.06; thence, S 01° 55′ 50″ E, a distance of 9,166.26 feet to the northernmost corner of said share No 20, and being corner No. 1, and the northernmost corner and place of beginning of the tract herein-described; thence, along the northeasterly boundary line of Share No. 20 and the southwesterly boundary line of Share No. 21, S 44° 17′ 45″ E, 975.87 feet to a point on a fence line along the southeasterly boundary line of said 44.900-acre tract for the easternmost

corner of said Share No. 20 and being corner No. 2 of this tract; thence, following said fence line along the southeasterly boundary line of Share No. 20 and the southeasterly boundary line of said 44.900-acre tract; S 55° 22′ 51″ W, 273.48 feet to the southernmost corner of Share No. 20 and being corner No. 3 of this tract; thence, along the northeasterly boundary line of Share No. 19 and the southwesterly boundary line of Share No. 20, N 41° 14′ 45″ W, 941.54 feet to the westernmost corner of Share No. 20 and being corner No. 4 of this tract; thence, along the southeasterly boundary line of a 35-ft. perpetual easement and the northwesterly boundary line of Share No. 20, N 48° 23′ 35″ E, 219.73 feet to the place of beginning and containing 5.396 acres of land.

(Chapeno Tract—Segment 664). Note: All bearings and distances are based on the International Boundary Commission Monuments as referenced by the U.S.C. & G.S. triangulation station "LABRA." The scale factor used is *00.9999252*, and the theta angle is *−00° 37′ 32″* (NAD 1927). All areas shown are true ground areas. Commencing for reference at the U. S. C. & G. S. triangulation station "LABRA," having coordinate values: x = 1,794,777.75, y = 331,881.06; thence, S 03° 00′ 15″ E, a distance of 9,027.56 feet to the northernmost corner of said Share No. 21 and being corner No. 1 and the northernmost corner and place of beginning of the tract herein-described; thence, along the northeasterly boundary line of Share No. 21 and the southwesterly boundary line of Share No 22, S 46 ° 18′ 57″ E, 1,008.60 feet to a point on a fence line along the southeasterly boundary line of said 44.900-acre tract for the easternmost corner of Share No. 21 and being corner No. 2 of this tract; thence, following said fence line along the southeasterly boundary line of Share No. 21 and the southeasterly boundary line of said 44.900-acre tract, S 54° 17′ 59″ W, 56.04 feet to a standard FWS aluminum monument stamped "Tract (664), R. P. S. No. 4731" set for a corner of said 44.900-acre tract and being corner No. 3 of this tract; thence, continuing along said fenceline along the southeasterly boundary line of Share No. 21 and the southeasterly boundary line of said 44.900-acre tract, S 55° 22′ 51″ W, 202.51 feet to the southernmost corner of Share No. 21 and being corner No. 4 of this tract; thence, along the northeasterly boundary line of Share No. 20 and the southwesterly boundary line of Share No. 21, N 44° 17′ 45″ W, 975.87 feet to the westernmost corner of Share No. 21 and being corner No. 5 of this tract; thence, along the southeasterly boundary line of a 35-foot perpetual easement and the northwesterly boundary line of Share No. 21, N 48° 23′ 35″ E, 219.73 feet to the place of beginning and containing 5.396 acres of land.

(Chapeno Tract—Segment 665). Note: All bearings and distances are based on the International Boundary Commission Monuments as referenced by the U.S.C. & G.S. Triangulation station "LABRA." The scale factor used is *00.9999252*, and the theta angle is *−00°37′32″* (NAD 1927). All areas shown are true ground areas. Commencing for reference at the U.S.C. & G.S. Triangulation station "LABRA," having coordinate values: x = 1794,777.75, y = 331,881.06; thence, S 04°06′38″E, a distance of 8,892.12 feet to the northernmost corner of said Share No. 22 and being corner No.1 and the northernmost corner and place of beginning of the tract herein-described; thence, following a fence line along the northeasterly boundary line of Share No. 22 and the southwesterly boundary line of Share No. 23, S 47°33′31″E, 1,036.06 feet to a point on a fence line along the southeasterly boundary line of said 44.900-acre tract for the easternmost corner of said Share No. 22 and being corner No. 2 of this tract; thence, following said fenceline along the southeasterly boundary line of Share No. 22 and the southeasterly boundary line of said 44.900-acre tract, S 54°17′59″W, 245.67 feet to the southernmost corner of Share No. 22 and being corner No. 3 of this tract; thence, along the northeasterly boundary line of Share No. 21 and the southwesterly boundary line of Share No. 22, N 46°18′57″W, 1,008.60 feet to the westernmost corner of Share No. 22 and being corner No. 4 of this tract; thence, along the southeasterly boundary line of a 35-foot perpetual easement and the northwesterly boundary line of Share No. 22, N 48°23′35″ E, 219.73 feet to the place of beginning and containing 5.396 acres of land.

(Chapeno Tract—Segment 666). Note: All bearings and distances are based on the International Boundary Commission Monuments as referenced by the U.S.C. & G.S. triangulation station "LABRA." The scale factor used is *00.9999252*, and the theta angle is *−00°37′32″* (NAD 1927). All areas shown are true ground areas. Commencing for reference at the U.S.C. & G.S. Triangulation station "LABRA," having coordinate values: x = 1,794,777.75, y =331,881.06; thence, S 05°15″E, a distance of 8,710.10 feet to the northernmost corner of said Share No. 23 and being corner No. 1 and the northernmost corner and place of beginning of the tract herein-described; thence, following a fenceline along the northeasterly boundary line of Share No. 23 and the southwesterly boundary line of said Share No. 24, S 48°10′23″E, 1,061.62 feet to a point on a fence line along the southeasterly boundary line of said 44.900-acre tract for the easternmost corner of Share No.23 and being corner No. 2 of this tract; thence, following said fenceline along the southeasterly boundary line of Share No. 23 and the southeasterly boundary line of said 44.900-acre tract, S 54°17′59″W, 234.95 feet to the southernmost corner of Share No.23 and being corner No. 3 of this tract; thence, along the northeasterly boundary line of Share No. 22 and the southwesterly boundary line of Share No. 23, N 47°33′31″W, 1,036.06 feet to the westernmost corner of Share No. 23 and being corner No. 4 of this tract; thence, along the southeasterly boundary line of a 35-ft. perpetual easement and the northwesterly boundary line of Share No. 23, N 48°23′35″ E, 219.73 feet to the place of beginning and containing 5.396 acres of land.

(Chapeno Tract—Segment 667). Note: All bearings and distances are based on the International Boundary Commission Monuments as referenced by the U.S.C. & G.S. Triangulation station "LABRA." The scale factor used is *00.9999252*, and the theta angle is *−00°37′32″* (NAD 1927). All areas shown are true ground areas. Commencing for reference at the U.S.C. & G.S. Triangulation station "LABRA," having coordinate values: x = 1,794,777.75, y = 331,881.06; thence, S 06°25′32″E, a distance of 8,631.65 feet to the northeasterly boundary line of said 44.900-acre tract for corner No. 1 and the place of beginning of the tract herein-described; thence, following a fence line along the northeasterly boundary line of share No. 24 and the northeasterly boundary line of said 44.900-acre tract, S 51°42′47″E, 679.97 feet to a standard FWS aluminum monument stamped "Tract (667), R. P. S. No. 4731" set for a corner of said 44.900-acre tract and being corner No. 2 of this tract; thence, continuing along the fenceline along the northeasterly boundary line of Share No. 24 and the northeasterly boundary line of said 44.900-acre tract, S 01°11′48″E, 136.46 feet to a standard FWS aluminum monument stamped "Tract (667), R. P. S. No. 4731" set for a corner of said 44.900-acre tract and being corner No. 3 of this tract; thence, continuing along the fenceline along the northeasterly boundary line of Share No. 24 and the

northeasterly boundary line of said 44.900-acre tract, S 54°15′17″E, 309.21 feet to a standard FWS aluminum monument stamped "Tract (667), R. P. S. No. 4731" set on a fenceline for the easternmost corner of Share No. 24 and being on the southeasterly boundary line of said 44.900-acre tract and being corner No. 4 of this tract; thence, following said fence line along the southeasterly boundary line of share No. 24 and the southeasterly boundary line of said 44.900-acre tract, S 54°17′59″W, 197.94 feet to the southernmost corner of Share No. 24 and being corner No. 5 of this tract; thence, following said fenceline along the southwesterly boundary line of Share No. 24 and the northeasterly boundary line of Share No. 23, N 48°10′23″W, 1,061.62 feet to the westernmost corner of Share No. 24 and northernmost corner of Share No. 23 and being corner No. 6 of this tract; thence, along the southeasterly boundary line of a 35-ft. perpetual easement and the northwesterly boundary line of Share No. 24, N 48°23′35″E, 219.73 feet to the place of beginning and containing 5.396 acres of land.

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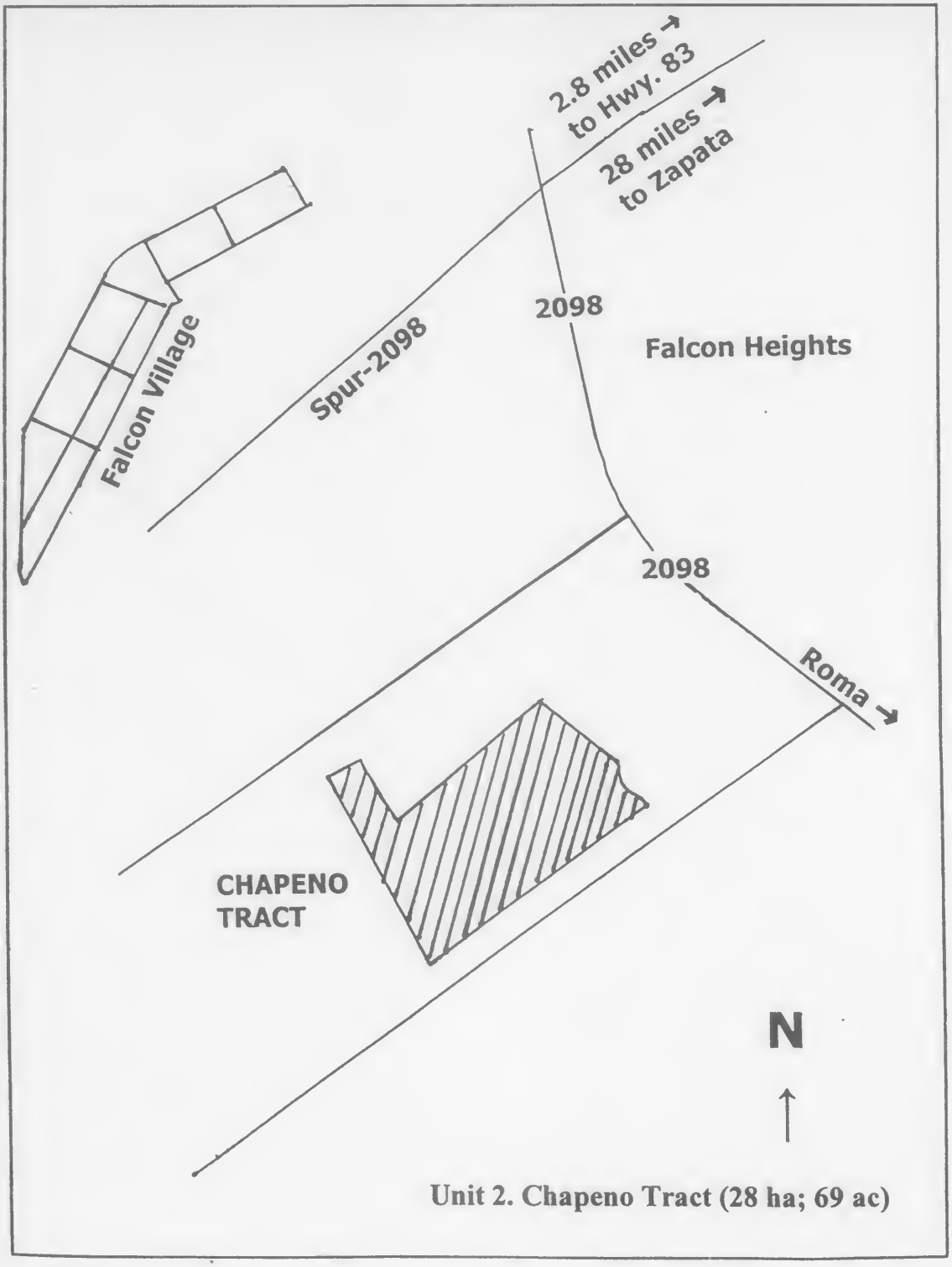

Unit 2. Chapeno Tract (28 ha; 69 ac)

BILLING CODE 4310-55-C

Unit 3, Arroyo Morteros Tract (41 ha; 102 ac)—Note: All bearings are based on the Texas State Plane Coordinate System, South Zone, (NAD 27), as referenced by FWS GPS Monument No. 105 having State plane coordinates of N = 311,099.90, E = 1,799,824.45. The scale factor used is *0.9999252*, and the theta angle is *−00°37′32″*. All areas and distances are true surface measurements. Beginning at a ½-inch iron rod found for corner No. 1 on the common line between Porcions 59 and 60, and being the northwest corner of that certain 127.71-acre tract and having a State plane coordinate value of N = 315,746.07, E = 1,793,538.58, from which FWS GPS monument No. 105 bears S 53°31′49″E, 7,816.59 feet; thence, in a northeasterly direction along the common line of Porcion 59 and 60; N 54°27′12″E, 510.43 feet to a standard FWS aluminum monument set for corner replacing a ½-inch iron rod found, being the northwest corner of the herein described tract and stamped "Tract 670, Cor. No. 2, R. P. L. S. No. 3680"; thence, in a easterly direction through the interior of said 536.485 acre tract; S 35°20′27″E, 3,621.01 feet to a standard FWS aluminum monument set for corner replacing a ½-inch iron rod found, being the northeast corner of the herein-described tract and stamped "Track 670, Cor. No. 3, R.P.L.S. No. 3680"; thence, in a southerly direction continuing through the interior of said 536.485 acre tract; S 61°18′54″W, 219.24 feet to a fence corner post found for a northwesterly corner of that certain 17.408 acre tract and being corner No. 4; thence, in a easterly direction along the common line between said 17.408 acre tract and the herein described tract; S 88°47′16″W, 110.41 feet to a fence post found for angle point and corner No. 5; thence, in a easterly direction continuing along said common line between a 17.408 acre tract and herein described tract; N 79°11′33″W, 67.63 feet to a fence post found for angle point and corner No. 6; thence, in a easterly direction continuing along said common line between a 17.408 acre tract and herein described tract; S 71°49′04″W, 50.57 feet to a fence post found for angle point and corner No. 7; thence, in a southerly direction continuing along said common line between a 17.408 acre tract and herein described tract; S 15°40′49″W, 44.43 feet to a fence post found for angle point and corner No. 8; thence, in a southerly direction continuing along said common line between a 17.408 acre tract and herein described tract; S 00°18′59″E, 253.83 feet to a fence post found for angle point and corner No. 9; thence, in a southerly direction continuing along said common line between a 17.408 acre tract and herein described tract; S 06°36′21″W, 182.88 feet to a fence post found for angle point and corner No. 10; thence, in a southerly direction continuing along said common line between a 17.408 acre tract and herein described tract; S 26°38′19″W, 125.18 feet to a fence post found for angle point and corner No. 11; thence, in a southerly direction continuing along said common line between a 17.408 acre tract and herein described tract; S 67°33′26″W, 129.76 feet to a fence post found for angle point and corner No. 12; thence, in a southerly direction continuing along said common line between a 17.408-acre tract and herein described tract; S 45°58′19″W, 73.00 feet to a fence post found for angle point and corner No. 13; thence, in a southerly direction continuing along said common line between a 17.408 acre tract and herein described tract; S 35°10′19″W, 113.60 feet to a fence post found for angle point and corner No. 14; thence, in a southerly direction continuing along said common line between a 17.408 acre tract and herein described tract; S 19°34′19″W, 42.80 feet to a fence post found for angle point and corner No. 15; thence, in a southerly direction continuing along said common line between a 17.408-acre tract and herein described tract; S 15°23′41″W, 28.84 feet to a ½-inch iron rod found on the apparent gradient boundary of the Rio Grande for the southeast corner hereof and corner No. 16; thence, in a westerly direction along said apparent gradient boundary of the Rio Grande; N 62°26′09″W, 81.47 feet to a point on said apparent gradient boundary of the Rio Grande for corner No. 7; thence, in a northwesterly direction continuing along said apparent gradient boundary of the Rio Grande; N 36°34′14″W, 122.63 feet to a point on said apparent gradient boundary of the Rio Grande for corner No. 18; thence, in a northerly direction continuing along said apparent gradient boundary of the Rio Grande; N 20°15′10″W, 58.91 feet to a point on said apparent gradient boundary of the Rio Grande for corner No. 19; thence, in a northwesterly direction continuing along said apparent gradient boundary of the Rio Grande; N 34°02′20″W, 118.95 feet to a point on said apparent gradient boundary of the Rio Grande for Corner No. 20; thence, in a westerly direction continuing along said apparent gradient boundary of the Rio Grande; S 73°36′56″W, 17.73 feet to a point on said apparent gradient boundary of the Rio Grande for corner No. 21; thence, in a northwesterly direction continuing along said apparent gradient boundary of the Rio Grande; N 43°36′30″W, 118.21 feet to a point on said apparent gradient boundary of the Rio Grande corner No. 22; thence, in a northerly direction continuing along said apparent gradient boundary of the Rio Grande; N 28°12′58″W, 168.21 feet to a point on said apparent gradient boundary of the Rio Grande for corner No. 23; thence, in a northwesterly direction continuing along said apparent gradient boundary of the Rio Grande; N 49°09′29″W, 149.82 feet to a point on said apparent gradient boundary of the Rio Grande for corner No. 24; thence, in a westerly direction continuing along said apparent gradient boundary of the Rio Grande; N 66°23′26″W, 123.27 feet to a point on said apparent gradient boundary of the Rio Grande for corner No. 25; thence, in a westerly direction continuing along said apparent gradient boundary of the Rio Grande; N 77°18′49″W, 240.49 feet to a point on said apparent gradient boundary of the Rio Grande for corner No. 26; thence, in a westerly direction continuing along said apparent gradient boundary of the Rio Grande; S 80°06′32″W, 129.98 feet to a point on said apparent gradient boundary of the Rio Grande for corner No. 27; thence, in a westerly direction continuing along said apparent gradient boundary of the Rio Grande; N 79°54′48″W, 218.17 feet to a point on said apparent gradient boundary of the Rio Grande for corner No. 28; thence, in a westerly direction continuing along said apparent gradient boundary of the Rio Grande; S 81°13′28″W, 136.03 feet to a ½-inch iron rod found on said apparent gradient boundary of the Rio Grande for the southeast corner of the aforementioned 127.71 acre tract, same being the southwest corner hereof and corner No. 29; thence, in a northerly direction along the common line between said 127.71-acre tract and the herein described tract; N 06°09′33″W, 237.00 feet to a fence post found for angle point and corner No. 30; thence, in a northerly direction continuing along the common line between said 127.71-acre tract and the herein described tract; N 05°51′34″W, 198.49 feet to a fence post found for angle point and corner No. 31; thence, in a Northerly direction continuing along the common line between said 127.71-acre tract and the herein described tract; N 07°49′27″E, 161.97 feet to a fence post found for angle point and corner No. 32; thence, in a Northerly direction continuing along the common line between said 127.71-acre tract and the herein described tract; N 07°47′00″E, 302.39 feet to a fence post found for

angle point and corner No. 33; thence, in a northerly direction continuing along the common line between said 127.71 acre tract and the herein described tract; N 07°17′37″E, 493.82 feet to a fence post found for angle point and corner No. 34; thence, in a northeasterly direction continuing along the common line between said 127.71-acre tract and the herein described tract, as fenced; N 46°28′41″E, 643.50 feet to a fence post found for angle point and corner No. 35; thence, in a northwesterly direction continuing along the common line between said 127.71 acre tract and the herein described tract; N 47°51′47″W, 1,087.49 feet to a fence post found for angle point and corner No. 36; thence, in a northerly direction continuing along the common line between said 127.71-acre tract and the herein described tract; N 21°22′25″W, 375.05 feet to the point of beginning and containing 89.90 acres of land.

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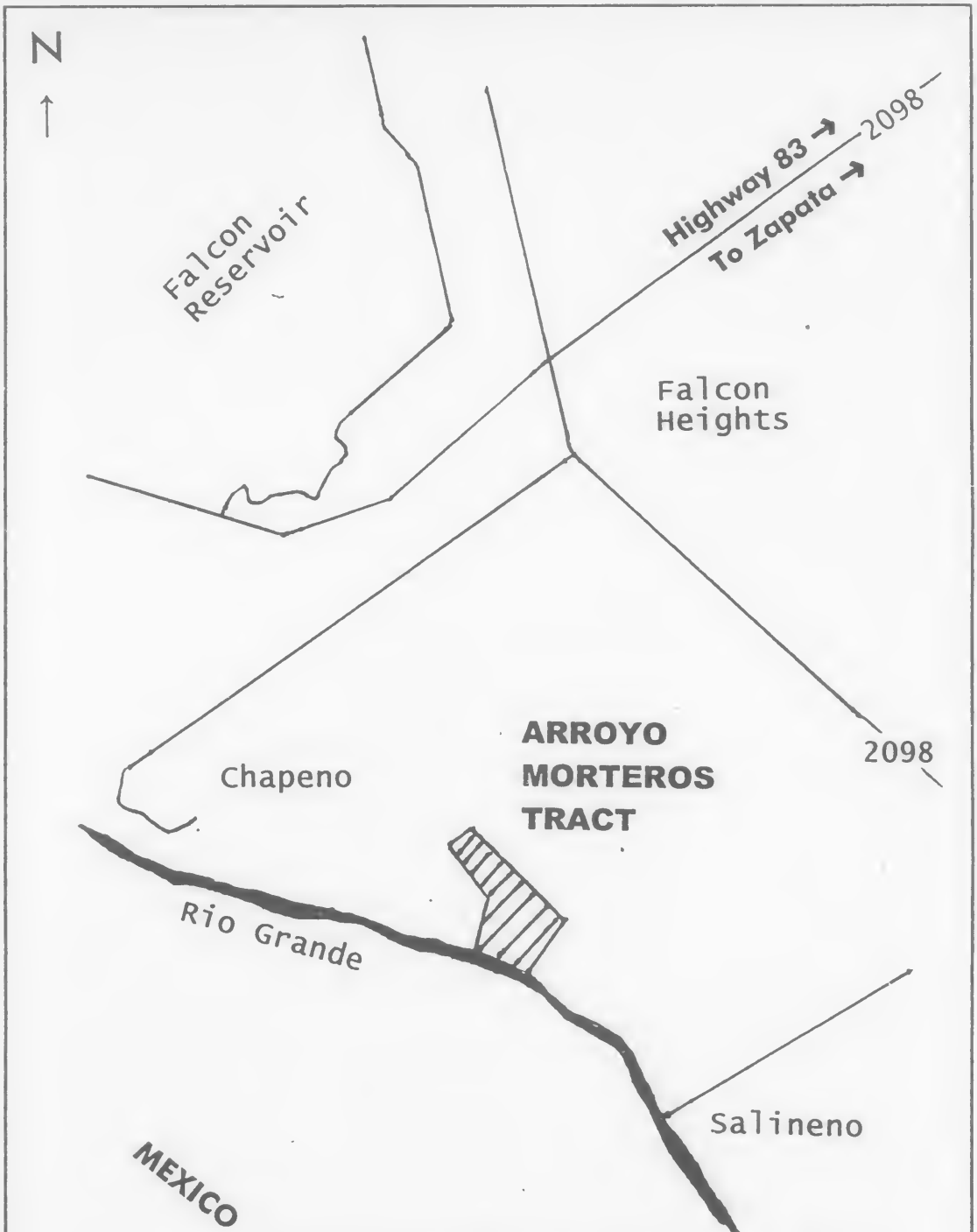

Unit 3. Arroyo Morteros Tract (41 ha; 102 ac)

BILLING CODE 4310–55–C

Unit 4, Las Ruinas Tract (104 ha; 256 ac)—Note: All bearings are based on the Texas State Plane Coordinate System, South Zone, as referenced by National Geodetic Survey (NGS.) Triangulation Station "GORGORA" having State plane coordinates (NAD 27) of N = 275,335.73, E = 1.833,217.01. The scale factor used is *0.9999421*, and the theta angle is *−00°16′22″*. All areas and distances are true surface measurements. Beginning at a 2-inch iron pipe having State plane coordinates of N = 280,488.40, E = 1,804,584.01 for the northerly southeast corner of the herein described tract, from which said triangulation station "GORGORA" bears S 79°47′55″ E, a distance of 29,092.93 feet, same being the southwest corner of Share 96, of said Porcion 66, and the southwest corner of a 1455.52-acre tract of land as described, same being in the north line of Share 94, of said Porcion 66, same being in the north line of Tract "K", a 26.82-acre tract of land as described, for corner No. 1 and point of beginning of the herein described tract of land. Thence, westerly along the common line between said northerly line of tract "K" and the southerly line hereof N 80°30′29″ W, 871.09 feet to a 6″ iron pipe found for corner No. 2, same being the northwest corner of said Tract "K"; thence, southerly along the common line between the westerly line of said Tract "K" and the easterly line hereof S 09°22′35″ W, 837.18 feet, to a 1¾″ iron pipe found for the southwest corner of said tract "K" and the northwest corner of a 23.5131-acre tract of land at corner No. 3, thence, southerly along the common line between said 23.5131-acre tract and the most southerly easterly line hereof, S 09°22′35″ W, 540.00 feet to a standard FWS aluminum monument set, said monument being in the north line of a 56.82-acre tract of land as described for corner No. 4 and stamped "Tract 630, Ref. No. 4,RPLS 3680"; thence, westerly along the common northerly line between said 56.82 acre tract and the southerly line hereof, N 80°31′16″ W, 3295.18 feet to the apparent gradient boundary of the Rio Grande, and passing a standard FWS aluminum monument set for reference at a distance of 3,210.08 feet and stamped "Tract 630, Ref. No. 5, RPLS 3680"; thence, northerly along the apparent gradient boundary of the Rio Grande N 63°00′17″ E, 192.97 feet to a point on the apparent gradient boundary of the Rio Grande for Corner No. 6; thence, northerly continuing along said apparent gradient boundary of the Rio Grande N 62°39′49″ E, 398.99 feet to a point on the apparent gradient boundary of the Rio Grande for corner No. 7; thence, northerly continuing along said apparent gradient boundary of the Rio Grande N 60°14′39″ E, 722.34 feet to a point on the apparent gradient boundary of the Rio Grande for Corner No. 8; thence, northerly continuing along said apparent gradient boundary of the Rio Grande N 57°28′43″ E, 416.75 feet to a point on the apparent gradient boundary of the Rio Grande for corner No. 9; thence, northerly continuing along said apparent gradient boundary of the Rio Grande N 57°55′40″ E, 171.44 feet to a point on the apparent gradient boundary of the Rio Grande for corner No. 10; thence, northerly continuing along said apparent gradient boundary of the Rio Grande N 47°49′48″ E, 287.44 feet to a point on the apparent gradient boundary of the Rio Grande for corner No. 11; thence, northerly continuing along said apparent gradient boundary of the Rio Grande N 43°00′00″ E, 246.79 feet to a point on the apparent gradient boundary of the Rio Grande for corner No. 12; thence, northerly continuing along said apparent gradient boundary of the Rio Grande N 39°40′14″ E, 295.08 feet to a point on the apparent gradient boundary of the Rio Grande for corner No. 13; thence, northerly continuing along said apparent gradient boundary of the Rio Grande N 35°41′43″ E, 380.79 feet to a point on the apparent gradient boundary of the Rio Grande for corner No. 14; thence, northerly continuing along said apparent gradient boundary of the Rio Grande N 31°28′24″ E, 370.58 feet to a point on the apparent gradient boundary of the Rio Grande for corner No. 15; thence, northerly continuing along said apparent gradient boundary of the Rio Grande N 33°19′15″ E, 293.00 feet to a point on the apparent gradient boundary of the Rio Grande for corner No. 16; thence, northerly continuing along said apparent gradient boundary of the Rio Grande N 13°43′08″ E, 146.31 feet to a point on the apparent gradient boundary of the Rio Grande for corner No. 17; thence, northerly continuing along said apparent gradient boundary of the Rio Grande N 11°00′57″ E, 189.14 feet to a point on the apparent gradient boundary of the Rio Grande for corner No. 18; thence, northerly continuing along said apparent gradient boundary of the Rio Grande N 02°10′54″ W, 305.51 feet to a point on the apparent gradient boundary of the Rio Grande for Corner No. 19; thence, northerly continuing along said apparent gradient boundary of the Rio Grande N 01°31′51″ W, 416.25 feet to a point on the apparent gradient boundary of the Rio Grande for Corner No. 20; thence, northerly continuing along said apparent gradient boundary of the Rio Grande N 00°01′29″ W, 441.45 feet to a point on the apparent gradient boundary of the Rio Grande for corner No. 21; thence, northerly continuing along said apparent gradient boundary of the Rio Grande N 03°29′26″ E, 405.03 feet to a point on the apparent gradient boundary of the Rio Grande for corner No. 22; thence, northerly continuing along said apparent gradient boundary of the Rio Grande N 08°08′02″ E, 308.09 feet to a point on the apparent gradient boundary of the Rio Grande for corner No. 23; thence, northerly continuing along said apparent gradient boundary of the Rio Grande N 39°03′01″ E, 218.95 feet to a point on the apparent gradient boundary line of the Rio Grande, for Corner No. 24 and northwest corner of this tract, same being the southwest corner of a 60.77-acre tract of land; thence, easterly along the common line between the south line of said 60.77-acre tract and the northerly line hereof S 80°31′16″ E, 1942.92 feet to a standard FWS aluminum monument set and stamped "Tract 630, Ref. No. 25, RPLS 3680" for corner No. 25, same being the southeast corner of said 60.77-acre tract, same being in the west line of Share 339 of said Porcion 66, same being in the west line of said 1,455.52-acre tract of land, and passing a standard FWS aluminum monument set for Reference at a distance of 38.95 feet and stamped "Tract 630, Ref. No. 24, RPLS 3680"; thence, southerly along the common line between the west line of said Share 339, Share 319, Share 227, Share 231, Share 230,Share 229, Share 518, Share 226, Share 225, Share 224, and saidShare 96, same being the west line of said 1,455.52-acre tract and the east line hereof S 09°28′44″ W, 3,845.12 feet and passing a 2-inch iron pipe found for the southwest corner of Share 339, same being the northwest corner of Share 319 at a distance of 315.48 feet, and being 0.46 feet easterly of and perpendicular to this line, and also passing a 1½ inch iron pipe found for the southwest corner of Share 319, same being the northwest corner of Share 227 at a distance of 711.48 feet, and being 0.39 feet easterly of and perpendicular to this line, and also passing a 2-inch iron pipe found for the southwest corner of Share 231, same being the northwest corner of Share 230 at a distance of 1,320.71 feet, and being 0.09 feet easterly of and perpendicular to this line, to the point of beginning of the herein described tract and containing 254.42 acres of land.

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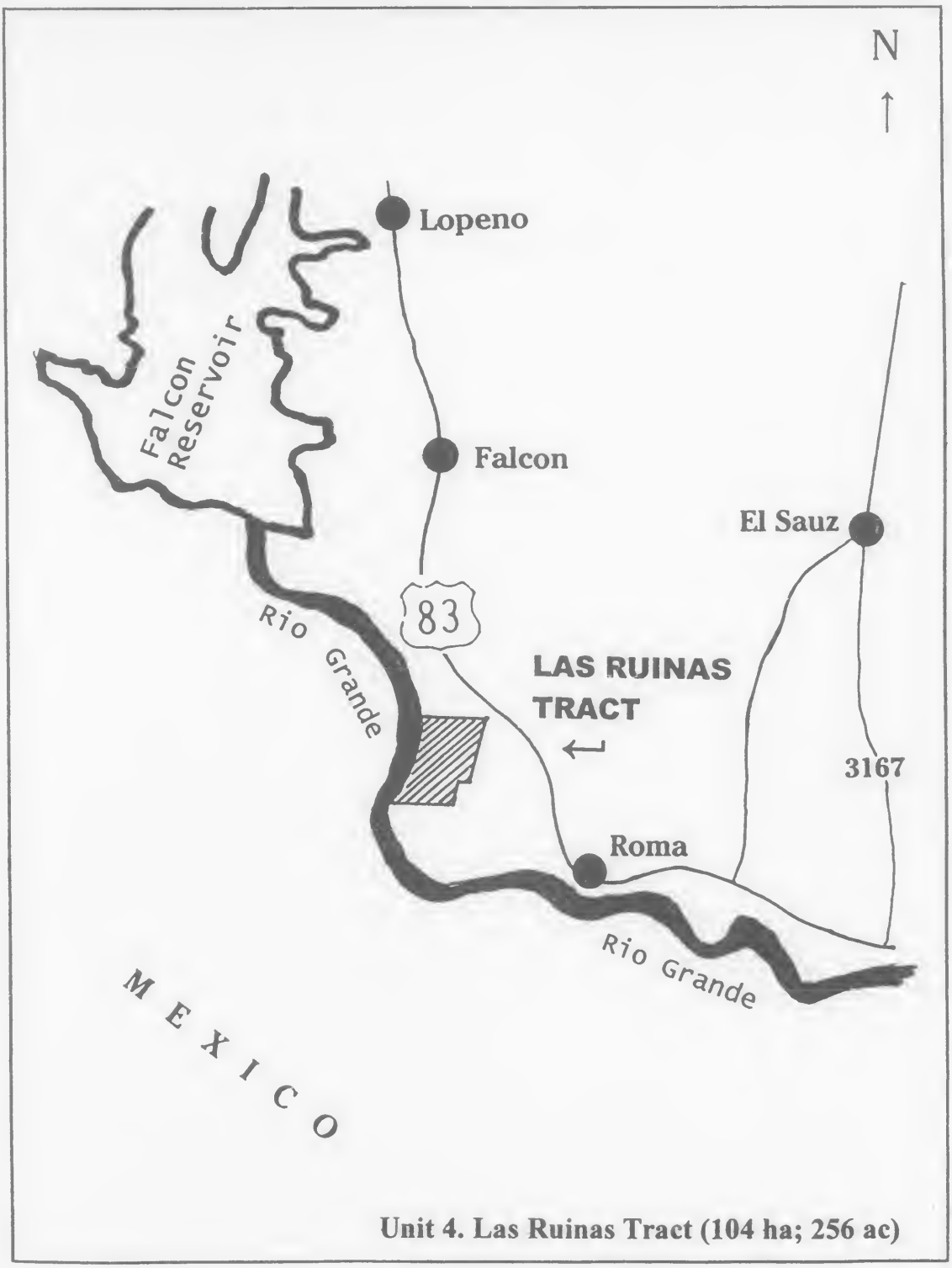
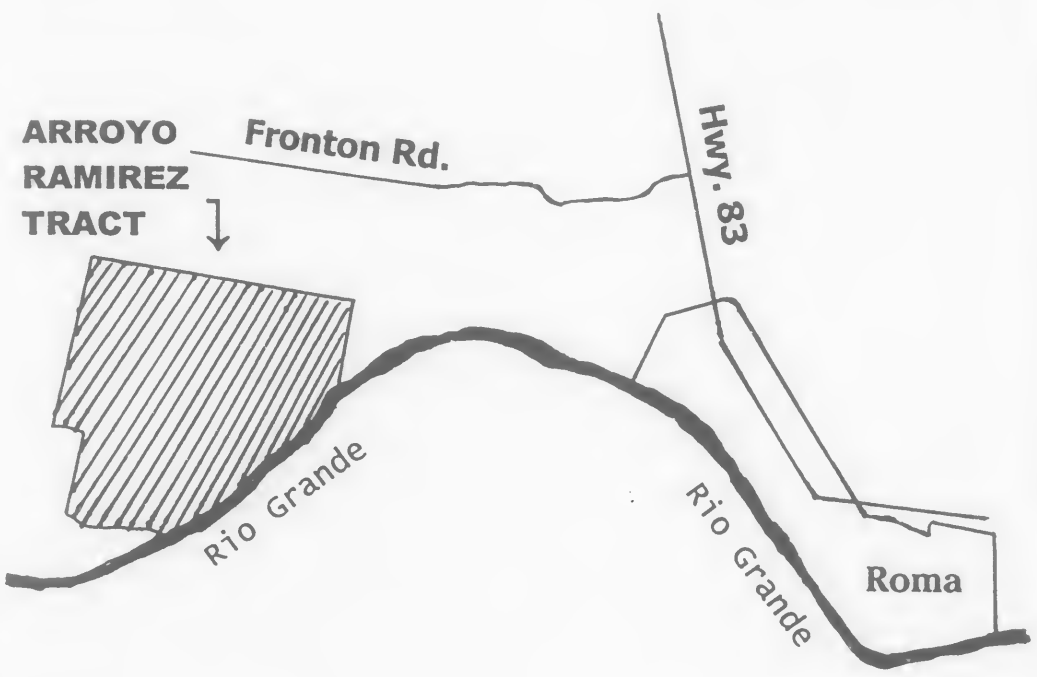


Unit 4. Las Ruinas Tract (104 ha; 256 ac)

Unit 5, Arroyo Ramirez Tract (273 ha; 675 ac)—Formal surveying of the tract has not been performed. Described as, "All of Share 79, Porcion 68, Abstract 191, Former Jurisdiction of Mier,Mexico, now Starr County, Texas, and all of Share 166, Porcion 69, Abstract No. 160, Former Jurisdiction of Mier, Mexico, nowStarr County, Texas. Description by approximated latitude/longitude coordinates (attached maps): Beginning at Latitude/Longitude 26°24′00.9″ N/ 099°03′23.9″ W, westward to Latitude/Longitude 026°24′04.7″ N/099°03′46.5″ W, northward to Lat/Long 026°24′25.2″ N/099°03′43.3″ W, westward to Lat/Long 026°24′26.0″ N/099°03′49.8″ W, northward to Lat/Long 026°25′05.5″ N/ 099°03′42.6″ W, eastward to Lat/Long 026°24′56.6″ N/099°02′40.3″ W to the apparent gradient boundary of the Rio Grande River.



Unit 5. Arroyo Ramirez Tract (273 ha; 675 ac)

Unit 6, Los Negros Creek Tract (47 ha; 116 ac)—The following described tract of land is located in Starr County, Texas, about 1 mile northwest of the town of Roma, being 111.67 acres out of Share 13, Porcion 70, and being more particularly described as follows: Beginning at Cor. No. 1, an iron pin set for the northeast corner of Share No. 13 of Porcion No. 70; thence, along an old fenceline and the dividing line between Share Nos. 13, 1–B and 12–A, S 09°15′ W, 2,694.00 feet to Cor. No. 2 an iron pin set on the Old High Bank of the Rio Grande and the southeast corner of this tract; thence leaving said fence line and along said Old High Bank with the following two courses, N 63°17′27″ W, 1,161.54 feet to Cor. No. 3 and N 87°10′00″ W, 612.00 feet to Cor. No. 4, a set iron pin and the southwest corner of this tract; thence leaving said Old High Bank and along the dividing line of Tract 2 and 3 of said Share 13 and an old fenceline with the following three courses, N 09°15′ E, 841.30 feet to Cor. No. 5, a set iron pin; N 80°45′ W, 397.50 feet to Cor. No. 6, a set iron pin; and N 09°15′ E, 1,572.60 feet to Cor. No. 7 & iron pin set for the northwest corner of this tract; thence leaving said dividing line and along the north line of this tract and an old fenceline, S 80°45′ E, 2,113.70 feet to Cor. No. 1 and the true place of beginning, containing 111.67 acres of land bounded on the West, North, and East by lands of unknown owner and on the South by the Rio Grande.

Unit 6. Los Negros Creek Tract (47 ha; 116 ac)

BILLING CODE 4310–55–C

Unit 7, La Puerta Tract (1,577 ha; 3,895 ac) (Segment 590). Note: All bearings and distances are based on the Texas State Plane Coordinate System, South Zone, as referenced by National Geodetic Survey (NGS) triangulation station "Fordyce 2" and NGS triangulation station "Monument". Scale factor used was *0.99993949*; theta angle used was *−00°06′ 15″*. All areas are true ground measured areas. Beginning at corner No. 1, a standard U.S. Fish and Wildlife Service (FWS) aluminum monument stamped "TR 590 COR 1" set in the west boundary of Porcion 86, said point being at the southwest corner of the aforementioned 8,061-acre tract, and also being the northeast corner of a 160-acre tract recorded in volume 60, pages 47–48, Deed Records, Starr County, Texas, from which NGS triangulation station "Monument" bears N. 68°59′27″ W, 8,477.20 feet; thence, from corner No. 1, along the western boundary line of said 8,061-acre tract and Porcion 86, N 09°02′27″ E, 25,125.17 feet to corner No. 2, a standard FWS aluminum monument stamped "TR 590 COR 2", set at a fence corner from which NGS triangulation station "Monument" bears S 28°34′49″ W, 24,795.18 feet; said corner No. 2 also being the northwest corner of the herein described tract, thence, from corner No. 2, departing said western boundary line, with fence, S. 78°52′36″ E, 1,889.04 feet, to corner No. 3, a standard FWS aluminum monument stamped "TR 590 COR 3" set at fence corner; thence, from corner No. 3, continuing with fence, N 06°16′07″ E, 1,007.99 feet to corner No. 4, a standard FWS aluminum monument stamped "TR 590 COR 4" set at fence corner; thence, from corner No. 4, continuing with fence, S 78°42′12″ E, 2,691.33 feet to corner No. 5, a standard FWS aluminum monument stamped "TR 590 COR 5" set for angle; thence from corner No. 5, continuing with fence, S 72°35′38″ E, 2,000.57 feet to corner No. 6, a standard FWS aluminum monument stamped "TR 590 COR 6" set at fence corner, said point being a perpendicular distance of 20.20 feet from the eastern boundary line of Porcion 87, said point also being the Northeast corner of the herein described tract; thence, from corner No. 6, continuing with fence, S 09°01′08″ W, 10,831.38 feet to corner No. 7, a standard FWS aluminum monument stamped "TR 590 COR 7" set for angle adjacent to a found ⅝-inch iron pin; thence, from corner No. 7, continuing with fence, S 08°56′57″ W, 10,030.04 feet, to corner No. 8, a standard FWS aluminum monument stamped "TR 590 COR 8" set for angle point, said point being at the intersection of said fence with the east boundary line of Porcion 87; thence, from corner No. 8, departing said fence, along the east boundary line of Porcion 87, S 09°02′27″ W, 4,824.69 feet to corner No. 9, a standard FWS aluminum monument stamped "TR 590 COR 9" set for corner; thence, from corner No. 9, departing said east line, N 80°47′09″ W,6,527.80 feet to the place of beginning and containing 3,844.674 acres.

(La Puerta 590a). Note: All bearings and distances are based on the Texas State Plane Coordinate System, South Zone, (NAD 27), as referenced by the National Geodetic Survey (NGS) Triangulation Station "Monument" having a coordinate value of N = 250,167.56 ; E = 1,912,489.81. Scale factor applied equals *0.99993949*; theta angle equals −00°06′15″. All areas are based on true ground measurements. Beginning at corner No. 1, a standard FWS aluminum monument stamped "TR 590A COR 1" set over a 2-inch iron pipe found in the west boundary line of Porcion 87, east boundary line of Porcion 86, at the northwest corner of said Lot 22, also being the northeast corner of a 2.83-acre tract as described by deed recorded in Volume 516,Page 62, Official Records, Starr County, Texas and being in the south boundary line of USA Tract (590) as described by deed recorded in Volume 608, Page 309, Official Records, Starr County, Texas said point having a coordinate value of N = 246,550.96; E = 1,923,962.74 and bearing S 72°30′13″ E,12,029.47 feet from NGS Triangulation Station "Monument"; thence from corner No. 1, with south boundary line of said USA Tract (590), the north boundary line of said Lot 22, S 80°47′09″ E, 2,922.00 feet to corner No. 2, a standard FWS aluminum monument stamped "TR 590 COR 9" found at the southeast corner of said USA Tract (590), also being the northeast corner of said Lot 21, and being in the east boundary line of Porcion 87, west boundary line of Porcion 88 for the northeast corner of the herein-described tract of land; thence, from Corner No. 2, with the said east boundary line of Porcion 87, west boundary line of Porcion 88, and also being the east boundary line of said Lot 21, S 08°18′30″ W, 1,130.60 feet to corner No. 3, a standard FWS aluminum monument stamped "TR 590A COR 3" set in the existing north right-of-way line of U.S. Highway 83 with the intersection of said east boundary line of Porcion 87, west boundary line of Porcion 88 for the southeast corner of the herein described tract of land; thence, from corner No. 3, with and along the said existing north right-of-way line of U.S. Highway 83, N 66°14′23″ W, 18.20 feet to corner No. 4, a standard FWS aluminum monument stamped "TR 590A COR 4" set for an angle point; thence, from corner No. 4, continuing along said existing north right-of-way line, N 60°31′23″ W,100.39 feet to corner No. 5, a standard FWS aluminum monument stamped "TR 590A COR 5" set for an angle point; thence, from corner 5, continuing along said existing north right-of-way line, N 66°14′23″ W, 499.97 feet to corner No. 6, a standardFWS aluminum monument stamped "TR 590A COR 6" set for an angle point; thence, from corner No. 6, continuing along said existing north right-of-way line, N 71°57′23″ W, 100.39 feet to a corner No. 7, a standard FWS aluminum monument stamped "TR 590A COR 7" set for an angle point; thence, from corner No. 7, continuing along said existing north right-of-way line, N 66°14′14″ W, 1,084.94 feet to corner No. 8, a ⅝ inch iron rod found at the intersection of the said existing north right-of-way line with the proposed north right-of-way line of U.S. Highway 83; thence, from corner No. 8, departing said existing north right-of-way line with and along the proposed north right-of-way line of U.S. Highway 83, N 60°43′04″ W, 200.90 feet to corner No. 9, a ⅝-inch iron rod found for an angle point; thence, from corner No. 9, continuing along said proposed north right-of-way line, N 69°54′31″ W, 300.83 feet to corner No. 10, a ⅝-inch iron rod found at the intersection of said proposed north right-of-way line with the existing north right-of-way line of U.S. Highway 83; thence, from corner No. 10, with the said existing north right-of-way line of U.S. Highway 83, N 66°16′51″ W, 399.70 feet to corner No. 11, a standard FWS aluminum monument stamped "TR 590A COR 11" set over a ½-inch iron rod found for an angle point; thence, from corner No. 11, continuing along said existing North right-of-way line, N 64°31′54″ W, 335.45 feet to corner No. 12, a standard FWS aluminum monument stamped "TR 590A COR 12" set at the intersection of said existing north right-of-way line with the west boundary line of Porcion 87, east boundary line of Porcion 86; thence, from corner No. 12, departing said existing north right-of-way line with the said west boundary line of Porcion 87, east boundary line of Porcion 86, N 08°56′59″ E, 357.90 feet to corner No. 1, the point of beginning and containing 50.033 acres of land.

(La Puerta Tract—Segment 590b). Note: All bearings and distances are

based on the Texas State Plane Coordinate System, South Zone, (NAD 27), as referenced by the National Geodetic Survey (NGS) Triangulation Station "Monument" having a coordinate value of N = 250,167.56′ E = 1,912,489.81. Scale factor applied equals *0.00003040*; theta angle equals *− 00°06′15″*. All areas are based on true ground measurements. Beginning at corner No. 1, a ⅝-inch iron rod found at the intersection of the west boundary line of Porcion 87, east boundary line of Porcion 86 with the proposed south right-of-way line of U.S. Highway 83, said point bears S 08°57′33″ W, 139.55 feet from a ⅝-inch iron rod found in the existing south right-of-way line of U.S. Highway 83, said point having a coordinate value of N = 245,880.85, E = 1,923,857.21 and bearing S 69°20′18″ E, 12,148.81 feet from NGS Triangulation Station "Monument"; thence, from corner No. 1, with the said proposed south right-of-way line, S 66°14′23″ E, 3,043.33 feet to corner No. 2, a ⅝-inch iron rod found at the intersection of the east boundary line of Porcion 87, the west boundary line of Porcion 88 and the said proposed south right-of-way line, thence, from corner No. 2, with the said east boundary line of Porcion 87, west boundary line of Porcion 88, S 08°59′29″ W, 2,925.70 feet to corner No. 3, a standard FWS aluminum monument stamped "TR 590B COR 3" set over a ½-inch iron rod found at the intersection of said east boundary line of Porcion 87, west boundary line of Porcion 88 with the north right-of-way line of the Missouri-Pacific Railroad; thence, from corner No. 3, with the said north right-of-way line of the Missouri-Pacific Railroad, N 52°58′07″ W, 3,333.49 feet to corner No. 4, a standard FWS aluminum monument stamped "TR 590B COR 4" set over a ⅜-inch iron rod found at the intersection of the said north right-of-way line with the said west boundary line of Porcion 87, the east boundary line of Porcion 86, said point also being the southeast corner of a 39.492-acre tract, thence from corner No. 4, with the said west boundary line of Porcion 87, east boundary line of Porcion 86, N 08°56′13″ E, 1,715.55 feet to corner No. 5, a standard FWS aluminum monument stamped "TR 590B COR 5" set over a ½-inch iron rod found at the southeast corner of a 2.0-acre tract, thence, from corner No. 5, continuing along said west boundary line of Porcion 87, east boundary line of Porcion 86, N 09°08′05″ E, 418.93 feet to corner No. 1, the point of beginning and containing 170.950 acres of land.

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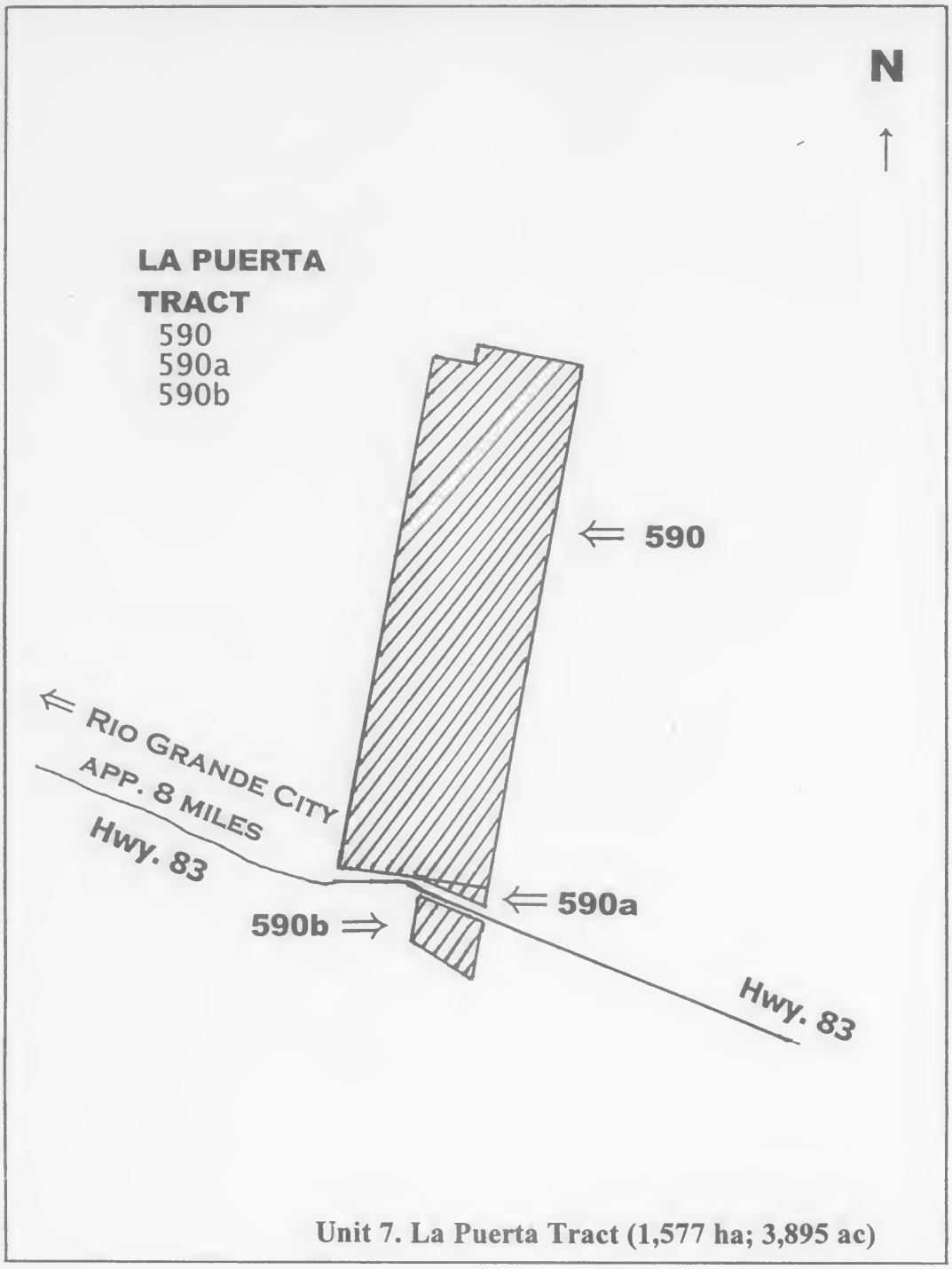
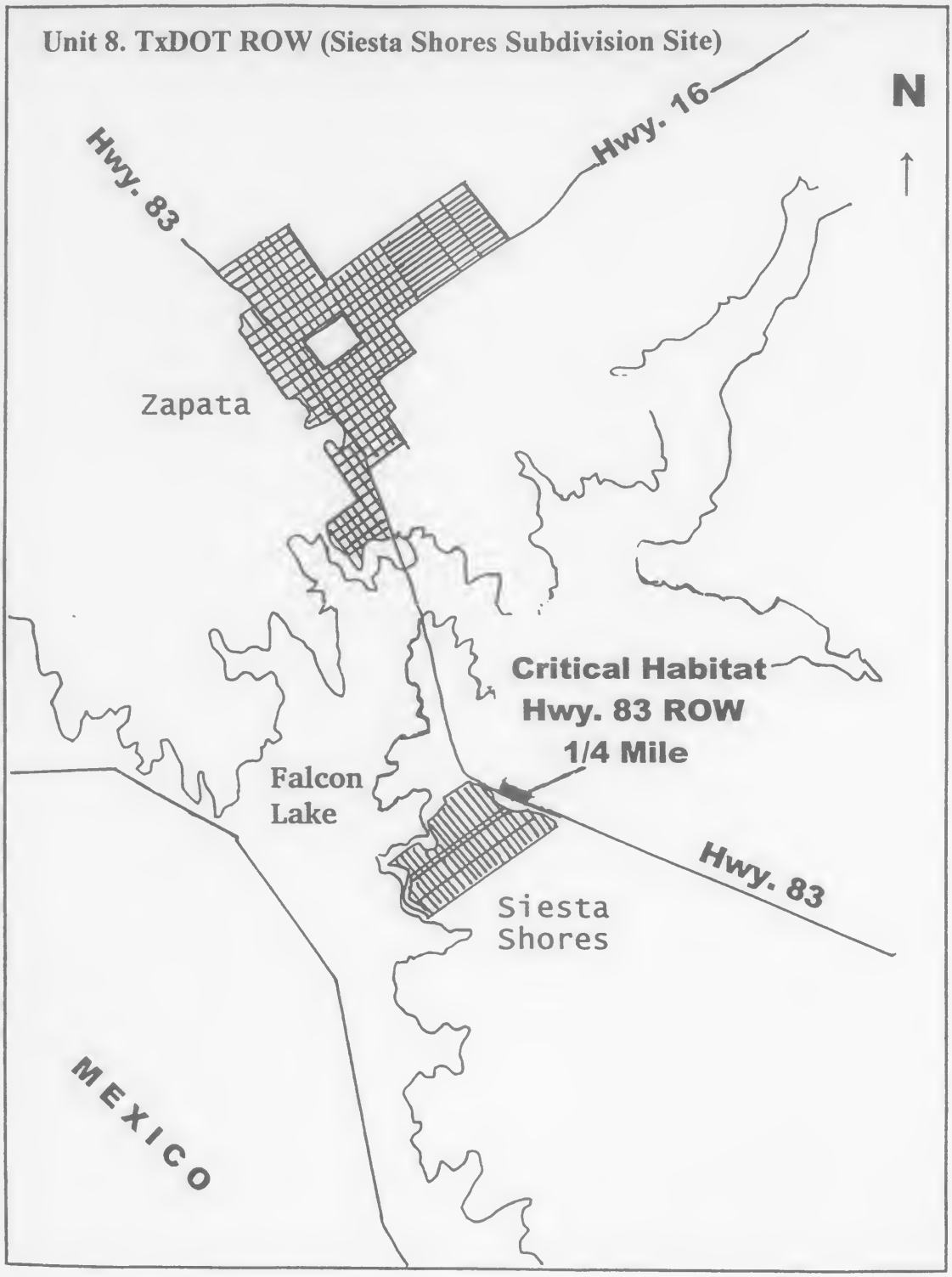


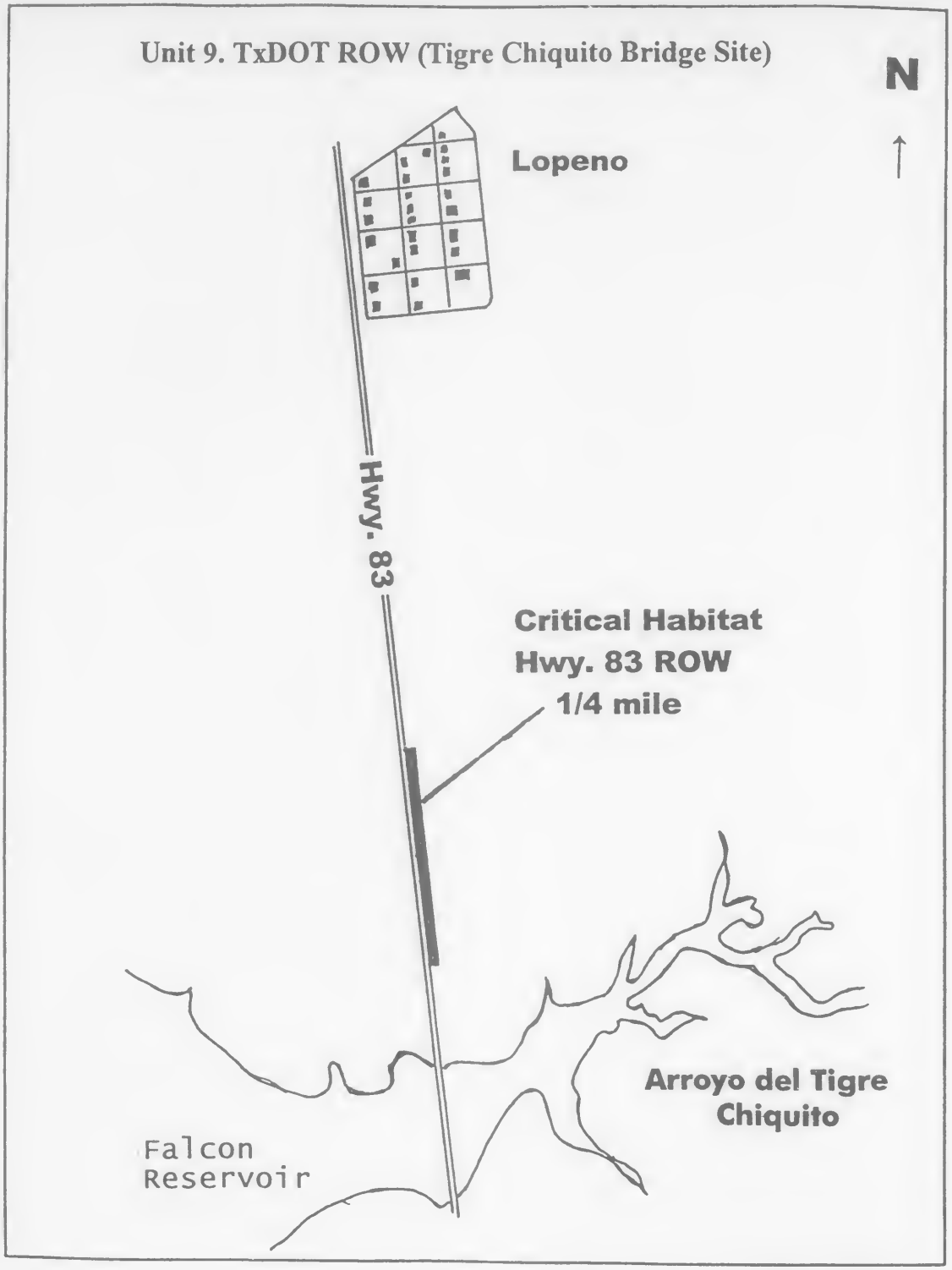
Unit 7. La Puerta Tract (1,577 ha; 3,895 ac)

Critical Habitat on Texas Department of Transportation Highway Rights of Way, Zapata County, Texas:

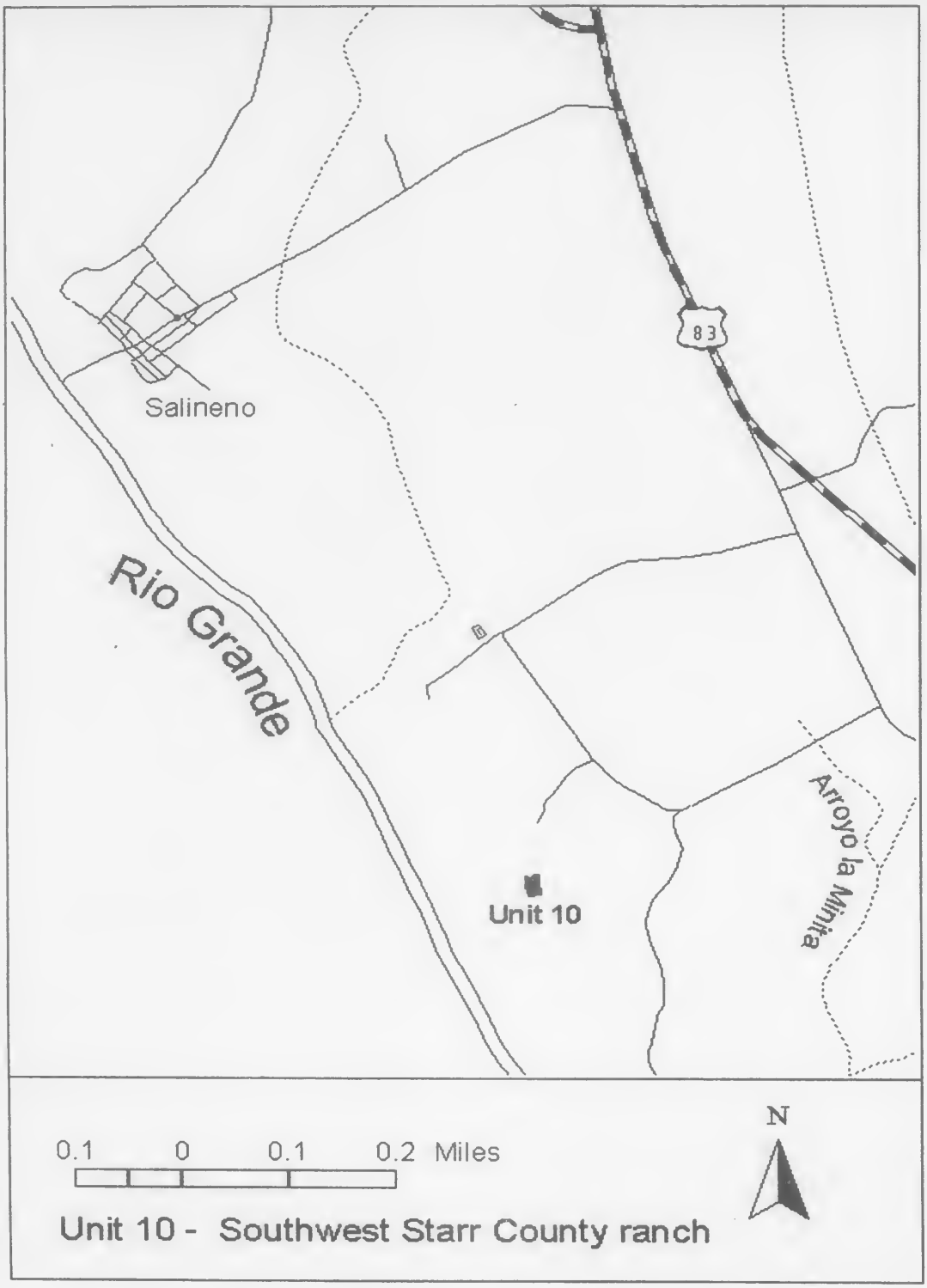
Unit 8 includes the existing maintained highway right of way along Highway 83, extending 201.2 m (0.125 mi) each direction, along the east side of the highway and approximately 15.2 m (50 ft) away from the road's edge, from the known *Lesquerella thamnophila* population located at Lat/Long 26°51′45″/99°14′48″.


Unit 8. TxDOT ROW (Siesta Shores Subdivision Site)
N
Hwy. 16
Hwy. 83
Zapata
Critical Habitat
Hwy. 83 ROW
1/4 Mile
Falcon
Lake
Hwy. 83
Siesta
Shores
MEXICO

Unit 9 includes the existing maintained highway right of way along Highway 83, extending 201.2 m (0.125 mile) each direction, along the east side of the highway and approximately 15.2 m (50 ft) away from the road's edge, from the known *Lesquerella thamnophila* population located at Lat/Long 26°41'55"/99°06'31".


Unit 9. TxDOT ROW (Tigre Chiquito Bridge Site)
N
Lopeno
Hwy. 83
Critical Habitat
Hwy. 83 ROW
1/4 mile
Arroyo del Tigre
Chiquito
Falcon
Reservoir

Unit 10—Private ranch site comprises 0.552 hectares (1.36 acres) within the Universal Transverse Mercator, Zone 14 and begins at UTM 490706 E, 2929709 N; thence to 490729 E, 2929706 N; to 490748 E, 2929720 N; to 490762 E, 2929722 N; to 490767 E, 2929704 N; to 490767 E, 2929679 N; to 490769 E, 2929654 N; to 490770 E, 2929637 N; to 490770 E, 2929629 N; to 490760 E, 2929619 N; to 490743 E, 2929614 N; to 490732 E, 2929612 N; to 490720 E, 2929614 N; to 490709 E, 2929670 N; and thence to point of beginning.


83
Salineno
Rio Grande
Unit 10
Arroyo la Minita
0.1 0 0.1 0.2 Miles
N
Unit 10 - Southwest Starr County ranch

* * * * *

Dated: July 13, 2000.

Stephen C. Saunders,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 00–18279 Filed 7–18–00; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 070500C]

Atlantic Highly Migratory Species (HMS) Fisheries; Bycatch Reduction

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

ACTION: Notice of intent to prepare a Supplemental Environmental Impact Statement (SEIS); notice of availability of Biological Opinion; announcement of scoping meetings.

SUMMARY: NMFS announces its intent to prepare an SEIS to address requirements of the Biological Opinion dated June 30, 2000, that was issued pursuant to a formal consultation under section 7 of the Endangered Species Act (ESA); and, relative to fishing activities for Atlantic HMS, to assess the impacts of potential management options on the natural and human environment. The purpose of this notice is to inform the interested public of the intent to prepare the SEIS; announce the availability of, and provide information on, the Biological Opinion; announce that NMFS is considering regulatory and non-regulatory measures to address the requirements of the Biological Opinion for the Atlantic HMS fisheries for the current fishing year and for the long-term; and announce public scoping meetings on issues and management options that NMFS should consider in addressing the requirements of the Biological Opinion and in preparing the SEIS.

DATES: Public scoping meetings will take place in July and August, 2000. See **SUPPLEMENTARY INFORMATION** for dates and times of the scoping meetings. Additional scoping meetings may be scheduled at a later date and will be announced in the **Federal Register**.

ADDRESSES: Comments on the proposal to prepare the SEIS and suggestions for the times and locations of additional scoping meetings should be sent to: Rebecca Lent, Chief, Highly Migratory Species Management Division (F/SF1), Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. See **SUPPLEMENTARY INFORMATION** for the locations of the scoping meetings.

FOR FURTHER INFORMATION CONTACT: Margo Schulze-Haugen or Karyl Brewster-Geisz, 301–713–2347; fax 301–713–1917.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic HMS fisheries are managed under the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP), Amendment 1 to the Atlantic Billfish Fishery Management Plan, and their implementing regulations found at 50 CFR part 635. The Atlantic shark regulations are issued under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson Stevens Act)(16 U.S.C. 1801 *et seq.*). The Atlantic tunas, swordfish, and billfish fisheries are managed under the authority of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (ATCA) (16 U.S.C. 971 *et seq.*).

Biological Opinion Requirements

In 1999, the Atlantic pelagic longline fishery exceeded its authorized take of loggerhead sea turtles as set out in the Incidental Take Statement previously issued with the April 23, 1999, Biological Opinion. As required under the ESA, NMFS requested, on November 19, 1999, a re-initiation of consultation under Section 7 of the ESA. On June 30, 2000, NMFS issued a new Biological Opinion that concluded the operation of the Atlantic pelagic longline fishery is likely to jeopardize the continued existence of the leatherback and loggerhead sea turtles.

In order to eliminate the threat of jeopardy, NMFS must address the level of sea turtle takes in the pelagic longline fishery. The Biological Opinion provides a framework for development of reasonable and prudent alternatives (RPAs) designed to remove the threat of jeopardy by reducing the number of loggerhead and leatherback sea turtles that are incidentally captured, injured, and killed by pelagic longline gear. The Biological Opinion provides two RPAs that, if implemented, would avoid the jeopardy finding. However, any combination of management measures, regulatory and/or non-regulatory, that have the effect of reducing the number of loggerhead and leatherback turtles that are incidentally captured, injured, and killed by pelagic longline gear by 75 percent will meet the requirements of the Biological Opinion. These combinations could include monitoring requirements, gear and/or fishing method modifications, and time/area closures. During the scoping period, NMFS plans to meet with fishery participants, particularly pelagic longline vessel operators who fish the northeast distant water statistical area (Grand Banks), to determine which combination of measures will reduce turtle takes to the required level while mitigating impacts to the industry.

The Biological Opinion also identified required reasonable and prudent measures (RPMs) and terms of conditions (T&Cs) for all HMS fisheries as part of the revised Incidental Take Statement. For example, education and outreach, monitoring requirements, and sea turtle resuscitation requirements were identified for several HMS fisheries. NMFS will work with fishery constituents to implement these required provisions of the Incidental Take Statement.

Management Measures Under Consideration

Because of the findings of the Biological Opinion, participants in the HMS fisheries may be required to operate under alternative management measures that may redistribute fishing effort and alter current fishing methods in order to avoid jeopardizing protected species. NMFS will consider regulatory and non-regulatory measures for managing the Atlantic tunas, swordfish, sharks, and billfish fisheries consistent with the requirements of the ESA. These measures will address the RPAs, RPMs, and T&Cs identified in the June 30, 2000, Biological Opinion, and may implement time/area closures, gear restrictions, crew training, monitoring and reporting requirements.

Scoping Meetings

Scoping for the SEIS will be held in consultation with the HMS and Billfish Advisory Panels. Public scoping meetings will be scheduled at times and locations convenient for affected parties. The following scoping meetings have been scheduled:

Monday, July 31, 2000—Silver Spring, MD, 1–3:30 p.m.

NMFS, SSMC2, 1325 East-West Highway, Room 2358, Silver Spring, MD 20910.

Tuesday, August 1, 2000—Barnegat Light, NJ, 7–9:30 p.m.

Barnegat Light Firehouse, Barnegat, NJ 08006.

Wednesday, August 2, 2000—Fairhaven, MA, 7–9:30 p.m.

The Seaport Inn (Holiday Inn), 110 Middle Street, Fairhaven, MA 02719.

Thursday, August 3, 2000—Islandia, NY, 7–9:30 p.m.

Islandia Marriott, 3635 Express Drive North, Islandia, NY 11749

Friday, August 4, 2000—Gloucester, MA, 1–3:30 p.m.

NMFS Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930.

Interested parties should contact Rebecca Lent (see **ADDRESSES**) regarding suggested times and locations for additional scoping meetings.

Special Accommodations

These meetings will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Margo Schulze-Haugen at (301) 713–2347 at least 5 days prior to the hearing date.

Timing of the Analysis and Tentative Schedule

Input on the issues to be addressed in preparing the SEIS and potential options for reducing take of protected species in the Atlantic HMS fisheries will be accepted and discussed at the scoping meetings. Given the jeopardy opinion, NMFS must take prompt action to reduce interactions with loggerhead and leatherback sea turtles. Therefore, NMFS is considering issuing regulations under the emergency provisions of the Magnuson-Stevens Act on an interim basis. In particular, immediate action may be required for the pelagic longline fishery operating on the Grand Banks, an area of high turtle takes during the summer and early fall. These emergency regulations would serve to implement provisional take reduction measures until a more comprehensive approach can be developed under the framework procedures of the HMS FMP, in conjunction with the SEIS. NMFS requests input from vessel captains on both the short term and long term solutions for reducing turtle interactions.

Dated: July 13, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–18144 Filed 7–13–00; 4:10 pm]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 65, No. 139
Wednesday, July 19, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Form FNS–380–1, Food Stamp Program Quality Control Review Schedule

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collection of Form FNS–380–1, Food Stamp Program Quality Control Review Schedule. The proposed collection is an extension of collection currently approved under OMB No. 0584–0299.

DATES: Written comments must be submitted on or before September 18, 2000.

ADDRESSES: Send comments and requests for copies of this information collection to Retha Oliver, Chief, Quality Control Branch, Room 1024, Program and Accountability Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302. You may FAX comments to us at (703) 305–0928. You may also download an electronic version of this notice at http://www.fns.usda.gov/fsp/ and comment via the Internet at the same address. If you do not receive a confirmation from the system that we have received your message, contact us directly at (703) 305–2474.

Comments are invited on (a) 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; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be included in the request for OMB's approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection form and instruction should be directed to Retha Oliver at (703) 305–2474.

SUPPLEMENTARY INFORMATION:

Title: Quality Control Review Schedule, Form FNS–380–1.

OMB Number: 0584–0299.

Expiration Date: December 31, 2000.

Type of Request: Revision of a currently approved collection.

Abstract: The Form FNS–380–1, Food Stamp Program Quality Control Review Schedule, collects quality control (QC) and household characteristics data. The information needed to complete this form is obtained from the Food Stamp case record and state quality control findings. The information is used to monitor and reduce errors, develop policy strategies, and analyze household characteristic data.

Affected Public: Individuals or households; State or local governments.

Estimated Number of Respondents: 53 State agencies.

Estimated Number of Affected Households: 54,663 households.

Estimated Total Number of Responses Per Year: 54,663.

Estimated Hours Per Response: 1.0736.

Total Annual Burden: 58,686.

Dated: June 28, 2000.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 00–18142 Filed 7–18–00; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Food Distribution Program: Value of Donated Foods From July 1, 2000 to June 30, 2001

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the value of donated foods or, where applicable, cash in lieu thereof, to be provided in the 2001 school year for each lunch served by schools participating in the National School Lunch Program (NSLP) or by commodity only schools and for each lunch and supper served by institutions participating in the Child and Adult Care Food Program.

EFFECTIVE DATE: July 1, 2000.

FOR FURTHER INFORMATION CONTACT: Suzanne Rigby, Chief, Schools and Institutions Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302 or telephone (703) 305–2644.

SUPPLEMENTARY INFORMATION: These programs are listed in the Catalog of Federal Domestic Assistance under Nos. 10.550, 10.555, and 10.558 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.)

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. This notice has been determined to be exempt under Executive Order 12866.

National Average Minimum Value of Donated Foods for the Period July 1, 2000 Through June 30, 2001

This notice implements mandatory provisions of sections 6(c), 14(f) and 17(h)(1) (B) of the Richard B. Russell National School Lunch Act (the Act) (42 U.S.C. 1755(c), 1762a(f), and 1766(h)(1)(B)). Section 6(c)(1)(A) of the

Act establishes the national average value of donated food assistance to be given to States for each lunch served in NSLP at 11.00 cents per meal. Pursuant to section 6(c)(1)(B), this amount is subject to annual adjustments as of July 1 of each year to reflect changes in a three-month average value of the Price Index for Foods Used in Schools and Institutions for March, April, and May each year (Price Index). Section 17(h)(1)(B) of the Act provides that the same value of donated foods (or cash in lieu of donated foods) for school lunches shall also be established for lunches and suppers served in the Child and Adult Care Food Program. Notice is hereby given that the national average minimum value of donated foods, or cash in lieu thereof, per lunch under the NSLP (7 CFR part 210) and per lunch and supper under the Child and Adult Care Food Program (7 CFR part 226) shall be 15 cents for the period July 1, 2000 through June 30, 2001.

The Price Index is computed using five major food components in the Bureau of Labor Statistics' Producer Price Index (cereal and bakery products; meats, poultry and fish; dairy products; processed fruits and vegetables; and fats and oils). Each component is weighted using the relative weight as determined by the Bureau of Labor Statistics. The value of food assistance is adjusted each July 1 by the annual percentage change in a three-month average value of the Price Index for March, April and May each year. The three-month average of the Price Index increased by 1.9 percent from 129.37 for March, April and May of 1999 to 131.78 for the same three months in 2000. When computed on the basis of unrounded data and rounded to the nearest one-quarter cent, the resulting national average for the period July 1, 1999 through June 30, 2000 will be 15 cents per meal. This is an increase of 0.25 cents from the school year 2000 rate.

In addition to the 15 cents per meal, Congress has authorized additional funds to be used to purchase foods under section 6(e) of the Act (42 U.S.C. 1755). Therefore, for this school year, schools will receive more than 15 cents per meal in commodities.

Section 14(f) of the Act provides that commodity only schools shall be eligible to receive donated foods equal in value to the sum of the national average value of donated foods established under section 6(c) of the Act and the national average payment established under section 4 of the Act (42 U.S.C. 1753). Such schools are eligible to receive up to 5 cents per meal of this value in cash for processing and handling expenses related to the use of such commodities.

Commodity only schools are defined in section 12(d)(2) of the Act (42 U.S.C. 1760(d)(2)) as "schools that do not participate in the school lunch program under this Act, but which receive commodities made available by the Secretary for use by such schools in nonprofit lunch programs." For the 2001 school year, commodity only schools shall be eligible to receive donated food assistance valued at 34 cents for each free, reduced price, and paid lunch served. This amount is based on the sum of the section 6(c) level of assistance announced in this notice and the adjusted section 4 minimum national average payment factor for school year 2001. The section 4 factor for commodity only schools does not include the two cents per lunch increase for schools where 60 percent of the lunches served in the school lunch program in the second preceding school year were served free or at reduced prices, because that increase is applicable only to schools participating in the NSLP.

Authority: Sections 6(c)(1)(A) and (B), 6(e)(1), 14(f) and 17(h)(1) (B) of the Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1755(c)(1)(A) and (B) and 6(e)(1), 1762a(f), and 1766(h)(1)(B)).

Dated: July 12, 2000.

Samuel Chambers, Jr.,

Administrator.

[FR Doc. 00–18164 Filed 7–18–00; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Oregon Province Interagency Executive Committee (PIEC) Advisory Committe

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Oregon PIEC Advisory Committee will meet on August 3, 2000 at Diamond Lake Resort, east of Roseburg, Oregon. The meeting will begin at 9 a.m. and continue until 5 p.m. Agenda items to be covered include: (1) Diamond Lake Fish Rehabilitation; (2) BLM Off-Highway Vehicle Strategy; (3) Province Large Woody Material Follow-up; (4) Implementing Ecosystem Management on the Umpqua National Forest; (5) Public Comment; and (6) Current issues as perceived by Advisory Committee members.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Terrie Davis, Province Advisory Committee Staff Assistant, USDA, Forest Service, Umpqua National Forest, 2900 NW Stewart Parkway, Roseburg, Oregon 97470, phone (541) 957–3210.

Dated: July 13, 2000.

Michael D. Hupp,

Acting Designated Federal Official.

[FR Doc. 00–18183 Filed 7–18–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Wisconsin

AGENCY: Natural Resources Conservation Service (NRCS) in Wisconsin, US Department of Agriculture.

ACTION: Notice of availability of a proposed change in Section IV of the FOTG of the NRCS in Wisconsin for review and comment.

SUMMARY: It is the intention of NRCS in Wisconsin to issue four revised conservation practice standards in Section IV of the FOTG. The revised standards are Pond (Code 378), Grade Stabilization Structure (Code 410), and Water and Sediment Control Basin (Code 638). These practices may be used in conservation systems that treat highly erodible land.

DATES: Comments will be received for a 30-day period commencing on July 19, 2000.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to Donald A. Baloun, Assistant State Conservationist, Natural Resources Conservation Service (NRCS), 6515 Watts Road, Suite 200, Madison, WI 53719–2726. Copies of this standard will be made available upon written request. You may submit electronic requests and comments to don.baloun@wi.usda.gov.

FOR FURTHER INFORMATION CONTACT: Donald A. Baloun, 608–276–8732.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law, to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Wisconsin will receive comments relative to the proposed

change. Following that period, a determination will be made by the NRCS in Wisconsin regarding disposition of those comments and a final determination of change will be made.

Dated: July 11, 2000.

John R. Ramsden,

Acting State Conservationist, Madison, Wisconsin.

[FR Doc. 00–18275 Filed 7–18–00; 8:45 am]

BILLING CODE 3410–16–U

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

USDA Policy Advisory Committee on Farmland; Public Forums

AGENCY: Natural Resources Conservation Service (NRCS) and Forest Service.

ACTION: Notice of meeting.

SUMMARY: Maintaining Agriculture and Forestry in Rapidly Growing Areas Listening Forums hosted by members of the USDA Policy Advisory Committee on Farmland Protection. The USDA Policy Advisory Committee on Farm and Forest Lands Protection is holding listening forums this summer to solicit policy feedback and anecdotal information on what works and what doesn't from a community's perspective in working with federal tools designed to maintain land as farmland and forest land. The input received from these forums will be synthesized into a report that USDA will issue on this subject later this year.

Specifically, the forums will ask for public comment on the following questions:

1. What are the economic, environmental and social benefits of farms and forested lands for communities, especially those in rapidly growing regions?

2. What are the challenges that communities and individuals face in trying to maintain farms and forested lands, especially in rapidly growing areas?

3. What sorts of opportunities exist to capitalize on market opportunities (*e.g.*, direct marketing and agri-tourism) to encourage maintenance of farmland and forestland?

4. What role could the federal government play to better support farmers and forest operators in taking advantage of these opportunities?

DATES: The first forum will convene on Thursday morning, July 13 at the Dekalb County Farm Bureau Center for Agriculture, 1350 West Prairie Drive, Sycamore, Illinois 60178. The second forum is scheduled for Friday, July 21, 2000, beginning at 9 a.m. and continuing until 12 p.m., at the University of California, Davis, Alumni and Visitors Center, in Room AGR, located on Old Davis Road and Mark Hall Drive, Davis, California. The third forum will be held on Monday, July 31, 2000, from 9 a.m. until 12 p.m., at the Yale Street Landing, 1001 Fairview Avenue North, Seattle, Washington 98109. The fourth forum will take place on Wednesday, August 9, 2000, from 9 a.m. until 12 p.m. at the Frelinghuysen Arboretum, 53 East Hanover Avenue, Morristown, New Jersey 07962–1295. An additional meeting will be scheduled for Atlanta, Georgia in early August.

ADDRESSES: Are included in the above information under **DATES.**

SUPPLEMENTARY INFORMATION: Notice of these forums is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2. Additional information about the USDA Policy Advisory Committee, including any revised agendas for the forums may appear after this **Federal Register** Notice is published, may be found on the World Wide Web at http://www.usda.gov.

Draft Agenda for the Forums

A. Opening remarks.
B. Panel presentations.
C. Public participation: oral statements, questions and answer period.
D. Closing remarks.

Procedural

The forums are open to the general public. Members of the general public will have an opportunity to present their ideas and opinions during each forum. Persons wishing to make oral statements must pre-register by contacting Ms. Mary Lou Flores at (202) 720–4525. Those who wish to submit written statements can do so by submitting 25 copies of their statements on or before July 17, 2000, for the UC Davis, CA forum, July 26, 2000, for the Seattle, WA forum, and August 4, 2000, for the Morristown, NJ forum. Please send them to Ms. Stacie Kornegay, Natural Resources Conservation Service, P.O. Box 2890, Washington, D.C. 20013, Room 6013. The written form of the oral statements must not exceed 5 pages in 12 point pitch. At each forum, reasonable provisions will be made for oral presentations of no more than three minutes each in duration.

FOR FURTHER INFORMATION: Requests for special accommodations due to disability, questions or comments should be directed to Rosann Durrah, Designated Federal Official, telephone (202) 720–4072, fax (202) 690–0639, email *rosann.durrah@usda.gov.*

Dated: July 13, 2000.

James R. Lyons,

Under Secretary, Natural Resources and Environment, USDA.

[FR Doc. 00–18255 Filed 7–14–00; 4:23 pm]

BILLING CODE 3410–16–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Public Rights-of-Way Access Advisory Committee; Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) established a Public Rights-of-Way Access Advisory Committee (committee) to assist the Board in developing a proposed rule on accessibility guidelines for newly constructed and altered public rights-of-way covered by the Americans with Disabilities Act of 1990 and the Architectural Barriers Act of 1968. This document announces the next meeting of the committee, which will be open to the public.

DATES: The fourth meeting of the committee is scheduled for August 16 through 18, 2000, beginning at 9:00 a.m. and ending at 5:30 p.m. each day.

ADDRESSES: The meeting will be held at the Bill Graham Civic Auditorium, 99 Grove Street, San Francisco, CA 94102.

FOR FURTHER INFORMATION CONTACT: Scott Windley, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC, 20004–1111. Telephone number (202) 272–5434 extension 125 (Voice); (202) 272–5449 (TTY). E-mail windley@access-board.gov. This document is available in alternate formats (cassette tape, Braille, large print, or ASCII disk) upon request. This document is also available on the Board's Internet Site (http://www.access-board.gov/notices/prowmtg.htm).

SUPPLEMENTARY INFORMATION: On October 20, 1999, the Architectural and Transportation Barriers Compliance Board (Access Board) published a notice appointing members to a Public Rights-of-Way Access Advisory Committee

(committee) to provide recommendations for developing a proposed rule addressing accessibility guidelines for newly constructed and altered public rights-of-way covered by the Americans with Disabilities Act of 1990 and the Architectural Barriers Act of 1968. 64 FR 56482 (October 20, 1999).

Committee meetings will be open to the public and interested persons can attend the meetings and communicate their views. Members of the public will have an opportunity to address the committee on issues of interest to them and the committee during the public comment period at the end of each meeting day. Members of groups or individuals who are not members of the committee may also have the opportunity to participate with subcommittees of the committee. Additionally, all interested persons will have the opportunity to comment when the proposed accessibility guidelines for public rights-of-way are issued in the **Federal Register** by the Access Board.

Individuals who require sign language interpreters or real-time captioning systems should contact Scott Windley by August 2, 2000. Notices of future meetings will be published in the **Federal Register**.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 00–18273 Filed 7–18–00; 8:45 am]

BILLING CODE 8150–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Alaska Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Alaska Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 3 p.m. on Thursday, September 21, 2000, at the Hilton Anchorage Hotel, 500 West Third Avenue, Anchorage, Alaska 99501. The purpose of the meeting is to discuss civil rights issues and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 7, 2000.

Lisa M. Kelly,

Special Assistant to the Staff Director, Regional Programs Coordination Unit.

[FR Doc. 00–18167 Filed 7–18–00; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Census 2000 Evaluation: Multiple Response Follow-up.

Form Number(s): None.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 1,500 hours.

Number of Respondents: 7,500.

Avg. Hours Per Response: 12 minutes.

Needs and Uses: As part of Census 2000, the Census Bureau is conducting a comprehensive program of evaluations designed to measure how well our programs, operations, and procedures performed. The Multiple Response Follow-up (MRFU) is included in this evaluation program. This evaluation will help determine how well the Primary Selection Algorithm (PSA) resolves multiple returns. The Census 2000 is the first census to provide a wide-range of methods of responding to the public, *e.g.*, returning a questionnaire by mail, responding by telephone, or accessing the Internet. These methods will increase the likelihood of persons responding, but they will also create multiple responses (or "multiple returns") for some addresses (or Census IDs). PSA is the algorithm used to determine which persons from each of the multiple returns will and will not be included in the Census households for a given Census ID. It includes unduplication between returns and other types of resolution. We will select a nationally representative sample of Census IDs which had more than one Census 2000 return and conduct an interview of all those persons on any of the multiple returns to determine who was a resident on Census Day (April 1, 2000) and who was not. We will compare this information with the persons identified by PSA to be census residents. Evaluation results will be used to determine if PSA was successful in meeting its goals, and to identify areas of future research that will help us learn how we can improve the algorithm.

Affected Public: Individuals or households.

Frequency: One-time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Sections 141 and 193.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: July 14, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–18253 Filed 7–18–00; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062700D]

Advisory Committee and Species Working Group Technical Advisor Appointments

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

ACTION: Nominations.

SUMMARY: NMFS is soliciting nominations to the Advisory Committee to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas (ICCAT) as established by the Atlantic Tunas Convention Act (ATCA). NMFS is also soliciting nominations for technical advisors to the Advisory Committee's species working groups.

DATES: Nominations are due by August 18, 2000.

ADDRESSES: Nominations to the Advisory Committee or to a species working group should be sent to: Mr.

Roiland A. Schmitten, Deputy Assistant Secretary for International Affairs, NOAA, Department of Commerce, Herbert C. Hoover Building, Room 5809, 14th Street and Constitution Avenue, Washington, D.C. 20230. A copy should also be sent to Patrick E. Moran, International Fisheries Division, Office of Sustainable Fisheries, NMFS, Room 13114, 1315 East West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Patrick E. Moran, 301-713-2276.

SUPPLEMENTARY INFORMATION: Section 971b of the ATCA (16 U.S.C. 971 *et seq.*) requires that an advisory committee be established that shall be composed of (1) not less than five nor more than 20 individuals appointed by the U.S. Commissioners to ICCAT who shall select such individuals from the various groups concerned with the fisheries covered by the ICCAT Convention; and (2) the chairs (or their designees) of the New England, Mid-Atlantic, South Atlantic, Caribbean, and Gulf Fishery Management Councils. Each member of the Advisory Committee appointed under item (1) shall serve for a term of 2 years and shall be eligible for reappointment. Members of the Advisory Committee may attend all public meetings of the ICCAT Commission, Council, or any Panel and any other meetings to which they are invited by the ICCAT Commission, Council, or any Panel. The Advisory Committee shall be invited to attend all nonexecutive meetings of the U.S. Commissioners to ICCAT and, at such meetings, shall be given the opportunity to examine and to be heard on all proposed programs of investigation, reports, recommendations, and regulations of the ICCAT Commission. Members of the Advisory Committee shall receive no compensation for their services as such members. The Secretary of Commerce and the Secretary of State may pay the necessary travel expenses of members of the Advisory Committee.

There are currently 20 appointed Advisory Committee members. The terms of these members expire on December 31, 2000. New appointments will be made as soon as possible, but will not take effect until January 1, 2001.

Section 971b-1 of the ATCA specifies that the U.S. Commissioners may establish species working groups for the purpose of providing advice and recommendations to the U.S. Commissioners and the Advisory Committee on matters relating to the conservation and management of any highly migratory species covered by the ICCAT Convention. Any species working group shall consist of no more than seven members of the Advisory Committee and no more than four scientific or technical personnel, as considered necessary by the Commissioners. Currently, there are four species working groups advising the Committee and the U.S. Commissioners. Specifically, there is a Bluefin Tuna Working Group, a Swordfish Working Group, a Billfish Working Group, and a BAYS (Bigeye, Albacore, Yellowfin, and Skipjack) Tunas Working Group. Technical Advisors to species working groups serve at the pleasure of the U.S. Commissioners; therefore, the Commissioners can choose to alter appointments at any time.

Nominations to the Advisory Committee or to a species working group should include a letter of interest and a resume or curriculum vitae. Letters of recommendation are useful but not required. Self-nominations are acceptable. When making a nomination, please clearly specify which appointment (Advisory Committee member or technical advisor to a species working group) is being sought. Requesting consideration for placement on both the Advisory Committee and a species working group is acceptable. Those interested in a species working group technical advisor appointment should indicate which of the four working groups is preferred. Placement on the requested species working group, however, is not guaranteed.

Dated: July 13, 2000.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–18145 Filed 7–18–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071300B]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling public meetings of its Scallop Committee and Scallop Advisory Panel in August and September, 2000 to consider actions affecting New England fisheries in the exclusive economic zone. Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will held between Friday, August 4, 2000 and Tuesday, September 19, 2000. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held in Mansfield, MA and Warwick, RI. See **SUPPLEMENTARY INFORMATION** for specific locations.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Friday, August 4, 2000, at 10:00 a.m.—Scallop Committee Meeting

Location: Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; telephone: (508) 339–2200.

The Scallop Committee will evaluate technical advice from the Scallop Plan Development Team (PDT) on areas to close during the 2000 fishing year to conserve small scallops. If the committee recommends action, the management measures could take effect in late 2000.

The Scallop Committee also will continue development of management alternatives for Amendment 10 to the Scallop Fishery Management Plan (FMP). Issues to be discussed include, but are not limited to measures that would close areas with concentrations of small scallops through a notice action, mechanisms to fund monitoring and research activities in support of scallop area management, and other issues related to an industry proposal presented by the Fishermen's Survival Fund. The committee will re-consider adding additional area management alternatives to Amendment 10.

Monday, September 18, 2000, at 10:00 a.m. and Tuesday, September 19, 2000 at 8:30 a.m.—Joint Scallop Committee and Scallop Advisory Panel Meeting.

Location: Radisson Hotel, 2081 Post Road, Warwick, RI 02886; telephone: (401) 739–3000.

The Scallop PDT will present the 2000 Stock Assessment and Fishery Evaluation (SAFE) Report and recommend management adjustments for the 2001 fishing year to meet the FMP objectives. The advisors and oversight committee will evaluate these recommendations in preparation for a Council discussion on Framework Adjustment 14 at the September 26–28, 2000 Council meeting.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: July 14, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–18261 Filed 7–18–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071400A]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Groundfish Management Team (GMT) will hold a working meeting which is open to the public.

DATES: The GMT working meeting will be begin Monday, August 14, 2000 at 1 p.m. and may go into the evening until business for the day is completed. The meeting will reconvene from 8 a.m. to 5 p.m. Tuesday, August 15 through Friday, August 18.

ADDRESSES: The meetings will be held at the Pacific Fishery Management Council office, Conference Room, 2130 SW Fifth Avenue, Suite 224, Portland, OR; telephone: 503–326–6352.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Jim Glock, Groundfish Fishery Management Coordinator; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The primary purpose of the GMT meeting is to review groundfish stock assessment information and prepare recommendations regarding harvest levels and management for 2001. Members of the Council's Scientific and Statistical Committee's Groundfish Subcommittee and the Groundfish Advisory Subpanel will meet jointly with the GMT to discuss the results of recent stock assessments and 2001 harvest levels. The GMT will also prepare reports, recommendations, and analyses in support of various Council decisions through the remainder of the year. The GMT will discuss, receive reports, and/or prepare reports on the following topics during this working session: (1) Stock Assessment Review (STAR) Panel reports; (2) rebuilding plans for canary rockfish, cowcod, lingcod, and Pacific ocean perch, including allocation and bycatch reduction; (3) preliminary acceptable biological catch and optimum yield recommendations for 2001, including management issues; (4) preliminary economic/social analysis of proposed harvest levels and management; (5) Stock Assessment and Fishery Evaluation (SAFE) document preparation; (6) recreational data issues; (7) inseason management; (8) groundfish strategic plan; and (9) permit stacking proposal and analysis.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: July 14, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–18256 Filed 7–18–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.071200D]

Endangered Species; Permits

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

ACTION: Receipt of applications to modify permits (984)(1058) and issued modifications to existing permits (994)(1134)(1194).

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement:

NMFS has received a request to modify permit (984) from Dr. Steve Ross, of the North Carolina National Estuarine Research Reserve, and from the Idaho Fishery Resource Office of the U.S. Fish and Wildlife Service at Ahsahka, ID (FWS) (1058); NMFS has issued modifications to a scientific research permit to the Columbia River Inter-Tribal Fish Commission at Portland, OR (CRITFC)(1134), a scientific research permit to the Idaho Cooperative Fish and Wildlife Research Unit at Moscow, ID (ICFWRU)(994) and a scientific research permit to the Fish Ecology Division, Northwest Fisheries Science Center, National Marine Fisheries Service at Seattle, WA (NWFSC)(1194).

DATES: Comments or requests for a public hearing on any of the new applications or modification requests must be received at the appropriate address or fax number no later than 5:00 pm eastern standard time on August 18, 2000.

ADDRESSES: Written comments on any of the new applications or modification requests should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the application or modification request. Comments will not be accepted if submitted via e-mail or the internet. The applications and related documents are available for review in the indicated office, by appointment:

For permits 994, 1058, 1134, 1194: Protected Resources Division, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737 (ph: 503–230–5400, fax: 503–230–5435).

For permit 984: Office of Protected Resources, Endangered Species Division, F/PR3, 1315 East-West

Highway, Silver Spring, MD 20910 (ph: 301–713–1401, fax: 301–713–0376).

Documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401).

FOR FURTHER INFORMATION CONTACT:

For permit 984: Terri Jordan, Silver Spring, MD (ph: 301–713–1401, fax: 301–713–0376, e-mail: Terri.Jordan@noaa.gov).

For permits 994, 1058: Robert Koch, Portland, OR (ph: 503–230–5424, fax: 503–230–5435, e-mail: Robert.Koch@noaa.gov).

For permit 1134, 1194: Leslie Schaeffer, Portland, OR (503–230–5433, fax: 503–230–5435, e-mail: Leslie.Schaeffer@noaa.gov).

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in this Notice

The following species and evolutionarily significant units (ESU's) are covered in this notice:

Sockeye salmon (*Oncorhynchus nerka*): endangered Snake River (SnR).

Chinook salmon (*O. tshawytscha*): endangered upper Columbia River (UCR) spring, threatened SnR spring/summer, threatened SnR fall, threatened lower Columbia River (LCR).

Steelhead (*O. mykiss*): endangered UCR; threatened SnR; threatened middle Columbia River (MCR); threatened LCR.

Shortnose sturgeon (*Acipenser brevirostrum*).

Modification Requests Received

Permit 984

Dr. Steven Ross requests modification 3 to ESA section 10(a)(1)(A) scientific research permit 984. Permit 984 authorizes the take of shortnose sturgeon from rivers throughout the state of North Carolina. This permit authorizes capture in gillnets, handling, weighing, photographing, dorsalm din clipping for genetic material collection, external and internal tagging and release. Currently both Dr. Mary Moser of the National Marine Fisheries Service—Northwest Fisheries Science Center in Seattle, WA and Dr. Steven Ross are co-investigators, modification #3 would remove Dr. Moser from the permit as co-investigator and extend the expiration date of the permit to December 31, 2001.

Permit 1058

FWS requests modification 2 to ESA section 10(a)(1)(A) scientific research permit 1058. Permit 1058 authorizes FWS annual takes of adult and juvenile, threatened, Snake River fall chinook salmon associated with two scientific research studies. The purpose of Study 1 is to monitor and evaluate adult returns of hatchery-origin fall chinook salmon released as juveniles above Lower Granite Dam on the Snake River in the Pacific Northwest. Currently, information on ESA-listed, natural-origin fish is needed to assess the impacts of fish management actions (e.g., hatchery supplementation), as well as other human activities (e.g., regulated river flows), on wild fish populations. Study 1 has two components: (1) Radio-tagging returning adult salmon at Lower Granite Dam to document the movements and spawning distribution of known natural-origin fall chinook salmon above the dam, and (2) collecting data and scale/tissue samples from spawned-out adult fish in the Snake River and tributaries above Lower Granite Dam to augment information on spawning distribution collected from the radio-tagged fish. The purpose of Study 2 is to obtain a better understanding of the factors leading to residualism and interactions between residuals and wild or natural stocks of juvenile fish in the Clearwater River Basin in ID. For modification 2, FWS requests an increase in the annual take of ESA-listed adult fish associated with Component 1 of Study 1.

Due to increases in adult salmon runsize estimates in the Snake River, a greater number of ESA-listed fish are likely to be captured and handled (checked for tags and sampled for tissues and/or scales) by FWS. Tissue samples and scales will subsequently be analyzed for genetic attributes and population determinants. Modification 2 is requested to be valid for the duration of the permit which expires on December 31, 2001.

Permits and Modifications Issued

Permit 994

Notice was published on March 21, 2000 (65 FR 15131) that ICFWRU applied for a modification to permit 994. Modification 5 to permit 994 was issued on July 5, 2000. Permit 994 authorizes ICFWRU annual takes of adult SnR sockeye salmon, adult SnR spring/summer and fall chinook salmon, and adult UCR steelhead associated with scientific research designed to assess the passage success and homing behavior of adult salmonids that migrate upriver past the eight dams and reservoirs in the lower Columbia and lower Snake Rivers, evaluate specific flow and spill conditions, and evaluate measures to improve adult anadromous fish passage. For modification 5, ICFWRU is authorized a take of adult UCR spring chinook salmon associated with the research. With regard to ICFWRU's request for an increase in take of adult SnR sockeye salmon and takes of adult LCR chinook salmon, adult MCR steelhead, and adult LCR steelhead associated with the research, NMFS is not acting on that part of ICFWRU's application at this time. NMFS will make a decision regarding ICFWRU's proposed additional takes following the completion of ESA Section 7 consultations on this and other scientific research permit actions that have been requested for the 2000 research season. Modification 5 is valid for the duration of permit 994, which expires on December 31, 2000.

Permit 1134

Notice was published on September 27, 1999 (64 FR 51959) that the CRITFC had applied for a modification to permit 1134. Modification 1 to permit 1134 was issued on July 10, 2000, and authorizes CRITFC annual takes of adult and juvenile fish associated with three new projects: (1) biological and chemical monitoring, and physical habitat assessment in steelhead waters; (2) tagging juvenile Hanford Reach upriver bright fall chinook salmon; and (3) SnR steelhead kelt identification study. Annual takes of adult and juvenile,

naturally produced and artificially propagated UCR spring chinook salmon and adult and juvenile LCR chinook salmon associated with the research are also authorized. Modification 1 is valid for the duration of permit 1134, which expires on December 31, 2002.

Permit 1194

Notice was published on March 21, 2000 (65 FR 15131) that the NWFSC had applied for a modification to permit 1194. Modification 1 to permit 1194 was issued on June 6, 2000, and authorizes NWFSC annual takes of adult artificially propagated UCR spring chinook salmon. Modification 1 is valid for the duration of permit 1194, which expires on December 31, 2003.

Dated: July 14, 2000.

Wanda L. Cain,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–18262 Filed 7–18–00; 8:45 am]

BILLING CODE 3510–22–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Renewal of Currently Approved Information Collection: Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3508(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed revision of its AmeriCorps*NCCC Service Project Application Form (OMB Control Number 3045–0010). Copies of the information collection requests can be obtained by contacting the office below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section on or before September 18, 2000.

ADDRESSES: Send comments to Corporation for National and Community Service, AmeriCorps*NCCC, Attention: Mr. Wayne E. Verry, 1201 New York Avenue, NW., Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Wayne E. Verry, (202) 606–5000, ext. 108.

SUPPLEMENTARY INFORMATION:

Comment Request

The Corporation Service is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Background

This form is used by community non-profit organizations, government agencies, and other prospective service project sponsors in the submission of proposed service projects for consideration by AmeriCorps*National Civilian Community Corps.

Current Action

The Corporation seeks renewal of the current form as it is under revision. The revised form incorporates lessons learned since program inception, and will be used for the same purpose as the existing form. The current form is due to expire November 30, 2000.

The principal revisions of the new Project Application are:

- Additional information in the Instructions regarding electronic preparation and submission;
- A request for a description of the compelling community needs to be addressed rather than a general description of the proposed project;
- A request for a work plan for accomplishing the project rather than a calendar and timeline.
- A request for tasks to be performed in the event of inclement weather (as appropriate);
- A request for an estimated number of volunteers from the community who might participate in the project rather than a general description of community participation;
- A clarification of the term "Service Learning" as part of the Corps Member Development aspect of the project;
- A statement confirming that an assurance of non-discrimination is included in the Sponsor Agreement, to be signed after the Project Application is approved.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: AmeriCorps*NCCC Service Project Application.

OMB Number: 3045–0010.

Agency Number: N/A.

Affected Public: Various non-profit organizations/project sponsors.

Total Respondents: 900.

Frequency: Annually.

Average Time Per Response: 8 hours.

Estimated Total Burden Hours: 7,200 hours.

Total Burden Cost (capital/startup): N/A.

Total Burden Cost (operating/maintenance): N/A.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 13, 2000.

Fred L. Peters,

*Acting Director, AmeriCorps*NCCC.*

[FR Doc. 00–18211 Filed 7–18–00; 8:45 am]

BILLING CODE 6050–28–U

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Submission for OMB Review; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

The Corporation for National and Community Service (hereinafter the "Corporation") has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995

(Public Law 104–13, (44 U.S.C. Chapter 35). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Nancy Talbot, Director, Planning and Program Development, (202) 606–5000, extension 470. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–2799 between 8:30 a.m. and 5 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: Mr. Daniel Werfel, OMB Desk Officer for the Corporation for National and Community Service, Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316, within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information to those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Description

The application for funds to conduct outreach to individuals with a disability to increase their participation in national service provides the background, requirements and instructions that potential applicants need to complete an application to the Corporation. The Corporation seeks public comment on the forms, the instructions for the forms, and the instructions for the narrative portion of these application guidelines.

Type of Review: New collection.

Agency: Corporation for National and Community Service.

Title: Application for Outreach to Individuals with a Disability.

OMB Number: None.

Agency Number: None.

Affected Public: Eligible applicants to the Corporation for funding.

Total Respondents: 300.

Frequency: Once per year.

Average Time Per Response: Ten (10) hours.

Estimated Total Burden Hours: 3,000 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: July 13, 2000.

Gary Kowalczyk,

Coordinotor, Notionol Service Programs, Corporotion for Notionol ond Community Service.

[FR Doc. 00–18212 Filed 7–18–00; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Department of Defense, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics)/Defense Systems Management College.

ACTION: Notice.

In compliance of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics)/Defense Systems Management College, announces the proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 18, 2000.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Defense Systems Management College, Attention: Ms. Alberta Ladymon, Ft. Belvoir, VA 22060.

FOR FURTHER INFORMATION CONTACT: To request further information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Ms. Alberta Ladymon, Defense Systems Management College, (703) 805–5406.

Title, Associated Form, and OMB Number: Defense Systems Management College (DSMC) Information Technology Study, OMB Control Number 0704–XXXX.

Needs and Uses: The collection of information is needed to characterize the personality characteristics, behaviors, and workplace climate needs common among Information Technology specialists. The results from the analysis of these data will be used to determine the management practices most effective for working with these specialists and to develop management curricula based upon these findings.

Affected Public: Businesses or other for-profit; Small Businesses or organizations; Non-profit institutions.

Annual Burden Hours: 2,500 Hours.

Number of (Annual) Respondents: 1,000 (approximately 2,000 over two years).

Responses to Respondent: 1.

Average Burden Per Response: 2.5 Hours.

Frequency: One time only.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are information technology professionals from approximately 300 companies within the U.S. The purpose of this study is to develop a quantitative and qualitative understanding of what successful IT teams "look like" in terms of personnel composition and structure, and to learn about how successful IT teams operate. The goal of this effort is to use this information to form a basis for new Software Best Management Practices, to be encapsulated into the DSMC curriculum, as well as that of the Defense University's Chief of Information Officers program and civilian programs. Teams will be selected using a variety of sources, including DSMC listings, organizational listings held by industry experts, and professional contacts within the industry. Participation by team members is fully voluntary; all participants will be asked to sign a Study Participation Agreement form, explaining that the study is fully voluntary and describing how the data will be used. Data will be collected by two methods: completion of self-report personality/behavioral instruments by the participants, and observations of

team behavior during a workshop conducted by qualified researchers. Data generated for the study will be entered into a study database by the research team. Each individual and team will be assigned a participant and team code at the beginning of the effort. This code will be the primary identifier during data entry as well as analysis. Data that personally identify a participant may be stored in the master database for tracking purposes, but will not be reported or released without the specific consent of that individual. Aggregate data and resulting conclusions may be released in the form of summary reports, technical and academic papers, and formal briefings or presentations. The study team also plans to establish a public Internet site, where the IT Team members participating may go to learn about the study results and conclusions.

Dated: July 13, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–18198 Filed 7–18–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Form Number, and OMB Number: Application for Correction of Military Records Under the Provisions of Title 10, United States Code, Section 1552; DD Form 149; OMB Number 0704–0003.

Type of Request: Revision.

Number of Respondents: 28,000.

Responses per Respondent: 1.

Annual Responses: 28,000.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 14,000.

Needs and Uses: Under Title 10 U.S.C. 1552, the Secretary of a Military Department may correct any military record within their Department when the Secretary considers it necessary to correct an error or remove an injustice. The DD Form 149, "Application for Correction of Military Records Under the Provisions of Title 10 U.S. Code, Section 1552," allows an applicant to request correction of a military record. The form provides an avenue for active duty Service members and former Service personnel who believe an error is contained in their military records and/or they have suffered an injustice to request relief.

Affected Public: Individuals or Households.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: July 13, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–18193 Filed 7–18–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission of OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Associated Form, and OMB Number: Application for Trusteeship; DD Form 2827; OMB Number 0703—[To Be Determined].

Type of Request: New Collection.

Number of Respondents: 50.

Responses per respondent: 1.

Annual Responses: 50.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 13.

Needs and Uses: This form is used by the Defense Finance and Accounting Service (DFAS—Cleveland Center) to appoint a trustee to act on behalf of a member of the uniformed services. The authority for the collection of information is 37 U.S.C. sections 602–604. When members of the uniformed services are declared mentally incompetent, the need arises to have a trustee appointed to act on their behalf with regard to military pay matters. This requirement helps alleviate the opportunity for fraud, waste, and abuse of Government funds and protect member benefits.

Affected Public: Individuals of Households.

Frequency: On Occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: July 13, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–18194 Filed 7–18–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Associated Form, and OMB Number: Trustee Report, DD Form 2826; OMB Number 0703—[To Be Determined].

Type of Request: New Collection.

Number of Respondents: 300.

Responses per Respondent: 1.

Annual Responses: 300.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 150.

Needs and Uses: This form is used to report on the administration of the funds received on behalf of a mentally incompetent member of the uniformed services. The authority for the collection of information is 37 U.S.C. sections

602–604. When members of the uniformed services are declared mentally incompetent, the need arises to have a trustee appointed to act on their behalf with regard to military pay matters. Trustees will complete this form to report the administration of the funds received. The trustee is required to report dates, amounts, and reasons for payments made. This reporting requirement helps alleviate the opportunity for fraud, waste, and abuse of Government funds and member benefits.

Affected Public: Individuals or Households.

Frequency: On Occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: July 13, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–18195 Filed 7–18–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 228, Bonds and Insurance and Related Clauses at 252.228; OMB Number 0704–0216.

Type of Request: Extension.

Number of Respondents: 49.

Responses per Respondents: 1.

Annual Responses: 49.

Average Burden per Response: 17.53 hours.

Annual Burden Hours: 859.

Needs and Uses: The Department of Defense uses the information obtained through this collection to determine the allowability of a contractor's costs of providing warhazard benefits to its employees; to determine the need for an investigation regarding an accident that occurs in connection with a contract; and to determine whether a contractor performing a service or construction contract in Spain has adequate insurance coverage.

Affected Public: Business or Other For-Profit.

Frequency: On Occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Office: Mr. Lewis W. Oleinick.

Written comments and recommendations on the proposed information collection should be sent to Mr. Oleinick at the Office of Management and Budget, Desk Officer for DoD (Acquisition), Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 15, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–18196 Filed 7–18–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: Physician Certificate for Child Annuitant; DD Form X405; OMB Number 0730–[To Be Determined].

Type of Request: New Collection.

Number of Respondents: 120.

Responses Per Respondent: 1.

Annual Responses: 120.

Average Burden Per Response: 12 minutes.

Annual Burden Hours: 24.

Needs and Uses: The form will be used by the Directorate of Annuity Pay, Defense Finance and Accounting Service, Denver Center (DFAS–DE/FRB), in order to establish and start the annuity for a potential child annuitant. When the form is completed, it will serve as a medical report to substantiate a child's incapacity. The law requires that an unmarried child who is incapacitated must provide a current certified medical report. When the incapacity is not permanent a medical certification must be received by DFAS–DE/FRB every two years in order for the child to continue receiving annuity payments. The respondents are the incapacitated child annuitants and/or their legal guardians, custodians and legal representatives.

Affected Public: Individuals or Households.

Frequency: On Occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: July 12, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–18197 Filed 7–18–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Cost Accounting Standards

AGENCY: Department of Defense (DoD).

ACTION: Notice of public meeting.

SUMMARY: The Director of Defense Procurement, in conjunction with the National Contract Management Association, is sponsoring a public meeting to discuss potential areas for streamlining the Cost Accounting Standards. The Director of Defense Procurement would like to hear the views of interested parties regarding any standards or parts of standards that present streamlining opportunities (elimination, revision, and/or amendment) in light of changes that

have occurred since the standards were promulgated, including the evolution of Generally Accepted Accounting Principles, the advent of Acquisition Reform, and experience gained from implementation. A listing of some possible streamlining area can be found on the Internet Home Page of the Office of Cost, Pricing, and Finance at http://www.acq.osd.mil/dp/cpf.

Upon identification of the particular standards or parts of standards that present streamlining opportunities, subsequent public meetings will be held to discuss specific provisions, details, and/or recommendations. The dates and times of those meetings will be published on the Internet Home Page of the Office of Cost, Pricing, and Finance. Upon completion of this effort, recommendations will be provided to the Cost Accounting Standards Board for the Board's consideration.

DATES: The first meeting will be held on August 3, 2000, from 9:00 a.m. until 1:00 p.m.

ADDRESSES: The meeting will be held at the National Contract Management Association, 1912 Woodford Drive, Vienna, VA 22182. Directions may be found on the Intenet at http://www.acq.osd.mil/dp/cpf.

FOR FURTHER INFORMATION CONTACT: Mr. David Capitano, Office of Cost, Pricing, and Finance, by telephone at (703) 695–9764, by FAX at (703) 693–9616, or by e-mail at capitadj@acq.osd.mil.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 00–18251 Filed 7–18–00; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program, Scientific Advisory Board

ACTION: Notice.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee meeting:

Date of Meeting: August 9, 2000 from 0830 to 1710 and August 10, 2000 from 0830 to 1615.

Place: National Rural Electric Cooperative Association, 4301 Wilson Boulevard, Conference Center Room 1, Arlington, VA.

Matters to be Considered: Research and Development proposals and continuing projects requesting Strategic Environmental Research and Development Program funds in excess of $1M will be reviewed.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

FOR FURTHER INFORMATION CONTACT: Ms. Veronica Rice, SERDP Program Office, 901 North Stuart Street, Suite 303, Arlington, VA or by telephone at (703) 696–2119.

Dated: July 13, 2000.

C.M. Robinson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–18192 Filed 7–18–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to Add a System of Records.

SUMMARY: The Department of the Navy proposes to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective on August 18, 2000 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted on July 6, 2000, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996, (61 FR 6427, February 20, 1996).

Dated: July 13, 2000.

C.M. Robinson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01070–5

SYSTEM NAME:

Database of Retired Navy Flag Officers.

SYSTEM LOCATION:

Office of the Chief of Naval Operations (N09BC), 2000 Navy Pentagon, Washington, DC 20350–2000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Retired Navy Flag Officers who voluntarily request to be part of the Retired Flag Officer Web Site.

CATEGORIES OF RECORDS IN THE SYSTEM:

The file contains personal and professional information, such as full name and nickname, rank, work and/or home address, home and/or office telephone/FAX/pager numbers, e-mail address, and spouse's name.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations.

PURPOSE(S):

To maintain a directory of retired Navy flag officers for the purpose of providing briefings and outreach materials, and facilitating interaction between retired and active duty Navy flag officers via a limited access web site.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computerized data base.

RETRIEVABILITY:

Individual's name.

SAFEGUARDS:

Computerized data base is password protected and access is limited. The office is locked at the close of business.

The office is located in the Pentagon which is guarded.

RETENTION AND DISPOSAL:

Records are kept until the person is deceased or the person seeks removal of information, whichever is sooner.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Naval Operations (N09BC), 2000 Navy Pentagon, Washington, DC 20350–2000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Chief of Naval Operations (N09BC), 2000 Navy Pentagon, Washington, DC 20350–2000.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Chief of Naval Operations (N09BC), 2000 Navy Pentagon, Washington, DC 20350–2000.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 00–18191 Filed 7–18–00; 8:45 am]
BILLING CODE 5001–10–F

DEPARTMENT OF ENERGY

Revision to the Record of Decision on the Proposed Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel

AGENCY: Department of Energy.

ACTION: Revision to Record of Decision.

SUMMARY: The Department of Energy (DOE), pursuant to 10 CFR 1021.315, is revising the Record of Decision issued on May 13, 1996 (61 FR 25092) to allow the shipment of up to sixteen casks of spent nuclear fuel on a single ocean-going vessel transporting foreign research reactor spent nuclear fuel to the United States. That Record of Decision was issued after completion of the Environmental Impact Statement on the Proposed Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel, DOE–218F, February 1996 (The Final EIS).

FOR FURTHER INFORMATION CONTACT: For further information on the DOE program for the management of foreign research reactor spent nuclear fuel or the Record of Decision, contact: Mr. David G. Huizenga, Deputy Assistant Secretary for Integration and Disposition, Office of Environmental Management (EM–20), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–5151. For information on DOE's National Environmental Policy Act (NEPA) process, contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, telephone (202) 586–4600, or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

I. Background

DOE, in consultation with the Department of State, issued the Final EIS in February 1996. The Final EIS considered the potential environmental impacts of a proposed policy to manage spent nuclear fuel and target material from foreign research reactors. The Record of Decision was issued on May 13, 1996, and was published in the **Federal Register** on May 17, 1996 (61 FR 25092). In the Record of Decision, DOE announced the decision to implement the proposed policy as identified in the Preferred Alternative contained in the Final EIS, subject to additional stipulations specified in Section VII of the Record of Decision. Three revisions to the Record of Decision have been issued, one regarding taking title of the spent fuel at locations other than the U.S. port of entry for countries with other-than-high-income economies, and the other two regarding the fee policy for acceptance of foreign research reactor spent nuclear fuel (61 FR 38720, July 25, 1996; 61 FR 26507, May 28, 1996; and 64 FR 18006, April 13, 1999, respectively).

II. Reason for This Revision

The May 1996 Record of Decision limits the number of casks containing spent nuclear fuel on a single ocean-going vessel to eight. Based upon the experience gained during the implementation of the Foreign Research Reactor Spent Nuclear Fuel Acceptance Program, DOE has come to recognize that a need may arise during implementation of the policy for the United States to ship up to sixteen casks of spent nuclear fuel on a single ocean-going vessel.

DOE committed in the Record of Decision, and in subsequent discussions with representatives of the state and local jurisdictions through which spent nuclear fuel foreign research reactors is transported, to minimize the number of spent fuel shipments made over the 13-year period of the acceptance program. At the time those commitments were made, the worldwide supply of spent fuel casks available for use in transporting foreign research reactor spent nuclear fuel was very limited, and thus DOE forecasted that no more than eight casks could be made available to support any one shipment. Subsequent to the issuance of the Record of Decision, however, the worldwide supply of spent fuel casks has increased to the point where it is possible to transport more than eight casks on a single ocean-going vessel. As a planning basis, DOE believes that it would now be possible to transport up to 16 casks on a single ocean-going vessel.

DOE has reviewed the potential environmental impacts of transporting up to 16 casks on a single ocean-going vessel and compared the potential impacts with the analysis in the Final EIS, as part of a Supplement Analysis that DOE prepared in accordance with 10 CFR 1021.314 (Supplement Analysis of Acceptance of Foreign Research Reactor Spent Nuclear Fuel Under Scenarios Not Specifically Mentioned in the EIS, DOE/EIS–0218–SA–2, issued August 1998). Based on that Supplement Analysis, DOE determined that the potential environmental impacts of transporting up to 16 casks would be less than the impact estimated in the Final EIS, and that a supplement to the Final EIS is not required.

For example, the Supplement Analysis concludes that increasing the number of casks per vessel from eight to sixteen would not effect the radiological risk from accidents. The Supplement Analysis also concludes that the potential incident-free radiological risk would be expected to remain essentially the same for the program, but increase slightly on a per voyage basis. However, as the Supplement Analysis explains, experience has shown that the Final EIS estimates of doses during daily spent fuel inspections aboard ship were very conservative (i.e. tending to overstate risk). To date, all exposures of ship personnel have been well below the regulatory limit and well within the conservative estimates made in the Final EIS. Nevertheless, DOE will continue to implement the mitigative measures outlined in the Mitigation Action Plan that will prevent ships'

crews from receiving doses greater than those allowed by regulatory limits.

The use of up to sixteen casks per shipment would not change the total number of spent fuel casks or elements that will be accepted by DOE over the term of the acceptance program. Because the total number of spent fuel casks to be accepted remains the same, and the incident free and accident risks of transporting up to sixteen casks would not be materially different from the risks of transporting eight casks, DOE has concluded that the impacts from shipping up to sixteen casks on a single vessel, and subsequent train or truck shipments, would be within the bounds of potential environmental impacts discussed in the Final EIS. Further, adding up to eight more casks per shipment whenever possible would better promote the commitment set forth in the Record of Decision to reduce the number of spent fuel shipments.

For the reasons set forth above, Section VII ("Decision"), Paragraph A, of the Record of Decision issued on May 13, 1996, is revised to read as follows:

A. DOE will reduce the number of shipments necessary by coordinating shipments from several reactors at a time (*i.e.*, by placing multiple casks [up to sixteen] on a ship). DOE currently estimates that a maximum of approximately 150 to 300 shipments through the Charleston Naval Weapons Station and five shipments through the Concord Naval Weapons Station will be necessary during the 13 year spent fuel acceptance period.

In addition, Section VIII ("Use of All Practicable Means to Avoid or Minimize Harm"), Paragraph C of the Record of Decision is revised to read as follows:

C. DOE will reduce the risk associated with shipment of the spent fuel by shipping multiple casks per shipment, up to a maximum of sixteen, whenever possible, thus reducing the total number of shipments.

Issued in Washington, D.C., this 10th day of July, 2000.

Carolyn L. Huntoon,

Assistant Secretary for Environmental Management.

[FR Doc. 00–18229 Filed 7–18–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, August 8, 2000, 6 p.m.–9:30 p.m.

ADDRESSES: College Hill Library, Front Range Community College, 3705 West 112th Avenue, Westminster, CO 80021.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855; fax (303) 420–7579.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Conversation with new site manager, Barbara Mazurowski.
2. Presentation on Rocky Flats Closure Project Baseline.
3. Update by the Defense Nuclear Facilities Safety Board.
4. Other Board business may be conducted as necessary.

Public Participation

The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting.

Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda.

The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays.

Minutes will also be available at the Public Reading Room located at the Board's office at 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855. Hours of operation for the Public Reading Room are 9 a.m. to 4 p.m. Monday–Friday. Minutes will also be made available by writing or calling Deb Thompson at the address or telephone number listed above.

Issued at Washington, DC on July 14, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–18227 Filed 7–18–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB) Oak Ridge. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Friday, August 11, 2000, 3 p.m.–9 p.m.

ADDRESSES: Best Western Valley View Lodge, 7726 E. Lamar Alexander Pkwy., Townsend, TN.

FOR FURTHER INFORMATION CONTACT: Dave Adler, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831; phone (865) 576–4094; fax (865) 576–9121, or e-mail: adlerdg@oro.doe.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Training on various laws and regulations and risk assessment issues pertaining to environmental management cleanup efforts will be provided.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Dave Adler at the

address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda.

The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the end of the meeting.

Minutes

Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 7:30 a.m. and 5:30 p.m., Monday through Friday, or by writing to Dave Adler, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, or by calling him at (865) 576–4094.

Issued at Washington, DC on July 14, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–18228 Filed 7–18–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy; Orders Granting and Amending Authority To Import and Export Natural Gas, Including Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during June 2000, it issued Orders granting and amending authority to import and export natural gas, including liquefied natural gas. These Orders are summarized in the attached appendix and may be found on the FE web site at http://www.fe.doe.gov, or on the electronic bulletin board at (202) 586–7853. They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on July 13, 2000.

John W. Glynn,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum, Import & Export Activities, Office of Fossil Energy.

Appendix—Orders Granting and Amending Import/Export Authorizations

Order No.	Date issued	Importer/Exporter FE Docket No.	Import volume	Export volume	Comments
1600	06/06/00	IGI Resources, Inc., 00–39–NG	350 Bcf		Import from Canada beginning on August 1, 2000, and extending through July 31, 2002.
1601	06/08/00	Coral Energy Resources, L.P., 00–38–NG	730 Bcf	730 Bcf	Import combined total, including LNG, from Canada and Mexico, and export combined total, including LNG, to Canada and Mexico, beginning on July 1, 2000, and extending through June 30, 2002.
1602	06/13/00	WGR Canada, Inc., 00–40–NG	73 Bcf	73 Bcf	Import and export from and to Canada beginning on July 14, 2000, and extending through July 13, 2002.
1603	06/13/00	Duke Energy LNG Marketing and Management Company, 00–41–LNG.	700 Bcf		Import LNG from various international sources to existing facilities in the U.S. and its territories, over a two-year term beginning on June 13, 2000, and extending through June 12, 2002.
1604	06/14/00	Fortuna (U.S.) Inc., 00–37–NG	75 Bcf		Import and export a combined total from and to Canada, over a two-year term beginning on the date of first delivery.
1151–B	06/14/00	Hess Energy Inc. (Successor to Statoil Energy Services, Inc.), 96–02–NG.			Transfer of long-term import authority.
1440–A	06/14/00	Hess Energy Inc. (Successor to Statoil Energy Services, Inc.), 98–95–NG.			Transfer of blanket import and export authority.
1152–B	06/14/00	Hess Energy Inc. (Successor to Statoil Energy Services, Inc.), 96–03–NG.			Transfer of long-term import authority.
1569–A	06/16/00	Alliance Pipeline L.P., 00–08–NG	Increase of 41.2 Bcf.		Increase in volumes to blanket import authority.
261–F	06/20/00	Phillips Alaska Natural Gas Corporation and Marathon Oil Company: 88–22–LNG, 96–99–LNG.			Amendment to price formula April 1, 1998, through March 1, 2009.
1605	06/21/00	Premstar Energy Canada Ltd., 00–42–NG	400 Bcf		Import and export a combined total from and to Canada beginning on July 1, 2000, and extending through June 30, 2002.
1606	06/23/00	St. Lawrence Gas Company, Inc., 00–43–NG.	16.3 Bcf		Import from Canada beginning on July 26, 2000, and extending through July 25, 2002.
1581–A	06/28/00	Anadarko Energy Services Company, 00–20–NG.	100 Bcf		Amendment to include import of LNG from various international sources to existing facilities in the U.S. and its territories through April 30, 2002.

Order No.	Date issued	Importer/Exporter FE Docket No.	Import volume	Export volume	Comments
1607	06/30/00	New York State Electric & Gas Corporation, 00–45–NG.	(1) 50 Bcf	.....	Import and export a combined total from and to Canada beginning on July 1, 2000, and extending through June 30, 2002.

[FR Doc. 00–18230 Filed 7–18–00; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2737]

Central Vermont Public Service Corporation; Notice of Authorization for Continued Project Operation

July 13, 2000

On June 25, 1998, Central Vermont Public Service Corporation, licensee for the Middlebury Lower Project No. 2737, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2737 is located on Otter Creek in Addison County, Vermont.

The license for Project No. 2737 was issued for a period ending June 30, 2000. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to Section 15 of the FPA, notice is hereby given that an annual license for Project No. 2737 is issued to for a period effective July 1, 2000, through June 30, 2001, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before June 30, 2001, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under Section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that Central Vermont Public Service Corporation is authorized to continue operation of the Middlebury Lower Project No. 2737 until such time as the Commission acts on its application for subsequent license.

David P. Boergers,

Secretary.

[FR Doc. 00–18207 Filed 7–18–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2110]

Consolidated Water Power Company; Notice of Authorization for Continued Project Operation

July 13, 2000.

On June 26, 1998, Consolidated Water Power Company, licensee for the Stevens Point Project No. 2110, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2110 is located on the Wisconsin River in the Town of Stevens Point, Portage County, Wisconsin.

The license for Project No. 2110 was issued for a period ending June 30, 2000. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2110 is issued to for a period effective July 1, 2000, through June 30, 2001, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before June 30, 2001, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under Section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that Consolidated Water Power Company is authorized to continue operation of the Stevens Point Project No. 2110 until such time as the Commission acts on its application for subsequent license.

David P. Boergers,

Secretary.

[FR Doc. 00–18203 Filed 7–18–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2192]

Consolidated Water Power Company; Notice of Authorization for Continued Project Operation

July 13, 2000

On June 26, 1998, Consolidated Water Power Company, licensee for the Biron Project No. 2192, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2192 is located on the Wisconsin River in Wood and Portage Counties, Wisconsin.

The license for Project No. 2192 was issued for a period ending June 30, 2000. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to Section 15 of the FPA, notice is hereby given that an annual license for Project No. 2192 is issued to for a period effective July 1, 2000, through June 30, 2001, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before June 30, 2001, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that Consolidated Water Power Company is authorized to continue operation of the Biron Project No. 2192 until such time as the Commission acts on its application for subsequent license.

David P. Boergers,

Secretary.

[FR Doc. 00–18205 Filed 7–18–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT00–34–000]

Dauphin Island Gathering Partners; Notice of Proposed Change in FERC Gas Tariff

July 13, 2000.

Take notice that on July 7, 2000, Dauphin Island Gathering Partners (DIGP) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed below to become effective August 7, 2000.

First Revised Sheet No. 2
First Revised Sheet No. 3
Original Sheet No. 359
Original Sheet No. 427

DIGP states that the revised tariff sheets reflect the Commission's Regulations which state that any contract or executed service agreement that deviates in any material aspect from the form of service agreement must be filed with the Commission and such nonconforming agreement must be referenced in the pipeline's tariff.

DIGP states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–18199 Filed 7–18–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–382–000]

Iroquois Gas Transmission System L.P.; Notice of Fuel Calculations

July 13, 2000.

Take notice that on June 30, 2000, Iroquois Gas Transmission System L.P., (Iroquois) tendered for filing schedules with reflect calculations supporting the Measurement Variance/Fuel Use Factors utilized by Iroquois during the period January 1, 2000 through June 30, 2000.

Iroquois states that the schedules include calculations supporting each of the following three components of Iroquois' composite Measurement Variance/Fuel Use Factor:

1. Lost and unaccounted-for gas (Measurement Variance Factor);
2. Fuel use associated with the transportation of gas by others on behalf of Iroquois (Account 858 Fuel Use Factor); and
3. Fuel use associated with the transportation of gas on Iroquois' pipeline system (Account 854 Fuel Use Factor).

Iroquois states the Account 858 Fuel Use Factor was implemented effective September 1, 1993, and includes the tracking of Account No. 858 fuel effective August 20, 1993; as approved by the Commission in Docket No. RP93–8–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before July 20, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference

Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–18208 Filed 7–18–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 420]

City of Ketchikan; Notice of Authorization for Continued Project Operation

July 13, 2000.

On June 30, 1998, the City of Ketchikan, licensee for the Ketchikan Lakes Project No. 420, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 420 is located on Ketchikan Creek within and adjacent to the City of Ketchikan, Alaska.

The license for Project No. 420 was issued for a period ending June 30, 2000. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 15 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission act on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to Section 15 of the FPA, notice is hereby given that an annual license for Project No. 420 is issued to the City of Ketchikan for a period effective July 1, 2000, through June 30, 2001, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before June 30, 2001, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order ot notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that the City of Ketchikan is authorized to continue operation of the Ketchikan Lakes Project No. 420 until such time as the Commission acts on its application for subsequent license.

David P. Boergers,

Secretary.

[FR Doc. 00–18200 Filed 7–18–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2567]

Northern States Power Company; Notice of Authorization for Continued Project Operation

July 13, 2000.

On June 18, 1998, Northern States Power Company, licensee for the Wissota Project No. 2567, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2567 is located on the Chippewa River in Chippewa County, Wisconsin.

The license for Project No. 2567 was issued for a period ending June 30, 2000. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordacne with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2567 is issued to for a period effective July 1, 2000, through June 30, 2001, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before June 30, 2001, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that Northern States Power Company is authorized to continue operation of the Wissota Project No. 2567 until such time as the Commission acts on its application for subsequent license.

David P. Boergers,

Secretary.

[FR Doc. 00–18206 Filed 7–18–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2161]

Rhinelander Paper Company; Notice of Authorization for Continued Project Operation

July 13, 2000.

On June 26, 1998, Rhinelander Paper Company, licensee for the Rhinelander Project No. 2161, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2161 is located on the Wisconsin River in the Town of Rhinelander, Oneida County, Wisconsin.

The license for Project No. 2161 was issued for a period ending June 30, 2000. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the

prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2161 is issued to for a period effective July 1, 2000, through June 30, 2001, or until the issue of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before June 30, 2001, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Rhinelander Paper Company is authorized to continue operation of the Rhinelander Project No. 2161 until such time as the Commission acts on its application for subsequent license.

David P. Boergers,

Secretary.

[FR Doc. 00–18204 Filed 7–18–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1895]

South Carolina Electric and Gas Company; Notice of Authorization for Continued Project Operation

July 13, 2000.

On June 30, 1998, South Carolina Electric and Gas Company, licensee for the Columbia Project No. 1895, filed an application for a new or subsequent license pursuant to the Federal Act (FPA) and the Commission's regulations thereunder. Project No. 1895 is located on the Broad and Congaree Rivers in Richland County and the City of Columbia, South Carolina.

The license for Project No. 1895 was issued for a period ending June 30, 2000. Section 15(a)(1) of the EPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the projects's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to Section 15 of the FPA, notice is hereby given that an annual license for Project No. 1895 is issued to South Carolina Electric and Gas Company for a period effective July 1, 2000, through June 30, 2001, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before June 30, 2001, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that South Carolina Electric and Gas Company is authorized to continue operation of the Columbia Project No. 1895 until such time as the Commission acts on its application for subsequent license.

David P. Boergers,

Secretary.

[FR Doc. 00–18201 Filed 7–18–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES00–48–000, et al.]

Texas-New Mexico Power Company, et al.; Electric Rate and Corporate Regulation Filings

July 12, 2000.

Take notice that the following filings have been made with the Commission:

1. Texas-New Mexico Power Company

[Docket No. ES00–48–000]

Take notice that on June 29, 2000, Texas-New Mexico Power Company submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to make short-term borrowings under a bank syndicated revolving credit agreement in an amount not to exceed $325 million.

Comment date: August 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Citizens Utilities Company

[Docket No. ER00–3078–000]

Take notice that on July 6, 2000, Citizens Utilities Company (Citizens), tendered for filing on behalf of itself and The Legacy Energy Group, LLC, a Service Agreement for Non-Firm Point-to-Point Transmission Service under Citizens' Open Access Transmission Tariff. Also Citizens tendered for filing a revised Attachment E, Index of Point-to-Point Transmission Service Customers to update the Open Access Transmission Tariff of the Vermont Electric Division of Citizens Utilities Company.

Comment date: July 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. K2 Development LLC

[Docket No. ER00–3092–000]

Take notice that on July 6, 2000, K2 Development LLC, tendered a Notice of Name Change pursuant to Sections 35.16 and 131.51 of the Commission's Regulations, 18 CFR 35.16 and 131.51.

Comment date: July 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Ameren Services Company

[Docket No. ER00–3093–000]

Take notice that on July 7, 2000, Ameren Services Company (ASC), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Services between ASC and Entergy Power Marketing Corp. (Entergy). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to Entergy pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

Comment date: July 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Consumers Energy Company and International Transmission Company

[Docket No. ER00–3094–000]

Take notice that on July 7, 2000, Consumers Energy Company and International Transmission Company tendered for filing their joint open access transmission tariff, Original Volume 1, pursuant to Section 205 of the Federal Power Act, 16 U.S.C. 824d (1994).

Comment date: July 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–18171 Filed 7–18–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

July 13, 2000.

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.:* 2047–004.

c. *Date filed:* June 23, 1998.

d. *Applicant:* Erie Boulevard Hydropower, L.P..

e. *Name of Project:* Stewarts Bridge Hydroelectric Project.

f. *Location:* On the Sacandaga River, about 3 miles upstream from its confluence with the Hudson River, in the town of Hadley, Saratoga County, New York. The project would not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Jerry L. Sabattis, Hydro Licensing Coordinator, 225 Greenfield Parkway, Suite 201, Liverpool, New York 13088, (315) 413–2787.

i. *FERC Contact:* Lee Emery, E-mail address, Lee.Emery@ferc.fed.us, or telephone (202) 219–2779.

j. Deadline for comments, recommendations, terms and conditions, and prescriptions: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervener filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Status of environmental analysis: This application has been accepted for filing and is ready for environmental analysis at this time.

l. Description of the Project: The existing, operating project consists of: (1) A 1,860-foot-long dam consisting of: (a) A 1,646-foot-long rolled, compacted earth-fill structure 112 feet high at its highest point (crest elevation of 714.0 feet) with a base that varies from 120 feet to 680 feet in width; (b) a reinforced concrete Taintor gate spillway measuring 151 feet long, 49.7 feet wide, and 34 feet high, containing five 27-foot-long by 14.5-foot-high steel Taintor gates; (c) a 63-foot-long reinforced concrete intake structure equipped with two 25-foot-high by 22-foot-wide steel gates with 3⅝-inch clear spaced steel bar trashracks located directly in front of the gates; and (d) a 29-foot-wide roadway along the crest of the dam; (2) a reservoir (Stewart's Bridge Reservoir) with a surface area of 480 acres at a normal water surface elevation of 705.0 feet National Geodetic Vertical Datum; (3) a 10-foot-diameter, plugged diversion conduit used to pass river flows during project construction; (4) an 850-foot-long plastic concrete seepage barrier constructed through the impervious dam core; (5) a 216-foot-long, 22-foot inside diameter steel penstock; (6) an 88-foot-long by 78-foot-wide brick-faced structural steel framed powerhouse with one vertical Francis turbine/generator unit; (7) a tailrace which extends 450 feet downstream from the powerhouse; (8) an outdoor transformer, switching station, and 400-foot-long transmission line; and (9) appurtenant facilities. There is no bypassed reach. The project has an installed capacity of 30.0 megawatts and an annual average energy production of 118,678 megawatt hours.

The project currently operates as a peaking facility in tandem with the upstream E.J. West Project (P–2318), generating 12 hours a day (typically between 8 AM to 10 PM). Daily reservoir fluctuations are less than one foot most of the year except for maintenance drawdowns that approach 15 feet and are timed to coincide with the drawdowns of Great Sacandaga Lake which begin in mid-March.

m. Locations of the Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h. above.

Filing and Service or Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments,

recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) Bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS", "TERMS AND CONDITIONS", or "PRESCRIPTIONS"; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required 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 Environmental Engineering Review, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

David P. Boergers,

Secretary.

[FR Doc. 00–18202 Filed 7–18–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6837–4]

Final Notification of Alternative Tier 2 Requirements for Methylcyclopentadienyl Manganese Tricarbonyl (MMT)

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The purpose of this notice is to announce that the Environmental Protection Agency (EPA) has notified the Ethyl Corporation (Ethyl), manufacturer of the motor fuel additive methylcyclopentadienyl manganese tricarbonyl (MMT), and other affected registrants of motor fuels and additives containing MMT, of Alternative Tier 2 health and exposure testing requirements.

DATES: The Alternative Tier 2 testing requirements for MMT are effective upon receipt by Ethyl of the notification letter discussed in this notice.

ADDRESSES: Written requests for information regarding this notification should be addressed to Public Docket Number A–98–35, Waterside Mall (Room M–1500), Environmental Protection Agency, Air Docket Section, 401 M Street, SW, Washington, DC 20460. A copy of the notification transmitted to Ethyl and the notification transmitted to other affected registrants have been placed in Docket A–98–35. Documents may be inspected between the hours of 8:00 a.m. to 5:30 p.m., Monday through Friday. A reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT: Joseph R. Sopata, Chemist, U.S. Environmental Protection Agency, Office of Air and Radiation, (202) 564–9034.

SUPPLEMENTARY INFORMATION:

Regulated Entities.

Entities who may be regulated pursuant to the notifications referenced in this notice are those that manufacture or use the fuel additive MMT. Regulated categories and entities include:

Category	Examples of regulated entities	SIC Codes
Industry	The Ethyl Corporation, petroleum refiners, gasoline importers, fuel additive manufacturers.	2911, 5172, 2899.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA has concluded could potentially be regulated pursuant to the notifications. Other types of entities not listed in this table could also be regulated. If you have any questions regarding the applicability of the notifications to a particular entity, consult the person listed in the preceding section dealing with EPA contacts.

I. Introduction

The Clean Air Act (CAA), as amended, required the Administrator of EPA to promulgate regulations requiring manufacturers of fuels and fuel additives ("F/FAs") to conduct tests to determine potential health effects of such products. The final rule, promulgated on May 27, 1994, established new health effects testing requirements for the registration of designated F/FAs as authorized by CAA sections 211(b)(2) and 211(e) of the CAA.

The registration requirements are organized within a three-tier structure. Tier 1 requires F/FA manufacturers to supply to EPA (1) the identity and concentration of certain emission products of designated F/FAs and an analysis of potential emission exposures, and (2) any available information regarding the health and welfare effects of the whole and speciated emissions. 40 CFR 79.52. Tier 2 requires that combustion emissions of each F/FA subject to the testing requirements be tested for subchronic systemic and organic toxicity, as well as the assessment of specific health effect endpoints. 40 CFR 79.53. Tier 3 testing may be required, at EPA's discretion, when remaining uncertainties as to the significance of observed health or welfare effects, or emissions exposures interfere with EPA's ability to reasonably assess the potential risks posed by emissions from a F/FA. 40 CFR 79.54. EPA's regulations permit submission of adequate existing test

data in lieu of conducting new duplicative tests. 40 CFR 79.53(b).

At its discretion, EPA may modify the standard Tier 2 health effects testing requirements for a F/FA (or group thereof) by substituting, adding, or deleting testing requirements, or changing the underlying vehicle/engine specifications. 40 CFR 79.58(c). EPA will not, however, delete a testing requirement for a specific endpoint in the absence of existing adequate information, or an alternative testing requirement for that endpoint. 40 CFR 79.58(c). When EPA exercises its authority under this special provision, it will allow an appropriate time for completion of the prescribed alternative tests.

II. Proposed Alternative Tier 2 Requirements for MMT

On January 29, 1999, Ethyl was notified by certified letter of certain tests which the Agency proposed to require under the Alternative Tier 2 provisions for MMT, and the proposed schedule for completion and submission of such tests. Other affected registrants of fuels and fuel additives containing MMT were also notified by certified letter. An associated **Federal Register** notice (64 FR 6294) initiated a 60-day public comment period. Copies of the documents associated with the proposed tests and schedule under the Alternative Tier 2 provisions have been placed in the docket.

The purpose of this notice is to announce that the Environmental Protection Agency (EPA) has notified Ethyl, the manufacturer of MMT, and other affected registrants of fuels and additives containing MMT, of the adoption of Alternative Tier 2 testing requirements under 40 CFR 79.58(c) for fuels containing up to 1/32 gram per gallon (gpg) manganese in the form of MMT.

The purpose of the Alternative Tier 2 test requirements is to address specific research needs related to assessment of the potential risks associated with use of fuels containing MMT. The Alternative Tier 2 test requirements are within two general categories, pharmacokinetic testing of manganese compounds and characterization of manganese emissions from vehicles utilizing fuels containing MMT. These Alternative Tier 2 testing requirements are intended to be the first stage in a two-stage Alternative Tier 2 test program. EPA intends to evaluate the results produced in the first stage of testing, as well as any other information which may be submitted to or obtained by EPA in the meantime, in determining the specific nature and scope of the second stage of Alternative Tier 2 testing. Any additional Alternative Tier 2 tests proposed for fuels and additives containing MMT in the future will be announced in a separate **Federal Register** notice.

On May 19, 2000, Ethyl was notified by a certified letter of the specific tests which the Agency is requiring under the Alternative Tier 2 provisions for MMT, and the schedule for completion and submission of such tests. Other affected registrants of fuels and additives containing MMT were also notified by certified letter. A copy of the notification to Ethyl and the notification to other registrants, including a description of the Alternative Tier 2 tests and the schedule for such tests, has been placed in the Public Docket Number A–98–35, Waterside Mall (Room M–1500), Environmental Protection Agency, Air Docket Section, 401 M Street, SW, Washington, DC 20460. The notifications are also available on the internet via EPA's Mobile Source home page at *http://www.epa.gov/OMSWWW/*.

III. Environmental Impact

EPA's health effects testing notifications for MMT will result in no immediate environmental impact. Section 211(c) of the CAA, however, authorizes EPA to take regulatory action to control or prohibit manufacture or sale of fuels and fuel additives if testing information submitted by registrants or other information available to EPA indicates that use of such products may be reasonably anticipated to endanger public health or welfare. Thus, information obtained from health effects testing conducted by manufacturers of F/FAs may provide a basis for subsequent regulatory action.

IV. Economic Impact

The testing requirements which are the subject of this notice will have a potential economic impact on the affected registrants, who are obligated to make expenditures to conduct any required testing. EPA does not anticipate that there will be any direct economic impact on registrants of fuels and additives containing MMT other than Ethyl, because Ethyl has stated that it will be responsible for satisfying any test requirements imposed by EPA for the group of fuels and additives containing MMT.

The regulations at 40 CFR 79.58(d) also contain special provisions limiting testing obligations for those fuel or fuel additive manufacturers whose total annual sales are less than $10 million. EPA does not believe that the testing requirements which are the subject of these notifications will have any economic impact on small entities.

List of Subjects in 40 CFR Part 79

Environmental protection, Air pollution control, Gasoline, Conventional gasoline, Methylcyclopentadienyl manganese tricarbonyl, and Motor vehicle pollution.

Dated: June 20, 2000.

Robert A. Perciasepe,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 00–18276 Filed 7–18–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–100159; FRL–6597–5]

The Cadmus Group, Inc.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be tranferred to The Cadmus Group, Inc. in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). The Cadmus Group, Inc. has been awarded multiple contracts to perform work for OPP and the Office of Water (OW). Access to this information will enable The Cadmus Group, Inc. to fulfill the obligations of the contract.

DATES: The Cadmus Group, Inc. will be given access to this information on or before July 24, 2000.

FOR FURTHER INFORMATION CONTACT: By mail: Erik R. Johnson, FIFRA Security Officer, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–305–7248; e-mail address: johnson.erik@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific

entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

II. Contractor Requirements

Under contract number 68–C0–0113 work assignment 009, the contractor will perform the following:

Review the Environmental Fate and Effects Division's (EFED) carbofuran RED chapter; review other pertinent documents; participate in conference calls with the Work Assignment Manager (WAM), the Probabilistic Risk Assessment Implementation Team; develops methods for conducting probabilistic risk assessments; develop data input distributions for probabilistic risk assessments for designated agricultural crops (using methods discussed and agreed upon with the WAM) and provide supporting model development and other technical aspects of risk assessment development including literature searches, data extraction, interpretation and analysis to complete the quantitative risk assessment.

These contracts involve no subcontractors.

The OPP has determined that the contracts described in this document involve work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under the contracts. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contracts with The Cadmus Group, Inc., prohibits use of the information for any purpose not specified in these contracts; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, The Cadmus Group, Inc. is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to The Cadmus Group, Inc. until the requirements in this document have been fully satisfied. Records of information provided to The Cadmus Group, Inc. will be maintained by EPA Project Officers for these contracts. All information supplied to The Cadmus Group, Inc. by EPA for use in connection with these contracts will be returned to EPA when The Cadmus Group, Inc. has completed its work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: July 6, 2000.

Richard D. Schmitt,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 00–18152 Filed 7–18–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–100158; FRL–6597–2]

GRAM, Inc.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be transferred to GRAM, Inc. in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). GRAM, Inc. has been awarded multiple contracts to perform work for the Office of Water (OW). Access to this information will enable GRAM, Inc. to fulfill the obligations of the contracts.

DATES: GRAM, Inc. will be given access to this information on or before July 26, 2000.

FOR FURTHER INFORMATION CONTACT: By mail: Erik R. Johnson, FIFRA Security Officer, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–305–7248; e-mail address: johnson.erik@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

II. Contractor Requirements

Under contract number 68–C9–9232, work assignment B–17, the contractor will perform the following: Provide technical and regulatory support services to the Health and Ecological Criteria Division (HECD) in the Office of Water's Office of Science and Technology (OST) during the development of human health criteria, health advisories, maximum contaminate level goals, and pollutant limits, and to conduct laboratory and/or field studies and/or derive from the published literature detailed and comprehensive data bases for microbiological pollutants encountered in drinking water, ambient water, wastewater/sewage sludge, sediment/dredge spoils, fish, wildlife and sewage sludge for the EPA.

These contracts involve no subcontractors.

OPP has determined that the contracts described in this document involve

work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under the contracts. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contracts with GRAM, Inc., prohibits use of the information for any purpose not specified in these contracts; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, GRAM, Inc., is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to GRAM, Inc., until the requirements in this document have been fully satisfied. Records of information provided to GRAM, Inc., will be maintained by EPA Project Officers for these contracts. All information supplied to GRAM, Inc., by EPA for use in connection with these contracts will be returned to EPA when, Inc., has completed its work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: July 6, 2000.

Richard D. Schmitt,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 00–18153 Filed 7–18–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–100160; FRL–6597–8]

Oracle Corporation; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be transferred to Oracle Corporation in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). Oracle Corporation has been awarded multiple contracts to perform work for OPP, and access to this information will enable Oracle Corporation to fulfill the obligations of the contract.

DATES: Oracle Corporation will be given access to this information on or before July 24, 2000.

FOR FURTHER INFORMATION CONTACT: By mail: Erik R. Johnson, FIFRA Security Officer, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–305–7248; e-mail address: johnson.erik@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT."**

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

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

II. Contractor Requirements

Under contract number GS–35F–0108J, Blanket Purchase Agreement Number: OD–5038–NBLX, the contractor will perform the following:

Oracle Corporation will provide technical and operational support services to OPP in support of the migration of OPP systems to the Oracle environment in order to make OPP information readily available to OPP personnel via the LAN and external customers via the Internet and electronic bulletin boards. The contractor will provide or acquire the personnel to complete the following tasks:

- Assistance with general Oracle data base management and administration.
- Assistance with the development of an enterprise model for OPP systems.
- Assistance with development of the data model and object design for each module of the OPP system.
- Applications development for data accessibility by OPP LAN users and by the general public via the Internet and electronic bulletin boards.
- Systems installations and implementation.

These contracts involves no subcontractors.

EPA has determined that the contracts described in this document involve work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under the contracts. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contracts with Oracle Corporation, prohibits use of the information for any purpose not specified in these contracts; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, Oracle Corporation is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to Oracle Corporation until the requirements in this document have been fully satisfied. Records of information provided to Oracle Corporation will be maintained by EPA Project Officers for these contracts. All information supplied to Oracle Corporation by EPA for use in connection with these contracts will be returned to EPA when Oracle Corporation has completed its work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: July 10, 2000.

Richard D. Schmitt,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 00–18154 Filed 7–18–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00295; FRL–6596–2]

Request for Contractor Access to TSCA Confidential Business Information; Request for Comment on Renewal of Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), EPA is seeking public comment and information on the following Information Collection Request (ICR): Request for Contractor Access to TSCA Confidential Business Information (EPA ICR No. 1250.05, OMB No. 2070–0075). This ICR involves a collection activity that is currently approved and scheduled to expire on December 31, 2000. The information collected under this ICR helps EPA evaluate the suitability of employees of firms under contract to EPA for access to TSCA Confidential Business Information (CBI), thereby helping to protect the confidentiality of information submitted to EPA by industry. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket control number OPPTS–00295 and administrative record number AR–229, must be received on or before September 18, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–00295 and administrative record number AR–229 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Deborah Williams, Information Management Division (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–1734; fax number: (202) 260–1657; e-mail address: williams.deborah@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you are a company working under contract to the Federal government whose employees need access to TSCA CBI, or if you are an employee of such a company. Potentially affected categories and entities may include, but are not limited to:

Type of business	SIC codes
Help Supply Services	7363
Computer Facilities Management Services	7376
Management Consulting Services	8742
Facilities Support Management Services	8744
Services, Not Elsewhere Classified	8999

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

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

A. Electronically

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

B. Fax-on-Demand

Using a faxphone call (202) 401–0527 and select item 4082 for a copy of the ICR.

C. In Person

The Agency has established an official record for this action under docket control number OPPTS–00295 and administrative record number AR–229. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as CBI. This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m.; Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

III. How Can I Respond to this Action?

A. How and to Whom Do I Submit the Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–00295 and administrative record number AR–229 on the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics

(OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically.* Submit your comments and/or data electronically by e-mail to: "oppt.ncic@epa.gov," or submit your computer disk to the address identified in Units III.A.1. and 2. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–00295 and administrative record number AR–229. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI that I Want to Submit to the Agency?

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

C. What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number and administrative record number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

D. In What Information is EPA Particularly Interested?

Pursuant to section 3506(c)(2)(A) of PRA (44 U.S.C. 3501 *et seq.*), EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

IV. What Information Collection Activity or ICR does this Action Apply to?

EPA is seeking comments on the following ICR:

Title: Request for Contractor Access to TSCA Confidential Business Information.

ICR numbers: EPA ICR No. 1250.05, OMB No. 2070–0075.

ICR status: This ICR is currently scheduled to expire on December 31, 2000. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's information collections appear on the collection instruments or instructions, in the **Federal Register** notices for related rulemakings and ICR notices, and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR part 9.

Abstract: Certain employees of companies working under contract to EPA require access to CBI collected under the authority of TSCA in order to perform their official duties. The Office of Pollution Prevention and Toxics (OPPT), which is responsible for maintaining the security of TSCA CBI, requires that all individuals desiring access to TSCA CBI obtain and annually renew official clearance to TSCA CBI. As part of the process for obtaining TSCA CBI clearance, OPPT requires certain information about the contracting company and about each contractor employee requesting TSCA CBI clearance, primarily the name, Social Security Number and EPA identification badge number of the employee, the type of TSCA CBI clearance requested and the justification for such clearance, and the signature of the employee to an agreement with respect to access to and use of TSCA CBI.

Responses to the collection of information are voluntary, but failure to provide the requested information will prevent a contractor employee from obtaining clearance to TSCA CBI. EPA will observe strict confidentiality precautions with respect to the information collected on individual employees, based on the Privacy Act of 1974, as outlined in the ICR and in the collection instrument.

V. What are EPA's Burden and Cost Estimates for this ICR?

Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this

collection of information is estimated to average about 1.56 hours per response. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: 432.

Frequency of response: On occasion.

Estimated total/average number of responses for each respondent: One.

Estimated total annual burden hours: 675.

Estimated total annual burden costs: $40,727.

VI. Are There Changes in the Estimates from the Last Approval?

There is a decrease of 139 hours (from 814 hours to 675 hours) in the total estimated respondent burden compared with that identified in the information collection request most recently approved by OMB. This change reflects a lower estimate of the number of employees at contracting firms that need to obtain clearance to access TSCA CBI.

VII. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: July 12, 2000.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 00–18264 Filed 7–18–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–64048; FRL 6596–8]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on January 16, 2001, unless indicated otherwise.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460. Office location for commercial courier delivery, telephone number and e-mail address: Rm. 266A, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.james@epa.gov

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Electronically.* You may obtain electronic copies of this document and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov. To access this document, on the Home page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**-Environmental Documents." You can also go directly to the **Federal Register** listing at http://www.epa.gov/fedrgstr/.

2. *In person.* Contact James A. Hollins at 1921 Jefferson Davis Highway, Crystal Mall No. 2, Rm. 224, Arlington, VA, telephone number (703) 305–5761. Available from 7:30 a.m. to 4:45 p.m., Monday through Friday, excluding legal holidays.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to delete uses in six pesticide registrations. These registrations are listed in the following Table 1 by registration number, product name/active ingredient and specific uses deleted:

TABLE 1.—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Reg. No.	Product Name	Active Ingredient	Delete From Label
*000264–00637	Thiodan Technical	Endosulfan	All home & residential uses and any use other than commercial agricultural crops and commercial ornamentals, use in the form of fogger, insecticidal smoke, impregnated material, dust, pressurized liquid or pressurized spray, citrus fruits (except non-bearing trees and nursery stock), clover-forage (except grown for seed only), corn field/forage, endive, evening primrose, garden beets, garlic, rapeseed (including canola)-oil crop and grown for seed only, household or domestic dwelling (indoor contents), wood protection treatment-existing buildings or part of buildings, unseasoned forest products, ULV application, douglas fir (forest), forest planting (reforestation program), juniper, locust, maple, willow, commercially grown greenhouse/out-of-doors ornamental plants (except for commercially grown outdoor trees and shrubs)- including but not limited to aster, carnation, chrysanthemum, evening primrose, iris, lilies, marigold, poinsettia, snapdragon, tulips, croft lily, german lily, hydrangea, periwinkle, rhododendron, rose, rhododendron canescens, flowering peach/nectarine, leatherleaf fern, holly fern, any use in or around a structure used as a residence or domestic dwelling, or on any articles or areas associated with such structures (including household contents, home gardens, and home greenhouses), or any use (in the form of a fogger, dust, pressurized liquid or spray) inside a public building or structure, including recreational facilities, theaters, hotels, resorts, or other buildings used for public accommodation.
*000279–02306	Thiodan Technical Insecticide	Endosulfan	All home & residential uses and any use other than commercial agricultural crops and commercial ornamentals, use in the form of fogger, insecticidal smoke, impregnated material, dust, pressurized liquid or pressurized spray, citrus fruits (except non-bearing trees and nursery stock), clover-forage (except grown for seed only), corn field/forage, endive, evening primrose, garden beets, garlic, rapeseed (including canola)-oil crop and grown for seed only, household or domestic dwelling (indoor contents), wood protection treatment-existing buildings or parts of buildings, unseasoned forest products, ULV application, douglas fir (forest), forest planting (reforestation program), juniper, locust, maple, willow, commercially grown greenhouse/out-of-doors ornamental plants (except for commercially grown outdoor trees and shrubs)- including but not limited to aster, carnation, chrysanthemum, evening primrose, iris, lilies, marigold, poinsettia, snapdragon, tulips, croft lily, german lily, hydrangea, periwinkle, rhododendron, rose, rhododendron canescens, flowering peach/nectarine, leatherleaf fern, holly fern, any use in or around a structure used as a residence or domestic dwelling, or on any articles or areas associated with such structures (including household contents, home gardens, and home greenhouses), or any use (in the form of a fogger, dust, pressurized liquid or spray) inside a public building or structure, including recreational facilities, theaters, hotels, resorts, or other buildings used for public accommodation.
002217–00703	Acme Hi-Dep Herbicide	Diethanolamine (2,4-dichlorophenoxy) acetate	Vineyard use
010951–00010	Britz BT 25 Sulfur Dust	*Bacillus thuringiensis* subsp. Kurstaki; Sulfur)	Use on cucumbers (Southeastern U.S. only)

TABLE 1.—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Reg. No.	Product Name	Active Ingredient	Delete From Label
*011678–00005	Thionex Endosulfan Technical	Endosulfan	All home & residential uses and any use other than commercial agricultural crops and commercial ornamentals, use in the form of fogger, insecticidal smoke, impregnated material, dust, pressurized liquid or pressurized spray, citrus fruits (except non- bearing trees and nursery stock), clover-forage (except grown for seed only), corn field/forage, endive, evening primrose, garden beets, garlic, rapeseed (including canola)-oil crop and grown for seed only, household or domestic dwelling (indoor contents), wood protection treatment-existing buildings or parts of buildings, unseasoned forest products, ULV application, douglas fir (forest), forest planting (reforestation program), juniper, locust, maple, willow, commercially grown greenhouse/out-of-doors ornamental plants (except for commercially grown outdoor trees and shrubs)- including but not limited to aster, carnation, chrysanthemum, evening primrose, iris, lilies, marigold, poinsettia, snapdragon, tulips, croft lily, german lily hydrangea, periwinkle, rhododendron, rose, rhododendron canescens, flowering peach/nectarine, leatherleaf fern, holly fern, any use in or around a structure used as a residence or domestic dwelling, or on any articles or areas associated with such structures (including household contents, home gardens, and home greenhouses), or any use (in the form of a fogger, dust, pressurized liquid or spray) inside a public building or structure, including recreational facilities, theaters, hotels, resorts, or other buildings used for public accommodation.
*019713–00319	Endosulfan Technical	Endosulfan	All home & residential uses and any use other than commercial agricultural crops and commercial ornamentals, use in the form of fogger, insecticidal smoke, impregnated material, dust, pressurized liquid or pressurized spray, citrus fruits (except non-bearing trees and nursery stock), clover-forage (except grown for seed only), corn field/forage, endive, evening primrose, garden beets, garlic, rapeseed (including canola)-oil crop and grown for seed only, household or domestic dwelling (indoor contents), wood protection treatment-existing buildings or parts of buildings, unseasoned forest products, ULV application, douglas fir (forest), forest planting (reforestation program, juniper, locust, maple willow, commercially grown greenhouse/out of doors ornamental plants (except for commercially grown outdoor trees and shrubs)- including but not limited to aster, carnation, chrysanthemum, evening primrose, iris. lilies, marigold, poinsettia, snapdragon, tulips, croft lily, german lily, hydrangea, periwinkle, rhododendron, rose, rhododendron canescens, flowering peach/nectarine, leatherleaf fern, holly fern, any use in or around a structure used as a residence of domestic dwelling, or on any articles or areas associated with such structures (including household contents, home gardens and home greenhouses), or any use (in the form of a fogger, dust, pressurized liquid or spray) inside a public building or structure, including recreational facilities, theaters, hotels, resorts, or other buildings used for public accommodation.

Note: *30–day comment period.

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before January 16, 2001, unless a shorter comment was indicated, to discuss withdrawal of the application for amendment. This 180-day period will also permit interested members of the public to intercede with registrants prior to the Agency's approval of the deletion.

The following Table 2 includes, the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2.—REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Company Number	Company Name and Address
000264	Aventis CropScience, 2 TW Alexander Drive, Research Triangle Park, NC 27709.
000279	FMC Corporation, Agricultural Products Group, 1735 Market Street, Philadelphia, PA 19103.
002217	PBI/Gordon Corporation, P.O. Box 014090, Kansas City, MO 64101.
010951	Britz Fertilizers, Inc., P.O. Box 336, Five Points, CA 93624.
011678	Makhteshim-Agan of North America, Inc., 551 Fifth Ave., Suite 1100, New York, NY 10176.
019713	Drexel Chemical Company, 1700 Channel Avenue, P.O. Box 13327, Memphis, TN 38113.

III. What is the Agency Authority for Taking This Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. How and to Whom Do I Submit Withdrawal Requests?

1. *By mail.* Registrants who choose to withdraw a request for use deletion must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked January 16, 2001, unless indicated otherwise.

2. *In person or by courier.* Deliver your withdrawal request to: Document Processing Desk (DPD), Information Services Branch, Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 266A, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA. The DPD is open from 8:00 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The DPD telephone number is (703) 305–5263.

3. *Electronically.* You may submit your withdrawal request electronically by e-mail to: hollins.james@epa.gov. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format.

V. Provisions for Disposition of Existing Stocks

The Agency has authorized the registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: June 30, 2000.

Richard D. Schmitt,

Associate Director, Information Resources Services Division, Office of Pesticide Programs.

[FR Doc. 00–18265 Filed 7–18–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

July 12, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 18, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0710.

Title: Policy and Rules Concerning the Implementation of the Local Competition Provisions in the Telecommunications Act of 1996–CC Docket No. 96–98.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents: 12,250 respondents; 1,070,250 responses.

Estimated Time Per Response: 124.86 hours (average).

Frequency of Response: On occasion reporting requirement, third party disclosure requirement, recordkeeping requirement.

Total Annual Burden: 1,529,620 hours.

Total Annual Cost: $937,500.

Needs and Uses: The Commission adopted rules and regulations to implement part of Sections 251 and 252 that affect local competition. Incumbent local exchange carriers (LECs) are required to offer interconnection, unbundled network elements, transport and termination, and wholesale rates for certain services to new entrants. Incumbent LECs must price such services at rates that are cost-based and just and reasonable and provide access to rights-of-way as well as establish reciprocal compensation arrangements for the transport and termination of telecommunications traffic.

This submission is being sent to the Office of Management and Budget (OMB) to extend the current three-year approval.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–18186 Filed 7–18–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting

July 14, 2000.

FCC TO HOLD OPEN COMMISSION MEETING FRIDAY, JULY 21, 2000

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Friday, July 21, 2000, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, S.W., Washington, D.C.

Item No.	Bureau	Subject
1	Common carrier and consumer information	Title: The Use of N11 Codes and Other Abbreviated Dialing Arrangements (CC Docket No. 92–105). Summary: The Commission will consider a Second Report and Order concerning the nationwide implementation of 711 access to telecommunications relay services (TRS).
2	Common carrier	Title: Petition by the United States Department of Transportation for Assignment of an Abbreviated Dialing Code (N11) to Access Intelligent Transportation System (ITS) to Services Nationwide (NSD–L–99–24); Request by the Alliance of Information and Referral Systems, United Way of America, United Way 211 (Atlanta, Georgia), United Way of Connecticut, Florida Alliance of Information and Referral Services, Inc., and Texas I&R Network for Assignment of 211 Dialing Code (NSD–L–98–80); and The Use of N11 Codes and Other Abbreviated Dialing Arrangements (CC Docket No. 92–105). Summary: The Commission will consider a Third Report and Order and Order on Reconsideration concerning petitions for assignment of N11 codes for access to community information and referral services, and for access to traveler information services.
3	Common carrier	Title: Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; and Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers (CC Docket No. 94–129). Summary: The Commission will consider a Third Report and Order and Second Order on Reconsideration concerning the amendment of its carrier change authorization and verification rules, including the use of internet letter of authorization, and other proposals set forth in the Second Report and Order and Further Notice of Proposed Rule Making.
4	Mass media	Title: Implementation of Video Description of Video Programming (MM Docket No. 99–339). Summary: The Commission will consider a Report and Order concerning rules requiring certain broadcast stations and multichannel video programming distributors to provide programming with video description.
5	Office of Engineering and Technology	Title: Closed Captioning Requirements for Digital Television Receivers (ET Docket No. 99–254); and Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility (MM Docket No. 95–176). Summary: The Commission will consider a Report and Order concerning technical standards for the display of closed captions on digital television (DTV) receivers.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Media Relations, telephone number (202) 418–0500; TTY (202) 418–2555.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800; fax (202) 857–3805 and 857–3184; or TTY (202) 293–8810. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its_inc@ix.netcom.com. Their Internet address is http://www.itsdocs.com/.

This meeting can be viewed over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at http://www.fcc.gov/realaudio/. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–0100; fax number (703) 834–0111.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 00–18443 Filed 7–17–00; 3:34 pm]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2425]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

July 12, 2000.s

Petitions for Reconsideration and Clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR section 1.429(e). The full text of these documents are available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800.

Oppositions to these petitions must be filed by August 3, 2000. See section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Changes to the Board of Directors of the National Exchange Carrier Association, Inc. (CC Docket No. 97–21).

Federal-State Joint Board on Universal Service (CC Docket No. 96–45).

Number of Petitions Filed: 21.

Subject: Reexamination of the Comparative Standards for Noncommercial Educational Applicants (MM Docket No. 95–31).

Number of Petitions Filed: 17.

Subject: Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS (GEN Docket No. 90–314, ET Docket No. 92–100).

Implementation of Section 309(j) of the Communications Act—Competitive Bidding, Narrowband PCS (PP Docket No. 93–253).

Number of Petitions Filed: 2.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–18188 Filed 7–18–00; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection titled "Appraisal Standards."

DATES: Comments must be submitted on or before September 18, 2000.

ADDRESSES: Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst (Regulatory Analysis), (202) 898–7453, Office of the Executive Secretary, Room F–4058, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. All comments should refer to "Appraisal Standards." Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. [FAX number (202) 898–3838; Internet address: comments@ fdic.gov]. Comments may also be submitted to the OMB desk officer for the FDIC: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Tamara R. Manly, at the address identified above.

SUPPLEMENTARY INFORMATION:

Proposal To Renew the Following Currently Approved Collection of Information

Title: Appraisal Standards.

OMB Number: 3064–0103.

Frequency of Response: On occasion.

Affected Public: All financial institutions.

Estimated Number of Respondents: 5,800.

Estimated Number of Responses: 328,600.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden: 82,150 hours.

General Description of Collection: FIRREA directs the FDIC to prescribe appropriate standards for the performance of real estate appraisals in connection with Federally related transactions under its jurisdiction. The information collection activities attributable to 12 CFR part 323 are a direct consequence of the statutory requirements and the legislative intent.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Dated at Washington, D.C., this 14th day of July, 2000.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 00–18249 Filed 7–18–00; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting; Sunshine Act Notices

AGENCY: Federal Election Commission.

Previously Announced Date & Time: Thursday, July 20, 2000, 10:00 a.m., Meeting Open to the Public

The following item was added to the agenda:

Draft Advisory Opinion 2000–12: Bill Bradley for President, Inc. and McCain 2000, Inc. by counsel, Robert F. Bauer and Trevor Potter.

DATE & TIME: Tuesday, July 25, 2000 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 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.

DATE & TIME: Thursday, July 27, 2000, at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (ninth floor)

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Advisory Opinion 2000–16—Third Millennium: Advocates for the Future, Inc. by counsel, B. Holly Schadler and Brian G. Svoboda.

Advisory Opinion 2000–17—Extendicare Health Services, Inc. by counsel, Joseph A. Rieser, Jr.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Acting Secretary of the Commission.

[FR Doc. 00–18417 Filed 7–17–00; 2:48 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011716.

Title: P&O Nedlloyd-Farrell/Hapag-Lloyd Mediterranean Space Charter Agreement.

Parties: P&O Nedlloyd Limited/P&O Nedlloyd B.V., Farrell Lines Incorporated, Hapag Lloyd Container Linie GmbH.

Synopsis: Under the proposed agreement, the parties agree to exchange/charter space on vessels in the trade between the U.S. East Coast and countries on the Mediterranean Sea (together with Portugal). It also authorizes the parties to discuss and agree on the number, size and characteristics of vessels deployed and provides the number of slots allocated. The parties request expedited review.

By Order of the Federal Maritime Commission.

Dated: July 14, 2000.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–18268 Filed 7–18–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Terminations

The Federal Maritime Commission hereby gives notice that the following ocean transportation intermediary licenses have been terminated pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding dates shown below:

License Number: 4107.
Name: A.J. Int'l Cargo, Inc.
Address: 12000 S.W. 45th Street, Miami, FL 33175.
Date Revoked: April 19, 2000.
Reason: Failed to maintain a valid bond.

License Number: 14635N.
Name: Aboard Cargo Service, Inc.
Address: 8565 N.W. 29 Street, Miami, FL 33126.
Date Revoked: May 17, 2000.
Reason: Failed to maintain a valid surety bond.

License Number: 8930N.
Name: Amber Marine International, Ltd.
Address: 1554 Carmen Drive, Elk Grove Village, IL 60007.
Date Revoked: April 9, 2000.
Reason: Failed to maintain a valid bond.

License Number: 14368N.
Name: B.W.I. Shippers and Movers Ltd.
Address: 654 Flatbush Avenue, Brooklyn, NY 11225.
Date Revoked: April 26, 2000.
Reason: Failed to maintain a valid bond.

License Number: 3881.
Name: Czop, Inc.
Address: 13301 Biscayne Blvd., Suite 102, North Miami, FL 33181.
Date Revoked: April 21, 2000.
Reason: Failed to maintain a valid bond.

License Number: 4102.
Name: Desert Net, Inc.
Address: 410 East Pratt Street, Suite 1623, Baltimore, MD 21202.
Date Revoked: April 15, 2000.
Reason: Failed to maintain a valid bond.

License Number: 1538.
Name: Division M, Inc.
Address: 1352 E. Industrial Drive, Itasca, IL 60143.
Date Revoked: April 29, 2000.
Reason: Failed to maintain a valid bond.

License Number: 13315N.
Name: Eagle International Shipping, Inc.
Address: 5531 N.W. 72nd Avenue, Miami, FL 33166.
Date Revoked: May 20, 2000.
Reason: Failed to maintain a valid bond.

License Number: 3267.
Name: Global Transport Services, Inc.
Address: 15710 JFK Blvd., Suite 380, Houston, TX 77032.
Date Revoked: April 12, 2000.
Reason: Failed to maintain a valid bond.

License Number: 8504N.
Name: Hyun Dae Trucking Co., Inc.
Address: 3022 S. Western Avenue, Los Angeles, CA 90018.
Date Revoked: April 20, 2000.
Reason: Failed to maintain a valid bond.

License Number: 4653.
Name: Indus Shipping Company Ltd.
Address: 27 Park Place, Suite 200, New York, NY 10007.
Date Revoked: April 13, 2000.
Reason: Failed to maintain a valid bond.

License Number: 1417–R.
Name: Interconex Transport International, Inc.
Address: 50 Main Street, 11th Floor, White Plains, NY 10606.
Date Revoked: May 27, 2000.
Reason: Failed to maintain a valid bond.

License Number: 206.
Name: Marine Forwarding Company, Incorporated
Address: 17 Battery Place, New York, NY 10004.
Date Revoked: April 27, 2000.
Reason: Failed to maintain a valid bond.

License Number: 4321.
Name: Matrix Worldwide, Inc.
Address: 154–09 146th Avenue, Suite 302, Jamaica, NY 11434.
Date Revoked: April 17, 2000.
Reason: Failed to maintain a valid bond.

License Number: 11333N.
Name: Multi-Link Services
Address: 9009 N. Loop East, Suite 270, Houston, TX 77029.
Date Revoked: May 17, 2000.
Reason: Failed to maintain a valid bond.

License Number: 13936N.
Name: Ocean Spanners, Inc.
Address: 452 Hudson Terrace, Englewood Cliffs, NJ 07632.
Date Revoked: April 9, 2000.
Reason: Failed to maintain a valid bond.

License Number: 4643.
Name: Overseas Freight Forwarding & Consolidation, Corp.

Address: 4 Lagoon Place, San Rafael, CA 94903.

Date Revoked: April 14, 2000.

Reason: Failed to maintain a valid bond.

License Number: 1929–R.

Name: Perez International Forwarders, Inc.

Address: 4115 S.W. 98th Avenue, Miami, FL 33165.

Date Revoked: April 14, 2000.

Reason: Failed to maintain a valid bond.

License Number: 13589N.

Name: Promate Freight Service, Inc.

Address: 550 W. Patrice Place, Unit A, Gardena, CA 90248.

Date Revoked: May 13, 2000.

Reason: Failed to maintain a valid bond.

License Number: 11611N.

Name: Skyway Freight Systems, Inc.

Address: 225 Westridge Drive, Watsonville, CA 95076.

Date Revoked: June 1, 2000.

Reason: Failed to maintain a valid bond.

License Number: 11269N.

Name: Navajo Shipping Agency, Inc. d/b/a Africa Mid-East Line d/b/a The Nautilus Line d/b/a The Gold Line of Latin America

Address: 9050 Pines Blvd., Suite 460 Pembroke Pines, FL 33024.

Date Revoked: June 7, 2000.

Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 00–18266 Filed 7–18–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicant

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicant

Jenkar International Freight Ltd., 150–30 132nd Avenue, Jamaica, NY 11434, Officer: (Qualifying Individual), Donald James Wolfe, Director.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicant

JES Shipping, Inc., 2913 El Camino Real, Suite 241, Tustin, CA 92782 Officer: (Qualifying Individual), James Chik, President.

Dated: July 14, 2000.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–18267 Filed 7–18–00; 8:45 am]

BILLING CODE 6730–01–P

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 (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

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 August 11, 2000.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. *Caixa Geral De Depositos, S.A.*, Lisbon, Portugal; to retain approximately 8.8 percent of the voting shares of Banco Comercial Portugues, S.A., Oporto, Portugal, and thereby indirectly acquire voting shares of BPABank, National Association, Newark, New Jersey.

B. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Dacotah Banks, Inc.*, Aberdeen, South Dakota; to merge with Bowbells Holding Company, Bowbells, North Dakota, and thereby indirectly acquire voting shares of First National Bank, Bowbells, North Dakota.

Board of Governors of the Federal Reserve System, July 13, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–18143 Filed 7–18–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Revision

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission (FTC) seeks public comments on proposed additions to an Office of Management and Budget (OMB) clearance for FTC administrative activities. This request concerns three consumer complaint forms and a survey to be used to evaluate the effectiveness of the FTC's complaint handling system. The proposed additions will be submitted to OMB for review, as required by the Paperwork Reduction Act (PRA), following this opportunity for public comment.

DATES: Comments must be submitted on or before September 18, 2000.

ADDRESSES: Send written comments to Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580, or by e-mail to *frnotice0047@ftc.gov*. The submissions should include the submitter's name, address, telephone number and, if available, FAX number and e-mail address. All submissions should be captioned "PRA/Consumer

Complaint system." All comments should be identified as responding to this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed survey questions should be addressed to Joseph Brooke, Division of Planning and Information, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., H–292, Washington, DC 20580, (202) 326–3484. The consumer complaint forms may be found at the following websites: https://www.ftc.gov/ftc/complaint.htm (general complaint form); https://www.ftc.gov/ftc/knowfraudcomplaint.htm (fraud complaints); and https://www.ftc.gov/ftc/idtheftform.htm (identity theft).

SUPPLEMENTARY INFORMATION: Under section 3507(h)(3) of the PRA, 44 U.S.C. 3501–3520, a Federal agency may not materially change an approved collection of information [1] unless OMB has approved the modification. OMB previously granted approval for various collections of information grouped under the category "FTC Administrative Activities" (OMB Control Number 3084–0047) on August 16, 1999. This category consists of applications to the FTC, including those pertaining to its Rules of Practice, primarily those under Parts 1, 2, and 4 of CFR Title 16. On July 12, 2000, OMB granted an expedited provisional clearance for the forms and survey and, under 5 CFR 1320.13(d), waived the requirement to publish a notice of the emergency clearance request.

As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before submitting its certification and the forms and survey to OMB for its non-provisional clearance relating to FTC administrative activities. The FTC will ask that OMB extend its approval for these proposed additions through August 31, 2002, to coincide with the expiration of the existing clearance.

The FTC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) 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 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.

Description of the Collection of Information and Proposed Use

The forms and survey are to improve public access to the Bureau of Consumer Protection's (BCP) Consumer Response Center (CRC), and are voluntary. Consumers may call a hotline phone number or may log on to the FTC's website to electronically register a complaint using the applicable complaint form. There are three different consumer complain forms: (1) the general www.ftc.gov complain form (for other than indentify theft complaints); (2) the www.consumer.gov "Know Fraud" complain form (essentially another way to access complaint from #1); and (3) the "Identity Theft On-Line Complaint Form."

General and Fraud Complaint Systems

Telephone complaints and inquiries to the FTC are answered both by FTC staff and an offsite contractor. Telephone counselors ask for the same information that consumers would enter on the applicable online form. For the general complaint and fraud systems, BCP has set a target time of 4.5 minutes per call to gather information, somewhat less time than it estimates for consumers to enter their complaints online.[2] This target was determined by the BCP's standard telemarketing best practices for consumer calls. Frequently, part of these incoming calls is devoted to the agency's providing requested information to consumers, not collecting information. The burden estimate, however, conservatively assumes that all of the estimated time is devoted to collecting information from consumers.

Identity Theft

To handle complaints about identity theft, the FTC must obtain more detailed information than is required of other complainants. BCP designed the online identity theft form to be as short as practicable, seeking only the minimum information needed for initial evaluation and potential follow up. Obtaining further information through the initial consumer contact was dropped as unwieldy. With call-ins, however, staff and the contractor seek to obtain more detailed and comprehensive information up front to minimize the need for follow up calls.

Since investigating identity theft requires more information (e.g., credit history, credit bureau information, respondent social security number, identifying multiple suspects) than general consumer complaints and complaints about fraud, identity theft calls and online entries take longer. A significant portion of caller time (approximately 4 minutes per call), however, involves counseling consumers, no collecting information. Accordingly, the estimated telephone time shown below accounts only for the information collection part of the calls.

Customer Satisfaction Survey

The customer satisfaction survey would collect information concerning the overall effectiveness and timeliness of the CRC. The CRC will survey roughly 2 percent of complainants. Subsets of consumers contacts throughout the year will be questioned about specific aspects of CRC customer service.

Each consumer surveyed would be asked 8–10 questions chosen from the list noted above. Half of the questions would ask consumers to rate CRC performance on a scale or call for yes or no responses. The second half of the survey would ask more open-ended questions seeking a short written or verbal answer. BCP staff estimates that each respondent will require four minutes to answer the questions (approximately 20–30 seconds per question).

What follows are preliminary estimates of burden for these various collections of information, including the questionnaire. The figures for the online forms and consumer hotlines are an average of annualized volume-to-date for the respective programs and projected volume for the next two years (the period of the existing clearance for FTC administrative activities), and are rounded to the nearest thousand.

Annual hours burden:

[1] "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), and includes, as relevant here, agency requests for answers to identical questions from ten or more persons that extend beyond mere identification of the respondent.

[2] Because the fruad-related form is closely patterned after the general complain form, burden estimates per respondent for each are the same.

Activity	Number of respondents	Number of minutes activity	Total hours
Miscell. and fraud-related consumer complaints (phone)	300,000	4.5	23,000
Miscell. and fraud-related consumer complaints (lonline)	35,000	5.0	3,000
IDT complaints (phone)	90,000	8	12,000
IDT complaints (online)	26,000	7.5	3,000
Customer Satisfaction Questionnaire	9,000	4.0	600
Total	460,000	.....	41,600

Annual Cost Burden

The cost per respondent should be negligible. Participation is voluntary, and will not require any labor expenditures of respondents. There are no capital, start-up, operation, maintenance, or other similar costs to the respondents.

Debra A. Valentine,

General Counsel.

[FR Doc. 00–18190 Filed 7–18–00; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Public Workshop: Competition Policy in the World of B2B Electronic Marketplaces

AGENCY: Federal Trade Commission.

ACTION: Notice announcing extension of deadline.

SUMMARY: the Federal Trade Commission ("FTC" or "Commission") will extend to July 21, 2000, the date by which it will accept written presentations relating to the June 29–30, 2000, FTC workshop examining issues of competition policy that arise in connection with business-to-business ("B2B") electronic marketplaces.

DATES: Written presentations may be submitted by July 21, 2000.

ADDRESSES: Any interested person may submit by July 21, 2000, a written presentation that will be considered part of the public record of the workshop. Written presentations should be submitted in both hard copy and electronic form. Six hard copies of each submission should be addressed to Donald S. Clark, Office of the Secretary, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Submissions should be captioned "Comments regarding B2B Electronic Marketplaces." Electronic submissions may be sent by electronic mail to *b2bmarketplaces@ftc.gov*. Alternatively, electronic submissions may be filed on a 3½ inch computer disk with a label on the disk stating the name of the submitter and the name and version of the word processing program used to create the document.

FOR FURTHER INFORMATION CONTACT: To obtain information about the workshop, please contact Gail Levine, Assistant Director for Policy Planning, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, telephone (202) 326–3193, e-mail *glevine@ftc.gov*.

SUPPLEMENTARY INFORMATION: On June 29–30, 2000, the FTC held a workshop that brought together designers, owners, and operators of B2B electronic marketplaces, and the buyers and sellers who use or wish to use them. The goal was to enhance understanding of how B2B electronic marketplaces function and the means by which they may generate efficiencies, and to identify any antitrust issues that they raise. A transcript of the discussions will be posted on the FTC website as soon as it is available. Some of the questions that the workshop addressed are available in a previously issued Federal Register notice, available at http://www.ftc.gov/os/2000/05/b2workshopfrn.htm.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 00–18189 Filed 7–18–00; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meetings

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of Special Emphasis Panel meetings.

A Special Emphasis Panel (SEP) is a committee of a few experts selected to conduct scientific reviews of applications related to their areas of expertise. The committee members are drawn from a list of experts designated to serve for particular individual meetings rather than for extended fixed terms of services.

Substantial segments of the upcoming SEP meetings listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6). Grant applications are to be reviewed and discussed at these meetings. These discussions are likely to include personal information concerning individuals associated with these applications. This information is exempt from mandatory disclosure under the above-cited statutes.

1. Name of SEP: Systems-Related Best Practices to Improve Patient Safety.

Date: July 27–28, 2000 (Open from 8 a.m. to 8:15 a.m. and closed for remainder of the meeting).

Place: Doubletree Hotel, 1750 Rockville Pike, Conference Room TBD, Rockville, Maryland 20852.

2. Name of SEP: Translating Research Into Practice II.

Date: July 27–28, 2000 (Open from 8 a.m. to 8:15 a.m. and closed for remainder of the meeting).

Place: Doubletree Hotel, 1750 Rockville Pike, Conference Room TBD, Rockville, Maryland 20852.

3. Name of SEP: Violence Against Women: Evaluating Health Care Interventions.

Date: Aug 7–8, 2000 (Open from 8 a.m. to 8:15 a.m. and closed for remainder of the meeting).

Place: Doubletree Hotel, 1750 Rockville Pike, Conference Room TBD, Rockville, Maryland 20852.

4. Name of SEP: Primary Care Practice-Based Research Networks (PBRNs).

Date: Aug 10–11, 2000 (Open from 8 a.m. to 8:15 a.m and closed for remainder of the meeting).

Place: Doubletree Hotel, 1750 Rockville Pike, Conference Room TBD, Rockville, Maryland 20852.

Contact Person: Anyone wishing to obtain a roster of members or minutes of these meetings should contact Ms. Jenny Griffith, Committee Management Officer, Office of Research Review, Education and Policy, AHRQ, 2101 East

Jefferson Street, Suite 400, Rockville, Maryland 20852, Telephone (301) 594–1847.

Agenda items for these meetings are subject to change as priorities dictate.

This notice is being published less than 15 days prior to the July 27–28 meetings due to the time constraints of reviews and funding cycles.

Dated: July 11, 2000.

John M. Eisenberg,

Director.

[FR Doc. 00–18146 Filed 7–18–00; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Reallotment of FY 1999 Funds for Low Income Home Energy Assistance Program (LIHEAP)

AGENCY: Office of Community Services, ACF, DHHS.

ACTION: Notice of determination concerning funds available for reallotment.

SUMMARY: Notice is hereby given that a preliminary determination has been made that fiscal year (FY) 1999 Low Income Home Energy Assistance Program (LIHEAP) funds are available for reallotment *to States, territories, and Tribes and tribal organizations receiving FY 2000 direct LIHEAP funding.* No subgrantees or other entities may apply for the funds, Section 2607(b)(1) of the Low Income Home Energy Assistance Act (the Act), Title XXVI of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 8621 *et seq.*), as amended, requires that if the Secretary of the Department of Health and Human Services determines that, as of September 1 of any fiscal year, an amount in excess of certain levels allotted to a grantee for any fiscal year will not be used by the grantee during the fiscal year, the Secretary must notify the grantee and publish a notice in the **Federal Register** that such funds may be realloted to LIHEAP grantees during the following fiscal year. If reallotted, the LIHEAP block grant allocation formula will be used to distribute the funds. (No funds may be reallotted to entities that are not direct LIHEAP grantees during FY 2000). It has been determined that $496,085.78 may be available for reallotment during FY 2000. This determination is based on revised reports from the State of Wyoming and the Pala Band of Mission Indians, which were submitted to the Office of Community Services as required by 45 CFR 96.82.

The statute allows grantees who have funds unobligated at the end of the fiscal year for which they are awarded to request that they be allowed to carry over up to 10 percent of their allotments to the next fiscal year. Funds in excess of this amount must be returned to DHHS and are subject to reallotment under section 2607(b)(1) of the Act. The amount described in this notice was reported as unobligated FY 1999 funds in excess of the amount that the State of Wyoming and the Pala Band of Mission Indians could carry over to FY 2000.

The State of Wyoming was notified by certified mail that $493,063.78 of its FY 1999 funds may be allotted. Additionally, the Pala Band of Mission Indians was notified by certified mail that $3,022 of its FY 1999 funds may be reallotted. In accordance with section 2607(b)(3), the Chief Executive Officers of the State of Wyoming and of the Pala Band of Mission Indians have 30 days from the date of the letter to submit comments to: Donald Sykes, Director, Office of Community Services, 370 L'Enfant Promenade, SW., Washington, DC 20447. The comment period expires August 18, 2000.

After considering any comments submitted, the Chief Executive Officers will be notified of the decision, and the decision also will be published in the **Federal Register**. If funds are reallotted, they will be allocated in accordance with section 2604 of the Act and must be treated by LIHEAP grantees receiving them as an amount appropriated for FY 2000. As FY 2000 funds, they will be subject to all requirements of the Act, including section 2607(b)(2), which requires that a grantee obligate at least 90% of its total block grant allocation for a fiscal year by the end of the fiscal year for which the funds are appropriated, that is, by September 30, 2000.

FOR FURTHER INFORMATION CONTACT: Janet Fox, Director, Division of Energy Assistance, Office of Community Services, 370 L'Enfant Promenade, SW., Washington, DC 20447; telephone (202) 401–9351.

Dated: June 30, 2000

Donald Sykes,

Director, Office of Community Services.

[FR Doc. 00–18141 Filed 7–18–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96D–0009]

International Conference on Harmonisation; Draft Revised Guidance on Impurities in New Drug Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a draft revised guidance entitled "Q3B(R) Impurities in New Drug Products." The draft revised guidance, which updates a guidance on the same topic published in the **Federal Register** of May 19, 1997 (the 1997 guidance), was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The draft revised guidance clarifies the 1997 guidance, adds information, and provides consistency with more recently published ICH guidances. The draft revised guidance is intended to provide guidance for registration or marketing applications on the content and qualification of impurities in new drug products produced from chemically synthesized new drug substances not previously registered in a region or member State. The draft revised guidance is a complement to the ICH guidance entitled "Q3A Impurities in new Drug Substances," which is being revised also.

DATES: Submit written comments by September 18, 2000.

ADDRESSES: Submit written comments on the draft revised guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Copies of the draft revised guidance are available from the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573. Single copies of the draft revised guidance may be obtained by mail from the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), 1401 Rockville Pike, Rockville, MD 20852, or by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800. Copies may be obtained from CBER's FAX

Information System at 1–888–CBER–FAX or 301–827–3844.

FOR FURTHER INFORMATION CONTACT:
Regarding the guidance: Charles P. Hoiberg, Center for Drug Evaluation and Research (HFD–800), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5169.
Regarding the ICH: Janet J. Showalter, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0864.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

In October 1999, the ICH Steering Committee agreed that a draft revised guidance entitled "Q3B(R) Impurities in New Drug Products" should be made available for public comment. The draft revised guidance is a revision of a guidance on the same topic published in the **Federal Register** of May 19, 1997 (62 FR 27454). The draft revised guidance is the product of the Quality Expert Working Group of the ICH. Comments about this draft will be considered by FDA and the Quality Expert Working Group.

In accordance with FDA's good guidance practices (62 FR 8961, February 27, 1997), this document is now being called a guidance, rather than a guideline.

In the **Federal Register** of January 4, 1996 (61 FR 372), the agency published an ICH guidance entitled "Q3A Impurities in New Drug Substances." ICH Q3A, which is being revised also, provides guidance to applicants for drug marketing registration on the content and qualification of impurities in new drug substances produced by chemical synthesis and not previously registered in a country, region, or member State.

This draft revised guidance is a complement to the ICH Q3A guidance and provides guidance for registration or marketing applications on the content and qualification of impurities in new drug products produced from chemically synthesized new drug substances not previously registered in a region or member State. The draft revised guidance addresses only those impurities in drug products classified as degradation products of the active ingredient or reaction products of the active ingredient with an excipient and/or immediate container/closure system. Impurities arising from excipients present in the drug product are not addressed in this draft revised guidance.

The draft revised guidance includes revised text on threshold limits, revised text on degradation products, and new guidance on rounding. Additions to the glossary include definitions for the terms "identification threshold," "qualification threshold," "reporting threshold," and "rounding." The draft revised guidance was updated to include references to ICH guidances on analytical validation and specifications. Minor editorial changes were made to improve the clarity and consistency of the document.

This draft revised guidance represents the agency's current thinking on impurities in new drug products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may submit to the Dockets Management Branch (address above) written comments on the draft revised guidance by September 18, 2000. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the draft revised guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. An electronic version of this guidance is available on the Internet at http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/cber/publications.htm.

The text of the draft revised guidance follows:

Q3B(R) Impurities in New Drug Products[1]

1. Introduction

1.1 Objective of the Guidance

This document provides guidance recommendations for registration or applications for marketing on the content and qualification of impurities in new drug products produced from chemically synthesized new drug substances not previously registered in a region or member State.

1.2 Background

This guidance is a complement to the ICH Q3A guidance on impurities in new drug substances, which should be consulted for basic principles.

1.3 Scope of the Guidance

This guidance addresses only those impurities in drug products classified as degradation products of the drug substance or reaction products of the drug substance with an excipient and/or immediate container/closure system (collectively referred to as "degradation products" in this guidance). Impurities arising from excipients present in the product are not covered by this guidance. This guidance also does not address the regulation of products used during the clinical research stages of development. Biological/biotechnological products, peptides, oligonucleotides, radiopharmaceuticals, fermentation and semisynthetic products derived therefrom, herbal products, and crude products of animal or plant origin are not covered. Also excluded from this guidance are: Extraneous contaminants that should not occur in drug products and are more appropriately addressed as good manufacturing practice issues, polymorphic form, a solid state property of the new drug substance, and enantiomeric impurities. Impurities present in the new drug substance need not be monitored or specified in drug products unless they are also degradation products (see ICH Q6A guidance for specifications).

[1] This draft revised guidance represents the agency's current thinking on impurities in new drug products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

2. Guidance

2.1 Analytical Procedures

The application for a marketing authorization should include documented evidence that the analytical procedures have been validated and are suitable for the detection and quantitation of degradation products. Analytical methods should be validated to demonstrate that impurities unique to the new drug substance do not interfere with, or are separated from, specified and unspecified degradation products in the product (see ICH Q2A and Q2B guidances for analytical validation).

Degradation product levels can be measured by a variety of techniques, including those which compare an analytical response for a degradation product to that of an appropriate reference standard or to the response of the new drug substance itself. Reference standards used in the analytical procedures for control of degradation products should be evaluated and characterized according to their intended uses. The drug substance may be used to estimate the levels of degradation products. In cases where the response factors are not close, this practice may still be used if a correction factor is applied or the degradation products are, in fact, being overestimated. Specifications and analytical procedures used to estimate identified or unidentified degradation products are often based on analytical assumptions (e.g., equivalent detector response). These assumptions should be discussed in the application for marketing authorization. Differences in the analytical procedures used during development and those proposed for the commercial product should be discussed.

2.2 Rationale for the Reporting and Control of Impurities

The applicant should summarize those degradation products observed during stability studies of the drug product. This summary should be based on sound scientific appraisal of potential degradation pathways in the drug product and impurities arising from the interaction with excipients and/or the immediate container/closure system. In addition, the applicant should summarize any laboratory studies conducted to detect degradation products in the drug product. This summary should include test results of batches manufactured during the development process and batches representative of the proposed commercial process. A rationale should be provided for exclusion of those impurities that are not degradation products, e.g., process impurities from the drug substance and excipients and their related impurities. The impurity profile of the batches representative of the proposed commercial process should be compared with the profiles of batches used in development, and any differences discussed.

Degradation products observed in stability studies conducted at recommended storage conditions should be identified when present at a level greater than (>) the identification thresholds given in Attachment 1. When identification of a degradation product is not feasible, a summary of the laboratory studies demonstrating the unsuccessful effort should be included in the application for marketing authorization.

Degradation products present at a level of not more than (≤) the threshold generally would not need to be identified. However, analytical procedures should be developed for those degradation products that are suspected to be unusually potent, producing toxic or significant pharmacologic effects at levels lower than indicated. Conventional rounding rules should be applied, and the results presented with the same number of decimals as given in the limit.

2.3 Reporting Impurity Content of Batches

Analytical results should be provided in tabular format for all relevant batches of new drug product used for clinical, safety, and stability testing, as well as batches that are representative of the proposed commercial process. Because the degradation test procedure can be an important support tool for monitoring the manufacturing quality as well as for deciding the expiration dating period of the product, the reporting level should be set below the identification threshold. The recommended target value for the reporting threshold (expressed as a percentage of the drug substance) is found in Attachment I. A higher reporting threshold should only be proposed, with justification, if the target reporting threshold cannot be achieved.

In addition, where an analytical method reveals the presence of impurities in addition to the degradation products (e.g., impurities arising from the synthesis of the drug substance), the origin of these impurities should be discussed. Chromatograms or equivalent data (if other methods are used) from representative batches including long-term and accelerated stability conditions should be provided. The procedure should be capable of quantifying at least at the reporting threshold, and the chromatograms should show the location of the observed degradation products and impurities from the new drug substance.

The following information should be provided:

- Batch identity, strength, and size
- Date of manufacture
- Site of manufacture
- Manufacturing process, where applicable
- Immediate container/closure
- Degradation product content, individual and total
- Use of batch
- Reference to analytical procedure(s) used
- Batch number of the drug substance used in the drug product
- Storage conditions

2.4 Specification Limits for Degradation Products

The specifications for a new drug product should include limits for degradation products expected to occur during manufacture and under recommended storage conditions. Stability studies, knowledge of degradation pathways, product development studies, and laboratory studies should be used to characterize the degradation profile. Specifications should be set taking into account the qualification of the degradation products, the stability data, the content arising from the drug substance specification, the expected expiry period, and the recommended storage conditions for the product, allowing sufficient latitude to deal with normal manufacturing, analytical, and stability profile variation. The specifications for the product should include, where applicable, limits for:

- Each specified degradation product
- Any unspecified degradation product
- Total degradation products

Although some variation is expected, significant variation in batch to batch degradation profiles may indicate that the manufacturing process of the new drug product is not adequately controlled and validated. A rationale for the inclusion or exclusion of impurities in the specifications should be presented. This rationale should include a discussion of the impurity profiles observed in the safety and clinical studies, together with a consideration of the impurity profile of the product manufactured by the proposed commercial process. All impurities at a level greater than (>) the reporting threshold should be summed and reported as Total Impurities. The summation should be performed on the unrounded individual values, and the total value should be rounded and reported as described in section 2.2.

2.5 Qualification of Degradation Products

Qualification is the process of acquiring and evaluating data that establishes the biological safety of an individual degradation product or a given degradation profile at the level(s) specified. The applicant should provide a rationale for selecting degradation product limits based on safety considerations. The level of any degradation product present in a new drug product that has been adequately tested and found safe in safety and/or clinical studies is considered qualified. Therefore, it is useful to include any available information on the actual content of degradation products in the relevant batches at the time of use in safety and/or clinical studies. Degradation products that are also significant metabolites, present in animal and/or human studies, do not need further qualification. It may be possible to justify a higher level of a degradation product than the level administered in safety studies. The justification should include consideration of factors such as: The amount of degradation product administered in previous safety and/or clinical studies and found to be safe; the percentage change in the degradation product; and other safety factors, as appropriate.

If data are not available to qualify the proposed specification level of a degradation product, studies to obtain such data may be needed (see Attachment 2) when the usual qualification thresholds set out in Attachment 1 are exceeded. Higher or lower thresholds for qualification of degradation products may be appropriate for some individual products based on scientific rationale and level of concern, including drug class effects and clinical experience. For example, qualification may be especially important when there is evidence that such degradation products in certain drug products or therapeutic classes have previously been associated with adverse

reactions in patients. In these instances, a lower qualification threshold may be appropriate. Conversely, a higher qualification threshold may be appropriate for individual products when the level of concern for safety is less than usual based on similar considerations (e.g., patient population, drug class effects, and clinical considerations). In unusual circumstances, technical factors (e.g., manufacturing capability, a low drug substance to excipient ratio, or the use of excipients that are also crude products of animal or plant origin) may be considered as part of the justification for selection of alternative threshold limits based upon manufacturing experience with the proposed commercial process. Proposals for alternative thresholds would be considered on a case-by-case basis.

The "Decision Tree for Safety Studies" (Attachment 2) describes considerations for the qualification of impurities when thresholds are exceeded. Alternatively, if data are available in the scientific literature, then such data may be submitted for consideration to qualify a degradation product. If neither is the case, additional safety testing should be considered. The studies desired to qualify a degradation product will depend on a number of factors, including the patient population, daily dose, and route and duration of product administration. Such studies should normally be conducted on the product or substance containing the degradation products to be controlled, although studies using isolated degradation products are considered acceptable.

2.6 New Degradation Products

During the course of drug development studies, the qualitative degradation profile of a new drug product may change, resulting in new degradation products that exceed the identification and/or qualification threshold. In this event, these new degradation products should be identified and/or qualified. Such changes call for qualification of the level of the degradation product unless it is present at a level of not more than (≤) the threshold values as set out in Attachment 1.

When a new degradation product exceeds the threshold, the "Decision Tree for Safety Studies" should be consulted. Safety studies should provide a comparison of results of safety testing of the product or substance containing a representative level of the degradation product with previously qualified material, although studies using the isolated degradation products are also considered acceptable (these studies may not always have clinical significance).

3. Glossary

Degradation product: A molecule resulting from a chemical change in the substance brought about over time and/or by the action of, e.g., light, temperature, pH, or water or by reaction with an excipient and/or the immediate container/closure system (also called decomposition product).

Degradation profile: A description of the degradation products observed in the drug substance or drug product.

Development studies: Studies conducted to scale-up, optimize, and validate the manufacturing process for a drug product.

Identification threshold: A limit above which (>) an impurity needs identification.

Identified degradation product: A degradation product for which a structural characterization has been achieved.

Impurity: Any component of the drug product that is not the chemical entity defined as the drug substance or an excipient in the product.

Impurity profile: A description of the identified and unidentified impurities present in a drug product.

New drug substance: The designated therapeutic moiety that has not been previously registered in a region or member State (also referred to as a new molecular entity or new chemical entity). It may be a complex, simple ester, or salt of a previously approved substance.

Potential degradation product: An impurity that, from theoretical considerations, may arise during or after manufacture or storage of the drug product. It may or may not actually appear in the substance or product.

Qualification: The process of acquiring and evaluating data that establishes the biological safety of an individual impurity or a given impurity profile at the level(s) specified.

Qualification threshold: A limit above which (>) an impurity needs to be qualified.

Reaction product: Product arising from the reaction of a substance with an excipient in the drug product or immediate container/closure system.

Reporting threshold: A limit above which (>) an impurity needs to be reported.

Rounding: The process of reducing a result to the number of significant figures or number of decimal places as dictated by the appropriate limit. For example, a result greater than or equal to (≥) 0.05 and less than (<) 0.15 is rounded to 0.1.

Safety information: The body of information that establishes the biological safety of an individual impurity or a given impurity profile at the level(s) specified.

Specified degradation product: An identified or unidentified degradation product that is selected for inclusion in the new drug product specifications and is individually listed and limited in order to ensure the safety and quality of the new drug product.

Toxic impurity: An impurity having significant undesirable biological activity.

Unidentified degradation product: A degradation product that is defined solely by qualitative analytical properties, e.g., chromatographic retention time.

Unspecified degradation product: A degradation product that is not included in the list of specified degradation products.

ATTACHMENT 1.

Thresholds for Reporting of Degradation Products in New Drug Products

Maximum Daily Dose [1]	Threshold [2]
≤ 1 gram (g)	0.1%
> 1 g	0.05%

Thresholds for Identification of Degradation Products in New Drug Products

Maximum Daily Dose [1]	Threshold [2]
< 1 milligram (mg)	1% or 5 micrograms (µg) TDI,[3] whichever is lower
1 mg–10 mg	0.5% or 20 µg TDI, whichever is lower
>10 mg–2 g	0.2% or 2 mg TDI, whichever is lower
> 2 g	0.1%

Thresholds for Qualification of Degradation Products in New Drug Products

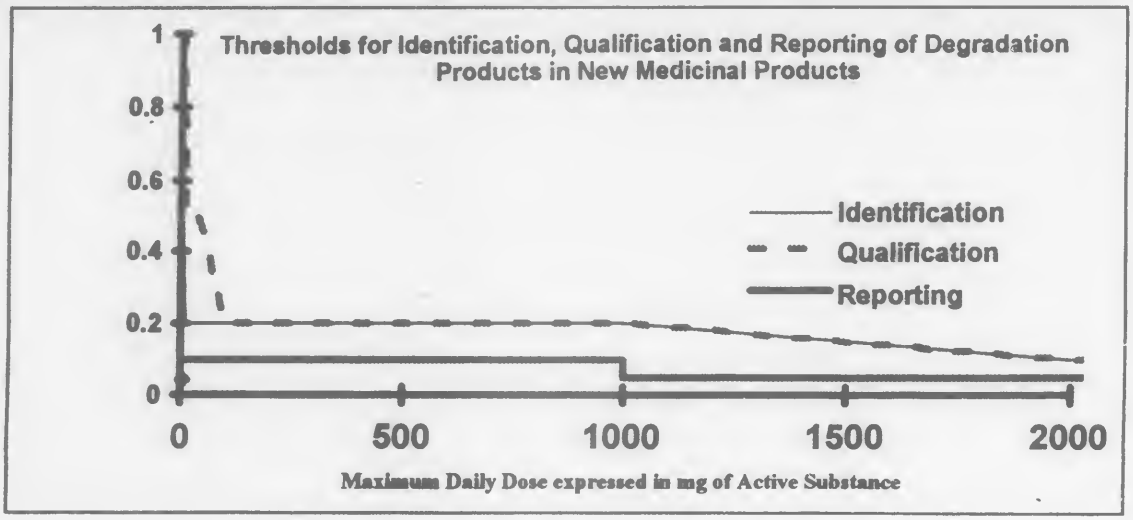
Maximum Daily Dose [1]	Threshold [2]
< 10 mg	1% or 50 µg TDI, whichever is lower

Thresholds for Qualification of Degradation Products in New Drug Products

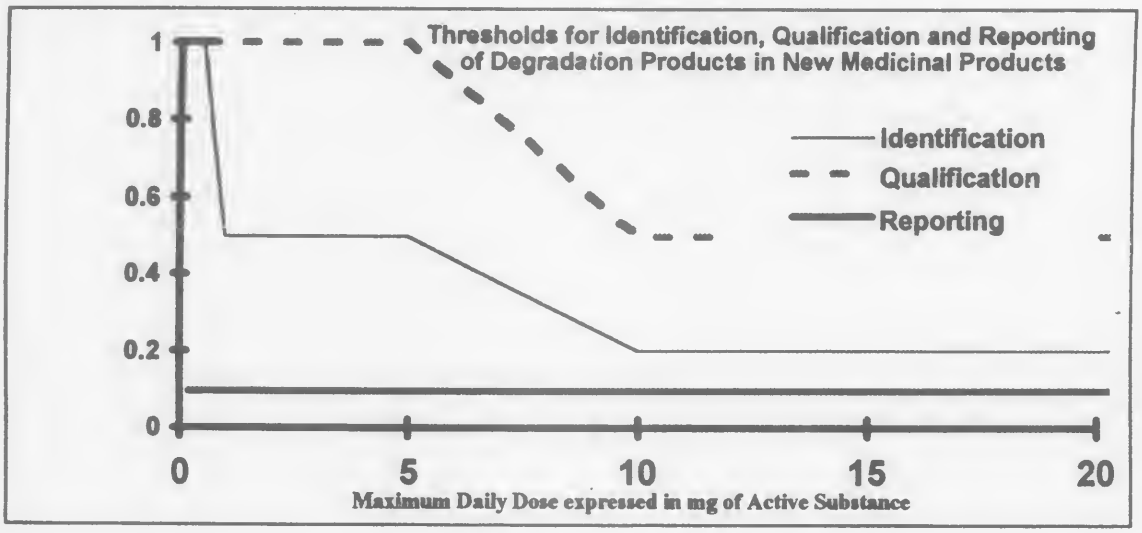
Maximum Daily Dose [1]	Threshold [2]
10 mg–100 mg	0.5% or 200 µg TDI, whichever is lower
>100 mg–2 g	0.2% or 2 mg TDI, whichever is lower
> 2 g	0.1%

[1] The amount of substance administered per day.
[2] Threshold is based on percent of the substance. Higher reporting thresholds should be scientifically justified.
[3] Total daily intake.

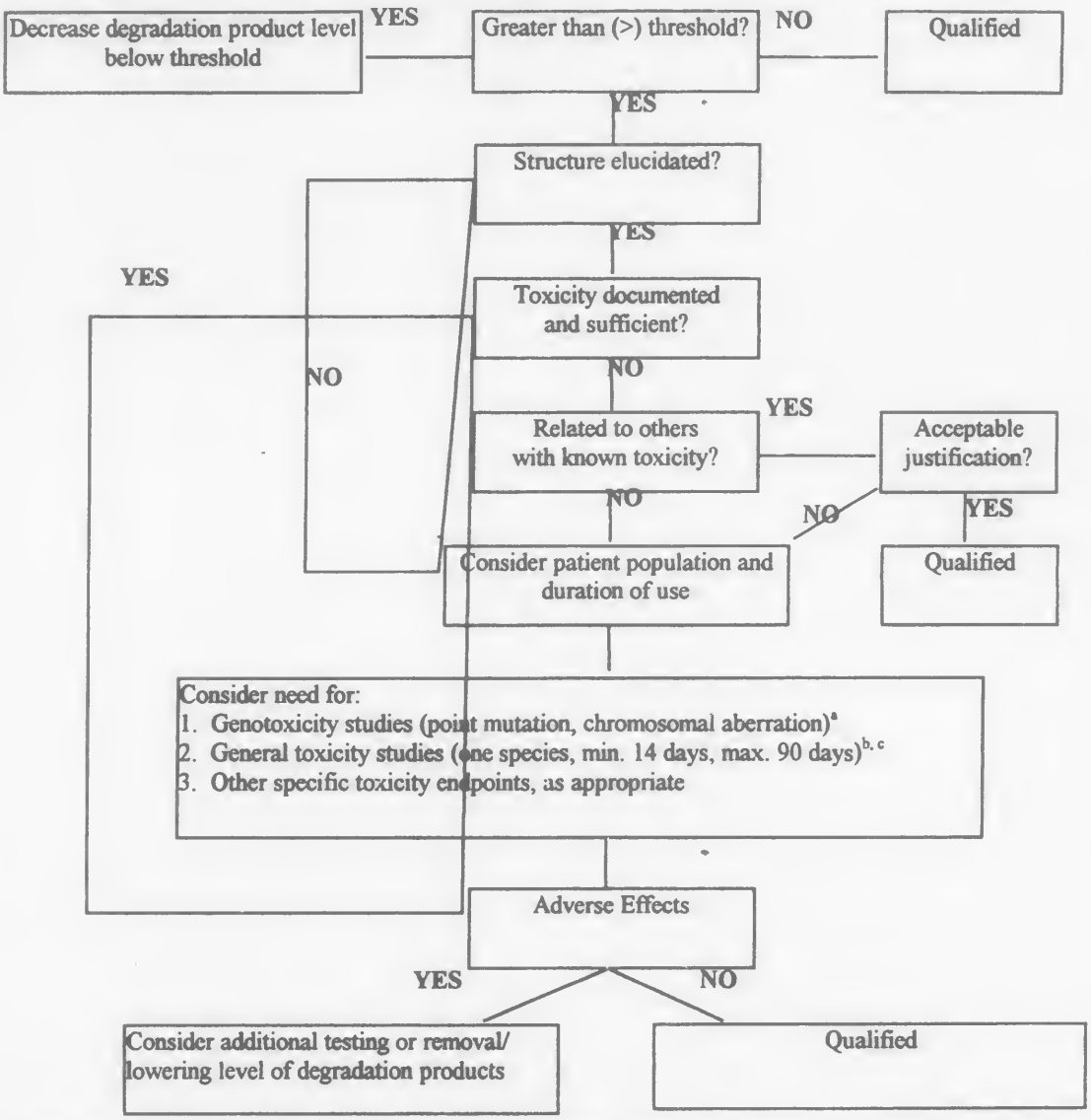
BILLING CODE 4160–01–F



Expanded scale:



ATTACHMENT 2: DECISION TREE FOR SAFETY STUDIES



[a] If considered desirable, a minimum screen, e.g., genotoxic potential, should be conducted. A study to detect point mutations and one to detect chromosomal aberrations, both in vitro, are recommended as an acceptable minimum screen, as discussed in the ICH guidances: "S2A Specific Aspects of Regulatory Genotoxicity Tests for Pharmaceuticals" and "S2B Genotoxicity: A Standard Battery for Genotoxicity Testing of Pharmaceuticals."

[b] If general toxicity studies are desirable, study(ies) should be designed to allow comparison of unqualified to qualified material. The study duration should be based on available relevant information and performed in the species most likely to maximize the potential to detect the toxicity of an impurity. In general, a minimum duration of 14 days and a maximum duration of 90 days would be acceptable.

[c] On a case-by-case basis, single-dose studies may be acceptable, especially for single-dose drugs. If repeat-dose studies are desirable, a maximum duration of 90 days would be acceptable.

Dated: July 10, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–18150 Filed 7–18–00; 8:45 am]

BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–313]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New collection.

Title of Information Collection: Medicare DMEPOS Competitive Bidding Demonstration: Follow-up to Original Survey.

Form No.: HCFA–R–313.

Use: This collection is the "follow-up" or "second round" to the original Competitive Bidding Demonstration collection to compare the results of the two surveys to make inferences about the impact of the competitive bidding demonstration on issues measured by the survey (*i.e.*, access and quality, and goods and services).

Section 4319 of the Balanced Budget Act (BBA) mandates HCFA to implement demonstration projects under which competitive acquisition areas are established for contract award purposes for the furnishing of Part B items and services, except for physician's services. The first of these demonstration projects implements competitive bidding of categories of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS). Under the law, suppliers can receive payments from Medicare for items and services covered by the demonstration only if their bids are competitive in terms of quality and price.

Each demonstration project may be conducted in up to three metropolitan areas for a three-year period. Authority for the demonstration expires on December 31, 2002. The schedule for the demonstration anticipates about a six- month period required between mailing the bidding forms to potential bidders and the start of payments for DMEPOS under the demonstration. HCFA intended to operate the demonstration in two rounds, the first of two years, and the second of one year.

HCFA has operated its first demonstration in Polk County, Florida, which is the Lakeland-Winter Haven Metropolitan Area. This "second round" evaluation is necessary to determine whether access to care, quality of care, and diversity of product selection are affected by the competitive bidding demonstration. Although secondary data will be used wherever possible in the evaluation, primary data from beneficiaries themselves is required in order to gain an understanding of changes in their level of satisfaction and in the quality and selection of the medical equipment.

The follow-up beneficiary surveys will take place July to September 2000. We will sample beneficiaries from claimant lists provided by the durable medical equipment regional carrier (DMERC). The sample will be stratified into two groups: beneficiaries who use oxygen and beneficiaries who are non-oxygen users, *i.e.*, users of the other four product categories covered by the demonstration (hospital beds, enteral nutrition, urological supplies, and surgical dressings) but not oxygen. To draw a comparison, we will sample in both the demonstration site (Polk County, Florida) and a comparison site (Brevard County, Florida) that matches Polk County on characteristics such as number of Medicare beneficiaries and DME/POS utilization. Information collected in the beneficiary survey will be used by the University of Wisconsin-Madison (UW–M), Research Triangle Institute (RTI), and Northwestern University (NU) to evaluate the Competitive Bidding Demonstration for DME and POS. Results of the evaluation will be used by HCFA and the Congress in formulating future Medicare policy on Part B competitive bidding.

The research questions to be addressed by the surveys focus on access, quality, and product selection. Our collection process includes fielding a survey for oxygen users and a survey for non-oxygen users before the demonstration begins and again after the new demonstration prices were put into effect. The baseline beneficiary survey was conducted between March and May 1999. The same data collection process will be followed in the comparison site (Brevard County). In the analysis of the data, we will also control for socioeconomic factors. This will allow us to separate the effects of the demonstration from beneficiary or site-specific effects.

In the survey, we will also ask beneficiaries about the types of equipment that they use. This will allow us to determine if certain users are affected while others are not. For example, we will be able to evaluate whether oxygen users experience a greater increase or decrease in access and quality than beneficiaries who receive enteral nutrition.

The information that this survey will provide about access, quality, and product selection will be very important to the future of competitive bidding within the Medicare program.

Frequency: Other: One time.

Affected Public: Individuals or households.

Number of Respondents: 2,128.

Total Annual Responses: 2,128.

Total Annual Hours: 637.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's web site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: July 3, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–18166 Filed 7–18–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee E—Cancer Epidemiology, Prevention & Control.

Date: August 17–18, 2000.

Time: 8:00 am to 2:00 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Ave, N.W., Washington, DC 20007.

Contact Person: Mary C. Fletcher, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Blvd., Room 8056, Bethesda, MD 20814, 301–496–7413.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 7, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–18172 Filed 7–18–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee C—Basic and Preclinical.

Date: August 17–18, 2000.

Time: 7:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Virginia P. Wray, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8046, Rockville, MD 20892–7405, 301/496–9236.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 7, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–18173 Filed 7–18–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The will be closed to the public in accordance with the provisions set forth sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group Subcommittee A—Cancer Centers.

Date: August 3–4, 2000.

Time: 8:00 am to 1:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: David E. Maslow, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard—Room 8054, Bethesda, MD 20892–7405, 301/496–2330.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 7, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–18174 Filed 7–18–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: August 9, 2000.

Time: 3:30 pm to 5:00 pm.

Agenda: To review and evaluate contract proposals.

Place: 6700B Rockledge Drive, Bethesda, MD 20892–2616, (Telephone Conference Call).

Contact Person: Nasrin Nabavi, PHD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301 496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 12, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–18176 Filed 7–18–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: July 24, 2000.

Time: 10:00 am to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: 2401 M Street N.W., Washington, D.C. 20037.

Contact Person: Anna L. Ramsey-Ewing, PhD, Scientific Review Administrator.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS).

Dated: July 12, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–18177 Filed 7–18–00; 8:45 am]

BILLING CODE 4140—01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: July 31, 2000.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: 6700B Rockledge Drive, Room 2103, Bethesda, MD 20982, (Telephone Conference Call).

Contact Person: M. Sayeed Quraishi, PHD, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2220, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 12, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–18178 Filed 7–18–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institutes of Diabetes and Digestive and Kidney Disease Special Emphasis Panel.

Date: July 19–21, 2000.

Time: 7:30 PM to 12:30 PM.

Agenda: To review and evaluate grant applications.

Place: Sheraton-Four Points Den Cherry Creek, Cherry Creek Center, 600 S. Colorado Boulevard Denver, CO 80246.

Contact Person: Shan S. Wong, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 643, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–7797.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Disease and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 12, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–18180 Filed 7–18–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 18, 2000.
Time: 11:00 am to 12:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Victoria S. Levin, MSW, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7846, Bethesda, MD 20892, (301) 435–0912, levinv@csr.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 24–25, 2000.
Time: 8:30 am to 3:30 pm
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, N.W., Washington, DC 20007.
Contact Person: Bruce Maurer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, (301) 435–1168.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 24, 2000.
Time: 8:30 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, Bethesda, MD 20814.
Contact Person: Sooja K. Kim, RD, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6178, MSC 7892, Bethesda, MD 20892, (301) 435–1780.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 24–26, 2000.
Time: 5:00 pm to 12:00 pm.
Agenda: To review and evaluate grant applications.
Place: Jumer's Castle Lodge, 209 South Broadway, Urbana, IL 61801.
Contact Person: Houston Baker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7854, Bethesda, MD 20892–7854, (301) 435–1175, bakerh@csr.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 25, 2000.
Time: 8:30 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Hotel Allegro Chicago, 171 West Randolph Street, Chicago, IL 60601.
Contact Person: Angela M. Pattatucci-Aragon, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, (301) 435–1775.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel VISB (03).
Date: July 25, 2000.
Time: 2:00 pm to 4:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Leonard Jakubczak, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5172, MSC 7844, Bethesda, MD 20892, (301) 435–1247.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 25, 2000.
Time: 2:00 pm to 4:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Michael Knecht, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, (301) 435–1046.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 26, 2000.
Time: 9:00 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Latham Hotel, 3000 M Street, N.W., Washington, DC 20007–3701.
Contact Person: Carl D. Banner, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7850, Bethesda, MD 20892, (301) 435–1251, bannerc@drg.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 26, 2000.
Time: 11:30 am to 12:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Timothy J. Henry, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4180, MSC 7808, Bethesda, MD 20892, (301) 435–1147.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 26, 2000.
Time: 1:00 pm to 3:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Gamil C. Debbas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1018.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 26, 2000.
Time: 1:00 pm to 3:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, (301) 435–1786.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 26, 2000.
Time: 1:00 pm to 3:00 pm.
Agenda: To review and evaluate grant applications and/or proposals.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Michael Micklin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 435–1258, micklinm@csr.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 26, 2000.
Time: 2:00 pm to 3:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Ellen K. Schwartz, PhD, Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7770, Bethesda, MD 20892, (301) 435–0681.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 26, 2000.

Time: 2:00 pm to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007–3701.

Contact Person: Carl D. Banner, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7850, Bethesda, MD 20892, (301) 435–1251, bannerc@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 26, 2000.

Time: 3:00 pm to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7850, Bethesda, MD 20892, (301) 435–1786.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS and Related Research 6.

Date: July 27–28, 2000.

Time: 8 am to 3 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Sami A. Mayyasi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7852, Bethesda, MD 20892, (301) 435–1169.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 27, 2000.

Time: 9 am to 11 am.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Larry Pinkus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 28, 2000.

Time: 1 pm to 2:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Timothy J. Henry, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4180, MSC 7808, Bethesda, MD 20892, (301) 435–1147.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 31, 2000.

Time: 2 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 12, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–18175 Filed 7–18–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Method for production of Layered Expression Scans for Tissue and Cell Samples.

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license worldwide to practice the invention embodied in: U.S. Patent Application Serial No. 60/145,613 entitled "Method for Production of Layered Expression Scans for Tissue and Cell Samples", filed July 26, 1999, to 20/20 genomics, LLC. having a place of business in Rockville, Maryland. The United States of America is an assignee to the patent rights of this invention.

The contemplated exclusive license may be limited to the development of instruments for medical diagnostics and research, based on the novel Layered Expression Scans (LES) technique.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before September 18, 2000 will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Uri Reichman, Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 496–7056, ext. 240; Facsimile: (301) 402–0220; E-mail: reichmau@od.nih.gov. A signed Confidential Disclosure Agreement will be required to receive copies of the patent application.

SUPPLEMENTARY INFORMATION:

LES is a new approach to comprehensive molecular analysis of biological samples that uses a layered array of capture membranes coupled to biological binders (antibodies, receptors, or DNA sequences) to perform multiplex protein, DNA or mRNA analysis. Cell or tissue samples are transferred through a series of individual capture layers, each linked to a separate binder. As the biomolecules in the sample traverse the membrane set, each targeted protein, mRNA or DNA is specifically captured by the layer containing its corresponding binder and then identified and quantified by molecular staining. The two-dimensional relationship of the cell populations of a tissue sample is maintained during the transfer process, thereby producing a molecular profile of each cell type present. The LES technology, when fully developed, will have multiple applications in both clinical and research areas. In particular, it will have applications in diagnostic and prognostic analysis of diseased tissues (i.e., tumors).

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes

that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: July 12, 2000.

Jack Spiegel,

Director, Division of Technology, Development and Transfer, Office of Technology Transfer.

[FR Doc. 00–18179 Filed 7–18–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2000 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Prevention (CSAP), Center for Substance Abuse Treatment (CSAT), and Center for Mental Health Services (CMHS) announce the availability of FY 2000 funds for grants for the following activity. This activity is discussed in more detail under Section 4 of this notice. This notice is not a complete description of the activity; potential applicants *must* obtain a copy of Parts I and II of the Guidance for Applicants (GFA) before preparing an application. Part I is entitled National Community Collaborative Involvement in Reducing Racial and Ethnic in Mental Health and/or Substance Abuse Service Disparities Cooperative Agreement. Part II is entitled General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements.

Activity	Application deadline	Estimated funds available, FY 2000 (in millions)	Estimated number of awards	Project period
Community disparities	8/29/00	$1.6	45	3 years.

The actual amount available for awards and their allocation may vary, depending on unanticipated program requirements and the number and quality of applications received. FY 2000 funds for the activity discussed in this announcement were appropriated by the Congress under Public Law No. 106–113. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The SAMHSA Centers' substance abuse and mental health services activities address issues related to Healthy People 2000 objectives of Mental Health and Mental Disorders; Alcohol and Other Drugs; Clinical Preventive Services; HIV Infection; and Surveillance and Data Systems. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone: 202–512–1800).

SAMHSA has published additional notices of available funding opportunities for FY 2000 in past issues of the **Federal Register**.

General Instructions: Applicants must use application form PHS 5161–1 (Rev. 6/99; OMB No. 0920–0428). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from the organizations specified for the activity covered by this notice (see Section 4).

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. This is to ensure receipt of all necessary forms and information, including any specific program review and award criteria.

The PHS 5161–1 application form and the full text of the activity described in Section 4 are also available electronically via SAMHSA's World Wide Web Home Page (address: http://www.samhsa.gov).

Application Submission: Applications must be submitted to: SAMHSA Programs, Center for Scientific Review, National Institutes of Health, Suite 1040, 6701 Rockledge Drive MSC–7710, Bethesda, Maryland 20892–7710*.
(* Applicants who wish to use express mail or courier service should change the zip code to 20817.)

Application Deadlines: The deadline for receipt of applications is August 29, 2000.

Competing applications must be received by the indicated receipt date to be accepted for review. An application received after the deadline may only be accepted if it carries a legible proof-of-mailing date assigned by the carrier and that date is not later than one week prior to the deadline date. Private metered postmarks are not acceptable as proof of timely mailing.

Applications received after the deadline date and those sent to an address other than the address specified above will be returned to the applicant without review.

FOR FURTHER INFORMATION CONTACT: Requests for activity-specific technical information should be directed to the program contact person identified for the activity covered by this notice (see Section 4).

Requests for information concerning business management issues should be directed to the grants management contact person identified for the activity covered by this notice (see Section 4).

Programmatic Information

1. Program Background and Objectives

SAMHSA's mission within the Nation's health system is to improve the quality and availability of prevention, early intervention, treatment, and rehabilitation services for substance abuse and mental illnesses, including co-occurring disorders, in order to improve health and reduce illness, death, disability, and cost to society.

Reinventing government, with its emphases on redefining the role of Federal agencies and on improving customer service, has provided SAMHSA with a welcome opportunity to examine carefully its programs and activities. As a result of that process, SAMHSA moved assertively to create a renewed and strategic emphasis on using its resources to generate knowledge about ways to improve the prevention and treatment of substance abuse and mental illness and to work with State and local governments as well as providers, families, and consumers to effectively use that knowledge in everyday practice.

SAMHSA's FY 2000 Knowledge Development and Application (KD&A) agenda is the outcome of a process whereby providers, services researchers, consumers, National Advisory Council members and other interested persons participated in special meetings or responded to calls for suggestions and reactions. From this input, each SAMHSA Center developed a "menu" of suggested topics. The topics were discussed jointly and an agency agenda of critical topics was agreed to. The selection of topics depended heavily on policy importance and on the existence of adequate research and practitioner experience on which to base studies. While SAMHSA's FY 2000 KD&A program will sometimes involve the evaluation of some delivery of services, they are services studies and application activities, not merely evaluation, since they are aimed at answering policy-relevant questions and putting that knowledge to use.

SAMHSA differs from other agencies in focusing on needed information at the services delivery level, and it is question-focus. Dissemination and application are integral, major features of the programs. SAMHSA believes that it is important to get the information into the hands of the public, providers, and systems administrators as effectively as possible. Technical assistance, training, and preparation of special materials will be used, in addition to normal communication means.

SAMHSA also continues to fund legislatively-mandated services programs for which funds are appropriated.

2. Special Concerns

SAMHSA's legislatively-mandated services programs do provide funds for mental health and/or substance abuse treatment and prevention services. However, SAMHSA's KD&A activities do not provide funds for mental health and/or substance abuse treatment and prevention services except sometimes for costs required by the particular activity's study design. Applicants are required to propose true knowledge application or knowledge development application projects. Applications seeking funding for services projects under a KD&A activity will be considered nonresponsive.

Applications that are incomplete or nonresponsive to the GFA will be returned to the applicant without further consideration.

3. Criteria for Review and Funding

3.1 General Review Criteria

Review criteria that will be used by the peer review groups are specified in the application guidance material.

3.2 Funding Criteria for Scored Applications

Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criteria. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

4. Special FY 2000 SAMHSA Activities

National Community Collaborative Involvement in Reducing Racial and Ethnic in Mental Health and/or Substance Abuse Service Disparities Cooperative Agreement (short title: Community Disparities, SP00–007)

- *Application Deadline:* The receipt date is August 29, 2000.
- *Purpose:* The Substance Abuse and Mental Health Services Administration's CSAP, CSAT, and CMHS announce the availability of funds for a knowledge development and application (KD&A) cooperative agreement to capitalize on the collaborative strength of racial/ethnic communities to address disparities in access to substance abuse prevention, treatment and mental health services they may experience. This mental health and/or substance abuse prevention or treatment initiative is intended to achieve those goals by employing existing racial/ethnic focused national and/or regional organizations and their collaborating affiliates to increase awareness, to develop/adapt programs, and/or to evaluate current models for specific populations with particular disparate issues. The involvement of national and/or regional organizations (whose existing infrastructure and experience give them both the management experience and target population base needed) will assure the applicant is well known to, and respected by, its respective constituency(s) and will facilitate access to these racial/ethnic communities through either their local community-based affiliates or other non-affiliated local organizations willing to quickly join in collaboration in order to ensure culturally competent, effective and timely strategies to reduce service disparities.
- *Eligible Applicants:* Applications may only be submitted by national or regional domestic non-profit organizations that can demonstrate collaborative relationships with community based organizations that are based in racial/ethnic minority communities which are capable of achieving the program design/approach and prepared to enter into contractual agreement for the purpose of this GFA with the national/regional organization. Applicants and collaboratives must be culturally competent to address the specialized needs of one of the target population groups listed below. Examples of suitable collaboratives may include local affiliates, chapters, community-based organizations, faith-based groups, and Indian tribes or tribal organizations, etc. Target populations are: Alaska Natives, African Americans, Asian Americans, Hispanic/Latinos, American Indians, and/or Native Hawaiians, and Pacific Islanders.
- *Amount:* SAMHSA is making $1.6 million available to support approximately four to five awards under this GFA in FY2000. The average award is expected to range from $200,000 to $400,000 in total costs (direct plus indirect costs). The awardee will only be entitled to actual cost or 20%, whichever is less for administering sub-awards and providing program management. The applicant is expected to administer at least 4 sub-awards to local organizations. Actual funding levels will depend upon the availability of appropriated funds.

Period of Support: Support may be requested for a period of up to 3 years.

- *Catalog of Federal Domestic Assistance Number:* 93.230.
- Program Contact: For questions concerning program issues, contact: Laura J. Flinchbaugh, MPH, Division of Knowledge Development and Evaluation, Center for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration, Rockwall II, Room 1075, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–4564.

For questions regarding grants management issues, contact: Edna Frazier, Grants Management Officer, Division of Grants Management, OPS, Substance Abuse and Mental Health Services Administration, Rockwall II,

Suite 630, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6816.

• Application kits are available from:

National Clearinghouse for Alcohol and Drug Information (NCADI), P.O. Box 2345, Rockville, MD 20847, Telephone: 1–800–729–6686, TDD: (800) 487–4889, Fax: (301) 468–6433

and/or

Knowledge Exchange Network (KEN), P.O. Box 42490, Washington, DC 20015, Telephone: 1–800–789–2647, TTY: (301) 443–9006, Fax: (301) 984–8796.

5. Public Health System Reporting Requirements

The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements.

Application guidance materials will specify if a particular FY 2000 activity is subject to the Public Health System Reporting Requirements.

6. PHS Non-Use of Tobacco Policy Statement

The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

7. Executive Order 12372

Applications submitted in response to the FY 2000 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to:

Division of Extramural Activities, Policy, and Review Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: July 13, 2000.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–18149 Filed 7–18–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4566–N–09]

Announcement of OMB Approval Number for the Continuum of Care Homeless Assistance Application

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Announcement of OMB approval number.

SUMMARY: The purpose of this notice is to announce the OMB approval number for the collection of information pertaining to the Continuum of Care Homeless Assistance Application.

FOR FURTHER INFORMATION CONTACT: Alma Thomas, Department of Housing and Urban Development, 451, 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–21240. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), this notice advises that OMB has responded to the Department's request for approval of the information collection pertaining to the Continuum of Care Homeless Assistance Application. The OMB approval number for this information collection is 2506–0112, which expires on June 30, 2003.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number.

Dated: July 13, 2000.

Joseph D'Agosta,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 00–18161 Filed 7–18–00; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4566–N–10]

Announcement of OMB Approval Number for the Consolidated Plan

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Announcement of OMB approval number.

SUMMARY: The purpose of this notice is to announce the OMB approval number for the collection of information pertaining to the Consolidated Plan.

FOR FURTHER INFORMATION CONTACT: Sal Sclafani, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–1283. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), this notice advises that OMB has responded to the Department's request for approval of the information collection pertaining to the Consolidated Plan. The OMB approval number for this information collection is 2506–0117, which expires on June 30, 2002.

An agency may not conduct or sponsor, and a person is not required to

respond to, a collection of information, unless it displays a currently valid OMB control number.

Dated: July 13, 2000.

Kenneth Williams,

Deputy Assistant Secretary for Grants Program.

[FR Doc. 00–18162 Filed 7–18–00; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Meeting

AGENCY: Office of the Secretary, Interior; National Oceanic and Atmospheric Administration, Commerce.

SUBJECT: U.S. Coral Reef Task Force; meeting.

ACTION: Notice of public meeting.

SUMMARY: On behalf of the U.S. Coral Reef Task Force, the Department of the Interior and the Department of Commerce announce a meeting to be held as a supplement to the upcoming U.S. Coral Reef Task Force meeting in American Samoa.

DATES: The public meeting will be held Thursday, July 27, 2000, from 1 p.m. to 4 p.m.

ADDRESSES: The meeting will be held in the Secretary's Conference Room, Room 5160, at the Department of the Interior, 1849 C Street NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jessica Jenkins, telephone (202) 219–0710, fax (202) 219–0229, e-mail Jessica_Jenkins@doi.gov.

SUPPLEMENTARY INFORMATION: The upcoming U.S. Coral Reef Task Force meeting to be held in American Samoa in August may be logistically difficult for some individuals to attend due to its remote location. A meeting in Washington, DC has been planned so that those people unable to travel to American Samoa are able to receive information and attend this meeting. For that reason, we have scheduled a "pre-meeting" to be held in Washington, DC on July 27. Please see the notice in today's **Federal Register** for details of that meeting.

A draft agenda for the meeting is available on the Task Force web site located at http://coralreef.gov. Participants are encouraged to submit their views on issues included in the agenda. Please provide the Task Force with your written comments either at the July 27 meeting or via mail to: Jessica Jenkins, Department of the Interior, 1849 C Street NW, Mail Stop 6635, Washington, DC 20240 or Jessica_Jenkins@doi.gov. You may also hand-deliver written comments to the address above, Room 3058. We will consider comments and information received by close of business Monday, August 7.

You may obtain additional information about the U.S. Coral Reef Task Force from the Internet at http://coralreef.gov.

Dated: July 13, 2000.

Stephen C. Saunders,

Deputy Assistant Secretary, Fish and Wildlife and Parks, Department of the Interior.

Rolland Schmitten,

Deputy Assistant, Secretary for International Affairs, Department of Commerce.

[FR Doc. 00–18184 Filed 7–18–00; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Public Meeting

AGENCY: Office of the Secretary, Interior; National Ocean and Atmospheric Administration, Commerce.

SUBJECT: Fifth meeting of the U.S. Coral Reef Task Force.

ACTION: Notice of public meeting.

SUMMARY: On behalf of the U.S. Coral Reef Task Force, the Department of the Interior and the Department of Commerce announce the upcoming U.S. Coral Reef Task Force meeting, to be held in American Samoa. This will be the Task Force's fifth meeting, and it will be open to the public.

DATES: The public meeting will be held Saturday August 5, and Monday, August 7, 2000, at times to be determined.

ADDRESSES: The meeting will be held in Pago Pago, American Samoa.

FOR FURTHER INFORMATION CONTACT: Matt Stout, National Oceanic and Atmospheric Administration, telephone (301) 713–3145, 0173, Fax (301) 713–0404, E-mail matthew.stout@noaa.gov

SUPPLEMENTARY INFORMATION: If you plan to attend the meeting in American Samoa, please contact Matthew Stout at the information provided above. We understand that it may be difficult for some individuals to provide comments on issues that will be on the August agenda. Members of the Task Force or their representatives will lead the meeting and background materials will be provided.

Participants are encouraged to submit their views on issues included in the August agenda, a draft of which can be found at http://coralreef.gov. Please provide the Task Force with your written comments either at the July 27 meeting or via mail to: Jessica Jenkins, Department of the Interior, 1849 C Street NW, Mail Stop 6635, Washington, DC 20240 or Jessica_Jenkins@doi.gov. You may also hand-deliver written comments to the address above, Room 3058. We will consider comments and information received by close of business Monday, August 7.

If you plan to attend the Washington, DC meeting, please RSVP to Jessica_Jenkins@doi.gov or (202) 219–0719 by July 25.

Dated: July 13, 2000.

Stephen C. Saunders,

Deputy Assistant Secretary, Fish and Wildlife and Parks, Department of the Interior.

Rolland Schmitten,

Deputy Assistant Secretary for International Affairs, Department of Commerce.

[FR Doc. 00–18185 Filed 7–18–00; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Crystal Power Generating Station and Associated Facilities, Moapa Indian Reservation, Clark County, Nevada

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs, with the cooperation of the Moapa Band of Paiutes and Calpine Corporation (Calpine), intends to gather information necessary for preparing an Environmental Impact Statement (EIS) for the approval of a long-term land lease for the proposed Crystal Power Generating Station, and associated infrastructure, that Calpine would construct and operate on approximately 50 acres of Indian trust land within the Moapa Indian Reservation, Clark County, Nevada. The purpose of the proposed action is to provide economic development and job opportunities for the tribe and to allow Calpine to meet the electrical power needs of Southern

Nevada and, possibly, California and Arizona. The proposed plant would have a nominal 760-megawatt base load rating. Details on the project location, proposed action and initial areas of environmental concern to be addressed in the EIS are provided below (See Supplementary Information). This notice also announces public scoping meetings regarding the content of the EIS.

DATES: Comments on the scope and implementation of this proposal must arrive by August 18, 2000. The public scoping meetings will be held on August 10, 2000, from 6:00 p.m. to 9:00 p.m., and August 11, 2000, from 6:00 p.m. to 9:00 p.m.

ADDRESSES: If you wish to comment, you may submit comments by any one of several methods. You may mail or hand carry written comments to either (1) Amy L. Heuslein, Regional Environmental Protection Officer, Western Regional Office, Bureau of Indian Affairs, Environmental Quality Services, P.O. Box 10, Phoenix, Arizona 85001, Telephone (602) 379–6750 or Telefax (602) 379–3833, or (2) Deborah Hamlin, Realty Specialist, Southern Paiute Field Station, P.O. Box 720, St. George, Utah 84771, Telephone (435) 674–9720 or Telefax (435) 674–9714. You may also comment via the Internet to AmyHueslein@bia.gov or DeborahHamlin@bia.gov. Please submit Internet comments as an ASCII file, avoiding the use of special characters and any form of encryption. If you do not receive confirmation from the system that your message was received, contact us directly at (602) 379–6750 or (435) 674–9720, respectively.

Comments, including the names and home addresses of respondents will be available for public review at the above addresses during regular business hours, 8 a.m. to 4:30 p.m. Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or your address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals representing themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

The August 10, 2000, public scoping meeting will be held at the Tribal Hall, Number 1 Lincoln Street, Moapa Indian Reservation, Moapa, Nevada. The August 11, 2000, public scoping meeting will be held in the First Floor Conference Room of the North Las Vegas Airport, 2730 Airport Drive, North Las Vegas, NV 89032.

FOR FURTHER INFORMATION CONTACT: Amy L. Heuslein, (602) 379–6750 or Deborah Hamlin, (435) 674–9720.

SUPPLEMENTARY INFORMATION: The EIS would evaluate the effects of a proposed land lease of approximately 50 acres (at 40°46′N Latitude, 6°97′W Longitude) on the Moapa Indian Reservation, where Calpine proposes to construct and operate a 760-megawatt combined cycle power plant. The proposed plant would be fueled by natural gas from the existing Kern River (Williams) Natural Gas Pipeline, which is located on the Reservation approximately 2,500 feet from the plant site. The plant would employ three gas turbines and one heat recovery steam generator. The stack height would be approximately 150 to 175 feet, with a diameter of about 18 feet. Groundwater would be used in operations and for cooling. Water is expected to be discharged to an on-site 10 to 15 acre evaporation pond.

The project is also proposed to include: (1) A gas supply lateral pipeline on reservation land; (2) a power grid interconnection at the Harry Allen substation, approximately 12 miles southwest of the plant site; (3) two parallel 230kV lines traversing both reservation land and Bureau of Land Management land, mostly within an existing utility corridor; and (4) a roadway connecting the site to Interstate Highway 15. The exact location of the roadway is still being evaluated due to design considerations.

Significant issues to be covered during the scoping process may include, but not be limited to, air quality, geology and soils, surface and groundwater resources, biological resources, cultural resources, socio-economic conditions, land use, aesthetics, environmental justice, and Indian trust assets.

This notice is published in accordance with section 1503.1 of the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508), implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: July 14, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–18274 Filed 7–18–00; 8:45 am]

BILLING CODE 4310–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–00–035]

Sunshine Act; Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: July 26, 2000 at 11 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–539–C, E, and F (Review) (Uranium from Russia, Ukraine, and Uzbekistan)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on August 7, 2000.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: July 13, 2000.

By order of the Commission:

Donna R. Koehnke,

Secretary.

[FR Doc. 00–18321 Filed 7–14–00; 5:09 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

Consistent with Departmental policy, 28 CFR 50.7, 38 FR 19029, and 42 U.S.C. 9622(d), notice is hereby given that on June 27, 2000, a proposed Settlement Agreement *In re CML, Inc.*, Case No. 98–49286–HJB (Bkr. D. Mass.), was lodged with the United States Bankpuptcy Court for the District of Massachusetts (Western Division). The proposed Settlement Agreement will resolve the United States' claims under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601, *et*

seq., on behalf of the U.S. Environmental Protection Agency ("EPA") against CML Group, Inc. (the "Debtor") and its subsidiary OCR, Inc. (together, the "Settling Parties") relating to the Kearsarge Metallurgical Corporation ("KMC") Superfund Site (the "Site") located in Conway, New Hampshire. The Complaint alleges that each defendant is liable under section 107(a) of CERCLA, 42 U.S.C. 9607(a).

Pursuant to the Settlement Agreement, the Debtor's insurer agrees to reimburse to the Untied States $575,000 out of $1,700,000 in past response costs. In exchange, the United States covenants not to bring a civil action or take administrative action against the Settling Parties, or their predecessors, successors and assigns, pursuant to Sections 106 and 107 of CERCLA relating to the Site, or to file any Proof of Claim in the Debtor's bankruptcy proceedings, or to seek to obtain any payment from the Debtor's Estate, on account of any matter relating to the EPA claim for the Site. This covenant not to sue is conditioned upon the complete and satisfactory performance by the Settling Parties and their insurer of their obligations under this Settlement Agreement.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Settlement Agreement. Any comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, PO Box 7611, Department of Justice, Washington, DC 20044–7611, and should refer to, *In re CML, Inc.*, Civil Action No. 98–49286 HJB (Bkr. D. Mass.), D.J. Ref. 90–11–3–761/2.

The proposed Settlement Agreement may be examined at the Office of the United States Attorney, District of Massachusetts, 1 Courthouse Way, Boston, MA 02210 and at Region I, Office of the Environmental Protection Agency, Superfund Records Center, One Congress Street, Boston, MA 02114. A copy of the proposed Settlement Agreement may also be obtained by mail from the Consent Decree Library, PO Box 7611, Washington, DC 20044–7611. In requesting a copy, please enclose a check (there is a 25 cent per page reproduction cost) in the amount of $2.00 payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–18159 Filed 7–18–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Oil Pollution Act of 1990

Notice is hereby given that a proposed consent decree in the action entitled *United States and State of Rhode Island v. EW Holding Corp.*, Civil Action No. 00332T, was lodged on July 6, 2000, with the United States District Court for the District of Rhode Island. The proposed consent decree resolves the claims of the United States under subsections 1002(b)(1) and (b)(2) of the Oil Pollution Act of 1990 ("OPA"), 33 U.S.C. 2702 (b)(1) and (b)(2), for removal costs and damages, against EW Holding Corp. (as successor to Thor Towing Corporation and Odin Marine Corporation), K-Sea Transportation Corp. (as successor to Eklof Marine Corporation), West of England Ship Owners Mutual Insurance Association (Luxembourg), and Gregory R. Aitken ("Settling Defendants"), in connection with the oil spill that occurred, on January 19, 1996, in the waters of Block Island Sound, State of Rhode Island, that resulted from the grounding of the barge *North Cape* and the tug *Scandia* (the *"North Cape* Oil Spill"). The proposed consent decree also resolves the claims of the United States against the officers, directors, and employees of the corporations listed above to the extent that their liability arises from actions taken in their official capacities as officers, directors, or employees of these corporations. The proposed consent decree also resolves similar claims filed by the State of Rhode Island and Providence Plantations ("State").

The proposed settlement resolves the claims of the United States and the State filed in a complaint on July 6, 2000. The complaint alleges that Odin Marine Corp. was the owner of the tank barge *North Cape* at the time of the *North Cape* oil spill, that Thor Towing Corp. was the owner of the tug *Scandia* at the time of the spill, and that Eklof Marine Corp. was the operator of both the tank barge *North Cape* and the tug *Scandia* at the time of the spill. West of England Ship Owners Mutual Insurance Association (Luxembourg) provided insurance coverage with respect to the spill, and Gregory R. Aitken was the Captain of the tug *Scandia* at the time of the spill. The complaint seeks damages for injury to, destruction of, loss of, or loss of use of, natural resources, including the reasonable costs of assessing the damage, resulting from the *North Cape* Oil Spill.

Pursuant to the proposed consent decree, the Settling Defendants will implement a lobster restoration program that will involve the v-notching and restocking of 1.248 million female legal-size lobsters into the waters of Block Island Sound by December 31, 2004. In addition, the Settling Defendants will make a payment to the United States and the State in the amount of $8 million, which will be used by the natural resource Trustees (the United States National Oceanic and Atmospheric Administration ("NOAA"), the United States Department of the Interior ("DOI"), and the Rhode Island Department of Environmental Management ("RIDEM")), to implement the following restoration projects: shellfish restoration (quahog transplanting), salt pond land acquisition, loon restoration (acquisition of land or easements to protect loon nests), sea bird restoration (acquisition of land or easements to protect eider nests), piping plover restoration project, and a fish run project. Finally, the Settling Defendants have paid the Trustees the following amounts toward their costs of assessment that have not previously been reimbursed: $2,714,940.20 to NOAA, $358,474.60 to DOI, and $250,000 to RIDEM.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, 960 Pennsylvania Avenue, NW., Washington, DC. 20530, and should refer to *United States and State of Rhode Island* v. *EW Holding Corp.*, DOJ Ref. Number 90–5–1–1–4337.

The proposed consent decree may be examined at the offices of the United States Attorney's Office for the District of Rhode Island, 50 Kennedy Plaza, 8th Floor, Providence, R.I. (contact Michael Iannotti, 401–538–5477). A copy of the proposed consent decree may be obtained by mail from the Department of Justice Consent Decree Library, PO Box 7611, Washington, DC, 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $18 (25 cents per page reproduction costs).

Bruce S. Gelber,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–18155 Filed 7–18–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Ninth Consent Decree in United States v. Naico Chemical Company, et al., Under the Comprehensive Environment Response, Compensation and Liability Act

Notice is hereby given that a proposed ninth Consent Decree in *United States* v. *Nalco Chemical Company, et al.*, Case No. 91–C–4482 (N.D. Ill.) entered into by the United States on behalf of U.S. EPA and Amerock Corporation was lodged on June 23, 2000 with the United States District Court for the Northern District of Illinois. The proposed Consent Decree resolves certain claims of the United States against the settling party under the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9601 *et seq.* relating to the Byron Salvage Superfund site in Ogle County, Illinois. The ninth Consent Decree is a past costs only settlement and provides for a payment of $300,000 to the Hazardous Substances Superfund.

The Department of Justice will receive comments relating to the proposed Consent Decree for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Nalco Chemical Company et al.*, D.J. Ref. No. 90–11–3–687. The proposed Consent Decree may be examined at the Office of the United States Attorney for the Northern District of Illinois, 219 S. Dearborn St., Chicago, Illinois 60604; and the Region V Office of the United States Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604. A copy of the Consent Decree may also be obtained by request addressed to the Department of Justice Consent Decreed Library, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044. In requesting a copy of the Consent Decree, please enclose a check in the amount of $5.00 (25 cents per page for reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–18214 Filed 7–18–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Eighth Consent Decree in United States v. Naico Chemical Company, et al., Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a proposed eighth Consent Decree in *United States* v. *Nalco Chemical Company, et al.*, Case No. 91–C–4482 (N.D. Ill.) entered into by the United States on behalf of U.S. EPA and Commonwealth Edison Company was lodged on August 3, 1999 with the United States District Court for the Northern District of Illinois. The proposed Consent Decree resolves certain claims of the United States against the settling party under the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9601 *et seq.* relating to the Byron Salvage Superfund Site in Ogle County, Illinois. Under the eighth Consent Decree, Commonwealth Edison Company will pay $860,900 to the Hazardous Substances Superfund in reimbursement of past response costs, will perform certain soil remediation work, and may make an additional payment as provided in the Consent Decree.

The Department of Justice will receive comments relating to the proposed Consent Decree for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Nalco Chemical Company, et al.*, D.J. Ref. No. 90–11–3–687. The proposed Consent Decree may be examined at the Office of the United States Attorney for the Northern District of Illinois, 219 S. Dearborn St., Chicago, Illinois 60604; and the Region V Office of the United States Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604. A copy of the Consent Decree may also be obtained by request addressed to the Department of Justice Consent Decree Library, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044. In requesting a copy of the Consent Decree, please enclose a check in the amount of $37.00 (25 cents per page for reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–18215 Filed 7–18–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

Notice is hereby given that a consent decree in *United States* v. *Royal Oak Enterprises, Inc.*, Civil Action No. 99–1506–A (E.D. Va.) was lodged with the Court on June 23, 2000.

The proposed decree resolves the claims of the United States against Royal Oak Enterprises, Inc. under the Clean Air Act, 42 U.S.C. 7401, *et seq.*, for civil penalties and injunctive relief to redress violations occurring at Royal Oak's Kenbridge, Virginia charcoal briquet manufacturing facility. Under the decree, Royal Oak Enterprises, Inc. is required to pay a civil penalty of $450,000 and is subjected to injunctive relief designed to ensure future compliance.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be address to: Office of the United States Attorney, Eastern District of Virginia, 2100 Jamieson Avenue, Alexandria, Virginia 22314, *Attention:* Richard W. Sponseller, Assistant United States Attorney, and should refer to *United States* v. *Royal Oak Enterprises, Inc.*, Civil Action No. 99–1506–A (E.D. Va.), U.S. Attorney's Office File Number 1998–V–00570.

The proposed consent decree may be examined and copied at the Office of the United States Attorney for the Eastern District of Virginia, 2100 Jamieson Avenue, Alexandria, Virginia 22314; or at the Region III Office of the environmental Protection Agency, c/o Neil R. Bigioni, Assistant Regional Counsel, 1650 Arch Street, Philadelphia, PA 19103. A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, PO Box No. 7611, Washington DC 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $3.50 (25 cents per page reproduction

costs), payable to the Consent Decree Library.

Richard W. Sponseller,

Assistant United States Attorney, Eastern District of Virginia.

[FR Doc. 00–18156 Filed 7–18–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Allied Waste Industries, Inc. and Superior Services, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) through (h), that a Complaint, Hold Separate Stipulation and Order, and proposed Final Judgment were filed with the United States District Court for the District of Columbia in *United States* v. *Allied Waste Industries, Inc., and Superior Services, Inc.*, Civil No. 1:00CV 01067 on May 12, 2000. A Competitive Impact Statement was filed on June 22, 2000. The Complaint sought to enjoin the following transactions: Allied Waste Industries, Inc.'s ("Allied") proposed acquisition of Superior Services, Inc.'s ("Superior") waste hauling assets in Mansfield. Ohio; Superior's proposed acquisition of Allied's waste hauling assets in Milwaukee, Wisconsin; and Superior's proposed acquisition of a landfill owned by Allied in Leeper, Pennsylvania. The Complaint alleged that these three transactions between Allied and Superior would lessen competition substantially in waste collection and municipal solid waste disposal services in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires, among other things, that (1) Allied divest certain commercial waste collection operations and a transfer station in the Milwaukee area, (2) Superior divest certain commercial waste collection operations and a transfer station in the Mansfield area, and (3) Superior abandon its purchase of an Allied Landfill in the Leeper area.

A Competitive Impact statement filed by the United States describes the Complaint, the proposed Final Judgment, the industry, and remedies to be implemented by Allied and Superior. Copies of the Complaint, Hold Separate Stipulation and Order, proposed Final Judgment, and the Competitive Impact Statement are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, NW, Washington, DC, and at the office of the Clerk of the United States District Court for the District of Columbia, Washington, DC. Copies of any of these materials may be obtained upon request and payment of a copying fee.

Public comment is invited within the statutory 60-day comment period. Such comments and response thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW, Suite 3000, Washington, DC 20530 (telephone: 202–307–0924).

Constance K. Robinson,

Director of Operations and Merger Enforcement.

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Allied Waste Industries, Inc., and Superior Services, Inc., Defendants.*

Hold Separate Stipulation and Order

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I. Definitions

As used in this Hold Separate Stipulation and Order:

A. "Allied" means defendant Allied Waste Industries, Inc., a Delaware corporation with its headquarters in Scottsdale, Arizona, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

B. "Superior" means defendant Superior Services, Inc., a Wisconsin corporation with its headquarters in Milwaukee, Wisconsin, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. "Relevant Milwaukee Asssets" means:

(1) Allied's two front-end loader and three rear-end loader small container commercial routes 6, 14, 21, 89, and 95 and recycling routes 73, 75, 705 and 708 that serve Milwaukee and the eastern half of Waukesha (east of route 83) counties, WI; and

(2) Allied's BFI Town & Country Transfer Station, located at W143 S. 6400 College Court, Muskego, WI 53150.

Relevant Milwaukee Assets includes, with respect to each of Allied's small container routes listed above, all tangible assets (including capital equipment, trucks and other vehicles, containers, interests, permits and supplies); and all intangible assets (including hauling-related customer lists, contracts, leasehold interests, and accounts related to each such route). Relevant Milwaukee Assets also includes, with respect to the BFI Town & Country Transfer Station described above, all of Allied's rights, titles and interests in any tangible assets (including all fee and leasehold and renewal rights in the transfer station); all related assets including capital equipment, trucks and other vehicles, scales, power supply equipment, interests, permits, and supplies; and all rights, titles and interests in any intangible assets, including all customer lists, contracts, and accounts, or options to purchase any adjoining property.

D. "Relevant Mansfield Assets" means:

(1) Superior's small container commercial routs 1, 2, 3 and 4 that serve Richland and Ashland counties, OH; and

(2) Superior's Transfer Station, located at 621 Newman Street, Mansfield, OH 44905.

Relevant Mansfield Assets includes, with respect to each of Superior's small container routes listed above, all tangible assets (including capital equipment, trucks and other vehicles, containers, interests, permits, and supplies); all intangible assets (including hauling-related customer lists, contracts, leasehold interests, and accounts related to each such route); and, if requested by the purchaser, real property and improvements to real property (*i.e.*, buildings and garages). Relevant Mansfield Assets also includes, with respect to the Superior Transfer Station described above, all of Superior's rights, titles and interests in any tangible assets (including all fee and leasehold and renewal rights in the transfer station); the garage and related facilities; offices; all related assets including capital equipment, trucks and other vehicles, scales, power supply equipment, interests, permits, and supplies; and all rights, titles and interests in any intangible assets, including all customer lists, contracts, and accounts, or options to purchase any adjoining property.

II. Objectives

The Final Judgment filed in this case is meant to ensure defendants' prompt divestiture of the Relevant Milwaukee Assets and Relevant Mansfield Assets for the purpose of establishing viable competitors in the waste disposal

business or the commercial waste hauling business, or both, to remedy the effects that the United States alleges would otherwise result from the exchange of assets between Allied and Superior. This Hold Separate Stipulation and Order ensures, prior to such divestiture, that the Relevant Milwaukee Assets and Relevant Mansfield Assets are independent, economically viable, and ongoing business concerns that will remain independent and uninfluenced by Allied, in the case of the Relevant Mansfield Assets, and Superior, in the case of the Relevant Milwaukee Assets; and that competition is maintained during the pendency of the ordered divestitures.

III. Jurisdiction and Venue

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

IV. Compliance With and Entry of Final Judgment

A. The parties stipulate that a Final Judgment in the form attached hereto as Exhibit A may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending the Judgment's entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

C. Defendants shall not consummate the transactions sought to be enjoined by the Complaint herein before the Court has signed this Hold Separate Stipulation and Order.

D. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

E. In the event (1) the United States has withdrawn its consent, as provided in Section IV(A) above, or (2) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

F. Defendants represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claim of mistake, hardship or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

V. Hold Separate Provisions

Until the divestitures required by the Final Judgment have been accomplished:

A. Defendants shall preserve, maintain, and operate the Relevant Milwaukee Assets and Relevant Mansfield Assets as independent competitive businesses, with management, sales and operations of such assets held entirely separate, distinct and apart from the operations of Superior, in the case of the Relevant Milwaukee Assets, and from Allied, in the case of the Relevant Mansfield Assets. Superior shall not coordinate the marketing of, or negotiation of sales by, any Relevant Milwaukee Asset with its other operations. Allied shall not coordinate the marketing of, or negotiation of sales by, any Relevant Mansfield Asset with its other operations. Within twenty (20) days after the filing of the Hold Separate Stipulation and Order, or thirty (30) days after the entry of this Order, whichever is later, defendants will inform the United States of the steps defendants have taken to comply with this Hold Separate Stipulation and Order.

B. Defendants shall take all steps necessary to ensure that (1) The Relevant Milwaukee Assets and Relevant Mansfield Assets will be maintained and operated as independent, ongoing, economically viable and active competitors in the commercial waste hauling business; (2) the management of the Relevant Milwaukee Assets will not be influenced by Superior, and the management of the Relevant Mansfield Assets will not be influenced by Allied; and (3) the books, records, competitively sensitive sales, marketing and pricing information, and decision-making concerning the Relevant Milwaukee Assets will be kept separate and apart from Superior's other operations, and the books, records, competitively sensitive sales marketing, and pricing information, and decision-making concerning the Relevant Mansfield Assets will be kept separate and apart from Allied's other operations. Superior's influence over the Relevant Milwaukee Assets and Allied's influence over Relevant Mansfield Assets shall be limited to that necessary to carry out defendants' obligations under this Hold Separate Stipulation and Order and the proposed final Judgment.

C. Defendants shall use all reasonable efforts to maintain and increase the sales and revenues of the Relevant Milwaukee Assets and Relevant Mansfield Assets, and shall maintain at 1999 or at previously approved levels, whichever are higher, all promotional, advertising, sales, technical assistance, marketing and merchandising support for the Relevant Milwaukee Assets and Relevant Mansfield Assets.

D. Defendants shall provide sufficient working capital to maintain the Relevant Milwaukee Assets and Relevant Mansfield Assets as economically viable and competitive ongoing businesses.

E. Defendants shall take all steps necessary to ensure that the Relevant Milwaukee Assets and Relevant Mansfield Assets are fully maintained in operable condition at no lower than their current capacity or sales, and shall maintain and adhere to normal repair and maintenance schedules for the Relevant Milwaukee Assets and Relevant Mansfield Assets.

F. Defendants shall not, except as part of a divestiture approved by the United States in accordance with the terms of the proposed Final Judgment, remove, sell, lease, assign, transfer, pledge or otherwise dispose of any of the Relevant Milwaukee Assets and Relevant Mansfield Assets.

G. Defendants shall maintain, in accordance with sound accounting principles, separate, accurate and complete financial ledgers, books and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues and income of the Relevant Milwaukee Assets and Relevant Mansfield Assets.

H. Except in the ordinary course of business or as is otherwise consistent with this Hold Separate Stipulation and

Order, defendants shall not hire, transfer, terminate, or otherwise alter the salary agreements for any Allied or Superior employee who, on the date of defendants' signing of this Hold Separate Stipulation and Order, either: (1) Works with a Relevant Milwaukee Asset or a Relevant Mansfield Asset, or (2) is a member of management referenced in Section V(I) of this Hold Separate Stipulation and Order.

I. Until such time as the Relevant Milwaukee Assets and Relevant Mansfield Assets are divested pursuant to the terms of the Final Judgment, the Relevant Milwaukee Assets shall be managed by Ray Bruckert and the Relevant Mansfield Assets shall be managed by Richard J. Wojahn. Messrs. Bruckert and Wojahn shall have complete managerial responsibility for the Relevant Milwaukee Assets and Relevant Mansfield Assets, subject to the provisions of this Order and the proposed Final Judgment. In the event that either Mr. Bruckert or Mr. Wojahn is unable to perform his duties, defendants shall appoint, subject to the approval of the United States, a replacement within ten (10) working days. Should defendants fail to appoint a replacement acceptable to the United States within ten (10) working days, the United States shall appoint a replacement.

J. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestitures pursuant to the Final Judgment to purchasers acceptable to the United States.

K. This Hold Separate Stipulation and Order shall remain in effect until consummation of the divestitures contemplated by the proposed Final Judgment or until further order of the Court.

For Plaintiff United States of America

David R. Bickel,
DC Bor #393409, U.S. Deportment of Justice, Antitrust Division, Litigotion II Section, 1401 H Street, NW, Suite 3000, Woshington, DC 20005, (202) 307–1168.

For Defendant Allied Waste Industries, Inc.

Tom D. Smith,
Jones, Day, Reavis & Pogue, 51 Louisiono Avenue, NW, Washington, DC 20001–2113, (202) 879–3971.

For Defendant Superior Services, Inc.

James T. McKeown,
Foley & Lardner, 777 East Wisconsin Avenue, Milwoukee, WI 53202–5367, (414) 271–2400.
Joseph D. Edmondson, Jr.,
Foley & Lardner, Woshington Horbour, 3000 K Street, NW, Woshington, DC 20007, 202–672–5354.

Order

It is so ordered on this ____ day of _____, 2000.
United States District Judge

Parties Entitled to Notice of Entry of Order:

Counsel for Plaintiff United States of America,

David R. Bickel,
U.S. Deportment of Justice, Antitrust Division, Suite 3000, 1401 H Street, NW, Washington, DC 20037.

Counsel for Defendant Allied Waste Industries, Inc.,

Tom D. Smith,
Jones, Day, Reavis & Pogue, 51 Louisiona Avenue, NW, Washington, DC 20001–2113.

Counsel for Superior Services, Inc.,

James T. McKeown,
Foley & Lardner, 777 Eost Wisconsin Avenue, Milwaukee, WI 53202–5367,
and

Joseph D. Edmondson, Jr.,
Foley & Lardner, Woshington Horbour, 3000 K Street, NW, Woshington, DC 20007.

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Allied Waste Industries, Inc., and Superior Services, Inc., Defendants.*

Final Judgment

Whereas, Plaintiff, the United States of America, having filed its Complaint in this action on May 12, 2000, and plaintiff and defendants, Allied Waste Services, Inc. ("Allied") and Superior Services, Inc. ("Superior"), by their respective attorneys, having consented to the entry of this Final Judgment without trial and adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And Whereas, Defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, The essence of this Final Judgment is the prompt and certain divestiture of certain relevant assets to assure that competition is not substantially lessened;

And Whereas, Defendants Allied and Superior shall make certain divestitures for the purpose of establishing one or more viable competitors in the commercial waste hauling business, in the specified areas of Milwaukee, Wisconsin and Mansfield, Ohio; and

And Whereas, Defendant Superior shall be enjoined from acquiring the County Environmental Landfill in Leeper, Pennsylvania except as provided in this Final Judgment;

And Whereas, Defendants have represented to the United States that the divestitures ordered herein can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the injunctive provisions contained below;

Now, Therefore, Before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby Ordered, Adjudged, and Decreed:

I. Jurisdiction

This Court has jurisdiction over each of the parties hereto and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants, as hereinafter defined, under Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

II. Definitions

As used in this Final Judgment:

A. "Allied" means defendant Allied Waste Industries, Inc., a Delaware corporation with its headquarters in Scottsdale, Arizona, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

B. "Superior" means defendant Superior Services, Inc., a Wisconsin corporation with its headquarters in Milwaukee, Wisconsin, and includes its successors and assigns, and its

subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. "Relevant Milwaukee Assets" means:

(1) Allied's two front-end loader and three rear-end loader small container commercial routes 6, 14, 21, 89, and 95 and recycling routes 73, 75, 705 and 708 that serve Milwaukee and the eastern half of Waukesha (east of route 83) Counties, WI; and

(2) Allied's BFI Town & Country Transfer Station, located at W143 S. 6400 College Court, Muskego, WI 53150.

Relevant Milwaukee Assets includes, with respect to each of Allied's small container routes listed above, all tangible assets (including capital equipment, trucks and other vehicles, containers, interests, permits, and supplies); and all intangible assets (including hauling-related customer lists, contracts, leasehold interests, and accounts related to each such route). Relevant Milwaukee Assets also includes, with respect to the BFI Town & Country Transfer Station described above, all of Allied's rights, titles and interests in any tangible assets (including all fee and leasehold and renewal rights in the transfer station); all related assets including capital equipment, trucks and other vehicles, scales, power supply equipment, interests, permits, and supplies; and all rights, titles and interests in any intangible assets, including all customer lists, contracts, and accounts, or options to purchase any adjoining property.

D. "Relevant Mansfield Assets" means:

(1) Superior's small container commercial routes 1, 2, 3 and 4 that serve Richland and Ashland counties, OH; and

(2) Superior's Transfer Station, located at 621 Newman Street, Mansfield, OH 44905.

Relevant Mansfield Assets includes, with respect to each of Superior's small container routes listed above, all tangible assets (including capital equipment, trucks and other vehicles, containers, interests, permits, and supplies); all intangible assets (including hauling-related customer lists, contracts, leasehold interests, and accounts related to each such route); and, if requested by the purchaser, real property and improvements to real property (*i.e.*, buildings and garages). Relevant Mansfield Assets also includes, with respect to the Superior Transfer Station described above, all of Superior's rights, titles and interests in any tangible assets (including all fee and leasehold and renewal rights in the transfer station); the garage and related facilities; offices; all related assets including capital equipment, trucks and other vehicles, scales, power supply equipment, interests, permits, and supplies; and all rights, titles and interests in any intangible assets, including all customer lists, contracts, and accounts, or options to purchase any adjoining property.

E. "Hauling" means the collection of waste from customers and the shipment of the collected waste to disposal sites. Hayling, as used herein, does not include collection of roll-off containers.

F. "MSW" means municipal solid waste, a term of art used to describe solid putrescible waste generated by households and commercial establishments such as retail stores, offices, restaurants, warehouses, and non-manufacturing activities in industrial facilities. MSW does not include special handling waste (e.g., waste from manufacturing processes, regulated medical waste. sewage, and sludge), hazardous waste, or waste generated by construction or demolition sites.

G. "Disposal" means the business of disposing of waste into approved disposal sites.

H. "Landfill" means a waste management facility where waste is placed into the land.

I. "Small container commercial waste collection service" means the business of collecting MSW from commercial and industrial accounts, usually in "dumpsters" (*i.e.*, a small container with one to ten cubic yards of storage capacity), and transporting or "hauling" such waste to a disposal site by use of a front- or rear-end loader truck. Typical commercial waste collection customers include office and apartment buildings and retail establishments (*e.g.*, stores and restaurants).

J. "Milwaukee area" means the City of Milwaukee, Milwaukee County, and the eastern half of Waukesha (east of route 83) County, Wisconsin.

K. "Mansfield area" means the City of Mansfield and Richland and Ashland Counties, Ohio.

L. "Leeper area" means the City of Leeper and Clarion, Elk, Forest, and Jefferson Counties, Pennsylvania.

III. Applicability

A. The provisions of this Final Judgment apply to Allied and Superior, as defined above, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their assets, or of a lesser business unit that includes defendants' Relevant Milwaukee Assets or Relevant Mansfield Assets, that the acquiring party or parties agree to be bound by the provisions of this Final Judgment.

IV. Divestitures

Milwaukee and Mansfield Areas

A. Defendants are hereby ordered and directed, in accordance with the terms of this Final Judgment, within ninety (90) calendar days after the filing of the complaint in this matter, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to sell the Relevant Milwaukee Assets as a viable, ongoing business to a single purchaser acceptable to the United States, in its sole discretion, and to sell the Relevant Mansfield Assets, as a viable, ongoing business, to a single purchaser acceptable to the United States, in its sole discretion.

B. Defendants shall use their best efforts to accomplish the divestitures ordered by this Final Judgment as expeditiously and timely as possible. The United States, in its sole discretion, may extend the time period for any divestiture an additional period of time, not to exceed sixty (60) calendar days.

C. In accomplishing the divestitures ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the Relevant Milwaukee Assets and Relevant Mansfield Assets. Defendants shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Defendants shall also offer to furnish to all prospective purchasers, subject to customary confidentiality assurances, all information regarding the Relevant Milwaukee Assets and Relevant Mansfield Assets customarily provided in a due diligence process except such information or documents subject to attorney-client privilege or attorney work-product privilege. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

D. Defendants shall not interfere with any negotiations by any purchaser to employ any Allied or Superior employee who, prior to the entry of the Hold Separate Stipulation and Order, works at, or whose primary responsibility concerns, any disposal or hauling business that is part of the

Relevant Milwaukee Assets and Relevant Mansfield Assets.

E. Defendants shall permit prospective purchasers of the Relevant Milwaukee Assets and Relevant Mansfield Assets to have reasonable access to personnel and to make inspections of the physical facilities of the Relevant Milwaukee Assets and Relevant Mansfield Assets; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

F. Defendants shall warrant to each purchaser of the Relevant Milwaukee Assets and Relevant Mansfield Assets that each asset will be operational on the date of sale.

G. Defendants shall not take any action, direct or indirect, that will impede in any way the permitting, operation, or divestiture of the Relevant Milwaukee Assets and Relevant Mansfield Assets.

H. Defendants shall warrant to each purchaser of the Relevant Milwaukee Assets and Relevant Mansfield Assets that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each asset, and that following the divestiture of each asset, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits or applications for permits or licenses pertaining to the operation of the asset.

I. Unless the United States otherwise consents in writing, the divestitures pursuant to Section IV, or by trustee appointed pursuant to Section VI of this Final Judgment, shall include all Relevant Milwaukee Assets and Relevant Mansfield Assets, and shall be accomplished by selling or otherwise conveying the assets to a purchaser in such a way as to satisfy the United States, in its sole discretion, that the Relevant Milwaukee Assets and Relevant Mansfield Assets can and will be used by the purchaser as part of a viable, ongoing business or businesses engaged in waste disposal or hauling. The divestitures, whether pursuant to Section IV or Section VI of this Final Judgment, (1) Shall be made to a purchaser that, in the United State's sole judgment, has the capability and intent (including the necessary managerial, operation and financial capability) of competing effectively in the waste disposal or hauling business in the Milwaukee and Mansfield areas; and (2) shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between the purchaser and defendants gives any defendant the ability unreasonably to raise the purchaser's costs, to lower the purchaser's efficiency, or otherwise to interfere in the ability of the purchaser to compete effectively.

V. Ban on Acquisition

Leeper Area

A. Superior shall abandon the purchase agreement between Superior and Allied, dated August 4, 1999, to acquire the County Environmental Landfill located at 344 Walley Run Drive, Leeper, PA 16233 ("County Landfill"). Superior shall not directly or indirectly acquire or propose to acquire any assets of or any interest, including any financial, security, loan equity or management interest, in the County Landfill except as provided in Paragraph V(B).

B. If a new landfill opens in the Leeper area which accepts MSW, Superior may propose to acquire assets or an interest in the County Landfill but shall provide advance notification to the Antitrust Division of any such plan. The obligation to provide notice under this Paragraph is met when Superior files a premerger notification pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a (the "HSR Act"). In the event that such a transaction is not subject to the reporting and waiting period prerequirements of the HSR Act, notification under this Paragraph shall be provided to the Antitrust Division in the same format as, and in accordance with, the instructions relating to the Notification and Report Form set forth in the appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested in Items 5 through 9 of the instructions must be provided only about the Leeper area. Notification shall be provided at least thirty (30) days prior to the acquisition of any such interest, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If, within the 30-day period after notification, representatives of the Antitrust Division make a written request for additional information, Superior shall not consummate the proposed transaction or agreement until twenty (20) days after submitting all such additional information. Early termination of the waiting periods in this Paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and the rules promulgated thereunder. This Paragraph shall be broadly construed, and any ambiguity or uncertainty regarding the filing of notice under this Paragraph shall be resolved in favor of filing notice.

VI. Appointment of Trustee

A. If defendants have not divested the Relevant Milwaukee Assets and Relevant Mansfield Assets within the time period specified in Section IV(A), defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestitures.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Relevant Milwaukee Assets and Relevant Mansfield Assets. The trustee shall have the power and authority to accomplish the divestiture to a purchaser acceptable to the Untied States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Section IV, VI, and VII of this Final Judgment, and shall have such other powers as the Court deems appropriate. Subject to Section VI(D) of this Final Judgment, the trustee may hire at the cost and expense of defendants any investment bankers, attorneys, or other agents, reasonably necessary in the trustee's judgment to assist in the divestiture and such professionals and agents shall be accountable solely to the trustee.

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VII.

D. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the

divested assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestitures and the speed with which the divestitures are accomplished.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestitures. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the Relevant Milwaukee Assets and Relevant Mansfield Assets. Defendants shall develop financial and other information relevant to the Relevant Milwaukee Assets and Relevant Mansfield Assets customarily provided in a due diligence process as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development or commercial information.

F. After the trustee's appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestitures ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall included the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Relevant Milwaukee Assets and the Relevant Mansfield Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to sell the Relevant Milwaukee Assets and the Relevant Mansfield Assets.

G. If the trustee has not accomplished such divestitures within six months after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestitures, (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished, and (3) the trustee's recommendations for completing the required divestitures. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VII. Notice of Proposed Divestitures

A. Within two (2) business days following execution of a definitive agreement to effect, in whole or in part, any proposed divestiture pursuant to Section IV or VI of this Final Judgment, defendants or the trustee, whichever is then responsible for effecting the divestiture, shall notify the United States of the proposed divestiture. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the assets to be divested that are the subject of the binding contract, together with full details of same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States, in its sole discretion, may request from defendants, the proposed purchaser, any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture and the proposed purchaser. Defendants and the trustee shall furnish any additional information requested from them within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed purchaser, and any third party, whichever is later, the United States shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice to defendants and the trustee, if applicable that it does not object, then the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section VI(C) of this Final Judgment. Upon objection by the United States, a divestiture proposed under Section IV or VI of this Final Judgment shall not be consummated. Upon objection by defendants under the provision in Section VI(C), a divestiture proposed under Section IV shall not be consummated unless approved by the Court.

VIII. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter and every twenty (20) calendar days thereafter until the divestitures have been completed pursuant to Section IV or VI of this Final Judgment, defendants shall deliver to the United States an affidavit as to the fact and manner of compliance with Section IV or VI of this Final Judgment. Each such affidavit shall include, *inter alia,* the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the assets to be divested, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that defendants have taken to solicit a buyer for the Relevant Milwaukee Assets and Relevant Mansfield Assets and to provide required information to prospective purchasers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants, including limitations on information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Compliant in this matter, defendants shall deliver to the United States an affidavit which describes in detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to preserve the Relevant Milwaukee Assets and Relevant Mansfield Assets pursuant to Section IX of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after any such change has been implemented.

C. For a one-year period following the completion of each divestiture, defendants shall preserve all records of any and all efforts made to preserve the Relevant Milwaukee Assets and Relevant Mansfield Assets that were divested and to effect the ordered divestitures.

IX. Hold Separate Order

Until the divestitures required by the Final Judgment have been accomplished, defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the sale of the Relevant Milwaukee Assets or the Relevant Mansfield Assets.

X. Financing

Defendants shall not finance all or any part of any purchase by any person made pursuant to Section IV or VI of this Final Judgment.

XI. Compliance Inspection

A. For purposes of determining or securing compliance with the Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time, duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

1. Access during office hours of defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, who may have counsel present, relating to the matters contained in this Final Judgment and the Hold Separate Stipulation and Order; and

2. To interview, either informally or on the record, their officers, employees, and agents, who may have counsel present, regarding any such matters. The interview shall be subject to reasonable convenience and without restraint or interference by defendants.

B. Upon the written request of the Attorney General in charge of the Antitrust Division, defendants shall submit such written reports, under oath if requested, relating to any matter contained in the Final Judgment and the Hold Separate Stipulation and Order as may be requested.

C. No information or documents obtained by the means provided in Section XI of this Final Judgment shall be divulged by a representative of the United States to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) calendar days notice shall be given by the United States to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendants are not a party.

XII. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XIII. Termination

Unless this Court grants an extension, this Final Judgment will expire upon the tenth anniversary of the date of its entry.

XIV. Public Interest

Entry of this Final Judgment is in the public interest.

Dated_____, 2000.
United States District Judge_____

Parties Entitled to Notice of Entry of Final Judgment:

Counsel for Plaintiff United States of America,

David R. Bickel,
U.S. Department of Justice, Antitrust Division, Suite 3000, 1401 H Street, NW., Washington, DC 20037.

Counsel for Defendant Allied Waste Industries, Inc.,

Tom D. Smith,
Jones, Day, Reavis & Pogue, 51 Louisiana Avenue, NW., Washington, DC 20001–2113.

Counsel for Superior Services, Inc.,

James T. McKeown,
Foley & Lardner, 777 East Wisconsin Avenue, Milwaukee, WI 53202–5367.

and

Joseph D. Edmondson, Jr.,
Foley & Lardner, Washington Harbour, 3000 K Street, NW., Washington, DC 20007.

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Allied Waste Industries, Inc. and Superior Services, Inc., Defendants.*

File No.: 1:00 CV 01067
Judge: Ricardo M. Urbina
Deck Type: Antitrust

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

Nature and Purpose of the Proceeding

The United States filed a civil antitrust Complaint on May 12, 2000, seeking to enjoin the acquisition of certain waste hauling and disposal assets by Allied Waste Industries, Inc. ("Allied") and Superior Services, Inc. ("Superior"). Allied and Superior had entered into purchase agreements pursuant to which Superior would acquire hauling assets from Allied in Milwaukee, Wisconsin; Allied would acquire hauling assets from Superior in Mansfield, Ohio; and Superior would acquire Allied's County Environmental Landfill in Leeper, Pennsylvania. The Complaint alleges that the likely effects of these acquisitions would be to substantially lessen competition for waste collection and disposal services in violation of Section 7 of the Clayton Act. This loss of competition would result in consumers paying higher prices and receiving fewer services for the collection and disposal of waste.

At the same time the Complaint was filed, the United States also filed a

proposed Final Judgment and a Hold Separate Stipulation and Order that were designed to eliminate the anticompetitive effects of the acquisitions. Under the proposed Final Judgment, which is explained more fully below, the defendants are required within 90 days after the filing of the Hold Separate Stipulation and Order, or five (5) days after notice of the entry of the Final Judgment by the Court, to divest, as viable business operations, certain waste hauling assets and related transfer stations in the Milwaukee and Mansfield areas. The proposed Final Judgment also requires Superior to abandon its proposed acquisition of Allied's landfill in Leeper. Under the terms of the Hold Separate Stipulation and Order, the defendants are required to take certain steps to ensure that the assets to be divested will be preserved and held separate from the defendants' other assets and businesses.

The United States and the defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transactions

Allied, with revenues in 1999 of approximately $6 billion, is the nation's second largest waste hauling and disposal company, operating throughout the United States. Superior, with 1999 revenues of approximately $319.7 million, is a multi-state waste collection and disposal company. On August 4, 1999, Allied and Superior entered into nine separate agreements in which they agreed to exchange certain waste hauling and disposal assets. Three of those nine agreements involve acquisitions of waste hauling and disposal assets in the Milwaukee, Mansfield, and Leeper areas. These acquisitions are the subject of the Complaint and proposed Final Judgment filed by the United States on May 12, 2000.

B. The Competitive Effects of the Transaction

Waste collection firms, or "haulers," contract to collect municipal solid waste ("MSW") from residential and commercial customers; they transport the waste to private and public disposal facilities (*e.g.*, transfer stations, incinerators and landfills), which, for a fee, process and legally dispose of waste. Allied and Superior compete in operating waste collection routes and waste disposal facilities.

1. The Effects of the Transaction on Competition in the Markets for Small Container Commercial Waste Collection Services.

Small container commercial waste collection service is the collection of MSW from commercial businesses such as office and apartment buildings and retail establishments (*e.g.*, stores and restaurants) for shipment to, and disposal at, an approved disposal facility. Because of the type and volume of waste generated by commercial accounts and the frequency of service required, haulers organize commercial accounts into special routes, and use specialized equipment to store, collect and transport waste from these accounts to approved disposal sites. This equipment—one to ten cubic yard container for waste storage, plus front-end and rear-end loader vehicles for collection and transportation—is uniquely well suited for the provision of small container commercial waste collection service. Providers of other types of waste collection services (*e.g.*, residential and roll-off services) are not good substitutes for small container commercial waste collection firms. In their waste collection efforts, other firms use different waste storage equipment (*e.g.*, garbage cans or semi-stationary roll-off containers) and different vehicles (*e.g.*, side-load trucks), which, for a variety of reasons, cannot be conveniently or efficiently used to store, collect or transport waste generated by commercial accounts, and hence, are rarely used on small container commercial waste collection routes. For purposes of antitrust analysis, the provision of small container commercial waste collection services constitutes a line of commerce, or relevant service., for analyzing the effects of the acquisitions.

The Complaint alleges that the provision of small container commercial waste collection services takes place in compact, highly localized geographic markets. It is expensive to ship waste long distances in either collection or disposal operations. To minimize transportation costs and maximize the scale, density, and efficiency of their waste collection operations, small container commercial waste collection firms concentrate their customers and collection routes in small areas. Firms with operations concentrated in a distant area cannot easily compete against firms whose routes and customers are locally based. Sheer distance may significantly limit a distant firm's ability to provide commercial waste collection service as frequently or conveniently as that offered by local firms with nearby routes. Also, local commercial waste collection firms have significant cost advantages over other firms, and can profitably increase their charges to local commercial customers without losing significant sales to firms outside the area.

Applying that analysis, the Complaint alleges that the Milwaukee and Mansfield areas constitute sections of the country, or relevant geographic markets, for the purpose of assessing the competitive effects of a combination of Allied and Superior in the provision of small container commercial waste collection services. The Milwaukee area includes the City of Milwaukee. Milwaukee County and the eastern half east of route 83 of Waukesha County, Wisconsin. The Mansfield area includes the city of Mansfield, and Richland and Ashland counties, Ohio.

In the Milwaukee area, Superior's acquisition of Allied's assets would reduce from three to two the number of significant firms competing in small container commercial waste collection service. After the acquisition, Superior would control approximately 40%, and two firms would control over 80%, of total market revenue, which is about $22 million annually. The acquisition would increase the Herfindahl-Hirschmann Index ("HHI"),[1] a measure of market concentration, by about 700 points to about 4700 in the Milwaukee area.

In the Mansfield area, Allied's acquisition of Superior's assets would reduce from two to one the number of significant firms that compete in small container commercial waste collection service. After the acquisition, Allied would control over 80% of the market. The acquisition would increase the HHI by over 3000 points to about 7300 in the

[1] The Herfindahl-Hirschmann Index ("HHI") is a measure of market concentration calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2600 (30 squared (900) plus 30 squared (900) plus 20 squared (400) plus 20 squared (400) = 2600). The HHI, which takes into account the relative size and distribution of the firms in a market, ranges from virtually zero to 10,000. The index approaches zero when a market is occupied by a large number of firms of relatively equal size. The index increases as the number of firms in the market decreases and as the disparity in size between the leading firms and the remaining firms increases.

Mansfield area, where total revenues exceed $3.5 million annually.

New entry into these markets would be difficult, time consuming, and is unlikely to be sufficient to constrain any post-merger price increase. Many customers of commercial waste collection firms have entered into long-term contracts, tying them to a market incumbent for indefinitely long periods of time. In competing for uncommitted customers, market incumbents can price discriminate, *i.e.*, selectively (and temporarily) charge unbeatably low prices to customers targeted by entrants, a tactic that would strongly discourage a would-be competitor from competing for such accounts, which, if won, may be unprofitable to serve. Taken together, the prevalence of long-term contracts and the ability of market incumbents to price discriminate substantially increases any would-be new entrant's costs and time necessary for it to build its customer base and obtain efficient scale and route density to become an effective competitor in the market.

The Complaint alleges that a combination of Allied and Superior in Milwaukee and Mansfield would likely lead to an increase in prices charged to consumers of small container commercial waste collection services. The two acquisitions would diminish competition by enabling the few remaining competitors to engage more easily, frequently, and effectively in coordinated pricing interaction that harms consumers.

2. The Effects of the Transaction on Competition in the Leeper Area for Disposal of Municipal Solid Waste.

A number of federal, state and local safety, environmental, zoning and permit laws and regulations dictate critical aspects of storage, handling, transportation, processing and disposal of MSW. MSW can be sent for disposal only to a transfer station, sanitary landfill, or incinerator permitted to accept MSW. Anyone who attempts to dispose of MSW in a facility that has not been approved for disposal of such waste risks severe civil and criminal penalties. Firms that compete in the disposal of MSW can profitably increase their charges to haulers for disposal of MSW without losing significant sales to other firms. For these reasons, there are no good substitutes for disposal of MSW. The disposal of MSW therefore constitutes a line of commerce, or relevant service, for the purposes of analyzing the acquisition.

Disposal of MSW generally tends to occur in localized markets. Disposal costs are a significant component of waste collection services, often comprising 40% or more of overall operating costs. It is expensive to transport waste significant distances for disposal. Consequently, waste collection firms strongly prefer to send waste to local disposal sites. Sending a vehicle to dump waste at a remote landfill increases both the actual and opportunity costs of a hauler's collection service. Natural and man-made obstacles (e.g., mountains and traffic congestion), sheer distance and relative isolation from population centers (and collection operations) substantially limit the ability of a remote disposal site to compete for MSW from closer, more accessible sites. Thus, waste collection firms will pay a premium to dispose of waste at more convenient and accessible sites. Operators of such disposal facilities can—and do—price discriminate, *i.e.*, charge higher prices to customers who have fewer local options for waste disposal.

For these reasons, the Complaint alleges that, for purposes of antitrust analysis, the Leeper area is a relevant geographic market for disposal of MSW. The Leeper area includes the City of Leeper, and Clarion, Elk, Forest, and Jefferson counties, Pennsylvania.

In the Leeper area, Superior's acquisition of Allied's County Environmental Landfill would reduce from two to one the number of significant firms competing in the disposal of MSW, resulting in a monopoly. In 1998, approximately 66,000 tons of MSW were generated from this market. In that same year, these two landfills disposed of about 97% of that MSW. Based on quantity disposed, the post-merger HHIs for disposal of MSW would be about 9500, with an increase of approximately 4500 points.

Obtaining a permit to construct or expand an existing disposal site is an expensive and time consuming task. Local public opposition often makes it more difficult and costly and increases the uncertainty of successfully permitting a facility. Significant new entry in the Leeper area is unlikely to prevent the exercise of market power after the acquisition.

The elimination of one of only two significant competitors, such as would occur as a result of the proposed transaction in the Leeper area, virtually ensures that consumers in this market will face higher prices for the disposal of MSW or the collection of small container commercial waste.

III. Explanation of the Proposed Final Judgment

A. Divestitures in the Milwaukee and Mansfield Areas

The divestiture provisions of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in small containerized commercial waste collection services in the Milwaukee and Mansfield areas by establishing a new, independent and economically viable competitor in each of those markets. The proposed Final Judgment requires defendants, within 90 days after the filing of the Complaint, or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later to divest, as a viable ongoing business or businesses, small container commercial waste collection assets (*e.g.*, routes, trucks, containers, and customer lists) relating to the Milwaukee and Mansfield markets, as well as a transfer station in each market. The transfer stations must be divested because they are likely to make the buyer of the waste collection assets a more effective competitor.

These assets must be divested in such a way as to satisfy the United States that the operations can and will be operated by the purchaser or purchasers as a viable, ongoing business that can compete effectively in each relevant market. Defendants must take all reasonable steps necessary to accomplish the divestitures quickly and shall cooperate with prospective purchasers.

In the event that defendants do not accomplish the divestitures within the above-described period, the proposed Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestitures. If a trustee is appointed, the proposed Final Judgment provides that the defendant affected will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth its efforts to accomplish divestitures. At the end of six months, if the divestiture has not been accomplished, the trustee and the parties will make recommendations to the Court, which shall enter such orders as appropriate in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

The relief sought in the Milwaukee and Mansfield areas will maintain the

pre-acquisition structure of each market and thereby ensure that consumers of small container commercial waste collection services will continue to receive the benefits of competition—lower prices and better service.

B. Ban on Acquisition of County Environmental Landfill

The proposed Final Judgment also requires Superior to abandon its purchase agreement with Allied, dated August 4, 1999, to acquire the County Environmental Landfill ("County Landfill") in Leeper, Pennsylvania. Superior is banned from acquiring the landfill for the ten-year term of the Final Judgment unless a new landfill opens in the Leeper area. If a new landfill opens, Superior may propose to acquire County Landfill, but it must give the Antitrust Division advance notice of any such plan.

Typically, the United States does not require parties who have abandoned an acquisition to enter into a Final Judgment preventing them from engaging in the same or a similar transaction in the future. In this case, however, such a provision was necessary because the acquisition of County landfill, standing alone, probably would not be large enough to trigger the reporting requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a. Absent such a provision, Superior could subsequently acquire the landfill without the United States knowing about the acquisition until well after it had taken place.

As noted above, the proposed Final Judgment does not completely bar Superior from acquiring County Landfill, but, rather, it permits superior to propose such an acquisition in the event that another landfill opens in the Leeper area. The United States does not believe entry is likely within the next two years or that foreseeable entry would be sufficient to counteract the anticompetitive effects of Superior's acquisition of County Landfill. The proposed Final Judgment has a term of ten years, however, and it is possible that entry during that period would sufficiently alter the market conditions so as to render competitively harmless an acquisition of County Landfill by Superior. Hence, the proposed Final Judgment requires Superior to provide the Antitrust Division with notice before consummating an acquisition of County Landfill. This will give the Antitrust Division time to evaluate the proposed transaction and take action to block the deal if the situation so warrants.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. § 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against the defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to: J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, N.W., Suite 3000, Washington, D.C. 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants Allied and Superior. The United States could have continued the litigation and sought preliminary and permanent injunctions against Allied's acquisition of the Superior assets, and Superior's acquisition of the Allied assets. The United States is satisfied, however, that the divestiture of hauling assets and the abandonment of the County Landfill acquisition will preserve competition for small containerized commercial waste collection services in the Milwaukee and Mansfield areas, as well as competition for the disposal of MSW in the Leeper area.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the court may consider—

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individual alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e) (emphasis added). As the Court of Appeals for the District of Columbia Circuit has held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft Corp.*, 56F.3d 1448, 1458–62 (D.C. Cir. 1995).

In conducting this inquiry, "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly

settlement through the consent decree process." [2] Rather, absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances. *United States.* v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States.* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), cert. denied, 454 U.S. 1083 (1981)); see also Microsoft, 56 F.3d 1448 (D.C. Cir. 1995). Precedent requires that

the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[3]

The proposed Final Judgment, therefore should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" [4]

Moreover, the court's role under the Tunney Act is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the Court to "construct [its] own hypothetical case and then evaluate the decree against that case," Microsoft, 56 F.3d at 1459. Since "[t]he court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that the court "is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States might have but did not pursue. *Id.*

VIII. Determinative Documents

There are not determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: June 22, 2000.

Respectfully submitted,

David R. Bickel,
DC Bar #393409, U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW, Suite 3000, Washington, DC 20530, (202) 307–0924.

Certificate of Service

I hereby certify that a copy of the foregoing has been served upon Allied Waste Industries, Inc. and Superior Services, Inc. by placing a copy of this Competitive Impact Statement in the U.S. mail, postage prepaid directed to each of the above-named parties at the addresses given below, this 22nd day of June, 2000.

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Counsel for Defendant Superior Services, Inc.

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and

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[2] 119 Cong. Rec. 24598 (1973). See *United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. 93–1463, 93rd Cong. 2d Sess. 8–9, reprinted in (1974) U.S. Code Cong. & Ad. News 6535, 6538.

[3] *United States* v. *Bechtel Corp.*, 648 F.2d at 666 (citations omitted) (emphasis added); see *United States* v. *BNS, Inc.*, 858 F.2d at 463; *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States* v. *Gillette Co.*, 406 F. Supp. at 746; see also *United States* v. *American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983), cert. denied. 465 U.S. 1101 (1984).

[4] *United States* v. *American Tel. and Tel. Co.*, 552 F. Supp. 131, 150 (D.D.C. 1982) (citations omitted), quoting *United States* v. *Gillette Co.*, supra, 406 F. Supp. at 716 aff'd sub nom. *Maryland* v. *United States*, 460 U.S. 1001 (1983); *United States* v. *Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Dairy Farmers of America, et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Section 16(b) through (h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the Eastern District of Pennsylvania in *United States of America* v. *Dairy Farmers of America, et al.*, Civil Action No. 00–1663. On March 31, 2000, the United States filed a Complaint alleging that the proposed acquisition by Dairy Farmers of America, Inc. ("DFA") of substantially all the assets of SODIAAL North America Corporation ("SODIAAL"), would violate section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed on May 18, 2000, allows DFA to complete the proposed acquisition of SODIAAL but prohibits it from entering into any federation with Land O' Lakes, Inc. with respect to the marketing, promotion, sale, or distribution of branded butter. Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, DC in Room 200, 325 Seventh Street, NW, and at the Office of the Clerk of the United States District Court for the Eastern District of Pennsylvania.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to J. Robert Kramer

II, Chief, Litigation II Section, Antitrust Division. Department of Justice, 1401 H St. NW, Suite 3000, Washington, DC 20530 (telephone: (202) 307–0924).

Constance K. Robinson,

Director of Operations and Merger Enforcement.

United States District Court, Eastern District of Pennsylvania

Civil Action No. 00–1663

United States of America, Plaintiff, vs. Dairy Farmers of America, et al., Defendants.

Stipulation and Order

It is stipulated by and between the undersigned parties, by their respective attorneys, as follows:

(1) The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the Eastern District of Pennsylvania.

(2) The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that the Plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on Defendants and by filing that notice with the Court.

(3) Defendants shall (a) act in accordance with, abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment, (b) from the date of the filing of this Stipulation, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court, and (c) continue to comply with those terms and provisions until superseded by an Order of this Court.

(4) This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

(5) Defendants waive any claim that the Capper-Volstead Act, 7 U.S.C. 291, constitutes a defense to any breach or violation of this Stipulation and Order or to any violation of any provision of the Final Judgment once entered by the Court.

(6) In the event the Plaintiff withdraws its consent, as provided in Paragraph 2 above, or if the proposed Final Judgment is not entered pursuant to this Stipulation, or the time has expired for all appeals of any court ruling declining entry of the proposed Final Judgment, this Stipulation shall have no binding effect on Plaintiff whatsoever, and the making of this Stipulation shall be without prejudice to Plaintiff in this or any other proceeding. Regardless of whether Plaintiff withdraws its consent, Defendants shall continue to abide by this Stipulation and Order until such time as it is superceded by Order of the Court.

(7) Defendants represent that the conduct ordered in the proposed Final Judgment can and will be performed, and that Defendants will raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions contained therein.

(8) Upon entry of this Stipulation as an Order of the Court, and consistent with this Stipulation, insofar as the Defendants were enjoined by Orders of the Court on March 31, 2000, April 4, 2000, and April 17, 2000, from consummation of their proposed transaction and from bringing their operations under common ownership and control, this Stipulation and Order, and the incorporated terms of the proposed Final Judgment shall supersede any inconsistent provisions of those earlier orders.

(9) Unless otherwise indicated, from the date of filing of this proposed Stipulation and Orders of the Court and until consummation of the transaction, Societe De Diffusion Internationale Agro-Alimentaire and SODIAAL North America Corporation shall:

a. Preserve, maintain, and operate the SODIAAL North America Corporation butter assets as an independent competitor with management, production, sales and operations held entirely separate, distinct and apart from those of Diary Farmers of America ("DFA");

b. Take all steps reasonably necessary to ensure that the SODIAAL North America Corporation butter assets will be maintained and operated as an independent, ongoing, economically viable and active competitor in the markets alleged in the Complaint; that the management of SODIAAL North America Corporation will not be influenced by DFA, and that the books, records, competitively sensitive sales, marketing and pricing information, and decision-making associated with the SODIAAL North America Corporation butter assets will be kept separate and apart from the operations of DFA;

c. Use all reasonable efforts to maintain the operations of the SODIAAL North America Corporation butter assets, and maintain at current or previously approved levels, whichever are higher, internal funding, promotional, advertising, sales, technical assistance marketing and merchandising support for the SODIAAL North America Corporation butter assets;

d. Provide and maintain sufficient working capital to maintain the SODIAAL North America Corporation butter assets as an economically viable, ongoing business;

e. Provide and maintain sufficient lines and sources of credit to maintain the SODIAAL North America Corporation butter assets as an economically viable, ongoing business;

f. Take all steps reasonably necessary to ensure that the SODIAAL North America Corporation butter assets are fully maintained in operable condition at no lower than their current rated capacity levels, and to maintain and adhere to normal repair and maintenance schedules of the SODIAAL North America Corporation butter assets; and,

g. Cause the management of the SODIAAL North America Corporation butter assets to maintain, in accordance with sound accounting principles, separate, true, accurate and complete financial ledgers, books and records that report, on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues, income, profit and loss of the SODIAAL North America Corporation butter assets.

Respectfully submitted,

Mark J. Botti

Michael H. Knight

U.S. Department of Justice, Antitrust Division, 1401 H Street, N.W., room 400, Washington, D.C. 20530, Telephone: (202) 514–9109, Facsimile: (202) 307–5802, Counsel for United States of America.

W. Todd Miller, Esq.

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Frederick A. Tecce, Esq.

McShea & Tecce Mellon Bank Ctr., 26th floor, Philadelphia, PA 19103, Telephone: (215) 599–0800, Counsel for Dairy Farmers of America, Inc.

Facsimile: (202) 307–5802

Burton Z. Alter, Esq.

Christopher Rooney, Esq.

Carmody & Torrance LLP 18th Floor, 195 Church Street, New Haven, CT 06509–1950, Counsel for Societe De Diffusion, Internationale Agro-Alimentaire and SODIAAL North America Corporation.

So ordered:

This 19th day of May, 2000.

United States District Court Eastern district of Pennsylvania

Civil Action No. 00–1663

United States of America Plaintiff, vs. Dairy Farmers of America, et al., Defendants.

Final Judgment

Whereas Plaintiff, the United States of America (hereinafter "United States"), having filed its Complaint on March 31, 2000, this Court having issued a temporary restraining order on the same date, and Plaintiff and Defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And whereas, Defendant Societe de Diffusion Internationale Agro-Alimentaire, while not agreeing that it does business in the United States generally, has agreed to be bound by the provisions of this Final Judgment;

And whereas, Defendants SODIAAL North America Corporation and Dairy Farmers of America, Inc. have agreed to be bound by the provisions of this Final Judgment;

Now, therefore, before the taking of any testimiony, and without trial or final adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *ordered, adjudged, and decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against the Defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. "Butter LLC" means the limited liability company formed pursuant to Section IV of this Final Judgment and includes each of its successors, divisions, subsidiaries, and affiliates, each other person directly or indirectly, wholly or in part, owned or controlled by its, and each partnership or joint venture to which any of them is a party, and all of their directors, officers, and employees, and each and any successor to its interest in the Keller's, Hotel Bar, or Breakstone's brands.

B. "Dairy Farmers of America, Inc." or "DFA", means Defendant Dairy Farmers of America, Inc., a Kansas corporation with its headquarters in Kansas City, Missouri, and includes each of its successors, divisions, parents, subsidiaries, and majority-owned affiliates, and each other person, directly or indirectly, majority-owned by it, including, but not limited to, Mid-Am Capital LLC and Butter LLC, and each majority-owned partnership or joint venture to which any of them is a party, and all of their directors, officers, managers, agents and employees.

C. "DFA butter assets" means (a) assets currently employed by DFA to produce and process butter at DFA's Winnsboro, Texas facility and (b) DFA's interest in the Breakstone's brand (the transfer of which is subject to the consent of Kraft Foods, Inc.), which shall include, but not be limited to, all customer lists, inventory, contracts, and promotional materials.

D. "Federation" means:

(1) An agency in common, federation, pooling arrangement, merger or other combination or collaboration, including, but not limited to, any agreement on price or output, involving DFA's and/or Land O'Lakes' Branded Butter operations; or

(2) An agreement, directly or indirectly, between DFA and Land O'Lakes with regard to the price, quantity, sale or supply of cream, milk, or butter to Butter LLC pursuant to which DFA, Land O'Lakes, or both would charge Butter LLC more for cream, milk or butter than either one or both charge other customers. However, nothing in this paragraph shall prohibit price differentials that are reasonably based on differences in purchase volume, freight or shipping costs, federal regulation or product quality.

E. "Land O'Lakes" means Land O'Lakes, Inc., each of its successors, divisions, parents, subsidiaries, and affiliates, each other person directly or indirectly, wholly or in part, owned or controlled by it, and each partnership or joint venture to which any of them is a party, and all of their directors, officers, managers, agents and employees.

F. "Societe de Diffusion Internationale Agro-Alimentaire" means Defendant Societe de Diffusion Internationale Agro-Alimentaire, each of its successors, divisions, parents, subsidiaries, and affiliates, each other person directly or indirectly, wholly or in part, owned or controlled by it, and each partnership or joint venture to which any of them is a party, and all of their directors, officers, managers, agents, and employees.

G. "SODIAAL North America Corporation" means Defendant SODIAAL North America Corporation and includes each of its successors, divisions, parents, subsidiaries, and affiliates, each other person directly or indirectly, wholly or in part, owned or controlled by it, and each partnership or joint venture to which any of them is a party, and all of their directors, officers, managers, agents and employees.

H. "SODIAAL North America Corporation butter assets" means the real property, equipment, vehicles, inventories, accounts receivables, information and records, intellectual property, and other assets used to produce, process or market butter including, but not limited to, the Keller's and Hotel Bar brands, and which assets are to be acquired by DFA pursuant to the Transaction, defined in Paragraph II.I., herein.

I. "Transaction" means the proposed acquisition of certain assets of SODIAAL North America Corporation by DFA, described in the December 15, 1999, letter agreement between DFA and Societe De Diffusion Internationale Agro-Alimentaire, and includes all related agreements among Defendants.

J. "Agricultural Cooperative" means an entity eligible for classification as an "agricultural cooperative" under the terms of the Capper Volstead Act, 7 U.S.C. 291, as "[p]ersons engaged in the production of agricultural products such as farmers, planters, ranchmen, dairymen, nut or fruit growers," acting individually or "together in associations, corporate or otherwise," as such terms are used in the Capper-Volstead Act.

K. "Branded Butter" means butter, as currently defined by the Food and Drug Administration at 7 CFR 58.305(a), sold in a retail grocery channel under a brand owned or licensed by the butter manufacturer.

L. "Majority-owned" means either (a) holding more than 50 percent of the voting interests in a corporation, partnership, or limited liability company, or (b) having the right to designate more than 50 percent of the board of directors or similar body.

M. "Competitively Sensitive Information" means information that is not public and could be used by a competitor or supplier to make production, pricing, or marketing decisions including, but not limited to, information relating to costs, capacity, distribution, marketing, supply, market territories, customer relationships, the terms of dealing with any particular customer (including the identity of individual customers and the quantity sold to any particular customer), and current and future prices, including discounts, slotting allowances, bids, or price lists. "Competitively Sensitive Information" does not include information that must be disclosed to implement a supply arrangement in the ordinary course of business.

III. Applicability

A. The provisions of this Final Judgment apply to:

(1) Defendant Dairy Farmers of America, Inc., as defined above, so long as DFA or Butter LLC (i) controls, (ii) receives royalty or other licensing payments from, or (iii) has any right or obligation to direct the pricing, production, sales, promotion, or marketing of Branded Butter sold under, the Keller's or Hotel Bar brands;

(2) Defendants Societe de Diffusion Internationale Agro-Alimentaire and SODIAAL North America Corporation, as defined above, so long as either of them (i) controls, (ii) receives royalty or other licensing payments from, or (iii) has any right or obligation to direct the pricing, production, sales, promotion, or marketing of Branded Butter sold under, the Keller's or Hotel Bar brands;

(3) Butter LLC, as defined above, so long as DFA or Butter LLC (i) controls, (ii) receives royalty or other licensing payments from, or (iii) has any right or obligation to direct the pricing, production, sales, promotion, or marketing of Branded Butter sold under, the Keller's or Hotel Bar brands;

(4) Any person under Paragraph III.B. of this Final Judgment; and

(5) All other persons in active concert or participation with anyone named in Paragraphs III.A.(1), III.A.(2), III.A.(3), or III.A.(4) above, who receive actual notice of this Final Judgment by Personal service or otherwise.

B. DFA and/or Butter LLC shall require as a condition of the sale or other disposition of either the Keller's or Hotel Bar brands (or both) to an Agricultural Cooperative or to an entity in which DFA has a non-majority ownership interest that such person or persons agree to be bound by the provisions of this Final Judgment. However, except as provided in Paragraph III.A.(2) or III.A.(5) above, this Final Judgment shall not apply to transferees of either the Keller's or Hotel Bar brands (or both) who are neither an Agricultural Cooperative nor an entity in which DFA has an ownership interest.

IV. Formation of Limited Liability Company and Contribution of Assets

A. Within 30 days after the consummation of the Transaction, DFA shall cause to be formed "Butter LLC," a limited liability company to be partially owned by persons other than DFA which will cause Butter LLC to be ineligible for classification as an Agricultural Cooperative. Butter LLC shall, within 15 days of its formation, stipulate in writing to be bound by this Final Judgment and subject to the jurisdiction of this Court and shall serve a copy of its stipulation on Plaintiff and file that stipulation with the Court within those 15 days.

B. Within 30 days after the consummation of the Transaction, DFA and/or Societe de Diffusion Internationale Agro-Alimentaire shall contribute to Butter LLC (a) the DFA butter assets including, subject to the consent of Kraft Foods, Inc., DFA's interest in the Breakstone's brand; and (b) the SODIAAL North America Corporation butter assets. Prior to that contribution, DFA shall take no steps to reduce eliminate, or otherwise divest those assets.

C. Without prior written approval of Plaintiff, Butter LLC shall not sell, transfer, divest, license, or in any way grant, direct or indirect, control over the pricing, production, sales, promotion, or marketing of any or all of Keller's, Hotel Bar, or Breakstone's brands to Land O'Lakes.

D. Without prior written approval of Plaintiff, Butter LLC shall not obtain, receive, or in any way acquire, direct or indirect, control over the pricing, production, sales, promotion, or marketing of any or all Branded Butter from Land O'Lakes.

E. Without 30 days prior notice to Plaintiff, Butter LLC shall not sell, transfer, or divest either the Keller's or Hotel Bar brands, or both, to any entity in which DFA has an ownership interest. This Final Judgment shall apply to any such entity pursuant to Paragraph III.B.

F. Without 30 days prior notice to Plaintiff, Butter LLC shall not sell, transfer, or divest either the Keller's or Hotel Bar brands, or both, to any entity in which neither DFA nor Land O'Lakes has an ownership interest. Notice provided under this Paragraph shall include the production to the Plaintiff of copies of any and all supply contracts then existing or contemplated between Butter LLC and the transferee.

V. Injunctive Provisions

A. DFA and Butter LLC are hereby enjoined, individually and/or collectively, from entering into a Federation with Land O'Lakes, provided, however that, except as set forth in Paragraphs IV.C. and IV.D., nothing contained herein shall prohibit either DFA or Butter LLC from entering into a supply arrangement with Land O'Lakes whereby one party processes and packages (but does not market, promote, sell, or distribute) Branded Butter on the other's behalf.

B. DFA and Butter LLC are further enjoined, individually and/or collectively, from disclosing to Land O'Lakes, directly or indirectly, any Competitively Sensitive Information regarding Branded Butter.

VI. Compliance Program

DFA and Butter LLC shall maintain a judgment compliance program that shall include:

A. Distributing, within 60 days from the entry of this Final Judgment, a copy of the Final Judgment and Competitive Impact Statement to all directors, officers and Branded Butter sales and marketing personnel;

B. Distributing, in a timely manner, a copy of this Final Judgment and Competitive Impact Statement to any person who succeeds to a position described in Paragraph VI.A;

C. Distributing, within 60 days from the entry of this Final Judgment, a copy of this Final Judgment and Competitive Impact Statement to Land O'Lakes;

D. Briefing, annually, in writing or orally, those persons designated in Paragraphs VI.A. and VI.B. on the meaning and requirements of this Final Judgment and the antitrust laws, including penalties for violation thereof;

E. Obtaining from those persons designated in Paragraphs VI.A. and VI.B. annual written certifications that they (1) have read, understand, and agree to abide by this Final Judgment, (2) understand that their noncompliance

with this Final Judgment may result in conviction for criminal contempt of court and imprisonment and/or fine, and (3) have reported violations, if any, of this Final Judgment of which they are aware to counsel for the respective Defendant; and

F. Designating a specific individual for each company who shall be responsible for maintaining for inspection by Plaintiff a record of recipients to whom this Final Judgment and Competitive Impact Statement have been distributed and from whom annual written certifications regarding this Final Judgment have been received.

VII. Certification and Notification

A. Within 75 days after entry of this Final Judgment, DFA and Butter LLC each shall certify to Plaintiff that it has made the distribution of the Final Judgment and Competitive Impact Statement as required by Paragraph VI.A.

B. For each year after the entry of this Final Judgment, on or before its anniversary date, DFA and Butter LLC each shall certify to Plaintiff its compliance with any provisions of Sections IV, V, and VI then applicable to it; and

C. Butter LLC shall notify the Plaintiff at least 30 days prior to, as applicable, any proposed (1) dissolution, (2) sale or assignment of claims or assets resulting in a successor person, or (3) change in company structure that may affect compliance with this Final Judgment.

D. All certifications, notices and communications required to be made to Plaintiff pursuant to this Final Judgment shall be in writing and shall be deemed to be delivered when (1) hand delivered; or (2) when deposited in the United States mail, postage prepaid, registered or certified U.S. mail, return receipt requested, and addressed, in each such case, to the address set forth in this Paragraph, or the address as changed pursuant to the requirements of this Paragraph.

United States Department of Justice—Antitrust Division, Director of Operations and Merger Enforcement, 601 D Street, N.W., Room 10103, Washington, DC 20530.

With a copy to:

United States Department of Justice—Antitrust Division, Chief, Litigation II Section, 1401 H Street, N.W., Washington, DC 20530.

Plaintiff may change the address for notices to be sent to it by written notice delivered to the Defendants by one of the methods described above in this Paragraph.

VIII. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any Defendant or Butter LLC, be permitted:

(1) Assess during office hours to inspect and copy, or at Plaintiff's option, demand Defendants or Butter LLC to provide copies of, all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Defendants or Butter LLC, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of Defendants or Butter LLC and without restraint or interference from them to interview, either informally or on the record, directors, officers, employees, and agents of Defendants or Butter LLC, who may have their individual counsel present, regarding any such matters.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, Defendants and Butter LLC shall submit such written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Defendants or Butter LLC to the United States, Defendants or Butter LLC represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Defendants or Butter LLC mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then the United States shall give Defendants or Butter LLC ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

IX. Retention of Jurisdiction

This Court retains jurisdiction for the purpose of enabling any party to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation, or modification of any of the Provisions of this Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

X. Termination of Final Judgment

This Final Judgment will continue in force until terminated pursuant to an order of this Court.

XI. Public Interest Determination

Entry of this Final Judgment is in the public interest.

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16.

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 00–1663

UNITED STATES OF AMERICA, Plaintiff, v. DAIRY FARMERS OF AMERICA, et al. Defendants.

Certificate of Service

I, Michael H. Knight, hereby certify that on May 17, 2000, I caused copies of the foregoing proposed Final Judgment and the United States' Explanation of Consent Decree

Procedures to be served by telecopier and by mail upon the following:

Todd Miller, Esq.,
Baker & Miller, PLLC, Counsel for Dairy Farmers of America, suite 1000, 915 15th Street, NW., Washington, DC 20005–2302.

Burton Z. Alter, Esq.,

Christopher Rooney, Esq.
Carmody & Torrance LLP, Counsel for SODIAAL North America Corporation and for Societe de Diffusion Internationale Agro-Alimentaire, 18th Floor, 195 Church Street, New Haven, CT 06509–1950.

Michael H. Knight,
Attorney, U.S. Department of Justice, Antitrust Division, 1401 H Street, NW., Room 4000, Washington, DC 20530, Phone: 202–514–9109 Fax: 202–514–9033.

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 00–1663

UNITED STATES OF AMERICA, *Plaintiff,* vs. DIARY FARMERS OF AMERICA, *et al., Defendants.*

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 16(b), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

1. Nature and Purpose of the Proceeding

On March 31, 2000, the United States filed a civil antitrust suit alleging that the proposed acquisition by Dairy Farmers of America, Inc. ("DFA") of SODIAAL North America Corporation ("SODIAAL") would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that the combination of DFA and SODIAAL would substantially lessen competition in the markets for the sale of branded whipped and branded stick butter in the Philadelphia and New York City metropolitan areas. The United States District Court for the Eastern District of Pennsylvania entered a Temporary Restraining Order on March 31, 2000, prohibiting the parties from consummating their proposed transaction and setting the government's Motion for Preliminary Injunction for hearing.

According to the Compliant, the proposed acquisition would create a duopoly in the markets for branded stick and branded whipped butter in Philadelphia and New York metropolitan areas. Land O' Lakes is the chief competitor to the SODIAAL brands in these regions. Combined, DFA (including the SODIAAL brands) and Land O' Lakes would control more than 90 percent of the sales of branded stick and branded whipped butter in these markets.

Moreover, because both DFA and Land O' Lakes are agricultural cooperatives they are entitled to federate their branded butter businesses under the Capper-Volstead Act, 7 U.S.C. 291, which exempts from antitrust scrutiny collective marketing by or on behalf of agricultural production cooperatives. SODIAAL, however, does not have the benefit of the Capper-Volstead exemption. Thus, DFA's acquisition of the SODIAAL assets would bring the important SODIAAL brands under the control of an exempt cooperative. As a result, prices for branded stick and branded whipped butter sold to retailers and consumers in the Philadelphia and New York metropolitan areas likely would increase.

The prayer for relief in the Compliant seeks: (1) A judgment that the proposed acquisition would violate Section 7 of the Clayton Act and (2) temporary and permanent injunctive relief that would prevent DFA from acquiring control of, or otherwise combining its assets with SODIAAL.

On May 18, 2000, the United States filed a proposed Stipulation and Order and proposed Final Judgment that would permit DFA to complete its acquisition of SODIAAL but prohibit it from federating with Land O' Lakes, Inc. with respect to the marketing and sale of branded butter.

The proposed Final Judgment requires DFA to form "Butter LLC," a limited liability company to be majority-owned by DFA and minority-owned by persons other than DFA (*i.e.*, former SODIAAL managers).[1] DFA and/or SODIAAL must contribute to Butter LLC assets necessary to produce and market the brands of butter DFA and SODIAAL have sold in New York and Philadelphia. Butter LLC will not be an agricultural cooperative and thus will not be entitled to Capper-Volstead immunity.

The proposed Final Judgment also enjoins DFA and Butter LLC, individually and collectively, from entering into any federation with Land O' Lakes with respect to the marketing, promotion, sale, or distribution of branded butter. DFA and Butter LLC are further prohibited from disclosing to Land O'Lakes any competitively sensitive information regarding branded butter.

[1] Butter LLC will do business under the name *Keller's Creamery, L.L.C.*

The Stipulation and Order, which was entered by the Court on May 19, 2000, permits the defendants to close their transaction but requires that they act in accordance with, abide by, and comply, with, the terms of the proposed Final Judgment pending its entry by the Court. The parties have agreed that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Violations Alleged in the Complaint

A. The Defendants and the Proposed Transaction

DFA is an agricultural cooperative based in Kansas City, Missouri. It owns and operates dairy processing plants throughout the United States, including butter-producing plants in Winnsboro, Texas, and Goshen, Indiana. DFA produces, processes, markets, advertises, and sells Breakstone's branded butter (under license from Kraft Food, Inc.) throughout the eastern United States, including the greater Philadelphia and New York metropolitan areas. The Breakstone's brand was founded in 1882. In 1998, the company recorded net sales of approximately $7.3 billion.

SODIAAL, headquartered in Harleysville, Pennsylvania, is a privately held subsidiary of a French cooperative, Societe de Diffusion Internationale Agro-Alimentaire. It owns and operates one butter-producing plant, Mayfair Creamery, in Somerset, Pennsylvania. SODIAAL produces, markets, advertises, and sells Keller's and Hotel Bar branded butter in the northeastern United States, including the greater Philadelphia and New York metropolitan areas. The Keller's brand was founded in 1906; the Hotel Bar brand was founded in 1885. In 1998, SODIAAL had net sales of approximately $238 million.

On or about December 15, 1999, DFA entered into a letter agreement with Societe de Diffusion Internationale Agro-Alimentaire, to purchase, for about $36 million, substantially all of the assets of SODIAAL. This transaction, which would eliminate the sole remaining, significant, privately held (*i.e.*, non-cooperative) branded butter producer in the Philadelphia and New York markets, precipitated the government's suit.

B. The Competitive Effects of the Transaction

1. The Relevant Product Markets for Branded Stick and Branded Whipped Butter

Butter is sold to consumers at retail in a variety of forms (*e.g.*, quarter-pound butter sticks, whipped butter, lightly salted butter, and unsalted butter) and package sizes (*e.g.*, one-pound packages comprising four quarter-pound sticks, one-half pound packages comprising two quarter-pound sticks, and eight-ounce tubs of whipped butter). In the greater Philadelphia and New York metropolitan areas combined, approximately 84 percent of butter sold at retail is in stick form. An additional 14 percent is whipped and is typically sold in half-pound (eight-ounce) tubs.

The unique characteristics of butter differentiate if from potential substitutes such as margarine. While spreads such as margarine compete in a limited way with butter, because of butter's unique qualities and characteristics, if the price of butter were increased by a small but significant amount, a sufficient number of purchasers would not switch to other products to make such a price increase unprofitable.

Most butter is sold to consumers through retail outlets, such as grocery stores and mass merchandisers. Consumers purchase two distinct categories of butter—branded butter (such as Keller's, Hotel Bar, Breakstone's, and Land O' Lakes) and private label butter (*i.e.*, butter marketed under a label owned or controlled by the retailer)—and two distinct forms of butter—stick and whipped.[2]

The sale of branded whipped butter through retail outlets is a relevant product market for antitrust purposes. Retail consumers of branded whipped butter consider it to be a distinct product from private label whipped butter, stick butter, and other products. With respect to private label whipped butter, consumers perceive branded whipped butter to possess different quality characteristics. These perceptions have been reinforced by years of promotions and brand advertising. In addition, branded whipped butter has different principal users and is manufactured and packaged differently from stick butter (branded and private label) and other products. Accordingly, a small but significant increase in the price of branded whipped butter will not cause a sufficient number of consumers of branded whipped butter to substitute other products (including private label whipped butter and stick butter) to dissuade a hypothetical monopolist from such a price increase.

The sale of branded stick butter through retail outlets is also a relevant product market for antitrust purposes. Retail consumers of branded stick butter consider it to be a distinct product from private label stick butter, whipped butter, and other products. As with branded whipped butter, consumers perceive quality differences between branded stick butter and private label stick butter. In addition, branded stick butter has different principal users and is manufactured and packaged differently from whipped butter and other products. A small but significant increase in the price of branded stick butter will not cause a sufficient number of consumers of branded stick butter to substitute other products (including private label stick butter and whipped butter) to dissuade a hypothetical monopolist from such a price increase.

Although branded products do not always comprise relevant markets, there is no principle of law or economics that implies that relevant markets cannot be limited to such products. Whether the market is properly limited to branded products is determined by an application of the general market delineation principles articulated in the Horizontal Merger Guidelines. In Section 1.0, the Guidelines state:

> A market is defined as a product or group of products and a geographic area in which a hypothetical profit-maximizing firm, not subject to price regulation, that was the only present and future producer or seller of those products in that area likely would impose at least a "small but significant and nontransitory" increase in price, assuming the terms of sale of all other products are held constant. A relevant market is a group of products and a geographic area that is no bigger than necessary to satisfy this test.

Stated differently, relevant product markets are delineated by determining the likely buyer response to a "small but significant and nontransitory" price increase (typically in the range of 5–10%) imposed by a hypothetical monopolist. If, in response to a price increase, buyers would switch to products outside the candidate market in sufficient numbers so that the hypothetical monopolist would not find it profit maximizing to increase price at least a "small but significant and nontransitory" amount, the candidate market is drawn too small.

A critical factor in applying the Merger Guidelines' market definition principles is "elasticity of demand," which measures the responsiveness of the quantity demanded for a product to changes in its price. Elasticity of demand is generally defined as the ratio of the percentage change in quantity demanded of a product to the percentage change in price that induced the quantity change. A high elasticity of demand for a product or group of products implies that good substitutes exist (and thus that the product or group of products is not likely to comprise a relevant market for antitrust purposes), while a low elasticity implies that substitutes are poor (and thus that the product or products may comprise a relevant market).

When the requisite data are available, the Merger Guidelines' market definition principles are applied empirically. Using data supplied by the parties to determine product margins, the United States can employ standard economic analysis to determine the "critical elasticity of demand" (*i.e.*, the demand elasticity value below which a hypothetical monopolist would impose at least the requisite "small but significant nontransitory price increase"), and compare it to the estimated elasticity of demand for candidate market.[3] An essentially equivalent approach identifies a critical sales loss corresponding to a designated threshold for a significant price increase. The latter approach has been used by several courts. *FTC v. Tenet Health Care Corp.*, 186 F.3d 1045, 1050–51, 1053–54 (8th Cir. 1999); *California v. Sutter Health System*, 84 F. Supp. 2d 1057, 1076–80 (N.D. Cal. 2000), *aff'd mem.* __F.3d__, 2000 WL531847 (9th Cir. 2000). The results of a critical elasticity analysis performed using data provided by the merging firms and Land O'Lakes during the course of the government's investigation of the proposed merger support the alleged relevant product markets for branded stick and branded whipped butter.

2. The Relevant Geographic Markets of Philadelphia and New York Metropolitan Areas.

Both DFA's and SODIAAL's brands of butter are sold and compete directly in the greater Philadelphia and New York metropolitan areas. DFA sells its Breakstone's brand in both the Philadelphia and New York metropolitan areas, while SODIAAL sells its Keller's brand primarily in the Philadelphia metropolitan area and its Hotel Bar brand primarily in the New

[2] A small percentage of butter sold at retail (approximately 2% in Philadelphia and New York) is purchased in "specialty" forms such as shaped holiday molds.

[3] For a more detailed discussion of the use of critical demand elasticities in delineating antitrust markets, *see* Gregory J. Werden, *Demand Elasticities in Antitrust Analysis*, 66 Antitrust L.J. 363, 384–96 (1998).

York metropolitan area. Due to local consumer preferences for specific brands, retailers and other consumers would not readily substitute brands of butter that had not been promoted and sold in the greater Philadelphia and New York metropolitan areas, and are likely to pay higher prices as a result of the proposed acquisition.

Differing consumer preferences in different geographic areas cause DFA and SODIAAL to charge different net prices for the same product sold in different geographic areas. The variations in price do not simply reflect differences in costs, but rather reflect local differences in brand strength, competition, and competitive strategy. Price variations often take the form of advertising allowances, local promotions, and couponing campaigns. DFA and SODIAAL develop distinct marketing plans for the Philadelphia metropolitan area and for the New York metropolitan area.

It would not be practical for retailers located in a higher-priced area to purchase branded stick or branded whipped butter from retailers in a lower-priced area. Such arbitrage, also known as "diversion," is not practical for retailers because of the control producers maintain over the distribution and sale of their products. Producers, like the defendants, structure locally targeted price concessions to prevent arbitrage and often require proof of local advertising, coupon limitations, and other promotional restrictions.

Accordingly, for the purposes of antitrust analysis, the greater Philadelphia and New York metropolitan areas each constitute a relevant geographic market.

3. The Effects of the Transaction on Competition in the Markets for Branded Stick and Branded Whipped Butter in Philadelphia and New York.

According to the Complaint, the proposed acquisition will reduce competition substantially for the sale of branded stick and branded whipped butter in the Philadelphia and New York metropolitan areas.

The Complaint alleges harm resulting from post-acquisition anticompetitive coordination between DFA and Land O' Lakes, Inc. DFA and SODIAAL are two of only three significant suppliers of branded butter in the greater Philadelphia and New York metropolitan areas. The third is Land O' Lakes, a cooperative with approximately $6 billion in annual sales, and the largest butter manufacturer in the United States. Post-transaction, more than 90 percent of the branded stick and branded whipped butter sold in the greater Philadelphia and New York metropolitan markets will be supplied by either DFA or Land O' Lakes. Economic analysis predicts that DFA and Land O' Lakes would find anticompetitive coordination to be profit-maximizing, particularly because both firms (unlike SODIAAL) are agricultural cooperatives between whom explicit collusion would be legal and could not be challenged under the antitrust laws. As a result, in the absence of relief, post-transaction prices would likely increase.

The Complaint also alleges that entry into the sale of branded stick and branded whipped butter in the greater Philadelphia and New York metropolitan areas is difficult. Such entry requires substantial, sunk promotional, and advertising expenditures. Establishing a branded butter product takes years of effort and would not be timely, likely, or sufficient to deter any exercise of market power by branded butter suppliers in the relevant markets following the acquisition by DFA of SODIAAL.

In order to prevent the consummation of the proposed acquisition, the Complaint had to be prepared on the basis of a preliminary analysis. That analysis suggested that the acquisition likely would also give rise to a unilateral anticompetitive effect resulting directly from the loss of competition between DFA and SODIAAL. Consequently, the Complaint also alleged this sort of anticompetitive effect. However, extensive post-Complaint analysis of the competitive interaction between DFA's Breakstone's brand and SODIAAL's Keller's and Hotel Bar brands has indicated that the proposed acquisition would not likely give rise to significant unilateral anticompetitive effects.

III. Explanation of the Proposed Final Judgment

The relief described in the proposed Final Judgment is designed to eliminate the anticompetitive effects of the acquisition in the markets for the sale of branded butter in the Philadelphia and New York metropolitan areas.

A. The Formation of Butter LLC as a Non-Cooperative Entity

The proposed Final Judgment requires DFA to form Butter LLC and ensures the transfer to Butter LLC of all assets necessary to manufacture and market the Breakstone's, Keller's, and Hotel Bar brands. Butter LLC will be owned in part by persons other than DFA (*i.e.*, members of the premerger SODIAAL management team) and thus, unlike DFA, it will not qualify as an agricultural cooperative entitled to engage in collective marketing under the Capper-Volstead Act. In addition, both DFA and Butter LLC would be bound by the injunctive provisions of the Final Judgment described below.

Neither DFA nor Butter LLC may dispose of either the Keller's or Hotel Bar brands (or both) to an "Agricultural Cooperative" (as defined in the proposed Final Judgment) unless the transferee agrees to be bound by the provisions of the Final Judgment. Similarly, disposition of these brands to any entity in which DFA holds a minority ownership interest, but which is not included within the definition of DFA in the Final Judgment, requires that the transferee agree to be bound by the Final Judgment. Disposition of the brands to any other entity (except Land O' Lakes) cannot be made without 30 days prior notice to the Department of Justice. Such notice shall include the provision of all supply contracts then existing or contemplated between the transferor and transferee. Finally, any transfer of control over the brands to Land O' Lakes would require the Department's prior written approval, as would receipt by Butter LLC (or DFA) of control over any Land O' Lakes brand.

B. The Injunctive Provisions

The proposed Final Judgment also enjoins DFA and Butter LLC from entering into any Federation with Land O'Lakes with respect to branded butter. "Federation" is defined in the proposed Final Judgment as:

> (1) An agency in common, federation, pooling arrangement, merger or other combination or collaboration, including, but not limited to, any agreement on price or output, involving DFA's and/or Land O'Lakes' Branded Butter operations; or
>
> (2) An agreement, directly or indirectly, between DFA and Land O'Lakes with regard to the price, quantity, sale or supply of cream, milk, or butter to Butter LLC pursuant to which DFA, Land O'Lakes, or both would charge Butter LLC more for cream, milk or butter than either one or both charge other customers. However, nothing in this paragraph shall prohibit price differentials that are reasonably based on differences in purchase volume, freight or shipping costs, federal regulation or product quality.

For purposes of illustration, the defendants have acknowledged that a federation between DFA and Land O'Lakes "involving (their) Branded Butter operations," prohibited by paragraph (1) above, would include an agreement on non-Branded Butter that has the purpose and effect of tying up substantial capacity otherwise available (and used) to produce Branded Butter. Similarly, an "indirect" agreement between DFA and Land O'Lakes of the

type prohibited by paragraph (2) above would exist if a non-majority-owned affiliate of DFA forms an agreement with Land O'Lakes with regard to the price, quantity, sale, or supply of cream, milk, or butter to Butter LLC and the non-majority-owned affiliate forms a related agreement with DFA with regard to the price, quantity, sale or supply of cream, milk, or butter to Butter LLC.

DFA and Butter LLC are also enjoined from disclosing to Land O'Lakes, directly or indirectly, competitively sensitive information regarding branded butter. "Competitively Sensitive Information" is defined as:

> information that is not public and could be used by a competitor or supplier to make production, pricing, or marketing decisions including, but not limited to, information relating to costs, capacity, distribution, marketing, supply, market territories, customer relationships, the terms of dealing with any particular customer (including the identity of individual customers and the quantity sold to any particular customer), and current and future prices, including discounts, slotting allowances, bids, or price lists. "Competitively Sensitive Information" does not include information that must be disclosed to implement a supply arrangement in the ordinary course of business.

C. Compliance Provisions

DFA and Butter LLC are required under the proposed Final Judgment to distribute copies of the proposed Final Judgment and this Competitive Impact Statement to: (1) All current and future directors, officers and Branded Butter sales and marketing personnel; and (2) Land O'Lakes, Inc. In addition, DFA and Butter LLC must brief, annually, those directors, officers, and employees receiving copies of the Final Judgment and Competitive Impact Statement, on the meaning and requirements of the Final Judgment and the antitrust laws, including penalties for violation thereof. DFA and Butter LLC must also obtain written certifications from these individuals that they: (1) Have read, understand, and agree to abide by the Final Judgment; (2) understand that noncompliance with the Final Judgment may result in a conviction for criminal contempt of court; and (3) have reported violations, if any, of the Final Judgment of which they are aware to counsel for the respective company. Finally, both DFA and Butter LLC must designate a specific individual for each company to be responsible for ensuring that the compliance provisions are satisfied.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against defendant.

V. Procedures Available for Modification of the Proposed Final Judgment

The parties have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry of the decree upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register.** The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the Federal Register. Written comments should be submitted to: J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW, Suited 3000, Washington, D.C. 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants DFA, SODIAAL and Societe de Diffusion International Agro-Alimentaire. The Untied States could have continued the litigation to seek preliminary and permanent injunctions against DFA's acquisition of SODIAAL. The United States is satisfied, however, that the requirements and prohibitions contained in the proposed Final Judgment will establish, preserved and ensure viable competitors in each of the relevant markets identified by the government. To this end, the United States expects that the proposed relief, once implemented by the Court, will likely prevent DFA's acquisition of SODIAAL from having significant adverse competitive effects.

VII. Standard or Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to sixty (60 days comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the court may consider—

> (1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;
>
> (2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e). As the Court of Appeals for the District of Columbia Circuit has held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft,* 56, F.3d 1448 (D.C. Cir. 1995).

In conducting this inquiry, "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process" [4] Rather,

[4] 119 Cong. Rec. 24598 (1973). *See United States* v. *Gillette Co.,* 406 F. Supp. 713, 715 (D.C. Mass. 1975). A "public interest" determined can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures. 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes

absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1977–1 CCH Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States* v. *Bethtel Corp.*, 648 F.2d 660, 666 (9th Cir.), *cert denied*, 454 U.S. 1083 (1981)); *see also Microsoft*, 56 F.3d 1448 (D.C. Cir. 1995). Precedent requires that:

the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest" More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[5]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is within the reaches of public interest."[6]

that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See.* H.R. 93–1463, 93rd Cong. 2d Sess. 8–9 *reprinted in* (1974) U.S. Code Cong. & Ad. News 6535, 6538.

[5] *United States v. Bechtel*, 648 F.2d at 666 (citations omitted) (emphasis added); *see United States v. BNS, Inc.* 858 F.2d at 463; *United States v. National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States v. Gillette Co.*, 406 F. Supp. at 716. *See also United v. American Cyanamid Co.*, 719 F.2d at 565.

[6] *United States* v. *American Tel. and Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (quoting *United States* v. *Gillette Co., supra*, 406 F. Supp. at 716) (citations omitted), *aff'd sub nam. Maryland* v. *United States*, 460 U.S. 1001 (1983); *United States* v. *Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: June 29, 2000.

Respectfully submitted,

Mark J. Botti

Michael H. Knight

U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW, Suite 3000, Washington, DC 20530, (202) 307–0827.

Certificate of Service

I hereby certify under penalty of perjury that on this 29th day of June, 2000, I caused a true and correct copy of the foregoing Competitive Impact Statement to be served by telecopier and by mail to:

W. Todd Miller, Esq.

Baker & Miller, PLLC, Suite 1000, 915 15th Street, N.W., Washington, D.C. 20005–2302, Counsel for Dairy Farmers of America, Inc.

Burton Z. Alter, Esq.

Christopher Rooney, Esq.

Carmody & Torrance LLP, 18th Floor, 195 Church Street, New Haven, CT 06509–1950, Counsel for Societe De Diffusion Internationale Agro-Alimentaire and SODIAAL North America Corporation.

Michael H. Knight

Trial Attorney, U.S. Department of Justice, Antitrust Division, 1401 H. Street, N.W., Suite 4000, Washington, D.C. 20530, Telephone: 202–514–9109, Facsimile: 202–514–9033.

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DEPARTMENT OF JUSTICE

Antitrust Division

United States v. JDS Uniphase Corporation and E–TEK Dynamics, Inc. Civil Action No. C 00–2227 TEH (N.D. Cal); Proposal Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h), that a Proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the Northern District of California in *United States* v. *JDS Uniphase Corp. and E-TEK Dynamics, Inc.*, Civil Action No. C00–2227 TEH. On June 22, 2000, the United States filed a Complaint which alleged that JDS Uniphase Corp.'s proposed merger with E-TEK Dynamics, Inc. would violate section 7 of the Clayton Act, 15 U.S.C. 18, by substantially lessening competition in the production and sale of dense wavelength division multiplexer and demultiplexer modules of 16 or fewer channels ("DWDMs"). The proposed Final Judgment, filed the same time as the Complaint, requires the newly merged firm to divest certain contractual rights in supply agreements the merged entity holds with several thin film filter suppliers. Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection in Room 215 of the Antitrust Division, United States Department of Justice, 325 Seventh Street, NW., Washington, DC 20530 (telephone: (202) 514–2481) and at the Office of the Clerk of the United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, California 94102.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Christopher S. Crook, Chief, San Francisco Field Office, Antitrust Division, United States Department of Justice, 450 Golden Gate Ave., Box 36046, Room 10–0101, San Francisco, California 94102 (telephone: (415) 436–6660).

Constance K. Robinson,

Director of Operations & Merger Enforcement, Antitrust Division.

Stipulation and Order

It is hereby STIPULATED by and between the undersigned parties, by their respective attorneys, as follows:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the Northern District of California.

2. The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that the plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

3. Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment by the Court, or until expiration of the time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the entry of this Stipulation and Order, comply with all the terms and provisions of the

proposed Final Judgment as though the same were in full force and effect as an order of the Court.

4. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

5. In the event that the plaintiff withdraws its consent, as provided in paragraph 2 above, or if the proposed Final Judgment is not entered pursuant to this Stipulation, or the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continuing compliance with the terms and provisions of the proposed Final Judgment, this Stipluation shall be of no effect whatsoever, and the making of this Stipulation shall be without prejudice to any part in this or any other proceeding.

6. Defendants agree not to consummate their transaction before the Court has signed this Stipulation and Order.

Respectfully submitted,

Howard J. Parker, Esq.,
U.S. Department of Justice, Antitrust Division, 450 Golden Gate Avenue, Room 10–0101, Box 36046, San Francisco, CA 94102, Telephone (415) 436–6660, Facsimile (415) 436–6687, Attorney for Untied States of America.

W. Stephen Smith, Esq.
Morrison & Foerster LLP, 2000 Pennsylvania AVenue, N.W., Washington, D.C. 20006–1888, Telephone (202) 887–1514, Facsimile (202) 887–0763, Attorney for JDS Uniphase Corporation.

Charles T.C. Compton, Esq.,
Wilson Sonsini Goodrich & Rosati, 650 Page Mill Road, Palo Alto, CA 94304–1050, Telephone (650) 493–9300, Facsimile (650) 565–5100, Attorney for E–TEK Dynamics, Inc.

Dated: June 22, 2000.

So Ordered:

This __ day of June, 2000.

United States District Judge

Final Judgment

Whereas, plaintiff, United States of America ("United States"), filed its Complaint on June 22, 2000, plaintiff and defendants, defendant JDS Uniphase Corporation ("JDS") and defendant E–TEK Dynamics, Inc. ("E–TEK"), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And Whereas, defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, plaintiff requires defendants to refrain from enforcing or reacquiring contractual rights effecting control over the output of any coating chambers owned by or on the premises of certain merchant suppliers, for the purpose of remedying the loss of competition alleged in the Complaint;

And Whereas, defendants have represented to the plaintiff that the defendants can and will refrain from effecting such control, as ordered herein, and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the prohibitions contained below;

Now Therefore, before the taking of any testimony, without trial or adjudication of any issue of fact, or law, and upon consent of the parties, it is Ordered, Adjudged and Decreed:

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of he parties to this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II. Definitions

As used in this Final Judgment:

A. "E–TEK" means defendant E–TEK Dynamics, Inc., a Delaware corporation with its headquarters in San Jose, California, its successors and assigns, and it subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

B. "Filter Vendor(s)" means Barr Associates, Inc., Herrmann Technology, Inc., Hoya Corporation USA, Optical Coating Japan Corporation, and their successors and assigns.

C. "JDS" means defendant JDS Uniphase Corporation, a Delaware corporation with its headquarters in San Jose, California, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

D. "Optical Filter(s)" means dielectric thin film filters used in optical networks for the telecommunications industry, such as, but not limited to, wideband, narrowband and gain flattening filters.

E. "Rights of First Refusal" means: (1) The contractual rights held by defendants of first refusal over all other persons with respect to the output of coating chambers for the manufacture of Optical Filters by the Filter Vendors, such as set forth in the Supply Agreements; (2) any right obligating a Filter Vendor to accept a defendant's purchase order for Optical Filters; and (3) any right that effect of which would be to enable a defendant, through unilateral action, to prevent a Filter Vendor from selling Optical Filters to persons other than a defendant.

F. "Security Interest and Rights of Repayment" means E–TEK's contractual rights under the Supply Agreements: (1) a priority security interest in the chambers that are subjects of the Supply Agreements; and (2) repayment, through discounts on Optical Filter purchases or otherwise, of funds advanced to the Filter Vendors in connection with the purchase or upgrade of the chambers that are subjects of the Supply Agreements.

G. "Supply Agreements" means the following contracts, including all amendments to these contracts: (1) Supply Agreement between E–TEK and Barr Associates, Inc. dated October 8, 1996; (2) Supply Agreements between E–TEK and Herrmann Technology, Inc. dated December 14, 1998, February 11, 1999 (both "First * * * Agreement" and "Second * * * Agreement"), and May 5, 1999; (3) Supply Agreement between E–TEK and Hoya Corporation USA dated July 20, 1999; and (4) Supply Agreement between E–TEK and Optical Coating Japan Corporation dated February 25, 1999.

H. "Transition Period" means the ninety (90) days following the filing of the Complaint in this matter.

III. Applicability

This Final Judgment applies to JDS and E–TEK, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV. Prohibition on Enforcement of Rights

A. After the expiration of the Transition Period, defendants shall not enforce the Rights of First Refusal in the Supply Agreements.

B. After the first thirty (30) days of the Transition Period, defendants shall not enforce the Rights of First Refusal in the Supply Agreements with respect to thirty (30) percent of each Filter Vendor's Optical Filter manufacturing capacity subject to those Rights. After the second thirty (30) days of the Transition Period, defendants shall not enforce the Rights of First Refusal in the Supply Agreements with respect to sixty (60) percent of each Filter Vendor's Optical Filter manufacturing capacity subject to those Rights. During the Transition Period, and unless the

plaintiff otherwise consents in writing, defendants shall refrain from making or enforcing any purchase orders to the Filter Vendors unless the period for deliveries of Optical Filters under the purchase orders is not longer than thirty (30) days in duration.

C. After the filing of the Complaint in this matter, defendants shall not enforce the Security Interest and Rights of Repayment in the Supply Agreements.

D. Defendants promptly shall notify, by usual and customary means, the firms that defendants have identified to the plaintiff, in response to Second Request Specifications 3(h) and 9, of the prohibitions under the terms of this Final Judgment on the Defendants' enforcement of the Rights of First Refusal and Security Interest and Rights of Repayment.

V. Affidavits

Within forty (40) calendar days of the filing of the Complaint in this matter, and every forty (40) calendar days thereafter, through and including one hundred twenty (120) calendar days thereafter, defendants shall deliver to plaintiff an affidavit as to the fact and manner of their compliance with Section IV of this Final Judgment.

VI. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

(1) Access during defendants' office hours to inspect and copy, or at plaintiff's option demand defendants provide copies of, all books, ledgers, accounts, records, correspondence, memoranda, and documents in the possession or control of defendants, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) To interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the interviewee's reasonable convenience and without restraint or interference by defendants.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the plaintiff to any person other than a duly authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to plaintiff, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then plaintiff shall give defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

VII. No Reacquisition

Defendants shall not reacquire, directly or indirectly, any Right of First Refusal over any coating chambers owned by or located on the premises of the Filter Vendors as of the filing of the Complaint in this matter. After the expiration of the Transition Period, nothing in this Final Judgment shall preclude defendants from purchasing Optical Filters from the Filter Vendors pursuant to purchase orders so long as the period for deliveries of Optical Filters under the purchase orders is no longer than sixty (60) days in duration, unless the plaintiff otherwise consents in writing. The provisions of this paragraph shall remain in effect for three years from expiration of the Transition Period.

VIII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

IX. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

X. Public Interest Determination

Entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16.

United States District Judge

Competitive Impact Statement

The United States of America, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this Civil Antitrust proceeding.

Nature and Purpose of the Proceeding

On June 22, 2000, the United States filed a civil antitrust Complaint alleging that the proposed acquisition of E–TEK Dynamics, Inc. ("E–TEK") by JDS Uniphase Corporation ("JDS") would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. The Complaint alleges that JDS and E–TEK are two of the leading manufacturers of components for fiber optic communication systems. JDS competes against E–TEK in the production and sale of dense wavelength division multiplexer and demultiplexer modules of 16 or fewer channels ("DWDMs"). DWDMs are important components that increase the transmission capacity of fiber optic networks. These two manufacturers are each other's primary competitor in the production and sale of DWDMs.

Competition between JDS and E–TEK has benefited customers through higher output, lower prices, increased quality, and faster delivery time. The acquisition of E–TEK by JDS will substantially lessen competition in the production and sale of DWDMs in violation of Section 7 of the Clayton Act. The proposed acquisition will substantially increase the incentive and likelihood for the combined company to engage unilaterally in anticompetitive behavior, such as suppressing output and increasing prices of DWDMs.

The request for relief in the Complaint seeks: (1) A judgment that the proposed acquisition would violate Section 7 of the Clayton Act; (2) a permanent injunction preventing JDS and E–TEK from merging; (3) an award to the United States of its costs in bringing the lawsuit; and (4) such other relief that the Court deems proper.

When the Complaint was filed, the United States also filed a proposed Final Judgment that would permit JDS and E–

TEK to merge, but would require the modification of certain supply agreements the merged entity will hold with several thin film filter suppliers.

The United States and the defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate the action, except that the Court would retain jurisdiction to construe, modify or enforce the provisions of the proposed Final Judgment and to punish Violations thereof .

II. Description of the Events Giving Rise to the Alleged Violation

A. Defendants and Proposed Transaction

JDS is a Delaware corporation, with its principal offices in San Jose, California. It designs, manufactures and distributes fiber optic products for communications applications. It is one of the world's largest independent suppliers of passive and active components for fiber optic communications networks. Passive components are composed of optical parts, while active components contain both optical and electronic parts. In 1999, JDS reported net sales of $282.8 million.

E–TEK is a Delaware corporation , with its principal offices in San Jose, California. It designs, manufactures and distributes passive components for fiber optic communications networks. In 1999, E–TEK reported net sales of $172.7 million.

On January 17, 2000, JDS and E–TEK entered into an agreement whereby JDS will acquire E–TEK by exchanging the outstanding shares of E–TEK common stock for shares of JDS common stock. The transactions is valued at approximately $15–18 billion.

B. Revelant Market

The volume of traffic carried by communications networks has increased rapidly over the last several years as a result of the explosion of bandwidth intensive applications such as Internet access, e-mail, remote access for computing, and electronic commerce. In the past, one fiber strand in a fiber optic communications network could carry only a single channel of voice or data traffic. Using a variety of different technologies, dense wavelength division multiplexers and demultiplexers separate the light signal in a fiber optic strand into multiple wavelengths, or colors, with each wavelength capable of carrying a separate communications channel. These multiplexers and demultiplexers enable the simultaneous transmission of multiple channels on a single strand fiber, and thereby increase the total transmission capacity of the fiber optic network.

Thin film filters are a critical component part at the core of the DWDMs that are designed, manufactured and sold by JDS and E–TEK. Thin film filters are made in a vacuum coating chamber by depositing thin alternating layers of two dielectric materials on a polished glass substrate. When packaged with other parts into a DWDM, each thin film filter will transmit a certain wavelength of light and reflect or absorb other wavelengths. The packaged filters are then assembled into modules of up to 16 channels, depending on a customer's desired channel count.

Because dense wavelength division multiplexers and demultiplexers are typically priced on a per channel basis—The higher the channel count, the greater the price of the module—a customer will only purchase the number of channels needed for its network design. A customer desiring a 16 channel multiplexer, for example, would not find it cost effective to substitute a 40 channel multiplexer. A small but significant increase in the price of DWDMS would not cause a significant number of customers to substitute multiplexers and demultiplexers which can achieve channel counts higher than 16 channels. Because there are no good substitutes for DWDMs, the production and sale of DWDMs, whether based on thin filter or some other technology, is a relevant product market, or "line of commerce," within the meaning of Section 7 of the Clayton Act.

JDS and E–TEK produce and ship DWDMs to customers throughout the United States and the world. The world constitutes a relevant geographic market within the meaning of Section 7 of the Clayton Act.

C. Harm to Competition as a Result of the Proposed Transaction

Upon consummation, the proposed acquisition will substantially lessen competition in the manufacturing and sale of DWDMs in the world market. JDS and E–TEK are the two most significant manufacturers and sellers of DWDMs, with market shares of 41% and 27% respectively. Their combined market share of 68% represents a substantial increase in concentration in the market. As measured by the commonly used Herfindahl-Hirschman Index (HHI), concentration in DWDMs will rise by about 2100 points to an HHI of about 4700 after the acquisition.

Customers view JDS and E–TEK as next best alternatives for DWDMs. During individuals purchase negotiations, customers compare product offerings from one company with offerings from the other to ensure that they are obtaining competitive prices, product specifications, and timely delivery. After the acquisition, customers will be left with inferior alternatives to the merged entity, with the result that JDS will have greater incentive and ability to reduce output below and raise prices above the levels they would have been had JDS been competing against E–TEK. JDS will also have reduced incentives to meet customer product specifications and delivery requirements without the competitive presence of E–TEK.

Competing firms are unlikely to constrain anticompetive behavior—a price increase, for example—by the merged firm in a timely manner. The DWDM market is characterized by increasing demand and supply shortages. Competing firms are currently operating at or near capacity. To expand output quickly enough to discipline a price increase by JDS would require overcoming time-consuming obstacles. One major obstacle faced by an existing firm or a new entrant is the availability of a sufficient supply of thin film filters. JDS has obtained virtually all of its supply of thin film filters from Optical Coating Laboratories, Inc. ("OCLI"), with which JDS established a strategic alliance in 1997 and which it acquired in February of 2000. E–TEK has obtained its supply of thin filters primarily through supply agreements that have included the acquisition of rights of first refusal over thin filter coating chambers located on the premises of merchant suppliers. E–TEK has also supplied itself with thin film filters produced at coating chambers located on company premises. Together, JDS and E–TEK in 1999 controlled approximately 80% of the world's thin film filter output.

It is a difficult and time consuming process to develop the capability of producing thin film filters cost effectively. Vacuum coating chambers and sophisticated optical monitoring systems to control the thin film deposition process must either be designed and constructed internally or be acquired from commercial venders of such equipment. Once coating chambers are installed, a potentially lengthy trial and error development process is needed to approach the manufacturing yields of the leading incumbents.

In addition to these limitations on the supply of thin film filters, there are further obstacles to timely and sufficient

new entry as a supplier of DWDMs. These obstacles include the need to design a DWDM that can be produced cost effectively in commercial volume and that meets specifications and is acceptable to customers for use in fiber optic communications networks. Customers commonly require rigorous and extensive testing over a substantial period of time before previously untested DWDMs are qualified and accepted for use in such networks. These obstacles are less significant for fringe firms already producing DWDMs.

In the world market for DWDMs, the proposed acquisition threatens substantial and serious harm to purchases of DWDMs. By significantly increasing the market share of JDS in DWDMs, the proposed acquisition will provide the combined company with substantially enhanced control over the output and price of DWDMs. Furthermore, customers of DWDMs will lose the competition between JDS and E–TEK which has resulted in faster product delivery times and improvement in product specifications.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment will preserve competition in the market for DWDMs by requiring defendants to eliminate control over the supply of thin film filters by four merchant filter vendors. The proposed Final Judgment effectively eliminates such control by prohibiting the merged firm from enforcing E–TEK's rights of first refusal over coating chambers used by four merchant vendors to produce thin film filters. The elimination of control is intended to ensure that firms other than the merged firm have access to a supply of thin film filters and thereby are able to serve as competitive alternatives to the merged firm in the supply of DWDMs.

A. Modification of Thin Film Filter Supply Agreements

E–TEK currently holds contractual rights of first refusal over a significant portion of the output of the four major merchant vendors of thin film filters. After a 90-day transition period that starts with the filing of the Complaint in this matter, Section IV.A. of the proposed Final Judgment directly requires the merged firm to cease enforcing these contractual rights. The 90-day transition is necessary for the merged firm to readjust settled commercial relationships. The effect of the cancellation of the rights of first refusal is an elimination of E–TEK's control over the supply of filters from the merchant vendors.

JDS, and its current subsidiary OCLI, in 1999 produced over 50% of the 100 GHz and 200 GHz world output of thin film filters. E–TEK produced about 5% of the world output in coating chambers located on company premises. E–TEK controlled an additional estimated 23% of the 1999 world output through rights of first refusal over chambers located on the premises of the four merchant vendors. Under the relief provisions of the proposed Final Judgment, this 23% of the 1999 world output of thin film filters will be released from control by the merged entity and available to other firms and new entrants. Control over this production will transfer to the established merchant vendors, who will be free to use the filters internally or to sell them to new entrants or established producers of DWDMs.

B. Transition Period

During the 90-day transition period specified in Section IV.B. of the proposed Final Judgment, the merged firm's reliance on its contractual control of coating machines at the four filter vendors is gradually phased out. After 30 days, 30% of the rights of first refusal at each filter vendor become unenforceable. After 60 days, 60% of the rights of first refusal become unenforceable. After 90 days, the transition period expires and all of the rights of first refusal are unenforceable.

The transition period will provide an opportunity for the merged firm to being expansion of its internal supply of thin film filters, thus facilitating an uninterrupted flow of thin film filters to the merged firm for production of DWDMs. OCLI is a long established supplier of optical coatings that the merging parties believe has significantly superior technology and significantly superior manufacturing yields in the production of thin film filters for use in DWDMs. Upon consummation of their merger, JDS and E–TEK expect they will be able to expand internal thin film filter capacity at the merged firm by transferring OCLI technology to E–TEK.

The 90-day transition period also provides an opportunity for the merged firm to compete with other potential purchasers for short term purchases of thin film filters from the merchant vendors. Thus, although the merged firms' rights of first refusal are gradually phased out during the transition period, its right to purchase in competition with others for short term purchase orders is not eliminated. Market forces, including competition from the merged firm, will determine the price of, and the customer receiving delivery of, each merchant vendor's thin film filters that are no longer controlled by rights of first refusal.

During the transition period, and under the terms of the proposed Final Judgment, defendants do not have unlimited rights to substitute long term purchase arrangements with the merchant filter vendors in replacement of their abrogated rights of first refusal. There is a 30-day limitation on the length of the period during which the merged firm can receive thin film filter deliveries under a purchase order. Thirty days is a commercially common length of time for thin film filter purchase orders and is the period expressly contemplated for the length of purchase orders under certain of E–TEK's existing supply agreements for thin film filters. The 30-day limitation on purchase orders during the transition period is intended to facilitate implementation of the relief by providing competitors and potential competitors of the merged firm with improved and unrestricted access to thin film filters.

C. Rights of Repayment

To reduce the incentive for the merged firm to purchase from these merchant filter vendors, rather than expand internal capacity, Section IV.C. of the proposed Final Judgment prohibits the merged firm from enforcing its contractual rights of repayment for money E–TEK advanced to the merchant filter vendors and prohibits the merged firm from enforcing its security interests in the coating chambers. The prohibition is effective immediately upon filing of the Complaint.

The rights of first refusal over coating chambers on the premises of the four merchant filter vendors commonly arose in connection with advance payments by E–TEK to a filter vendor that were to be repaid over a period of time by means of discounts of up to 20% off the market price the filter vendor otherwise would charge for the filters. The security interests were to secure the repayment of the advances. As of the date of the filing of the Complaint in this matter, the aggregate balance of the amounts advanced or currently due to be advanced to the four filter vendors was under $4 million. The effect of the merged firm having the right to obtain thin film filters from the merchant suppliers at this discounted price would be an incentive to continue to purchase from the merchant suppliers.

The provision of the proposed Final Judgment eliminating the merged firm's right to obtain filters at the discounted price will increase the incentive for the merged firm to expand its own

production capacity, rather than rely on purchase from the merchant filter vendors. Increased production capacity for thin film filters at the merged firm will increase total industry thin film filter capacity and will lower prices for DWDMs. The increased thin film filter capacity will have this effect because the supply of DWDMs is currently limited by capacity constraints in the total industry supply of thin film filters.

D. Notification to Competitors and Potential Competitors

Section IV.D. of the proposed Final Judgment requires the merged firm to notify a set of firms of the opportunity the Final Judgment will provide for improved and unrestricted access to the supply of thin film filters to be available from the merchant filter vendors. The firms to be notified are competitors and potential competitors of JDS and E–TEK who the merging parties have identified to the Antitrust Division.

E. No Reacquisition

For a period of three years from the date the defendants relinquish all rights of first refusal, the merged firm, in accordance with Section VII. of the proposed Final Judgment, cannot reacquire any right of first refusal over any coating chamber located on the premises or owned by the merchant filter vendors as of the date the Complaint was filed. The purpose of the bar on reacquisition is to protect the integrity of the intended elimination of control by preventing evasion of the required relief. This proposed Final Judgment seeks to prevent possible evasion by broadly defining rights of first refusal in Section II, and by specifying in Section VII. that the bar extends to acquisition of rights of first refusal over any coating chambers on the premises or owned by any of the four merchant filter vendors. Such acquisition would be a prohibited reacquisition under the terms of the proposed Final Judgment.

The bar on reacquisition by the merged firm of long term control over the four filter vendors' coating machines is not intended to foreclose the commercial opportunity for the merged firm to compete with other DWDM producers to purchase thin film filters from these four filter vendors on a spot market basis, with purchase orders of a duration for delivery of 60 or fewer days. A safe harbor provision in Section VII. of the proposed Final Judgment makes clear that nothing in the decree is intended to preclude such purchases.

The bar on reacquisition extends for three years. In this case, the evidence indicated that this time period would be sufficient to protect competition.

F. Other Provisions

In order to monitor and ensure compliance with the Final Judgment, Section V. requires periodic affidavits on the fact and manner of defendants' compliance with the Final Judgment. Section VI. gives the United States various rights, including the ability to inspect defendants' records, to conduct interviews and to take sworn testimony of defendants' officers, directors, employees and agents, and to require defendants to submit written reports. These rights are subject to legally recognized privileges, and any information the United States obtains using these powers is protected by specified confidentiality obligations.

The Court retains jurisdiction under Section VIII., and Section IX. provides that the proposed Final Judgment will expire on the tenth anniversary of the date of its entry, unless extended by the Court.

Through the modification of the supply agreements with merchant vendors of thin film filters, the proposed Final Judgment's prohibitions will lower obstacles to entry and expansion by new and fringe DWDM suppliers and thereby improve, enhance and preserve competitive alternatives to the merged firm in the world DWDM market. Absent these prohibitions, the likely result of a combined JDS and E–TEK would be higher prices and lower output than there otherwise would be for DWDMs.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal courts to recover three times the damages a person has suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against the defendants.

V. Procedures Available For Modification of the Proposed Final Judgment

Plaintiff and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate and respond to the comments. All comments will be given due consideration by the United States, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the responses of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to: Christopher S. Crook, Chief, San Francisco Field Office, United States Department of Justice, Antitrust Division, 450 Golden Gate Avenue, Box 36046, Room 10–0101, San Francisco, CA 94102.

The proposed Final Judgment provides, in Section VIII., that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate to carry out or construe the Final Judgment, to modify any of its provisions, to enforce compliance, and to punish any violations of its provisions.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, seeking an injunction to block consummation of the JDS/E–TEK merger and a full trial on the merits. The United States is satisfied, however, that the modification of supply agreements and other relief contained in the proposed Final Judgment will preserve competition in the market for DWDMs. This proposed Final Judgment will also avoid the substantial costs and uncertainty of a full trial on the merits on the violations alleged in the complaint. Therefore, the United States believes that there is no reason under the antitrust laws to proceed with further litigation if the supply agreements are modified in the manner required by the proposed Final Judgment.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the court may consider:

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e) (emphasis added). As the United States Court of Appleas for the D.C. Circuit held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties See *United States* v. *Microsoft*, 56 F.3d 1448; 1461–62 (D.C. Cir. 1995).

In conducting this inquiry, "[t]he Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." [1] Rather.

> [a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

[1] 119 Cong. Rec. 24598 (1973). See *United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. Rep. 93–1463, 93d Cong. 2d Sess. 8–9 (1974), reprinted in U.S.C.C.A.N. 6535, 6538.

United States v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.*, 858 F .2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981), see also Microsoft, 56 F.3d at 1460–62. Precedent requires that

> the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[2]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest." *United States* v. *American Tel. & Tel Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982), *aff'd sub nom., Maryland* v. *United States*, 460 U.S. 1001 (1983) (quoting Gillette Co., 406 F. Supp. at 716); *United States* v. *Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).

Moreover, the court's role under the Tunney Act is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to "construct [its] own hypothetical case and then evaluate the decree against that case." Microsoft, 56 F.3d at 1459. Since "[t]he court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that the court "is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States might have but did not pursue. Id.

[2] Bechel, 648 F.2d at 666 (emphasis added); see BNS, 858 F.2d at 463; *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); Gillette, 406 F. Supp. at 716. See also Microsoft, 56 F.3d at 1461 (whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' ").

VIII. Determinative Documents

There are no determinative materials within the meaning of the APPA that were considered by the Untied States in formulating the proposed Final Judgment. Consequently, the United States has not attached any such materials to the proposed Final Judgment.

Dated this 30th day of June 2000.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES

Joel I. Klein,
Assistant Attorney General.

Donna E. Patterson,
Deputy Assistant Attorney General.

Constance K. Robinson,
Director of Operations and Merger Enforcement.

Christopher S. Crook,
Chief, San Francisco Field Office.

Howard J. Parker
Pauline T. Wan
Jeane Hamilton
Niall E. Lynch
Lisa V. Tenorio
Trial Attorneys, U.S. Department of Justice, Antitrust Division, San Francisco Field Office.

Certificate of Service

United States v. Uniphase Corporation and E–TEK Dynamics Inc.

I, Brenda J. Fautt, declare that I am a citizen of the United States, over the age of 18 years and not a party to the within action.

I hereby certify that a copy of the foregoing:

Competitive Impact Statement

was served today by placing it in Federal Express at San Francisco, California in a postage-paid envelope, sealed and addressed to the attorneys for the parties listed below:

W. Stephen Smith, Esq.
Morrison & Foerster LLP, 2000 Pennsylvania Avenue, NW., Washington, DC 20006–1888.

Charles T. C. Compton, Esq.
Wilson Sonsini Goodrich & Rosati, 650 Page Mill Road, Palo Alto, CA 94304–1050.

I declare under penalty of perjury that the foregoing is true and correct, and that this certificate was executed at San Francisco, California.

Dated: June 30, 2000

Brenda J. Fautt.
Secretary, Antitrust Division, U.S. Department of Justice, San Francisco, California.

[FR Doc. 00–18158 Filed 7–18–00; 8:45 am]
BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA #186R]

Controlled Substances: Proposed Revised Aggregate Production Quotas for 2000

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed revised 2000 aggregate production quotas.

SUMMARY: This notice proposes revised 2000 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act (CSA).

DATES: Comments or objections must be received on or before August 18, 2000.

ADDRESSES: Send comments or objectives to the Deputy Administrator, Drug Enforcement Administration, Washington, D.C. 20537, Attn.: DEA Federal Register Representative (CCR).

FOR FURTHER INFORMATION CONTACT: Frank L. Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, D.C. 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the CSA (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for each basic class of controlled substance listed in Schedules I and II. This responsibility has been delegated to the Administrator of the DEA by Section 0.100 of Title 28 of the Code of Federal Regulations. The Administrator, in turn, has redelegated this function to the Deputy Administrator of the DEA pursuant to Section 0.104 of Title 28 of the Code of Federal Regulations.

On February 10, 2000, DEA published a notice of established initial 2000 aggregate production quotas for certain controlled substances in Schedules I and II (65 FR 6635). This notice stipulated that the Deputy Administrator of the DEA would adjust the quotas in early 2000 as provided for in Section 1303 of Title 21 of the Code of Federal Regulations.

The proposed revised 2000 aggregate production quotes represent those quantities of controlled substances in Schedules I and II that may be produced in the United States in 2000 to provide adequate supplies of each substance for: the estimated medical, scientific, research, and industrial needs of the United States; lawful export requirements; and the establishment and maintenance of reserve stocks. These quotas do not include imports of controlled substances for use in industrial processes.

The proposed revisions are based on a review of 1999 year-end inventories, 1999 disposition data submitted by quota applicants, estimates of the medical needs of the United States, and other information available to the DEA.

In addition, in a final rule published in the **Federal Register** on March 13, 2000 (65 FR 13235) gamma-hydroxybutyric acid (GHB) and its salts, isomers, and salts of isomers was placed into Schedule I of the CSA. Applications for quota for this substance were submitted and the aggregate production quota for gamma-hydroxybutyric acid is proposed as listed below.

Therefore, under the authority vested in the Attorney General by Section 306 of the CSA of 1970 (21 U.S.C. 826), delegated to the Administrator of the DEA by Section 0.100 of Title 28 of the Code of Federal Regulations, and redelegated to the Deputy Administrator pursuant to Section 0.104 of Title 28 of the Code of Federal Regulations, the Administrator hereby proposes the following revised 2000 aggregate production quotas for the following controlled substances, expressed in grams of anhydrous acid or base:

Basic class	Previously established initial 2000 quotas	Proposed revised 2000 quotas
SCHEDULE I		
2,5-Dimethoxyamphetamine	10,001,000	10,501,000
2,5-Dimethoxy-4-ethylamphetamine (DOET)	2	2
3-Methylfentanyl	14	14
3-Methylthiofentanyl	2	2
3,4-Methylenedioxyamphetamine (MDA)	20	20
3,4-Methylenedioxy-N-ethylamphetamine (MDEA)	30	30
3,4-Methylenedioxymethamphetamine (MDMA)	20	20
3,4, 5-Trimethoxyamphetamine	2	2
4-Bromo-2,5-Dimethoxyamphetamine (DOB)	2	2
4-Bromo-2,5-Dimethoxyphenethylamine (2–CB)	2	2
4-Methoxyamphetamine	201,000	201,000
4-Methylaminorex	3	3
4-Methyl-2,5-Dimethoxyamphetamine (DOM)	2	2
5-Methoxy-3,4-Methylenedioxyamphetamine	2	2
Acetyl-alpha-methylfentanyl	2	2
Acetyldihydrocodeine	2	2
Acetylmethadol	7	7
Allylprodine	2	2
Alphacetylmethadol	7	7
Alpha-ethyltryptamine	2	2
Alphameprodine	2	2
Alphamethadol	2	2
Alpha-methylfentanyl	2	2
Alpha-methylthiofentanyl	2	2
Aminorex	7	7
Benzylmorphine	2	2
Betacetylmethadol	2	2
Beta-hydroxy-3-methylfentanyl	2	2

Basic class	Previously established initial 2000 quotas	Proposed revised 2000 quotas
Beta-hydroxyfentanyl	2	2
Betameprodine	2	2
Betamethadol	2	2
Betaprodine	2	2
Bufotenine	2	2
Cathinone	9	9
Codeine-N-oxide	2	2
Diethyltryptamine	2	2
Difenoxin	10,000	10,000
Dihydromorphine	508,000	508,000
Dimethyltryptamine	3	3
Gamma-hydroxybutyric acid	.....	15,000,000
Heroin	2	2
Hydroxypethidine	2	2
Lysergic acid diethylamide (LSD)	38	63
Mescaline	7	7
Methaqualone	17	17
Methcathinone	9	9
Morphine-N-oxide	2	2
N,N-Dimethylamphetamine	7	7
N-Ethyl-1-Phenylcyclohexylamine (PCE)	5	5
N-Ethylamphetamine	7	7
N-Hydroxy-3,4-Methylenedioxyamphetamine	2	2
Noracymethadol	2	2
Norlevorphanol	2	2
Normethadone	7	7
Normorphine	7	7
Para-fluorofentanyl	2	2
Pholcodine	2	2
Propiram	415,000	415,000
Psilocybin	2	2
Psilocyn	2	2
Tetrahydrocannabinols	101,000	115,000
Thiofentanyl	2	2
Trimeperidine	2	2
SCHEDULE II		
1-Phenylcyclohexylamine	12	12
1-Piperidiocyclohexanecarbonitrile (PCC)	10	10
Alfentanil	8,000	8,000
Alphaprodine	2	2
Amobarbital	12	12
Amphetamine	9,007,000	6,491,000
Cocaine	251,000	251,000
Codeine (for sale)	54,504,000	43,248,000
Codeine (for conversion)	52,384,000	52,384,000
Dextropropoxyphene	114,078,000	121,017,000
Dihydrocodeine	268,000	133,000
Diphenoxylate	931,000	931,000
Ecgonine	36,000	36,000
Ethylmorphine	12	12
Fentanyl	300,000	300,000
Glutethimide	2	2
Hydrocodone (for sale)	20,208,000	21,417,000
Hydrocodone (for conversion)	20,700,000	20,700,000
Hydromorphone	1,239,000	1,239,000
Isomethadone	12	12
Levo-alphacetylmethadol (LAAM)	201,000	12
Levomethorphan	2	2
Levorphanol	27,000	27,000
Meperidine	11,335,000	9,870,000
Metazocine	1	1
Methadone (for sale)	8,347,000	8,347,000
Methadone (for conversion)	600,000	0
Methadone Intermediate	9,503,000	9,503,000
Methamphetamine	2,049,000	1,984,000
[750,000 grams of levo-desoxyephedrine for use in a non-controlled, non-prescription product; 1,225,000 grams for methamphetamine for conversion to a Schedule III product; and 9,000 grams for methamphetamine (for sale)]		
Methylphenidate	14,957,000	14,957,000
Morphine (for sale)	14,706,000	14,706,000

Basic class	Previously established initial 2000 quotas	Proposed revised 2000 quotas
Morphine (for conversion)	97,160,000	97,410,000
Nabilone	2	2
Noroxymorphone (for sale)	25,000	25,000
Noroxymorphone (for conversion)	3,813,000	3,813,000
Opium	720,000	720,000
Oxycodone (for sale)	29,826,000	32,575,000
Oxycodone (for conversion)	271,000	1,389,000
Oxymorphone	166,000	477,000
Pentobarbital	22,037,000	22,037,000
Phencyclidine	41	41
Phenmetrazine	2	2
Phenylacetone	10	10
Secobarbital	22	22
Sufentanil	1,700	1,700
Thebaine	41,300,000	45,444,000

The Administrator further proposes that aggregate production quotas for all other Schedules I and II controlled substances included in sections 1308.11 and 1308.12 of Title 21 of the Code of Federal Regulations remain at zero.

All interested persons are invited to submit their comments and objections in writing regarding this proposal. A person may object to or comment on the proposal relating to any of the above-mentioned substances without filing comments or objections regarding the others. If a person believes that one or more of these issues warrant a hearing, the individual should so state and summarize the reasons for this belief.

In the event that comments or objections to this proposal raise one or more issues which the Administrator finds warrant a hearing, the Administrator shall order a public hearing by notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing as per 21 CFR 1303.13(c) and 1303.32.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq*. The establishment of aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. Aggregate production quotas apply to approximately 200 DEA registered bulk and dosage form manufacturers of Schedules I and II controlled substances. The quotas are necessary to provide for the estimated medical, scientific, research and industrial needs of the United States, for export requirements and the establishment and maintenance of reserve stocks. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Administrator has determined that this action does not require a regulatory flexibility analysis.

Dated: July 12, 2000.

Donnie R. Marshall,

Administrator.

[FR Doc. 00–18148 Filed 7–18–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed extension collection of the following information collections: (1) Office of Federal Contract Compliance Programs (OFCCP), RECORDKEEPING AND REPORTING REQUIREMENTS-CONSTRUCTION; (2) Office of Workers' Compensation (OWCP), Division of Coal Mine Workers' Compensation (DCMWC), RESUBMISSION TURNAROUND DOCUMENT; (3) OWCP, DCMWC, RELEASE OF MEDICAL INFORMATION; and (4) REGULATIONS GOVERNING THE ADMINISTRATION OF THE LONGSHORE AND HARBOR WORKERS' ACT. Copies of the proposed information collection requests can be obtained by contacting the office listed below in the addressee section of this Notice.

DATES: Written comments must be submitted to the office listed in the addressee section below within 60 days of the date of this Notice.

ADDRESSEE: Ms. Patricia A. Forkel, U. S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0339 (this is not a toll-free number), fax (202) 693–1451.

SUPPLEMENTARY INFORMATION:

OFCCP Recordkeeping and Reporting Requirements: Construction

I. Background

The OFCCP is responsible for the administration of three equal opportunity programs which prohibit employment discrimination and require affirmative action by government contractors and subcontractors. The Acts administered by the OFCCP are Executive Order 11246, as amended;

Section 503 of the Rehabilitation Act of 1973, as amended; and the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA), 38 U.S.C. 4212. The OFCCP has promulgated regulations implementing these programs, which are found at Title 41 of the Code of Federal Regulations, Chapter 60. For purposes of this clearance request, the programs have been divided functionally into two categories, construction and supply and service. This information collection request covers the recordkeeping and reporting requirements for the construction industry. A separate information collection request covers the recordkeeping and reporting requirements for supply and service industries, and is approved under OMB number 1215–0072.

II. Review Focus

The Department of Labor (DOL) is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the extension of approval to collect this information in order to carry out its responsibility to enforce the affirmative action and anti-discrimination provisions of the three Acts which it administers.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: OFCCP Recordkeeping and Reporting Requirements, Construction.

OMB Number: 1215–0163.

Affected Public: Businesses or other for-profit; Not-for-profit institutions.

Total Respondents: 100,000.

Total Annual Responses: 103,711.

Average Time per Response, Recordkeeping:

Records Maintenance: 8 to 24 hours.

Affirmative Action Plan, Initial Development: 18 hours.

Affirmative Action Plan, Annual Update: 7.5 hours.

Affirmative Action Plan, Maintenance: 7.5 hours.

Average Time per Response, Reporting:

CC–41 Quarterly Administrative Committee Report: 25 minutes.

Compliance Reviews: 1–2 hours.

Total Burden Hours, Recordkeeping and Reporting: 4,841,475.

Frequency (Reporting): Quarterly.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $5.76.

Resubmission Turnaround Document (CM–1173)

I. Background

The Federal Mine Safety and Health Act of 1977, as amended (30 U.S.C. 901) and 20 CFR 725.701 provides DCMWC with responsibility for payment of covered black lung related medical treatment rendered to miners who are awarded black lung benefits. The Resubmission Turnaround Document (CM–1173) is used to request specific medical data to ensure the processing of Form OWCP–1500 (for payment of out-patient bills and for services and supplies provided to beneficiaries) and Form UB–92 (for payment of hospital bills).

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The DOL seeks extension of approval to collect this information on order to carry out its responsibility to ensure that black lung beneficiaries receive benefits as mandated in the legislation. The Resubmission Turnaround Document is sent to medical providers when information critical to bill payment is missing from a provider submitted medical bill (OWCP–1500 or UB–92). With use of the Resubmission Turnaround Document, a provider receives a document identifying all billing deficiencies based on a computer review of the bill. The bill remains in the system and processing continues once the necessary information is received. This in turn expedites payment to the provider, reduces processing time, maintains an audit trail, and is administratively cost effective.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Resubmission Turnaround Document.

OMB Number: 1215–0177.

Agency Number: CM–1173.

Affected Public: Businesses or other for-profit; Not-for-profit institutions.

Total Respondents: 89,000.

Frequency: On occasion.

Total Responses: 89,000.

Average Time per Response: 5 minutes.

Estimated Total Burden Hours: 7,417.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating and maintenance): $32,040.

Release of Medical Information (CM–936)

I. Background

The Federal Mine Safety and Health Act of 1977, as amended (30 U.S.C. 923), and 20 CFR 725.405 require that all relevant medical evidence be considered before a decision can be made regarding a claimant's eligibility for benefits. The CM–936 is a form that gives the claimant's consent for release of information covered by the Privacy Act of 1974, and contains information required by medical institutions and private physicians to enable them to release pertinent medical information.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks extension of approval to collect this information in order to obtain the claimant's consent for medical institutions and private physicians to release medical information to the Division of Coal Mine Workers' Compensation as evidence to support their claim for benefits. Failure to gather this information would inhibit the adjudication of black lung claims because pertinent medical data would not be considered during claims processing.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Authorization for Release of Medical Information.

OMB Number: 1215–0057.

Agency Number: CM–936.

Affected Public: Individuals or households.

Total Respondents: 2,700.

Frequency: Once.

Total Responses: 2,700.

Average Time per Response: 5 minutes.

Estimated Total Burden Hours: 225.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Regulations Governing the Administration of the Longshore and Harbor Workers' Compensation Act

I. Background

The Longshore and Harbor Workers' Compensation Act, as amended (20 CFR 702.162, 702.174, 702.175, 20 CFR 702.242, 20 CFR 702.285, 702.321, 702.201, and 702.111) pertains to the provision of benefits to workers injured in maritime employment on the navigable waters of the United States or in an adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel, as well as coverage extended to certain other employees. The Longshore Act administration requirements include: payment of compensation liens incurred by Trust Funds; certification of exemption and reinstatement of employers who are engaged in the building, repairing, or dismantling of exclusively small vessels; settlement of cases under the Act; reporting of earnings by injured claimants receiving benefits under the Act; filing applications for relief under second injury provisions; and, maintenance of injury reports under the Act. The forms contained in this information collection request have been developed to capture the information required by various sections of the regulations.

II. Review Focus

The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor (DOL) seeks extension of approval to collect this information in order to carry out its responsibility to insure that Longshore beneficiaries are receiving appropriate benefits. Failure to request this information would result in no way to insure beneficiaries are receiving the correct amount of benefits.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Regulations Governing the Administration of the Longshore and Harbor Workers' Compensation Act.

OMB Number: 1215–0160.

Agency Numbers: LS–200, 201, 203, 204, 262, 267, 271, 274, 513, ESA–100.

Affected Public: Individuals or households, Businesses or other for profit, Small businesses or organizations.

Total Respondents: 189,144.

Frequency: On occasion.

Total Responses: 189,144.

Average Time Per Response for Reporting:

LS–200—10 minutes
LS–201, 203, 204, 262—15 minutes
LS–267—2 minutes
LS–271—2 hours
LS–274—1 hour
LS–513—30 minutes

Estimated Total Burden Hours: 84,576.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintenance): $60.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 13, 2000.

Margaret J. Sherrill,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 00–18217 Filed 7–18–00; 8:45 am]

BILLING CODE 4510–49–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NRC Form 664—General Licensee Registration.

2. *Current OMB approval number:* None.

3. *How often the collection is required:* Annually.

4. *Who is required or asked to report:* NRC general licensees who possess devices subject to registration under 10 CFR 31.5.

5. *The number of annual respondents:* 4,300.

6. *The number of hours needed annually to complete the requirement or request:* 1,433 hours annually (4300 respondents × 20 minutes per form).

7. *Abstract:* NRC Form 664 would be used by NRC general licensees to make reports regarding certain generally licensed devices subject to registration. The registration program is intended to allow NRC to better track general licensees, so that they can be contacted or inspected as necessary, and to make sure that generally licensed devices can be identified even if lost or damaged, and to further ensure that general licensees are aware of and understand the requirements for the possession of devices containing byproduct material. Greater awareness helps to ensure that general licensees will comply with the requirements for proper handling and disposal of generally licensed devices and would reduce the potential for incidents that could result in unnecessary radiation exposure to the public and contamination of property.

Submit, by September 18, 2000, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 13th day of July 2000.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–18237 Filed 7–18–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–271]

Amergen Vermont, LLC, Vermont Yankee Nuclear Power Station; Notice of Consideration of Approval of Transfer of Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the indirect transfer of Facility Operating License No. DPR–28 for the Vermont Yankee Nuclear Power Station (Vermont Yankee), currently held by Vermont Yankee Nuclear Power Corporation, as the owner and licensed operator.

A direct transfer of this license from Vermont Yankee Nuclear Power Corporation to AmerGen Vermont, LLC (AmerGen Vermont) was approved by the Nuclear Regulatory Commission by an order dated July 7, 2000. The conforming amendment to the license to reflect this transfer will be issued upon completion of the purchase of the facility by AmerGen Vermont. Upon completion of this transfer, AmerGen Vermont will hold the license as the owner and licensed operator of Vermont Yankee.

AmerGen Energy Company, LLC (AmerGen) and its wholly owned subsidiary AmerGen Vermont submitted an application to the Commission dated February 28, 2000, which was supplemented by submittals dated May 12, June 1, and June 28, 2000, for a subsequent indirect transfer of the license following the acquisition of Vermont Yankee by AmerGen Vermont. The indirect transfer proposed in the February 28, 2000, application as supplemented would result from the acquisition of PECO Energy Company's (PECO's) existing interest in AmerGen by a new generation company. This company, Exelon Generation Company, LLC, is to be a subsidiary of Exelon Ventures Company, which will be a wholly owned subsidiary of a new holding company, Exelon Corporation. Exelon Corporation will be formed from a planned merger between PECO and Unicom Corporation (Unicom). The facility is located in Vernon, Vermont.

According to the application filed by AmerGen and AmerGen Vermont, AmerGen is a limited liability company formed to acquire and operate nuclear power plants in the United States. AmerGen Vermont is a limited liability company formed by AmerGen to acquire and operate Vermont Yankee. British Energy, Inc., and PECO each own 50 percent of AmerGen. Following completion of the merger between Unicom and PECO, Exelon Generation Company will acquire PECO's existing 50-percent ownership interest in AmerGen. AmerGen Vermont, as a wholly owned subsidiary of AmerGen, as owned by Exelon Generation Company and British Energy, Inc., will continue to be responsible, after the completion of the transfer of Vermont Yankee to AmerGen Vermont, for the operation, maintenance, and eventual decommissioning of Vermont Yankee. No direct transfer of the license is being proposed. Also, no physical changes to the facility or operational changes are being proposed in the application.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the indirect transfer of a license if the Commission determines that the underlying transaction effectuating the indirect transfer will not affect the qualifications of the holder of the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By August 8, 2000, any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not, the applicant may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR

2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon: Kevin P. Gallen, Esq., Morgan, Lewis & Bockius LLP, 1800 M Street NW, Washington, DC 20036–5869; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by August 18, 2000, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated February 28, 2000, and supplemental letters dated May 12, June 1, and June 28, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW, Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*httpwww.nrc.gov*).

Dated at Rockville, Maryland this 13th day of July 2000.

For the Nuclear Regulatory Commission.

Richard P. Croteau,

Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–18238 Filed 7–18–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

NRC Coordination Meeting With American Society for Quality Energy and Environmental Division Nuclear Power Production Committee

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The NRC has been meeting annually with the ASQ EED NPPC Executive Board and interested members to discuss quality assurance matters of mutual interest. Following the meeting with NRC this year, the NPPC will take advantage of the meeting site to conduct a committee meeting and to work on two good practice papers. This notice provides the date and agenda for the next meeting.

DATES: July 20–21, 2000—The NRC part of the meeting will begin at 8 a.m. on 7/20 and will last until noon. Attendees should enter the One White Flint North lobby by 7:45 a.m. to complete the required badging process.

Location: U.S. Nuclear Regulatory Commission Headquarters, One White Flint North, 11555 Rockville Pike, Room O–4–B6, Rockville, Maryland 20852–2738.

Contact: Owen P. Gormley, USNRC, Telephone: (301) 415–6793; Fax: (301) 415–5074; Internet: opg@nrc.gov

Attendance: This meeting is open to the general public. All individuals planning to attend are requested to pre-register with Mr. Gormley by telephone or e-mail and provide their name, affiliation, phone number, and e-mail address.

Program: The purpose of the meeting is to continue the annual communication between NRC and quality assurance professionals, and to continue support to the NPPC as it prepares good practice papers pooling and sharing successful QA activities experienced by the various participants.

Among the topics to be discussed are:

QA for Probablistic Risk Analysis.

Approach to QA on digital I&C systems.

Presentation by BG&E on the NRC inspection of problem identification and resolution, using the new NRC Inspection Module, 71152.

Other activities will include:

A NPPC meeting covering general committee business.

Work on revisions to the good practices papers on performance indicators and self assessments.

Dated in Rockville, Maryland, this 13th day of July, 2000.

For the Nuclear Regulatory Commission.

Sher Bahadur,

Chief, Engineering Research Applications Branch, Division of Engineering Technology, Office of Nuclear Regulatory Research.

[FR Doc. 00–18235 Filed 7–18–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting; Notice

AGENCY HOLDING MEETING: Nuclear Regulatory Commission.

DATE: Weeks of July 17, 24, 31, August 7, 14, and 21, 2000.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of July 17

There are no meetings scheduled for the Week of July 17.

Week of July 24—Tentative

Tuesday, July 25

3:25 p.m. Affirmation Session (Public Meeting) (If necessary).

Week of July 31—Tentative

There are no meetings scheduled for the Week of July 31.

Week of August 7—Tentative

There are no meetings scheduled for the Week of August 7.

Week of August 14—Tentative

Tuesday, August 15.

9:25 a.m. Affirmation Session (Public Meeting) (If necessary).

9:30 a.m. Briefing on NRC International Activities (Public Meeting) (Contact: Ron Hauber, 301–415–2344).

This meeting will be webcast live at the Web address—*www.nrc.gov/live.html*

Week of August 21—Tentative

Monday, August 21

1:55 p.m. Affirmation Session (Public Meeting) (If necessary).

*THE SCHEDULE FOR COMMISSION MEETINGS IS SUBJECT TO CHANGE ON SHORT NOTICE. TO VERIFY THE STATUS

OF MEETINGS CALL (RECORDING)—(301) 415–1292. CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at:

http://www.nrc.gov/SECY/smj/schedule.htm

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: July 14, 2000.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 00–18349 Filed 7–17–00; 1:00 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Human Interaction With Reused Soil: A Literature Search; Draft NUREG–1725 for Public Comment

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance of Draft NUREG for public comment.

SUMMARY: The Nuclear Regulatory Commission is issuing draft NUREG–1725 "Human Interaction with Reused Soil: A Literature Search" for public comment.

DATES: Submit comments by September 18, 2000. Comments received after this date will be considered if its is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to: David L. Meyer, Chief, Rules and Directives Branch, Office of Administration, Mail Stop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Copies of the Draft NUREG report can be obtained through the NRC homepage address: *http:///www.nrc.gov/NUREGS/SR1725/index.html* or by request to the NRC staff contact, Thomas J. Nicholson.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nicholson; e-mail: *tjn@nrc.gov*. telephone: (301) 415–6268; Office of Nuclear Regulatory Research, Mail Stop T–9F31, USNRC, Washington DC 20555–0001.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission (NRC) is issuing draft NUREG–1725 "Human Interaction with Reused Soil: A Literature Search" for a 60-day public comment period. The report was compiled by National Agriculture Library (NAL) staff of the U.S. Department of Agriculture working under an Interagency Agreement with the NRC, and NRC technical staff. The report presents the literature and INTERNET search strategies for identifying documented information sources on types of soil reuse. The report discusses how this information will be used to establish the technical bases for evaluating possible dose impacts from the reuse of soils from NRC-licensed facilities. Information received through the public comment process will assist the NRC staff in developing technical bases for characterizing soil reuse practices and related dose assessment scenarios.

Specifically, the NRC staff is seeking information through comments on draft NUREG–1725 regarding potential uses of soil which may be excavated and transported offsite from NRC-licensed facilities for use in commerce or by the general public. This information will assist in developing a reasonably complete characterization of relevant usages for these reused soils. These soil reuse scenarios would include, but not be limited to, soil processing, construction and agricultural uses of reused soils, and various commercial and residential uses of reused soil and soil-related products. The goal of the solicitation of comments on the draft NUREG–1725 report is to further the development of technical bases and the supporting documentation that could be used to characterize the soil reuse scenarios.

Electronic Access: Information on draft NUREG–1725 for public comment can be accessed using the following NRC homepage address: *http:/// www.nrc.gov/NUREGS/SR1725/index.html* or by notifying the NRC staff contact, Thomas J. Nicholson.

Dated at Rockville, Maryland, this 13th day of July 2000.

For the Nuclear Regulatory Commission.

Cheryl A. Trottier,

Chief, Radiation Protection, Environmental Risk and Waste Management Branch, Division of Risk Assessment and Applications, Office of Nuclear Regulatory Research.

[FR Doc. 00–18239 Filed 7–18–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43032; File No. SR–CSE–00–04]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Cincinnati Stock Exchange, Inc., Amending Its Rules To Mandate Decimal Pricing Testing

July 13, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 10, 2000, the Cincinnati Stock Exchange, Inc. ("CSE" 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 CSE. The CSE has designated this proposal as one concerned solely with the administration of the CSE under Section 19(b)(3)(A)(iii) of the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CSE proposes to amend its rules by adopting new CSE Rule 4.6 to mandate that member firms test computer systems in order to ensure preparedness for the industry's conversion to decimal pricing.

The text of the proposed rule change is available upon request from the CSE or the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As the securities industry prepares for the conversion to decimal pricing, it will be necessary for various constituents of the securities industry to test their computer systems in order to avoid widespread problems. The CSE, in cooperation with the Commission and other self-regulatory organizations, has been working toward a successful transition to decimal pricing. The purpose of the proposed rule change is to require CSE member firms to participate in tests of computer systems designed to prepare for the industry's conversion to decimal pricing.

The proposed rule change would create new CSE Rule 4.6 to require CSE members to participate in the testing of computer systems in a manner and frequency to be prescribed by the Exchange. It is the CSE's understanding that other self-regulatory organizations, including the National Association of Securities Dealers, Inc., the New York Stock Exchange, the American Stock Exchange, and the Chicago Board Options Exchange are also proposing rule changes to require testing by their members in connection with the industry's conversion to decimal pricing.

The Securities Industry Association has undertaken to coordinate industry-wide computer testing to ensure that the securities industry is adequately prepared to convert to decimal pricing. Industry constituents to participate in the testing will include, among others, national securities exchanges, registered clearing corporations, data processors, and broker-dealers. Several industry-wide tests have been planned, the first of which took place in April 2000.

The CSE will employ its new rule 4.6 to require that its members participate in these tests. New CSE Rule 4.6 further provides that any firm having an electronic interface with the Exchange would be required to conduct point-to-point testing with the Exchange. Point-to-point testing refers to tests conducted between two entities, in this case a member having an electronic interface and the Exchange.[4]

Under the proposal, the Exchange would require member firms to participate in industry-wide testing to the extent such firms can be accommodated by the testing schedule. The Exchange would exercise its authority under new CSE Rule 4.6 to the extent it deems that the participation of particular members in the testing is important, and to the extent those members would otherwise not voluntarily choose to participate.

The proposed rule change would also allow the CSE to require members to file reports with the CSE concerning the required tests in the manner and frequency determined by the Exchange. A member subject to new CSE Rule 4.6. who failed to participate in the mandatory tests or who failed to file any required reports, would be subject to disciplinary action pursuant to Chapter VIII of the Exchange's rules.[5]

The proposed new CSE Rule 4.6 would expire automatically upon the completion of decimal pricing implementation.

2. Statutory Basis

The CSE believes proposed new CSE Rule 4.6, whose purpose is to ensure the participation of Exchange members in important testing prior to the securities industry's conversion to decimal pricing, is consistent with section 6(b) of the Act[6] in general and further the objectives of section 6(b)(5)[7] in particular in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CSE does not believe that the proposed rule change will impose any burden on competition 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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change is concerned solely with the administration of the Exchange, it has become effective pursuant to section 19(b)(3)(A)(iii) of the Act[8] and subparagraph (f)(3) of Rule 19b–4 thereunder.[9] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CSE–00–04 and should be submitted by August 11, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–18234 Filed 7–18–00; 8:45 am]

BILLING CODE 8010–01–M

[4] A member that has its electronic interface with the Exchange through a service provider may be exempted from this requirement if such service provider conducts successful tests with the Exchange on behalf of the firms its serves, and if the member conducts successful point-to-point testing with the service provider by a time to be designated by the Exchange.

[5] *See* CSE Rules, Chapter VIII, "Discipline."

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(3).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43029; File No. SR–OCC–00–02]

Self-Regulatory Organizations; Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to OCC Clearing Members Pledging Long Options Positions

July 12, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Exchange Act"),[1] notice is hereby given that on March 6, 2000, The Options Clearing Corporation ("OCC") 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 primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would allow OCC to expand the categories of accounts from which a clearing member can pledge long option positions and the categories of permitted pledgees.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to expand the categories of accounts from which clearing members may pledge long option positions to third party lenders and to expand the categories of permitted pledgees. The proposed rule change is intended to reflect liberalizing amendments to Regulation T (12 CFR part 220) and Regulation U (12 CFR part 221) made by the Board of Governors of the Federal Reserve System ("Fed Board").

Options have traditionally had no loan value under the Fed Board's margin regulations. The Only relevant exception was for "special purpose credit" extended to broker-dealers.[4] A bank or another broker-dealer could extend credit on long options carried for the account of market makers and specialists to secure credit for financing their market making functions. Accordingly, when OCC adopted Rule 614, which allowed long options to be pledged to a bank or another broker-dealer, OCC specified that options could only be pledged from clearing members' market-maker and specialist accounts.[5] In addition, the permitted pledgees under Rule 614 were limited to banks and broker-dealers as these were the only categories of lenders from which a broker-dealer such as a clearing member or market maker was permitted to borrow.[6]

In 1996, the Fed Board eliminated the general prohibition against extending credit on long options and instead deferred to the rules of the options exchanges regarding option loan value by incorporating those rules by reference into Regulation T.[7] Although exchange margin rules then in effect also prohibited extensions of credit against long options, these rules have subsequently been amended to permit broker-dealers to extend credit on certain long option positions in a customer margin account.[8]

In 1998, the Board amended the Supplement to Regulation U to allow lenders other than broker-dealers to extend 50 percent loan value against all long positions in listed options.[9] The Fed Board also modified the margin regulations to reflect amendments to the Exchange Act. The National Securities Markets Improvement Act of 1996 ("NSMIA") repealed section 8(a) of the Exchange Act which, among other things, had prohibited broker-dealers from obtaining credit against the collateral of exchange-traded equity securities from lenders other than broker-dealers and certain banks. For that reason, the Fed Board deleted provisions of Regulations T and U that implemented section 8(a) of the Exchange Act.

As a result of all of the foregoing statutory and regulatory changes, credit may now be extended by broker-dealers, banks and other lenders against long option positions whether carried for the account of a market-maker or specialist, another broker-dealer, a public customer, or for the clearing member's own proprietary account. This renders the provisions of Rule 614, restricting the types of OCC accounts from which long options may be pledged and the kinds of entities that may be pledgees, obsolete. In recognition of this fact, OCC now proposes to amend Rule 614 to delete the obsolete restrictions.

Of course, Regulations T and U continue to impose certain restrictions on extensions of credit secured by OCC-issued options. For example, the 50 percent loan limit would generally be applicable, with certain exceptions such as when the credit is extended to an "exempted borrower."[10] As is the case with other securities credit transactions, lenders and borrowers who use the OCC pledge program are obligated to comply with the Fed Board's margin regulations.

OCC is also proposing to make certain technical amendments to Rule 614. These reflect, among other things, revisions to section 8 and 9 of the Uniform Commercial Code adopted since Rule 614 was originally drafted. Conforming changes are being made to Rules 601, 602, 1105, and 1106.

OCC believes that the proposed rule change is consistent with the requirements of the Section 17A of the Exchange Act[11] and the rules and regulations thereunder because it increases the ability of clearing members and their customers to arrange for or maintain financing for their positions while maintaining OCC's overall protection against default.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

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[1] 15 U.S.C. 78s(b)(1).

[2] The complete text of the proposed rule change is included in OCC's filing, which is available for inspection and copying at the Commission's public reference room and through OCC.

[3] The Commission has modified the text of the summaries prepared by OCC.

[4] Long options may also be given value in a customer's margin account when used to offset margin otherwise required on short option positions and are in turn given margin credit in the clearing member's account at OCC. However, that use of long option value does not involve the pledging of options to third party lenders, and Rule 614 therefore has no application to such use.

[5] In recognition of the ability of a clearing member to pledge long options to a commodity clearing organization for the purpose of securing obligations to such clearing organization on related futures and futures option contracts, OCC later amended Rule 614 to permit this particular form of pledge. In 1999, OCC also amended its rules to permit pledging of long positions to third party lenders from a non-proprietary cross-margining account. Securities Exchange Act Rel. No. 41883 (September 17, 1999), 64 FR 51819 (September 24, 1999).

[6] As noted in the footnote above, the rule was later amended to permit pledging of long options to a commodity clearing organization.

[7] Fed Board Release, 61 FR 20385 (May 6, 1996).

[8] *E.G.*, Securities Exchange Act Rel. Nos. 41658 (July 27, 1999), 64 FR 42736 (August 5, 1999) [SR–CBOE–97–67] and 42011 (October 14, 1999), 64 FR 57172 (October 22, 1999) [SR–NYSE–99–03].

[9] Fed Board Release, 63 FR 2306 (January 16, 1998).

[10] Exempted borrower is defined in Section 220.2 of Regulation T and in Section 221.2 of Regulation U.

[11] 15 U.S.C. 78–1.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety 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 OCC 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, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC.

All submissions should refer to File No. SR–OCC–00–02 and should be submitted by August 11, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–18233 Filed 7–18–00; 8:45 am]

BILLING CODE 8010–01–M

[12] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3271]

State of Minnesota (Amendment #1)

In accordance with a notice from the Federal Emergency Management Agency dated July 12, 2000, the above-numbered Declaration is hereby amended to include Dakota, Fillmore, Houston, and Mower Counties in the State of Minnesota as a disaster area due to damages caused by severe storms and flooding beginning on May 17, 2000, and continuing.

In addition, applications for economic injury loans from small businesses located in the following contiguous Counties may be filed until the specified date at the previously designated location: Dodge, Freeborn, Goodhue, Hennepin, Olmsted, Ramsey, Rice, Scott, Steele, Washington, and Winona Counties in Minnesota; Pierce County, Wisconsin; and Howard, Mitchell, Winneshiek, and Worth Counties in Iowa. Any counties contiguous to the above-named primary counties and not listed herein have been previously declared under a separate declaration for the same occurrence.

The economic injury number for Wisconsin is 9H8500 and for Iowa the number is 9H8600.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is August 29, 2000 and for economic injury the deadline is March 30, 2001.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 13, 2000.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 00–18270 Filed 7–18–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3269]

State of North Dakota (Amendment #1)

In accordance with a notice from the Federal Emergency Management Agency, dated July 11, 2000, the above-numbered Declaration is hereby amended to change the incident period for this disaster from beginning on June 12, 2000 to beginning on April 5, 2000 and continuing.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is August 26, 2000 and for economic injury the deadline is March 27, 2001.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 12, 2000.

Becky C. Brantley,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 00–18271 Filed 7–18–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3272]

State of Wisconsin

As a result of the President's major disaster declaration on June 23, 2000 for Public Assistance only, and an amendment thereto on July 11 adding Individual Assistance, I find that Crawford, Dane, Grant, Kenosha, Milwaukee, Vernon, and Walworth Counties in the State of Wisconsin constitute a disaster area due to damages caused by severe storms, tornadoes, and flooding beginning on May 26, 2000, and continuing through July 5, 2000. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on September 9, 2000 and for economic injury until the close of business on April 11, 2001 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Columbia, Dodge, Green, Iowa, Jefferson, Juneau, LaCrosse, Lafayette, Monroe, Ozaukee, Racine, Richland, Rock, Sauk, Washington, and Waukesha Counties in Wisconsin; Allamakee, Clayton, and Dubuque Counties in Iowa; and Boone, Jo Daviess, Lake, and McHenry Counties in Illinois. Any counties contiguous to the above-named primary counties and not listed herein have been previously declared under a separate declaration for the same occurrence.

The interest rates are:

For Physical Damage

Homeowners with credit available elsewhere: 7.375%

Homeowners without credit available elsewhere: 3.687%

Businesses with credit available elsewhere: 8.000%

Businesses and non-profit organizations without credit available elsewhere: 4.000%

Others (including non-profit organizations) with credit available elsewhere: 6.750%

For Economic Injury

Businesses and small agricultural cooperatives without credit available elsewhere: 4.000%

The number assigned to this disaster for physical damage is 327206. For economic injury the numbers are 9H8100 for Wisconsin, 9H8300 for Iowa, and 9H8400 for Illinois.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 13, 2000.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 00–18269 Filed 7–18–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Interest Rates

The Small Business Administration publishes an interest rate called the optional "peg" rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 6.375 (6 3/8) percent for the July–September quarter of FY 2000.

Arnold S. Rosenthal,

Acting Deputy Associate Administrator for Financial Assistance.

[FR Doc. 00–18272 Filed 7–18–00; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Intent To Use the Central Contractor Registration System

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: The U.S. Department of Transportation (DOT) has partnered with the Joint Electronic Commerce Program Office (JECPO) of the U.S. Department of Defense (DOD) to use the Central Contractor Registration (CCR) system to obtain financial electronic funds transfer (EFT) information. EFT information is inputted and maintained by contractors using DOD's web-based CCR program (www.ccr2000.com), which currently has information on over 160,000 contractors.

DATES: Effective January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Direct questions on DOT's use of CCR to Susan Abrams at (202) 366–9650 or Lesley Field at (202) 366–4960. Submit questions on the CCR system via e-mail to the JECPO office at contact.ccr@us.pwcglobal.com.

SUPPLEMENTARY INFORMATION: All DOT contracts will contain (FAR) 48 CFR 52.232–33, Payment by Electronic Funds Transfer—Central Contractor Registration in lieu of (FAR) 48 CFR 52.232–34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration and 52.232–35, Designation of Office for Government Receipt of Electronic Funds Transfer Information. This means contractors receiving payments under DOT contracts, purchase orders, delivery orders, or other contractual vehicles must be registered in the CCR. The EFT information in the CCR must be accurate in order for contractors' invoices or contract financing requests to be considered proper invoices for the purpose of prompt payment under DOT contracts. Current and prospective contractors are encouraged to register in the CCR without delay. By registering, the paperwork burden imposed by (FAR) 48 CFR 52.232–34 and (FAR) 48 CFR 52.232–35 will no longer exist. In lieu thereof, contractors will update their EFT information electronically through the CCR.

David J. Litman,

Senior Procurement Executive.

[FR Doc. 00–18241 Filed 7–18–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular: Advisory Circular (AC) 23.143–1, Ice Contaminated Tailplane Stall

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed advisory circular (AC) and request for comments.

SUMMARY: This notice announces the availability of and request for comments on a proposed AC, which provides information and guidance concerning ice contaminated tailplane stall.

DATES: Comments must be received on or before September 18, 2000.

ADDRESSES: Send all comments on the proposed AC to: Preferred e-mail address: <bill.marshall@faa.gov> or Federal Aviation Administration, Attention: Mr. Bill Marshall, Small Airplane Directorate, Aircraft Certification Service, Standards Office (ACE–110), DOT Building, 901 Locust, Room 301, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Marshall, <bill.marshall@faa.gov>, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration; telephone number (816) 329–4124.

SUPPLEMENTARY INFORMATION: You may obtain a copy of this proposed AC by contacting the person named above under **FOR FURTHER INFORMATION CONTACT.**

Comments Invited: We invite you to submit comments on the proposed AC. You must identify AC 23.143–1 and submit comments to the (e-mail preferred) address specified above. The FAA will consider all communications received on or before the closing date for comments before issuing the final AC. You may inspect the proposed AC and comments received at the Standards Office (ACE–110), Room 301, DOT Building, 901 Locust, Kansas City, Missouri, between the hours of 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

Background

This proposed advisory circular (AC) sets forth an acceptable way, but not the only way, of demonstrating compliance with the pitch axis flight characteristics with ice contamination requirements in Title 14 of the Code of Federal Regulations (14 CFR) part 23. Accordingly, the FAA is proposing and requesting comments on AC 23.143–1, which will provide more detailed and uniform guidance in showing compliance with the existing regulation.

Issued in Kansas City, Missouri on July 5, 2000.

Marvin Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–18243 Filed 7–18–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at Ardmore Municipal Airport, Ardmore, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposed to rule and invites public comment on the

release of land at Ardmore Municipal Airport under the provisions of section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before August 18, 2000.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Edward Agnew, Manager, Federal Aviation Administration, Southwest Region, Airports Division, Arkansas/Oklahoma Airports Development Office, ASW–630, Fort Worth, Texas 76193–0630.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to D. Weston Stuckey, President, Ardmore Development Authority, at the following address: Ardmore Development Authority, 410 West Main, Ardmore, OK 73401.

FOR FURTHER INFORMATION CONTACT: Glenn Boles, Program Manager, Federal Aviation Administration, AR/OK ADO, ASW–630, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0630.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Ardmore Municipal Airport under the provisions of the AIR 21.

On June 27, 2000, the FAA determined that the request to release property at Ardmore Municipal Airport submitted by the City met the procedural requirements of the Federal Aviation Regulations, part 155. The FAA may approve the request, in whole or in part, no later than August 27, 2000.

The following is a brief overview of the request: The Ardmore Development Authority requests the release of 121.84 acres of airport property. The release of property will allow for two industrial development projects to proceed. The sale is estimated to provide $163,750 to allow construction of a new terminal facility at the airport and improvements to the control tower.

Any person may inspect the request 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 Ardmore Municipal Airport.

Issued in Fort Worth, Texas on June 27, 2000.

Joseph G. Washington,

Acting Manager, Airports Division.

[FR Doc. 00–18242 Filed 7–18–00; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Revocation of Type Certificate

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Revocation of a type certificate.

SUMMARY: Notice of revocation of Type Certificate No. H12EU.

FOR FURTHER INFORMATION CONTACT: Jim Grigg, Rotorcraft Standards Staff, Rotorcraft Directorate, Aircraft Certification Service, Fort Worth, Texas 76193–0110, telephone (817) 222–5961.

SUPPLEMENTARY INFORMATION: Westland Helicopters Limited (Westland), current owner of Type Certificate (TC) No. H12EU, has returned that TC to the United Kingdom Civil Aviation Authority (UKCAA), which is the airworthiness authority for the United Kingdom. The UKCAA has requested that the FAA revoke the TC, which includes Model Westland 30 series 100 and series 100–60 helicopters. There are 9 of the subject model helicopters on the U.S. Registry; however, all 9 helicopters have been purchased by Westland and are being destroyed.

Effective today, TC No. H12EU is revoked, and there is no further FAA approval status for the Westland 30 series 100 and series 100–60 helicopters.

Issued in Forth Worth, Texas on July 11, 2000.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–18244 Filed 7–18–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2000–7139]

Notice of Receipt of Petition for Decision that Nonconforming 1999–2000 Mercedes Benz Gelaendewagen Multi-Purpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1999–2000 Mercedes Benz Gelaendewagen multi-purpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1999–2000 Mercedes Benz Gelaendewagen MPVs that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) They are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is August 18, 2000.

ADDRESS: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141 (a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then

publishes this decision in the **Federal Register**

J.K. Motors of Baltimore, Maryland ("J.K.") (Registered Importer 90–006) has petitioned NHTSA to decide whether 1999–2000 Mercedes Benz Gelaendewagen MPVs are eligible for importation into the United States. The vehicles which J.K. believes are substantially similar are 1999–2000 Mercedes Benz Gelaendewagen MPVs that were manufactured for importation into, and sale in, the United States, and certified by Europa International, Inc. ("Europa"), as conforming to all applicable Federal motor vehicle safety standards, prior to their importation into the United States.

By way of explanation, in March 1998, Daimler Benz, A.G., as the company was then known, provided a letter of understanding to Europa under which Gelaendewagens manufactured in Graz, Austria, would be produced to Europa's specifications, and then shipped to a Mercedes facility in Germany for installation of additional electronic equipment (OBD II) needed to effect compliance with Federal emissions control requirements. DaimlerChrysler A.G. modified the letter of understanding in December 1999 to state that incomplete vehicles, for which it would make no representation of compliance, would be sent to the German facility for completion. At the end of either process, Europa certifies compliance with all applicable Federal requirements of the Department of Transportation and the Environmental Protection Agency. Under these factual circumstances, the agency regards Europa as the "manufacturer" of the Gelaendewagens that it has certified to U.S. standards, and JK Imports as entitled to petition for an eligibility determination on the basis that the Gelaendewagens it wishes to import are substantially similar to vehicles certified by their original manufacturer for sale in the United States.

The petitioner claims that it carefully compared non-U.S. certified 1999–2000 Mercedes Benz Gelaendewagen MPVs to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that non-U.S. certified 1999–2000 Mercedes Benz Gelaendewagen MPVs, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1999–2000 Mercedes Benz Gelaendewagen MPVs are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 119 *New Pneumatic Tires for Vehicles other than Passengers Cars,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 301 *Fuel System Integrity,* and 302 *Flammability of Interior Materials.*

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked "Brake" for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) replacement of the speedometer with one calibrated in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamps and front sidemarker lamps; (b) modification of U.S.-model taillamp assemblies and addition of U.S.-model marker light assemblies; (c) installation of a U.S.-model high mounted stop lamp assembly.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component etched with the appropriate warning statement.

Standard No. 114 *Theft Protection:* installation of a warning buzzer and a warner buzzer microswitch in the steering lock assembly on vehicles that are not already so equipped.

Standard No. 118 *Power Window Systems:* installation, on vehicles that are not already so equipped, of a relay in the power window system so that the windows will not operate when the ignition is switched off.

Standard No. 120 *Tire Selection and Rims for Motor Vehicles other than Passenger Cars:* installation of a tire information placard.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a seat belt warning buzzer, wired to the driver's seat belt latch; (b) inspection of all vehicles imported and replacement of the air bags, control units, sensors, and seat belts with U.S.–model components on vehicles that are not already so equipped. The petitioner states that the vehicles are equipped with driver's and passenger's side air bags and knee bolsters, with combination lap and shoulder belts that are self-tensioning and that release by means of a single red push button at the front and rear outboard seating positions, and with a lap belt at the rear center seating position.

Standard No. 214 *Side Impact Protection:* Installation of doorbars in vehicles that are not already so equipped.

Before submitting its request, the petitioner asked on July 2, 1999, for a determination of confidentiality regarding certain modifications it planned to make in conforming the vehicle to FMVSS No. 108 and 208. The petitioner asserted that the engineering modifications necessary for testing were substantial and considered proprietary due to the expense of development, and that the information could result in substantial competitive harm if disclosed. The agency granted the petitioner's request on September 1, 1999. Accordingly, the petition that was filed on April 4, 2000, and that is available to the public states, with respect to FMVSS No. 108 that the modifications to the taillamp assemblies have been previously granted confidentiality. With respect to FMVSS No. 208, the petition states that "This vehicle will meet frontal impact test requirements with structural modifications described in a submission that has been granted confidentiality by NHTSA's Office of Chief Counsel under 49 CFR 512."

The petitioner also states that a vehicle identification plate must be affixed to the vehicle near the left windshield post and a reference and certification label must be affixed in the area of the left front door post to to meet the requirements of 49 CFR part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and

will be available for examination in the docket at the above address both before and after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on July 13, 2000.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 00–18246 Filed 7–18–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2000–7555]

Notice of Receipt of Petition for Decision That Nonconforming 1991–1995 Mercedes-Benz E Series Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1991–1995 Mercedes-Benz E Series passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1991–1995 Mercedes-Benz E Series passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATE: The closing date for comments on the petition is August 18, 2000.

ADDRESS: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 am to 5 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Wallace Environmental Testing Laboratories, Inc. of Houston, Texas ("WETL")(Registered Importer 90–005) has petitioned NHTSA to decide whether 1991–1995 Mercedes-Benz E Series passenger cars are eligible for importation into the United States. The vehicles which WETL believes are substantially similar are 1991–1995 Mercedes-Benz E Series passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1991–1995 Mercedes-Benz E Series passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

WETL submitted information with its petition intended to demonstrate that non-U.S. certified 1991–1995 Mercedes-Benz E Series passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1991–1995 Mercedes-Benz E Series passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * * .*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion, and* 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that non-U.S. certified 1991–1995 Mercedes-Benz E Series passenger cars comply with the Bumper Standard found in 49 CFR part 581.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked "brake" for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) replacement of the speedometer/odometer, which is calibrated in kilometers, with a component that conforms to the standard.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Replacement of the headlight and taillight lenses with lenses that conform to the standard; (b) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* inscription of the required warning statement in the passenger side rearview mirror.

Standard No. 114 *Theft Protection:* installation of a warning buzzer and a warning buzzer microswitch in the steering lock assembly.

Standard No. 118 *Power Window Systems:* Rewiring of the power window system so that the window transport mechanism is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) Replacement of the driver's seat belt latch and installation of a safety belt warning buzzer; (b) replacement of the driver's side air bag and knee bolster with U.S.-model components on 1991–1993 190E model

vehicles, replacement of the driver's side air bag and knee bolster with U.S.-model components on all other 1991–1992 E Series vehicles, and replacement of the driver's and passenger's side air bags and knee bolsters on 1993–1995 E Series vehicles. The petitioner states that the vehicles are equipped at the front and rear outboard seating positions with Type II seat belts, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection:* Installation of reinforcing beams in the doors which comply with the standard.

Standard No. 301 *Fuel System Integrity:* Installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicle to meet the requirements of 49 CFR part 565.

Additionally, the petitioner states that all vehicles will be inspected prior to importation to ensure that they are equipped with U.S.-model anti-theft devices, and that all vehicle that are not so equipped will be modified to comply with the Theft Prevention Standard at 49 CFR part 541.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm.] It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 13, 2000.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 00–18247 Filed 7–18–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2000–7523]

Notice of Receipt of Petition for Decision That Nonconforming 1997 Chevrolet Blazer Multi-Purpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1997 Chevrolet Blazer multi-purpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1997 Chevrolet Blazer manufactured for the European and other foreign markets that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATE: The closing date for comments on the petition is August 18, 2000.

ADDRESS: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Wallace Environmental Testing Laboratories, Inc., of Houston, Texas ("Wallace") (Registered Importer 90–005) has petitioned NHTSA to decide whether 1997 Chevrolet Blazer MPVs manufactured for the European and other foreign markets are eligible for importation into the United States. The vehicle which Wallace believes is substantially similar is the 1997 Chevrolet Blazer that was manufactured for sale in the United States and certified by its manufacturer, General Motors Corporation, as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1997 Chevrolet Blazer to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Wallace submitted information with its petition intended to demonstrate that the non-U.S. certified 1997 Chevrolet Blazer, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1997 Chevrolet Blazer is identical to its U.S. certified counterpart with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence . . . .*, 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 113 *Hood Latch Systems,* 114 *Theft Protection,* 116 *Brake Fluid,* 118 *Power-Operated Window Systems,* 119 *New Pneumatic Tires,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention*

Components, 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 301 *Fuel System Integrity,* and 302 *Flammability of Interior Materials.*

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) installation of a conforming brake failure warning light on vehicles that are not already so equipped; (b) inspection of the speedometer and replacement, if necessary, with one reading in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* inspection of all equipment subject to standard and replacement with U.S. model headlights, taillights, front and rear sidemarker light assemblies, and high mounted stop lamps on vehicles that are not already so equipped.

Standard No. 111 *Rearview Mirrors:* replacement of the passenger side rearview mirror or inscription of the required warning statement on that mirror.

Standard No. 120 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 208 *Occupant Crash Protection:* installation of U.S.-model driver's side air bag and knee bolster. The petitioner states that the vehicle is equipped with combination lap and shoulder belts in the front and rear outboard designated seating positions and with a lap belt in the center designated seating position.

Standard No. 214 *Side Impact Protection:* inspection of all vehicles and installation of U.S. model door bars on vehicles that are not already so equipped.

Additionally, the petitioner states that a vehicle identification number plate must be affixed to the vehicle to meet the requirements of 49 CFR part 565.

The petitioner also states that all vehicles will be inspected prior to importation and that parts identification markings will be added, where necessary to ensure compliance with the Theft Prevention Standard at 49 CFR part 541.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 13, 2000.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 00–18248 Filed 7–18–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Notice of Public Information Collection Submitted to the Office of the Management and Budget for Review

AGENCY: Surface Transportation Board, DOT.

ACTION: Requesting approval of revision of a currently approved collection.

SUMMARY: The Surface Transportation Board submitted to the Office of Management and Budget for review and approval the following proposal for collection of information as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. Chapter 35).

Title: Annual Waybill Compliance Survey.

Office: Office of Economics, Environmental Analysis, and Administration.

OMB Form No.: OMB 2140–0010.

Frequency: Annually.

No. of Respondents: 600.

Total Burden Hours: 300.

DATES: Persons wishing to comment on this information collection should submit comments by August 18, 2000.

ADDRESSES: Direct all comments to Case Control, Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423. When submitting comments refer to the title of the information collection.

FOR FURTHER INFORMATION CONTACT: Harold J. Warren, (202) 565–1433. Requests for copies of the information collection may be obtained by contacting Arlene Jeffcoat, (202) 565–1661.

SUPPLEMENTARY INFORMATION: The Surface Transportation Board is, by statute, responsible for the economic regulation of railroads operating in the United States. The Carload Waybill Sample is collected to support the Board's regulatory activities as is the information concerning railroad revenue. The Annual Waybill Compliance Survey, which collects on the number of carloads terminated and operating revenue, is required to be filed by all railroads operating in the United States pursuant to authority in title 49 U.S.C. 1145, 11144,11901,11326(b), 11327, and 11328(b) of the ICC Termination Act of 1995, Pub. L. 104–88, 109 Stat. 803 (1995). Our regulations at 49 CRF 1244.2(f) specifically require the survey to be filed annually.

Decided: July 13, 2000.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams,

Secretary.

[FR Doc. 00–18231 Filed 7–18–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33901]

Hi-Tech Trans, LLC—Operation Exemption—Over Lines Owned Canadian Pacific Railway and Connecting Carriers

Hi-Tech Trans, LLC (HTT), a noncarrier, has filed a notice of exemption under 49 CFR 1150.31 to commence operations over approximately 641 miles of rail line from Oak Island Yard in Newark, NJ to points in Irwin, Buffalo and Niagara, NY, and Lowellville and or Canton. OH.[1] The specific route has not been established because HTT asserts that the route may be changed in the future to afford more efficient service. HTT certifies that its projected revenues will not exceed those that would qualify it as a Class III railroad.

HTT states that operations will not commence until it reaches lease or trackage rights agreements with other railroads. HTT further states that it expects that those agreements can be finalized by August 1, 2000 and that it can commence operations before January 1, 2001.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of

[1] HTT states that it expects to enter into sub-lease or trackage rights agreements with the Canadian Pacific Railway and its affiliates and will arrange connections with the Finger Lakes Railroad, Norfolk Southern Railway Company, and CSX Corporation.

a petition to revoke will not automatically stay the transaction.[2]

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33901, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on John F. McHugh, McHugh & Barnes, P.C., 20 Exchange Place, New York, NY 10005.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: July 13, 2000.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–18263 Filed 7–18–00; 8:45 am]

BILLING CODE 4945–00–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Letterhead Applications and Notices Relating to Denatured Spirits.

DATES: Written comments should be received on or before September 18, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Daniel Hiland, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8176.

SUPPLEMENTARY INFORMATION:

Title: Letterhead Applications and Notices Relating to Denatured Spirits.

OMB Number: 1512–0336.

Recordkeeping Requirement ID Number: ATF REC 5150/2.

Abstract: Denatured spirits are used for nonbeverage industrial purposes in the manufacture of personal and household products. Permits and applications control the authorized use and flow. Tax revenue and public safety is protected. The record retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 3,111.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 1,556.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 11, 2000.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 00–18219 Filed 7–18–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Comment; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Inventory-Manufacturer of Tobacco Products.

DATES: Written comments should be received on or before September 18, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Cliff Mullen, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8181.

SUPPLEMENTARY INFORMATION:

Title: Inventory-Manufacturer of Tobacco Products.

OMB Number: 1512–0162.

Form Number: ATF F 3067 (5210.9).

Abstract: ATF F 3067 (5210.9) is used by tobacco product manufacturers to record inventories that are required by law. This form provides a uniform format for recording inventories and establishes tax liability on tobacco products enabling ATF to determine that correct taxes have been or will be paid. The record retention requirement for this information collection is 3 years after the close of the year for which inventories and reports are filed.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 34.

[2] On July 6, 2000, a petition for stay of the exemption filed by HTT was filed by Samuel J. Nasca, on behalf of the United Transportation Union—New York Legislative Board. The petition for stay was denied by the Board in *Hi-Tech Trans, LLC—Operation Exemption—Over Lines Owned By Canadian Pacific Railway and Connecting Carriers*, STB Finance Docket No. 33901 (STB served July 10, 2000).

Estimated Time Per Respondent: 5 hours.

Estimated Total Annual Burden Hours: 170.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 11, 2000.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 00–18220 Filed 7–18–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Usual and Customary Business Records Relating to Tax-Free Alcohol.

DATES: Written comments should be received on or before September 18, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue NW, Washington, DC 20226; (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Steve Simon, Regulations Division, 650 Massachusetts Avenue, NW, Washington, DC 20226, (202) 927–8183.

SUPPLEMENTARY INFORMATION:

Title: Usual and Customary Business Records Relating to Tax-Free Alcohol.

OMB Number: 1512–0334.

Recordkeeping Requirement ID Number: ATF REC 5150/3.

Abstract: Tax-free alcohol is used for nonbeverage purposes by educational organizations, hospitals, laboratories, etc. The use of alcohol free of tax is regulated to prevent illegal diversion to taxable beverage use. Records maintain spirits accountability and protect tax revenue and public safety. The record retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension only.

Type of Review: Extension.

Affected Public: Not-for-profit institutions, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 4,560.

Estimated Time Per Respondent: The recordkeeping requirement involves usual and customary business records therefore, there is no burden on the respondent.

Estimated Total Annual Burden Hours: 1 hour.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 11, 2000.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 00–18221 Filed 7–18–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Release and Receipt of Imported Firearms, Ammunition and Implements of War.

DATES: Written comments should be received on or before September 18, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226; (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Marie Pollard, Firearms and Explosives Imports Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226; (202) 927–8320.

SUPPLEMENTARY INFORMATION:

Title: Release and Receipt of Imported Firearms, Ammunition and Implements of War.

OMB Number: 1512–0019.

Form Number: ATF F 6A (5330.3C).

Abstract: The information collection is needed to verify importation of firearms, ammunition and implements of war. ATF F 6A (5330.3C) is completed by Federal firearms licensees, active duty military members, nonresident U.S. citizens returning to the U.S. and aliens immigrating to the United States.

Current Actions: There are no changes to this information collection and it is

being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Individual or households, business or other for-profit, not-for-profit institutions.

Estimated Number of Respondents: 20,000.

Estimated Time Per Respondent: 24 minutes.

Estimated Total Annual Burden Hours: 8,000.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 11, 2000.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 00–18222 Filed 7–18–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application and Permit for Importation of Firearms, Ammunition and Implements of War.

DATES: Written comments should be received on or before September 18, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226; (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Marie Pollard, Firearms and Explosives Imports Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226; (202) 927–8320.

SUPPLEMENTARY INFORMATION:

Title: Application and Permit for Importation of Firearms, Ammunition and Implements of War.

OMB Number: 1512–0017.

Form Number: ATF F 6–Part 1 (5330.3A).

Abstract: This information collection is needed to determine whether firearms, ammunition and implements of war are eligible for importation into the United States. The form is used to secure authorization to import such articles. All persons who desire to import such articles except for persons who are members of the United States Armed Forces must complete this form.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Individuals or households, business or other for-profit, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 9,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 4,500.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 11, 2000.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 00–18223 Filed 7–18–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Tobacco Products Manufacturers—Records of Operations.

DATES: Written comments should be received on or before September 18, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Cliff Mullen, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8181.

SUPPLEMENTARY INFORMATION:

Title: Tobacco Products Manufacturers—Records of Operations.

OMB Number: 1512–0358.

Recordkeeping Requirement ID Number: ATF REC 5210/1.

Abstract: Tobacco manufacturers must maintain a system of records that

provide accountability over tobacco products received and produced. The information collection is needed to ensure tobacco transactions can be traced and ensure that tax liabilities have been totally satisfied. The record retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 108.

Estimated Time Per Respondent: 150 hours per year.

Estimated Total Annual Burden Hours: 16,200.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 11, 2000.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 00–18224 Filed 7–18–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Notice of Removal of Tobacco Products, Cigarette Papers, or Cigarette Tubes.

DATES: Written comments should be received on or before September 18, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226; (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Cliff Mullen, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226; (202) 927–8181.

SUPPLEMENTARY INFORMATION:

Title: Notice of Removal of Tobacco Products, or Cigarette Papers, or Cigarette Tubes.

OMB Number: 1512–0119.

Form Number: ATF F 2149/2150 (5200.14).

Abstract: Tobacco manufacturers or export warehouse proprietors are liable for tax on tobacco products removed from their premises, tobacco products, cigarette papers and tubes may be recovered without payment of tax for special purposes. This form verifies these removals. The record retention requirement for this information collection is 3 years after the close of the year in which evidence of clearance or delivery was received.

Current Actions: Item 10 of the form has been revised to add letter (F) Return to Factory, and (G) Return to Export Warehouse to better serve the respondent. The Item 12, column headings, have been re-formated for better clarification.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 221.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 18,225.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 11, 2000.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 00–18225 Filed 7–18–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Tobacco Products Importer or Manufacturer—Records of Large Cigar Wholesale Prices.

DATES: Written comments should be received on or before September 18, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226; (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Robert P. Ruhf,

Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226; (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Tobacco Products Importer or Manufacturer—Records of Large Cigar Wholesale Prices.

OMB Number: 1512–0368.

Recordkeeping Requirement ID Number: ATF REC 5230/1.

Abstract: This information collection is used by tobacco products importers or manufacturers who import or make large cigars. Records are needed to verify wholesale prices of those cigars and tax is based on those prices. The collection also ensures that all tax revenues due to the government are collected. The record retention period for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 108.

Estimated Time Per Respondent: 2 hours and 30 minutes.

Estimated Total Annual Burden Hours: 252.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 11, 2000.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 00–18226 Filed 7–18–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI–255–82]

Proposed Collection; Comment Request for Regulation Project; Correction

AGENCY: Internal Revenue Service (IRS), Treasury

ACTION: Correction to notice and request for comments.

SUMMARY: This document contains a correction to a notice and request for comments which was published in the **Federal Register** on June 23, 2000 (65 FR 39228), relating to an invitation to comment on a proposed information collection.

FOR FURTHER INFORMATION CONTACT: Larnice Mack at (202) 622–3179.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published, this notice and request for comments contains an error that is misleading and needs clarification.

Correction of Publication

Accordingly, the publication of the notice and request for comments (FI–255–82), which is the subject of FR. Doc 00–15869 is corrected as follows:

On page 39228, column 1, under the caption "SUMMARY", last line in the paragraph, the language "(§ 1.149–1(c)(4))." is corrected to read "(§ 5f.103–1(c))."

Cynthia Grigsby,

Chief, Regulations Unit, Office of Special Counsel, (Modernization and Strategic Planning).

[FR Doc. 00–18140 Filed 7–18–00; 8:45 am]

BILLING CODE 4850–01–P

Corrections

Federal Register
Vol. 65, No. 139
Wednesday, July 19, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF JUSTICE

Antitrust Division

Joint Motion To Modify Final Judgment and United States' Memorandum in Support of Motion To Modify; United States vs. Baroid Corp., et al.

Correction

In notice document 00–9746 beginning on page 21027 in the issue of Wednesday, April 19, 2000, make the following correction:

On page 21028, in the first column, six lines from the bottom, "50 " should read "60".

[FR Doc. C0–9746 Filed 7–18–00; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR 1218–0176(2000)]

Proposed information Collection Request Submitted for Public Comment and Recommendations; 29 CFR Part 1904 Recording and Reporting injuries and illnesses (1218-0176)

Correction

In notice document 00–17266 beginning on page 42034 in the issue of Friday, July 7, 2000, make the following correction:

1. On page 42035, in the second column, in the fourth full paragraph, in the fourth line, "28 CFR" should read "29 CFR".

2. On the same page, in the third column, in the 12th line, "1,395,516." should read "1.5 hours".

[FR Doc. C0–17266 Filed 7–18–00; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Wednesday,
July 19, 2000

Part II

Department of Transportation

Maritime Administration

46 CFR Part 356

Fishery Endorsement; Eligibility of U.S.-Flag Vessels of 100 Feet or Greater; Final Rule

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 356

[Docket No. MARAD–99–5609]

RIN 2133–AB38

Eligibility of U.S.-Flag Vessels of 100 Feet or Greater In Registered Length To Obtain a Fishery Endorsement to the Vessel's Documentation

AGENCY: Maritime Administration, Transportation.

ACTION: Final rule.

SUMMARY: The Maritime Administration ("MARAD," "we," "our," or "us") is publishing this final rule implementing the new U.S. citizenship requirements set forth in the American Fisheries Act of 1998 ("AFA") for vessels of 100 feet or greater in registered length for which a fishery endorsement to the vessel's documentation is sought.

The rule implements new statutory requirements of the AFA by raising the U.S. ownership and control requirements for U.S.-flag fishing vessels of 100 feet or greater in registered length that are operating in U.S. waters, by eliminating exemptions for fishing vessels that cannot meet current citizenship standards, by phasing out of operation many of the largest fishing vessels, and by establishing new criteria to be eligible to hold a preferred mortgage on vessels of 100 feet or greater with a fishery endorsement to the vessel's documentation. The regulations set out which transactions are permissible, which transactions will require prior approval, and which transactions are impermissible and, to the extent practicable, minimize disruptions to the commercial fishing industry, to the traditional financing arrangements of such industry, and to the opportunity to form fishery cooperatives. Pursuant to 5 U.S.C. 553(d)(3), this final rule will become effective immediately upon the date of publication. The immediate effective date is necessary to provide extra time before the compliance date for vessel owners and mortgagees to request letter rulings from MARAD regarding their citizenship status and potential waivers from the rule by virtue of a conflict with an international agreement or treaty.

DATES: *Effective Date:* July 19, 2000.

Compliance Date: Vessel owners and Mortgagees are required to comply with the new citizenship requirements by October 1, 2001, in order to obtain a fishery endorsement to the vessel's documentation. The rule requires owners to submit an Affidavit of U.S. Citizenship by June 1, 2001, so that MARAD can make render citizenship decisions by the compliance date.

ADDRESSES: The complete file for this rule is available for inspection with the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001, between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. You may also view the comments submitted to the docket via the Internet at *http://dms.dot.gov* by using the search function and entering the docket number 5609.

FOR FURTHER INFORMATION CONTACT: John T. Marquez, Jr. of the Office of Chief Counsel at (202) 366–5320. You may send mail to John T. Marquez, Jr., Maritime Administration, Office of Chief Counsel, Room 7228, MAR–222, 400 7th St., SW, Washington, DC, 20590–0001, or you may contact him by e-mail at John.Marquez@marad.dot.gov.

SUPPLEMENTARY INFORMATION:

Background

The AFA imposes new citizenship requirements for the owners of vessels of 100 feet or greater in registered length for which a fishery endorsement to the vessel's documentation is sought. The AFA, among other things:

(1) Raises, with some exceptions, the U.S. Citizen ownership and control standards for U.S.-flag Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels operating in U.S. waters from a controlling interest to a 75 percent interest requirement as set forth in 2(c) of the Shipping Act, 1916, as amended ("1916 Act");

(2) Sets forth certain criteria for purposes of determining whether "control" of the owner of Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels is vested in Citizens of the United States;

(3) Requires state or federally chartered financial institutions to comply with the Controlling Interest (51%) requirements of 2(b) of the 1916 Act in order to hold a preferred mortgage on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel of 100 feet or more in registered length;

(4) Requires preferred mortgagees of vessels of 100 feet or more in registered length that are not state or federally chartered financial institutions to comply with the requirements of 2(c) of the 1916 Act which provides that 75% of the interest in the entity must be owned and controlled by Citizens of the United States, or use an approved Mortgage Trustee that complies with the citizenship requirements of 2(c) of the 1916 Act and other requirements of the AFA;

(5) Prohibits certain foreign-built factory trawlers from participating in the fisheries of the United States; and,

(6) Prohibits, with some exceptions, vessels above 165 feet or 750 gross tons or with engines of 3,000 horsepower or more from obtaining a fishery endorsement to the vessel's documentation.

We are required by § 203(c) of the AFA to "rigorously" scrutinize any transfer of ownership and control over Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels and to pay particular attention to leases, charters, financings, mortgages, and other arrangements to determine if they constitute an impermissible conveyance of control to persons not eligible to own a vessel with a fishery endorsement. These regulations set out which transactions are permissible, which transactions will require prior approval, and which transactions are impermissible. Pursuant to 203(b) of the AFA, these regulations also, "to the extent practicable, minimize disruptions to the commercial fishing industry, to the traditional financing arrangements of such industry, and to the opportunity to form fishery cooperatives."

The rule provides procedures for owners, Mortgagees, Mortgage Trustees, and charterers to request letter rulings regarding citizenship status and for Owners and Mortgagees to request letter rulings regarding exemptions from the regulations as a result of conflicts between the regulations and an international treaty or law upon publication of the rule in the **Federal Register**. However, the new ownership and control standards, including the 75% ownership and control requirement, will not become effective until October 1, 2001.

Prior Federal Action

As the first step in this rulemaking process, we issued an Advance Notice of Proposed Rulemaking (ANPRM) entitled Eligibility of U.S.-Flag Vessels of 100 Feet or Greater To Obtain Commercial Fisheries Documents, 64 FR 24311 (May 6, 1999). The ANPRM provided an explanation of the changes in the law and requested comments, suggestions, and information from the public relating to the development of regulations necessary to implement the new statutory requirements to obtain a fishery endorsement for a documented vessel of 100 feet or greater in registered length. Based on the comments that we received in response to the ANPRM, we

issued a Notice of Proposed Rulemaking (NPRM) entitled Eligibility of U.S.-Flag Vessels of 100 Feet or Greater In Registered Length to Obtain a Fishery Endorsement to the Vessel's Documentation Commercial Fisheries Documents, 65 FR 645 (January 5, 2000).

The NPRM set forth a proposed rule to implement the new statutory requirements to obtain a fishery endorsement for a documented vessel of 100 feet or greater in registered length. In response to the NPRM, we received approximately 20 written comments. In addition, we held three public meetings in Seattle, WA, Anchorage, AK, and Washington, DC, and met with one interested party who requested a meeting with us. The written comments, transcripts of the public meetings, and a memorandum summarizing a meeting with an interested party are available for review in the rulemaking docket. Following is a summary of those comments and our response.

Comments on the Proposed Rule

Subpart A—General Provisions

Section 356.3 Definitions

Several commenters noted that a state or federally chartered financial institution that meets the controlling interest requirements of 2(b) of the 1916 Act would be deemed a Non-Citizen under the definitions of "Citizen of the United States" in § 356.3(d), "Non-Citizen" in § 356.3(n), and "Non-Citizen Lender" in § 356.3(o). Accordingly, the commenters state that the benefit accorded to state or federally chartered financial institution under 202 of the AFA to be eligible to hold a Preferred Mortgage on a Fishing Vessel, Fish Tender Vessel or Fish Processing Vessel would be rendered without meaning. The commenters suggested that the rule should clarify in § 356.19 or in one of the definitions in § 356.3 that a state or federally chartered financial institution is considered to be a U.S. Citizen when functioning as a Preferred Mortgagee with respect to a Fishing Vessel, Fish Processing Vessel or Fish Tender Vessel.

We agree that the rule should be clarified with regard to the citizenship status of state or federally chartered financial institutions that meet the controlling interest requirements of 2(b) of the 1916 Act and that are acting as Preferred Mortgagees. Accordingly, the definitions of "Controlling Interest" and "Non-Citizen Lender" in § 356.3 have been amended to indicate that a state or federally chartered financial institution that meets the controlling interest requirements is considered a Citizen of the United States for purposes of Subpart D of the regulation.

One commenter reasoned that it is commercially impractical to expect parties to wonder whether a bona fide limited liability company will be treated by the Maritime Administration as a general partnership for AFA purposes under proposed § 356.3(d)(2)(vii) or § 356.3(f)(2)(vi). The commenter noted that every state, or almost every state, now has a limited liability company statute and that MARAD should provide certainty in the rule regarding the citizenship status of limited liability companies ("LLCs") by concluding that it will accept the status of these entities as determined by state law or by specifying which state limited liability company statutes create, for AFA purposes, general partnerships.

This rule marks the first time that we have set out in a regulation how we plan to deal with LLCs in the context of determining U.S. Citizenship. Because LLCs can vary greatly in their structure, we feel that it is important to reserve some flexibility for ourselves in this area. Furthermore, we do not believe that it makes sense to list every state limited liability company statute that could potentially present a problem as these statutes can easily be amended over time. Therefore, the final rule will follow our proposal in the NPRM that an LLC that is deemed to be a general partnership will be treated as such, and we will evaluate each LLC citizenship application individually.

The same commenter also stated that the definitions of Citizen of the United States and Controlling Interest in §§ 356.3(d)(2)(i)(a) and 356.3(f)(2)(i)(a) were unnecessarily broad because they state that all officers authorized to act in the absence of the chief executive officer and chairman of a corporation must be citizens, whereas the relevant statutes refer only to the citizenship of chairmen, presidents and chief executive officers. The commenter suggested that the relevant statutes identify chairmen, presidents and chief executive officers as the officers who must be U.S. Citizens and that MARAD should allow a Non-Citizen Vice President or Non-Citizen Vice Chairman unless a vacancy that temporarily places such a person in the senior position of responsibility is left unfilled with the intent of evading the law. The commenter proposed that the rule should allow a vacancy in the offices of chairman, president or chief executive officer that is filled with a Citizen of the United States before the earlier of the next required filing date for an annual meeting or the next actual meeting of directors for which a notice of meeting has not already been set at the time at which the vacancy occurs.

We disagree with the commenter's assertion that 2 of the 1916 Act limits our citizenship analysis to the citizenship of chairmen, presidents and chief executive officers or restricts us from taking into consideration the rights of a Non-Citizen to act in the absence of the chief executive officer or chairman of a corporation. Moreover, this analysis is consistent with our past practice of determining citizenship under 2 of the 1916 Act. Accordingly, we do not plan to amend the final rule.

Several commenters also noted that we had used the terms "affiliated" and "unrelated" in the rule, but that the terms were not defined. Accordingly, we have added definitions for the terms "Affiliate or Affiliated" and "Related Party" to § 356.3 and have renumbered the section accordingly.

Subpart B—Ownership and Control

Section 356.7 Methods of Establishing United States Ownership

One commenter stated that the fair inference rule is outdated and does not take into consideration the sweeping changes that have occurred in the way that shares of publicly traded companies are held since the establishment of the fair inference method in 1936. In particular, the commenter stated that because the vast majority of shares in corporations are held today by brokerage houses in "street" name for beneficial owners, the stock ownership records of corporations do not provide information as to the beneficial owners. In addition, the commenter noted that many shares are held for the benefit of pension trusts or mutual funds, the true beneficial owners of which change frequently and are not discernible from any available records. Accordingly, the commenter proposed that a different rule be adopted for use by publicly traded corporations with some minimum number of shareholders (perhaps keyed to the reporting requirements of the Securities Exchange Act of 1934) pursuant to which it may be inferred that shares held in street name or similar manner are held by U.S. Citizens if the record holder has a U.S. address unless the party claiming U.S. citizenship for the corporation has actual notice to the contrary. Under the commenter's proposal, the shares held by greater than 5% beneficial owners, who are obligated to file with the Securities Exchange Commission would be treated as owned by their actual beneficial owners as reflected on the pertinent forms and all other shares would be deemed held by and in the domicile of the record holder, absent

actual knowledge or information to the contrary.

We disagree with the commenter's assertion that the information required for entities to demonstrate the citizenship of beneficial owners under the fair inference rule is not available to corporations because stocks today are widely held in "street" name by brokerages. Although the citizenship information for beneficial owners where the stock is held by a brokerage company or other entity may not be part of the corporation's stock records, it is readily available from the brokerage company, trust, pension plan, or other entity that is holding the stock for the benefit of the true owner. In fact, a corporation or other entity proving its citizenship is required to obtain from any brokerage firm, trust, pension plan, or other entity that is holding stock for the benefit of other persons, confirmation as to how many shares are held for the benefit of holders with a U.S. address and whether any shareholders hold more than 5% of the outstanding shares of a class of stock. We regularly deal with large publicly traded companies that are required to demonstrate their citizenship for other MARAD programs using the fair inference method, and we have not found it to be a problem for corporations or other entities to obtain this information.

Section 356.9 Tiered Ownership Structures

Section 202 of the AFA requires that 75% of the interest in an entity that owns or controls a vessel eligible for a fishery endorsement under 46 U.S.C. 12108 be held by Citizens of the United States "at each tier of ownership of such entity and in the aggregate." In the NPRM, we proposed to interpret the phrase "in the aggregate" to mean that no individual Non-Citizen may own or control more than 25% of the interest in a vessel or vessel-owning entity. In the NPRM, we stated that our belief was that a restrictive interpretation of the phrase "in the aggregate" would limit the ability of companies to have tiered ownership and would limit their ability to raise capital through equity participation.

There were three different comments relating to MARAD's interpretation of "in the aggregate" under proposed § 356.9. One commenter supported MARAD's interpretation and noted that it is both workable and appropriate where publicly traded companies and complex ownership structures are involved. The commenter noted that there is virtually no possibility that varied, disparate and unrelated Non-Citizen interests throughout a complex ownership structure could come together to control the entity or its vessels and that the reservation of authority to reject excessive tiering arrangements provides a safeguard against abuse of the flexibility in the proposed provisions. Further, the commenter highlighted that there is well established precedent for a similar mechanism, the fair inference rule. The commenter agreed that a restrictive interpretation of "in the aggregate" would not only significantly complicate the process, but would also likely be disruptive to the industry and could reduce the availability of conventional financing.

Two commenters opposed MARAD's interpretation of "in the aggregate" as overly broad and stated that it does not reflect the basic intent of the AFA to insure at least 75% U.S. ownership and control of fishing vessels "at each tier and in the aggregate." The first commenter stated that the proposed rule could be interpreted to allow 25% ownership by three different Non-Citizens at three ownership tiers which would result in an aggregate Non-Citizen ownership in excess of 50%. The commenter reasoned that such ownership structures run contrary to the intent of the AFA; therefore, MARAD should use a more restrictive interpretation of the ownership and control standards.

The second commenter opposed to MARAD's interpretation of "in the aggregate" noted that even if MARAD's concern that an overly restrictive reading of "in the aggregate" would result in limiting the ability of owners to obtain equity participation in their companies, Congress had already decided the issue otherwise. The commenter stated that there is nothing in the AFA that limits the "aggregation" to each particular Non-citizen and that such an interpretation would turn the statutory requirement on its head by permitting Non-U.S. Citizens to own more than 25% in the aggregate of the equity interest in a vessel, with the result that less than 75% of the interest in an entity in the aggregate will be owned and controlled by U.S. Citizens. The commenter asserts that this interpretation contradicts the plain language of the statute and cannot be a "reasonable" interpretation of the law. The commenter further states that the final rule, including the definitions and the Affidavit of U.S. Citizenship, must comply with the Congressional requirement that at least 75% of the interest in a vessel seeking a fishery endorsement be owned and controlled by U.S. Citizens, at each tier of ownership and in the aggregate. This means that no more than 25% of such interest may be held "in the aggregate" by either a particular foreign citizen or any combination of foreign citizens.

Upon further consideration, we agree that the plain language of the statute leaves little room for flexibility of interpretation in the regulation and that the phrase "in the aggregate" precludes more than 25% Non-Citizen ownership whether for an individual or several entities if taking into account all tiers. As a matter of clarification, we do not conclude that this interpretation prohibits use of the fair inference method to determine citizenship of publicly traded companies, *i.e.*, 95% U.S. Citizen addresses establishes a fair inference of 75% U.S. ownership, provided that there is not clear evidence of more than 25% ownership and control by a Non-Citizen. For example if a U.S. Citizen owns 80% of a vessel-owning entity and a Non-Citizen owns 20% of the vessel-owning entity, we would permit the U.S. Citizen to demonstrate its citizenship using the fair inference rule and demonstrating that 95% of the addresses of shareholders are U.S. addresses. However, if a U.S. Citizen owns 75% of a vessel-owning entity and a Non-Citizen owns 25% of the vessel-owning entity, the U.S. Citizen could not use the fair inference method to demonstrate that it is a U.S. Citizen unless it could demonstrate 100% U.S. Citizen addresses as the Non-Citizen ownership already amounts to 25% and does not provide for any leeway for additional Non-Citizen participation. Accordingly, the interpretation of "in the aggregate" proposed in the NPRM will be so modified in the final rule.

This interpretation eliminates the need to caution against unlimited tiering because MARAD will deem it to be excessive foreign ownership and control if the sum of the ownership and control in Non-Citizens through subsequent tiering is in excess of 25% as computed by MARAD. As a practical matter, there will be very limited opportunities for any tiering involving Non-Citizen ownership and control.

Section 356.11(a)—Absolute Indicia of Control

Several commenters provided comments on the various indicia of control. One commenter noted that, as a general matter, the AFA (46 U.S.C. 12102(c)(2)(B)) expressly authorized Non-Citizens simply to participate in certain activities that would otherwise be deemed control; however, this language is not included in the rule. We agree with the commenter that certain

limited rights of participation that may limit the authority of directors and possibly additional personnel aboard the vessel were statutorily intended. We have added language to § 356.11(a)(1) and (3) to indicate that a Non-Citizen has the right simply to participate in certain activities.

One commenter noted that every partnership and shareholder agreement involving minority investors typically includes limitations in favor of the minority investors on "the actions of * * * the chief executive officer, a majority of the board of directors, any general partner or any person serving in a management capacity of the entity which owns the fishing industry vessel." Such agreements typically prohibit the majority investors and the management they control from selling all or substantially all of the assets of the entity without the consent of the minority investors, from going into a different business, and from entering into contracts with or guaranteeing the obligations of the majority investors or their affiliates without the consent of the minority investors. The commenter noted that none of these restrictions permit the Non-Citizen to intrude into the day-to-day operations of the vessel or the vessel owner. Furthermore, the commenter stated that measures that restrict the actions of the management, board of directors, general partner, etc., are inconsistent with the types of restrictive loan covenants approved in § 356.23(a). For example, the commenter stated that § 356.23(a)(1) authorizes mortgage loan covenants that prohibit the borrower from selling part or all of its assets; however, these covenants would be deemed impermissible under § 356.11(a)(2). The commenter suggested that § 356.11(a)(2) should provide that these and similar restrictions are not deemed impermissible control. We agree with commenter that certain rights of minority shareholders that do not deal with day-to-day activities should be authorized and have amended § 356.11(a)(2) to make clear that certain standard minority shareholder rights are permitted.

The same commenter suggested that § 356.11(a)(2) is inconsistent with § 356.11(a)(4), which states that it is impermissible control if a Non-Citizen has the right to unduly restrict the day-to-day activities and management policies through loan covenants or other means. We do not believe that these provisions are inconsistent. However, § 356.11(a)(4) has been amended to make clear that the limitation on the ability of a Non-Citizen to unduly restrict the day-to-day activities and management policies through loan covenants applies to covenants other than those approved for use by the Citizenship Approval Officer.

The commenter also indicated that § 356.11(a)(2) is inconsistent with § 356.11(b)(2) which states that the authority to preclude the owner from engaging in other business activities is just one factor that *may*, in conjunction with other factors, lead to a finding of impermissible control by a Non-Citizen. We intend for the two sections to be distinguishable and for § 356.11(a)(2) to address the right of a Non-Citizen to participate in day-to-day business activities conducted in the ordinary course of business. Section 356.11(a)(2) has been amended accordingly to distinguish it from § 356.11(b)(2).

Four commenters pointed out that traditional arrangements in the fishing industry could be technically read to confer a "disproportionate" benefit on the Non-Citizen. The commenters claimed that limited disproportion in economic benefits in the range of 1–5% are common in the fishing industry, and are not a meaningful indicia of control. Accordingly, the commenters suggested that § 356.11(a)(5), which defines as an absolute indicia of control the right to derive through a minority shareholder a "disproportionate" share of the economic benefits from the ownership or operation of a vessel, is overly vague. The commenters recommended that § 356.11(a)(5) be moved to subsection (b) and defined as a possible indicia of control, thus giving the agency discretion to determine on a case-by-case basis if disproportionate economic benefit is conferred upon Non-Citizens. In the alternative, the commenters suggested that some measure of materiality be added to § 356.11(a)(5) by requiring that the disproportion be "substantial," "considerable," "significant," or "material." We agree with the latter suggestion and have amended § 356.11(a)(5) to indicate that ability of a Non-Citizen to derive a "significantly disproportionate" share of the economic benefit will be deemed impermissible control.

One commenter further suggested that § 356.11(a)(5) be tightened to clearly state that the disproportionate benefit be in favor of the Non-Citizen in order to result in a loss of Citizenship. Otherwise an arrangement where the Non-Citizen owns 24% of the interest but derives 10% of the economic benefit would result in the automatic loss of U.S. citizenship. We agree with this comment and have amended § 356.11(a)(5) accordingly.

One commenter argued that the language of § 356.11(a)(6), which indicates that impermissible control will be found where a Non-Citizen has the right to be or is "a controlling factor" in the entity, is too vague. The commenter explained that a Non-Citizen who is a 20% shareholder and has one fifth of the votes would be a deciding factor if the other four Citizens are split. We disagree with the assertion that the term "controlling factor" is too vague. This provision is intended to address more direct involvement by a Non-Citizen; therefore, we do not consider the ability of a Non-Citizen to act as a tie breaker where the Citizen owners are deadlocked to be a "controlling factor."

Section 356.11(a)(7), which prohibits a Non-Citizen shareholder or limited partner from having the right to cause the sale of the vessel, was thought to be overly restrictive by one commenter. The commenter stated that most shareholder agreements and partnership agreements contain provisions for terminating the association of the investors. The usual mechanism for terminating the relationship between investors is for one to buy out the other(s). Because there is no market for a minority interest in a closely held company and a Non-Citizen is prevented from buying out the interest of the U.S. Citizens, the commenter recommended that a Non-Citizen minority shareholder should have the ability to force the sale of the vessel to a qualified third party. We agree that minority shareholders should have the ability to exit the arrangement, but we do not believe that a Non-Citizen should have the ability to force the sale of the assets in other situations. Accordingly, we have amended § 356.11(a)(7) to make clear that in the event of the dissolution of the arrangement the Non-Citizen may require the sale of its interest in the vessel.

The deletion of § 356.11(a)(9) was suggested by one commenter who believed that responsibility of a Non-Citizen for the procurement of insurance on a Fishing Vessel is completely unrelated to control of the vessel or vessel owner. We disagree with the commenter. The responsibility for procuring insurance on a vessel is generally the responsibility of the vessel owner or a bareboat charterer who steps into the shoes of a vessel owner. It is a definitive control responsibility because it determines disposition of loss proceeds as well as forward condition and likelihood of recovering loss proceeds. Therefore, it is an element of ownership that will be deemed impermissible control if it is the responsibility of a Non-Citizen.

Section 356.11(a)(10) states that it will be considered an absolute indicia of control if a Non-Citizen "[h]as the

ability through any other means whatsoever to control the entity that owns a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel." Several commenters stated that it was inappropriate to include as an absolute indicia of control what appears to be a "catch all" provision. The commenters submitted that while other factors of contractual arrangement may accurately be considered "indicia" of control (as described in § 356.11(b)), § 356.11(a) should only include specific descriptions of impermissible transfers of control and thus § 356.11(a)(10) should be deleted. Because every instance of control cannot be identified in the rule, we disagree with the commenter and believe that a flexible provision such as § 356.11(a)(10) is needed in the final rule. Further the provision is firmly rooted in statute (see, 46 App. U.S.C. 802).

Section 356.11(b) Discretionary Indicia of Control

One commenter suggested that the undefined term "foreign involvement" used in the first sentence of § 356.11(b) should be changed to the defined term "Non-Citizen" in order to avoid confusion. We agree with the commenter and have amended § 356.11(b) to use the term "Non-Citizen."

Section 356.11(b)(5) states that one factor to be considered in determining whether impermissible control by a Non-Citizen is present is whether a Non-Citizen absorbs "many of the costs and normal business risks of the ownership and operation of a vessel." One commenter suggested that the term "many" could make it difficult to interpret this provision and, therefore, suggested that the term "many" should be replaced with "most" to clarify that only an inequity of cost and risk may suggest impermissible control. We agree with the commenter that the language should be clarified and have amended § 356.11(b)(5) to replace the phrase "many of" with "considerable."

Section 356.11(b)(6) states that if a Non-Citizen provides start up capital for an owner or bareboat charterer on "less than an arm's length basis," this may be deemed impermissible. Two commenters remarked that the provision should only apply to "prospective" start up capital arrangements as to do otherwise would penalize parties who entered into arrangements that complied with the law prior to the AFA. While we understand the commenters' concern, this is only one factor to be considered and weighed, and it will not necessarily constitute control. Therefore, we intend to apply § 356.11(b)(6) to all citizenship determinations.

Section 356.11(b)(7) states that if a Non-Citizen has the general right to inspect the books and records of the owner or bareboat charter, this may be deemed impermissible control. Three commenters noted that under state and common law, the right to inspect the books and records of a company at a proper time and for a proper purpose has long been basic among rights of minority partners and shareholders. The commenters explained that this right has been essential to prevent abuse and fraud by the majority partner or shareholder upon the minority and is more indicative of a lack of control. The commenters recommended that this provision be deleted. Section 356.11(b)(7) was intended to implement MARAD's long standing policy that one indicia of control to be considered is whether a Non-Citizen time charterer has the right to inspect the books of an owner or a bareboat charterer. Consequently, 356.11(b)(7) has been amended so that it restricts the right of a time charterer, and not all Non-Citizen minority shareholders, to examine the books of an owner, bareboat charterer, or time charterer.

Several commenters stated MARAD should not consider the use of the same legal representation, accounting firms, etc., as an indicia of control in § 356.11(b)(8). The commenters explained that many fishermen in Seattle use the same law firms, accounting firms, etc., because these firms have experience in the fishing industry and understand the idiosyncrasies of the fishing industry. We inadvertently failed to include the use of law firms and accounting firms by participants in the fishing industry and have so amended the provision. However, it is only one factor to be considered in the full context of each particular situation, and is not an absolute indicia of control.

Two commenters noted that the right to control a vessel's co-op allocation share is the practical equivalent of control over the vessel. One of the commenters pointed out that the owners of several fishing boats have sold or leased the pollock co-op share allocations corresponding to certain vessels for the year 2000 pollock season and, as a result, the vessels are tied up at the dock, not operating in any fishery. Both commenters explained that if the co-op share allocated to a vessel is sold or leased, the co-op share holder can prevent the vessel from participating in the pollock fishery for the next five years, which is the duration of the fishing allocation under subtitle II of the AFA. Accordingly, the commenters stressed that Non-Citizen ownership or control over a Fishing Vessel's fishing privileges, whether in the form of the sale or lease of co-op allocation shares or some other fishing privilege reserved exclusively for that vessel under any future fishery management regime, must be prohibited by MARAD's regulations as an impermissible transfer of control to a Non-Citizen. One commenter also suggested that such a transfer should be considered as the equivalent of a prohibited time or voyage charter of a Fishing Vessel. We received no other comments on this issue either at the NPRM or ANPRM stage. We agree with the commenters that control over a vessel's co-op share or fishing rights by a Non-Citizen is an element of control that should be considered; therefore, we have added a new § 356.11(b)(9) to include control over the fishing quota or fishing rights allocated to a vessel or vessel owner as an indicia of control to be considered.

One commenter stated that § 356.11(d) should indicate that MARAD will not seek to revoke a vessel's fishery endorsement or impose penalties for violation of the Non-Citizen control restrictions until the agency has notified the vessel owner of its concerns and sought to resolve the matter by agreement. The commenter argued that the rule should provide a process for working out any problems that the agency has with previously executed agreements and provide for a reasonable time for owners to cure the problem. The commenter believed that such an approach would ensure that owners do not seek advance rulings from MARAD in every case. In addition, the commenter asserted that the rules should include basic principles of due process and the right to an adjudicative hearing. The commenter suggested that the rule should state that a fishery endorsement will not become invalid for violation of the Non-Citizen ownership or control restrictions until formally revoked and that before MARAD can formally request that the Coast Guard revoke a fishery endorsement, it must give the owner written notice and an opportunity for a formal adjudicative hearing.

We agree with the commenter that prior to the imposition of penalties or the revocation of a vessel's fishery endorsement, we should attempt to notify the vessel owner and work out any problems, assuming no involvement of fraud. In fact, that is precisely the intent of § 356.11(d). To the extent possible and consistent with our long-standing practice in making citizenship determinations for other programs, we

intend to work through any issues related to citizenship determinations under the AFA. However, we do not agree that it is necessary to prescribe any additional process for working through such issues or to establish a formal adjudicative hearing process for such determinations.

Subpart C—Requirements for Vessels Owners

Section 356.13 Information Required To Be Submitted by Vessel Owners

A commenter recommended that MARAD should limit the documentation to be submitted in support of a citizenship determination to those documents and agreements involving transactions with Non-Citizens. Specifically, the commenter noted that § 356.13(a)(5) requires vessel owners to submit loan agreements and other financing documents applicable to a fishing industry vessel even when the loan is with a U.S.-Citizen Bank. We agree with the commenter and have amended § 356.13(a)(5) to require the submission of loan agreements and financing documents where the lender has not been approved by MARAD as a U.S. Citizen, except for standard loan agreements from Non-Citizen Lenders where the Non-Citizen Lender has been granted approval from the Citizenship Approval Officer pursuant to § 356.21 to enter into such standard loans without transactional approval from MARAD.

The commenter also noted that § 356.13(a)(6) applies to management agreements with both U.S. Citizens and Non-Citizens, and suggested that information related to management agreements should only be required where the agreement is with a Non-Citizen. We have amended § 356.13(a)(6) to clarify that information related to operating and management agreements is only required where the agreement is between the owner or bareboat charterer and an entity that has not been determined by MARAD to be a U.S. Citizen.

One commenter suggested that § 356.13(a)(7) should only require information on exclusive sales agreements where the agreement is with or for the benefit of a Non-Citizen as opposed to all exclusive sales agreements. We agree that information regarding agreements with U.S. Citizens should not be required. Therefore, we have amended § 356.13(a)(7) to state that copies of any sales, purchase, or marketing agreements that relate to the sale or purchase of all or a significant portion of a vessel's catch must only be submitted where the agreement is with an entity that has not been determined by MARAD to be a U.S. Citizen and the agreement contains provisions that could convey control to a Non-Citizen other than those provisions expressly authorized in § 356.43. For agreements that only contain the provisions expressly authorized in § 356.43, the owner or bareboat charterer is still required to identify the agreements and the parties to the agreement, but copies of the agreements are not required to be submitted.

The commenter also noted that §§ 356.13(a)(8) and (9) would require submission of stockholders' agreements, voting trust agreements, pooling agreements, proxy appointments, options to buy or sell stock or other comparable equity interests and agreements that restrict the sale of such stock or equity interests for the vessel owner and for any entity whose interest is being relied upon to establish 75% U.S. Citizen ownership, without regard to whether a Non-Citizen is a party to such agreements or receives any rights or benefits thereunder. The commenter stated that such information should only be required where the agreements or contracts are with a Non-Citizen or where a Non-Citizen receives rights or benefits. It is important for MARAD to be able to identify the true owners of an entity for which it is making a Citizenship determination. Accordingly, we disagree with the commenter's suggestion and will continue to require the information identified in §§ 356.13(a)(8) and (9).

The commenter suggested that § 356.13(a)(10) should only require documents relating to a merger, consolidation, liquidation, or dissolution of the vessel owner or any parent corporation where a Non-Citizen is involved in or affected by the transaction or will benefit from the transaction. We agree that where the parties involved have already been determined by MARAD to be U.S. Citizens the information required by § 356.13(a)(10) is not necessary. However, because the transactions identified in § 356.13(a)(10) involve significant changes to the ownership structure of an entity that can have major implications to its citizenship status, this information will continue to be required for parties that have not been deemed to be U.S. Citizens by MARAD.

As noted in the discussion under § 356.11(b), we agree with one commenter's suggestion that agreements to sell, lease, or otherwise transfer to a Non-Citizen a fishing quota, fishing right, processing quota, or any other right allocated to a vessel or vessel owner is an element that should be considered in determining whether impermissible control has been conveyed to a Non-Citizen. Accordingly, we have added a new § 356.13(a)(12) to require that such agreements or contracts be submitted to the Citizenship Approval Officer.

Section 356.15 Filing of Affidavit of U.S. Citizenship

We received a number of comments regarding the timing and ongoing availability of letter rulings. Several commenters requested that entities be allowed to request letter rulings under § 356.15 regarding their citizenship status as soon as the rules become final as opposed to being forced to wait until October 1, 2000. The commenters explained that delaying the time for accepting letter requests to October 1, 2000, has the effect of shortening the time period that Congress intended to give vessel owners, mortgagees, and others with a stake in the fishing industry to adjust to the new requirements. One commenter noted that in some cases, lenders have required that owners obtain their citizenship status by December 31, 2000. We agree with the commenters and have amended § 356.15(a) to indicate that we will begin accepting requests for letter rulings as soon as the final rules are published in the **Federal Register**. Parties can request an advance letter ruling up to June 1, 2001; however, owners will still be required to submit their citizenship information no later than June 1, 2001, to ensure that we have enough time to make a citizenship determination before the rules go into effect on October 1, 2001. In addition, the time period for submission of the required certification indicating that the information submitted in support of a letter ruling remains true and accurate has been amended to require submission of the certification between September 10, 2001 and September 20, 2001, in order to provide time for the Citizenship Approval Officer to review the certifications prior to October 1, 2001.

Several commenters requested that the rule expressly state that letter rulings will be available after October 1, 2001. We do not currently plan to issue letter rulings after October 1, 2001 because letter rulings necessarily involve hypothetical transactions and can absorb an inordinate amount of time and resources.

A couple of commenters stated that the 120-day time period in § 356.15(a) for MARAD to respond to a request for a letter ruling is too long. The commenters suggested shortening the time period to 60 days or 30 days after

the submission of any supplemental material, whichever is longer. We plan to respond to letter ruling requests as expeditiously as possible; however, we feel that given the uncertainty regarding the number of letter ruling requests that we may receive and the level of difficulty that each one will present, the 120-day time period is reasonable.

One commenter noted that § 356.15(c) requires vessel owners to submit an Affidavit and supporting documentation by June 1, 2001, so that MARAD can issue a citizenship determination by October 1, 2001; however, the rule is unclear as to whether the existing fishery endorsements will expire on October 1, 2001, thus requiring a new fishery endorsement to be obtained prior to October 1, 2001; whether existing fishery endorsements will be subject to revocation if the required affidavit and supporting documentation are not submitted; or whether the requirements of § 356.15(c) apply only to owners seeking new fishery endorsements on or after October 1, 2001. The commenter stated that if the intent of the rules is that all existing fishery endorsements will expire on October 1, 2001, unless MARAD reviews and approves them in advance, the rules should provide for adequate notice and an opportunity for a formal hearing before a vessel loses its fishery endorsement.

We agree with the commenter that the intent of § 356.15(c) should be clarified. We have added a new § 356.15(d) to make clear that a fishery endorsement for a vessel of 100 feet or greater in registered length will not be valid after October 1, 2001, unless the Citizenship Approval Officer has determined that the owner is eligible to own a vessel with a fishery endorsement. If the Citizenship Approval Officer determines that the owner is eligible to own a vessel with a fishery endorsement, the vessel's fishery endorsement will continue to be valid and will not be required to be renewed until its normal expiration. If the Citizenship Approval Officer determines that the owner is not eligible to own a vessel with a fishery endorsement, the endorsement will be deemed invalid as of October 1, 2001. In order to obtain a new fishery endorsement, the owner must demonstrate to the Citizenship Approval Officer that it is eligible to own a vessel with a fishery endorsement and apply to the Coast Guard for a new fishery endorsement.

The same commenter suggested that the rule should clearly state that MARAD will notify the owner of any defects in its Affidavit or related filings and give the owner an opportunity to cure the defect before any action is taken against the vessel's fishery endorsement. The commenter also stated that the rules should provide for adequate notice and an opportunity for a formal hearing before a vessel loses its fishery endorsement. We agree with the commenter that the rule should make clear that we will generally notify the applicant of any defects in its citizenship information and provide an opportunity to cure those defects. In fact, § 356.11(d) states that we will notify an owner if we have concerns regarding its citizenship status and that we will work with them to reach a satisfactory resolution, provided there is no verifiable evidence of fraud.

One commenter suggested that proposed § 356.15(d) should be clarified to indicate whether a "new owner" can document a vessel with a fishery endorsement (or operate it in the fisheries) before MARAD has made an affirmative determination that the new owner is eligible for a fishery endorsement. The commenter stated that if MARAD's involvement is required in every sale before an owner can operate the vessel, the purchase and sale of fishing vessels could be greatly complicated and delayed. According to the commenter, it would be a major mistake for MARAD to delay the purchase and transfer of every vessel. Given that most of these transactions take place between U.S. citizens with no foreign involvement, the commenter felt that it is likely that the cost of MARAD's involvement and the burdens placed on the industry will vastly exceed any benefits. Accordingly, the commenter urged that, at a minimum, MARAD provide for expedited approval of a fishery endorsement if the Citizenship Approval Officer has previously determined that a purchaser is eligible to own a vessel with a fishery endorsement and the purchaser certifies that no change has occurred since that determination was made or since the most recent filing of its Citizenship Affidavit. The commenter suggested that MARAD should be required to act within 15 days where the buyer has previously been approved by MARAD as a U.S. Citizen, and in all other cases there should be a deadline for action of 60 days. In addition, the commenter stated that MARAD should permit advance determinations to minimize disruptions of vessel sales.

We agree with the commenter that proposed § 356.15(d) (now § 356.15(e)) could be clarified to indicate that a vessel may not be documented with a fishery endorsement until the Citizenship Approval Officer has made a determination that the vessel owner is eligible to document a vessel with a fishery endorsement or operated in the fisheries of the United States until a fishery endorsement has in fact been issued by the Coast Guard. However, we do not agree that it will be necessary to provide for an expedited approval process where the vessel buyer has already been approved by the Citizenship Approval Officer as a Citizen of the United States. Such approvals should naturally be turned around very quickly if there are no significant changes. Similarly, we do not believe that it is necessary to create a deadline for action with regard to a sale that involves parties whose citizenship has not been previously reviewed by the Citizenship Approval Officer. We would expect to respond to these applications in a timely and expeditious manner; however, without knowing the parties involved or the particulars of each transaction and how complicated the citizenship analysis will be, we are reluctant to establish a deadline for action by the Citizenship Approval Officer at this time.

Section 356.17 Annual Requirements for Vessel Owners

One commenter stated that § 356.17 should clearly state that a vessel owner submitting its annual Affidavit need not include all the documentary material or information anticipated in its first submission if to do so would be repetitive of information already submitted to MARAD. We agree that the information should not have to be resubmitted unless the Citizenship Approval Officer requests copies of specific documents and have amended § 356.17 to incorporate the comment.

In order to simplify the renewal process and to coordinate better with the Coast Guard, we have decided on our own initiative to amend § 356.17(b) so that the date for the annual citizenship submission is tied to the renewal date for the vessel's documentation and fishery endorsement rather than the stockholder's meeting. Otherwise, owners would be forced to re-document each vessel so that the expiration of the fishery endorsement and the citizenship approval coincide. Owners of multiple vessels with different documentation dates are only required to file an Affidavit of U.S. Citizenship and supporting documentation in conjunction with the first vessel renewal during each calendar year. In order to avoid requiring an owner of multiple vessels to submit a separate Affidavit of U.S. Citizenship and supporting documentation in conjunction with the

annual renewal of the fishery endorsement for each vessel, the rule allows the owner to rely on the Affidavit of U.S. Citizenship and supporting documentation submitted with the first vessel that is subject to renewal in a given calendar year. For every other vessel for which the owner has to demonstrate that it is a Citizen eligible to own a vessel with a fishery endorsement, the owner must submit a certification to the Citizenship Approval Officer at least 45 days prior to the renewal date for the vessel's fishery endorsement stating that the Affidavit of U.S. Citizenship and supporting documentation already on file with Citizenship Approval Officer for the first renewal in that calendar year of a fishery endorsement for a vessel or 100 feet or greater in registered length continues to be true and accurate. Any information or supporting documentation unique to a particular vessel that would normally be required to be submitted under § 356.13 or any other provision of Part 356 such as charters, management agreements, loans or financing agreements, long-term agreements for the sale of a vessels catch, or exemptions claimed under the rule must be submitted with the annual filing for that vessel if the documents are not already on file with the Citizenship Approval Officer.

Subpart D—Mortgages

Section 356.19 Requirements To Hold a Preferred Mortgage

Several commenters noted that state or federally chartered financial institutions meeting the controlling interest requirements of section 2(b) of the 1916 Act are deemed eligible under section 202 of the AFA to hold a preferred mortgage on a Fishing Vessel. However, the commenters stated that this benefit, which is conferred upon state or federally chartered financial institutions through § 356.19, is vitiated by the definition of Non-Citizen in proposed § 356.3(n), which includes any entity that does not meet the 75% U.S. Citizen ownership and control standard, including a state or federally chartered financial institution that meets the controlling interest standard. The commenters recommended that either the definition section be amended or that § 356.19 be amended to state specifically that for purposes of Subpart D of the regulations these lenders are considered U.S. Citizens as though they met the 75% ownership standard. We agree with the commenters and have added a new subsection 356.3(g)(3) to clarify under the definition of "Controlling Interest" that a state or federally chartered financial institution is considered a Citizen of the United States for purposes of Subpart D of this Part for all purposes other than operation of the vessel pursuant to § 356.25. Similar language was also added to the definition of "Non-Citizen Lender" at § 356.3(p).

Section 356.21 General Approval for Non-Citizen Lender's Standard Loan or Mortgage Agreements

Several commenters suggested that § 356.21(a) should be clarified to make clear that general approval of loan documents is not limited to "financial institutions engaged in the business of financing fishing vessels." They contend that this language should only be descriptive and not limiting, otherwise, it could restrict sources of financing. The commenters recommended that pre-approval of loan documents be available to all Non-Citizen Lenders seeking to lend to the owner of a U.S. fishing industry vessel through a Mortgage Trustee. In addition, one of the commenters recommended that any Non-Citizen whose business includes making loans to vessel owners should be able to obtain prior approval.

The language used in § 356.21(a) is intended to be limiting and to apply to financial institutions that are engaged in the business of financing fishing vessels. We want to provide an avenue through the rule for financing institutions to get approval of their standard loan and mortgage packages to minimize the burden of the rule and to provide certainty for traditional financial institutions regarding the covenants that can be used. However, we are concerned about loans from other Non-Citizen entities that may have additional dealings with the vessel owner or bareboat charter that when considered together with the loan may result in excessive control by the Non-Citizen. Accordingly, we believe that it is necessary to examine the loan agreements between vessel owners and Non-Citizens other than financial institutions engaged in the business of financing fishing vessels on more of a case-by-case basis and that general approval of loan agreements should not be granted to other Non-Citizens.

A couple of commenters noted that § 356.21(e) imposes stiff penalties on owners as well as lenders when the lender strays from the pre-approved documents. In addition to the loss of the vessel's fishery endorsement, this subsection subjects lenders to civil and criminal penalties. The commenters suggest that the loss of economic value of the capital should be sufficient. The commenters felt that criminal liability resulting from some minor variance in the loan documents was excessive and that it would likely deter lenders from lending or encourage them to get every loan approved to avoid the potential liability. The commenters recommend that the civil and criminal penalties be deleted or that, at a minimum, the regulations set a materiality benchmark for variations.

The civil and criminal penalties included in § 356.21(e) were intended to discourage willful misconduct and material fraud and were not intended to result in overly harsh penalties for essentially harmless mistakes. We agree with the commenters that some measure of materiality would be an improvement to this subsection, and we have amended § 356.21(e) to indicate that the penalties apply where there has been material fraud or the lender has knowingly violated this subsection.

Section 356.23 Restrictive Loan Covenants Approved for Use by Non-Citizens

Although § 356.23 provides a general conceptual framework for restrictive loan covenants that would be permissible, several commenters noted that loan covenants may vary from one transaction to the next. Because it will be crucial during the final negotiations of a transaction to know whether covenants will pass muster, the commenters stated that it would be helpful for the rule to provide for a quick response time, such as 15 business days, to confirm that similar provisions fall within the general approval authority or are similarly approved. We understand the need for a quick response time during the final stages of negotiations and in response to questions related to the regulation in general, and we will endeavor to provide quick responses. However, without knowing how complicated the transactions or questions put forth to us will be or what the workload to implement these rules will be at any given point in time, we feel that we must evaluate each question on a case-by-case basis and that we can not include a set time frame in the regulation at this point.

One commenter noted that § 356.23(a) provides a list of approved covenants for use by a Non-Citizen Lender that is "unrelated" to the vessel owner. The commenter suggested that the term "unrelated" should be deleted so that the approved covenants could be used by related parties as well as unrelated parties or, at a minimum, that it should be defined so that owners do not have to seek prior approval for every loan where they may have some other

business dealing with the Non-Citizen Lender. In addition, the commenter stated that § 356.23 should provide that Non-Citizen Lenders who use the covenants approved in this section do not have to obtain prior MARAD approval before entering into the mortgage. As with § 356.45, the commenter suggested that the owner should only have to submit a description of the loan within 30 days.

We do not agree to the extension of approved covenants to related parties. The predicate of a list of approved restrictive loan covenants is that there are no other relationships between the lender and the vessel owner. The restrictive loan covenants in conjunction with other relationships between related parties may result in impermissible control. Therefore, we have not extended the coverage of approved covenants to related parties, and we have added a definition of "Related Parties" to § 356.3 to provide additional clarification.

Subpart E Mortgage Trustees

Section 356.27 Mortgage Trustee Requirements

Section 356.27(b)(6) contains a "catch all" requirement which states that Mortgage Trustees must "meet any other requirements prescribed by the Citizenship Approval Officer." Several commenters noted that while this is consistent with MARAD's discretion under the AFA, it creates continued uncertainty regarding the Mortgage Trustee requirements and could discourage potential Mortgage Trustees who may be considering engaging in the business. The commenters noted that MARAD always has the right to amend the rule at a later date if other conditions need to be included and, therefore, suggested that the "catch all" requirement of § 356.27(b)(6) be deleted in order to provide certainty regarding the Mortgage Trustee provisions. Although MARAD has the authority to promulgate a new regulation to respond to any unforeseen circumstances that could arise related to Mortgage Trustees, promulgating a new rule is a cumbersome, time consuming approach. We believe that the "catch all" requirement § 356.27(b)(6) provides a reasonable way to handle any unforeseen issues and that it would not serve as a significant deterrent to U.S-Citizen financial institutions to act as Mortgage Trustees.

A couple of commenters stated that they believed § 356.27(e) presents a problem by creating a conflict between the fiduciary duties that the Mortgage Trustee has to the Non-Citizen Lender and the requirement of the regulations that the Mortgage Trustee not assume any fiduciary duty in favor of a Non-Citizen Lender that is in conflict with the U.S. Citizen ownership and control provisions of the AFA. State and common law requirements subject trustees to a fiduciary duty in favor of the beneficiary—in this case, the Non-Citizen Lender. Therefore, the commenters suggest that a financial institution may be wary of litigation and unlikely to place itself in this conflict and face the possible civil and criminal penalties of § 356.27(g). The commenters recommend that MARAD modify the section to provide that a Mortgage Trustee that utilizes a trust agreement form that is pre-approved by MARAD will be deemed not to be in conflict with the U.S. Citizen ownership and control requirements. We agree with the commenter and have amended § 356.27(e) to provide for requests for pre-approval of trust documents to the Citizenship Approval Officer if the Mortgage Trustee desires additional assurance that the agreement is consistent with the requirements of Part 356 and the AFA.

Section 356.31 Maintenance of Mortgage Trustee Approval

A couple of commenters recommended that § 356.31 be amended to make clear that if a Mortgage Trustee loses its qualification and the Non-Citizen Lender is forced to find a new Mortgage Trustee, the preferred status of the mortgage will be preserved during the 30-day transition period. We agree with the comment and have amended § 356.31(c) to implement the commenters' suggestion.

Subpart F—Charters, Management Agreements, and Exclusive or Long-Term Contracts

Section 356.39 Charters

One commenter suggested that MARAD should not accept as a valid practice in the fishing industry so-called "service agreements," in which a contract is made between a party and a vessel owner to have certain services (for example delivery of 100 tons of pollock) performed without specifying which vessel or for what time period. The commenter stated that such agreements have been used in marine transportation to avoid charter limitations. Accordingly, the commenter suggested that MARAD should review all agreements involving Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels and Non-Citizens, to ensure that:

(1) The owner retains management and operation of the vessel, deciding when to fish, what species to catch, and where and when to deliver the catch;

(2) A Non-Citizen, whether a processor or another entity, may not hire the vessel for any period of time or for any voyage as such an arrangement would be a prohibited time or voyage charter. The commenter intimated that a foreign-owned processor, for example, could not contract with a fishing vessel for a season or for a year, since that would be the equivalent of a time charter; and

(3) A bareboat charter is indeed a bareboat charter and not a time charter.

The commenter stated that MARAD should examine all agreements to determine who has the right to hire the crew, who has the obligation to pay expenses and insurance, and who is liable to third parties. For a Fishing Vessel used to harvest fish, the commenter stated that if a Non-Citizen has any of these rights or obligations the agreement should be prohibited.

We agree with the commenter that provisions in various agreements must be regulated to limit the transfer of control over a vessel or vessel-owning entity to Non-Citizens. Accordingly, we feel that a well-grounded approach is to define provisions that are deemed acceptable and others that are deemed prohibited and to require a copy of the charters to be submitted to the Citizenship Approval Officer to ensure that time charters are indeed time charters and that impermissible control is not transferred to a Non-Citizen. However, we do not agree with the commenter that any agreement with a Non-Citizen processor, which for instance sets a delivery schedule for fish to be delivered for processing should be deemed a time charter and prohibited. Certain provisions will be necessary in any such agreements to allow parties to coordinate their operations without determining that coordination equates to control by a Non-Citizen. We discuss management agreements and long-term sales agreements in greater detail under § 356.41 and § 356.43 respectively.

One commenter stated that § 356.39(a)(1), which requires a bareboat charterer to submit an Affidavit of U.S. Citizenship to MARAD for review and approval prior to entering into such charter, is inconsistent with the requirements of the regulations unless MARAD plans to require pre-approval before the sale of each vessel. If so, the commenter suggested that MARAD should minimize the disruption of transactions by permitting a charterer to get an advance determination from the Citizenship Approval Officer that it is a

U.S. Citizen. The commenter also suggested that a vessel owner should be protected if it enters into a voyage or time charter with a person who has been determined by the Citizenship Approval Officer to be a U.S. Citizen. We intend to require approval of a bareboat charterer's citizenship before the parties may enter into the charter. However, an owner may enter into a bareboat charter without prior MARAD approval if the charterer has already been approved by the Citizenship Approval Officer as a U.S. Citizen. Accordingly, we would make a citizenship determination for an entity before it entered into a bareboat charter, minimizing the disruption to transactions between U.S. Citizens. In addition, the owner would be free to rely on the certification of the charterer that it was deemed by the Citizenship Approval Officer within the last year to be a U.S. Citizen where the owner did not otherwise have reason to know that the charterer no longer qualified as a U.S. Citizen.

One commenter noted that § 356.39(b)(1) contains typographical errors. The terms "Fishing Vessel" and "Fish Processing Vessel" should be plural and the words "including Fish Tender Vessels and Fish Processing Vessels" should be deleted. We agree and have made the technical corrections to § 356.39(b)(1).

The same commenter stated that § 356.39(b)(2) should not require prior approval by MARAD of time and voyage charters of Fish Processing and Fish Tender Vessels to charterers who are Non-Citizens. The commenter asserted that the differences between a bareboat charter and time charter are readily apparent and the penalty, loss of the fishery endorsement, is sufficiently severe to keep people honest. Accordingly, the commenter suggested that such charters should be allowed to be submitted to MARAD within 30 days of execution as in § 356.39(a)(2) for charters to U.S. Citizens.

We do not agree with the commenter that MARAD review of the time and voyage charters to Non-Citizens is unnecessary. In order to ensure that an owner has not entered into a prohibited charter with a Non-Citizen, we must know whether the parties to the charter are U.S. citizens and into what type of charter the parties have entered. Because any charter of a Fishing Vessel to a Non-Citizen for the purposes of harvesting fish is prohibited, we must confirm that all charterers of Fishing Vessels are U.S. Citizens. Accordingly, we have required in § 356.39(a)(2) that a charterer claiming to be a U.S. Citizen submit an Affidavit of U.S. Citizenship. However, in § 356.39(b)(2) we are authorizing time and voyage charters of Fish Processing Vessels and Fish Tender Vessels to Non-Citizens. Because a bareboat charterer steps into the shoes of the owner and is considered the owner *pro hac vice*, we believe that it is necessary to ensure that a charter with a Non-Citizen is indeed a time charter or voyage charter to ensure that such impermissible control is not transferred to a Non-Citizen. Therefore, we will continue to require the approval of time and voyage charters to Non-Citizens prior to their execution. As we gain more experience over time with the participants and charters in the fishing industry, we may revisit whether it is necessary to pre-approve time and voyage charters to Non-Citizens.

The commenter also noted that § 356.39(b)(2), which authorizes time or voyage charters to Non-Citizens of dedicated Fish Processing or Fish Tender Vessels, should be clarified to make clear that the vessel only needs to be "dedicated" as a fish harvesting or fish processing vessel during the period that it is on charter. The commenter stated that there is no policy reason for prohibiting a Fishing Vessel from being utilized as a Fish Tender Vessel or Fish Processing Vessel on a charter to a Non-Citizen when it is not being used as a Fishing Vessel. We agree that the ultimate use of the vessel should determine whether or not it can be chartered under a time or voyage charter to a Non-Citizen. However, we disagree with the commenter's suggestion to allow Fishing Vessels to be chartered to Non-Citizens for use as Fish Processing Vessels and Fish Tender Vessels when not being used to harvest fish because it would be too difficult to track and police time and voyage charters of Fishing Vessels to Non-Citizens. If an owner wishes to time charter or voyage charter a Fishing Vessel for use as a Fish Processing Vessels or Fish Tender Vessel in order to fully utilize its vessel, it still has the option of chartering to a U.S. Citizen.

One commenter suggested that § 356.39 should allow bareboat charters of Fish Tender Vessels or Fish Processing Vessels to Non-Citizens for operation outside of the United States. The commenter noted that this would be perfectly legal and, unlike Fishing Vessels for which there is a rationale to avoid operation outside of the United States, there is not a rationale for preventing what would be a logical use of the vessel outside of the United States. Furthermore, the commenter stated that there is no statutory authority to immediately invalidate the fishery endorsement of a Fish Tender Vessel or Fish Processing Vessel. We agree with the commenter that the same compelling reasons for limiting the use of Fishing Vessels outside of the United States do not exist for the charter of Fish Processing Vessels and Fish Tender Vessels. Accordingly, § 356.39(b)(1) has been amended to allow bareboat charters of Fish Processing Vessels or Fish Tender Vessels to Non-Citizens for use outside of the United States.

One commenter noted that the rule should make clear that a Non-Citizen time charterer of a Fish Processing Vessel may hire, supervise, manage and direct the processing workers employed in the processing operations of the vessel without rendering the charter a bareboat charter. The commenter urged that the term "crew" be defined as limited to navigational and deck crew where restrictions on Non-Citizen control of the vessel's crew are described. We agree with the commenter that the term "crew" is intended to apply to the navigational and deck crew. Personnel that are solely involved in processing the catch may be hired and managed by a Non-Citizen time charterer, provided that they are engaged solely in the processing of the vessel's catch and are in no way responsible for or authorized to control the navigation, fish harvesting activities, or general operation of the vessel.

Two commenters provided suggestions on § 356.39(d). One commenter suggested that the section is unnecessary and should be deleted because it is clear that a violation of the rules could lead to a loss of the fishery endorsement. The commenter did not believe that it was necessary to restate the penalty here while the rule is silent elsewhere. At a minimum, the commenter thought that the provision should be amended to indicate that the fishery endorsement will be lost only if the vessel is chartered to a Non-Citizen and used for harvesting fish. The commenter stated that loss of the fishery endorsement for a violation of this section for a reason other than using the vessel for harvesting fish goes beyond the requirements of the AFA. The second commenter did not oppose the specification in § 356.39(d) of the penalty for violating this section; however, the commenter thought it should provide for notice to the charterer if it was determined that there was a violation. We disagree with the first commenter's assertion that a loss of the fishery endorsement for a violation of the chartering restrictions goes beyond the scope of the AFA. If a charterer is deemed to have violated the chartering provisions, we would deem there to be an impermissible transfer of control to a Non-Citizen, which would

mean that the vessel owner is not eligible to own a vessel with a fishery endorsement. Accordingly, we do not plan to delete § 356.39(d) from the rule. However, we agree with the second commenter that the owner should be notified if the Citizenship Approval Officer determines that there has been a violation of § 356.39 and that the fishery endorsement is, therefore, being revoked.

Section 356.41 Management Agreements

Several commenters suggested that § 356.41(b) be amended to authorize quality control activities, management of fish processors and other non-navigational crew as elements of a management agreement with a Non-Citizen. Similarly, the commenters suggested that for time or voyage charters to Non-Citizens of Fish Processing Vessels and Fish Tender Vessels that are not used for harvesting fish, the Non-Citizen time charterer or voyage charterer should be permitted to hire, supervise, manage and direct the processing workers employed in the processing operations of the vessel without violating the Non-Citizen control provisions of the rule. The commenters noted that such quality control personnel are critical to maintain quality assurance of surimi and other processed products. Accordingly, the commenters urged that the term "crew" be defined as limited to navigational and deck crew and that the term "operation of the vessel" should be defined to exclude processing activities.

We agree with the commenters that control of employees who are engaged solely in the processing operations of a vessel, including quality control personnel, is distinguishable from control over crew responsible for the navigation and general operation of the vessel. Accordingly, we will not consider the term "crew" to include any employees who are engaged solely in the processing of the fish and who are in no way responsible for or authorized to control the navigation, fish harvesting activities, or general operation of the vessel.

Section 356.43 Long-Term or Exclusive Sales and/or Marketing Contracts

Several commenters stated that the AFA does not grant authority to MARAD to regulate long-term marketing arrangements or exclusive sales contracts of processed products. Even if MARAD did conclude that it had such authority, the commenters urged that the rule include elements of long-term sales contracts that are permissible and that reference to approval of long-term marketing arrangements be dropped. We agree with the commenters that the regulation of long-term marketing arrangements of a vessel's catch is unnecessarily broad and should be dropped from § 356.43. However, we do not agree that the requirement of section 203(c)(2) of the AFA that MARAD review contracts or agreements with Non-Citizens related to the sale of all, or substantially all, of the living marine resources harvested by a fishing vessel was intended to apply only to the sale of whole fish. Catcher/processors that sell all or substantially all of the living marine resources harvested by that vessel after performing some level of processing on the catch are still subject to control through such agreements by Non-Citizens. Accordingly, even if the living marine resources harvested by a vessel have been processed in some way, long-term contracts for the sale of those products that account for all or a significant portion of the vessel's catch are still covered by this regulation.

One of the commenters who supported the approval of long-term or exclusive sales agreements without prior approval elaborated on the above comment by pointing out that the provisions in the regulation focus on harvesting vessels delivering to shoreside processors and do not address factory trawlers. The commenter stated that factory trawler agreements include additional contractual elements such as species and product type, expected quantities to be purchased, quality standards, conditions for consignment, responsibility for various costs of sales, terms and methods of payments, shipping instructions, and the possible engagement of a buyer's representative or technician. However, the commenter did not provide specific suggestions regarding contractual provisions that should be approved and no other information relating to standard provisions for such agreements with factory trawlers was submitted. Therefore, the final rule has not been amended and any additional terms that are specific to agreements with factory trawlers will have to be approved by the Citizenship Approval Officer.

One commenter suggested that § 356.43(b)(8) should be revised to allow the Non-Citizen purchaser also to provide processing or quality control technicians. We agree with this comment, provided the quality control technician or processing technician does not have the ability to control navigation, operation, or harvesting activities of the vessel.

One commenter opposed our approach in § 356.43 and stated that the rule should not allow exclusive sales or marketing contracts for all or a significant portion of a vessel's catch without prior review and approval in any case involving a Non-Citizen. The commenter stated that, as proposed, the regulations would allow a Non-Citizen to enter into an arrangement with a Fishing Vessel that is indistinguishable from a prohibited time or voyage charter. For example, the commenter pointed out that § 356.43(a) would permit "the employment of certain vessels on an exclusive basis for a certain period of time," while § 356.43(b)(2) would permit the contract to specify the type of fish to be caught and the place at which the fish is to be delivered. The commenter stated that these provisions are identical to the requirements of a time or voyage charter and that the effort to "minimize disruptions to the fishing industry" should not be translated into loopholes to the express limitations of the AFA. Therefore, the commenter recommended that § 356.43 be revised to require that all contracts with a Non-Citizen for the sale of all or a significant portion of a Fishing Vessel's catch be submitted for approval prior to implementation, and that the rule prohibit any such contract if it permits the Non-Citizen to control the time, location, operation, or nature of the fishing activities.

We believe that a long-term sales contract is distinguishable from a charter of the vessel and that certain provisions related to the timing and scheduling of deliveries are a necessary requirement for any processor to conduct an efficient operation and to avoid bottlenecks. These contracts may specifically provide that the purchaser has the right of first refusal to purchase all or a certain portion of an owner's or bareboat charterer's catch and/or that the owner or charterer agrees to sell all production of its vessels or a portion of the production of its vessels to the processor at fair market value.

Section 356.45 Advance of Funds

One commenter suggested we make clear in § 356.45(a)(1) that it addresses both funds advanced for products prior to delivery of the product to the buyer and provisional payments for product already delivered for consignment sales, but not yet sold. We agree that an advance of funds should also be allowed for provisional payments from a Non-Citizen for product already delivered for consignment but not yet sold.

Several commenters stated that § 356.45(a)(1) should not restrict the

advancement of funds to working capital expenditures or restrict the use of funds in any way. Rather, the commenters suggested that MARAD should focus on permissible and prohibited security, collateral, and other obligations by the vessel owner to the Non-Citizen in exchange for the advancement. The commenters stated that the inquiry should be whether the advance of funds is for a bona fide need of the vessel or would otherwise improve the operation of the vessel or its access to fish. Further, the commenters explained that the decision is often artificial or uncertain regarding whether the funds are used for capitalized improvements, so this requirement does not further the purposes of the AFA. Therefore, the commenters suggested that no restriction should be placed on an unsecured, uncollateralized advancement of sales proceeds. The commenters stated that the use of an unsecured advancement of funds for capital improvements to a Fishing Vessel should not be deemed evidence of a transfer of control to a Non-Citizen.

Another commenter elaborated on the advancement of funds and noted that such loans from processors to vessel owners are common in the fishing industry. The commenter explained that often these loans from fish processors to vessel owners are necessary because the vessel owner does not have enough collateral to provide security for the loan. In almost every situation, there is no unencumbered security available, and the processor is asked to take a junior credit position. The borrower is generally required to commit to the delivery of fish to the processor on a right of first refusal basis for a period of time or at least until the loan has been paid off; and to grant security for the loan including a preferred ship mortgage in the vessel. According to the commenter, Non-Citizen owned processors would be placed at a competitive disadvantage if they could not make such loans or had to wait 30, 60, or 90 days for MARAD to approve a transaction.

Likewise, another commenter stated that the requirement in § 356.45(a)(5) that advances of funds not be secured with an interest in the vessel is not appropriate as such a requirement would disrupt the standard practice in the fishing industry. Moreover, the commenter pointed out that even if a Non-Citizen processor did not require a preferred mortgage, an advance of funds for the purpose of procuring goods or services for the vessel (*i.e.*, necessaries) likely gives rise to a lien on the vessel whether or not a mortgage is granted.

We agree with the commenters that an advancement of funds should not be limited on the basis of whether those funds are used for working capital or capitalized improvements to the vessel because dollars are not readily traceable. A more appropriate consideration is what type of security is granted for the loan. Accordingly, we have amended the rule by striking the requirement that an advance of funds from a Non-Citizen can only be used for working capital. Although we recognize that loans from Non-Citizen processors secured by a preferred mortgage on the vessel may have been widely utilized in the past, the parties that can hold a preferred mortgage on a vessel are specifically delineated in section 202 of the AFA. A Non-Citizen is specifically prohibited from holding a preferred mortgage on a vessel.

Several commenters requested that we clarify whether a Non-Citizen processor can obtain a preferred mortgage through a Mortgage Trustee as security for a loan to a vessel owner. We do believe that such a security interest in the vessel conveys too much control to a Non-Citizen when considered in conjunction with other leverage that it may have over a vessel owner or charterer through a long term sales contract. Therefore, advancements of funds from Non-Citizen processors will not be permitted where the security for the loan is a security interest in the vessel. If a Non-Citizen processor wishes to lend money to a vessel owner or charterer it may only do so if the loan is unsecured or if the security for the loan is based on a sales agreement for the sale of a percentage of the catch from the vessel owner's vessels.

One commenter stated that § 356.45(a)(3) should not prohibit an advance of funds on the basis of a sales agreement if the agreement provides "any right whatsoever to control the operation, management, and harvesting activities" of a vessel. Instead, it should permit an advance of funds on the basis of a sales agreement which contains the terms approved in proposed § 356.43(b). The commenter asserted that § 356.43(b) clearly contemplates some degree of control over the management and harvesting activities of a vessel by a Non-Citizen and that it does not make sense to authorize these terms in one section and negate their use in another. We agree with the commenter and have amended § 356.45 to clarify that the limitations on the ability of the Non-Citizen to control the operation and harvesting activities of the vessel are limited to those actions not explicitly authorized by § 356.43.

One commenter requested that § 356.45(a)(2) be clarified to indicate what is meant by "the annual value of the sales contract" or why such a standard makes sense as a limit for the amount of the advance. We have amended the rule to clarify that the "annual value of the sales contract" refers to the total sums paid by the processor under the supply contract.

A commenter noted that § 356.45(b) provides a safe harbor for loans that are not secured by a sales or marketing agreement. The commenter stated that the reference to a Non-Citizen Lender with a "U.S. branch" suggests that proposed § 356.45(b) was intended to provide a safe harbor for Non-Citizen financial institutions. However, the language of the section is not so limited and the commenter asserts that there is no reason why the provision should be limited to a financial institution with a U.S. branch. The commenter suggests that the practical result of excluding processors from the safe harbor provisions of § 356.43 and § 356.45 will be to require case-by-case approval of all financial arrangements between Non-Citizen processors and vessel owners. The commenter claims that this will severely burden such arrangements and leave vessel owners with few alternatives to obtain necessary financing for operating costs, repairs or capital improvements. Therefore, the commenter requests that "U.S. branch" be deleted from the provision to make clear that it is available to any Non-Citizen. We do intend to allow Non-Citizens other than financial institutions to enter into unsecured loans with vessel owners. However, the rule restricts the allowance of unsecured loans to a parties with a "U.S. branch" to assure that the foreign entity is subject to service of process in the United States.

Subpart G—Special Requirements for Certain Vessels

Section 356.47 Special Requirements for Large Vessels

There were only a few comments related to the special requirements for larger vessels contained in § 356.47. Two commenters requested that the rule be amended to state that for purposes of 46 U.S.C. 12102(c)(6)(A)(iii) a vessel exceeding the length, tonnage, and horsepower threshold cannot be rendered ineligible for a fishery endorsement by reason of the failure to file an application for a new fishery endorsement within 15 business days after an event causing the endorsement to become invalid unless the owner failed to file such an application after

having received written notice that the fishery endorsement was invalidated and a complete statement as to the grounds for such invalidation. The commenters noted that this concept was discussed in the preamble of the NPRM but was not actually included in the rule. We agree with the comment and have amended § 356.47 accordingly.

Another commenter claimed that the 15 business-day time period to respond to an invalidated endorsement is too short under any circumstances to respond. The commenter pointed out that senior personnel in the fishing industry are often away from their desks for extended periods of time during the fishing season, and notice of this kind could easily be overlooked, without fault of the company, for longer than 15 business-days. In addition, in cases where the invalidation of a fishery endorsement was due to an impermissible change in Non-Citizen ownership, or failure of a Non-Citizen owner or Mortgagee to qualify for or retain a treaty exemption, the proposed 15 business-day cure period is entirely too short and would result in a fire sale of the vessel. We understand the commenter's concern; however, the 15 business-day time period is a statutory requirement and MARAD does not have discretion to provide for a longer period of time.

One commenter stated that while the requirement in § 356.47(a)(3) that a vessel possess an engine or engines "capable of producing a total of more than 3,000 shaft horsepower" is consistent with the language of the statute, it is overly broad and could be misinterpreted. The commenter suggested that the intent of the statute was to limit the power of the vessel's propulsion engines, but that the term "shaft horsepower" does not necessarily refer to the output at the vessel's propeller shafts and could be interpreted to include all engines aboard the vessel including auxiliaries for hydraulics, electrical equipment, etc.

In addition, the commenter noted that use of the term "capable of" to describe the horsepower produced by the engines is overly broad as the term could refer to the maximum possible horsepower rating rather than the horsepower that the engine produces in its actual service rate. For example, the commenter noted that a Caterpillar 3516 marine diesel engine would be rated at 3,000 horsepower at 1,925 rpm for fast passenger vessels and patrol craft, but would only be rated at 1,200 horsepower at 900 rpm when "A" rated for continuous duty operation. Therefore, a new fishing vessel with two 3516's in continuous duty operation would have a combined output of 2,400 horsepower, well within the limits of the law and regulation. However, under the proposed regulation the vessel could be in interpreted as having engines "capable of producing a total of" 6,000 horsepower, nearly double the threshold of the regulations.

We agree with the commenter that the AFA was intended to limit the propulsion horsepower of the vessel's engines as they are rated for their intended use. Accordingly, we have amended § 356.47(a)(3) to clarify that rule applies to the rated horsepower and does not include other auxiliary engines.

Section 356.51 Exemptions for Specific Vessels

One commenter pointed out that there was a technical error in § 356.51(c) and that it should read that the NORTHERN VOYAGER and NORTHERN TRAVELER must be used in a fishery governed by the authority of either the New England Fishery Management Council or the Mid-Atlantic Fishery Council rather than a fishery other than one governed by one of these fishery councils. The technical correction was made to the final rule.

One commenter noted that pursuant to the newly enacted 46 U.S.C. 12102(c)(5), the new citizenship regime does not apply at all to some of the Western Pacific fisheries. The commenter stated that it expected the Coast Guard to implement two fishery endorsements, one applicable generally under the AFA and one limited to service in the relevant Pacific fisheries. The commenter suggested that the regulations deal with these vessels either in a scope provision that serves as a gloss on all of part 356, or at least at the places where phrases like "eligible for a fishery endorsement" or the like are used.

We recognize that these vessels are exempt from the new citizenship requirements and have already addressed this in the proposed rule. Section 356.51(e) (now section 356.51(d)) exempts Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels engaged in fisheries in the exclusive economic zone under the authority of the Western Pacific Fishery Management Council established under section 302(a)(1)(H) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1)(H)) from compliance with the new citizenship standards and Mortgagee requirements established by the AFA and part 356. In order to obtain a fishery endorsement, the vessel owner is still required to demonstrate in an Affidavit of U.S. Citizenship that it complies with the ownership and control requirements in effect prior to the passage of the AFA and to note on its Affidavit of U.S. Citizenship that it is claiming an exemption pursuant to this subpart, so that we can appropriately notify the Coast Guard if the vessel owner qualifies for a fishery endorsement.

Subpart H—International Agreements

Section 356.53 Conflicts With International Agreements

We received a number of comments related to section 356.53 and the process to exempt vessel owners and Mortgagees from the requirements of the rule where there is deemed to be a conflict between the requirements of the rule and an international agreement or treaty to which the United States is a party. Several commenters noted that they believed that there was indeed a conflict between the requirements of the AFA and the Treaty of Friendship, Commerce, and Navigation ("FCN") between the United States and Japan and the FCN between the United States and Korea. These commenters stated that harming Japanese interests violates the AFA's provisions requiring that MARAD "minimize disruptions to the commercial fishing industry, to the traditional financing arrangements of such industry, and to the opportunity to form fishery cooperatives."

The commenters noted that Article V of the U.S.-Japan FCN prohibits "unreasonable measures that would impair the legally acquired rights or interests" of Japanese nationals or companies. These commenters stated that the regulations and the AFA are in conflict with the U.S.-Japan FCN because the law fails to provide for "prompt payment and compensation" for what amounts to a taking. The commenters further explained that failure of the rule to address the treaty issue has placed relationships with Japanese owned entities in the fishing industry in unnecessary jeopardy and is likely to have a significant adverse economic effect on the U.S. fishing industry as this uncertainty may cause Japanese interests to sell rather than wait for the final rule or determination by MARAD.

Several commenters asserted that the final rule should acknowledge that the rules and the U.S.-Japan FCN are inconsistent and that it should state that any owner or Mortgagee that makes the required factual showing that it is covered by the U.S.-Japan FCN will be exempted from the final rule. The commenters also stated that the

proposed rule ignores the affirmative obligation of the United States to rule on the applicability of the U.S.-Japan FCN, and thus attempts to shift the burden to the Japanese investors and lenders to assert the conflict on an individual, case-by-case basis. The commenters stated that all Japanese companies would not be assured of an exemption from the requirements of the AFA due to the procedural review mechanism, which would require a private company to provide interpretations of the FCN, a matter which they asserted is the obligation of the U.S. Government.

In contrast, one commenter stated that a liberal interpretation of the investment treaties with Japan and Korea would eliminate the intended effect of the new ownership requirements in the nation's largest fishery. The commenter stated that Congress could not have intended such a result inasmuch as all of the treaties were given advice and consent of the Senate and were thus known to Congress. Nevertheless, the commenter pointed out that the Conference Report states that "[w]hile Congress does not believe that any of the requirements of the American Fisheries Act violate any international agreements relating to foreign investment to which the United States is a party, subsection [213](g) is included as a precaution." Furthermore, the commenter stated that the FCN treaties were general in nature and were negotiated for the purpose of granting most-favored-nation trading status to the other nations with respect to tariffs.

The commenter noted that the U.S. has consistently exempted vessel ownership statutes from multilateral agreements dealing with trade and investment. The final act establishing the World Trade Organization, signed on April 15, 1994, adopted a series of additional understandings, one of which made it clear that the new WTO provisions did not apply to national legislation restricting vessel ownership and use within a nation's territorial sea or exclusive economic zone. In addition, the commenter stated that the North American Free Trade Agreement (NAFTA) contains a reservation in Annex II dealing with water transportation which states that the U.S. reserved the right to adopt any new measure or maintain any existing measure covering investments, ownership, control and operation of vessels engaged in fishing in the U.S. territorial sea or exclusive economic zone. Among the statutes identified in the Act are the Commercial Fishing Industry Vessel Anti-Reflagging Act, which established majority U.S. ownership and control requirements for all fishing industry vessels. The commenter asserted that the United States clearly must have believed that it could apply existing and new requirements to nationals of Canada and Mexico.

In any event, the commenter noted that the Anti-Reflagging Act contained requirements that all fishing vessels be majority owned and controlled by U.S. Citizens. Even if the U.S.-Korea and U.S.-Japan FCN treaties are stretched to cover fishing industry investment, the commenter suggested that any investment made after January 11, 1988, must now comply with the majority ownership and control requirements implemented by the Anti-Reflagging Act, regardless of any previous grandfathering that may have applied to a specific vessel under section 7(b) of that Act. By repealing section 7(b) in 204 of the AFA, the commenter stated that Congress eliminated the exemption provided to vessels and clearly intended that all Non-Citizen investment in the U.S. fishing industry must meet the majority ownership requirements after January 11, 1988.

The final rule promulgates a process under which a vessel owner or Mortgagee may petition MARAD for a determination that there is a conflict between the requirements of the final rule and an international agreement and that the vessel owner or Mortgagee is therefore exempt from the requirements of the rule. We do not agree with the comments that it is an affirmative duty of the United States Government to pronounce its interpretation of the treaties in the rule or that it would be a hardship on private sector companies to advance an argument as to why they believe they should be exempt from the requirements of the rule. Therefore, we intend to maintain our process in the final rule for making determinations regarding the exemption of certain vessel owners and Mortgagees on the grounds that there is a conflict with an international agreement or treaty and the AFA as implemented in the rule.

Several commenters noted that the proposed rule implicitly invites submission of petitions any time after issuance of the rule in final form, but fails to state this explicitly. The commenters urged that the rule explicitly state that the petitions will be received as soon as the rule becomes final. We agree and have amended the final rule accordingly.

In addition, several commenters noted that there is no time schedule for review of petitions by MARAD. The commenters pointed out that a time frame is included for analogous situations in the rule, such as citizenship determinations under § 356.15(a) and suggested that we include a time frame for decision-making related to exemptions under § 356.53. The suggested time frames ranged from 45 days to120 days. The commenters stated that failure to provide a prompt response to an exemption petition will have the effect of a denial, since uncertainty can have the same adverse effect as a definitive requirement to divest. We agree with the commenters that a time frame for MARAD decision should be included in the rule, and we have amended § 356.53 to indicate that absent any extenuating circumstances, a decision will be rendered within 120 days of the receipt of a fully completed petition. After consulting with the federal agencies who have responsibility for interpreting investment treaties, we have concluded that under most circumstances we should be able to render a decision within the 120 day time frame. However, because we do not know how many petitions we may receive, how complicated the petitions will be, how many investment agreements we may be required to address simultaneously, or what other unforseen circumstances may be presented, it is possible that the work load at a given point in time or other extenuating circumstances could prevent us from rendering a decision within 120 days. We recognize the importance of obtaining a decision on a petition in a timely manner and of knowing when that decision will be rendered; therefore, if the Chief Counsel concludes that it will not be possible to render a decision within the 120 day time frame, the petitioner will be notified around the 90th day after the completed petition is received that a decision will not be rendered within 120 days. The Chief Counsel will advise the petitioner at the time of that notification of the date on which MARAD expects to render a decision.

Other commenters suggested that any petitions should be subject to publication in the **Federal Register** with an opportunity for the public to comment given the precedential value of these decisions. We agree with the commenters and have amended the rule to include a requirement that each application be noticed in the **Federal Register** with an opportunity for comment. The **Federal Register** notice will include the petitioner's description regarding how the AFA and Part 356 are in conflict with a particular investment treaty or agreement, but it will not include proprietary or confidential information about the petitioner. The Chief Counsel, in consultation with other departments and agencies within

the Federal Government that have responsibility or expertise related to the interpretation or application of international investment agreements (*e.g.*, the Department of State, United States Trade Representative, Department of Treasury, etc.), will review the petition and the public comments to determine whether the international agreement and the requirements of the AFA and Part 356 are in conflict.

Several commenters noted that information in §§ 356.53(b), (d), and (e) only addresses owners of vessels and would be either inappropriate or irrelevant for a foreign mortgagee. They pointed out that the rule does not describe the information that a foreign mortgagee must submit. We agree with the comments and have amended § 356.53(b), (d) and (e) to address the particular information that must be submitted by a Non-Citizen mortgagee. It should be noted that § 356.53(d) has been divided and the second part has been renumbered as § 356.53(e). Subsection (e) and (f) have been renumbered as (f) and (g) respectively.

A number of commenters stated that the rule should recognize that the owner of a vessel may be seeking an exemption from any of the control provisions of the AFA and should clearly state that an owner that is deemed to be exempt does not have to abide by the control provisions in its dealings with Non-Citizens since the owner is now outside the scope of the rule. The commenters stated that the rule should be clarified to anticipate petitions for exemption from the "control" provisions with respect to other types of business arrangements (such as exclusive sales contracts) incidental to a mortgage. Further, the commenters stated that the rule should make clear that anyone that has an ownership interest may utilize the petition process, *e.g.*, a minority shareholder with a direct or indirect interest. We agree with the commenters that a minority shareholder should be allowed to petition for an exemption.

One commenter offered a technical correction to § 356.53(d) of the NPRM, pointing out that the language should include a reference to a conflict with 46 U.S.C. 31322(a). We agree with the commenter and have amended § 356.53(d).

One commenter noted that § 356.53(d) should also include a statement that the pre-AFA documentation requirements included a prohibition on control by a foreign national. Those issues are not addressed in this rule and will be considered when acting on requests under § 356.53.

One commenter noted that the rule does not provide for an opportunity for comment or appeal if the agency rules against a petition for exemption. Accordingly, the new § 356.53(e) will allow for an appeal to the Maritime Administrator within 15 business-days of the issuance of a decision by the Chief Counsel.

Section 356.53(f)(2) of the NPRM states that an exemption under § 356.53 is terminated "if any ownership interest in [the owner of a fishing industry vessel] is transferred to or otherwise acquired by a Non-Citizen after [October 1, 2001]." Several commenters felt that it was clear from the AFA, and should be made explicit in the regulations, that the term "owner" in this provision relates only to the U.S. vessel-owning company and not to the mere change of one share of the foreign investor, which may be publicly traded. The commenters supported their argument by noting that the balance of stock shares of a Non-Citizen investor, which by definition is not relied upon for citizen ownership or control requirement, is of no concern under the AFA. The commenters recommend that the rule clarify that such an exemption-ending ownership change refers only to an equity shift in the U.S. vessel-owning company, not any parent foreign companies, which, for example, may be publicly traded on foreign markets.

We agree with the commenters and have made clear in § 356.53(g)(2) of the final rule that an ownership interest is deemed to be transferred under this subsection when there is a transfer of interest in the primary vessel-owning entity. The amendments further clarify that we will not consider a transfer of interest in the primary vessel-owning entity to take place where: (1) The primary vessel-owning entity is a publicly traded company and the transfer is of disparately held shares totaling less than 5% of the shares in that class; (2) the transfer is of shares in a parent company of the primary vessel-owning entity and the transfer does not result in a transfer of the parent company to another Non-Citizen; or (3) the transfer is pursuant to a divorce or death. However, an interest in a vessel owning entity that exceeds 5% of the shares in a class can not be sold to the same Non-Citizen through multiple transactions involving less than 5% of the shares of that class of stock in order to maintain the exemption for the vessel owner.

We made one additional change to § 356.53 on our own initiative to require that a petition for an exemption be filed with the Chief Counsel of the Maritime Administration as opposed to the Citizenship Approval Officer. References in § 356.53 to the Citizenship Approval Officer have therefore been changed to the Chief Counsel. In addition, we have clarified in § 356.53 that the Chief Counsel will make his decision in consultation with other departments and agencies within the Federal Government that have responsibility or expertise related to the interpretation or application of international investment agreements (*e.g.*, the Department of State, United States Trade Representative, Department of Treasury, *etc.*).

Subpart I—Review of Harvesting and Processing Compliance

Section 356.55 Review of Compliance With Harvesting and Processing Quotas.

One commenter noted that MARAD should suspend rulemaking under subpart I until the National Marine Fisheries Service ("NMFS") has promulgated a processing and excessive share regulation and should adopt whatever definition of "entity" is used in the fishery regulations. We determined that it is not necessary to suspend our rulemaking under Subpart I; however, we decided that a number of changes to § 356.55 are appropriate. Those changes include:

- Making the Chief Counsel of the Maritime Administration the appropriate official to make the necessary findings under § 356.55.
- Describing in § 356.55(b) the type of information that the Chief Counsel will request from the National Marine Fisheries Service or the North Pacific Fishery Management Council ("NPFMC").
- Clarifying in a new paragraph § 356.55(c) that any requests for information from the parties involved will be transmitted to the parties by the Chief Counsel through the Secretary of Commerce and/or the NPFMC.
- Redesignating paragraphs (c), (d), and (e) as (d), (e), and (f) respectively.
- Amending the newly designated paragraph (f) to clarify that it is within the Secretary of Commerce's discretion to determine either, on the basis of MARAD's finding or other evidence, if there is enough evidence to pursue an enforcement action for a violation of the harvesting or processing caps contained in § 210(e) of the AFA.
- Deleting former paragraph (f) relating to penalties. Penalties will be assessed by the National Oceanic and Atmospheric Administration.

Rulemaking Analysis and Notices

Executive Order 12866 (Regulatory Planning and Review)

This final rule is a significant regulatory action under section 3(f) of

Executive Order 12866 and was reviewed by the Office of Management and Budget. The rule is not economically significant under section 3(f)(1) of the Executive Order. The rule is significant under the Regulatory Policies and Procedures of the Department of Transportation, 44 FR 11034 (February 26, 1979), because of significant public and congressional interest.

This final rule establishes regulations pursuant to the AFA. The AFA raises the U.S. citizen ownership and control requirements for U.S.-flag Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels operating in U.S. waters from 51% to 75%. The AFA also eliminates exemptions for vessels that cannot meet current citizenship standards and phases out of operation many of the largest vessels. Section 203 of the AFA requires that we promulgate regulations that: (1) Prohibit impermissible transfers of ownership or control; (2) identify transactions that will require our prior approval; and (3) identify transactions that will not require our prior approval. To the extent practicable, the regulations are required to minimize disruptions to the commercial fishing industry, to the traditional financing arrangements of such industry, and to the formation of fishery cooperatives.

The new statutory requirement that 75% of the ownership and control of an entity owning a documented vessel of 100 feet or greater in registered length be vested in Citizens of the United States in order for the vessel to be eligible for a fishery endorsement is expected to impact a relatively small segment of the fishing industry. There are over 36,000 vessels that currently have a fishery endorsement. Based on information from the Coast Guard Vessel Documentation Center, we believe that fewer than 550 of these vessels are 100 feet or greater in registered length and thus subject to these final regulations. These approximately 550 vessels are owned by roughly 400 different entities. We estimate that less than 6% of the nearly 550 vessels are currently owned by entities that do not meet the 75% ownership requirement and that may be required to increase the level of United States Citizen participation in their ownership structure so as to comply with the requirements of the AFA.

The AFA also requires that 75% of the control over a vessel or vessel-owning entity be vested in Citizens of the United States. Therefore, owners that comply with the ownership requirements may still be affected by this rule if they have entered into contracts or agreements that would convey impermissible control to Non-Citizens. Agreements that convey impermissible control over a vessel or vessel-owning entity are prohibited by the AFA. However, we have attempted in this rulemaking to minimize the review of certain contracts and agreements so as not to interfere unduly with the operation of Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels.

Some lenders financing Fishing Vessels, Fish Processing Vessels, or Fish Tender Vessels could also be affected by this rule if they do not meet the requisite United States Citizenship requirements to hold a Preferred Mortgage on such vessels. A Non-Citizen Lender that does not qualify to hold a Preferred Mortgage on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel in its own right may receive a Preferred Mortgage through the use of an approved Mortgage Trustee that qualifies as a Citizen of the United States. It has been our experience that the use of a Mortgage Trustee imposes minimal cost and burden compared to the overall benefits of receiving a Preferred Mortgage or security for a loan. Therefore, while Non-Citizen Lenders may incur some cost associated with using a qualified Mortgage Trustee to hold the Preferred Mortgage, the burden will be minimal; Non-Citizen Lenders will not be prohibited from financing Fishing Vessels, Fish Processing Vessels, or Fish Tender Vessels; and, no more than minimal costs are likely to be passed on to vessel owners.

We do not have additional cost estimates regarding the total cost of the requirements of the statute or this rule because little cost information was submitted by the industry in response to the ANPRM and the NPRM and no one disputed the above assessment. The preliminary regulatory analysis reflects the comments that were received in response to the ANPRM and NPRM.

Discussion of Alternatives

The AFA specifically requires that we issue regulations that set out the requirements for owners of vessels to file, on an annual basis, a statement of citizenship setting forth all relevant facts regarding vessel ownership and control that are necessary to demonstrate compliance with 2(c) of the Shipping Act of 1916, 46 App. U.S.C. 802(c), and with 46 U.S.C. 12102(c). Section 203(b) of the AFA requires that the regulations conform, to the extent practicable, with our regulations establishing the form of citizenship affidavit set forth in 46 CFR part 355, as in effect on September 25, 1997. The form of the statement is also required to be written in a manner that will allow the owner of each vessel to satisfy any annual renewal requirements for a certificate of documentation. Section 203(c) requires transfers of ownership and control of vessels after October 1, 2001, to be rigorously scrutinized for violations of the ownership and control requirements, with particular attention given to leases, charters, mortgages, financing, contracts for the purchase over time of all or substantially all of a Fishing Vessel's catch, and other arrangements that may convey control over the management, sales, financing, or other operations of an entity. In contrast to the specific requirement of 203(c) that we rigorously scrutinize certain transactions, is the more general mandate of 203(b) that the regulations, to the extent practicable, minimize disruptions of the commercial fishing industry, to the traditional financing arrangements of such industry, and to the opportunity to form fishery cooperatives.

The Affidavit of U.S. Citizenship required for an entity owning a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel to provide evidence of United States citizenship is modeled after our existing regulations in 46 CFR part 355. We have considered various alternatives to implement the AFA and the impact of these alternatives on the regulated community and on small business entities in the fishing industry. Although the AFA grants broad authority to us to regulate transactions related to the ownership and control of Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels, we have attempted to promulgate requirements that pose the least possible burden on the regulated public, while still providing us with the information necessary to implement our responsibilities under the AFA.

We have also reviewed alternatives with respect to the approval and oversight of mortgages and Mortgage Trustees. While 203(c) of the AFA requires us to rigorously scrutinize mortgages and financing agreements, we do not believe that it will be necessary to require transactional approval of each financing and mortgage transaction. Accordingly, we propose to allow Non-Citizens who are in the business of financing vessels to obtain general approval of their standard loan agreement, provided that the standard loan covenants are acceptable to us. Section 356.21 allows a Non-Citizen Lender to get general approval for its standard loan documents if it does not include covenants that would convey

impermissible control to the Non-Citizen. Once a Non-Citizen Lender has received approval for its standard loan agreements, it may enter into loans for Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels without having to obtain the approval of the Citizenship Approval Officer for each loan agreement. The general approval should reduce the paperwork required for lenders and owners, provide certainty regarding the loan covenants that will be considered permissible, streamline the process for financing Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels, and increase the range of financing options for vessel owners, including small business entities.

A Non-Citizen Lender is required to use an approved Mortgage Trustee in order to hold a Preferred Mortgage on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel. As with the above general approval for Non-Citizen Lenders, a Mortgage Trustee may obtain approval from the Citizenship Approval Officer on an annual basis to act as a Mortgage Trustee and will not be required to obtain transactional approval. The Mortgage Trustee will be required simply to provide an annual certification in the form of an Affidavit of United States Citizenship to demonstrate that it is still a Citizen of the United States, a current copy of its Articles of Incorporation and Bylaws, a copy of its most recent published report of condition, and a list of the vessels and lenders for which it is acting as Mortgage Trustee. The freedom for Mortgage Trustees to enter into agreements without being required to get transactional approval will minimize the burden of using a Mortgage Trustee, will provide certainty for vessel owners and Non-Citizen Lenders regarding qualified Mortgage Trustees, and will simplify the process for owners to obtain financing from Non-Citizens.

With regard to long-term or exclusive contracts for the sale of all or a significant portion of a vessel's catch, we again considered requiring that these agreements be approved on a transactional basis. However, because we do not wish to impose requirements on owners of Fishing Vessels that will interfere with their ability to enter into such agreements in a timely manner, we have elected to authorize such standard agreements, provided that they do not convey impermissible control to a Non-Citizen. We have determined that certain standard provisions do not convey impermissible control to Non-Citizens and may be included in these agreements. The NPRM will thus permit owners and bareboat charterers of Fishing Vessels to enter into these agreements with Non-Citizens in a timely manner without imposing additional costs or time consuming regulatory requirements.

Finally, with respect to management agreements, rather than requiring approval of each agreement to determine whether there is an impermissible transfer of ownership or control over the vessel to a Non-Citizen, we opted to establish a set of criteria for such agreements and to generally approve certain management agreements, provided that they are for technical and administrative services and are advisory in nature.

Federalism

We analyzed this rulemaking in accordance with the principles and criteria contained in E.O. 13132 ("Federalism") and have determined that it does not have sufficient federalism implications to warrant consultation with State and local officials. The regulations have no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires us to consider whether our proposals will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). We believe that the cost of complying with these proposed regulations will be minimal. Therefore, MARAD certifies that this rule will not have a significant economic impact on a substantial number of small entities.

In our effort to determine whether there are a substantial number of small entities that may be affected by this rule, we issued an ANPRM entitled Eligibility of U.S.-Flag Vessels of 100 Feet or Greater to Obtain Fisheries Documents, 64 FR 24311 (May 6, 1999), and a NPRM entitled Eligibility of U.S.-Flag Vessels of 100 Feet or Greater in Registered Length To Obtain a Fishery Endorsement to the Vessel's Documentation, 65 FR 646 (January 5, 2000) and requested input from the public regarding the potential economic impact of the new citizenship and control requirements of the AFA. We specifically requested information regarding: (1) Any unique issues within the fishing industry regarding the ownership, operation, management, control, financing, or mortgaging of Fishing Vessels; and (2) costs relating to the new citizenship and control requirements that would likely be incurred by vessel owners, operators, lending institutions, Mortgagees, and other participants in the fishing industry. We conducted five public meetings during the 60-day comment period for the ANPRM and three public meetings during the 45-day comment period for the NPRM to obtain oral and written comments from the public. Although the comments in response to the ANPRM and the NPRM provided us with some valuable information, we only received four comments from entities that identified themselves as small entities, and we did not receive specific information regarding the economic impact on small entities that may result from this rulemaking.

This rulemaking may reasonably be expected to affect small businesses or entities that currently own documented Fishing Vessels, Fish Processing Vessels, or Fish Tender Vessels, that have financed such vessels, or that are engaging in the fisheries of the United States with such vessels. The Small Business Administration defines businesses within the fishing industry that have annual receipts of $3 million or less as small businesses, 13 CFR 121.201. While we recognize that a number of vessel owners may be classified under the Small Business Administration regulations as small entities, we have not received any comments indicating that the rulemaking will have a significant economic impact on small entities. We estimate that of the nearly 33,000 vessels that have a fishery endorsement, fewer than 550 are 100 feet or greater in registered length and thus subject to this final rule. We further estimate that there are approximately 400 vessel owners within this group of 550. Only one commenter responded to the NPRM that several of its members who are subject to the rule would be classified as small businesses; however, the commenter did not provide a specific number of small entities that would be subject to the rule or argue that the rule would result in a significant economic impact on a substantial number of small entities.

We estimate that less than 6 percent of the 550 vessels potentially subject to this final rule have less than the 75% United States Citizen ownership required by the AFA. It is possible that some of these vessel owners, who otherwise meet the 75% United States Citizen ownership requirement may still be affected by the proposed rule if the

vessel is mortgaged to a financial institution that does not qualify to hold a Preferred Mortgage on the vessel or if the owner does not meet the requirement that control over 75% of the interest in the entity owning the vessel be vested in Citizens of the United States. However, even if the mortgage on the vessel is held by a financial institution that does not qualify, the financial institution will still be able to secure a Preferred Mortgage on the vessel through the use of an approved Mortgage Trustee. Based on our 30 years of experience using Mortgage Trustees in other programs, we have concluded that the use of a Mortgage Trustee imposes minimal cost and burden compared to the overall benefit of receiving a Preferred Mortgage as security for a loan. The use of a Mortgage Trustee will allow the Non-Citizen Lender to continue to receive a First Preferred Mortgage on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel. Therefore, the new citizenship requirements for Mortgagees are expected to have minimal economic impact.

In our regulatory analysis, we considered a variety of alternatives in order to find ways to minimize the regulatory burden on the affected public, specifically on small business entities, and to foster the ability of vessel owners to obtain financing for their vessels. A discussion of these alternatives is contained under the above section marked "Executive Order 12866 (Regulatory Planning and Review)".

Environmental Impact Statement

We have analyzed this rule for purposes of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and have concluded that under the categorical exclusions provision in section 4.05 of Maritime Administrative Order 600–1, "Procedures for Considering Environmental Impacts," 50 FR 11606 (March 22, 1985), the preparation of an Environmental Assessment, and an Environmental Impact Statement, or a Finding of No Significant Impact for this rulemaking is not required. This rulemaking involves administrative and procedural regulations that clearly have no environmental impact.

Paperwork Reduction Act

This rulemaking establishes a new requirement for the collection of information. The Office of Management and Budget ("OMB") has reviewed and approved the information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) and assigned OMB control number 2133–0530. Comments received on this information collection are discussed in the "Comments on the Proposed Rule" section of this notice of final rule.

Unfunded Mandates Reform Act of 1995

This final rule will not impose an unfunded mandate under the Unfunded Mandates Reform Act of 1995. It will not result in costs of $100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector. This proposed rule is the least burdensome alternative that achieves the objective of the rule.

Regulation Identifier Number

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

List of Subjects in 46 CFR Part 356

Citizenship and naturalization, Fishery endorsement, Fishing vessels, Mortgages, Mortgage trustee, Penalties, Preferred mortgages, Reporting and recordkeeping requirements, Vessels.

Accordingly, we are adding a new 46 CFR part 356 to read as follows:

PART 356—REQUIREMENTS FOR VESSELS OF 100 FEET OR GREATER IN REGISTERED LENGTH TO OBTAIN A FISHERY ENDORSEMENT TO THE VESSEL'S DOCUMENTATION

Subpart A—General Provisions

Sec.
356.1 Purpose.
356.3 Definitions.

Subpart B—Ownership and Control

356.5 Affidavit of U.S. Citizenship.
356.7 Methods of establishing ownership by United States Citizens.
356.9 Tiered ownership structures.
356.11 Impermissible control by a Non-Citizen.

Subpart C—Requirements for Vessel Owners

356.13 Information required to be submitted by vessel owners.
356.15 Filing of affidavit of U.S. Citizenship.
356.17 Annual requirements for vessel owners.

Subpart D—Mortgages

356.19 Requirements to hold a Preferred Mortgage.
356.21 General approval of Non-Citizen Lender's standard loan or mortgage agreements.
356.23 Restrictive loan covenants approved for use by Non-Citizen Lenders.
356.25 Operation of Fishing Vessels, Fish Processing Vessels, or Fish Tender Vessels by Mortgagees.

Subpart E—Mortgage Trustees

356.27 Mortgage Trustee requirements.
356.31 Maintenance of Mortgage Trustee approval.
356.37 Operation of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel by a Mortgage Trustee.

Subpart F—Charters, Management Agreements and Exclusive or Long-Term Contracts

356.39 Charters.
356.41 Management agreements.
356.43 Long-term or exclusive sales contracts.
356.45 Advance of funds.

Subpart G—Special Requirements for Certain Vessels

356.47 Special requirements for large vessels.
356.49 Penalties.
356.51 Exemptions for specific vessels.

Subpart H—International Agreements

356.53 Conflicts with international agreements.

Subpart I—Review of Harvesting and Processing Compliance

356.55 Review of compliance with harvesting and processing quotas.

Authority: 46 App. U.S.C. 12102; Pub. L. 105–277, Division C, Title II, Subtitle I, section 203 (46 App. U.S.C. 12102 note), section 210(e), and section 213(g), 112 Stat. 2681; 46 CFR 1.66.

Subpart A—General Provisions

§ 356.1 Purpose.

(a) Part 356 implements the U.S. Citizenship requirements of the American Fisheries Act of 1998, as amended, Title II, Division C, Public Law 105–277, for owners, Mortgage Trustees, and Mortgagees of vessels of 100 feet or greater in registered length that have a fishery endorsement to the vessel's documentation or where a fishery endorsement to the vessel's documentation is being sought. This part also addresses ancillary matters of charters, management agreements, exclusive sales or marketing contracts, conflicts with international agreements, determinations regarding violations of harvesting or processing limits, and exceptions for certain vessels, vessel owners and Mortgagees from the general requirements of the rule.

(b) An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB

control number. Part 356 establishes a new requirement for the collection of information. The Office of Management and Budget ("OMB") has reviewed and approved the information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) and assigned OMB control number 2133–0530 to the information collection requirements of this part 356.

§ 356.3 Definitions.

For the purpose of this part, when used in capitalized form:

(a) *1916 Act* refers to section 2 of the Shipping Act, 1916, as amended, 46 App. U.S.C. 802. The Controlling Interest requirements of the Shipping Act are found in section 2(b), 46 App. U.S.C. section 802(b). The citizenship requirements for eligibility to own a vessel with a fisheries endorsement are found in section 2(c), 46 App. U.S.C. 802(c), and 46 U.S.C. 12102(c).

(b) *AFA* means the American Fisheries Act of 1998, as amended, Title II, Division C, of Public Law 105–277;

(c) *Affiliate or Affiliated* refers to a Person that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the first Person. For the purposes of this definition the term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of a Person, whether through the ownership of voting securities, by contract, as trustee or executor, or otherwise.

(d) *Charter* means any agreement or commitment by which the possession or services of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel are secured for a period of time, or for one or more voyages, whether or not a bareboat charter of the vessel. A long-term or exclusive contract for the sale of all or a portion of a Fishing Vessel's catch is not considered a Charter.

(e) *Citizen of the United States, Citizen or U.S. Citizen:*

(1) Means an individual who is a Citizen of the United States, by birth, naturalization or as otherwise authorized by law, or an entity that in both form and substance, at each tier of ownership and in the aggregate, satisfies the requirements of 46 U.S.C. 12102(c) and section 2(c) of the 1916 Act, 46 App. U.S.C. 802(c). In order to satisfy the statutory requirements an entity other than an individual must meet the requirements of paragraph (e)(2) of this section and the following criteria:

(i) The entity must be organized under the laws of the United States or of a State;

(ii) Seventy five percent (75%) of the ownership and control in the entity must be owned by and vested in Citizens of the United States free from any trust or fiduciary obligation in favor of any Non-Citizen;

(iii) No arrangement may exist, whether through contract or any understanding, that would allow more than 25% of the voting power of the entity to be exercised, directly or indirectly, in behalf of any Non-Citizen; and

(iv) Control of the entity, by any other means whatsoever, may not be conferred upon or permitted to be exercised by a Non-Citizen.

(2) Other criteria that must be met by entities other than individuals include:

(i) In the case of a corporation:

(A) The chief executive officer, by whatever title, and chairman of the board of directors and all officers authorized to act in the absence or disability of such persons must be Citizens of the United States; and

(B) No more of its directors than a minority of the number necessary to constitute a quorum are Non-Citizens;

(ii) In the case of a partnership all general partners are Citizens of the United States;

(iii) In the case of an association:

(A) All of the members are Citizens of the United States;

(B) The chief executive officer, by whatever title, and the chairman of the board of directors (or equivalent committee or body) and all officers authorized to act in their absence or disability are Citizens of the United States; and,

(C) No more than a minority of the number of its directors, or equivalent, necessary to constitute a quorum are Non-Citizens;

(iv) In the case of a joint venture:

(A) It is not determined by the Citizenship Approval Officer to be in effect an association or a partnership; and

(B) Each co-venturer is a Citizen of the United States;

(v) In the case of a Trust that owns a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel:

(A) The Trust is domiciled in the United States or a State;

(B) The Trustee is a Citizen of the United States; and

(C) All beneficiaries of the trust are persons eligible to document vessels pursuant to the requirements of 46 U.S.C. 12102;

(vi) In the case of a mortgage Trust:

(A) The Trust is domiciled in the United States or a State;

(B) The Mortgage Trustee is a Citizen of the United States; and

(C) The Mortgage Trustee is authorized to act on behalf of Non-Citizen beneficiaries pursuant to § 356.5.

(vii) In the case of a Limited Liability Company (LLC) that is not found to be in effect a general partnership requiring all of the general partners to be Citizens of the United States:

(A) Any Person elected to manage the LLC or who is authorized to bind the LLC, and any Person who holds a position equivalent to a Chief Executive Officer, by whatever title, and the Chairman of the Board of Directors in a corporation are Citizens of the United States; and

(B) Non-Citizens do not have authority within a management group, whether through veto power, combined voting, or otherwise, to exercise control over the LLC.

(f) *Citizenship Approval Officer* means MARAD's Citizenship Approval Officer within the Office of Chief Counsel. The Citizenship Approval Officer's address is: Maritime Administration, United States Department of Transportation, Citizenship Approval Officer, MAR–220, Room 7232, 400 7th Street, SW., Washington, DC 20590.

(g) *Controlling Interest:*

(1) Means, in the context of an entity, that in both form and substance, at each tier of ownership and in the aggregate, the entity satisfies the controlling interest requirements of section 2(b) of the 1916 Act, 46 App. U.S.C. 802(b). In order to satisfy the statutory requirements, an entity other than an individual must meet the requirements of paragraph (g)(2) of this section and the following criteria:

(i) The entity must be organized under the laws of the United States or of a State;

(ii) A majority of the ownership and control in the entity must be owned by and vested in Citizens of the United States free from any trust or fiduciary obligation in favor of any Non-Citizen;

(iii) No arrangement may exist, whether through contract or any understanding, that would allow a majority of the voting power of the entity to be exercised, directly or indirectly, in behalf of any Non-Citizen; and

(iv) Control of the entity, by any other means whatsoever, may not be conferred upon or permitted to be exercised by a Non-Citizen.

(2) Other criteria that must be met by entities other than an individual include:

(i) In the case of a corporation:

(A) The Chief Executive Officer, by whatever title, and the Chairman of the Board of Directors (or equivalent committee or body) and all officers authorized to act in their absence or disability are Citizens of the United States; and,

(B) No more than a minority of the number of its directors, or equivalent, necessary to constitute a quorum are Non-Citizens;

(ii) In the case of a partnership all general partners are Citizens of the United States;

(iii) In the case of an association:

(A) The Chief Executive Officer, by whatever title, and the Chairman of the Board of Directors (or equivalent committee or body) and all officers authorized to act in their absence or disability are Citizens of the United States; and,

(B) No more than a minority of the number of its directors, or equivalent, necessary to constitute a quorum are Non-Citizens;

(iv) In the case of a joint venture:

(A) It is not determined by the Citizenship Approval Officer to be in effect an association or partnership; and

(B) A majority of the equity is owned by and vested in Citizens of the United States free and clear of any trust or fiduciary obligation in favor of any Non-Citizen;

(v) In the case of a mortgage trust:

(A) The Trust is domiciled in the United States or a State;

(B) The Mortgage Trustee is a Citizen of the United States;

(C) The Mortgage Trustee is authorized to act on behalf of Non-Citizen beneficiaries pursuant to § 356.5;

(vi) In the case of a Limited Liability Company (LLC) that is not found to be in effect a general partnership requiring all of the general partners to be Citizens of the United States:

(A) Any Person elected to manage the LLC or who is authorized to bind the LLC, and any Person who holds a position equivalent to the Chief Executive Officer, by whatever title, and the Chairman of the Board of Directors in a corporation and any Persons authorized to act in their absence are Citizens of the United States; and,

(B) Non-Citizens do not have authority within a management group, whether through veto power, combined voting, or otherwise, to exercise control over the LLC;

(3) A state or federally chartered financial institution that meets the Controlling Interest requirements of paragraphs (g)(1) and (2) of this section is deemed to be a Citizen of the United States for all purposes under subpart D of this part other than operation of the vessel pursuant to § 356.25.

(h) *Fishing Vessel* means a vessel of 100 feet or greater in registered length that has or for which the owner is seeking a fishery endorsement to the vessel's documentation and that commercially engages in the planting, cultivating, catching, taking, or harvesting of fish, shellfish, marine animals, pearls, shells, or marine vegetation or an activity that can reasonably be expected to result in the planting, cultivating, catching, taking, or harvesting of fish, shellfish, marine animals, pearls, shells, or marine vegetation;

(i) *Fish Processing Vessel* means a vessel of 100 feet or greater in registered length that has or for which the owner is seeking a fishery endorsement to the vessel's documentation and that commercially prepares fish or fish products other than by gutting, decapitating, gilling, skinning, shucking, icing, freezing, or brine chilling;

(j) *Fish Tender Vessel* means a vessel of 100 feet or greater in registered length that has or for which the owner is seeking a fishery endorsement to the vessel's documentation and that commercially supplies, stores, refrigerates, or transports (except in foreign commerce) fish, fish products, or materials directly related to fishing or the preparation of fish to or from a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel or a fish processing facility;

(k) *Harvest* means to commercially engage in the catching, taking, or harvesting of fish or fishery resources or any activity that can reasonably be expected to result in the catching, taking or harvesting of fish or fishery resources;

(l) *MARAD* means the Maritime Administration within the United States Department of Transportation. The terms "we, our, and us" may also be used to refer to the Maritime Administration;

(m) *Mortgagee* means a Person to whom a Fishing Vessel or other property is mortgaged. (*See* the definition of Non-Citizen Lender and Preferred Mortgage in this section)

(n) *Mortgage Trustee,* for purposes of holding a Preferred Mortgage on a Fishing Vessel, means a corporation that:

(1) Is organized and doing business under the laws of the United States or of a State;

(2) Is a Citizen of the United States;

(3) Is authorized under those laws to exercise corporate trust powers;

(4) Is subject to supervision or examination by an official of the United States Government, or of a State;

(5) Has a combined capital and surplus (as stated in its most recent published report of condition) of at least $3,000,000; and

(6) Meets any other requirements prescribed by the Citizenship Approval Officer.

(o) *Non-Citizen* means a Person who is not a Citizen of the United States within the meaning of paragraph (d) of this section, 46 U.S.C. 12102(c) and section 2(c) of the 1916 Act, 46 App. U.S.C. 802(c).

(p) *Non-Citizen Lender* means a lender that does not qualify as a Citizen of the United States. A state or federally chartered financial institution that meets the requirements of § 356.3(g) is considered a Citizen of the United States for all purposes of subpart D of this part other than operation of the vessel pursuant to § 356.25.

(q) *Person* includes an individual, corporation, partnership, joint venture, association, limited liability company, Trust, and other entities existing under or authorized by the laws of the United States or of a State or, unless the context indicates otherwise, of any foreign country.

(r) *Preferred Mortgage* means a mortgage on a Fishing Vessel that has as the Mortgagee:

(1) A person eligible to own a vessel with a fishery endorsement under 46 U.S.C. 12102(c);

(2) A state or federally chartered financial institution that satisfies the Controlling Interest criteria of section 2(b) of the 1916 Act (46 App. U.S.C. 802(b)) and paragraph (f) of this section; or

(3) A person that complies with the provisions of 46 U.S.C. 12102(c)(4).

(s) *Related Party* means a holding company, subsidiary, affiliate, or associate of a Non-Citizen or an officer, director, agent, or other executive of the Non-Citizen or of a holding company, subsidiary, affiliate or associate thereof.

(t) *State* means a State of the United States, Guam, Puerto Rico, the Virgin Islands, American Samoa, the District of Columbia, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States.

(u) *Submitted* means sent by mail and postmarked on that date, or sent by another delivery service or by electronic means, including E-mail and facsimile, and marked with an indication of the date equivalent to a postmark;

(v) *Trust* means:

(1) In the case of ownership of a Fishing Vessel, Fish Processing Vessel,

or Fish Tender Vessel, a trust that is domiciled in and existing under the laws of the United States or of a State, of which the Trustee is a Citizen of the United States, and 100% of the interest in the Trust is held for the benefit of a Citizen of the United States; or

(2) In the case of a mortgage trust, a trust that is domiciled in and existing under the laws of the United States, or of a State, of which the Mortgage Trustee is a Citizen of the United States and for which the Mortgage Trustee is authorized to act on behalf of Non-Citizen beneficiaries pursuant to §§ 356.27 through 356.37.

(w) *United States,* when used in the geographic sense, means the States of the United States, Guam, Puerto Rico, the Virgin Islands, American Samoa, the District of Columbia, and any other territory or possession of the United States; when used in other than the geographic sense, it means the United States Government.

(x) *United States Government* means the Federal Government acting by or through any of its departments or agencies.

Subpart B—Ownership and Control

§ 356.5 Affidavit of U.S. Citizenship.

(a) In order to establish that a corporation or other entity is a Citizen of the United States within the meaning of section 2(c) of the 1916 Act, or where applicable, section 2(b) of the 1916 Act, the form of Affidavit is hereby prescribed for execution in behalf of the owner, charterer, Mortgagee, or Mortgage Trustee of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel. Such Affidavit must include information required of parent corporations and other stockholders whose stock ownership is being relied upon to establish that the requisite ownership in the entity is owned by and vested in Citizens of the United States. A certified copy of the Articles of Incorporation and Bylaws, or comparable corporate documents, must be submitted along with the executed Affidavit.

(b) This Affidavit form set forth in paragraph (d) of this section may be modified to conform to the requirements of vessel owners, Mortgagees, or Mortgage Trustees in various forms such as partnerships, limited liability companies, etc. A copy of an Affidavit of U.S. Citizenship modified appropriately, for limited liability companies, partnerships (limited and general), and other entities is available on MARAD's internet home page at http://www.marad.dot.gov.

(c) As indicated in § 356.17, in order to renew annually the fishery endorsement on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel, the owner must submit annually to the Citizenship Approval Officer evidence of U.S. Citizenship within the meaning of section 2(c) of the 1916 Act and 46 App. U.S.C. 12102(c).

(d) The prescribed form of the Affidavit of U.S. Citizenship is as follows:

State of _____ County of _____ Social Security Number: _____

I, _____, (Name) of _____, (Residence address) being duly sworn, depose and say:

1. That I am the _____ (Title of office(s) held) of _____, (Name of corporation) a corporation organized and existing under the laws of the State of _____ (hereinafter called the "Corporation"), with offices at _____, (Business address) in evidence of which incorporation a certified copy of the Articles or Certificate of Incorporation (or Association) is filed herewith (or has been filed) together with a certified copy of the corporate Bylaws. [Evidence of continuing U.S. citizenship status, including amendments to said Articles or Certificate and Bylaws, should be filed within 45 days of the annual documentation renewal date for vessel owners. Other parties required to provide evidence of U.S. citizenship status must file within 30 days after the annual meeting of the stockholders or annually, within 30 days after the original affidavit if there has been no meeting of the stockholders prior to that time.];

2. That I am authorized by and in behalf of the Corporation to execute and deliver this Affidavit of U.S. Citizenship;

3. That the names of the Chief Executive Officer, by whatever title, the Chairman of the Board of Directors, all Vice Presidents or other individuals who are authorized to act in the absence or disability of the Chief Executive Officer or Chairman of the Board of Directors, and the Directors of the Corporation are as follows: [1]

_____

Name Title Date and Place of Birth

_____

_____

(The foregoing list should include the officers, whether or not they are also directors, and all directors, whether or not they are also officers.) Each of said individuals is a Citizen of the United States by virtue of birth in the United States, birth abroad of U.S. citizen parents, by naturalization, by naturalization during minority through the naturalization of a parent, by marriage (if a woman) to a U.S. citizen prior to September 22, 1922, or as otherwise authorized by law, except (give name and nationality of all Non-Citizen officers and directors, if any). The By-laws of the Corporation provide that _____ (Number) of the directors are necessary to constitute a quorum; therefore, the Non-Citizen directors named represent no more than a minority of the number necessary to constitute a quorum.

4. Information as to stock, where Corporation has 30 or more stockholders:[2].

_____

That I have access to the stock books and records of the Corporation; that said stock books and records have been examined and disclose (a) that, as of _____, (Date) the Corporation had issued and outstanding _____ (Number) shares of _____, (Class) the only class of stock of the Corporation issued and outstanding [if such is the case], owned of record by _____ (Number) stockholders, said number of stockholders representing the ownership of the entire issued and outstanding stock of the Corporation, and (b) that no stockholder owned of record as of said date five per centum (5%) or more of the issued and outstanding stock of the Corporation of any class. [If different classes of stock exist, give the same information for each class issued and outstanding, showing the monetary value and voting rights per share in each class. If there is an exception to the statement in clause (b), the name, address, and citizenship of the stockholder and the amount and class of stock owned should be stated and the required citizenship information on such stockholder must be submitted.] That the registered addresses of _____ owners of record of _____ shares of the issued and outstanding _____ (Class) stock of the Corporation are shown on the stock books and records of the Corporation as being within the United States, said _____ shares being _____ per centum (_____%) of the total number of shares of said stock (each class). [The exact figure as disclosed by the stock books of the corporation must be given and the per centum figure must not be less than 65 per centum for a state or federally chartered financial institution holding a Preferred Mortgage, or not less than 95 per centum for an entity that is demonstrating ownership in a vessel for which a fishery endorsement is sought or a Mortgage Trustee. These per centum figures apply to corporate stockholders as well as to the primary corporation.] (The same statement should be made with reference to each class of stock, if there is more than one class.) or

4. Information as to stock, where Corporation has less than 30 stockholders: That the information as to stock ownership, upon which the Corporation relies to establish that 75% of the stock ownership is vested in Citizens of the United States, is as follows:

_____

Name of Stockholder

_____

Number of shares owned (each class)

_____

Percentage of shares owned (each class)

_____

[1] Offices that are currently vacant should be noted when listing Officers and Directors in the Affidavit.

[2] Strike inapplicable paragraph 4.

and that each of said individual stockholders is a Citizen of the United States by virtue of birth in the United States, birth abroad of U.S. citizen parents, by naturalization during minority through the naturalization of a parent, by marriage (if a woman) to a U.S. citizen prior to September 22, 1922, or as otherwise authorized by law. Note: If a corporate stockholder, give information with respect to State of incorporation, the names of the officers, directors, and stockholders and the appropriate percentage of shares held, with statement that they are all U.S. citizens. Nominee holders of record of 5% or more of any class of stock and the beneficial owners thereof should be named and their U.S. citizenship information submitted to MARAD.

5. That 75% of the interest in (each) said Corporation, as established by the [3] information hereinbefore set forth, is owned by Citizens of the United States; that the title to 75% of the stock of (each) class of the stock of (each) said Corporation is vested in Citizens of the United States free from any trust or fiduciary obligation in favor of any person not a Citizen of the United States; that such proportion of the voting power of (each) said Corporation is vested in Citizens of the United States; that through no contract or understanding is it so arranged that more than 25% the voting power of (each) said Corporation may be exercised, directly or indirectly, in behalf of any person who is not a Citizen of the United States; and that by no means whatsoever, is any interest in said Corporation in excess of 25% conferred upon or permitted to be exercised by any person who is not a Citizen of the United States; and

Note: For state or federally chartered financial institutions acting as Preferred Mortgagees, the Controlling Interest language, which is set forth below, is applicable.

5. That the Controlling Interest in (each) said Corporation, as established by the information hereinbefore set forth, is owned by Citizens of the United States; that the title to a majority of the stock of (each) said Corporation is vested in Citizens of the United States free from any trust or fiduciary obligation in favor of any person not a Citizen of the United States; that such proportion of the voting power of (each) said Corporation is vested in Citizens of the United States; that through no contract or understanding is it so arranged that the majority of the voting power of (each) said Corporation may be exercised, directly or indirectly, in behalf of any person who is not a Citizen of the United States; and that by no means whatsoever, is control of (each) said Corporation conferred upon or permitted to be exercised by any person who is not a Citizen of the United States; and

6. That affiant has carefully examined this affidavit and asserts that all of the statements and representations contained therein are true to the best of his knowledge, information, and belief.

_____

(Name and title of affiant)

_____

(Signature of affiant)

_____

Date

Penalty for False Statement: A fine or imprisonment, or both, are provided for violation of the proscriptions contained in 18 U.S.C. 1001 (see also, 18 U.S.C. 286, 287).

(e) The format for an Affidavit of United States Citizenship, modified appropriately for limited liability companies, partnerships, etc., will be available from the Citizenship Approval Officer and on MARAD's internet web site at *http://www.marad.dot.gov.*

(f) The same criteria should be observed in obtaining information to be furnished for stockholders named (direct ownership of required percentage of shares of stock of each class) in the Affidavit as those observed for the owner of the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel. If, on the other hand, the "fair inference rule" is applied with respect to stock ownership as outlined in § 356.7(c), the extent of U.S. Citizen ownership of stock should be ascertained in the requisite percentage (65 % for state or federally chartered financial institutions and 95 % for Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel owners, bareboat charterers, trustees, as well as entities owning 5% or more of the stock of such entities). Any entity that must establish its U.S. citizenship has to submit proof of U.S. citizenship of any five percent stockholder of each class of stock in order that the veracity of the statutory statements made in the Affidavit (paragraph 5) may be relied upon by MARAD.

(g) It shall be incumbent upon the parties filing affidavits under this part to notify the Citizenship Approval Officer in writing within 30 calendar days of any changes in information last furnished with respect to the officers, directors, and stockholders, including 5 percent or more stockholders of the issued and outstanding stock of each class, together with information concerning their citizenship status. If other than a corporation, comparable information must be filed by other entities owning Fishing Vessels, Fish Processing Vessels, or Fish Tender Vessels, including any entity whose ownership interest is being relied upon to establish 75% ownership by Citizens of the United States.

(h) If additional material is determined to be essential to clarify or support the evidence of U.S. citizenship, such material shall be furnished by the owner of the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel upon request by the Citizenship Approval Officer.

§ 356.7 Methods of establishing ownership by United States Citizens.

(a) An entity may demonstrate that the interest in the entity (75% for Citizens of the United States or 51% for entities meeting the Controlling Interest requirements) is owned by Citizens of the United States either by direct proof or through the fair inference method depending on the size of the entity.

(b) The "direct proof" method is used for closely held companies that have 30 or fewer stockholders. Under the direct proof method, the following information must be set forth in paragraph four of the Affidavit of U.S. Citizenship:

(1) The identity of the holders of stock or other equitable interests;

(2) The amount of stock or interest that each stockholder owns;

(3) A representation as to the citizenship of the stockholder; and

(4) If the stockholder is a corporation or other entity, the names and citizenship of officers, directors, stockholders, etc. must be set out in the Affidavit of U.S. Citizenship.

(c) The "fair inference method" is used by corporations whose stock is publicly traded (more than 30 stockholders). Use of the fair inference method requires that:

(1)(i) At least 95% of the stock (each class) of the corporation be held by Persons having a registered U.S. address in order to infer at least 75% ownership by U.S. Citizens, or

(ii) At least 65% of the stock (each class) of the corporation be held by Persons having a registered U.S. address in order to infer at least 51% ownership by U.S. Citizens in the case of a state or federally chartered financial institution acting as a Mortgagee; and,

(2) Disclosure be made in the Affidavit of U.S. Citizenship of the names and citizenship of any stockholders who holds five percent or more of the corporation's stock (including all classes of stock, voting and non-voting), officers, and directors.

(d) If the owner of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel is consecutively owned by several "parent" corporations, the facts revealing the stock ownership of each entity must be set forth in the Affidavit of U.S. Citizenship.

§ 356.9 Tiered ownership structures.

Non-Citizens may not own or control, either directly through the first tier of ownership or in the aggregate through an interest in other entities at various tiers, more than 25% of the interest in an entity which owns a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel. The prohibition against Non-Citizens owning or controlling more

[3] Strike inappropriate Paragraph 5.

than 25%, in the aggregate, of the interest in an entity that owns a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel means, for example, that:

(a) Non-Citizens that own or control a 25% stake in the ownership entity of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel at the first tier may not have any interest whatsoever in any entity that is being relied upon to establish the required 75% U.S. Citizen ownership; and

(b) Non-Citizens that own or control less than a 25% stake at the first tier may participate in the ownership and control of other entities that are being relied upon to establish the required 75% U.S. Citizen ownership and control at the first tier. However, the total ownership and control by Non-Citizens of the entity owning a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel may not exceed 25% in the aggregate as computed by MARAD.

§ 356.11 Impermissible control by a Non-Citizen.

(a) An impermissible transfer of control will be deemed to exist where a Non-Citizen, whether by agreement, contract, influence, or any other means whatsoever:

(1) Has the right to direct the business of the entity which owns the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel. The right to "direct the business of the entity" does not include the right to simply participate in the direction of the business activities of an entity which owns a Fishing Vessel, Fish Tender Vessel or Fish Processing Vessel;

(2) Has the right in the ordinary course of business to limit the actions of or replace the chief executive officer, a majority of the board of directors, any general partner or any person serving in a management capacity of the entity which owns the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel. Standard rights of minority shareholders to restrict the actions of the entity are permitted provided they are unrelated to day-to-day business activities. These rights include provisions to require the consent of the minority shareholder to sell all or substantially all of the assets, to enter into a different business, to contract with the majority investors or their affiliates or to guarantee the obligations of majority investors or their affiliates;

(3) Has the right to direct the transfer, operation, or manning of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel. The right to "direct the transfer, operation, or manning" of such vessels does not include the right to simply participate in the direction of the transfer, operation, and manning of such vessels;

(4) Has the right to restrict unduly the day-to-day business activities and management policies of the entity owning a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel through loan covenants other than those approved for use by the Citizenship Approval Officer or other means;

(5) Has the right to derive, through a minority shareholder and in favor of a Non-Citizen, a significantly disproportionate amount of the economic benefit from the ownership and operation of the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel;

(6) Has the right to control the management of or to be a controlling factor in the entity owning a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel;

(7) Has the right to cause the sale of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel, other than through approved loan covenants where there is a Preferred Mortgage on the vessel or where it is necessary in order to allow a Non-Citizen to dissolve its interest in the entity;

(8) Absorbs all of the costs and normal business risks associated with ownership and operation of the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel;

(9) Has the responsibility for the procurement of insurance on the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel, or assumes any liability in excess of insurance coverage; or,

(10) Has the ability through any other means whatsoever to control the entity that owns a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel.

(b) In addition to the actions in paragraph (a) of this section that are considered absolute indicia of control, we will consider other factors which, in combination with other elements of Non-Citizen involvement, may be deemed impermissible control. The following factors may be considered indicia of control:

(1) If a Non-Citizen minority stockholder takes the leading role in establishing an entity that will own a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel;

(2) If a Non-Citizen has the right to preclude the owner of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel from engaging in other business activities;

(3) If a Non-Citizen and owner use the same law firm, accounting firm, etc.;

(4) If a Non-Citizen and owner share the same office space, phones, administrative support, etc.;

(5) If a Non-Citizen absorbs considerable costs and normal business risks associated with ownership and operation of the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel;

(6) If a Non-Citizen provides the start up capital for the owner or bareboat charterer on less than an arm's-length basis;

(7) If a Non-Citizen time charterer has the general right to inspect the books and records of the owner, bareboat charterer, or time charterer of a Fish Processing Vessel or Fish Tender Vessel;

(8) If the owner or bareboat charterer uses the same insurance agent, law firm, accounting firm, or broker of any Non-Citizen with whom the owner or a bareboat charterer has entered into a mortgage, long-term or exclusive sales or marketing agreement, unsecured loan agreement, or management agreement; or

(9) If a Non-Citizen has the right to control, whether through sale, lease or other method, the fishing quota, fishing rights or processing rights allocated to a vessel or vessel-owning entity.

(c) In most cases, any single factor listed in paragraph (b) of this section will not be sufficient to deem an entity a Non-Citizen. However, a combination of several factors listed in paragraph (b) of this section may increase our concern as to whether the entity complies with the U.S. Citizen ownership and control provisions of the AFA and any single factor listed in paragraph (b) of this section may be the basis for a request from us for further information.

(d) If we have a concern regarding a Non-Citizen, we will notify the entity of the concern and work with the entity toward a satisfactory resolution, provided there is no verifiable evidence of fraud. Resolution of any control issues may result in a request by us for additional information to clarify the intent of the provision or to amend or delete the provision in question.

(e) Information that is specifically required to be submitted for our consideration is set out in § 356.13. However, in determining whether an entity has control over a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel, we may review any contract or agreement that may, by any means whatsoever, result in a transfer of control to a Non-Citizen.

Subpart C—Requirements for Vessel Owners

§ 356.13 Information required to be submitted by vessel owners.

(a) In order to be eligible to document a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel with a fishery endorsement, the entity that owns the vessel must submit documentation to demonstrate that 75 percent (75%) of the interest in such entity is owned and controlled by Citizens of the United States. Unless otherwise exempted, the following documents must be submitted to the Citizenship Approval Officer in support of a request for a determination of U.S. Citizenship:

(1) An Affidavit of U.S. Citizenship. This affidavit, set out in § 356.15, must contain all required facts, at all tiers of ownership, needed for determining the citizenship of the owner of the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel.

(2) A certified copy of the Articles of Incorporation and Bylaws of the owner of the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel. and any parent corporation, must be submitted. The certification must be by the Secretary of State in which the corporation is incorporated or by the Secretary of the corporation. For entities other than corporations, comparable certified documents must be submitted. For example, for a limited liability company, a copy of the Certificate of Formation filed with a State must be submitted, along with a certified copy of the Limited Liability Company Operating Agreement;

(3) An Affidavit of U.S. Citizenship for each charterer of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel, with the exception of time or voyage charterers of Fish Processing Vessels and Fish Tender Vessels permitted under § 356.39(b)(2);

(4) A copy of any time charter or voyage charter to a Non-Citizen of a Fish Tender Vessel or Fish Processing Vessel;

(5) Any loan agreements or other financing documents applicable to a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel where the lender has not been approved by MARAD as a U.S. Citizen, excepting standard loan agreements from Non-Citizen Lenders where the Non-Citizen Lender has been granted approval from the Citizenship Approval Officer pursuant to § 356.21 to enter into such loans without transactional approval from MARAD;

(6) A description of any operating and/or management agreements entered into between the owner or bareboat charterer of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel and an entity that has not been determined by MARAD to be a U.S. Citizen, accompanied by a representation and warranty that the agreement does not contain any provisions that convey control over the vessel or vessel-owning entity to a Non-Citizen;

(7) Copies of any sales or purchase agreements that relate to the sale or purchase of all or a significant portion of a vessel's catch where the agreement is with an entity that has not been determined by MARAD to be a U.S. Citizen and the agreement contains provisions that could convey control to a Non-Citizen other than those expressly authorized in § 356.43. Agreements that only contain provisions expressly authorized in § 356.43 do not have to be submitted; however, the agreements and the parties to the agreements must be identified;

(8) Any stockholder's agreement, voting trust agreements, or any other pooling agreements, including any proxy appointment, relating to the ownership of all classes of stock, whether voting or non-voting of the owner of the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel, including any parent corporation or other stockholder whose stock is being relied upon to establish 75 percent U.S. Citizen ownership;

(9) Any agreements relating to an option to buy or sell stock or other comparable equity interest in the owner of the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel, or any agreement that restricts the sale of such stock or equity interests in the owner of the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel, including any parent corporation or other stockholder whose stock is being relied upon to establish 75 percent U.S. Citizen ownership;

(10) Any documents relating to a merger, consolidation, liquidation or dissolution of the owner of the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel, including any parent corporation where all of the parties have not been determined by the Citizenship Approval Officer to be U.S. Citizens;

(11) Disclosure of any interlocking directors or other officials by and between the owner of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel (including any parent corporation) and any Non-Citizen minority stockholder of the owner and any parent corporation. This requirement is also applicable to any lender, purchaser of fish catch, or other entity that is a Non-Citizen; and

(12) Any contract or agreement that purports to sell, lease or otherwise transfer to a Non-Citizen the fishing rights, a fishing quota, a processing quota or any other right allocated to a vessel owner, bareboat charterer, or a particular Fishing Vessel, Fish Processing Vessel or Fish Tender Vessel.

(b) In the event the owner or bareboat charterer of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel enters into any agreement reflected in any of the documents set forth in paragraph (a) of this section after the submission of the Affidavit of U.S. Citizenship, the owner or bareboat charterer must notify the Citizenship Approval Officer within 30 calendar days. Failure to notify the Citizenship Approval Officer of such agreements within the prescribed time may result in the vessel owner being deemed ineligible to document the vessel with a fishery endorsement.

§ 356.15 Filing of affidavit of U.S. Citizenship.

(a) Prior to June 1, 2001, the owner of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel may request a letter ruling from the Citizenship Approval Officer that the owner is a U.S. Citizen eligible to own a vessel with a fishery endorsement. The owner must submit to the Citizenship Approval Officer a request for a letter ruling that includes an Affidavit of U.S. Citizenship and all other documentation required by § 356.13. The Citizenship Approval Officer will issue a letter ruling within 120 calendar days of receiving all applicable documents.

(b) An owner that receives a letter ruling pursuant to paragraph (a) of this section must submit a certification that the information contained in the Affidavit of U.S. Citizenship and in documents submitted in support of the request for a letter ruling remains true and accurate. The certification must be submitted no earlier than September 10, 2001 and no later than September 20, 2001. If changes in the information have occurred between the time of the request for the letter ruling and the time of the certification, the owner must notify the Citizenship Approval Officer of those changes as required by § 356.5 and § 356.17. The owner is still required to inform the Citizenship Approval Officer of any changes as they occur as required by § 356.17 and not merely at the time of the certification.

(c) An owner of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel that does not request a letter ruling prior to June 1, 2001, and who wishes to be eligible to obtain a fishery endorsement on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel on October 1, 2001, must submit the

required Affidavit of U.S. Citizenship and all other documentation required by § 356.13 to the Citizenship Approval Officer no later than June 1, 2001. If a completed Affidavit of U.S. Citizenship including all required documentation is not submitted by June 1, 2001, the Citizenship Approval Officer may not have sufficient time to make a citizenship determination and the Vessel may be prohibited from operating in the fisheries of the United States until an eligibility determination is made by the Citizenship Approval Officer.

(d) A vessel owner that has a valid fishery endorsement prior to October 1, 2001, must obtain a citizenship determination from the Citizenship Approval Officer no later than October 1, 2001, which states that the owner is a U.S. Citizen eligible to own a vessel with a fishery endorsement. If the owner obtains the required determination from the Citizenship Approval Officer, the fishery endorsement will remain valid and will be subject to renewal at the time of its next regularly scheduled annual filing to document the vessel with the Coast Guard, at which point the owner will be required to obtain an annual ruling from the MARAD's Citizenship Approval Officer that it is still a U.S. Citizen. If a vessel owner that owns a vessel with a valid fishery endorsement prior to October 1, 2001, does not obtain the required determination from the Citizenship Approval Officer by October 1, 2001, the vessel's fishery endorsement will necessarily be deemed invalid. In order to obtain a new fishery endorsement, the vessel owner will be required to obtain a citizenship determination from the Citizenship Approval Officer and to apply to the U.S. Coast Guard for a new fishery endorsement.

(e) New owners of Fishing Vessels, Fish Processing Vessels, or Fish Tender Vessels after October 1, 2001, must file the Affidavit of U.S. Citizenship and other required documentation with the Citizenship Approval Officer in order for the Citizenship Approval Officer to make a determination whether the owner is eligible to own a vessel with a fishery endorsement to the vessel's documentation. A vessel may not receive a fishery endorsement to its documentation or operate in the fisheries of the United States before this determination has been made.

(f) If the Citizenship Approval Officer believes that there is a defect in the Affidavit of U.S. Citizenship or the supporting documentation, the applicant will be notified and will be given an opportunity to work with the Citizenship Approval Officer to resolve the matter before a determination is made whether the applicant qualifies as a U.S. Citizen.

§ 356.17 Annual requirements for vessel owners.

(a) An owner of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel must submit a certification in the form of an Affidavit of United States Citizenship to the Citizenship Approval Officer on an annual basis as provided in paragraph (b) of this section. The vessel owner does not have to submit duplicate copies of documents that have already been submitted and that have not changed, provided a copy is still retained by us. This annual certification requirement does not excuse the owner from the requirements of § 356.5 to notify the Citizenship Approval Officer throughout the year when changes in the citizenship information occur.

(b) The annual certification required by paragraph (a) of this section must be filed at least 45 days prior to the renewal date for the vessel's documentation and fishery endorsement. Owners of multiple vessels with different documentation renewal dates are only required to file an Affidavit of U.S. Citizenship and supporting documentation in conjunction with the first vessel renewal during each calendar year. To satisfy the citizenship approval requirements for the renewal of a fishery endorsement for another vessel in the same calendar year, the owner must submit a certification to the Citizenship Approval Officer at least 45 days prior to the renewal date for the vessel's fishery endorsement stating that the Affidavit of U.S. Citizenship and supporting documentation already on file with the Citizenship Approval Officer for the first renewal in that calendar year of a fishery endorsement for a vessel of 100 feet or greater in registered length belonging to that owner continues to be true and accurate. Any information or supporting documentation unique to a particular vessel that would normally be required to be submitted under § 356.13 or any other provision of this part 356 such as charters, management agreements, loans or financing agreements, sales, purchase or marketing agreements, or exemptions claimed under the rule must be submitted with the annual filing for that vessel if the documents are not already on file with the Citizenship Approval Officer.

(c) Failure to file the annual certification in a timely manner may result in the expiration of the vessel's fishery endorsement, which will prohibit the vessel from operating in the fisheries of the United States.

Subpart D—Mortgages

§ 356.19 Requirements to hold a Preferred Mortgage.

(a) In order for Mortgagee to be eligible to obtain a Preferred Mortgage on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel, it must be:

(1) A Citizen of the United States;

(2) A state or federally chartered financial institution that complies with the Controlling Interest requirements of section 2(b) of the 1916 Act, 46 App. U.S.C. 802(b); or

(3) A Mortgage Trustee that qualifies as a Citizen of the United States and that has satisfied the requirements of §§ 356.27 through 356.31.

(b) The Mortgagee must file an Affidavit of United States Citizenship demonstrating that it complies with the citizenship requirements that correspond to the provisions of paragraph (a) of this section under which the Mortgagee qualifies.

(c) In addition to the Affidavit of U.S. Citizenship, a certified copy of the Articles of Incorporation and Bylaws, or other comparable corporate documents must be submitted to the Citizenship Approval Officer.

(d) A Preferred Mortgagee must provide an annual certification to the Citizenship Approval Officer in the form of an Affidavit of United States Citizenship evidencing its continued status as a Citizen of the United States or, if a state or federally chartered financial institution, that it complies with the Controlling Interest requirements of section 2(b) of the 1916 Act, 46 App. U.S.C. 802(b), during the period that it holds a Preferred Mortgage on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel. The certification must be submitted at least 30 calendar days prior to the annual anniversary date of the original filing.

§ 356.21 General approval of Non-Citizen Lender's standard loan or mortgage agreements.

(a) A Non-Citizen Lender that is a financial institution engaged in the business of financing Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels may apply to the Citizenship Approval Officer for general approval of its standard loan and mortgage agreements for such vessels. In order to obtain general approval for its standard loan and mortgage agreements, a Non-Citizen Lender using an approved Mortgage Trustee must submit to the Citizenship Approval Officer:

(1) A copy of its standard loan or mortgage agreement for Fishing Vessels, Fish Processing Vessels, and Fish

Tender Vessels, including all covenants that may be included in the loan or mortgage agreement; and,

(2) A certification that it will not use covenants or restrictions in the loan or mortgage agreement outside of those approved by the Citizenship Approval Officer without obtaining the prior approval of the Citizenship Approval Officer.

(b) A Non-Citizen Lender that receives general approval may enter into loans and mortgages on Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels without prior approval from us of each individual loan or mortgage; *provided,* that the loan or mortgage conforms to the standard agreement approved by the Citizenship Approval Officer and does not include any other covenants that have not been approved by the Citizenship Approval Officer.

(c) The Non-Citizen Lender must provide an annual certification to the Citizenship Approval Officer certifying that all loans and mortgages on Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels entered into under this general approval conform to the standard agreement approved by us and do not contain deviations from the standard agreement or covenants that were not reviewed and approved by the Citizenship Approval Officer. The certification must be submitted at least 30 calendar days prior to the annual anniversary date of the previous approval.

(d) If the Non-Citizen Lender wishes to use covenants that were not approved pursuant to this section, it must submit the new covenants to the Citizenship Approval Officer for approval.

(e) A Non-Citizen Lender that has received general approval for its lending program and that uses covenants in a loan or mortgage on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel that have not been approved by the Citizenship Approval Officer will be subject to loss of its general approval and the Citizenship Approval Officer may determine that there has been an impermissible transfer of control to a Non-Citizen resulting in a loss of the vessel owner's eligibility to document the vessel with a fishery endorsement. If the Non-Citizen Lender knowingly files a false certification with the Citizenship Approval Officer or has used covenants in a loan or mortgage on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel that are materially different from the approved covenants, it may also be subject to civil and criminal penalties pursuant to 18 U.S.C. 1001.

§ 356.23 Restrictive loan covenants approved for use by Non-Citizen Lenders.

(a) We approve the following standard loan covenants, which may restrict the activities of the borrower without the lender's consent and which may be included in loan agreements or other documents between an owner of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel and an unrelated Non-Citizen Lender that is using an approved Mortgage Trustee to hold the mortgage and debt instrument for the benefit of the Non-Citizen Lender, so long as the lender's consent is not unreasonably withheld:

(1) Borrower cannot sell part or all of its assets;

(2) Borrower cannot merge, consolidate, reorganize, dissolve, or liquidate;

(3) Borrower cannot undertake new borrowing or contingent liabilities;

(4) Borrower cannot insure, guaranty or become otherwise liable for debt obligations of any other entity, Person, etc.;

(5) Borrower cannot Charter or lease a vessel that is collateral for the loan;

(6) Borrower cannot incur liens, except any permitted liens that may be set forth in the loan or other financing documents;

(7) Borrower must limit its investments to marketable investments guaranteed by the United States or a State, or commercial paper with the highest rating of a generally recognized rating service;

(8) Borrower cannot make structural alterations or any other major alteration to the vessel;

(9) Borrower, if in arrears in its debt obligations to the lender, cannot make dividend payments on its capital stock; and,

(10) Borrower, if in arrears in its debt obligations to the lender, cannot make excessive contributions to pension plans, make payment of employee bonuses, or make excessive contributions to stock option plans, or provide other major fringe benefits in terms of dollar amount to its employees, officers, and directors, such as loans, etc.

(b) The mortgage may not include covenants that allow the Mortgagee to operate the vessel except as provided for in § 356.25.

§ 356.25 Operation of Fishing Vessels, Fish Processing Vessels, or Fish Tender Vessels by Mortgagees.

(a) A Mortgagee that has demonstrated to MARAD that it qualifies as a Citizen of the United States and is eligible to own a vessel with a fishery endorsement may operate a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel.

(b) A Mortgagee not eligible to own a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel cannot operate or cause operation of, the vessel in the fisheries of the United States. Except as provided in paragraph (c) of this section, the vessel may not be operated for any purpose without the prior written approval of the Citizenship Approval Officer.

(c) A Mortgagee not eligible to own a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel may operate the vessel for a non-commercial purpose to the extent necessary for the immediate safety of the vessel or for repairs, drydocking or berthing changes; provided, that the vessel is operated under the command of a Citizen of the United States and for no longer than 15 calendar days.

(d) A Mortgagee that is holding a Preferred Mortgage on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel but that is not eligible to own a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel may take possession of the vessel in the event of default by the mortgagor other than by foreclosure pursuant to 46 U.S.C. 31329, if provided for in the mortgage or a related financing document. However, the vessel may not be operated, or caused to be operated in commerce, except as provided in paragraph (c) of this section or with the approval of the Citizenship Approval Officer.

(e) A Non-Citizen Lender that has brought a civil action in rem for enforcement of a Preferred Mortgage lien on a Citizen-owned Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel pursuant to 46 U.S.C. 31325(b)(1) may petition the court pursuant to 46 U.S.C. 31325(e)(1) for appointment of a receiver, and, if the receiver is a Person eligible to own a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel, to authorize the receiver to operate the mortgaged vessel pursuant to terms and conditions consistent with this part 356. If the receiver is not a Citizen of the United States that meets the requirements of section 2(c) of the 1916 Act, 46 App. U.S.C. 802(c), and 46 U.S.C. 12102(c), the vessel may not be operated in the fisheries of the United States.

Subpart E—Mortgage Trustees

§ 356.27 Mortgage Trustee requirements.

(a) A lender who does not qualify as a Citizen of the United States or is not a state or federally chartered financial institution that meets the Controlling Interest requirements of section 2(b) of

the 1916 Act and Section 356.3(g) can obtain a Preferred Mortgage on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel by using an approved Mortgage Trustee to hold the mortgage and the debt instrument that the mortgage is securing.

(b) In order to qualify as an approved Mortgage Trustee, the Mortgage Trustee must:

(1) Qualify as a Citizen of the United States eligible to own a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel;

(2) Be organized as a corporation and doing business under the laws of the United States or of a State;

(3) Be authorized under the laws of the United States or of the State under which it is organized to exercise corporate trust powers;

(4) Be subject to supervision or examination by an official of the United States Government, or of a State;

(5) Have a combined capital and surplus (as stated in its most recent published report of condition) of at least $3,000,000; and

(6) Meet any other requirements prescribed by the Citizenship Approval Officer.

(c) The Mortgage Trustee must submit to the Citizenship Approval Officer the following documentation in order to be an approved Mortgage Trustee:

(1) An application for approval as a Mortgage Trustee as set out in paragraph (g) of this section;

(2) An Affidavit of U.S. Citizenship setting forth the required information necessary to determine that the applicant qualifies as a Citizen of the United States;

(3) A certified copy of the Articles of Incorporation and Bylaws, or other comparable documents;

(4) A copy of the most recent published report of condition of the Mortgage Trustee; and,

(5) A certification that the Mortgage Trustee is authorized under the laws of the United States or of a State to exercise corporate trust powers and is subject to supervision or examination by an official of the United States or of a State;

(d) Any right set forth in a mortgage on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel cannot be issued, assigned, or transferred to a person who is not eligible to be a Mortgagee without the approval of the Citizenship Approval Officer.

(e) Mortgage Trustees approved by the Citizenship Approval Officer must not assume any fiduciary obligations in favor of Non-Citizen Lenders that are in conflict with the U.S. Citizen ownership and control requirements set forth in the AFA, without the approval of the Citizenship Approval Officer. An approved Mortgage Trustee may request that the Citizenship Approval Officer pre-approve a trust agreement form to ensure that the fiduciary duties assumed by the Mortgage Trustee in favor of a Non-Citizen Lender are consistent with the ownership and control requirements of this part and the AFA.

(f) We will periodically publish a list of Approved Mortgage Trustees in the **Federal Register**, but current information as to the status of any particular Mortgage Trustee must be obtained from the Citizenship Approval Officer.

(g) An application to be approved as a Mortgage Trustee should include the following:

The undersigned (the "Mortgage Trustee") hereby applies for approval as Mortgage Trustee pursuant to 46 U.S.C. 12102(c)(4) and the Regulation (46 CFR part 356), prescribed by the Maritime Administration ("MARAD"). All terms used in this application have the meaning given in the Regulation.

In support of this application, the Mortgage Trustee certifies to and agrees with MARAD as hereinafter set forth:

I. The Mortgage Trustee certifies:

(a) That it is acting or proposing to act as Mortgage Trustee on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessels documented, or to be documented under the U.S. registry;

(b) That it—

(1) Is organized as a corporation under the laws of the United States or of a State and is doing business in the United States;

(2) Is authorized under those laws to exercise corporate trust powers;

(3) Is a Citizen of the United States eligible to own a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel within the meaning of 46 U.S.C. 12102(c) and section 2(c) of the 1916 Act, as amended, (46 App. U.S.C. 802(c)) and is eligible to own a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel;

(4) Is subject to supervision or examination by an official of the United States Government or a State; and

(5) Has a combined capital and surplus of at least $3,000,000 as set forth in its most recent published report of condition, a copy of which, dated _____, is attached.

II. The Mortgage Trustee agrees:

(a) That it will, so long as it shall continue to be on the List of Approved Mortgage Trustees referred to in the Regulation:

(1) Notify the Citizenship Approval Officer in writing, within 20 days, if it shall cease to be a corporation which:

(i) Is organized under the laws of the United States or of a State, and is doing business under the laws of the United States or of a State;

(ii) Is authorized under those laws to exercise corporate trust powers;

(iii) Is a Citizen of the United States;

(iv) Is subject to supervision or examination by an authority of the U.S. Government or of a State; and

(v) Has a combined capital and surplus (as set forth in its most recent published report of condition) of at least $3,000,000.

(2) Notify the Citizenship Approval Officer in writing, of any changes in its name, address, officers, directors, stockholders, articles of incorporation or bylaws within 30 calendar days of such changes;

(3) Furnish to the Citizenship Approval Officer on an annual basis:

(i) An Affidavit of U.S. Citizenship demonstrating compliance with the U.S. citizenship requirements of the AFA;

(ii) A current copy of the Articles of Incorporation and Bylaws, or other comparable corporate documents;

(iii) A copy of the most recent published report of condition of the Mortgage Trustee; and,

(iv) A list of the Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels and the respective lenders for which it is acting as Mortgage Trustee.

(4) Furnish to the Citizenship Approval Officer any further relevant and material information concerning its qualifications as Mortgage Trustee under which it is acting or proposing to act as Mortgage Trustee, as the Citizenship Approval Officer may from time to time request; and,

(5) Permit representatives of the Maritime Administration, upon request, to examine its books and records relating to the matters referred to herein;

(b) That it will not issue, assign, or in any manner transfer to a person not eligible to own a documented vessel, any right under a mortgage of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel, or operate such vessel without the approval of the Citizenship Approval Officer; except that it may operate the vessel to the extent necessary for the immediate safety of the vessel, for its direct return to the United States or for its movement within the United States for repairs, drydocking or berthing changes, but only under the command of a Citizen of the United States for a period not to exceed 15 calendar days;

(c) That after a responsible official of such Mortgage Trustee obtains knowledge of a foreclosure proceeding, including a proceeding in a foreign jurisdiction, that involves a documented Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel on which it holds a mortgage pursuant to approval under the Regulation and to which 46 App. U.S.C. 802(c) and 46 U.S.C. 12102(c) are applicable, it shall promptly notify the Citizenship Approval Officer with respect thereto, and shall ensure that the court or other tribunal has proper notice of those provisions; and

(d) That it shall not assume any fiduciary obligation in favor of Non-Citizen beneficiaries that is in conflict with any restrictions or requirements of the Regulation.

III. This application is made in order to induce the Maritime Administration to grant approval of the undersigned as Mortgage Trustee pursuant to 46 App. U.S.C. 802(c) and 46 U.S.C. 12102(c) and the Regulation, and may be relied on by the Citizenship Approval Officer for such purposes. False statements in this application may subject

the applicant to fine or imprisonment, or both, as provided for violation of the proscriptions contained in 18 U.S.C. 286, 287, and 1001.

Dated this_____day of _____, 20__.
ATTEST:

_____
(Print or type name below)
(SEAL)
MORTGAGE TRUSTEE'S NAME & ADDRESS

_____
By:
(print or type name below)
TITLE

§ 356.31 Maintenance of Mortgage Trustee approval.

(a) A Mortgage Trustee that holds a Preferred Mortgage on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel must submit the following information to the Citizenship Approval Officer during each calendar year that it is acting as a Mortgage Trustee:

(1) An Affidavit of U.S. Citizenship demonstrating compliance with the U.S. citizenship requirements of the AFA;

(2) A current copy of the Articles of Incorporation and Bylaws, or other comparable corporate documents;

(3) A copy of the most recent published report of condition of the Mortgage Trustee; and

(4) A list of the Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels and the respective lenders for which it is acting as Mortgage Trustee.

(b) The Mortgage Trustee must file the documents required in paragraph (a) of this section within 30 calendar days of the annual stockholder's meeting of the Mortgage Trustee, or if no annual meeting is held, then the filing must be within 30 calendar days prior to the anniversary date of the original Affidavit of U.S. Citizenship filed with MARAD.

(c) If at any time the Mortgage Trustee fails to meet the statutory requirements set forth in the AFA, the Mortgage Trustee must notify the Citizenship Approval Officer of such failure to qualify as a Mortgage Trustee not later than 20 calendar days after the event causing such failure. We will publish in the **Federal Register** a disapproval notice and will so notify the U.S. Coast Guard and the Mortgage Trustee of such disapproval by providing them a copy of the disapproval notice. Within thirty 30 calendar days of such publication in the **Federal Register**, the disapproved Mortgage Trustee must transfer its fiduciary responsibilities to a successor Mortgage Trustee, approved by the Citizenship Approval Officer. The preferred status of the mortgage will be maintained during the 30 day period following publication of the disapproval notice in the **Federal Register** pending transfer of the Mortgage Trustee's fiduciary responsibilities to a successor Mortgage Trustee.

§ 356.37 Operation of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel by a Mortgage Trustee.

An approved Mortgage Trustee cannot operate a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel without the approval of the Citizenship Approval Officer, except where non-commercial operation is necessary for the immediate safety of the vessel and the vessel is operated under the command of a Citizen of the United States for a period of no more than 15 calendar days.

Subpart F—Charters, Management Agreements and Exclusive or Long-Term Contracts

§ 356.39 Charters.

(a) Charters to Citizens of the United States:

(1) Bareboat charters may be entered into with Citizens of the United States subject to approval by the Citizenship Approval Officer that the charterer is a Citizen of the United States. The bareboat charterer of Fishing Vessels, Fish Processing Vessels, or Fish Tender Vessels must submit an Affidavit of U.S. Citizenship to the Citizenship Approval Officer for review and approval prior to entering into such charter.

(2) Time charters, voyage charters and other charter arrangements that do not constitute a bareboat charter of the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel may be entered into with Citizens of the United States. The charterer must submit an Affidavit of U.S. Citizenship to the Citizenship Approval Officer within 30 calendar days of execution of the charter.

(b) Charters to Non-Citizens:

(1) Bareboat or demise charters to Non-Citizens of Fishing Vessels, Fish Processing Vessels, or Fish Tender Vessels for use in the United States are prohibited. Bareboat charters to Non-Citizens of Fish Processing Vessels and Fish Tender Vessels for use solely outside of the United States are permitted.

(2) Time charters, voyage charters and other charters that are not a demise of the vessel may be entered into with Non-Citizens for the charter of dedicated Fish Tender Vessels and Fish Processing Vessels that are not engaged in the Harvesting of fish or fishery resources. A copy of the charter must be submitted to the Citizenship Approval Officer prior to being executed in order for the Citizenship Approval officer to verify that the charter is not in fact a demise of the vessel.

(3) Time charters, voyage charters and other charters of Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessels to Non-Citizens are prohibited if the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel will be used to Harvest fish or fishery resources.

(c) We reserve the right to request a copy of any time charter, voyage charter, contract of affreightment or other Charter of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel in order to confirm that the Charter is not a bareboat charter of the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel.

(d) Any violation of this section will render the vessel's fishery endorsement immediately invalid upon notification from the Citizenship Approval Officer.

§ 356.41 Management agreements.

(a) An owner or bareboat charterer of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel may enter into a management agreement with a Non-Citizen in which the management company provides marketing services, consulting services or other services that are ministerial in nature and do not convey control of the vessel to the Non-Citizen.

(b) An owner or bareboat charterer of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel may not enter into a management agreement that allows the Non-Citizen to appoint, discipline or replace the crew or the master, direct the operations of the vessel or to otherwise effectively gain control over the management and operation of the vessel or vessel-owning entity.

(c) The owner or bareboat charterer must file with the Citizenship Approval Officer a description of any management agreement entered into with a Non-Citizen. The description must be submitted within 30 days of the execution and must include:

(1) A description of the agreement with a summary of the terms and conditions, and,

(2) A representation and warranty that the agreement does not contain any provisions that convey control over the vessel or vessel-owning entity to a Non-Citizen.

(d) The Citizenship Approval Officer may request a copy of any management agreement to determine if it contains provisions that convey control over the vessel or vessel-owning entity to a Non-Citizen.

§ 356.43 Long-term or exclusive sales contracts.

(a) An owner or bareboat charterer of a Fishing Vessel, Fish Processing Vessel,

or Fish Tender Vessel may enter into an agreement or contract with a Non-Citizen for the sale of all or a significant portion of its catch where the contract or agreement is solely for the purpose of employment of certain vessels on an exclusive basis for a specified period of time. Such contracts or agreements will not require our prior approval; provided, that the contract or agreement does not convey control over the owner or bareboat charterer of the vessel or the vessel's operation, management and harvesting activities.

(b) Provisions of a long-term or exclusive contract or agreement for the sale of all or a significant portion of a vessel's catch entered into pursuant to paragraph (a) of this section that are not considered to convey impermissible control to a Non-Citizen and do not require our approval include provisions that:

(1) Specify that the owner or bareboat charterer agrees to sell and purchaser agrees to procure, on a preferential basis, a certain quantity of fish caught by a vessel owner or bareboat charterer on a specific vessel;

(2) Specify that the vessel owner or charterer is responsible for supplying a specific type of fish to off-loading points designated by the purchaser;

(3) Provide for the replacement by the vessel owner of vessels covered by the contract or agreement in the event of loss or damage;

(4) Specify refrigeration criteria;

(5) Provide that the owner or bareboat charterer has to comply with fishing schedules that specify the maximum age of fish to be delivered and a method to coordinate delivery to the purchaser;

(6) Provide for methods of calculating price per pound or other price schedules and a schedule for payment for delivered fish;

(7) Provide for an arbitration mechanism in the event of dispute; and

(8) Provide for the purchaser to furnish off-loading crew and/or processing or quality control technicians but no other vessel crew members.

(c) An owner or bareboat charterer of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel must obtain the approval of the Citizenship Approval Officer prior to entering into any agreement or contract with a Non-Citizen for the sale of all or a significant portion of a vessel's catch if the agreement or contract contains provisions that in any way convey to the purchaser of the vessel's catch control over the operation, management or harvesting activities of the vessel, vessel owner, or bareboat charterer other than as provided for in paragraph (b) of this section.

(d) An owner or bareboat charterer must submit, with its Affidavit of United States Citizenship and annually thereafter, a list of any long-term or exclusive sales agreements to which it is a party and the principal parties to those agreements. If requested, a copy of such agreements must be provided to the Citizenship Approval Officer.

§ 356.45 Advance of funds.

(a) A Non-Citizen may advance funds to the owner or bareboat charterer of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel:

(1) As provisional payment for products delivered for consignment sales, but not yet sold; or

(2) Where the basis of the advancement is an agreement between the Non-Citizen and the vessel owner or bareboat charterer to sell all or a portion of the vessel's catch to the Non-Citizen and the agreement meets the following conditions:

(i) The amount of the advancement does not exceed the annual value of the sales contract, measured as the value of the product to be supplied to the processor;

(ii) The Non-Citizen is not granted any rights whatsoever to control the operation, management and harvesting activities of the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel other than as provided for in § 356.43;

(iii) The owner or bareboat charterer submits to the Citizenship Approval Officer within 30 days of execution a description of the arrangement and a certification and warranty that the agreement or contract with the Non-Citizen does not convey control over the vessel, the vessel owner or bareboat charterer in any manner whatsoever other than as provided for in § 356.43; and,

(iv) No security interest in the vessel is conveyed as collateral for the advance of funds.

(b) An owner or bareboat charterer may enter into an unsecured letter of credit or promissory note with a U.S. branch of a Non-Citizen Lender if:

(1) The Non-Citizen Lender is not affiliated with any party with whom the owner or bareboat charter has entered into a mortgage, long-term or exclusive sales or purchase agreement, or other similar contract;

(2) The Non-Citizen Lender is not granted any rights whatsoever to control the owner or the operation, management and harvesting activities of the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel; and,

(3) The owner or bareboat charterer submits to the Citizenship Approval Officer within 30 days of execution a description of the arrangement and a certification and warranty that the agreement or contract with the Non-Citizen Lender does not convey control over the vessel, the vessel owner or bareboat charter in any manner whatsoever.

(c) The Citizenship Approval Officer may request a copy of any agreement for an advance of funds or letter of credit in order to determine if it contains an impermissible conveyance of control to a Non-Citizen.

Subpart G—Special Requirements for Certain Vessels

§ 356.47 Special requirements for large vessels.

(a) Unless exempted in paragraph (b), (c) or (d) of this section, a vessel is not eligible for a fishery endorsement under 46 U.S.C. 12108 if:

(1) It is greater than 165 feet in registered length;

(2) It is more than 750 gross registered tons; or

(3) It possesses a main propulsion engine or engines rated to produce a total of more than 3,000 shaft horsepower; such limitation shall not include auxiliary engines for hydraulic power, electrical generation, bow or stern thrusters, or similar purposes.

(b) A vessel that meets one or more of the conditions in paragraph (a) of this section may still be eligible for a fishery endorsement if:

(1) A certificate of documentation was issued for the vessel and endorsed with a fishery endorsement that was effective on September 25, 1997;

(2) The vessel is not placed under foreign registry after October 21, 1998; and,

(3) In the event of the invalidation of the fishery endorsement after October 21, 1998, application is made for a new fishery endorsement within 15 business days of the receipt of written notification from MARAD or the Coast Guard identifying the reason for such invalidation;

(c) A vessel that is prohibited from receiving a fishery endorsement under paragraph (a) of this section will be eligible if the owner of such vessel demonstrates to MARAD that the regional fishery management council of jurisdiction established under section 302(a)(1) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1)) has recommended after October 21, 1998, and the Secretary of Commerce has approved, conservation and

management measures in accordance with the American Fisheries Act of 1998, Title II, Division C, Public Law 105–277, to allow such vessel to be used in fisheries under such council's authority.

(d) A vessel that meets one or more of the conditions in paragraph (a) of this section may still be eligible for a fishery endorsement if the vessel is engaged exclusively in the menhaden fishery in the geographic region governed by the South Atlantic Fisheries Council or the Gulf of Mexico Fisheries Council.

§ 356.49 Penalties.

If the owner or the representative or agent of the owner has knowingly falsified or concealed a material fact or knowingly made a false statement or representation with respect to the eligibility of the vessel under 46 U.S.C. 12102(c), in applying for or applying to renew the vessel's fishery endorsement, the following penalties may apply:

(a) The vessel's fishery endorsement may be revoked;

(b) A fine of up to $100,000 may be assessed against the vessel owner for each day in which such vessel has engaged in fishing (as such term is defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802)) within the exclusive economic zone of the United States; and

(c) The owner, representative or agent may be subject to additional fines, penalties or both for violation of the proscriptions of 18 U.S.C. 286, 287, and 1001.

§ 356.51 Exemptions for specific vessels.

(a) The following vessels are exempt from the requirements of 46 U.S.C. 12102(c) as amended by the AFA until such time as 50% of the interest owned and controlled in the vessel changes; *provided,* the vessel maintains eligibility for a fishery endorsement under the federal law that was in effect prior to the enactment of the AFA:

(1) EXCELLENCE (United States official number 296779);

(2) GOLDEN ALASKA (United States official number 651041);

(3) OCEAN PHOENIX (United States official number 296779);

(4) NORTHERN TRAVELER (United States official number 635986); and

(5) NORTHERN VOYAGER (United States official number 637398) or a replacement for the NORTHERN VOYAGER that complies with paragraphs 2, 5, and 6 of section 208(g) of the AFA.

(b) The NORTHERN VOYAGER (United States official number 637398) and NORTHERN TRAVELER (United States official number 635986) will forfeit the exemption under paragraph (a) of this section if the vessel is used in a fishery under the authority of a regional fishery management council other than the New England Fishery Management Council or Mid-Atlantic Fishery Management Council established, respectively, under subparagraphs (A) and (B) of section 302(a)(1) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1)(A) and (B)).

(c) The EXCELLENCE (United States official number 296779), GOLDEN ALASKA (United States official number 651041), and OCEAN PHOENIX (United States official number 296779) will forfeit their exemption under paragraph (a) of this section if the vessel is used to Harvest fish.

(d) The following Fishing Vessels, Fish Processing Vessels, or Fish Tender Vessels are exempt from the new ownership and control standards under the AFA and this part 356 for vessel owners and Mortgagees:

(1) Fishing Vessels, Fish Processing Vessels, or Fish Tender Vessels engaged in fisheries in the exclusive economic zone under the authority of the Western Pacific Fishery Management Council established under section 302(a)(1)(H) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1)(H)); and

(2) Purse seine vessels when they are engaged in tuna fishing in the Pacific Ocean outside the exclusive economic zone of the United States or pursuant to the South Pacific Regional Fisheries Treaty.

(e) Owners of vessels exempt from the new ownership and control requirements of the AFA and this part 356 by paragraph (a) or (d) of this section must still comply with the requirements for a fishery endorsement under the federal law that was in effect on October 20, 1998. The owners must also submit to the Citizenship Approval Officer on an annual basis an Affidavit of United States Citizenship in accordance with § 356.15 demonstrating that they comply with the Controlling Interest requirements of section 2(b) of the 1916 Act. In addition:

(1) The owners of the Fishing Vessels, Fish Processing Vessels, or Fish Tender Vessels listed in paragraph (a) of this section that are exempt from the new requirements of 46 U.S.C. 12102(c) must specifically outline the current ownership structure at the time of filing, any changes in the ownership structure that have occurred since the filing of the last Affidavit, and a chronology of all changes that have occurred since October 21, 1998; and,

(2) The owners of Fishing Vessels, Fish Processing Vessels, or Fish Tender Vessels exempted under paragraph (e) of this section must note on the Affidavit that the owner is claiming an exemption from the requirements of this part 356 pursuant to § 356.51(e).

Subpart H—International Agreements

§ 356.53 Conflicts with International agreements.

(a) If the owner or Mortgagee of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel believes that there is a conflict between the AFA or 46 CFR part 356 and any international treaty or agreement to which the United States is a party on October 1, 2001, and to which the United States is currently a party, the owner or Mortgagee may petition the Chief Counsel of the Maritime Administration at any time after July 19, 2000 to request a ruling that all or part of the requirements of this part 356 do not apply to that particular owner or particular Mortgagee with respect to a specific vessel; provided, the petitioner had an ownership interest in the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel, or a mortgage on the vessel in the case of a Mortgagee, on October 1, 2001, and is covered by the international agreement. Petitions may be filed prior to October 1, 2001 by owners or Mortgagees with respect to international treaties or agreements in effect at the time of the petition which are not scheduled to expire prior to October 1, 2001.

(b) A petition for exemption from the requirements of this part 356 must include:

(1) Evidence of the ownership structure, or mortgage structure in the case of a Mortgagee, of the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel as of October 1, 2001 (or on the date of the petition, for petitions filed prior to October 1, 2001), and any subsequent changes to the ownership structure, or mortgage structure in the case of a Mortgagee, of the vessel;

(2) A copy of the provisions of the international agreement or treaty which the owner or mortgagee believes are in conflict with the regulations in this part 356;

(3) A detailed description of how the provisions of the international agreement or treaty and the regulations in this part 356 are in conflict;

(4) A certification in all petitions filed on or after October 1, 2001, that no interest in the vessel-owning entity has been transferred to a Non-Citizen after September 30, 2001; and,

(5) For all petitions filed prior to October 1, 2001, a certification that the owner does not intend to transfer interest in the vessel-owning entity to a Non-citizen prior to October 1, 2001.

(c) A separate petition must be filed for each Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel for which the vessel owner or a Mortgagee is requesting an exemption unless the Chief Counsel authorizes consolidated filing. Petitions should include two copies of all materials and should be sent to the following address: Maritime Administration, Chief Counsel, Room 7228, 400 7th Street, SW., Washington, DC 20590.

(d) Upon receipt of a complete petition, the Chief Counsel will publish a notice in the **Federal Register** requesting public comment. The **Federal Register** notice will include the petitioner's descriptions regarding how the AFA and this part 356 are in conflict with a particular investment treaty or agreement, but it will not include proprietary or confidential information about the petitioner. The Chief Counsel, in consultation with other departments and agencies within the Federal Government that have responsibility or expertise related to the interpretation or application of international investment agreements (*e.g.*, the Department of State, United States Trade Representative, Department of Treasury, etc.), will review the petition and the public comments to determine whether the international agreement and the requirements of the AFA and this part 356 are in conflict and, absent any extenuating circumstances, will render a decision within 120 days of the receipt of a fully completed petition. If MARAD's Chief Counsel determines after the receipt of a fully completed petition that there are extenuating circumstances that will preclude a decision from being rendered on the petition within 120 days, the petitioner will be notified around the 90th day and provided with an estimated date on which a decision will be rendered.

(e) To the extent that it is determined that an international agreement covering the petitioner is in conflict with the requirements of this part 356, the AFA, 46 U.S.C. 31322(a), 46 U.S.C. 12102(c), and this part 356 will not be applied to the petitioner with respect to the specific vessel. If the petitioner is a vessel owner, it will be required to comply with the documentation requirements as in effect prior to passage of the AFA on October 21, 1998. If the petitioner is a Mortgagee, it will be subject to requirements of 46 U.S.C. 31322(a) as in effect prior to passage of the AFA with regard to the mortgage on the particular vessel covered by the petition. Decisions of the Chief Counsel may be appealed to the Maritime Administrator within 15 business days of issuance.

(f) The owner of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel that is determined through the petition process to be exempt from all or part of the requirements of this part 356 must submit evidence of its ownership structure to the Chief Counsel on an annual basis. The owner must specifically set forth:

(1) The Vessel's current ownership structure;

(2) The identity of all Non-Citizen owners and the percentage owned;

(3) Any changes in the ownership structure that have occurred since the filing of the last Affidavit; and,

(4) A certification that no interest in the vessel was transferred to a Non-Citizen after September 30, 2001.

(g) The provisions of this part 356 shall apply:

(1) To all owners and Mortgagees of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel who acquired an interest in the vessel after October 1, 2001; and

(2) To the owner of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel on October 1, 2001, if any ownership interest in that owner is transferred to or otherwise acquired by a Non-Citizen after such date. An ownership interest is deemed to be transferred under this section when there is a transfer of interest in the primary vessel-owning entity. A transfer of interest in the primary vessel-owning entity does not include:

(i) Transfers of disparately held shares of the vessel-owning entity if it is a publicly traded company and the total of the shares transferred in a particular transaction equals less than 5% of the shares in that class. An interest in a vessel owning entity that exceeds 5% of the shares in a class can not be sold to the same Non-Citizen through multiple transactions involving less than 5% of the shares of that class of stock in order to maintain the exemption for the vessel owner;

(ii) Transfers of shares in a parent company that do not result in a transfer of the parent company to another Non-Citizen; or

(iii) Transfers pursuant to a divorce or death.

Subpart I—REVIEW OF HARVESTING AND PROCESSING COMPLIANCE

§ 356.55 Review of compliance with harvesting and processing quotas.

(a) Upon the request of either the North Pacific Fishery Management Council ("NPFMC") or the Secretary of Commerce, the Chief Counsel will review any allegation that an individual or entity has exceeded the allowable percentage for harvesting or processing pollock as provided for in section 210(e)(1) or (2) of the AFA.

(b) Following a request for MARAD review under paragraph (a) of this section, the NPFMC and the Secretary of Commerce (through the National Oceanic and Atmospheric Administration and the National Marine Fisheries Service) will transmit to MARAD any relevant information in their possession including, but not limited to:

(1) The identity of the parties alleged to have exceeded the excessive share caps;

(2) The relevant harvesting or processing data (the amount harvested or processed by particular parties);

(3) Any information that would be helpful in determining if the parties are related;

(4) Any information regarding the ownership structure of the parties, including:

(i) Articles of incorporation;

(ii) Bylaws;

(iii) Identity of shareholders and the percentage owned;

(iv) Any contracts or agreements that would demonstrate ownership or control of one party by another allegedly related party; and

(v) Any other evidence that would demonstrate ownership or control of one party by another allegedly related party.

(c) If MARAD determines during the course of its review that additional information is required from the parties alleged to have exceeded the excessive share cap, the Chief Counsel will advise the Secretary of Commerce and/or the NPFMC what information is required. The Secretary and/or the NPFMC will request that specific parties submit the required information to MARAD.

(d) The Chief Counsel will make a finding as soon as practicable and will submit it to the Secretary of Commerce and the NPFMC.

(e) For purposes of this section, if 10% or more of the interest in an entity is owned or controlled either directly or indirectly by another individual or entity, the two entities will be considered the same entity for purposes of applying the harvesting and processing caps.

(1) For purposes of this section, an entity will be deemed to have an ownership interest in a pollock harvesting or processing entity if it either owns a percentage of the pollock harvesting or processing entity directly

or if ownership can be traced through intermediate entities to the pollock harvesting or processing entity. To determine the percentage of ownership interest that an entity has in a pollock harvesting or processing entity where the ownership interest passes through one or more intermediate entities, the entity's percentage of direct interest in an intermediate entity is multiplied by the intermediate entity's percentage of direct or indirect interest in the pollock harvesting or processing entity.

(2) For purposes of this section, an entity will be deemed to exercise 10% or greater control over a pollock harvesting or processing entity if:

(i) It has the right to direct the business of the pollock harvesting or processing entity;

(ii) It has the right to appoint members to the management team of the pollock harvesting or processing entity such as the directors of a corporation or is a general partner or joint venturer in a harvesting or processing entity;

(iii) It has the right to direct the business of an entity that directly or indirectly owns or controls 10% of a harvesting or processing entity; or

(iv) It owns 50% or more of an entity that owns or controls 10 percent of a pollock harvesting or processing entity.

(f) If the Secretary of Commerce determines that there is enough evidence to pursue an enforcement action for violation of the harvesting or processing caps contained in section 210(e) of the AFA, the Person against whom an enforcement action is taken is entitled to notice and an opportunity for a hearing before the Secretary of Commerce in accordance with 5 U.S.C. 554.

Dated: July 6, 2000.

By Order of the Maritime Administrator

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–17495 Filed 7–17–00; 10:09 am]

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Wednesday,
July 19, 2000

Part III

Department of the Interior

National Park Service

Simplified Concession Contracts; Revision

DEPARTMENT OF THE INTERIOR

National Park Service

Simplified Concession Contracts; Revision

ACTION: Final revision of the National Park Service simplified concession contracts.

SUMMARY: The National Park Service (NPS) authorizes certain business entities to operate concessions in areas of the national park system. The agreements embodying these authorizations are concession contracts (and, previously, concession permits) that incorporate NPS terms and conditions established by law and prudent contract administration. In 1998, Public Law 105–391 (the 1998 Act) was enacted and which in many significant ways affects the content of concession contracts to be entered into after its effective date. NPS has amended its existing standard concession contract (Category I contract) to conform to the requirements of the 1998 Act and to otherwise make improvements to the standard form (65 FR 26052, May 4, 2000).

Under this notice, NPS adopts two simplified versions of its standard concession contract (Category II and Category III contracts) that will be used for smaller concession operations. Although not required to do so by law, NPS sought by publication in the **Federal Register** on December 21, 1999, public comments on the proposed simplified contracts to assist it in developing final versions as a matter of public comment. NPS, after consideration of public comments has adopted these simplified versions of its standard concession contract. NPS points out that these simplified versions of the standard concession contract serve as a guideline for the form of concession contracts used to authorize smaller concession operations. These forms reflect the current policies of NPS with regard to concession operations, but may be changed by the Director of NPS when necessary to accommodate the circumstances of any particular contracting situation, so long as the contract form used is consistent with the 1998 Act and 36 CFR Part 51.

EFFECTIVE DATE: August 18, 2000.

FOR FURTHER INFORMATION CONTACT: Cindy Orlando, Concessions Program Manager, National Park Service, 1849 "C" Street, NW, Washington, DC 10140 (202/565–1210).

SUPPLEMENTARY INFORMATION: The 1998 Act, among other matters, amended the statutory policies and procedures under which NPS operated its concession program. The new law required adoption of new regulations governing the award, content and management of concession contracts. On June 30, 1999, NPS published for public comment proposed regulations implementing the new law. The final new regulations were published in the **Federal Register** on April 17, 2000. On September 3, 1999, NPS published for public comment a new standard concession contract (Category I contract). The final Category I contract language was published in the **Federal Register** on May 4, 2000. On December 21, NPS published for public comment its proposed simplified concession contracts (Category II and Category III contracts) that will be used for smaller concession operations that do not involve the concessioner's obtaining a compensable interest in real property located on park lands. The simplified concession contracts set forth in this notice reflect the requirements of the 1998 Act and the requirements of the amended 36 CFR Part 51. They also reflect a variety of improvements NPS wishes to make to its standard form contracts, including a new organizational structure for the sake of clarity.

NPS will utilize the three contract categories as follows:

Category I contracts will be used in situations where the concessioner will be required or allowed to construct or install capital improvements on park area lands, thereby acquiring in certain conditions a leasehold surrender interest. Category I contracts will also require that the concessioner perform capital maintenance on assigned concession facilities, as necessary, and may require the establishment of a maintenance reserve for this purpose.

Category II contracts will be used in situations where a concessioner will operate on assigned land or in an assigned concession facility, but will not be allowed to construct or install capital improvements. As an example, a Category II contract might be used to authorize a gift shop operation in a portion of a park visitor center, or a small snack bar operation in an assigned building.

Category III contracts will be used in situations where no lands or buildings are assigned to the concessioner; consequently, the concessioner will not be allowed to construct or install any capital improvements and the concessioner will not obtain any leasehold surrender interest. Many outfitter/guide operations will be authorized by Category III contracts.

Public Comments

Twenty-two public comments were received in response to the public notice. Twenty of these comments were from outfitters and guides, or groups representing outfitters and guides. The remaining two comments were submitted by an organization representing some 150 existing concessioner members (the "general concessioner organization"), and by one large concessioner supporting the comments made by that organization.

Two commenters expressly incorporated by reference objections they had made to the proposed Category I contract. Those comments are not addressed here, as they have been addressed in the preamble to the Category I contract. Additionally, several comments directed to specific provisions of the Category II and Category III contracts have been addressed in response to similar comments received on the Category I contract. These comments will be noted here, and the response will give reference to the section of the Category I preamble where they have been addressed. Changes made to the Category I contract in response to public comments are incorporated in the final simplified contracts where applicable.

General Comments

All but one commenter stated that the simplified contracts must specifically recognize the right of preference provided to outfitters and guides and small businesses under the 1998 Act. See NPS response in paragraph 7, Additional Provisions Section of the Category I contract.

One commenter who submitted comments on behalf of Alaska hunting guides identified several sections where conflicts may exist between the contracts and the provisions of the Alaska National Interest Lands Conservation Act (ANILCA) or other laws specific to Alaska. NPS wishes to point out that the proposed simplified contracts have been developed for nationwide application. If, in the development of individual contracts, it appears that modifications are necessary in order to comport with specific legislative requirements, they will be considered and incorporated, as appropriate, on a case-by-case basis. The NPS further notes that the 1998 Act specifically states that the Act does not amend, supersede or otherwise affect any provision of ANILCA relating to revenue producing visitor services (Sec. 415(c) of the 1998 Act).

Only one of the 22 commenters objected to the length and level of detail

of the proposed simplified contracts. NPS has made every effort to streamline the simplified contracts to the extent possible. However, it considers that all of the provisions are required in order to give NPS the ability to properly preserve and protect the resources of areas of the national park system and their visitors. Further, the simplified contracts provide added protections to small concessioners that were not afforded under the terms of concession permits with regard to NPS administrative actions.

In developing these final simplified contracts, NPS has incorporated the changes it has made to the Category I contract in response to public comment, to the extent applicable. Those changes, and the discussion of those changes, are incorporated and made a part of this notice, as if repeated fully herein. In addition, discussions of comments and/or changes made in response to public comments on 36 CFR part 51 as amended, to the extent that they are applicable to the simplified contracts, are also incorporated and made a part of this notice. NPS has also made several editorial and conforming changes to the simplified contracts in addition to the changes discussed below.

Section-by-Section Analysis of Comments and Changes

The following discusses significant comments made on the several sections of the proposed simplified contracts. Unless otherwise noted, comments relate to both Category II and Category III contracts. Where section numbers differ between Category II and III contracts, both section numbers will be identified (for example, Section 10/7). The first number will refer to the applicable section number in the Category II contract. The second number will refer to the related section number in the Category III contract.

Opening Paragraphs

One commenter expressed concern that the opening paragraphs assume that concessioners will be a corporation, partnerships or sole proprietorships, and suggested that the contracts be revised to allow for other possibilities. NPS has included opening paragraphs for these three forms of business organization because they are the ones most commonly encountered in the award of concession contracts. Appropriate opening paragraphs will be developed for other legally recognized forms of business entities on a case-by-case basis as the need arises.

Section 1. Term of Contract

Several commenters felt that the proposed contracts should specify a 10-year term for outfitters and guides. NPS has left the proposed term of contract blank because the appropriate term for each individual contract will be determined on a case by case basis in accordance with 36 CFR Part 51 and NPS policies.

Section 2. Definitions

Many commenters objected to the definition of "Applicable Laws" in Section 2(a) as providing NPS unilateral authority to amend contracts to reflect future changes in agency regulations, rules, requirements or policies. See NPS response to comments on Section 2(a), Applicable Laws, of the Category I contract.

Several comments stated that Section 7, Fees, should reflect that fees should be charged only on the portion of gross receipts related to park visitation. See NPS response to comments on Section 2(g), Definition of gross receipts, of the Category I contract.

Section 3. Services and Operations

Several commenters felt that the requirement in Section 3(d) that all promotional or interpretive material must be approved is unreasonable and unworkable. See NPS response to comments on Section 3(d)(2) of the Category I contract.

Section 4. Concessioner Personnel

Most outfitters and guides objected to the requirement in Section 4(c) that concessioner employees must wear a uniform or badge, and stated that this is inappropriate for most outfitter and guide operations. NPS points out that this section only requires the wearing of a uniform or badge by employees who come in direct contact with the public "so far as practicable" (emphasis added). NPS considers this to be a reasonable requirement.

One commenter expressed concern that the language of Section 4(e) concerning the hiring of people interested in serving the public and being positive contributors to the park's purposes would require concessioners to base hiring decisions on subjective judgement. This clause has been deleted (see NPS response to comments on Section 4(a)(5) of the Category I contract).

Section 5. Legal, Regulatory and Policy Compliance

No comments were received on this section.

Section 6. Environmental and Cultural Protection

Several comments were received on this section. However, on February 23, 2000, NPS published for public comment a revised Section 6. The public comments received in response to that public notice are discussed in the preamble to the final Category I contract. The comments received on this section in response to the simplified contracts notice were also considered in that connection and are addressed in the preamble to the Category I contract.

Section 7. Interpretation of Area Resources (Category II Only)

No comments were received on this section.

Section 8. Concession Facilities Used in Operation by Concessioner (Category II Only)

One commenter, the general concessioner organization, objected to Section 8(a) of the Category II contract, in that the contract imposes maintenance obligations on the concessioner and feels that, to the extent these obligations result in construction of capital improvements, the concessioner would be entitled to leasehold surrender interest. Given the stated purpose of Category II contracts, the commenter feels that NPS should be responsible for maintenance and collect a greater franchise fee. NPS is confused by this comment. Section 8(a)(1) specifically states that the concessioner shall not be authorized to construct any capital improvements on parklands. The fact that the concessioner is not authorized to make capital improvements should not, however, excuse the concessioner from responsibility for maintenance obligations. NPS has added the phrase "Subject to the limitations set forth in Section 8(a)(1)," at the beginning of Section 9 to clarify that maintenance projects that would require the concessioner to make capital improvements will not be required or authorized. See also NPS response to comments on Section 51.75 (Section 51.67 in the final rule) concerning the relationship of concessioner repair and maintenance requirements and leasehold surrender interest.

The same commenter questions why the phrase "or real property improvements" was deleted from subsection 8(b). NPS agrees with this comment and has reinserted the phrase "or real property improvements." See also discussion in Section 8(b) of the Category I contract.

Section 9. Maintenance (Category II Only)

The general concessioner organization raises the same comments with regard to this section as it expressed on Section 8(a) of the Category II contract. See NPS response to comment on Section 8(a) of the Category II contract.

Section 10/7. Fees

Two commenters expressed concern about the monthly fee payment requirement of Section 10/7 (b)(1). One suggested that NPS consider annual payments, and the other suggested that payments be required twice yearly, or monthly only if annual gross receipts exceed $250,000. NPS points out that standard government accounting practices require monthly payment of fees. However, in revising its administrative practices regarding concessioners, NPS will look into other possible payment schedules that may lessen the burden of monthly payments on small concessioners.

Another commenter suggested that fees for outfitters be based on a per head, per day basis for each day the guide operates on park lands. Again, in reviewing and revising its administrative practices regarding concessioners, NPS may look into alternative methods of structuring fees for specific types of operations.

Several commenters suggested that this section should be more specific about the methodology to be used to determine whether there is diversion or concealment of profits. NPS considers that such methodology is not the subject of contract terms and conditions, but, more appropriately, belongs in related administrative policies and procedures.

One commenter noted that the Fees section of the simplified contract omits fee adjustment language. NPS agrees that, in compliance with section 407 of the 1998 Act, this language should be included in contracts with terms of more than 5 years. Accordingly, NPS has included the fee adjustment language from the Category I contract along with instructions to this effect.

Section 11/8. Indemnification and Insurance

Many commenters felt that this section is unnecessarily vague on the types of insurance that a concessioner will be required to obtain and maintain, and suggested that these insurance types and limits should be specifically reflected in the contract, as was the case in the past. NPS will identify on a case-by-case basis the specific types and minimum amounts of insurance applicable to each contract in the Insurance Exhibit (Exhibit D) that will be attached to each simplified contract.

One commenter objected to Section 11(d) requiring concessioner to insure concession facilities assigned to it in the context of a Category II contract. This commenter further objected to Section 11(d)(1) of the Category II contract to the extent it purports to impose requirements on the insurance of concessioner facilities located outside of the park. NPS assumes that the first comment relates to "shared use" facilities (for example, where a concessioner occupies a small portion of a visitor center). The extent to which, if at all, the concessioner may be required to provide property insurance in these circumstances is determined on a case-by-case basis in accordance with NPS administrative guidelines. These guidelines have been in place for many years and have proved to be fair and workable. With regard to the second comment, NPS does not consider that Section 11(d)(1) purports to impose requirements on the insurance of concessioner facilities located outside of the park.

Section 12/9. Bonds and Liens

Several commenters suggest that NPS should limit its first lien to only that property used exclusively in the performance of the contract. See NPS response to comments on Section 13(b), Liens, of the Category I contract.

One commenter felt that for the types of operations envisioned under the simplified contracts, there is no justification for bonding requirements, and that it is unfair for the Government to have any lien rights. NPS does not agree that bonding requirements are inappropriate under the simplified contracts. As an example, bonding could be utilized under a Category III contract if considered necessary to mitigate anticipated resource impacts of a particular concession operation. However, in light of changes made to the Category I contract as a result of public comment (see NPS response to comments on Section 13(b) of the Category I contract), NPS considers that it is appropriate to delete the lien provision from the Category III contract, because the concessioner's real and personal property will, in almost all instances, be located outside the park area.

Section 13/10. Accounting Records and Reports

No comments were received on this section.

Section 14/11. Other Reporting Requirements

One commenter questioned whether concessioners would be required under Section 14/11(b) to submit reports on environmental compliance if no reportable actions or incidents had occurred. There is no requirement of this nature except in the limited circumstances described in this section.

One commenter points out that the requirement of Section 14/11(a) that concessioners provide the Director with certificates of insurance for all coverages at specified times is inconsistent with the requirements of Section 8/11(c) which also require them to be provided at specified times, but only at the request of the Director. NPS agrees that these provisions appear to be inconsistent, and has added the conditional language "At the request of the Director" at the beginning of Section 8/11(b)(3).

Section 15/12. Suspension and Termination

Several commenters felt that Section 15/12 grants an undue degree of discretion by allowing NPS to suspend or terminate contracts when necessary for administrative purposes or to enhance or protect park resources. Another commenter stated that the contract should not be able to be unilaterally amended or terminated. NPS has modified these sections in response to public comment on the Category I contract. See NPS response to comments on Sections 16(a) and 16(b)(1) of the Category I contract.

One commenter felt that concessioners should be allowed 1 month rather than 15 days to cure monetary breaches under Section 16(b)(3). NPS disagrees, and feels that 15 days should be an adequate period of time in which to cure a monetary breach of the contract.

One commenter stated that the Director should not have the discretion to suspend operations after one breach before the concessioner has had an opportunity to cure under Section 16(b)(3).

NPS does not agree with this comment, and notes that Section 16(b)(3) limits the Director's authority to suspend a contract pending cure to that set forth in Section 16(a), *i.e.*, to protect park visitors or to conserve and preserve park area resources. NPS considers this provision necessary for proper management of park area resources and visitor protection. See NPS response to comments on Section 16 of the Category I contract.

One commenter requested that NPS specify a time period for how promptly

a concessioner will be required to vacate the area after termination, and stated that the vacating concessioner should be compensated for its personal property. See NPS response to comments on Section 17(e) of the Category I contract.

Section 16/13. Assignment, Sale or Encumbrance of Interests

Most commenters felt that Section 16/13 needs to be rewritten to reflect the intent of the 1998 Act that contracts be transferable to a qualified buyer. As this section of the contract simply incorporates by reference the requirements of 36 CFR part 51 with regard to assignments, sales and encumbrances, this comment is addressed in the NPS response to comments on Subpart I, 36 CFR part 51.

Section 17/14. General Provisions

No comments were received on this section.

Section 18/15. Special Provisions

No comments were received on this section.

Exhibits

See the discussion of exhibits contained in the preamble to the final Category I contract.

Based on the foregoing, NPS adopts the following standard form Category II and III concession contract for use in its concession management program, with the understanding that they are only internal guidelines. The Director, in his discretion, may utilize any form of concession contract it may choose consistent with the requirements of the 1998 Act and 36 CFR part 51.

Category II Contract

United States Department of the Interior; National Park Service

[Name of Area] _____

[Site] _____

[Type of Service] _____

Concession Contract No. _____

[Name of Concessioner] _____

[Address, including email address and phone number] _____

Doing Business As _____

Covering the Period _____ through _____

Concession Contract

Table of Contents

[CORPORATION]

This Contract is made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the Regional Director of the _____ Region, (hereinafter referred to as the "Director"), and _____, a corporation organized and existing under the laws of the State of _____ (hereinafter referred to as the "Concessioner"):

[PARTNERSHIP]

This Contract is made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the Regional Director of the _____ Region, hereinafter referred to as the "Director", and _____ a partnership organized under the laws of the State of _____, hereinafter referred to as the "Concessioner":

[SOLE PROPRIETORSHIP]

This Contract made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the Regional Director of the _____ Region, hereinafter referred to as the "Director," and, _____, an individual of, doing business as _____, hereinafter referred to as the "Concessioner":

WITNESSETH:

That Whereas, [Name of Park, Recreation Area, etc.] is administered by the Director as a unit of the national park system to conserve the scenery and the natural and historic objects and the wildlife therein, and to provide for the public enjoyment of the same in such manner as will leave such Area unimpaired for the enjoyment of future generations; and

Whereas, to accomplish these purposes, the Director has determined that certain visitor services are necessary and appropriate for the public use and enjoyment of the Area and should be provided for the public visiting the Area; and

Whereas, the Director desires the Concessioner to establish and operate these visitor services at reasonable rates under the supervision and regulation of the Director; and

Whereas, the Director desires the Concessioner to conduct these visitor services in a manner that demonstrates sound environmental management, stewardship, and leadership;

Now, Therefore, pursuant to the authority contained in the Acts of August 25, 1916 (16 U.S.C. 1, 2–4), and November 13, 1998 (Pub. L. 105–391), and other laws that supplement and amend the Acts, the Director and the Concessioner agree as follows:

Sec. 1. Term of Contract

This Concession Contract No. _____ ("CONTRACT") shall be effective as of _____, and shall be for the term of _____ (_____) years until its expiration on _____, 20_____.

Sec. 2. Definitions

The following terms used in this CONTRACT will have the following meanings, which apply to both the singular and the plural forms of the defined terms:

(a) "Applicable Laws" means the laws of Congress governing the Area, including, but not limited to, the rules, regulations, requirements and policies promulgated under those laws (*e.g.,* 36 CFR Part 51), whether now in force, or amended, enacted or promulgated in the future, including, without limitation, federal, state and local laws, rules, regulations, requirements and policies governing nondiscrimination, protection of the environment and protection of public health and safety.

(b) "Area" means the property within the boundaries of *[Name of Park Unit].*

(c) "Best Management Practices" or "BMPs" are policies and practices that apply the most current and advanced means and technologies available to the Concessioner to undertake and maintain a superior level of environmental performance reasonable in light of the circumstances of the operations conducted under this CONTRACT. BMPs are expected to change from time to time as technology evolves with a goal of sustainability of the Concessioner's operations. Sustainability of operations refers to operations that have a restorative or net positive impact on the environment.

(d) "Concession Facilities" shall mean all Area lands assigned to the Concessioner under this CONTRACT and all real property improvements assigned to the Concessioner under this CONTRACT. The United States retains title and ownership to all Concession Facilities.

(f) "Days" shall mean calendar days.

(g) "Director" means the Director of the National Park Service, acting on behalf of the Secretary of the Interior and the United States, and his duly authorized representatives.

(h) "Exhibit" or "Exhibits" shall mean the various exhibits, which are attached to this CONTRACT, each of which is hereby made a part of this CONTRACT.

(i) "Gross receipts" means the total amount received or realized by, or accruing to, the Concessioner from all sales for cash or credit, of services, accommodations, materials, and other merchandise made pursuant to the rights granted by this CONTRACT, including gross receipts of subconcessioners as herein defined, commissions earned on contracts or agreements with other persons or companies operating in the Area, and gross receipts earned from electronic media sales, but excluding:

(1) Intracompany earnings on account of charges to other departments of the operation (such as laundry);

(2) Charges for employees' meals, lodgings, and transportation;

(3) Cash discounts on purchases;

(4) Cash discounts on sales;

(5) Returned sales and allowances;

(6) Interest on money loaned or in bank accounts;

(7) Income from investments;

(8) Income from subsidiary companies outside of the Area;

(9) Sale of property other than that purchased in the regular course of business for the purpose of resale;

(10) Sales and excise taxes that are added as separate charges to sales prices, gasoline taxes, fishing license fees, and postage stamps, provided that the amount excluded shall not exceed the amount actually due or paid government agencies;

(11) Receipts from the sale of handicrafts that have been approved for sale by the Director as constituting authentic American Indian, Alaskan Native, Native Samoan, or Native Hawaiian handicrafts.

All monies paid into coin operated devices, except telephones, whether provided by the Concessioner or by others, shall be included in gross receipts. However, only revenues actually received by the Concessioner from coin-operated telephones shall be included in gross receipts. All revenues received from charges for in-room telephone or computer access shall be included in gross receipts.

(j) "Gross receipts of subconcessioners" means the total amount received or realized by, or accruing to, subconcessioners from all sources, as a result of the exercise of the rights conferred by a subconcession contract. A subconcessioner will report all of its gross receipts to the Concessioner without allowances, exclusions, or deductions of any kind or nature.

(k) "Subconcessioner" means a third party that, with the approval of the Director, has been granted by a concessioner rights to operate under a concession contract (or any portion thereof), whether in consideration of a percentage of revenues or otherwise.

(l) "Superintendent" means the manager of the Area.

(m) "Visitor services" means the accommodations, facilities and services that the Concessioner is required and/or authorized to provide by Section 3(a) of this CONTRACT.

Sec. 3. Services and Operations

(a) Required and Authorized Visitor Services

During the term of this CONTRACT, the Director requires and authorizes the Concessioner to provide the following visitor services for the public within the Area:

(1) *Required Visitor Services.* The Concessioner is required to provide the following visitor services during the term of this CONTRACT:

[Provide a detailed description of required services. Broad generalizations such as "any and all facilities and services customary in such operations" or "such additional facilities and services as may be required" are not to be used.]

(2) *Authorized Visitor Services.* The Concessioner is authorized but not required to provide the following visitor services during the term of this CONTRACT:

[Provide detailed description of authorized services. See note in subsection (a)(1) above.]

(b) Operation and Quality of Operation

The Concessioner shall provide, operate and maintain the required and authorized visitor services and any related support facilities and services in accordance with this CONTRACT to such an extent and in a manner considered satisfactory by the Director. Except for any such items that may be provided to the Concessioner by the Director, the Concessioner shall provide the plant, personnel, equipment, goods, and commodities necessary for providing, operating and maintaining the required and authorized visitor services in accordance with this CONTRACT. The Concessioner's authority to provide visitor services

under the terms of this CONTRACT is non-exclusive.

(c) Operating Plan

[Optional—This section may be deleted and operating requirements incorporated under Section 18, Special Provisions.]

The Director, acting through the Superintendent, shall establish and revise, as necessary, specific requirements for the operations of the Concessioner under this CONTRACT in the form of an Operating Plan (including, without limitation, a risk management program, that must be adhered to by the Concessioner). The initial Operating Plan is attached to this CONTRACT as Exhibit A. The Director in his discretion, after consultation with the Concessioner, may make reasonable modifications to the initial Operating Plan that are in furtherance of the purposes of this CONTRACT and are not inconsistent with the terms and conditions of the main body of this CONTRACT.

(d) Merchandise and Services

(1) The Director reserves the right to determine and control the nature, type and quality of the visitor services described in this CONTRACT, including, but not limited to, the nature, type, and quality of merchandise, if any, to be sold or provided by the Concessioner within the Area.

(2) All promotional material, regardless of media format (*i.e.* printed, electronic, broadcast media), provided to the public by the Concessioner in connection with the services provided under this CONTRACT must be approved in writing by the Director prior to use. All such material will identify the Concessioner as an authorized Concessioner of the National Park Service, Department of the Interior.

(3) [OPTIONAL—To be used only if the concessioner is authorized to sell merchandise.] The Concessioner, where applicable, will develop and implement a plan satisfactory to the Director that will assure that gift merchandise, if any, to be sold or provided reflects the purpose and significance of the Area, including, but not limited to, merchandise that reflects the conservation of the Area's resources or the Area's geology, wildlife, plant life, archeology, local Native American culture, local ethnic culture, and historic significance.

(e) Rates

All rates and charges to the public by the Concessioner for visitor services shall be reasonable and appropriate for the type and quality of facilities and/or services required and/or authorized under this CONTRACT. The Concessioner's rates and charges to the public must be approved by the Director in accordance with Applicable Laws and guidelines promulgated by the Director from time to time.

(f) Impartiality as to Rates and Services

(1) Subject to Section (f)(2) and (f)(3), in providing visitor services, the Concessioner must require its employees to observe a strict impartiality as to rates and services in all circumstances. The Concessioner shall comply with all Applicable Laws relating to nondiscrimination in providing visitor services to the public including, without limitation, those set forth in Exhibit B.

(2) The Concessioner may grant complimentary or reduced rates under such circumstances as are customary in businesses of the character conducted under this CONTRACT. However, the Director reserves the right to review and modify the Concessioner's complimentary or reduced rate policies and practices as part of its rate approval process.

(3) The Concessioner will provide Federal employees conducting official business reduced rates for lodging, essential transportation and other specified services necessary for conducting official business in accordance with guidelines established by the Director. Complimentary or reduced rates and charges shall otherwise not be provided to Federal employees by the Concessioner except to the extent that they are equally available to the general public.

Sec 4. Concessioner Personnel

(a) The Concessioner shall provide all personnel necessary to provide the visitor services required and authorized by this CONTRACT.

(b) The Concessioner shall comply with all Applicable Laws relating to employment and employment conditions, including, without limitation, those set forth in Exhibit B.

(c) The Concessioner shall ensure that its employees are hospitable and exercise courtesy and consideration in their relations with the public. The Concessioner shall have its employees who come in direct contact with the public, so far as practicable, wear a uniform or badge by which they may be identified as the employees of the Concessioner.

(d) The Concessioner shall establish pre-employment screening, hiring, training, employment, termination and other policies and procedures for the purpose of providing visitor services through its employees in an efficient and effective manner and for the purpose of maintaining a healthful, law abiding, and safe working environment for its employees. The Concessioner shall conduct appropriate background reviews of applicants to whom an offer for employment may be extended to assure that they conform to the hiring policies established by the Concessioner.

(e) The Concessioner shall ensure that its employees are provided the training needed to provide quality visitor services and to maintain up-to-date job skills.

(f) The Concessioner shall review the conduct of any of its employees whose action or activities are considered by the Concessioner or the Director to be inconsistent with the proper administration of the Area and enjoyment and protection of visitors and shall take such actions as are necessary to correct the situation.

(g) The Concessioner shall maintain, to the greatest extent possible, a drug free environment, both in the workplace and in any Concessioner employee housing, within the Area.

(h) The Concessioner shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and in the Area, and specifying the actions that will be taken against employees for violating this prohibition. In addition, the Concessioner shall establish a drug-free awareness program to inform employees about the danger of drug abuse in the workplace and the Area, the availability of drug counseling, rehabilitation and employee assistance programs, and the Concessioner's policy of maintaining a drug-free environment both in the workplace and in the Area.

(i) The Concessioner shall take appropriate personnel action, up to and including termination or requiring satisfactory participation in a drug abuse or rehabilitation program which is approved by a Federal, State, or local health, law enforcement or other appropriate agency, for any employee that is found to be in violation of the prohibition on the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

Sec. 5. Legal, Regulatory, and Policy Compliance

(a) Legal, Regulatory and Policy Compliance

This CONTRACT, operations thereunder by the Concessioner and the

administration of it by the Director, shall be subject to all Applicable Laws. The Concessioner must comply with all Applicable Laws in fulfilling its obligations under this CONTRACT at the Concessioner's sole cost and expense. Certain Applicable Laws governing protection of the environment are further described in this CONTRACT. Certain Applicable Laws relating to nondiscrimination in employment and providing accessible facilities and services to the public are further described in this CONTRACT.

(b) Notice

The Concessioner shall give the Director immediate written notice of any violation of Applicable Laws by the Concessioner, including its employees, agents or contractors, and, at its sole cost and expense, must promptly rectify any such violation.

(c) How and Where To Send Notice

All notices required by this CONTRACT shall be in writing and shall be served on the parties at the following addresses. The mailing of a notice by registered or certified mail, return receipt requested, shall be sufficient service. Notices sent to the Director shall be sent to the following address:

Superintendent
Park name
Address
Attention:

Notices sent to the Concessioner shall be sent to the following address:

Concessioner
Address
Attention:

Sec. 6. Environmental and Cultural Protection

(a) Environmental Management Objectives

The Concessioner shall meet the following environmental management objectives (hereinafter "Environmental Management Objectives") in the conduct of its operations under this CONTRACT:

(1) The Concessioner, including its employees, agents and contractors, shall comply with all Applicable Laws pertaining to the protection of human health and the environment.

(2) The Concessioner shall incorporate Best Management Practices (BMPs) in its operation, construction, maintenance, acquisition, provision of visitor services, and other activities under this CONTRACT.

(b) Environmental Management Program

(1) The Concessioner shall develop, document, implement, and comply fully with, to the satisfaction of the Director, a comprehensive written Environmental Management Program (EMP) to achieve the Environmental Management Objectives. The initial EMP shall be developed and submitted to the Director for approval within sixty days of the effective date of this CONTRACT. The Concessioner shall submit to the Director for approval a proposed updated EMP annually.

(2) The EMP shall account for all activities with potential environmental impacts conducted by the Concessioner or to which the Concessioner contributes. The scope and complexity of the EMP may vary based on the type, size and number of Concessioner activities under this CONTRACT.

(3) The EMP shall include, without limitation, the following elements:

(i) *Policy.* The EMP shall provide a clear statement of the Concessioner's commitment to the Environmental Management Objectives.

(ii) *Goals and Targets.* The EMP shall identify environmental goals established by the Concessioner consistent with all Environmental Management Objectives. The EMP shall also identify specific targets (*i.e.* measurable results and schedules) to achieve these goals.

(iii) *Responsibilities and Accountability.* The EMP shall identify environmental responsibilities for Concessioner employees and contractors. The EMP shall include the designation of an environmental program manager. The EMP shall include procedures for the Concessioner to implement the evaluation of employee and contractor performance against these environmental responsibilities.

(iv) *Documentation.* The EMP shall identify plans, procedures, manuals, and other documentation maintained by the Concessioner to meet the Environmental Management Objectives.

(v) *Documentation Control and Information Management System.* The EMP shall describe (and implement) document control and information management systems to maintain knowledge of Applicable Laws and BMPs. In addition, the EMP shall identify how the Concessioner will manage environmental information, including without limitation, plans, permits, certifications, reports, and correspondence.

(vi) *Reporting.* The EMP shall describe (and implement) a system for reporting environmental information on a routine and emergency basis, including providing reports to the Director under this CONTRACT.

(vii) *Communication.* The EMP shall describe how the environmental policy, goals, targets, responsibilities and procedures will be communicated throughout the Concessioner's organization.

(viii) *Training.* The EMP shall describe the environmental training program for the Concessioner, including identification of staff to be trained, training subjects, frequency of training and how training will be documented.

(ix) *Monitoring, Measurement, and Corrective Action.* The EMP shall describe how the Concessioner will comply with the EMP and how the Concessioner will self-assess its performance under the EMP, a least annually, in a manner consistent with NPS protocol regarding audit of NPS operations. The self-assessment should ensure the Concessioner's conformance with the Environmental Management Objectives and measure performance against environmental goals and targets. The EMP shall also describe procedures to be taken by the Concessioner to correct any deficiencies identified by the self-assessment.

(c) Environmental Performance Measurement

The Concessioner shall be evaluated by the Director on its environmental performance under this CONTRACT, including, without limitation, compliance with the approved EMP, on at least an annual basis.

(d) Environmental Data, Reports, Notifications, and Approvals

(1) *Inventory of Hazardous Substances and Inventory of Waste Streams.* The Concessioner shall submit to the Director, at least annually, an inventory of federal Occupational Safety and Health Administration (OSHA) designated hazardous chemicals used and stored in the Area by the Concessioner. The Director may prohibit the use of any OSHA hazardous chemical by the Concessioner in operations under this CONTRACT. The Concessioner shall obtain the Director's approval prior to using any extremely hazardous substance, as defined in the Emergency Planning and Community Right to Know Act of 1986, in operations under this CONTRACT. The Concessioner shall also submit to the Director, at least annually, an inventory of all waste streams generated by the Concessioner under this CONTRACT. Such inventory shall include any documents, reports, monitoring data, manifests, and other documentation required by Applicable Laws regarding waste streams.

(2) *Reports.* The Concessioner shall submit to the Director copies of all documents, reports, monitoring data,

manifests, and other documentation required under Applicable Laws to be submitted to regulatory agencies. The Concessioner shall also submit to the Director any environmental plans for which coordination with Area operations are necessary and appropriate, as determined by the Director in accordance with Applicable Laws.

(3) *Notification of Releases.* The Concessioner shall give the Director immediate written notice of any discharge, release or threatened release (as these terms are defined by Applicable Laws) within or at the vicinity of the Area, (whether solid, semi-solid, liquid or gaseous in nature) of any hazardous or toxic substance, material, or waste of any kind, including, without limitation, building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product.

(4) *Notice of Violation.* The Concessioner shall give the Director in writing immediate notice of any written threatened or actual notice of violation from other regulatory agencies of any Applicable Law arising out of the activities of the Concessioner, its agents or employees.

(5) *Communication with Regulatory Agencies.* The Concessioner shall provide timely written advance notice to the Director of communications, including without limitation, meetings, audits, inspections, hearings and other proceedings, between regulatory agencies and the Concessioner related to compliance with Applicable Laws concerning operations under this CONTRACT. The Concessioner shall also provide to the Director any written materials prepared or received by the Concessioner in advance of or subsequent to any such communications. The Concessioner shall allow the Director to participate in any such communications. The Concessioner shall also provide timely notice to the Director following any unplanned communications between regulatory agencies and the Concessioner.

(e) Corrective Action

(1) The Concessioner, at its sole cost and expense, shall promptly control and contain any discharge, release or threatened release, as set forth in this section, or any threatened or actual violation, as set forth in this section, arising in connection with the Concessioner's operations under this CONTRACT, including, but not limited to, payment of any fines or penalties imposed by appropriate agencies. Following the prompt control or containment of any release, discharge or violation, the Concessioner shall take all response actions necessary to remediate the release, discharge or violation, and to protect human health and the environment.

(2) Even if not specifically required by Applicable Laws, the Concessioner shall comply with directives of the Director to clean up or remove any materials, product or by-product used, handled, stored, disposed, or transported onto or into the Area by the Concessioner to ensure that the Area remains in good condition.

(f) Indemnification and Cost Recovery for Concessioner Environmental Activities

(1) The Concessioner shall indemnify the United States in accordance with Section 11 of this CONTRACT from all losses, claims, damages, environmental injuries, expenses, response costs, allegations or judgments (including, without limitation, fines and penalties) and expenses (including, without limitation, attorneys fees and experts' fees) arising out of the activities of the Concessioner, its employees, agents and contractors pursuant to this section. Such indemnification shall survive termination or expiration of this CONTRACT.

(2) If the Concessioner does not promptly contain and remediate an unauthorized discharge or release arising out of the activities of the Concessioner, its employees, agents and contractors, as set forth in this section, or correct any environmental self-assessment finding of non-compliance, in full compliance with Applicable Laws, the Director may, in its sole discretion and after notice to the Concessioner, take any such action consistent with Applicable Laws as the Director deems necessary to abate, mitigate, remediate, or otherwise respond to such release or discharge, or take corrective action on the environmental self-assessment finding. The Concessioner shall be liable for and shall pay to the Director any costs of the Director associated with such action upon demand. Nothing in this section shall preclude the Concessioner from seeking to recover costs from a responsible third party.

(g) Weed and Pest Management

The Concessioner shall be responsible for managing weeds, and through an integrated pest management program, harmful insects, rats, mice and other pests on Concession Facilities assigned to the Concessioner under this CONTRACT. All such weed and pest management activities shall be in accordance with Applicable Laws and guidelines established by the Director.

(h) Protection of Cultural and Archeological Resources

The Concessioner shall ensure that any protected sites and archeological resources within the Area are not disturbed or damaged by the Concessioner, including the Concessioner's employees, agents and contractors, except in accordance with Applicable Laws, and only with the prior approval of the Director. Discoveries of any archeological resources by the Concessioner shall be promptly reported to the Director. The Concessioner shall cease work or other disturbance which may impact any protected site or archeological resource until the Director grants approval, upon such terms and conditions as the Director deems necessary, to continue such work or other disturbance.

Sec. 7. Interpretation of Area Resources

(a) Concessioner Obligations

(1) The Concessioner shall provide all visitor services in a manner that is consistent with and supportive of the interpretive themes, goals and objectives of the Area as reflected in Area planning documents, mission statements and/or interpretive prospectuses.

(2) The Concessioner may assist in Area interpretation at the request of the Director to enhance visitor enjoyment of the Area. Any additional visitor services that may result from this assistance must be recognized in writing through written amendment of Section 3 of this CONTRACT.

(3) The Concessioner is encouraged to develop interpretive materials or means to educate visitors about environmental programs or initiatives implemented by the Concessioner.

(b) Director review of content

The Concessioner must submit the proposed content of any interpretive programs, exhibits, displays or materials, regardless of media format (*i.e.* printed, electronic, or broadcast media), to the Director for review and approval prior to offering such programs, exhibits, displays or materials to Area visitors.

Sec. 8. Concession Facilities Used in Operation by the Concessioner

(a) Assignment of Concession Facilities

(1) The Director hereby assigns Concession Facilities as described in Exhibit C to the Concessioner for the purposes of this CONTRACT. The Concessioner shall not be authorized to

construct any Capital Improvements (as defined in Applicable Laws including without limitation 36 CFR Part 51) upon Area lands. The Concessioner shall not obtain a Leasehold Surrender Interest or other compensable interest in Capital Improvements constructed or installed in violation of this CONTRACT.

(2) The Director shall from time to time amend Exhibit C to reflect changes in Concession Facilities assigned to the Concessioner.

(b) Concession Facilities Withdrawals

The Director may withdraw all or portions of these Concession Facilities assignments at any time during the term of this CONTRACT if:

(1) The withdrawal is necessary for the purpose of conserving, preserving or protecting Area resources or visitor enjoyment or safety;

(2) The operations utilizing the assigned Concession Facilities have been terminated or suspended by the Director; or

(3) Land or real property improvements assigned to the Concessioner are no longer necessary for the concession operation.

(c) Effect of Withdrawal

Any permanent withdrawal of assigned Concession Facilities which the Director or the Concessioner considers to be essential for the Concessioner to provide the visitor services required by this CONTRACT will be treated as a termination of this CONTRACT pursuant to Section 15. No compensation is due the Concessioner in these circumstances.

(d) Right of Entry

The Director shall have the right at any time to enter upon or into the Concession Facilities assigned to the Concessioner under this CONTRACT for any purpose he may deem necessary for the administration of the Area.

(e) Personal Property

(1) *Personal Property Provided by the Concessioner.* The Concessioner shall provide all personal property, including without limitation removable equipment, furniture and goods, necessary for its operations under this CONTRACT, unless such personal property is provided by the Director as set forth in subsection (e)(2).

(2) *Personal Property Provided by the Government.* The Director may provide certain items of government personal property, including without limitation removable equipment, furniture and goods, for the Concessioner's use in the performance of this CONTRACT. The Director hereby assigns government personal property listed in Exhibit D to the Concessioner as of the effective date of this CONTRACT. This Exhibit D will be modified from time to time by the Director as items may be withdrawn or additional items added. The Concessioner shall be accountable to the Director for the government personal property assigned to it and shall be responsible for maintaining the property as necessary to keep it in good and operable condition. If the property ceases to be serviceable, it shall be returned to the Director for disposition.

(f) Condition of Concession Facilities

The Concessioner has inspected the Concession Facilities and any assigned government personal property, is thoroughly acquainted with their condition, and accepts the Concession Facilities, and any assigned government personal property, "as is."

(g) Utilities

(1) The Director may provide utilities to the Concessioner for use in connection with the operations required or authorized hereunder when available and at rates to be determined in accordance with Applicable Laws.

(2) If the Director does not provide utilities to the Concessioner, the Concessioner shall, with the written approval of the Director and under any requirements that the Director shall prescribe, secure necessary utilities at its own expense from sources outside the Area.

Sec. 9. Maintenance

(a) Maintenance Obligation

Subject to the limitations set forth in Section 8(a)(1) of this CONTRACT, the Concessioner shall be solely responsible for maintenance, repairs, housekeeping, and groundskeeping for all Concession Facilities to the satisfaction of the Director.

(b) Maintenance Plan

[OPTIONAL—This section may be deleted and maintenance requirements incorporated under Section 18, Special Provisions.]

For these purposes, the Director, acting through the Superintendent, shall undertake appropriate inspections, and shall establish and revise, as necessary, a Maintenance Plan consisting of specific maintenance requirements which shall be adhered to by the Concessioner. The initial Maintenance Plan is set forth in Exhibit E. The Director in his discretion may make reasonable modifications to the Maintenance Plan from time to time after consultation with the Concessioner. Such modifications shall be in furtherance of the purposes of this CONTRACT and shall not be inconsistent with the terms and conditions of the main body of this CONTRACT.

Sec. 10. Fees

(a) Franchise Fee

(1) For the term of this CONTRACT, the Concessioner shall pay to the Director for the privileges granted under this CONTRACT a franchise fee equal to _____ percent (_____%) of the Concessioner's gross receipts for the preceding year or portion of a year.

(2) Neither the Concessioner nor the Director shall have a right to an adjustment of the fees except as provided below. The Concessioner has no right to waiver of the fee under any circumstances.

(b) Payments Due

(1) The franchise fee shall be due on a monthly basis at the end of each month and shall be paid by the Concessioner in such a manner that the Director shall receive payment within fifteen (15) days after the last day of each month that the Concessioner operates. This monthly payment shall include the franchise fee equal to the specified percentage of gross receipts for the preceding month.

(2) The Concessioner shall pay any additional fee amounts due at the end of the operating year as a result of adjustments at the time of submission of the Concessioner's Annual Financial Report. Overpayments shall be offset against the following year's fees. In the event of termination or expiration of this CONTRACT, overpayments will first be offset against any amounts due and owing the Government, and the remainder will be paid to the Concessioner.

(3) All franchise fee payments consisting of $10,000 or more, shall be deposited electronically by the Concessioner using the Treasury Financial Communications System.

(c) Interest

An interest charge will be assessed on overdue amounts for each thirty (30) day period, or portion thereof, that payment is delayed beyond the fifteen (15) day period provided for above. The percent of interest charged will be based on the current value of funds to the United States Treasury as published quarterly in the Treasury Fiscal Requirements Manual. The Director may also impose penalties for late payment to the extent authorized by Applicable Law.

(d) Adjustment of Franchise Fee

[OPTIONAL-Include only if contract term is greater than 5 years.]

(1) The Concessioner or the Director may request, in the event that either considers that extraordinary, unanticipated changes have occurred after the effective date of this CONTRACT, a reconsideration and possible subsequent adjustment of the franchise fee established in this section. For the purposes of this section, the phrase "extraordinary, unanticipated changes" shall mean extraordinary, unanticipated changes from the conditions existing or reasonably anticipated before the effective date of this CONTRACT which have or will significantly affect the probable value of the privileges granted to the Concessioner by this CONTRACT. For the purposes of this section, the phrase "probable value" means a reasonable opportunity for net profit in relation to capital invested and the obligations of this CONTRACT.

(2) The Concessioner or the Director must make a request for a reconsideration by mailing, within sixty (60) days from the date that the party becomes aware, or should have become aware, of the possible extraordinary, unanticipated changes, a written notice to the other party that includes a description of the possible extraordinary, unanticipated changes and why the party believes they have affected or will significantly affect the probable value of the privileges granted by this CONTRACT.

(3) If the Concessioner and the Director agree that extraordinary, unanticipated changes have occurred, the Concessioner and the Director will undertake good faith negotiations as to an appropriate adjustment of the franchise fee.

(4) The negotiation will last for a period of sixty (60) days from the date the Concessioner and the Director agree that extraordinary, unanticipated changes occurred. If the negotiation results in agreement as to an adjustment (up or down) of the franchise fee within this period, the franchise fee will be adjusted accordingly, prospectively as of the date of agreement.

(5) If the negotiation does not result in agreement as to the adjustment of the franchise fee within this sixty (60) day period, then either the Concessioner or the Director may request binding arbitration to determine the adjustment to franchise fee in accordance with this section. Such a request for arbitration must be made by mailing written notice to the other party within fifteen (15) days of the expiration of the sixty (60) day period.

(6) Within thirty (30) days of receipt of such a written notice, the Concessioner and the Director shall each select an arbiter. These two arbiters, within thirty (30) days of selection, must agree to the selection of a third arbiter to complete the arbitration panel. Unless otherwise agreed by the parties, the arbitration panel shall establish the procedures of the arbitration. Such procedures must provide each party a fair and equal opportunity to present its position on the matter to the arbitration panel.

(7) The arbitration panel shall consider the written submissions and any oral presentations made by the Concessioner and the Director and provide its decision on an adjusted franchise fee (up, down or unchanged) that is consistent with the probable value of the privileges granted by this CONTRACT within sixty (60) days of the presentations.

(8) Any adjustment to the franchise fee resulting from this section shall be prospective only.

(9) Any adjustment to the franchise fee will be embodied in an amendment to this CONTRACT.

(10) During the pendency of the process described in this section, the Concessioner shall continue to make the established franchise fee payments required by this CONTRACT.

Sec. 11. Indemnification and Insurance

(a) Indemnification

The Concessioner agrees to assume liability for and does hereby agree to save, hold harmless, protect, defend and indemnify the United States of America, its agents and employees from and against any and all liabilities, obligations, losses, damages or judgments (including without limitation penalties and fines), claims, actions, suits, costs and expenses (including without limitation attorneys fees and experts' fees) of any kind and nature whatsoever on account of fire or other peril, bodily injury, death or property damage, or claims for bodily injury, death or property damage of any nature whatsoever, and by whomsoever made, in any way connected with or arising out of the activities of the Concessioner, its employees, agents or contractors under this CONTRACT. This indemnification shall survive the termination or expiration of this CONTRACT.

(b) Insurance in General

(1) The Concessioner shall obtain and maintain during the entire term of this CONTRACT at its sole cost and expense, the types and amounts of insurance coverage necessary to fulfill the obligations of this CONTRACT as determined by the Director. The initial insurance requirements are set forth below and in Exhibit F. Any changed or additional requirements that the Director determines necessary must be reasonable and consistent with the types and coverage amounts of insurance a prudent businessperson would purchase in similar circumstances. The Director shall approve the types and amounts of insurance coverage purchased by the Concessioner.

(2) The Director will not be responsible for any omissions or inadequacies of insurance coverages and amounts in the event the insurance purchased by the Concessioner proves to be inadequate or otherwise insufficient for any reason whatsoever.

(3) At the request of the Director, the Concessioner shall at the time insurance is first purchased and annually thereafter, provide the Director with a Certificate of Insurance that accurately details the conditions of the policy as evidence of compliance with this section. The Concessioner shall provide the Director immediate written notice of any material change in the Concessioner's insurance program hereunder, including without limitation, cancellation of any required insurance coverages.

(c) Commercial Public Liability

(1) The Concessioner shall provide commercial general liability insurance against claims arising out of or resulting from the acts or omissions of the Concessioner or its employees, agents or contractors, in carrying out the activities and operations required and/or authorized under this CONTRACT.

(2) This insurance shall be in the amount commensurate with the degree of risk and the scope and size of the activities required and/or authorized under this CONTRACT, as more specifically set forth in Exhibit F. Furthermore, the commercial general liability package shall provide no less than the coverages and limits described in Exhibit F.

(3) All liability policies shall specify that the insurance company shall have no right of subrogation against the United States of America and shall provide that the United States of America is named an additional insured.

(4) From time to time, as conditions in the insurance industry warrant, the Director may modify Exhibit F to revise the minimum required limits or to require additional types of insurance,

provided that any additional requirements must be reasonable and consistent with the types of insurance a prudent businessperson would purchase in similar circumstances.

(d) Property Insurance

(1) In the event of damage or destruction, the Concessioner will repair or replace those Concession Facilities and personal property utilized by the Concessioner in the performance of the Concessioner's obligations under this CONTRACT.

(2) For this purpose, the Concessioner shall provide fire and extended insurance coverage on Concession Facilities for all or part of their replacement cost as specified in Exhibit F in amounts no less than the Director may require during the term of the CONTRACT. The minimum values currently in effect are set forth in Exhibit F.

(3) Commercial property insurance shall provide for the Concessioner and the United States of America to be named insured as their interests may appear.

(4) In the event of loss, the Concessioner shall use all proceeds of such insurance to repair, rebuild, restore or replace Concession Facilities and/or personal property utilized in the Concessioner's operations under this CONTRACT, as directed by the Director. Policies may not contain provisions limiting insurance proceeds to in situ replacement. The lien provision of Section 12 shall apply to such insurance proceeds. The Concessioner shall not be relieved of its obligations under subsection (d)(1) because insurance proceeds are not sufficient to repair or replace damaged or destroyed property.

(5) Insurance policies that cover Concession Facilities shall contain a loss payable clause approved by the Director which requires insurance proceeds to be paid directly to the Concessioner without requiring endorsement by the United States. The use of insurance proceeds for repair or replacement of Concession Facilities will not alter their character as properties of the United States and, notwithstanding any provision of this CONTRACT to the contrary, the Concessioner shall gain no ownership, Leasehold Surrender Interest (as defined in Applicable Laws including without limitation 36 CFR Part 51) or other compensable interest as a result of the use of these insurance proceeds.

(6) The commercial property package shall include the coverages and amounts described in Exhibit F.

Sec. 12. Bonds and Liens

(a) Bonds

The Director may require the Concessioner to furnish appropriate forms of bonds in amounts reasonable in the circumstances and acceptable to the Director, in order to ensure faithful performance of the Concessioner's obligations under this CONTRACT.

(b) Lien

As additional security for the faithful performance by the Concessioner of its obligations under this CONTRACT, and the payment to the Government of all damages or claims that may result from the Concessioner's failure to observe any such obligations, the Government shall have at all times the first lien on all assets of the Concessioner within the Area, including, but not limited to, all personal property of the Concessioner used in performance of the CONTRACT hereunder within the Area.

Sec. 13. Accounting Records and Reports

(a) Accounting System

(1) The Concessioner shall maintain an accounting system under which its accounts can be readily identified with its system of accounts classification. Such accounting system shall be capable of providing the information required by this CONTRACT, including but not limited to the Concessioner's repair and maintenance obligations. The Concessioner's system of accounts classification shall be directly related to the Concessioner Annual Financial Report Form issued by the Director.

(2) If the Concessioner's annual gross receipts are $250,000 or more, the Concessioner must use the accrual accounting method.

(3) In computing net profits for any purposes of this CONTRACT, the Concessioner shall keep its accounts in such manner that there can be no diversion or concealment of profits or expenses in the operations authorized under this CONTRACT by means of arrangements for the procurement of equipment, merchandise, supplies or services from sources controlled by or under common ownership with the Concessioner or by any other device.

(b) Annual Financial Report

(1) The Concessioner shall submit annually as soon as possible but not later than one hundred twenty (120) days after the last day of its fiscal year a financial statement for the preceding fiscal year or portion of a year as prescribed by the Director ("Concessioner Annual Financial Report").

(2) If the annual gross receipts of the Concessioner are in excess of $1,000,000, the financial statements shall be audited by an independent Certified Public Accountant in accordance with Generally Accepted Auditing Standards (GAAS) and procedures promulgated by the American Institute of Certified Public Accountants.

(3) If annual gross receipts are between $250,000, and $1,000,000, the financial statements shall be reviewed by an independent Certified Public Accountant in accordance with Generally Accepted Auditing Standards (GAAS) and procedures promulgated by the American Institute of Certified Public Accountants.

(4) If annual gross receipts are less than $250,000, the financial statements may be prepared without involvement by an independent Certified Public Accountant, unless otherwise directed by the Director.

(c) Other Financial Reports

(1) *Balance Sheet.* Within ninety (90) days of the execution of this CONTRACT or its effective date, whichever is later, the Concessioner shall submit to the Director a balance sheet as of the beginning date of the term of this CONTRACT. The balance sheet shall be audited or reviewed, as determined by the annual gross receipts, by an independent Certified Public Accountant.

Sec. 14. Other Reporting Requirements

The following describes certain other reports required under this CONTRACT:

(a) Insurance Certification

As specified in Section 11, the Concessioner shall, at the request of the Director, provide the Director with a Certificate of Insurance for all insurance coverages related to its operations under this CONTRACT. The Concessioner shall give the Director immediate written notice of any material change in its insurance program, including without limitation, any cancellation of required insurance coverages.

(b) Environmental Reporting

The Concessioner shall submit environmental reports as specified in Section 6 of this CONTRACT, and as otherwise required by the Director under the terms of this CONTRACT.

(c) Miscellaneous Reports and Data

The Director from time to time may require the Concessioner to submit other reports and data regarding its performance under the CONTRACT or

otherwise, including, but not limited to, operational information.

Sec. 15. Suspension, Termination, or Expiration

(a) Suspension

The Director may temporarily suspend operations under this CONTRACT in whole or in part in order to protect Area visitors or to protect, conserve and preserve Area resources. No compensation of any nature shall be due the Concessioner by the Director in the event of a suspension of operations, including, but not limited to, compensation for losses based on lost income, profit, or the necessity to make expenditures as a result of the suspension.

(b) Termination

(1) The Director may terminate this CONTRACT at any time in order to protect Area visitors, protect, conserve, and preserve Area resources, or to limit visitor services in the Area to those that continue to be necessary and appropriate.

(2) The Director may terminate this CONTRACT if the Director determines that the Concessioner has materially breached any requirement of this CONTRACT, including, but not limited to, the requirement to maintain and operate visitor services to the satisfaction of the Director, the requirement to provide only those visitor services required or authorized by the Director pursuant to this CONTRACT, the requirement to pay the established franchise fee, the requirement to prepare and comply with an Environmental Management Program and the requirement to comply with Applicable Laws.

(3) In the event of a breach of the CONTRACT, the Director will provide the Concessioner an opportunity to cure by providing written notice to the Concessioner of the breach. In the event of a monetary breach, the Director will give the Concessioner a fifteen (15) day period to cure the breach. If the breach is not cured within that period, then the Director may terminate the CONTRACT for default. In the event of a nonmonetary breach, if the Director considers that the nature of the breach so permits, the Director will give the Concessioner thirty (30) days to cure the breach, or to provide a plan, to the satisfaction of the Director, to cure the breach over a specified period of time. If the breach is not cured within this specified period of time, the Director may terminate the CONTRACT for default. Notwithstanding this provision, repeated breaches (two or more) of the same nature shall be grounds for termination for default without a cure period. In the event of a breach of any nature, the Director may suspend the Concessioner's operations as appropriate in accordance with Section 15(a).

(4) The Director may terminate this CONTRACT upon the filing or the execution of a petition in bankruptcy by or against the Concessioner, a petition seeking relief of the same or different kind under any provision of the Bankruptcy Act or its successor, an assignment by the Concessioner for the benefit of creditors, a petition or other proceeding against the Concessioner for the appointment of a trustee, receiver, or liquidator, or, the taking by any person or entity of the rights granted by this CONTRACT or any part thereof upon execution, attachment or other process of law or equity. The Director may terminate this CONTRACT if the Director determines that the Concessioner is unable to perform the terms of CONTRACT due to bankruptcy or insolvency.

(5) Termination of this CONTRACT for any reason shall be by written notice to the Concessioner.

(c) Notice of Bankruptcy or Insolvency

The Concessioner must give the Director immediate notice (within five (5) days) after the filing of any petition in bankruptcy, filing any petition seeking relief of the same or different kind under any provision of the Bankruptcy Act or its successor, or making any assignment for the benefit of creditors. The Concessioner must also give the Director immediate notice of any petition or other proceeding against the Concessioner for the appointment of a trustee, receiver, or liquidator, or, the taking by any person or entity of the rights granted by this CONTRACT or any part thereof upon execution, attachment or other process of law or equity. For purposes of the bankruptcy statutes, NPS considers that this CONTRACT is not a lease but an executory contract exempt from inclusion in assets of Concessioner pursuant to 11 U.S.C. 365.

(d) Requirements in the Event of Termination or Expiration

(1) In the event of termination of this CONTRACT for any reason or expiration of this CONTRACT, no compensation of any nature shall be due the Concessioner in the event of a termination or expiration of this CONTRACT, including, but not limited to, compensation for losses based on lost income, profit, or the necessity to make expenditures as a result of the termination.

(2) Upon termination of this CONTRACT for any reason, or upon its expiration, and except as otherwise provided in this section, the Concessioner shall, at the Concessioner's expense, promptly vacate the Area, remove all of the Concessioner's personal property, repair any injury occasioned by installation or removal of such property, and ensure that Concession Facilities are in at least as good condition as they were at the beginning of the term of this CONTRACT, reasonable wear and tear excepted. The removal of such personal property must occur within thirty (30) days after the termination of this CONTRACT for any reason or its expiration (unless the Director in particular circumstances requires immediate removal). No compensation is due the Concessioner from the Director or a successor concessioner for the Concessioner's personal property used in operations under this CONTRACT. However, the Director or a successor concessioner may purchase such personal property from the Concessioner subject to mutually agreed upon terms. Personal property not removed from the Area by the Concessioner in accordance with the terms of this CONTRACT shall be considered abandoned property subject to disposition by the Director, at full cost and expense of the Concessioner, in accordance with Applicable Laws. Any cost or expense incurred by the Director as a result of such disposition may be offset from any amounts owed to the Concessioner by the Director to the extent consistent with Applicable Laws.

Sec. 16. Assignment, Sale or Encumbrance of Interests

(a) This CONTRACT is subject to the requirements of Applicable Laws, including, without limitation, 36 CFR Part 51, with respect to proposed assignments and encumbrances, as those terms are defined by Applicable Laws. Failure by the Concessioner to comply with Applicable Laws is a material breach of this CONTRACT for which the Director may terminate this CONTRACT for default. The Director shall not be obliged to recognize any right of any person or entity to an interest in this CONTRACT of any nature or operating rights under this CONTRACT, if obtained in violation of Applicable Laws.

(b) The Concessioner shall advise any person(s) or entity proposing to enter into a transaction which may be subject to Applicable Laws, including without limitation, 36 CFR Part 51, of the

requirements of Applicable Law and this CONTRACT.

Sec. 17. General Provisions

(a) The Director and Comptroller General of the United States, or any of their duly authorized representatives, shall have access to the records of the Concessioner as provided by the terms of Applicable Laws.

(b) All information required to be submitted to the Director by the Concessioner pursuant to this CONTRACT is subject to public release by the Director to the extent provided by Applicable Laws.

(c) Subconcession or other third party agreements, including management agreements, for the provision of visitor services required and/or authorized under this CONTRACT are not permitted.

(d) The Concessioner is not entitled to be awarded or to have negotiating rights to any Federal procurement or service contract by virtue of any provision of this CONTRACT.

(e) Any and all taxes or assessments of any nature that may be lawfully imposed by any State or its political subdivisions upon the property or business of the Concessioner shall be paid promptly by the Concessioner.

(f) No member of, or delegate to, Congress or Resident Commissioner shall be admitted to any share or part of this CONTRACT or to any benefit that may arise from this CONTRACT but this restriction shall not be construed to extend to this CONTRACT if made with a corporation or company for its general benefit.

(g) This CONTRACT is subject to the provisions of 43 CFR, Subtitle A, Subpart D, concerning nonprocurement debarment and suspension. The Director may recommend that the Concessioner be debarred or suspended in accordance with the requirements and procedures described in those regulations, as they are effective now or may be revised in the future.

(h) This CONTRACT contains the sole and entire agreement of the parties. No oral representations of any nature form the basis of or may amend this CONTRACT. This CONTRACT may be extended, renewed or amended only when agreed to in writing by the Director and the Concessioner.

(i) This CONTRACT does not grant rights or benefits of any nature to any third party.

(j) The invalidity of a specific provision of this CONTRACT shall not affect the validity of the remaining provisions of this CONTRACT.

(k) Waiver by the Director or the Concessioner of any breach of any of the terms of this CONTRACT by the other party shall not be deemed to be a waiver or elimination of such term, nor of any subsequent breach of the same type, nor of any other term of the CONTRACT. The subsequent acceptance of any payment of money or other performance required by this CONTRACT shall not be deemed to be a waiver of any preceding breach of any term of the CONTRACT.

(l) Claims against the Director (to the extent subject to 28 U.S.C. 2514) arising from this CONTRACT shall be forfeited to the Director by any person who corruptly practices or attempts to practice any fraud against the United States in the proof, statement, establishment, or allowance thereof within the meaning of 28 U.S.C. 2514.

Section 18. Special Provisions

[Optional—To be used when operating and maintenance requirements are incorporated in the body of the contract, rather than as separate operating and maintenance plans.]

In Witness Whereof, the duly authorized representatives of the parties have executed this CONTRACT as of the _____ day of_____, _____.

Concessioner

By _____
(Title) (Company Name)

United States of America

By _____
Director, National Park Service

[Corporations]

Attest:

By: _____

Title: _____

[Sole Proprietorship]

Witnesses:

Name: _____

Address: _____

Title: _____

Name: _____

Address: _____

Title: _____

[Partnership]

Witnesses as to Each:

Name: _____

Address: _____

[*Concessioner*]

_____
(Name)

_____
(Name)

Exhibit A—Operating Plan

I. Introduction

This Operating Plan between _____ (hereinafter referred to as the "Concessioner") and [Park Unit Name] (hereinafter referred to as the "Service") shall serve as a supplement to Concession Contract CC-xxxxnnnn-yy (hereinafter referred to as the "CONTRACT"). It describes specific operating responsibilities of the Concessioner and the Service with regard to those lands and facilities within [Park Unit Name] which are assigned to the Concessioner for the purposes authorized by the CONTRACT.

In the event of any conflict between the terms of the CONTRACT and this Operating Plan, the terms of the CONTRACT, including its designations and amendments, shall prevail.

This plan will be reviewed annually by the Superintendent in consultation with the Concessioner and revised as determined necessary by the Superintendent of [Park Unit Name].

Any revisions shall not be inconsistent with the main body of this CONTRACT. Any revisions must be reasonable and in furtherance of the purposes of the CONTRACT.

[From this point on, this document is tailored to the requirements of each individual park.]

Exhibit B—Nondiscrimination

Section I: Requirements Relating to Employment and Service to the Public

A. Employment

During the performance of this CONTRACT the Concessioner agrees as follows:

(1) The Concessioner will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin, or disabling condition. The Concessioner will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, or disabling condition. Such action shall include, but not be limited to, the following: Employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Concessioner agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Secretary setting forth the provision of this nondiscrimination clause.

(2) The Concessioner will, in all solicitations or advertisements for employees placed by on behalf of the Concessioner, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, national origin, or disabling condition.

(3) The Concessioner will send to each labor union or representative of workers with which the Concessioner has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Secretary, advising the labor union or workers' representative of the Concessioner's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) Within 120 days of the commencement of a contract every Government contractor or subcontractor holding a contract that

generates gross receipts which exceed $50,000 and having 50 or more employees shall prepare and maintain an affirmative action program at each establishment which shall set forth the contractor's policies, practices, and procedures in accordance with the affirmative action program requirement.

(5) The Concessioner will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Concessioner will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to the Concessioner's books, records, and accounts by the Secretary of the Interior and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Concessioner's noncompliance with the nondiscrimination clauses of this CONTRACT or with any of such rules, regulations, or orders, this CONTRACT may be canceled, terminated or suspended in whole or in part and the Concessioner may be declared ineligible for further Government concession contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Concessioner will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, so that such provisions will be binding upon each subcontractor or vendor. The Concessioner will take such action with respect to any subcontract or purchase order as the Secretary may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the Concessioner becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Secretary, the Concessioner may request the United States to enter into such litigation to protect the interests of the United States.

B. Construction, Repair, and Similar Contracts

The preceding provisions A(1) through A(8) governing performance of work under this CONTRACT, as set out in Section 202 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, shall be applicable to this CONTRACT, and shall be included in all contracts executed by the Concessioner for the performance of construction, repair, and similar work contemplated by this CONTRACT, and for that purpose the term "CONTRACT" shall be deemed to refer to this instrument and to contracts awarded by the Concessioner and the term "Concessioner" shall be deemed to refer to the Concessioner and to contractors awarded contacts by the Concessioner.

C. Facilities

(1) Definitions: As used herein:

(i) Concessioner shall mean the Concessioner and its employees, agents, lessees, sublessees, and contractors, and the successors in interest of the Concessioner;

(ii) facility shall mean any and all services, facilities, privileges, accommodations, or activities available to the general public and permitted by this agreement.

(2) The Concessioner is prohibited from:

(i) Publicizing facilities operated hereunder in any manner that would directly or inferentially reflect upon or question the acceptability of any person because of race, color, religion, sex, age, national origin, or disabling condition;

(ii) Discriminating by segregation or other means against any person.

Section II: Accessibility

Title V, Section 504, of the Rehabilitation Act of 1973, as amended in 1978, requires that action be taken to assure that any "program" or "service" being provided to the general public be provided to the highest extent reasonably possible to individuals who are mobility impaired, hearing impaired, and visually impaired. It does not require architectural access to every building or facility, but only that the service or program can be provided somewhere in an accessible location. It also allows for a wide range of methods and techniques for achieving the intent of the law, and calls for consultation with disabled persons in determining what is reasonable and feasible.

No handicapped person shall, because a Concessioner's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance or conducted by any Executive agency or by the U.S. Postal Service.

A. Discrimination Prohibited

A Concessioner, in providing any aid, benefit, or service, may not directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(1) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(2) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(3) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;

(4) Provide different or separate aids, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(5) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program;

(6) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(7) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

B. Existing Facilities

A Concessioner shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not require a Concessioner to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

Exhibit C—Assigned Land and Real Property Improvements (Concession Facilities)

Land Assigned: Land is assigned in accordance with the boundaries shown on the following map[s]:

Real Property Improvements Assigned: The following real property improvements are assigned to the concessioner for use in conducting its operations under this CONTRACT:

Building Number Description

Approved, effective_____, 20_____.

By: _____

Regional Director, _____ Region

Exhibit D—Assigned Government Personal Property

Government personal property is assigned to the Concessioner for the purposes of this CONTRACT as follows:

Property Number Description of Item

Effective, this_____ day of _____, 20_____.

By: _____

Regional Director, _____ Region

Exhibit E—Maintenance Plan

I. Introduction

This Maintenance Plan between _____ (hereinafter referred to as the "Concessioner") and [Park Unit Name], National Park Service (hereinafter referred to as the "Service") shall serve as a supplement to Concession Contract CC-xxxxnnnn-yy (hereinafter referred to as the "CONTRACT"). It sets forth the maintenance responsibilities of the Concessioner and the Service with regard to those lands and facilities within [Park Unit Name] which are assigned to the Concessioner for the purposes authorized by the CONTRACT.

In the event of any apparent conflict between the terms of the CONTRACT and this Maintenance Plan, the terms of the CONTRACT, including its designations and amendments, shall prevail.

This plan shall remain in effect until superseded or amended. It will be reviewed annually by the Superintendent in consultation with the Concessioner and revised as determined necessary by the Superintendent of [Park Unit Name]. Revisions may not be inconsistent with the terms and conditions of the main body of this CONTRACT. Revisions must be reasonable and in furtherance of the purposes of this CONTRACT.

[From this point on, this document is tailored to the requirements of each individual park.]

Exhibit F—Insurance Requirements

I. Insurance Requirements

The Concessioner shall obtain and maintain during the entire term of this CONTRACT, at its sole cost and expense, the types and amounts of insurance coverage necessary to fulfill the obligations of the CONTRACT:

II. Liability Insurance

The following Liability Coverages are to be maintained at a minimum, all of which are to be written on an occurrence basis only. The Concessioner may attain the limits specified below by means of supplementing the respective coverage(s) with Excess or Excess "Umbrella" Liability.

A. Commercial General Liability

1. Coverage will be provided for bodily injury, property damage, personal or advertising injury liability (and must include Contractual Liability and Products/Completed Operations Liability).

Bodily Injury and Property Damage Limit
Products/Completed Operations Limit
Personal Injury & Advertising Injury Limit
General Aggregate
Fire Damage Legal Liability "per fire"

2. The liability coverages may not contain the following exclusions/limitations:

a. Athletic or Sports Participants
b. Products/Completed Operations
c. Personal Injury or Advertising Injury exclusion or limitation
d. Contractual Liability limitation
e. Explosion, Collapse and Underground Property Damage exclusion
f. Total Pollution exclusion
g. Watercraft limitations affecting the use of watercraft in the course of the concessioner's operations (unless separate Watercraft coverage is maintained)

3. For all lodging facilities and other indoor facilities where there may be a large concentration of people, the pollution exclusion may be amended so that it does not apply to the smoke, fumes, vapor or soot from equipment used to heat the building.

4. If the policy insures more than one location, the General Aggregate limit must be amended to apply separately to each location, or, at least, separately to the appropriate NPS location(s).

B. Automobile Liability

Coverage will be provided for bodily injury or property damage arising out of the ownership, maintenance or use of "any auto," Symbol 1. (Where there are no owned autos, coverage applicable to "hired" and "non-owned" autos, "Symbols 8 & 9," shall be maintained.)

Each Accident Limit

C. Liquor Liability (if applicable)

Coverage will be provided for bodily injury or property damage including damages for care, loss of services, or loss of support arising out of the selling, serving or furnishing of any alcoholic beverage.

Each Common Cause Limit
Aggregate Limit

D. Watercraft Liability (or Protection & Indemnity) (if applicable)

Coverage will be provided for bodily injury or property damage arising out of the use of any watercraft.

Each Occurrence Limit

E. Aircraft Liability (if applicable)

Coverage will be provided for bodily injury or property damage arising out of the use of any aircraft.

Each Person Limit
Property Damage Limit
Each Accident Limit

F. Garage Liability (if applicable)

This coverage is not required, but may be used in place of Commercial General Liability and Auto Liability coverages for some operations. Coverage will be provided for bodily injury, property damage, personal or advertising injury liability arising out of garage operations (including products/completed operations and contractual liability) as well as bodily injury and property damage arising out of the use of automobiles.

Each Accident Limits—Garage Operations
Auto Only
Other Than Auto Only
Personal Injury & Advertising
Injury Limit
Fire Damage Legal Liability "per fire"
Aggregate Limit—Garage Operations
Other Than Auto Only

If owned vehicles are involved, Liability coverage should be applicable to "any auto" ("Symbol 21") otherwise, coverage applicable to "hired" and "non-owned" autos ("Symbols 28 & 29") should be maintained.

G. Excess Liability or Excess "Umbrella" Liability

This coverage is not required, but may be used to supplement any of the above Liability coverage policies in order to arrive at the required minimum limit of liability. If maintained, coverage will be provided for bodily injury, property damage, personal or advertising injury liability in excess of scheduled underlying insurance. In addition, coverage shall be at least as broad as that provided by underlying insurance policies and the limits of underlying insurance shall be sufficient to prevent any gap between such minimum limits and the attachment point of the coverage afforded under the Excess Liability or Excess "Umbrella" Liability policy.

H. Care, Custody and Control—Legal Liability (Describe Specific Coverage)

Coverage will be provided for damage to property in the care, custody or control of the concessioner.

Any One Loss

I. Environmental Impairment Liability

Coverage will be provided for bodily injury, personal injury or property damage arising out of pollutants or contaminants (on site and/or offsite).

Each Occurrence or Each Claim Limit
Aggregate Limit

J. Special Provisions for Use of Aggregate Policies

At such time as the aggregate limit of any required policy is (or if it appears that it will be) reduced or exhausted, the concessioner may be required to reinstate such limit or purchase additional coverage limits.

K. Self-Insured Retentions

Self-insured retentions on any of the above described Liability insurance policies (other than Excess "Umbrella" Liability, if maintained) may not exceed $5,000.

L. Workers Compensation & Employers' Liability

Coverage will comply with the statutory requirements of the state(s) in which the concessioner operates.

III. Property Insurance

A. Building(s) and/or Contents Coverage

1. Insurance shall cover buildings, structures, improvements & betterments and/or contents for all Concession Facilities, as more specifically described in Exhibit D of this CONTRACT.

2. Coverage shall apply on an "All Risks" or "Special Coverage" basis.

3. The policy shall provide for loss recovery on a Replacement Cost basis.

4. The amount of insurance should represent no less than 90% of the Replacement Cost value of the insured property.

5. The coinsurance provision, if any, shall be waived or suspended by an Agreed Amount or Agreed Value clause.

6. Coverage is to be provided on a blanket basis.

7. The Vacancy restriction, if any, must be eliminated for property that will be vacant beyond any vacancy time period specified in the policy.

8. Flood Coverage shall be maintained with a limit of not less than $

9. Earthquake Coverage shall be maintained with a limit of not less than $

10. Ordinance or Law Coverage shall be maintained with a limit of not less than $

B. Boiler & Machinery Coverage

1. Insurance shall apply to all pressure objects within Concession Facilities.

2. The policy shall provide for loss recovery on a Replacement Cost basis.

3. The amount of insurance should represent no less than 75% of the Replacement Cost value of the insured property.

4. The coinsurance provision, if any, shall be waived or suspended by an Agreed Amount or Agreed Value clause.

5. Coverage is to be provided on a blanket basis.

6. If insurance is written with a different insurer than the Building(s) and Contents insurance, both the Property and Boiler insurance policies must be endorsed with a joint loss agreement.

7. Ordinance or Law Coverage shall be maintained with a limit of not less than $

C. Builders Risk Coverage

1. Insurance shall cover new buildings or structures under construction at the Concession Facilities, and include coverage for property that has or will become a part of the project while such property is at the project site, at temporary off-site storage and while in transit. Coverage should also apply to temporary structures such as scaffolding and construction forms.

2. Coverage shall apply on an "All Risks" or "Special Coverage" basis.

3. The policy shall provide for loss recovery on a Replacement Cost basis.

4. The amount of insurance should represent no less than 90% of the Replacement Cost value of the insured property.

5. The coinsurance provision, if any, shall be waived or suspended by an Agreed Amount or Agreed Value clause.

6. Any occupancy restriction must be eliminated.

7. Any collapse exclusion must be eliminated.

8. Any exclusion for loss caused by faulty workmanship must be eliminated.

9. Flood Coverage shall be maintained with a limit of not less than $

10. Earthquake Coverage shall be maintained with a limit of not less than $

D. Business Interruption and/or Expense

1. Business Interruption insurance, if maintained by the Concessioner, should cover the loss of income and continuation of fixed expenses in the event of damage to or loss of Concession Facilities. Extra Expense insurance shall cover the extra expenses above normal operating expenses to continue operations in the event of damage or loss to covered property.

E. Deductibles

Property Insurance coverages described above may be subject to deductibles as follows:

1. Direct Damage deductibles shall not exceed the lesser of 10% of the amount of insurance or $25,000 (except Flood & Earthquake coverage may be subject to deductibles not exceeding $50,000).

2. Extra Expense deductibles (when coverage is not combined with Business Interruption) shall not exceed $25,000.

F. Required Clauses

1. Loss Payable Clause:

A loss payable clause similar to the following must be added to Buildings and/or Contents, Boiler and Machinery, and Builders Risk policies:

"In accordance with Concession Contract No. _____ dated _____, between the United States of America and [*the Concessioner*] payment of insurance proceeds resulting from damage or loss of structures insured under this policy is to be disbursed directly to the Concessioner without requiring endorsement by the United States of America."

IV. Construction Project Insurance

Concessioners entering into contracts with outside contractors for various construction projects, including major renovation projects, rehabilitation projects, additions or new buildings/facilities will be responsible to ensure that all contractors retained for such work maintain an insurance program that adequately covers the construction project.

The insurance maintained by the construction and construction-related contractors shall comply with the insurance requirements stated herein (for Commercial General Liability, Automobile Liability, Workers' Compensation and, if professional services are involved, Professional Liability). Where appropriate, the interests of the Concessioner and the United States shall be covered in the same fashion as required in the Commercial Operator Insurance Requirements. The amounts/limits of the required coverages shall be determined in consultation with the Director taking into consideration the scope and size of the project.

V. Insurance Company Minimum Standards

All insurance companies providing the above described insurance coverages must meet the minimum standards set forth below:

1. All insurers for all coverages must be rated no lower than A− by the most recent edition of Best's Key Rating Guide (Property-Casualty edition).

2. All insurers for all coverages must have a Best's Financial Size Category of at least VIII according to the most recent edition of Best's Key Rating Guide (Property-Casualty edition).

3. All insurers must be admitted (licensed) in the state in which the concessioner is domiciled.

VI. Certificates of Insurance

All certificates of Insurance required by this CONTRACT shall be completed in sufficient detail to allow easy identification of the coverages, limits, and coverage amendments that are described above. In addition, the insurance companies must be accurately listed along with their A.M. Best Identification Number ("AMB#"). The name, address and telephone number of the issuing insurance agent or broker must be clearly shown on the certificate of insurance as well.

Due to the space limitations of most standard certificates of insurance, it is expected that an addendum will be attached to the appropriate certificate(s) in order to provide the space needed to show the required information.

In addition to providing certificates of insurance, the concessioner, upon written request of the Director, shall provide the Director with a complete copy of any of the insurance policies (or endorsements thereto) required herein to be maintained by the concessioner.

VII. Statutory Limits

In the event that a statutorily required limit exceeds a limit required herein, the higher statutorily required limit shall be considered the minimum to be maintained.

Category III Contract

United States Department of the Interior; National Park Service

_____

[Name of Area]

_____

[Site]

_____

[Type of Service]

Concession Contract No. _____

_____

[Name of Concessioner]

_____

[Address, including email address and phone number]

Doing Business As _____

Covering the Period _____

through _____

Concession Contract

Table of Contents

[Corporation]

This Contract is made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the Regional Director of the _____ Region, (hereinafter referred to as the "Director"), and _____ a corporation organized and existing under the laws of the State of _____ (hereinafter referred to as the "Concessioner"):

[Partnership]

This Contract is made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the Regional Director of the _____ Region, hereinafter referred to as the "Director", and _____ a partnership organized under the laws of the State of _____, hereinafter referred to as the "Concessioner":

[Sole Proprietorship]

This Contract made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the Regional Director of the _____ Region, hereinafter referred to as the "Director," and, _____, an individual of, doing business as _____, hereinafter referred to as the "Concessioner":

WITNESSETH:

That Whereas, [*Name of Park, Recreation Area, etc.*] is administered by the Director as a unit of the national park system to conserve the scenery and the natural and historic objects and the wildlife therein, and to provide for the public enjoyment of the same in such manner as will leave such Area unimpaired for the enjoyment of future generations; and

Whereas, to accomplish these purposes, the Director has determined that certain visitor services are necessary and appropriate for the public use and enjoyment of the Area and should be provided for the public visiting the Area; and

Whereas, the Director desires the Concessioner to establish and operate these visitor services at reasonable rates under the supervision and regulation of the Director; and

Whereas, the Director desires the Concessioner to conduct these visitor services in a manner that demonstrates sound environmental management, stewardship, and leadership;

Now, Therefore, pursuant to the authority contained in the Acts of August 25, 1916 (16 U.S.C. 1, 2–4), and November 13, 1998 (Pub.L. 105–391), and other laws that supplement and amend the Acts, the Director and the Concessioner agree as follows:

Sec. 1. Term of Contract

This Concession Contract No. _____ ("CONTRACT") shall be effective as of _____, and shall be for the term of _____ (_____) years until its expiration on _____, 20 _____.

Sec. 2. Definitions

The following terms used in this CONTRACT will have the following meanings, which apply to both the singular and the plural forms of the defined terms:

(a) "Applicable Laws" means the laws of Congress governing the Area, including, but not limited to, the rules, regulations, requirements and policies promulgated under those laws (*e.g.,* 36 CFR Part 51), whether now in force, or amended, enacted or promulgated in the future, including, without limitation, federal, state and local laws, rules, regulations, requirements and policies governing nondiscrimination, protection of the environment and protection of public health and safety.

(b) "Area" means the property within the boundaries of [*Name of Park Unit*].

(c) "Best Management Practices" or "BMPs" are policies and practices that apply the most current and advanced means and technologies available to the Concessioner to undertake and maintain a superior level of environmental performance reasonable in light of the circumstances of the operations conducted under this CONTRACT. BMPs are expected to change from time to time as technology evolves with a goal of sustainability of the Concessioner's operations. Sustainability of operations refers to operations that have a restorative or net positive impact on the environment.

(d) "Concession Facilities" shall mean all Area lands assigned to the Concessioner under this CONTRACT and all real property improvements assigned to the Concessioner under this CONTRACT. The United States retains title and ownership to all Concession Facilities. (4)

(e) "Days" shall mean calendar days.

(f) "Director" means the Director of the National Park Service, acting on behalf of the Secretary of the Interior and the United States, and his duly authorized representatives.

(g) "Exhibit" or "Exhibits" shall mean the various exhibits, which are attached to this CONTRACT, each of which is hereby made a part of this CONTRACT.

(h) "Gross receipts" means the total amount received or realized by, or accruing to, the Concessioner from all sales for cash or credit, of services, accommodations, materials, and other merchandise made pursuant to the rights granted by this CONTRACT, including gross receipts of subconcessioners as herein defined, commissions earned on contracts or agreements with other persons or companies operating in the Area, and gross receipts earned from electronic media sales, but excluding:

(1) Intracompany earnings on account of charges to other departments of the operation (such as laundry);

(5) Charges for employees' meals, lodgings, and transportation;

(6) Cash discounts on purchases;

(7) Cash discounts on sales;

(5) Returned sales and allowances;

(6) Interest on money loaned or in bank accounts;

(7) Income from investments;

(8) Income from subsidiary companies outside of the Area;

(9) Sale of property other than that purchased in the regular course of business for the purpose of resale;

(10) Sales and excise taxes that are added as separate charges to sales prices, gasoline taxes, fishing license fees, and postage stamps, provided that the amount excluded shall not exceed the amount actually due or paid government agencies;

(11) Receipts from the sale of handicrafts that have been approved for sale by the Director as constituting authentic American Indian, Alaskan Native, Native Samoan, or Native Hawaiian handicrafts.

All monies paid into coin operated devices, except telephones, whether provided by the Concessioner or by others, shall be included in gross receipts. However, only revenues actually received by the Concessioner from coin-operated telephones shall be included in gross receipts. All revenues received from charges for in-room telephone or computer access shall be included in gross receipts.

(i) "Gross receipts of subconcessioners" means the total amount received or realized by, or accruing to, subconcessioners from all sources, as a result of the exercise of the rights conferred by a subconcession contract. A subconcessioner will report all of its gross receipts to the Concessioner without allowances, exclusions, or deductions of any kind or nature.

(j) "Subconcessioner" means a third party that, with the approval of the Director, has been granted by a concessioner rights to operate under a concession contract (or any portion thereof), whether in consideration of a percentage of revenues or otherwise.

(k) "Superintendent" means the manager of the Area.

(l) "Visitor services" means the accommodations, facilities and services that the Concessioner is required and/or authorized to provide by Section 3(a) of this CONTRACT.

Sec. 3. Services and Operations

(a) Required and Authorized Visitor Services

During the term of this CONTRACT, the Director requires and authorizes the Concessioner to provide the following visitor services for the public within the Area:

[Provide a detailed description of required services. Broad generalizations such as "any and all facilities and services customary in such operations" or "such additional facilities and services as may be required" are not to be used.]

The Concessioner shall not be authorized to construct any Capital Improvements (as defined in Applicable Laws including without limitation 36 CFR Part 51) upon Area lands. The Concessioner shall not obtain a Leasehold Surrender Interest (as defined in Applicable Laws, including without limitation 36 CFR Part 51) or other compensable interest in Capital Improvements constructed or installed in violation of this CONTRACT.

(b) Operation, Maintenance and Quality of Operation

(1) The Concessioner shall provide, operate and maintain the required and authorized visitor services in accordance with this CONTRACT to such an extent and in a manner considered satisfactory by the Director. The Concessioner's authority to provide visitor services under the terms of this CONTRACT is non-exclusive.

(2) The Concessioner shall provide and maintain all personal property necessary for its operations under this CONTRACT.

(3) The Director may provide certain items of government personal property, including without limitation removable equipment, and goods, for the Concessioner's use in the performance of this CONTRACT. The Director hereby assigns government personal property listed in Exhibit A to the Concessioner as of the effective date of this CONTRACT. This Exhibit A will be modified from time to time by the Director as items may be withdrawn or additional items added. The Concessioner shall be accountable to the Director for the government personal property assigned to it and shall be responsible for maintaining the property as necessary to keep it in good and operable condition. If the property ceases to be serviceable, it shall be returned to the Director for disposition.

(c) Operating and Maintenance Plan

[Optional—This section may be deleted and operating requirements incorporated under Section 18, Special Provisions.]

The Director, acting through the Superintendent, shall establish and revise, as necessary, specific requirements for the operations of the Concessioner under this CONTRACT in the form of an Operating and Maintenance Plan (including, without limitation, a risk management program, that must be adhered to by the Concessioner). The initial Operating and Maintenance Plan is attached to this CONTRACT as Exhibit B. The Director in his discretion, after consultation with the Concessioner, may make reasonable modifications to the initial Operating and Maintenance Plan that are in furtherance of the purposes of this CONTRACT and are not inconsistent with the terms and conditions of the main body of this CONTRACT.

(e) Merchandise and Services

(1) The Director reserves the right to determine and control the nature, type and quality of the visitor services described in this CONTRACT, including, but not limited to, the nature, type, and quality of merchandise, if any, to be sold or provided by the Concessioner within the Area.

(2) All promotional material, regardless of media format (*i.e.*, printed, electronic, broadcast media), provided to the public by the Concessioner in connection with the services provided under this CONTRACT must be approved in writing by the Director prior to use. All such material will identify the Concessioner as an authorized Concessioner of the National Park Service, Department of the Interior.

(3) [OPTIONAL—To be used only if the concessioner is authorized to sell merchandise.] The Concessioner, where applicable, will develop and implement a plan satisfactory to the Director that will assure that gift merchandise, if any, to be sold or provided reflects the purpose and significance of the Area, including, but not limited to, merchandise that reflects the conservation of the Area's resources or the Area's geology, wildlife, plant life, archeology, local Native American culture, local ethnic culture, and historic significance.

(e) Rates

All rates and charges to the public by the Concessioner for visitor services shall be reasonable and appropriate for the type and quality of facilities and/or services required and/or authorized under this CONTRACT. The Concessioner's rates and charges to the public must be approved by the Director in accordance with Applicable Laws and guidelines promulgated by the Director from time to time.

(f) Impartiality as to Rates and Services

(1) Subject to Section (f)(2) and (f)(3), in providing visitor services, the Concessioner must require its employees to observe a strict impartiality as to rates and services in all circumstances. The Concessioner shall comply with all Applicable Laws relating to nondiscrimination in providing visitor services to the public including, without limitation, those set forth in Exhibit C.

(2) The Concessioner may grant complimentary or reduced rates under such circumstances as are customary in businesses of the character conducted under this CONTRACT. However, the Director reserves the right to review and modify the Concessioner's complimentary or reduced rate policies and practices as part of its rate approval process.

(3) The Concessioner will provide Federal employees conducting official business reduced rates for lodging, essential transportation and other specified services necessary for conducting official business in accordance with guidelines established

by the Director. Complimentary or reduced rates and charges shall otherwise not be provided to Federal employees by the Concessioner except to the extent that they are equally available to the general public.

Sec. 4. Concessioner Personnel

(a) The Concessioner shall provide all personnel necessary to provide the visitor services required and authorized by this CONTRACT.

(b) The Concessioner shall comply with all Applicable Laws relating to employment and employment conditions, including, without limitation, those set forth in Exhibit C.

(c) The Concessioner shall ensure that its employees are hospitable and exercise courtesy and consideration in their relations with the public. The Concessioner shall have its employees who come in direct contact with the public, so far as practicable, wear a uniform or badge by which they may be identified as the employees of the Concessioner.

(d) The Concessioner shall establish pre-employment screening, hiring, training, employment, termination and other policies and procedures for the purpose of providing visitor services through its employees in an efficient and effective manner and for the purpose of maintaining a healthful, law abiding, and safe working environment for its employees. The Concessioner shall conduct appropriate background reviews of applicants to whom an offer for employment may be extended to assure that they conform to the hiring policies established by the Concessioner.

(e) The Concessioner shall ensure that its employees are provided the training needed to provide quality visitor services and to maintain up-to-date job skills.

(f) The Concessioner shall review the conduct of any of its employees whose action or activities are considered by the Concessioner or the Director to be inconsistent with the proper administration of the Area and enjoyment and protection of visitors and shall take such actions as are necessary to correct the situation.

(g) The Concessioner shall maintain, to the greatest extent possible, a drug free environment, both in the workplace and in any Concessioner employee housing, within the Area.

(h) The Concessioner shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and in the Area, and specifying the actions that will be taken against employees for violating this prohibition. In addition, the Concessioner shall establish a drug-free awareness program to inform employees about the danger of drug abuse in the workplace and the Area, the availability of drug counseling, rehabilitation and employee assistance programs, and the Concessioner's policy of maintaining a drug-free environment both in the workplace and in the Area.

(i) The Concessioner shall take appropriate personnel action, up to and including termination or requiring satisfactory participation in a drug abuse or rehabilitation program which is approved by a Federal, State, or local health, law enforcement or other appropriate agency, for any employee that is found to be in violation of the prohibition on the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

Sec. 5. Legal, Regulatory, and Policy Compliance

(a) Legal, Regulatory and Policy Compliance

This CONTRACT, operations thereunder by the Concessioner and the administration of it by the Director, shall be subject to all Applicable Laws. The Concessioner must comply with all Applicable Laws in fulfilling its obligations under this CONTRACT at the Concessioner's sole cost and expense. Certain Applicable Laws governing protection of the environment are further described in this CONTRACT. Certain Applicable Laws relating to nondiscrimination in employment and providing accessible facilities and services to the public are further described in this CONTRACT.

(b) Notice

The Concessioner shall give the Director immediate written notice of any violation of Applicable Laws by the Concessioner, including its employees, agents or contractors, and, at its sole cost and expense, must promptly rectify any such violation.

(c) How and Where to Send Notice

All notices required by this CONTRACT shall be in writing and shall be served on the parties at the following addresses. The mailing of a notice by registered or certified mail, return receipt requested, shall be sufficient service. Notices sent to the Director shall be sent to the following address:

Superintendent
Park name
Address
Attention:

Notices sent to the Concessioner shall be sent to the following address:

Concessioner
Address
Attention:

Sec. 6. Environmental and Cultural Protection

(a) Environmental Management Objectives

The Concessioner shall meet the following environmental management objectives (hereinafter "Environmental Management Objectives") in the conduct of its operations under this CONTRACT:

(1) The Concessioner, including its employees, agents and contractors, shall comply with all Applicable Laws pertaining to the protection of human health and the environment.

(2) The Concessioner shall incorporate Best Management Practices (BMPs) in its operation, construction, maintenance, acquisition, provision of visitor services, and other activities under this CONTRACT.

(b) Environmental Management Program

(1) The Concessioner shall develop, document, implement, and comply fully with, to the satisfaction of the Director, a comprehensive written Environmental Management Program (EMP) to achieve the Environmental Management Objectives. The initial EMP shall be developed and submitted to the Director for approval within sixty days of the effective date of this CONTRACT. The Concessioner shall submit to the Director for approval a proposed updated EMP annually.

(2) The EMP shall account for all activities with potential environmental impacts conducted by the Concessioner or to which the Concessioner contributes. The scope and complexity of the EMP may vary based on the type, size and number of Concessioner activities under this CONTRACT.

(3) The EMP shall include, without limitation, the following elements:

(i) *Policy.* The EMP shall provide a clear statement of the Concessioner's commitment to the Environmental Management Objectives.

(ii) *Goals and Targets.* The EMP shall identify environmental goals established by the Concessioner consistent with all Environmental Management Objectives. The EMP shall also identify specific targets (*i.e.* measurable results and schedules) to achieve these goals.

(iii) *Responsibilities and Accountability.* The EMP shall identify environmental responsibilities for Concessioner employees and

contractors. The EMP shall include the designation of an environmental program manager. The EMP shall include procedures for the Concessioner to implement the evaluation of employee and contractor performance against these environmental responsibilities.

(iv) *Documentation.* The EMP shall identify plans, procedures, manuals, and other documentation maintained by the Concessioner to meet the Environmental Management Objectives.

(v) *Documentation Control and Information Management System.* The EMP shall describe (and implement) document control and information management systems to maintain knowledge of Applicable Laws and BMPs. In addition, the EMP shall identify how the Concessioner will manage environmental information, including without limitation, plans, permits, certifications, reports, and correspondence.

(vi) *Reporting.* The EMP shall describe (and implement) a system for reporting environmental information on a routine and emergency basis, including providing reports to the Director under this CONTRACT.

(vii) *Communication.* The EMP shall describe how the environmental policy, goals, targets, responsibilities and procedures will be communicated throughout the Concessioner's organization.

(viii) *Training.* The EMP shall describe the environmental training program for the Concessioner, including identification of staff to be trained, training subjects, frequency of training and how training will be documented.

(ix) *Monitoring, Measurement, and Corrective Action.* The EMP shall describe how the Concessioner will comply with the EMP and how the Concessioner will self-assess its performance under the EMP, a least annually, in a manner consistent with NPS protocol regarding audit of NPS operations. The self-assessment should ensure the Concessioner's conformance with the Environmental Management Objectives and measure performance against environmental goals and targets. The EMP shall also describe procedures to be taken by the Concessioner to correct any deficiencies identified by the self-assessment.

(c) Environmental Performance Measurement

The Concessioner shall be evaluated by the Director on its environmental performance under this CONTRACT, including, without limitation, compliance with the approved EMP, on at least an annual basis.

(d) Environmental Data, Reports, Notifications, and Approvals

(1) *Inventory of Hazardous Substances and Inventory of Waste Streams.* The Concessioner shall submit to the Director, at least annually, an inventory of federal Occupational Safety and Health Administration (OSHA) designated hazardous chemicals used and stored in the Area by the Concessioner. The Director may prohibit the use of any OSHA hazardous chemical by the Concessioner in operations under this CONTRACT. The Concessioner shall obtain the Director's approval prior to using any extremely hazardous substance, as defined in the Emergency Planning and Community Right to Know Act of 1986, in operations under this CONTRACT. The Concessioner shall also submit to the Director, at least annually, an inventory of all waste streams generated by the Concessioner under this CONTRACT. Such inventory shall include any documents, reports, monitoring data, manifests, and other documentation required by Applicable Laws regarding waste streams.

(2) *Reports.* The Concessioner shall submit to the Director copies of all documents, reports, monitoring data, manifests, and other documentation required under Applicable Laws to be submitted to regulatory agencies. The Concessioner shall also submit to the Director any environmental plans for which coordination with Area operations are necessary and appropriate, as determined by the Director in accordance with Applicable Laws.

(3) *Notification of Releases.* The Concessioner shall give the Director immediate written notice of any discharge, release or threatened release (as these terms are defined by Applicable Laws) within or at the vicinity of the Area, (whether solid, semi-solid, liquid or gaseous in nature) of any hazardous or toxic substance, material, or waste of any kind, including, without limitation, building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product.

(4) *Notice of Violation.* The Concessioner shall give the Director in writing immediate notice of any written threatened or actual notice of violation from other regulatory agencies of any Applicable Law arising out of the activities of the Concessioner, its agents or employees.

(5) *Communication with Regulatory Agencies.* The Concessioner shall provide timely written advance notice to the Director of communications, including without limitation, meetings, audits, inspections, hearings and other proceedings, between regulatory agencies and the Concessioner related to compliance with Applicable Laws concerning operations under this CONTRACT. The Concessioner shall also provide to the Director any written materials prepared or received by the Concessioner in advance of or subsequent to any such communications. The Concessioner shall allow the Director to participate in any such communications. The Concessioner shall also provide timely notice to the Director following any unplanned communications between regulatory agencies and the Concessioner.

(e) Corrective Action

(1) The Concessioner, at its sole cost and expense, shall promptly control and contain any discharge, release or threatened release, as set forth in this section, or any threatened or actual violation, as set forth in this section, arising in connection with the Concessioner's operations under this CONTRACT, including, but not limited to, payment of any fines or penalties imposed by appropriate agencies. Following the prompt control or containment of any release, discharge or violation, the Concessioner shall take all response actions necessary to remediate the release, discharge or violation, and to protect human health and the environment.

(2) Even if not specifically required by Applicable Laws, the Concessioner shall comply with directives of the Director to clean up or remove any materials, product or by-product used, handled, stored, disposed, or transported onto or into the Area by the Concessioner to ensure that the Area remains in good condition.

(f) Indemnification and Cost Recovery for Concessioner Environmental Activities

(1) The Concessioner shall indemnify the United States in accordance with Section 8 of this CONTRACT from all losses, claims, damages, environmental injuries, expenses, response costs, allegations or judgments (including, without limitation, fines and penalties) and expenses (including, without limitation, attorneys fees and experts' fees) arising out of the activities of the Concessioner, its employees, agents and contractors pursuant to this section. Such indemnification shall survive termination or expiration of this CONTRACT.

(2) If the Concessioner does not promptly contain and remediate an unauthorized discharge or release arising out of the activities of the Concessioner, its employees, agents and contractors, as set forth in this section, or correct any environmental self-assessment finding of non-compliance, in full compliance with Applicable Laws, the Director may, in its sole discretion and after notice to the Concessioner, take any such action consistent with Applicable Laws as the Director deems necessary to abate, mitigate, remediate, or otherwise respond to such release or discharge, or take corrective action on the environmental self-assessment finding. The Concessioner shall be liable for and shall pay to the Director any costs of the Director associated with such action upon demand. Nothing in this section shall preclude the Concessioner from seeking to recover costs from a responsible third party.

(g) Weed and Pest Management

The Concessioner shall be responsible for managing weeds, and through an integrated pest management program, harmful insects, rats, mice and other pests on Concession Facilities assigned to the Concessioner under this CONTRACT. All such weed and pest management activities shall be in accordance with Applicable Laws and guidelines established by the Director.

(j) Protection of Cultural and Archeological Resources.

The Concessioner shall ensure that any protected sites and archeological resources within the Area are not disturbed or damaged by the Concessioner, including the Concessioner's employees, agents and contractors, except in accordance with Applicable Laws, and only with the prior approval of the Director. Discoveries of any archeological resources by the Concessioner shall be promptly reported to the Director. The Concessioner shall cease work or other disturbance which may impact any protected site or archeological resource until the Director grants approval, upon such terms and conditions as the Director deems necessary, to continue such work or other disturbance.

Sec. 7. Fees

(a) Franchise Fee

(1) For the term of this CONTRACT, the Concessioner shall pay to the Director for the privileges granted under this CONTRACT a franchise fee equal to _____ percent (_____ %) of the Concessioner's gross receipts for the preceding year or portion of a year.

(2) Neither the Concessioner nor the Director shall have a right to an adjustment of the fees except as provided below. The Concessioner has no right to waiver of the fee under any circumstances.

(b) Payments Due

(1) The franchise fee shall be due on a monthly basis at the end of each month and shall be paid by the Concessioner in such a manner that the Director shall receive payment within fifteen (15) days after the last day of each month that the Concessioner operates. This monthly payment shall include the franchise fee equal to the specified percentage of gross receipts for the preceding month.

(2) The Concessioner shall pay any additional fee amounts due at the end of the operating year as a result of adjustments at the time of submission of the Concessioner's Annual Financial Report. Overpayments shall be offset against the following year's fees. In the event of termination or expiration of this CONTRACT, overpayments will first be offset against any amounts due and owing the Government, and the remainder will be paid to the Concessioner.

(3) All franchise fee payments consisting of $10,000 or more, shall be deposited electronically by the Concessioner using the Treasury Financial Communications System.

(c) Interest

An interest charge will be assessed on overdue amounts for each thirty (30) day period, or portion thereof, that payment is delayed beyond the fifteen (15) day period provided for above. The percent of interest charged will be based on the current value of funds to the United States Treasury as published quarterly in the Treasury Fiscal Requirements Manual. The Director may also impose penalties for late payment to the extent authorized by Applicable Law.

(d) Adjustment of Franchise Fee

[OPTIONAL–Include only if contract term is greater than 5 years.]

(1) The Concessioner or the Director may request, in the event that either considers that extraordinary, unanticipated changes have occurred after the effective date of this CONTRACT, a reconsideration and possible subsequent adjustment of the franchise fee established in this section. For the purposes of this section, the phrase "extraordinary, unanticipated changes" shall mean extraordinary, unanticipated changes from the conditions existing or reasonably anticipated before the effective date of this CONTRACT which have or will significantly affect the probable value of the privileges granted to the Concessioner by this CONTRACT. For the purposes of this section, the phrase "probable value" means a reasonable opportunity for net profit in relation to capital invested and the obligations of this CONTRACT.

(2) The Concessioner or the Director must make a request for a reconsideration by mailing, within sixty (60) days from the date that the party becomes aware, or should have become aware, of the possible extraordinary, unanticipated changes, a written notice to the other party that includes a description of the possible extraordinary, unanticipated changes and why the party believes they have affected or will significantly affect the probable value of the privileges granted by this CONTRACT.

(3) If the Concessioner and the Director agree that extraordinary, unanticipated changes have occurred, the Concessioner and the Director will undertake good faith negotiations as to an appropriate adjustment of the franchise fee.

(4) The negotiation will last for a period of sixty (60) days from the date the Concessioner and the Director agree that extraordinary, unanticipated changes occurred. If the negotiation results in agreement as to an adjustment (up or down) of the franchise fee within this period, the franchise fee will be adjusted accordingly, prospectively as of the date of agreement.

(5) If the negotiation does not result in agreement as to the adjustment of the franchise fee within this sixty (60) day period, then either the Concessioner or the Director may request binding arbitration to determine the adjustment to franchise fee in accordance with this section. Such a request for arbitration must be made by mailing written notice to the other party within fifteen (15) days of the expiration of the sixty (60) day period.

(6) Within thirty (30) days of receipt of such a written notice, the Concessioner and the Director shall each select an arbiter. These two arbiters, within thirty (30) days of selection, must agree to the selection of a third arbiter to complete the arbitration panel. Unless otherwise agreed by the parties, the arbitration panel shall establish the procedures of the arbitration. Such procedures must provide each party a fair and equal opportunity to present its position on the matter to the arbitration panel.

(7) The arbitration panel shall consider the written submissions and any oral presentations made by the Concessioner and the Director and provide its decision on an adjusted franchise fee (up, down or unchanged) that is consistent with the probable value of the privileges granted by this CONTRACT within sixty (60) days of the presentations.

(8) Any adjustment to the franchise fee resulting from this section shall be prospective only.

(10) Any adjustment to the franchise fee will be embodied in an amendment to this CONTRACT.

(10) During the pendency of the process described in this section, the Concessioner shall continue to make the established franchise fee payments required by this CONTRACT.

Sec. 8. Indemnification and Insurance

(a) Indemnification

The Concessioner agrees to assume liability for and does hereby agree to save, hold harmless, protect, defend and indemnify the United States of America, its agents and employees from and against any and all liabilities, obligations, losses, damages or judgments (including without limitation penalties and fines), claims, actions, suits, costs and expenses (including without limitation attorneys fees and experts' fees) of any kind and nature whatsoever on account of fire or other peril, bodily injury, death or property damage, or claims for bodily injury, death or property damage of any nature whatsoever, and by whomsoever made, in any way connected with or arising out of the activities of the Concessioner, its employees, agents or contractors under this CONTRACT. This indemnification shall survive the termination or expiration of this CONTRACT.

(b) Insurance in General

(1) The Concessioner shall obtain and maintain during the entire term of this CONTRACT at its sole cost and expense, the types and amounts of insurance coverage necessary to fulfill the obligations of this CONTRACT as determined by the Director. The initial insurance requirements are set forth below and in Exhibit D. Any changed or additional requirements that the Director determines necessary must be reasonable and consistent with the types and coverage amounts of insurance a prudent businessperson would purchase in similar circumstances. The Director shall approve the types and amounts of insurance coverage purchased by the Concessioner.

(2) The Director will not be responsible for any omissions or inadequacies of insurance coverages and amounts in the event the insurance purchased by the Concessioner proves to be inadequate or otherwise insufficient for any reason whatsoever.

(3) At the request of the Director, the Concessioner shall at the time insurance is first purchased and annually thereafter, provide the Director with a Certificate of Insurance that accurately details the conditions of the policy as evidence of compliance with this section. The Concessioner shall provide the Director immediate written notice of any material change in the Concessioner's insurance program hereunder, including without limitation, cancellation of any required insurance coverages.

(c) Commercial Public Liability

(1) The Concessioner shall provide commercial general liability insurance against claims arising out of or resulting from the acts or omissions of the Concessioner or its employees, agents or contractors, in carrying out the activities and operations required and/or authorized under this CONTRACT.

(2) This insurance shall be in the amount commensurate with the degree of risk and the scope and size of the activities required and/or authorized under this CONTRACT, as more specifically set forth in Exhibit D. Furthermore, the commercial general liability package shall provide no less than the coverages and limits described in Exhibit D.

(3) All liability policies shall specify that the insurance company shall have no right of subrogation against the United States of America and shall provide that the United States of America is named an additional insured.

(4) From time to time, as conditions in the insurance industry warrant, the Director may modify Exhibit D to revise the minimum required limits or to require additional types of insurance, provided that any additional requirements must be reasonable and consistent with the types of insurance a prudent businessperson would purchase in similar circumstances.

Sec. 9. Bonds

The Director may require the Concessioner to furnish appropriate forms of bonds in amounts reasonable in the circumstances and acceptable to the Director, in order to ensure faithful performance of the Concessioner's obligations under this CONTRACT.

Sec. 10. Accounting Records and Reports

(a) Accounting System

(1) The Concessioner shall maintain an accounting system under which its accounts can be readily identified with its system of accounts classification. Such accounting system shall be capable of providing the information required by this CONTRACT, including but not limited to the Concessioner's repair and maintenance obligations. The Concessioner's system of accounts classification shall be directly related to the Concessioner Annual Financial Report Form issued by the Director.

(2) If the Concessioner's annual gross receipts are $250,000 or more, the Concessioner must use the accrual accounting method.

(3) In computing net profits for any purposes of this CONTRACT, the Concessioner shall keep its accounts in such manner that there can be no diversion or concealment of profits or expenses in the operations authorized under this CONTRACT by means of arrangements for the procurement of equipment, merchandise, supplies or services from sources controlled by or under common ownership with the Concessioner or by any other device.

(b) Annual Financial Report

(1) The Concessioner shall submit annually as soon as possible but not later than one hundred twenty (120) days after the last day of its fiscal year a financial statement for the preceding fiscal year or portion of a year as prescribed by the Director ("Concessioner Annual Financial Report").

(2) If the annual gross receipts of the Concessioner are in excess of $1,000,000, the financial statements shall be audited by an independent Certified Public Accountant in accordance with Generally Accepted Auditing Standards (GAAS) and procedures promulgated by the American Institute of Certified Public Accountants.

(3) If annual gross receipts are between $250,000, and $1,000,000, the financial statements shall be reviewed by an independent Certified Public Accountant in accordance with Generally Accepted Auditing Standards (GAAS) and procedures promulgated by the American Institute of Certified Public Accountants.

(4) If annual gross receipts are less than $250,000, the financial statements may be prepared without involvement by an independent Certified Public Accountant, unless otherwise directed by the Director.

(c) Other Financial Reports

(1) *Balance Sheet.* Within ninety (90) days of the execution of this CONTRACT or its effective date, whichever is later, the Concessioner shall submit to the Director a balance sheet as of the beginning date of the term of this CONTRACT. The balance sheet shall be audited or reviewed, as determined by the annual gross receipts, by an independent Certified Public Accountant.

Sec. 11. Other Reporting Requirements

The following describes certain other reports required under this CONTRACT:

(a) Insurance Certification

As specified in Section 8, the Concessioner shall, at the request of the Director, provide the Director with a Certificate of Insurance for all insurance coverages related to its operations under this CONTRACT. The Concessioner shall give the Director immediate written notice of any material change in its insurance program, including without limitation, any cancellation of required insurance coverages.

(b) Environmental Reporting

The Concessioner shall submit environmental reports as specified in Section 6 of this CONTRACT, and as otherwise required by the Director under the terms of this CONTRACT.

(c) Miscellaneous Reports and Data

The Director from time to time may require the Concessioner to submit other reports and data regarding its performance under the CONTRACT or otherwise, including, but not limited to, operational information.

Sec. 12. Suspension, Termination, or Expiration

(a) Suspension

The Director may temporarily suspend operations under this CONTRACT in whole or in part in order to protect Area visitors or to protect, conserve and preserve Area resources. No compensation of any nature shall be due the Concessioner by the Director in the event of a suspension of operations, including, but not limited to, compensation for losses based on lost income, profit, or the necessity to make expenditures as a result of the suspension.

(b) Termination

(1) The Director may terminate this CONTRACT at any time in order to protect Area visitors, protect, conserve, and preserve Area resources, or to limit visitor services in the Area to those that continue to be necessary and appropriate.

(2) The Director may terminate this CONTRACT if the Director determines that the Concessioner has materially breached any requirement of this CONTRACT, including, but not limited to, the requirement to maintain and operate visitor services to the satisfaction of the Director, the requirement to provide only those visitor services required or authorized by the Director pursuant to this CONTRACT, the requirement to pay the established franchise fee, the requirement to prepare and comply with an Environmental Management Program and the requirement to comply with Applicable Laws.

(3) In the event of a breach of the CONTRACT, the Director will provide the Concessioner an opportunity to cure by providing written notice to the Concessioner of the breach. In the event of a monetary breach, the Director will give the Concessioner a fifteen (15) day period to cure the breach. If the breach is not cured within that period, then the Director may terminate the CONTRACT for default. In the event of a nonmonetary breach, if the Director considers that the nature of the breach so permits, the Director will give the Concessioner thirty (30) days to cure the breach, or to provide a plan, to the satisfaction of the Director, to cure the breach over a specified period of time. If the breach is not cured within this specified period of time, the Director may terminate the CONTRACT for default. Notwithstanding this provision, repeated breaches (two or more) of the same nature shall be grounds for termination for default without a cure period. In the event of a breach of any nature, the Director may suspend the Concessioner's operations as appropriate in accordance with Section 12(a).

(4) The Director may terminate this CONTRACT upon the filing or the execution of a petition in bankruptcy by or against the Concessioner, a petition seeking relief of the same or different kind under any provision of the Bankruptcy Act or its successor, an assignment by the Concessioner for the benefit of creditors, a petition or other proceeding against the Concessioner for the appointment of a trustee, receiver, or liquidator, or, the taking by any person or entity of the rights granted by this CONTRACT or any part thereof upon execution, attachment or other process of law or equity. The Director may terminate this CONTRACT if the Director determines that the Concessioner is unable to perform the terms of CONTRACT due to bankruptcy or insolvency.

(5) Termination of this CONTRACT for any reason shall be by written notice to the Concessioner.

(c) Notice of Bankruptcy or Insolvency

The Concessioner must give the Director immediate notice (within five (5) days) after the filing of any petition in bankruptcy, filing any petition seeking relief of the same or different kind under any provision of the Bankruptcy Act or its successor, or making any assignment for the benefit of creditors. The Concessioner must also give the Director immediate notice of any petition or other proceeding against the Concessioner for the appointment of a trustee, receiver, or liquidator, or, the taking by any person or entity of the rights granted by this CONTRACT or any part thereof upon execution, attachment or other process of law or equity. For purposes of the bankruptcy statutes, NPS considers that this CONTRACT is not a lease but an executory contract exempt from inclusion in assets of Concessioner pursuant to 11 U.S.C. 365.

(d) Requirements in the Event of Termination or Expiration

(1) In the event of termination of this CONTRACT for any reason or expiration of this CONTRACT, no compensation of any nature shall be due the Concessioner in the event of a termination or expiration of this CONTRACT, including, but not limited to, compensation for losses based on lost income, profit, or the necessity to make expenditures as a result of the termination.

(2) Upon termination of this CONTRACT for any reason, or upon its expiration, and except as otherwise provided in this section, the Concessioner shall, at the Concessioner's expense, promptly vacate the Area, remove all of the Concessioner's personal property, and repair any injury occasioned by removal of such property. The removal of such personal property must occur within thirty (30) days after the termination of this CONTRACT for any reason or its expiration (unless the Director in particular circumstances requires immediate removal). No compensation is due the Concessioner from the Director or a successor concessioner for the Concessioner's personal property used in operations under this CONTRACT. However, the Director or a successor concessioner may purchase such personal property from the Concessioner subject to mutually agreed upon terms. Personal property not

removed from the Area by the Concessioner in accordance with the terms of this CONTRACT shall be considered abandoned property subject to disposition by the Director, at full cost and expense of the Concessioner, in accordance with Applicable Laws. Any cost or expense incurred by the Director as a result of such disposition may be offset from any amounts owed to the Concessioner by the Director to the extent consistent with Applicable Laws.

Sec. 13. Assignment, Sale or Encumbrance of Interests

(a) This CONTRACT is subject to the requirements of Applicable Laws, including, without limitation, 36 CFR Part 51, with respect to proposed assignments and encumbrances, as those terms are defined by Applicable Laws. Failure by the Concessioner to comply with Applicable Laws is a material breach of this CONTRACT for which the Director may terminate this CONTRACT for default. The Director shall not be obliged to recognize any right of any person or entity to an interest in this CONTRACT of any nature or operating rights under this CONTRACT, if obtained in violation of Applicable Laws.

(b) The Concessioner shall advise any person(s) or entity proposing to enter into a transaction which may be subject to Applicable Laws, including without limitation, 36 CFR Part 51, of the requirements of Applicable Law and this CONTRACT.

Sec. 14. General Provisions

(a) The Director and Comptroller General of the United States, or any of their duly authorized representatives, shall have access to the records of the Concessioner as provided by the terms of Applicable Laws.

(b) All information required to be submitted to the Director by the Concessioner pursuant to this CONTRACT is subject to public release by the Director to the extent provided by Applicable Laws.

(c) Subconcession or other third party agreements, including management agreements, for the provision of visitor services required and/or authorized under this CONTRACT are not permitted.

(d) The Concessioner is not entitled to be awarded or to have negotiating rights to any Federal procurement or service contract by virtue of any provision of this CONTRACT.

(e) Any and all taxes or assessments of any nature that may be lawfully imposed by any State or its political subdivisions upon the property or business of the Concessioner shall be paid promptly by the Concessioner.

(f) No member of, or delegate to, Congress or Resident Commissioner shall be admitted to any share or part of this CONTRACT or to any benefit that may arise from this CONTRACT but this restriction shall not be construed to extend to this CONTRACT if made with a corporation or company for its general benefit.

(g) This CONTRACT is subject to the provisions of 43 CFR, Subtitle A, Subpart D, concerning nonprocurement debarment and suspension. The Director may recommend that the Concessioner be debarred or suspended in accordance with the requirements and procedures described in those regulations, as they are effective now or may be revised in the future.

(h) This CONTRACT contains the sole and entire agreement of the parties. No oral representations of any nature form the basis of or may amend this CONTRACT. This CONTRACT may be extended, renewed or amended only when agreed to in writing by the Director and the Concessioner.

(i) This CONTRACT does not grant rights or benefits of any nature to any third party.

(j) The invalidity of a specific provision of this CONTRACT shall not affect the validity of the remaining provisions of this CONTRACT.

(k) Waiver by the Director or the Concessioner of any breach of any of the terms of this CONTRACT by the other party shall not be deemed to be a waiver or elimination of such term, nor of any subsequent breach of the same type, nor of any other term of the CONTRACT. The subsequent acceptance of any payment of money or other performance required by this CONTRACT shall not be deemed to be a waiver of any preceding breach of any term of the CONTRACT.

(l) Claims against the Director (to the extent subject to 28 U.S.C. 2514) arising from this CONTRACT shall be forfeited to the Director by any person who corruptly practices or attempts to practice any fraud against the United States in the proof, statement, establishment, or allowance thereof within the meaning of 28 U.S.C. 2514.

Section 15. Special Provisions

[Optional—To be used when operating and maintenance requirements are incorporated in the body of the contract, rather than as separate operating and maintenance plans.]

In Witness Whereof, the duly authorized representatives of the parties have executed this CONTRACT as of the____day of_____, _____.

Concessioner

By _____
(Title) (Company Name)

United States of America

By _____
Director; National Park Service

[Corporations]

Attest:

By: _____

Title: _____

[Sole Proprietorship]

Witnesses:

Name _____
Address _____
Title _____

Name _____
Address _____
Title _____

[Partnership]

Witnesses as to Each:

Name _____
Address _____

Name _____
Address _____

[*Concessioner*]

_____
Name

_____
Name

Exhibit A—Assigned Government Personal Property

Government personal property is assigned to the Concessioner for the purposes of this CONTRACT as follows:

Property Number Description of Item

Effective, this_____day of_____, 20_____.

By: _____
Regional Director,_____Region

Exhibit B—Operating and Maintenance Plan

I. Introduction

This Operating and Maintenance Plan between _____ (hereinafter referred to as the "Concessioner") and [Park Unit Name] (hereinafter referred to as the "Service") shall serve as a supplement to Concession Contract CC-xxxxnnnn-yy (hereinafter referred to as the "CONTRACT"). It describes specific operating and maintenance responsibilities of the Concessioner and the Service with regard to those lands utilized by the Concessioner for the purposes authorized by the CONTRACT.

In the event of any conflict between the terms of the CONTRACT and this Operating and Maintenance Plan, the terms of the CONTRACT, including its designations and amendments, shall prevail.

This plan will be reviewed annually by the Superintendent in consultation with the Concessioner and revised as determined necessary by the Superintendent of [Park Unit Name].

Any revisions shall not be inconsistent with the main body of this CONTRACT. Any revisions must be reasonable and in furtherance of the purposes of the CONTRACT.

[From this point on, this document is tailored to the requirements of each individual park.]

Exhibit C—Nondiscrimination

Section I: Requirements Relating to Employment and Service to the Public

C. Employment

During the performance of this CONTRACT the Concessioner agrees as follows:

(1) The Concessioner will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin, or disabling condition. The Concessioner will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, or disabling condition. Such action shall include, but not be limited to, the following: Employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Concessioner agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Secretary setting forth the provision of this nondiscrimination clause.

(2) The Concessioner will, in all solicitations or advertisements for employees placed by on behalf of the Concessioner, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, national origin, or disabling condition.

(3) The Concessioner will send to each labor union or representative of workers with which the Concessioner has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Secretary, advising the labor union or workers' representative of the Concessioner's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) Within 120 days of the commencement of a contract every Government contractor or subcontractor holding a contract that generates gross receipts which exceed $50,000 and having 50 or more employees shall prepare and maintain an affirmative action program at each establishment which shall set forth the contractor's policies, practices, and procedures in accordance with the affirmative action program requirement.

(5) The Concessioner will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Concessioner will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to the Concessioner's books, records, and accounts by the Secretary of the Interior and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Concessioner's noncompliance with the nondiscrimination clauses of this CONTRACT or with any of such rules, regulations, or orders, this CONTRACT may be canceled, terminated or suspended in whole or in part and the Concessioner may be declared ineligible for further Government concession contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Concessioner will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, so that such provisions will be binding upon each subcontractor or vendor. The Concessioner will take such action with respect to any subcontract or purchase order as the Secretary may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the Concessioner becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Secretary, the Concessioner may request the United States to enter into such litigation to protect the interests of the United States.

D. Construction, Repair, and Similar Contracts

The preceding provisions A(1) through A(8) governing performance of work under this CONTRACT, as set out in Section 202 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, shall be applicable to this CONTRACT, and shall be included in all contracts executed by the Concessioner for the performance of construction, repair, and similar work contemplated by this CONTRACT, and for that purpose the term "CONTRACT" shall be deemed to refer to this instrument and to contracts awarded by the Concessioner and the term "Concessioner" shall be deemed to refer to the Concessioner and to contractors awarded contacts by the Concessioner.

C. Facilities

(2) Definitions: As used herein:

(k) Concessioner shall mean the Concessioner and its employees, agents, lessees, sublessees, and contractors, and the successors in interest of the Concessioner;

(ii) Facility shall mean any and all services, facilities, privileges, accommodations, or activities available to the general public and permitted by this agreement.

(2) The Concessioner is prohibited from:

(j) Publicizing facilities operated hereunder in any manner that would directly or inferentially reflect upon or question the acceptability of any person because of race, color, religion, sex, age, national origin, or disabling condition;

(ii) Discriminating by segregation or other means against any person.

Section II: Accessibility

Title V, Section 504, of the Rehabilitation Act of 1973, as amended in 1978, requires that action be taken to assure that any "program" or "service" being provided to the general public be provided to the highest extent reasonably possible to individuals who are mobility impaired, hearing impaired, and visually impaired. It does not require architectural access to every building or facility, but only that the service or program can be provided somewhere in an accessible location. It also allows for a wide range of methods and techniques for achieving the intent of the law, and calls for consultation with disabled persons in determining what is reasonable and feasible.

No handicapped person shall, because a Concessioner's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance or conducted by any Executive agency or by the U.S. Postal Service.

A. Discrimination Prohibited

A Concessioner, in providing any aid, benefit, or service, may not directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(1) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(2) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(3) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;

(4) Provide different or separate aids, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(5) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program;

(6) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(7) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

B. Existing Facilities

A Concessioner shall operate each program or activity so that the program or activity,

when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not require a Concessioner to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

Exhibit F—Insurance Requirements

I. Insurance Requirements

The Concessioner shall obtain and maintain during the entire term of this CONTRACT, at its sole cost and expense, the types and amounts of insurance coverage necessary to fulfill the obligations of the CONTRACT:

II. Liability Insurance

The following Liability Coverages are to be maintained at a minimum, all of which are to be written on an occurrence basis only. The Concessioner may attain the limits specified below by means of supplementing the respective coverage(s) with Excess or Excess "Umbrella" Liability.

A. Commercial General Liability

1. Coverage will be provided for bodily injury, property damage, personal or advertising injury liability (and must include Contractual Liability and Products/Completed Operations Liability).

Bodily Injury and Property Damage Limit
Products/Completed Operations Limit
Personal Injury & Advertising Injury Limit
General Aggregate
Fire Damage Legal Liability "per fire"

2. The liability coverages may not contain the following exclusions/limitations:

a. Athletic or Sports Participants
b. Products/Completed Operations
c. Personal Injury or Advertising Injury exclusion or limitation
d. Contractual Liability limitation
e. Explosion, Collapse and Underground Property Damage exclusion
f. Total Pollution exclusion
g. Watercraft limitations affecting the use of watercraft in the course of the concessioner's operations (unless separate Watercraft coverage is maintained)

3. For all lodging facilities and other indoor facilities where there may be a large concentration of people, the pollution exclusion may be amended so that it does not apply to the smoke, fumes, vapor or soot from equipment used to heat the building.

4. If the policy insures more than one location, the General Aggregate limit must be amended to apply separately to each location, or, at least, separately to the appropriate NPS location(s).

B. Automobile Liability

Coverage will be provided for bodily injury or property damage arising out of the ownership, maintenance or use of "any auto," Symbol 1. (Where there are no owned autos, coverage applicable to "hired" and "non-owned" autos, "Symbols 8 & 9," shall be maintained.)

Each Accident Limit

C. Liquor Liability (if applicable)

Coverage will be provided for bodily injury or property damage including damages for care, loss of services, or loss of support arising out of the selling, serving or furnishing of any alcoholic beverage.

Each Common Cause Limit
Aggregate Limit

D. Watercraft Liability (or Protection & Indemnity) (if applicable)

Coverage will be provided for bodily injury or property damage arising out of the use of any watercraft.

Each Occurrence Limit

E. Aircraft Liability (if applicable)

Coverage will be provided for bodily injury or property damage arising out of the use of any aircraft.

Each Person Limit
Property Damage Limit
Each Accident Limit

F. Garage Liability (if applicable)

This coverage is not required, but may be used in place of Commercial General Liability and Auto Liability coverages for some operations. Coverage will be provided for bodily injury, property damage, personal or advertising injury liability arising out of garage operations (including products/completed operations and contractual liability) as well as bodily injury and property damage arising out of the use of automobiles.

Each Accident Limits—Garage Operations
Auto Only
Other Than Auto Only
Personal Injury & Advertising
Injury Limit
Fire Damage Legal Liability "per fire"
Aggregate Limit—Garage Operations
Other Than Auto Only

If owned vehicles are involved, Liability coverage should be applicable to "any auto" ("Symbol 21") otherwise, coverage applicable to "hired" and "non-owned" autos ("Symbols 28 & 29") should be maintained.

G. Excess Liability or Excess "Umbrella" Liability

This coverage is not required, but may be used to supplement any of the above Liability coverage policies in order to arrive at the required minimum limit of liability. If maintained, coverage will be provided for bodily injury, property damage, personal or advertising injury liability in excess of scheduled underlying insurance. In addition, coverage shall be at least as broad as that provided by underlying insurance policies and the limits of underlying insurance shall be sufficient to prevent any gap between such minimum limits and the attachment point of the coverage afforded under the Excess Liability or Excess "Umbrella" Liability policy.

H. Care, Custody and Control—Legal Liability (Describe Specific Coverage)

Coverage will be provided for damage to property in the care, custody or control of the concessioner.

Any One Loss

I. Environmental Impairment Liability

Coverage will be provided for bodily injury, personal injury or property damage arising out of pollutants or contaminants (on site and/or offsite).

Each Occurrence or Each Claim Limit
Aggregate Limit

J. Special Provisions for Use of Aggregate Policies

At such time as the aggregate limit of any required policy is (or if it appears that it will be) reduced or exhausted, the concessioner may be required to reinstate such limit or purchase additional coverage limits.

K. Self-Insured Retentions

Self-insured retentions on any of the above described Liability insurance policies (other than Excess "Umbrella" Liability, if maintained) may not exceed $5,000.

L. Workers Compensation & Employers' Liability

Coverage will comply with the statutory requirements of the state(s) in which the concessioner operates.

III. Insurance Company Minimum Standards

All insurance companies providing the above described insurance coverages must meet the minimum standards set forth below:

1. All insurers for all coverages must be rated no lower than A – by the most recent edition of Best's Key Rating Guide (Property-Casualty edition).

2. All insurers for all coverages must have a Best's Financial Size Category of at least VIII according to the most recent edition of Best's Key Rating Guide (Property-Casualty edition).

3. All insurers must be admitted (licensed) in the state in which the concessioner is domiciled.

IV. Certificates of Insurance

All certificates of Insurance required by this CONTRACT shall be completed in sufficient detail to allow easy identification of the coverages, limits, and coverage amendments that are described above. In addition, the insurance companies must be accurately listed along with their A.M. Best Identification Number ("AMB#"). The name, address and telephone number of the issuing insurance agent or broker must be clearly shown on the certificate of insurance as well.

Due to the space limitations of most standard certificates of insurance, it is expected that an addendum will be attached to the appropriate certificate(s) in order to provide the space needed to show the required information.

In addition to providing certificates of insurance, the concessioner, upon written request of the Director, shall provide the Director with a complete copy of any of the insurance policies (or endorsements thereto) required herein to be maintained by the concessioner.

V. Statutory Limits

In the event that a statutorily required limit exceeds a limit required herein, the higher statutorily required limit shall be considered the minimum to be maintained.

Dated: July 3, 2000.

Cynthia Orlando,

Associate Director, Park Operations and Education, National Park Service.

[FR Doc. 00–17431 Filed 7–18–00; 8:45 am]

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Federal Register

Wednesday,
July 19, 2000

Part IV

Department of Housing and Urban Development

Notice of Regulatory Waiver Requests Granted for the First Quarter of Calendar Year 2000; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4591–N–01]

Notice of Regulatory Waiver Requests Granted for the First Quarter of Calendar Year 2000

AGENCY: Office of the Secretary, HUD.

ACTION: Public Notice of the granting of regulatory waivers from January 1, 2000 through March 31, 2000.

SUMMARY: Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the "HUD Reform Act"), requires HUD to publish quarterly **Federal Register** notices of all regulatory waivers that HUD has approved. Each notice must cover the quarterly period since the most recent **Federal Register** notice. The purpose of this notice is to comply with the requirements of section 106 of the HUD Reform Act. This notice contains a list of regulatory waivers granted by HUD during the quarter beginning on January 1, 2000 and ending on March 31, 2000.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact Camille E. Acevedo, Assistant General Counsel for Regulations, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–3055 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

For information concerning a particular waiver action for which public notice is provided in this document, contact the person whose name and address is set out for the particular item, in the accompanying list of waiver-grant actions.

SUPPLEMENTARY INFORMATION: As part of the Housing and Urban Development Reform Act of 1989 (the "HUD Reform Act"), the Congress adopted, at HUD's request, legislation to limit and control the granting of regulatory waivers by HUD. Section 106 of the HUD Reform Act added a new section 7(q) to the Department of Housing and Urban Development Act (2 U.S.C. 3535(q)), which provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary rank or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that HUD has approved, by publishing a notice in the **Federal Register**. These notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived, and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request;

e. State how additional information about a particular waiver grant action may be obtained.

Section 106 of the HUD Reform Act also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purpose of this notice.

Today's document follows publication of HUD's Statement of Policy on Waiver of Regulations and Directives issued by HUD on April 22, 1991 (56 FR 16337). This notice covers HUD's waiver-grant activity from January 1, 2000 through March 31, 2000. Additionally, this notice contains two reports of regulatory waivers granted during December 1999 by the Office of Housing, but which were inadvertently not included in HUD's **Federal Register** notice of waiver grant activity from October 1, 1999, to December 31, 1999.

For ease of reference, the waivers granted by HUD are listed by HUD program office (for example, the Office of Community Planning and Development, the Office of Housing, the Office of Public and Indian Housing, etc.). Within each program office grouping, the waivers are listed sequentially by the section of title 24 being waived. For example, a waiver-grant action involving the waiver of a provision in 24 CFR part 58 would come before a waiver of a provision in 24 CFR part 570.

Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement in title 24 that is being waived as part of the waiver-grant action. For example, a waiver of both § 58.73 and § 58.74 would appear sequentially in the listing under § 58.73.

Waiver-grant actions involving the same initial regulatory citation are in time sequence beginning with the earliest-dated waiver grant action.

Should HUD receive additional reports of waiver actions taken during the period covered by this report before the next report is published, the next updated report will include these earlier actions, as well as those that occurred between April 1, 2000 through June 30, 2000.

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.

Dated: July 12, 2000.

Andrew Cuomo,

Secretary.

Appendix

Listing of Waivers of Regulatory Requirements Granted by Offices of the Department of Housing and Urban Development January 1, 2000 through March 31, 2000

Note to Reader: More information about the granting of these waivers, including a copy of the waiver request and approval, may be obtained by contacting the person whose name is listed as the contact person directly before each set of waivers granted.

The regulatory waivers granted appear in the following order:

I. Regulatory Waivers granted by the Office of Community Planning and Development.

II. Regulatory Waivers granted by the Office of Housing.

III. Regulatory Waivers granted by the Office of Multifamily Housing Assistance Restructuring.

IV. Regulatory Waivers granted by the Office of Public and Indian Housing.

I. Regulatory Waivers Granted by the Office of Community Planning and Development

For further information about the following waiver actions, contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7152, Washington, DC 20410; telephone (202) 708–2565 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

• *Regulation:* 24 CFR 91.520(a).

Project/Activity: The City of Fayetteville, Arkansas requested a waiver of the submission deadline for the City's FY 2000 program year performance report.

Nature of Requirement: HUD's regulation at 24 CFR 91.520(a) requires each grantee to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted By: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: March 28, 2000.

Reasons Waived: The City experienced personnel changes which delayed completion of the report. The City would not be able to submit a complete and accurate expenditure report on its FY 1999 program if the extension is not granted.

• *Regulation:* 24 CFR 92.2.

Project/Activity: The State of Maine requested a waiver of the definition of housing in the HOME final rule to permit two projects funded with HOME funds for children with disabilities.

Nature of Requirement: The HOME regulation definition at 24 CFR 92.2 states that housing does not include emergency shelters of facilities such as nursing homes, convalescent homes, hospitals residential treatment facilities, correctional facilities and student dormitories.

Granted By: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: March 8, 2000.

Reasons Waived: HUD determined that denial of this request would be an undue hardship for the nine disabled children residing in the Meadow Way and Turning Point Farm facilities. These circumstances constitute a good cause for the waiver.

• *Regulation:* 24 CFR 92.254(a)(5)(ii)(A)(7).

Project/Activity: Delaware County, Pennsylvania, requested a waiver to allow low income buyers of HOME-assisted property to have 48 months to complete the purchase of their homes.

Nature of Requirement: HUD's regulation at 24 CFR 92.254(a)(5)(ii)(A)(7) requires persons participating in HOME's lease-purchase program to purchase their homes within 36 months of signing the lease-purchase agreement.

Granted By: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: March 1, 2000.

Reasons Waived: The County stated in its request that due mainly to poor credit ratings and changing financial circumstances for a number of households, it will take 48 months for the lease-purchaser to accumulate sufficient funds and repair their credit ratings before purchase of the properties will become possible. HUD determined that disqualification of these initial program participants would create an undue hardship.

• *Regulation:* 24 CFR 92.500(d)(1)(c).

Project/Activity: The State of California requested a waiver to allow the State to retain $50,000 of its remaining HOME disaster funds for ongoing program administrative costs, while deobligating the remaining balance of $3,407,153.60 of program funds.

Nature of Requirement: HUD's regulation at 24 CFR 92.500(d)(1)(c) states that HUD will reduce or recapture HOME funds in the HOME Investment Trust Fund by the amount of any funds in the United States Treasury that are not expended within five years after the last day of the month in which HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnership Agreement.

Granted By: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: March 28, 2000.

Reasons Waived: HUD determined that deobligation of the entire remaining balance of the State's HOME disaster funds would create a significant hardship. The HOME disaster funds will be used for monitoring and on-site inspection requirements for disaster-related HOME projects. The $50,000 is granted for a period of no more than twelve months. Funds that remain uncommitted at the end of the twelve months will be recaptured by HUD.

• *Regulations:* 24 CFR 570.200(b)(2).

Project/Activity: The City of Reading, Pennsylvania, requested a waiver of the provision requiring that fees for use of its Civic Center facility be reasonable so as to not preclude its use by low-and moderate-income persons.

Nature of Requirement: HUD's regulation at 24 CFR 570.200(b)(2) requires that fees charged at the facility be reasonable so as not to preclude its use by low-and moderate-income persons.

Granted By: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: March 22, 2000.

Reasons Waived: This activity will meet the national objective of elimination or prevention of slums or blight through completion of an urban renewal project originally approved in 1965. HUD never contemplated at that time there would be special provisions related to use of the facility by low-and moderate-income persons. Failure to grant the waiver would be an undue hardship for the City of Reading.

• *Regulation:* 24 CFR 570.200(h).

Project/Activity: Lexington County, South Carolina requested a waiver to allow the County to use CDBG funds to reimburse costs incurred as a result of preparing the CDBG-specific portions of its first Consolidated Plan.

Nature of Requirement: HUD's regulation at 24 CFR 570.200(h)(1)(i) states that a grantee may only use CDBG funds to reimburse for pre-award costs if, among other things, the activity for which the costs are being incurred is included in a Consolidated Plan or an amended Consolidated Plan Action Plan prior to the costs being incurred.

Granted By: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: January 4, 2000.

Reasons Waived: The November 1995 revision to the CDBG pre-award regulations was meant to broaden grantees' authority to use CDBG funds to pay reasonable pre-award costs, but in making that revision, the authorization for new grantees to pay for planning and administrative start-up costs with CDBG funds was inadvertently omitted. This is the first Consolidated Plan for the County. Failure to grant the requested waiver would result in undue hardship.

• *Regulation:* 24 CFR 570.200(h).

Project/Activity: The City of Opelika, Alabama, requested a waiver to allow the City to use CDBG funds to reimburse costs incurred as a result of preparing the CDBG-specific portions of its first Consolidated Plan.

Nature of Requirement: HUD's regulation at 24 CFR 570.200(h)(1)(i) states that a grantee may only use CDBG funds to reimburse for pre-award costs if, among other things, the activity for which the costs are being incurred is included in a Consolidated Plan or an amended Consolidated Plan Action Plan prior to the costs being incurred.

Granted By: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: February 2, 2000.

Reasons Waived: The November 1995 revision to the CDBG pre-award regulations was meant to broaden grantees' authority to use CDBG funds to pay reasonable pre-award costs, but in making that revision, the authorization for new grantees to pay for planning and administrative start-up costs with CDBG funds was inadvertently omitted. This is the first Consolidated Plan for the City. Failure to grant the requested waiver would result in undue hardship.

• *Regulation:* 24 CFR 570.200(h).

Project/Activity: The City of Corvallis, Oregon, requested a waiver to allow the City to use CDBG funds to reimburse costs incurred as a result of preparing the CDBG-specific portions of its first Consolidated Plan.

Nature of Requirement: HUD's regulation at 24 CFR 570.200(h)(1)(i) states that a grantee may only use CDBG funds to reimburse for pre-award costs if, among other things, the activity for which the costs are being incurred is included in a Consolidated Plan or an amended Consolidated Plan Action Plan prior to the costs being incurred.

Granted By: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: February 3, 2000.

Reasons Waived: The November 1995 revision to the CDBG pre-award regulations was meant to broaden grantees' authority to use CDBG funds to pay reasonable pre-award costs, but in making that revision, the authorization for new grantees to pay for planning and administrative start-up costs with CDBG funds was inadvertently omitted. This is the first Consolidated Plan for the City. Failure to grant the requested waiver would result in undue hardship.

• *Regulation:* 24 CFR 576.21(b)(2).

Project/Activity: The City of Boston requested a waiver of the 30 percent Emergency Shelter Grant Program spending limitation on essential services.

Nature of Requirement: HUD's regulation in 24 CFR 576.21(b)(2) imposes the statutory requirement that no more than thirty percent of the Emergency Shelter Grant funds be expended for essential services. This regulatory section also notes that the statute (42 U.S.C. 11374) also permits waiver of this requirement if the grantee demonstrates that other eligible activities are already being carried out in the locality with other resources.

Granted By: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: February 17, 2000.

Reasons Waived: The City stated in its request that the reallocated funds would be used to provide short term hotel/motel accommodations for homeless families who are not immediately eligible for state-funded emergency shelter. The City also certified that other eligible activities under the program are being carried out in the locality with other resources.

• *Regulation:* 24 CFR 576.21(b)(2).

Project/Activity: The City of Niagara Falls, New York, requested a waiver of the Emergency Shelter Grant Program 30 percent spending limitation on essential services.

Nature of Requirement: HUD's regulation at 24 CFR 576.21(b)(2) imposes the statutory requirement that no more than thirty percent of the Emergency Shelter Grant funds be expended for essential services. This regulatory section also notes that the statute (42 U.S.C. 11374) also permits waiver of this requirement if the grantee demonstrates that other eligible activities are already being carried out in the locality with other resources.

Granted By: Cardell Cooper, Assistant Secretary for Community Planning and Development,

Date Granted: February 22, 2000.

Reasons Waived: The City stated in its request that since the inception of its Emergency Shelter Grant program, the City provided funding to homeless services providers in the form of rehabilitation assistance for the renovation and/or expansion of emergency shelters. Therefore, the City is requesting the waiver of the essential services spending limitation so that 100 percent of the City's FY 2000 ESG grant can be spent on essential services.

• *Regulation:* 24 CFR 582.105(e).

Project/Activity: The Housing Authority for the City of Santa Barbara, California, requested a waiver of the eight percent administrative cap on its Shelter Plus Care grant.

Nature of Requirement: HUD's regulation at 24 CFR 582.105(e) establishes a cap of eight percent of a Shelter Plus Care grant for administrative costs.

Granted By: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: February 17, 2000.

Reasons Waived: In this case, at the request of the Housing Authority, in order to provide administrative coverage during the extension period, the administrative cap was waived to allow it to be raised proportionately to the time needed to spend out the funds. With the granting of the waiver, the Housing Authority will be able to continue to administer the grant with no additional funds and serve additional persons within the existing grant award. Therefore, 11% of the grant funds may be expended for administrative costs.

II. Regulatory Waivers Granted by the Office of Housing

A. *For further information about the following waiver action, contact:* Willie Spearmon, Director, Office of Business Products, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410–7000, telephone (202) 708–3000. Hearing or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8391.

• *Regulation:* 24 CFR 200.54(a).

Project/Activity: Kimberly Court Apartments, Atlanta, Georgia, Project Number: 061–35503. Request for project completion funding.

Nature of Requirement: HUD's regulation at 24 CFR 200.54(a) provides that for project completion funding, an agreement acceptable to the Commissioner shall require that funds provided by the mortgagor under the requirements of § 200.54 must be disbursed in full for project work, material, and incidental charges and expenses before disbursement of any mortgage proceeds, except for the funds described in § 200.54(b).

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 29, 1999.

Reason Waived: A waiver of the requirement that 100 percent of the tax credit equity be funded before disbursement of mortgage proceeds will result in the lowest interest rate on the FHA-insured loan.

B. *For further information about the following waiver actions, contact:* Joy L. Hadley, Director, Quality Assurance Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410–7000, telephone (202) 708–2830. Hearing or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8391.

• *Regulation:* 24 CFR 202.3(c)(2)(iii).

Project/Activity: FHA Title II mortgagees. To raise the threshold for placing a HUD/FHA approved lender on Credit Watch status when its default and claim rate exceeds the HUD Field Office default and claim rate.

Nature of Requirement: HUD's regulation at 24 CFR 202.3(c)(2)(iii) provides that the Secretary may notify a mortgagee that it is on credit watch status if the mortgagee had a rate of defaults and claims on insured mortgages originated in an area which exceeded 150 percent, but not 200 percent, of the normal rate.

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 12, 2000.

Reason Waived: Waiving the regulation permits HUD/FHA to initially focus on those lenders originating the worst performing loans. The waiver will adjust the Credit Watch threshold from being between 150% and 200.9% of the HUD Field Office default and claim rate to being between 200% and 300.9% of that rate. This waiver is limited to Credit Watch reviews conducted in the fourth quarter of FY 1999.

• *Regulation:* 24 CFR 202.3(c)(2)(iii).

Project/Activity: FHA Title II mortgagees. To raise the threshold for placing a HUD/FHA approved lender on Credit Watch status when its default and claim rate exceeds the HUD Field Office default and claim rate.

Nature of Requirement: HUD's regulation at 24 CFR 202.3(c)(2)(iii) provides that the Secretary may notify a mortgagee that it is on credit watch status if the mortgagee had a rate of defaults and claims on insured mortgages originated in an area which exceeded 150 percent, but not 200 percent, of the normal rate.

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 31, 2000.

Reason Waived: Waiving the regulation permits HUD/FHA to initially focus on those lenders originating the worst performing loans. The waiver will adjust the Credit Watch threshold from being between 150% and 200.9% of the HUD Field Office default and claim rate to being between 200% and 300.9% of that rate. This waiver is limited to Credit Watch reviews conducted in the first quarter of FY 2000.

C. *For further information about the following waiver action, contact:* Vance T. Morris, Director, Office of Single Family Product Development, Department of Housing and Urban Development, Room 9266, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–2121. Hearing or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8391.

• *Regulation:* 24 CFR 203.49(c).

Project/Activity: Mortgagee, Homeside Lending, Incorporated, Jacksonville, Florida, requested waiver of the requirements to extend the initial adjustment dates for adjustable rate mortgage loan (ARM) loans beyond the 12 to 18 month window currently provided for in the regulation.

Nature of Requirement: HUD's regulation at 24 CFR 203.49(c) provides that lenders may extend the initial interest rate adjustment dates on ARM loans thus rendering the loans eligible for placement in Ginnie Mae pools. Ineligibility of the loans for delivery to Ginnie Mae would result in financial hardship to the mortgagee and will not have an adverse impact on any mortgagors.

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 2, 2000.

Reasons Waived: Mortgagee, Homeside Lending, Incorporated, requested an extension of the initial change date for an ARM loan beyond the 12–18 month window period as required by 24 CFR 203.49(c). Approving the waiver enabled the lender to securitize the loans and rendered no harm to the borrowers or the Department.

D. *For further information about the following waiver actions, contact:* Willie Spearmon, Director, Office of Business Products, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410–7000, telephone (202) 708–3000. Hearing or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8391.

• *Regulation:* 24 CFR 200.54(a).

Project/Activity: Kimberly Court Apartments, Atlanta, Georgia, Project Number: 061–35503. Request for project completion funding.

Nature of Requirement: HUD's regulation at 24 CFR 200.54(a) provides that for project completion funding, an agreement acceptable to the Commissioner shall require that funds provided by the mortgagor under the requirements of § 200.54 must be disbursed in full for project work, material, and incidental charges and expenses before disbursement of any mortgage proceeds, except for the funds described in § 200.54(b).

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 29, 1999.
Reason Waived: A waiver of the requirement that 100 percent of the tax credit equity be funded before disbursement of mortgage proceeds will result in the lowest interest rate on the FHA-insured loan.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Riley Cheeks House, Washington, DC, Project Number: 000–HD030/DC39–Q961–001.
Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: William C. Apgar, Assistant Secretary-Federal Housing Commissioner.
Date Granted: January 3, 2000.
Reason Waived: Additional funds were needed for increased construction costs due to the project being 100% accessible, and features required for compliance with neighborhood compatibility. The project is comparable to a similar project, does not feature any excessive features, and the Sponsor cannot raise any additional funds nor do they have the capacity to provide funds.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Lenore Street Senior Housing, Willits, California, Project Number: 121–EE107/CA–S971–006.
Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: January 14, 2000.
Reason Waived: The original contractor could not honor the proposed costs that HUD had based its Firm Commitment processing on, and the Sponsor had to rebid the contract.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Citrus Gardens, Orlando, Florida, Project Number: 067–EE082/FLF29–S971–008.
Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Waived: January 19, 2000.
Reason Waived: Additional funds were needed due to an increase in impact fees by the City of Orlando.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Centerburg Place, Columbus, Ohio, Project Number: 043–EE056/OH16–S971–002.
Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: William C. Apgar, Assistant Secretary-Housing Federal Housing Commissioner.
Date Granted: January 19, 2000.
Reason Waived: The Sponsor/Owner made every attempt to secure additional funding from outside sources, the project is modest in design and is comparable to similar projects in the area.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Nutley Senior Housing, Inc., Nutley, New Jersey, Project Number: 031–EE025/NJ39–S941–003.
Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: January 19, 2000.
Reason Waived: The project is economically designed, comparable to other similar projects developed in the area, and the Owner has exhausted all efforts to provide additional funds from other sources.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Melrose Villa Hermosa, Bronx, New York, Project Number: 012–EE124/NY36–S041–017.
Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: February 8, 2000.
Reason Waived: The project had to comply with local design modifications which increased costs. The Sponsor does not have the financial capacity to fund the increase.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Coosa Valley Apartments, Sylacauga, Alabama, Project Number: 062–EE043/AL09–S981–005.
Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: March 2, 2000.
Reason Waived: Although the Owner has tried to reduce the construction costs, and the project is comparable to similar projects, amendment funds are needed to develop this project. The Owner has contributed substantially to the project development cost.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Royale Gardens, Chicago, Illinois, Project Number: 071–EE125/IL06–S961–016.
Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: March 2, 2000.
Reason Waived: The project is modest in design comparable in costs to other similar projects and Sponsor has exhausted all means of obtaining the funds through other resources.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Rochester VOA Elderly Housing, Rochester, Minnesota, Project Number: 092–EE056/MN45–S981–007.
Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: March 2, 2000.
Reason Waived: The project is modest in design, comparable in costs to other similar projects and the Sponsor has exhausted all means of obtaining the funds through other resources.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: HIS/Elois McCoy Village Apartments, Chicago, Illinois, Project Number: 071–EE115/IL06–S961–006.
Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: March 2, 2000.
Reason Waived: The project is modestly designed, and the Owner has exhausted all efforts to find additional funds from other sources.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: St. Mary's Apartments for the Elderly, Waltham, Massachusetts, Project Number: 023–EE077/MA06–S961–013.
Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: March 6, 2000.
Reason Waived: Local opposition delayed the project which resulted in the loss of funding from other sources.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Coyne Road, Newton, Massachusetts, Project Number: 023–HD098.
Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: March 6, 2000.
Reason Waived: The Sponsor has exhausted all available resources and due to the escalating costs to acquire property in the Boston area.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Landmark House, Nantucket, Massachusetts, Project Number: 023–EE095.
Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: March 8, 2000.
Reason Waived: The Sponsor has exhausted all available resources, the project is modestly designed and comparable to similar projects.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: AHEPA Daughters of Penelope Elderly Housing. Peabody, Mass., Project Number: 023–EE084;

Family Quarters Housing, Peabody, Mass., Project Number: 023–HDO103;

13th Association, Springfield, Mass., Project Number: 023–HD112,

Florida Street, Springfield, Mass., Project Number: 023–HD125;

Natick Village, Natick, Mass., Project Number: 023–HD133

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 8, 2000.

Reason Waived: AHEPA Daughters of Penelope, 023–EE085—The presence of significant historical artifacts caused delays in the development of the project which resulted in increased development costs.

Family Quarters, 023–HD103—A change in contractors due to delays in securing secondary financing resulted in increased costs.

13th Association, 023–HD112—The project is modest in design and the Sponsor is contributing significantly to the project.

Florida Street, 023–HD125—The Sponsor has exhausted all means to find the funds from other sources.

Natick Village (Advocates Incorporated) 023–HD133—The project requires additional funds for project feasibility and the Sponsor has been unable to secure funds from other sources.

• *Regulotion:* 24 CFR 891.100(d).

Project/Activity: Eagle Point, Brewster, Mass., Project Number: 023–DH124.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Dote Granted: March 8, 2000.

Reoson Woived: The Sponsor has exhausted all available resources and additional costs are attributable to the removal of prohibited amenities from the existing structure.

• *Regulotion:* 24 CFR 891.100(d).

Project/Activity: Woodside Village II, Martha's Vineyard, Mass., Project Number: 023—EE087.

Noture of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Gronted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Dote Gronted: March 8, 2000.

Reoson Woived: The Sponsor has exhausted all available resources and the project is comparable in costs to similar projects and is efficiently designed.

• *Regulotion:* 24 CFR 891.100(d).

Project/Activity: Hillside Village II, Martha's Vineyard, Massachusetts, Project Number: 023–EE086.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 8, 2000.

Reason Waived: The Sponsor has exhausted all available resources and the development costs are comparable to similar projects developed in the area.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: California Street, Newton, Massachusetts, Project Number: 023–HD100.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Dote Granted: March 8, 2000.

Reason Woived: The Sponsor has exhausted all available resources and the cost to development this project is comparable to similar developments in this area.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Eaton Knolls, Central Islip, Suffolk County, New York, Project Number: 012–HD076/NY36–Q971–005.

Noture of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Dated Granted: March 17, 2000.

Reoson Woived: The project is economically designed, comparable to other HUD projects developed in the area and all efforts to lower the cost of the project have been exhausted.

• *Regulotion:* 24 CFR 891.100(d) and 891.165.

Project/Activity: Our Lady of Senior Manor, Bronx, New York, Project Number: 012–EE219/NY36–S971–006. Request to use amendment funds prior to initial closing. Request for fund reservation extension.

Noture of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 19, 2000.

Reason Woived: The project was delayed due to the Sponsor encountering difficulties in soliciting a general contractor who could complete the project within the cost limits. The project is modest in design, comparable to similar project and the Sponsor has been unable to secure the funds from other resources.

• *Regulotion:* 24 CFR 891.100(d) and 891.165.

Project/Activity: Castleton Manor, New York, NY, Project Number: 012–EE221/NY36–S971–008. Request to use amendment funds prior to initial closing. Request for fund reservation extension.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Dote Gronted: January 24, 2000.

Reason Waived: The project was delayed because the Sponsor had to seek an alternative site when it was discovered that the original site had outstanding tax liens against it. The project is modest in design, comparable to similar projects and the Sponsor has exhausted all means to secure the funds through other resources.

• *Regulotion:* 24 CFR 891.100(d) and 891.165.

Project/Activity: Crockett Senior Housing, Crockett, California, Project Number: 121–EE104/CA39–S971–003. Request to use amendment funds prior to initial closing. Request for fund reservation extension.

Noture of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Gronted By: William C. Apgar, Assistant Secretary Housing-Federal Housing Commissioner.

Date Waived: March 2, 2000.

Reoson Woived: Additional time is needed due to HUD caused delays. Because of these delays the contractor could not honor the originally proposed costs based HUD's Commitment processing.

• *Regulotion:* 24 CFR 891.100(d) and 891.165.

Project/Activity: HIS/Elois McCoy Village Apartments, Chicago, Illinois, Project Number: 071–EE115/IL06–S961–006. Request to use amendment funds prior to initial closing. Request for fund reservation extension.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Dote Granted: March 2, 2000.

Reoson Woived: The project is modestly designed and the owner has exhausted all efforts to find additional funds from other sources. The project experienced delays as it sought secondary financing from the City of Chicago.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Wynn House, Pasadena, California, Project Number: 122–HDI–1–WDD–NP/CA16–Q971–007. Request for fund reservation extension.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 22, 1999.

Reason Waived: Delays that this project experienced in achieving a construction start have been because the Owner needed additional time to secure funds to meet their cash requirement.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Request for fund reservation extension by: Zeigler Homes II, Toledo, Ohio, Project Number: 042–HD058/OH12–961–005; Canaan Manor, Dayton, Ohio, Project Number: 046–HD018–Q961–001, Centerburg Place, Centerburg, Ohio, Project Number: 043–EE056/OH16–S971–001.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 3, 2000.

Reason Waiver: Ziegler Homes II experienced delays as Owner tried to resolve unforeseen zoning issues and unacceptable deed restrictions.

Canaan Manor and Centerburg experienced delays due to extensive local government reviews.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Barbara Chappelle Manor, Grenada, Mississippi, Project Number: 065–EE019/MS26–S961–002. Request for fund reservation extension.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 17, 2000.

Reason Waived: Additional time is needed for the Owner to secure funding for the projects.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Royale Gardens Residences, Chicago, Illinois, Project Number: 071–EE125/IL06–S961–016. Request for fund reservation extension.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 19, 2000.

Reason Waived: The Sponsor has exhausted all efforts to get funds from other sources. Application for additional funds from the City of Chicago Department of Housing and the State of Illinois Department of Energy are pending.

• *Regulation:* 24 CFR 891.165.

Project/Activity: The Diocese of Buffalo, Buffalo, New York, Project Number: 014–HD066/NY06–Q971–013. Request for fund reservation extension.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Date Granted: January 24, 2000.

Reason Waived: The project experienced delays because the Sponsor was forced to seek a replacement site.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Request for fund reservation extension by: St. Mary's, Waltham, Mass., Project Number: 023–EE077/MA06–S971–005; Hillside Village II, Martha's Vineyard, Mass. Project Number: 023–EE086/MA06–S971–006;

Woodside Village II, Martha's Vineyard, Mass., Project Number: 023–EE087/MA06–S971–007;

Landmark House, Nantucket, Mass., Project Number: 023–EE095/MA06–S971–015;

Coyne Road, Newton, Mass., Project Number: 023–HD098/MA06–Q961–001;

California Street, Newton, Mass., Project Number: 023–HD100/MA06–Q961–006;

Family Quarters, Peabody, Mass., Project Number: 023–HD103/MA06–Q961–006;

13th Association Properties, West Springfield, Mass., Project Number: 023–HD112/MA06–Q961–015;

Lexington Avenue, Somerville, Mass., Project Number: 023–H118/MA06–Q961–021;

Eagle Point, Brewster, Mass., Project Number: 023–HD124/MA06–Q971–005;

Florida Street, Springfield, Mass., Project Number: 023–HD125/MA06–Q971–006;

Advocates, Natick, Mass., Project Number: 023–HD133/MA06–Q971–014.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 28, 2000.

Reason Waived: St. Mary's delays were attributed to changes to the Massachusetts Building Code requiring the redrawing of plans and specifications, for zoning variances, and for securing a comprehensive permit.

AHEPA project's site was found to be of archaeological and historical significance and the process of securing approval for development as well as preservation and removal of antiquities caused delays.

Hillside Village II, Woodside Village II, Landmark House—The Sponsors of these projects had a very difficult time finding and keeping general contractors. The Nantucket project also experienced local opposition to federal requirements.

Coyne Road delays occurred because the sponsor needed additional time to acquire other half of the building which is being developed with its own resources to serve a larger number of individuals.

California Street was forced to change contractors and to perform value engineering due to the high development cost in the current real estate market.

Family Quarters needed additional time to secure secondary financing.

13th Association Properties has been delayed due to the Sponsor/Owner having to secure additional funds for project feasibility.

Lexington Avenue—Site control issues and local opposition have delayed this project and the Sponsor had to seek secondary financing.

Eagle Point—This project experienced delays pertaining to high development costs and secondary financing to perform value engineering.

Florida Street—Delays have been caused by the need to secure secondary financing and to perform value engineering.

Advocates—the project experienced delays as the Sponsor sought additional funds for the project as well as a new contractor.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Ralston Mercy-Douglass House, Philadelphia, Pa., Project Number 034–EE061/PA26–S961–005. Request for fund reservation extension.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 31, 2000.

Reason Waived: The Initial Closing was delayed in order to allow for the re-negotiation of lease revisions affecting the project.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Maison de Rayne, Rayne, Louisiana, Project Number: 064–HD040–WPD–NP–L8. Request for fund reservation extension.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: February 8, 2000.

Reason Waived: Additional time was needed by HUD to complete its processing.

• *Regulatian:* 24 CFR 891.165.
Project/Activity: Greater St. Stephen Manor, New Orleans, Louisiana, Project Number: 064–EE083–WAH–NP–L8. Request for fund reservation extension.
Nature of Requirement: HUD's regulation at 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner
Date Granted: February 8, 2000.
Reason Waived: Delays were due to third party opposition to the project.

• *Regulatian:* 24 CFR 891.165.
Project/Activity: Sumac Trail Apartments, Inc., Rhinelander, Wisconsin, Project Number: 075–HD050/WI39–Q971–001. Request for fund reservation extension.
Nature af Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: March 2, 2000.
Reason Waived: The project has experienced delays due to difficulties obtaining State approval of the building plans and working with both the architect and the general contractor to develop the project within the Capital Advance budget.

• *Regulatian:* 24 CFR 891.165.
Project/Activity: East 21st Midwood Residence, New York, NY, Project Number: 012–HD052/NY36–Q961–005. Request for fund reservation extension.
Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: March 2, 2000.
Reasan Waived: The project's secondary financing source, the New York State Office of Mental Retardation and Developmental Disabilities has encountered delays in obtaining necessary sign-offs.

• *Regulation:* 24 CFR 891.165.
Project/Activity: QLS Meadows, Atlanta, Georgia, Project Number: 061–EE053/GA06–S961–007. Request for fund reservation extension.
Nature af Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: March 2, 2000.
Reason Waived: Because the seller of the original site increased the price of the site above the appraised value, the Sponsor needed time to find a new site and to prepare new plans and specifications.

• *Regulatian:* 24 CFR 891.165.
Project/Activity: Transitional Learning Community Supportive Housing, Galveston, Texas, Project Number: 114–HDD013/TX24–Q971–001. Request for fund reservation extension.
Nature af Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: March 2, 2000.
Reason Waived: This project had to change from the original site. Additional time was needed from the environment's assessment to be completed since the site is in a floodplain.

• *Regulation:* 24 CFR 891.165.
Praject/Activity: Request for fund reservation extension by:
Ailbe III, Chicago, Illinois, Project Number: 071–HD108/IL06–Q971–008; Ozanam Village, Chicago, Illinois, Project Number: 071–EE112/IL06–S961–003;
Ailbe II, Chicago, Illinois, Project Number: 071–EE139/IL06–S971–013;
Victoria Jennings Residences, Chicago, Illinois, Project Number: 071–HD088/IL06–Q961–003.
Nature af Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: March 2, 2000.
Reason Waived: Ailbe III, Project Number: 071–HD108/IL06–Q971–008—The project experienced delays while the Owner tried to find additional funds for the project.
Ozanam Village, Project Number: 071–EE112/IL06–S961–003—Additional time was needed for HUD to complete firm commitment processing and for the initial closing to be submitted.
Ailbe II, Project Number: 071–EE139/IL06–S971–013—Additional time is needed for HUD to complete firm commitment processing.
Victoria Jennings Residences, Project Number: 071–HD088/IL06–Q961–003—Because all the construction companies bids were significantly higher than the capital advance amount, additional time was needed for the Owner to redesign the project.

• *Regulation:* 24 CFR 891.165.
Praject/Activity: Casa D'Oro II, Pasadena, California, Project Number: 122–HD098. Request for fund reservation extension.
Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: March 2, 2000.
Reason Waived: The delays that this project has experienced in achieving construction startup have been caused by circumstances beyond the Sponsor's control and involved delays in the local government's approval of secondary financing.

• *Regulatian:* 24 CFR 891.165.
Praject/Activity: Kaneohe, Oahu, Hawaii, Project Number: 140–EH015–WAH/H110–Q961–003 and HI10–Q971–002. Request for fund reservation extension.
Nature af Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: March 8, 2000.
Reasan Waived: The project experienced delays due to difficulties in coordinating numerous sources of funding and reviewing legal documents.

• *Regulatian:* 24 CFR 891.165.
Praject/Activity: Presbyterian Home at Franklin Township, Franklin Township, NJ, Project Number: 031/EE045/NJ39-S971–002. Request for fund reservation extension.
Nature af Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: March 8, 2000.
Reason Waived: The project experienced delays due to obtaining Planning Board approval, getting the utilities extended to the site and overcoming local opposition to this development.

• *Regulatian:* 24 CFR 891.165
Praject/Activity: Pathways, Greenwich, Connecticut, Project Number: 017–HD022/CT26–Q981–001. Request for fund reservation extension.
Nature af Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: March 8, 2000.
Reasan Waived: The projects experienced delays due to neighborhood opposition and in the appeal of an adverse decision by Planning and Zoning.

• *Regulatian:* 24 CFR 891.165.

Project/Activity: Edison Consumer Home, Edison, New Jersey, Project Number: 031–HD081. Request for fund reservation extension.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 8, 2000.

Reason Waived: The Sponsor/Owner had difficulty securing a site and HUD needs additional time for technical processing.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Reese Village, San Diego, California, Project Number: 129–HD005/CA33–Q941–003. Request for fund reservation extension.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 17, 2000.

Reason Waived: HUD needs time to issue the firm commitment and review the initial closing documents for this project.

• *Regulation:* 24 CFR 891.310(b)(1).

Project/Activity: Arc HUD IV, Inc., Philadelphia, Pennsylvania, Project Number: 032–D020–WDD/DE26–Q981–002.

Nature of Requirement: HUD's regulation at 24 CFR 891.310(b)(1) provides that all entrances, common areas, units to be occupied by resident staff, and amenities must be readily accessible to and usable by persons with disabilities.

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 3, 2000.

Reason Waived: The Sponsor proposes to make one of the three properties fully accessible to persons with physical disabilities. To make all these projects fully accessible would render the project financially infeasible.

E. *For further information about the following waiver actions, contact:* Jerold Nachison, Eastern and Atlantic Servicing Branch, Office of Portfolio Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–3730 (this is not a toll free number). Hearing or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8391.

• *Regulation:* 24 CFR 891.205 and 891.410(c).

Project/Activity: West Union, Ohio (Mariaview Apartments—Project Number 046–EE037). The Columbus Multifamily Hub requested a waiver for a tenant erroneously admitted to the Section 202/PRAC project. ("PRAC" refers to project rental assistance contract.) The tenant is non-elderly with no disabilities.

Nature of Requirement: HUD regulations in 24 CFR 891.205 and 891.410(c) limit occupancy to very low-income (VLI) elderly persons (*i.e.*, households composed of one or more persons at least one of whom is 62 years of age at time of initial occupancy).

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 3, 2000.

Reason Waived: This waiver of the regulation was granted to be fair with the current ineligible VLI resident and still recognize the purpose and intent of the Supportive Housing for the Elderly Program. Management did not use the 202/PRAC rules and regulations but used the occupancy requirements of the Section 202/8 program for this tenant. These requirements allow a non-elderly disabled person with mobility impairments to live in one of a Section 202/8 project's accessible units. The tenant meets the VLI criterion with an income of $500 per month. The project must remain a 202/PRAC for the elderly and Hub staff must review the project's occupancy plan, tenant selection criteria and management plan and request revision as appropriate for Hub approval. This waiver is restricted to this ineligible tenant and should not be offered to any additional non-elderly or disabled families or elderly families who are not VLI.

• *Regulation:* 24 CFR 891.575 and 891.610(c).

Project/Activity: Columbia, Mississippi (East Columbia Apartments—Project No. 065–EH024). The Jacksonville Multifamily Hub requested an age waiver for the subject project due to continual vacancy problems.

Nature of Requirement: HUD regulations in 24 CFR 891.575 and 610(c) limit occupancy to very low-income (VLI) elderly persons (*i.e.*, households composed of one or more persons at least one of whom is 62 years of age at time of initial occupancy).

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 8, 2000.

Reason Waived: This waiver was granted based on the area's soft market due to the Department of Agriculture's Rural Housing Services' development of other senior projects in the area. Vacancies persist even though measures such as raising the income ceiling to lower income were instituted. This waiver would allow management additional flexibility in renting up these units through marketing 90% of units that are for elderly persons to persons with or without disabilities between the ages of 52 and 62 for a period of one (1) year.

F. *For further information about the following waiver action, contact:* Margaret Keels, Eastern and Atlantic Service Branch, Office of Portfolio Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–2654. Hearing and speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8391.

• *Regulation:* 24 CFR 891.575.

Project/Activity: Lumberton, North Carolina (First Baptist Homes I—Project Number 053–EH471/NC19–T861–087). The Greensboro Multifamily Hub requested an age waiver for the subject project due to high vacancy problems. Management has aggressively marketed its units but are unable to rent up these units.

Nature of Requirement: HUD regulations at 24 CFR 891.575 limit occupancy to very low-income (VLI) elderly persons (*i.e.*, households composed of one or more persons at least one of whom is 62 years of age at time of initial occupancy).

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: February 17, 2000.

Reason Waived: This waiver was granted based on difficulty in renting up vacant units due to the soft housing market there for persons 62 years of age and older. This waiver would allow project management additional flexibility in attempting to rent up the vacant units for a period of one (1) year.

G. *For further information about the following waiver actions, contact:* Ronald Wallace, Western and Pacific Servicing Branch, Office of Portfolio Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–2654 (this is not a toll free number). Hearing or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8391.

• *Regulation:* 24 CFR 891.575 and 891.610(c).

Project/Activity: Trenton, New Jersey (Cathedral Square—Project Number 035–EH082). The Newark Multifamily Program Center requested an age waiver for the subject project because of vacancy problems due to a soft housing market.

Nature of Requirement: HUD regulations in 24 CFR 891.575 and 891.610(c) limit occupancy to very low-income (VLI) elderly persons (*i.e.*, households composed of one or more persons at least one of whom is 62 years of age at time of initial occupancy).

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 11, 2000.

Reason Waived: This waiver was granted based on the soft housing market and the potential market for persons between the ages 55 and 61 in the City of Trenton. This would allow additional flexibility in attempting to rent up the vacant units. The waiver is granted for a period of one (1) year.

• *Regulation:* 24 CFR 891.575.

Project/Activity: Pynette, Wisconsin (Pioneer Place I—Project No. 075–EH090). The Milwaukee Multifamily Program Center requested an age waiver for the subject project due to a soft housing market.

Nature of Requirement: HUD regulations at 24 CFR 891.575 limit occupancy to very low-income (VLI) elderly persons (*i.e.*, households composed of one or more persons at least one of whom is 62 years of age at a time of initial occupancy).

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 19, 2000.

Reason Waived: This waiver was granted based on the area's soft housing market resulting in difficulty in renting up vacant units. This waiver would allow project rent up by allowing management additional flexibility by marketing 90% of the units that are set aside for elderly persons to people between the ages of 55 and 62 for a period of one (1) year.

H. *For further information about the following waiver action, contact:* Richard Harrington, Eastern and Atlantic Servicing Branch, Office of Portfolio Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–2654 (this is not a toll free number). Hearing and speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8391.

• *Regulation:* 24 CFR 891.575 and 891.610(c).

Project/Activity: Mt. Sterling, Ohio (Meadowview Village—Project Number 043–EH110). The Columbus Multifamily Hub requested an age waiver to allow management additional flexibility in attempting to rent up vacant units. Approval to market units that are for elderly persons to persons with or without disabilities between the ages of 55 and 62 for prescribed period of one (1) year.

Nature of Requirement: HUD regulations in 24 CFR 891.575 and 610(c) limit occupancy to very low-income (VLI) elderly persons (*i.e.*, households composed of one or more persons at least one of whom is 62 years of age at time of initial occupancy).

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 20, 2000.

Reason Waived: This waiver was granted based on constant vacancy problems and over-saturation of elderly housing projects in the area. This waiver would allow project management additional flexibility in attempting to rent up vacant units.

I. *For further information about the following waiver action, contact:* Jerold Nachison, Eastern and Atlantic Servicing Branch, Office of Portfolio Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–3730 (this is not a toll free number). Hearing or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8391.

• *Regulation:* 24 CFR 891.640 and 891.650.

Project/Activity: Kennet, Missouri (Cotton Roll Group Homes—Project Number 085–EH047). The Kansas City Multifamily Hub has requested waiver of the vacancy payments/rent increase process to offset income shortfalls due to changing State law.

Nature of Requirement: HUD regulations in 24 CFR 891.640 and 891.650 require for rent adjustments that the housing assistance payment (HAP) contract provide or has been amended to provide that contracts rents will be adjusted based upon a HUD-approved budget. Contract rent adjustments will be made based on the sum of the project's operating costs and debt service as calculated by HUD. Adjustments for vacancies longer than 60 days—the Borrower may apply to receive additional vacancy payments in an amount equal to the principal and interest payments required to amortize that portion of the debt service attributable to the vacant unit for up top 12 months.

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 3, 2000.

Reason Waived: This waiver was granted to allow vacancy payments above normal approved by the Field Office, retroactive to July 1997. The project was put on notice to reduce operating expenses consistent with the drop in tenants from nine to six, based on changing State law for group homes. The reduction needed to take place within 30 days of the waiver memorandum. The new budget levels were to be consistent with normally allowable costs consistent with a six-person group home, and adjusted as appropriate from July 1997.

III. Regulatory Waivers Granted by the Office of Multifamily Housing Assistance Restructuring (OMHAR)

For further information about the following waiver actions, contact: Dan Sullivan, Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development, Portals Building, Suite 400, 1280 Maryland Avenue, Washington, DC 20410; telephone (202) 708–0001 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

• *Regulation:* 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12 month limit at above-market rents (24 CFR 401.600):

FHA no.	Project name	State
14035071	Wilikina Apts.	HI
03355032	Westgate Village II	PA
10538006	Holly Haven I	UT
07535214	Euclid Arms	WI
10935025	Sheridan Square Apts	WY

Nature of Requirement: HUD's regulation at 24 CFR 401.600 requires that projects be marked down to market rents within 12 months of their first expiration date after 1/1/98. The intent of this provision is to ensure timely processing of requests for restructuring, and that the properties will not default on their FHA insured mortgages during the restructuring process.

Granted By: Ira Peppercorn, Director of OMHAR.

Date Granted: January 12, 2000.

Reasons Waived: The attached list of projects were not assigned to the participating administrative entities (PAEs) in a timely manner or for which the restructuring analysis was unavoidably delayed due to no fault of the owner.

• *Regulation:* 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12-month limit at above-market rents (24 CFR 401.600):

FHA no.	Project name	State
17635014	Executive Estates	AK
17635013	Parkwest Apartments	AK
08244073	Summerchase Apts	AR
12244452	Rodeo Drive Apartments	CA
06535245	Sunflower Lane Apartments	MS
03444171	Sherman Hills Apartments	PA
03335083	Station Square	PA
03344022	Third East Hills Park	PA
03344087	Towne Towers	PA
03344059	Valley Terrace Apts	PA
11494012	Missionary Village	TX
05135239	Shawnee II	VA

FHA no.	Project name	State
12738049	Village Green Apartments	WA
07544106	Meadow Village Apartments	WI
07535218	Westport Meadows	WI
04538001	Riverview Manor	WV

Nature of Requirement: HUD's regulation at 24 CFR 401.600 requires that projects be marked down to market rents within 12 months of their first expiration date after 1/1/98. The intent of this provision is to ensure timely processing of requests for restructuring, and that the properties will not default on their FHA insured mortgages during the restructuring process.

Granted By: Ira Peppercorn, Director of OMHAR.

Date Granted: February 8, 2000.

Reasons Waived: The attached list of projects were not assigned to the PAEs in a timely manner or for which the restructuring analysis was unavoidably delayed due to no fault of the owner.

FHA No.	Project name	State
13644125	Florin Gardens Coop East	CA
12235609	Kilgore Manor	CA
12144337	Kings Canyon	CA
12258508	New Venice Partners 1D	CA
12258507	New Venice Partners 2D	CA
06155056	Martin Luther King Jr	GA
14044027	Hale Hoaloha	HI
07435110	Floyd Valley Apartments	IA
07435106	Valley View of Cherokee	IA
02344134	Cathedral Hill Apartments	MA
06592502	Brookville Gardens	MS
06535246	Moore Manor	MS
03555003	All American Gardens	NJ
03135124	Center City 9C	NJ
03135119	Park Terrace	NJ
01257026	1018 Development	NY
01235242	President Street	NY
01257004	Riverstone Houses	NY
04335166	Bellfontaine Manor	OH
04335196	Lansing Gardens	OH
11744096	Buena Vista	OK
03444106	Hillrise Mutual Housing	PA
03435104	Kephart Plaza	PA
03438009	Lutheran Manor	PA
05438003	Hampton House	SC
11444026	Cedarwood Apartments	TX
11535187	Woodland Creek	TX
07535138	Juneau Gardens	WI
07535080	Sunny Hill Apartments	WI

Nature of Requirement: HUD's regulation at 24 CFR 401.600 requires that projects be marked down to market rents within 12 months of their first expiration date after 1/1/98. The intent of this provision is to ensure timely processing of requests for restructuring, and that the properties will not default on their FHA insured mortgages during the restructuring process.

Granted By: Ira Peppercorn, Director of OMHAR.

Date Granted: March 10, 2000.

Reasons Waived: The attached list of projects were not assigned to the PAEs in a timely manner or for which the restructuring analysis was unavoidably delayed due to no fault of the owner.

- *Regulation:* 24 CFR 401.600

Project/Activity: The following projects requested waivers to the 12-month limit at above-market rents (24 CFR 401.600):

FHA No.	Project name	State
17635012	Bayview Terrace	AK
17635015	KBL Apartments	AK
1755119	Antillean Manor	CT
09435029	Prairie View I	ND
04235273	Ashland Village	OH
04644100	Miami Manor	OH
03344007	East Mall	PA
03344142	Leechburg	PA
03344002	Penn Circle	PA
17135177	Hawaiian Village II	WA
17138007	Kenwood Square	WA

Nature of Requirement: HUD's regulation at 24 CFR 401.600 requires that projects be marked down to market rents within 12 months of their first expiration date after 1/1/98. The intent of this provision is to ensure timely processing of requests for

restructuring, and that the properties will not default on their FHA insured mortgages during the restructuring process.

Granted By: Ira Peppercorn, Director of OMHAR.

Date Granted: March 30, 2000.

Reasons Waived: The attached list of projects were not assigned to the PAEs in a timely manner or for which the restructuring analysis was unavoidably delayed due to no fault of the owner.

IV. Regulatory Waivers Granted by the Office of Public and Indian Housing

A. *For further information about the following waiver actions, contact:* Tracy C. Outlaw, National Office of Native American Programs (ONAP), Office of Public and Indian Housing, Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO 80202, telephone (303) 675–1600 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

• *Regulation:* 24 CFR 761.30(1)(b),(2) and (4)

Project/Activity: A request was made by the Gila River Housing Authority to waive the terms of the grant agreement beyond 24-months for the Public and Indian Housing Drug Elimination Program (PIHDEP). The tribe requested an extension because they did not anticipate extended delays in organizing elders, teachers and traditionalists for certain activities that they wanted to implement.

Nature of Requirement: The regulations state that any funds not expended at the end of the grant term shall be remitted to HUD. The regulations also state that the maximum extension allowable for any program period is six months.

Granted By: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: February 4, 2000.

Reason Waived: Based on the narrative justification that was submitted to the Department on behalf of the Gila River Housing Authority and their submission of required documents, good cause was found to waive the extension/grant term requirements of 24 CFR 761.30(1)(b),(2) and (4).

• *Regulation:* 24 CFR 761.30(1)(b),(2) and (4)

Project/Activity: A request was made by the Reno Sparks Indian Housing Authority (RSIHA) to waive the terms of the grant agreement beyond 24-months for the Public and Indian Housing Drug Elimination Program (PIHDEP). The tribe requested an extension so that they would have additional time to complete an environmental design project to eliminate crime in the RSIHA developments which involved installing wire fencing around three playground areas in the community.

Nature of Requirement: The regulations state that any funds not expended at the end of the grant term shall be remitted to HUD. The regulations also state that the maximum extension allowable for any program period is six months.

Granted By: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: February 9, 2000.

Reason Waived: Based on the narrative justification that was submitted to the Deportment on behalf of the Gila River Housing Authority and submission of required documents, good cause was found to waive the extension/grant term requirements of 24 CFR 761.30(1)(b),(2) and (4).

• *Regulation:* FY 1996 Notice of Funding Availability (NOFA), Economic Development and Supportive Services (EDSS) section (3)(f).

Project/Activity: A request as made by the Cherokee Nation to waive the grant term requirement for the Economic Development and Supportive Services (EDSS) program that all funds must be expended within three years of the effective date of the grant agreement. The Cherokee Nation experienced significant, unexpected delays caused by their proposed partner who needed additional time in obtaining the required community charter approvals for the expansion of the credit union in Tahlequah, Oklahoma. The Cherokee Nation had also proposed in their Indian Housing Plan to use their proceed of sales funds to purchase and renovate the proposed credit union facility, but were informed by the SPONAP that this was an ineligible affordable housing activity.

Nature of Requirement: The grant term requirement for the Economic Development and Supportive Services (EDSS) program, as provided in the Fiscal Year 1996 NOFA, states that all funds must be expended within three years of the effective date of the grant agreement. The language in the NOFA also states that grant terms may not be extended without substantial good cause (circumstances reasonably unforeseen and reasonably beyond the grantee's control) and subject to HUD approval.

Granted By: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: March 21, 2000.

Reason Waived: Based on the narrative justification submitted to the Department on behalf of the Cherokee Nation and submission of required documents, good cause was found to waive the grant term requirements stated in the EDSS NOFA.

B. For further information about the following waiver actions, contact Sonia L. Burgos, Director, Community Safety and Conservation Division Department of Housing and Urban Development, Room 4206, 451 Seventh Street, S.W., Washington, DC 20410–5000 (202) 708–1197 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

• *Regulation:* 24 CFR 761.30(b).

Project/Activity: Waiver of 24 CFR 761.30(b) was requested to extend a 1997 PHDEP Grant for the Lancaster City Housing Authority (LCHA), Pennsylvania.

Nature of Requirement: HUD's regulation at 24 CFR 761.30(b) provides that terms of the grant agreement may not exceed 12 months for the Assisted Housing Program, and 24 months for the Public Housing Program, unless an extension is approved by the local HUD Office or local HUD Office of Native American Programs. This section also provides that the maximum extension that may be approved by the local offices is 6 months.

Granted By: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: January 20, 2000.

Reason Waived: LCHA's prevention program was delayed while they searched for and hired a new PHDEP contractor and staff for the program. The waiver is for 6 months from the date the grant agreement (HUD–1044) is modified and signed by both parties.

• *Regulations:* 24 CFR 761.30(b).

Project/Activity: Waiver of 24 CFR 761.30(b) was requested to extend the PHDEP 1997 grant for the Housing Authority of the City of Key West (KWHA), Florida.

Nature of Requirement: HUD's regulation at 24 CFR 761.30(b) provides that terms of the grant agreement may not exceed 12 months for the Assisted Housing Program, and 24 months for the Public Housing Program, unless an extension is approved by the local HUD Office or local HUD Office of Native American Programs. This section also provides that the maximum extension that may be approved by the local offices is 6 months.

Granted By: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: January 24, 2000.

Reason Waived: Implementation of the PHDEP grant was delayed as a result of litigation surrounding the Campus South educational project. Additionally, the Girls and Boys Club terminated its contract due to the lack of community support and additional operating funds. KWHA plans to utilize the remaining grant funds for the provision of drug prevention activities targeting the youth population.

• *Regulation:* 24 CFR 761.30(b).

Project/Activity: Waiver of 24 CFR 761.30(b) to extend the PHDEP 1996 grant for Bethlehem Housing Authority (BHA), Bethlehem, Pennsylvania.

Nature of Requirement: HUD's regulation at 24 761.30(b) provides that terms of the grant agreement may not exceed 12 months for the Assisted Housing Program, and 24 months for the Public Housing Program, unless an extension is approved by the local HUD Office or local HUD Office of Native American Programs. This section also provides that the maximum extension that may be approved by the local offices is 6 months.

Granted By: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: January 29, 2000.

Reason Waived: The BHA is requesting this waiver to expend the remaining PHDEP funds under budget line item 9110 (Reimbursement of Law Enforcement). Due to contractual problems and the loss of essential personnel the BHA encountered delays in the implementation of the PHDEP schedule.

• *Regulation:* 24 CFR 761.30(b).

Project/Activity: Public Housing Drug Elimination Program (PHDEP) Grant #M128DEP0090197. Waiver of 24 CFR 761.30(b) to extend a 1997 Set-Aside PHDEP grant for Flint Housing Commission (FHC), Flint, Michigan.

Nature of Requirement: HUD's regulation at 24 CFR 761.30(b) provides that terms of the grant agreement may not exceed 12 months for the Assisted Housing Program, and 24 months for the Public Housing Program, unless an extension is approved by the local HUD Office or local HUD Office of Native American Programs. This section also provides that the maximum extension that may be approved by the local offices is 6 months.

Granted By: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: February 3, 2000.

Reason Waived: FHC experienced problems in obtaining proposals for installation security cameras and security doors. It was necessary to tender a new RFP for additional proposals. FHC expended time to resolve issues before awarding a contract. By the time all this was completed the grant reached termination. FHC has advised that it can complete the activity in 6 months if granted a waiver.

- *Regulation:* 24 CFR 761.30(b).

Project/Activity: Public Housing Drug Elimination Program (PHDEP) Grant #MI28DEP0090198. Waiver of 24 CFR 761.30(b) was requested to extend a 1998 PHDEP grant for Flint Housing Commission (FHC), Flint, Michigan.

Nature of Requirement: HUD's regulation at 24 CFR 761.30(b) provides that terms of the grant agreement may not exceed 12 months for the Assisted Housing Program, and 24 months for the Public Housing Program, unless an extension is approved by the local HUD Office or local HUD Office of Native American Programs. This section also provides that the maximum extension that may be approved by the local offices is 6 months.

Granted By: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: February 3, 2000.

Reason Waived: FHC was not able to complete the computer learning center relocation, special programs, and fully fund the security guard services due to the grant funds not being available until January 1999.

- *Regulation:* 24 CFR 761.30(b).

Project/Activity: Waiver of 24 CFR 761.30(b) was requested to extend the PHDEP 1997 grant for Bethlehem Housing Authority (BHA), Bethlehem, Pennsylvania.

Nature of Requirement: HUD's regulation at 24 CFR 761.30(b) provides that terms of the grant agreement may not exceed 12 months for the Assisted Housing Program, and 24 months for the Public Housing Program, unless an extension is approved by the local HUD Office or local HUD Office of Native American Programs. This section also provides that the maximum extension that may be approved by the local offices is 6 months.

Granted By: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: February 25, 2000.

Reason Waived: The BHA is requesting this waiver to expend the remaining funds ($97,807) that they were unable to spend because of contractual problems encountered and the loss of essential personnel.

- *Regulation:* 24 CFR 761.30(b)

Project/Activity: Public Housing Drug Elimination Program (PHDEP) Grant #NM00DEP0090197. Waiver of 24 CFR 761.30(b) was requested to extend the PHDEP 1997 grant for Santa Fe Civic Housing Authority (SCHA), Santa Fe, New Mexico.

Nature of Requirement: Section 761.30(b) provides that terms of the grant agreement may not exceed 12 months for the Assisted Housing Program, and 24 months for the Public Housing Program, unless an extension is approved by the local HUD Office or local HUD Office of Native American Programs. This section also provides that the maximum extension that may be approved by the local offices is 6 months.

Granted By: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: February 25, 2000

Reason Waived: SCHA experienced numerous turnovers of personnel, which delayed the timely drawdown of PHDEP funds. SCHA also experienced jurisdictional issues between the district and the municipality causing additions delays.

- *Regulation:* 24 CFR 761.30(b)

Project/Activity: South Charleston Housing Authority, South Charleston, West Virginia. Waiver of 24 CFR 761.30(b) was requested to extend the PHDEP 1998 grant for South Charleston Housing Authority, South Charleston, West Virginia (SCHA).

Nature of Requirement: Section 761.30(b) provides that terms of the grant agreement may not exceed 12 months for the Assisted Housing Program, and 24 months for the Public Housing Program, unless an extension is approved by the local HUD Office or local HUD Office of Native American Programs. This section also provides that the maximum extension that may be approved by the local offices is 6 months.

Granted By: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: February 28, 2000

Reason Waived: The SCHA requested an extension to their 1998 grant to use PHDEP funds (approximately $7,163.00) to conduct classes at the agency's new on-site computer lab. These classes will enable the adults to enhance their computer skills. Also, school age children will be granted access to the lab for the purpose of preparing reports for class reports for class assignments.

- *Regulation:* 24 CFR 761.30(b).

Project/Activity: Waiver of 24 CFR 761.30(b) to extend the PHDEP 1997 grant for Delaware State Housing Authority, Delaware County, Pennsylvania.

Nature of Requirement:

Granted By: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: February 28, 2000.

Reason Waived: The Delaware State Housing Authority (DSHA) seeks this waiver so that contractors can expend all appropriated PHDEP funds. Since program costs were not as high as anticipated under Law Enforcement they have $6,225 remaining and under Drug Prevention $17,035.99 for an overall total of $23,260.99.

- *Regulation:* 24 CFR 761.30(b).

Project/Activity: Waiver of 24 CFR 761.30(b) was requested to extend the PHDEP 1997 grant for Providence Housing Authority (PHA), Providence, Rhode Island.

Nature of Requirement: HUD's regulation at 24 CFR 761.30(b) provides that terms of the grant agreement may not exceed 12 months for the Assisted Housing Program, and 24 months for the Public Housing Program, unless an extension is approved by the local HUD Office or local HUD Office of Native American Programs. This section also provides that the maximum extension that may be approved by the local offices is 6 months.

Granted By: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: March 30, 2000.

Reason Waived: The PHA has achieved substantial cost savings in its FY 1997 PHDEP Program. The unanticipated savings resulted in the PHA making adjustments to its grant activities and delivery of programs. Adding to this is the fact that the PHAs fiscal date is in conflict with the HUD's grant execution date. The grant execution date was in December and the PHA's fiscal date had already started six months prior. This extension will allow for closure of this grant and coincide with the PHA's fiscal year.

C. *For further information about the following waiver action, contact:* Gerald Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4210, 451 Seventh Street, SW., Washington, DC 20410, (202) 708–0477 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

- *Regulation:* 24 CFR 982.306(d).

Project/Activity: Warren Metropolitan Housing Authority, Ohio, Section 8 voucher program.

Nature of Requirement: The regulation limits the circumstances under which a landlord could lease a unit with tenant-based assistance to a relative of the landlord.

Granted By: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: January 27, 2000.

Reason Waived: Approval of the waiver prevented a hard-to-house family that had completed the transitional housing program from becoming homeless by allowing the family to lease a unit from a relative. There were no other units available in the public housing agency's jurisdiction large enough to accommodate the family.

D. *For further information about the following waiver actions, contact:* Regina McGill, Director, Funding and Financial Management Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4216, 451 Seventh Street, SW., Washington, DC 20410, (202) 708–1872 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

- *Regulation:* 24 CFR 990.107(f) and 990.109.

Project/Activity: Housing Authority of the County of Kern, CA. A request was made to permit the Authority to benefit from energy performance contracting for developments

which have tenant-paid utilities. The HA estimates that it could increase savings substantially if it were able to undertake energy performance contracting for *both* PHA-paid and tenant-paid utilities.

Nature of Requirement: Under 24 CFR part 990, Performance Funding System (PFS) energy conservation incentive that relates to energy performance contracting currently applies to only PHA-paid utilities. The Housing Authority of the County of Kern has both PHA-paid and tenant-paid utilities.

Granted By: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: February 2, 2000.

Reason Waived: In September 1996, the Oakland Housing Authority was granted a waiver to permit the Authority to benefit from energy performance contracting for developments with tenant-paid utilities. The waiver was granted on the basis that the Authority presented a sound and reasonable methodology for doing so. The Housing Authority of the County of Kern requested a waiver based on the same approved methodology. The waiver permits the HA to exclude from its PFS calculation of rental income, increased rental income due to the difference between updated baseline utility (before implementation of the energy conservation measures) and revised allowances (after implementation of the measures) for the project(s) involved for the duration of the contract period, which cannot exceed 12 years.

- *Regulation:* 24 CFR 990.107(f) and 990.109.

Project/Activity: Housing Authority of the County of Kern, CA. A request was made to permit the Authority to benefit from energy performance contracting for developments which have tenant-paid utilities. The HA estimates that it could increase savings substantially if it were able to undertake energy performance contracting for *both* PHA-paid and tenant-paid utilities.

Nature of Requirement: Under 24 CFR part 990, Performance Funding System (PFS) energy conservation incentive that relates to energy performance contracting currently applies to only PHA-paid utilities. The Housing Authority of the County of Kern has both PHA-paid and tenant-paid utilities.

Granted By: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: February 2, 2000.

Reason Waived: In September 1996, the Oakland Housing Authority was granted a waiver to permit the Authority to benefit from energy performance contracting for developments with tenant-paid utilities. The waiver was granted on the basis that the Authority presented a sound and reasonable methodology for doing so. The Housing Authority of the County of Kern requested a waiver based on the same approved methodology. The waiver permits the HA to exclude from its PFS calculation of rental income, increased rental income due to the difference between updated baseline utility (before implementation of the energy conservation measures) and revised allowances (after implementation of the measures) for the project(s) involved for the duration of the contract period, which cannot exceed 12 years.

- *Regulation:* 24 CFR 990.107(f) and 990.109.

Project/Activity: Housing Authority of Conway, South Carolina. A request was made to permit the Authority to benefit from energy performance contracting for developments which have tenant-paid utilities. The HA estimates that it could increase savings substantially if it were able to undertake energy performance contracting for *both* PHA-paid and tenant-paid utilities.

Nature of Requirement: Under 24 CFR 990, Performance Funding System (PFS) energy conservation incentive that relates to energy performance contracting currently applies to only PHA-paid utilities. The Housing Authority of Conway has both PHA-paid and tenant-paid utilities.

Granted By: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: March 8, 2000.

Reason Waived: In September 1996, the Oakland Housing Authority was granted a waiver to permit the Authority to benefit from energy performance contracting for developments with tenant-paid utilities. The waiver was granted on the basis that the Authority presented a sound and reasonable methodology for doing so. The Housing Authority of Conway requested a waiver based on the same approved methodology. The waiver permits the HA to exclude from its PFS calculation of rental income, increased rental income due to the difference between updated baseline utility (before implementation of the energy conservation measures) and revised allowances (after implementation of the measures) for the project(s) involved for the duration of the contract period, which cannot exceed 12 years.

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Federal Register

Wednesday,
July 19, 2000

Part V

Department of Transportation

Office of the Secretary
Federal Highway Administration
Federal Railroad Administration
Federal Transit Administration

49 CFR Part 80
Credit Assistance for Surface Transportation Projects; Final Rule
Applications for TIFIA Credit Assistance; Notice

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

49 CFR Part 80

[OST Docket No. OST–2000–7401]

RIN 2105–AC87

Credit Assistance for Surface Transportation Projects

AGENCY: Office of the Secretary, Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The Department of Transportation (DOT) continues to implement the Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA), under which the DOT may provide secured (direct) loans, lines of credit, and loan guarantees to public and private sponsors of eligible surface transportation projects. The DOT published original implementing regulations for the TIFIA on June 2, 1999. With this rule, the DOT revises certain of these prior regulations, as codified within 49 CFR Part 80, as follows: clarifies that funds will be disbursed based on the project's anticipated financing needs; clarifies that the borrower must obtain ongoing credit surveillance for the life of the TIFIA credit instrument; assigns specific weights to each of the eight statutory selection criteria; specifies that loan servicing fees are to be paid by the borrower; modifies the time period for audited financial statements from 120 days to within no more than 180 days; and provides that administrative offsets will be employed only in cases of fraud, misrepresentation, or criminal acts, and will not be employed as a result of revenue shortfalls.

EFFECTIVE DATE: This final rule is effective August 18, 2000.

FOR FURTHER INFORMATION CONTACT: *FHWA:* Mr. Max Inman, Office of Budget and Finance, Federal-Aid Financial Management Division, (202) 366–0673; or Mr. Steven M. Rochlis, Office of the Chief Counsel, (202) 366–1395. *FRA:* Ms. JoAnne McGowan, Office of Passenger and Freight Services, Freight Program Division, (202) 493–6390; or Mr. Joseph Pomponio, Office of the Chief Counsel, (202) 493–6051. *FTA:* Mr. Paul Marx, Office of Policy Development, (202) 366–1675; or Ms. Paula Schwach, Office of the Chief Counsel, (816) 523–0204. *OST:* Ms. Stephanie Kaufman, Office of Budget and Program Performance, (202) 366–9649; or Mr. Terence W. Carlson, Office of the General Counsel, (202) 366–9161. Department of Transportation, 400 Seventh Street, SW, Washington, DC, 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays. Hearing-and speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets 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 Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the **Federal Register**'s home page at http://www.nara.gov/fedreg and the Government Printing Office's web page at http://www.access.gpo.gov/nara.

Additional general information on the TIFIA program and credit assistance for surface transportation projects is available on the TIFIA web site at http://tifia.fhwa.dot.gov.

Background

The Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. 107, created the TIFIA. The TIFIA, as amended by section 9007, Public Law 105–206, 112 Stat. 685, 849 and codified at 23 U.S.C. 181–189, authorizes the DOT to provide credit assistance in the form of secured (direct) loans, lines of credit, and loan guarantees to public and private sponsors of eligible surface transportation projects. Regulations governing the TIFIA program appear at 49 CFR Part 80 and provide specific guidance on the program requirements. For additional information, the TIFIA Program Guide is available from the TIFIA website (http://tifia.fhwa.dot.gov).

The TIFIA authorizes annual levels for both credit assistance (as measured by the principal amounts of the secured loans, guaranteed loans, or lines of credit) and subsidy amounts (i.e., the amounts of budget authority available to cover the estimated present value of the Government's expected losses associated with the provision of credit instruments, net of any fee income). Funding for the subsidy amounts is provided in the form of budget authority appropriated from the Highway Trust Fund, other than the Mass Transit Account. Both funding (budget authority) and credit assistance authority for this program are limited, so projects seeking assistance are evaluated and selected by the DOT on a competitive basis. Following selections, term sheets are issued and credit agreements are developed through negotiations between the project sponsors and the DOT.

Total Federal credit assistance amounts authorized for the TIFIA program are $1.8 billion in FY 2000; $2.2 billion in FY 2001; $2.4 billion in FY 2002; and $2.6 billion in FY 2003. These amounts lapse if they are not awarded by the end of the fiscal year for which they are provided. To support these credit assistance amounts, the TIFIA provides budget authority to fund the required subsidy amounts of $90 million in FY 2000; $110 million in FY 2001; $120 million in FY 2002; and $130 million in FY 2003. Of these amounts, the Secretary may use up to $2 million for each of the fiscal years for administrative expenses. Any budget authority that is not obligated in the fiscal year for which it is authorized remains available for obligation in subsequent years.

The TIFIA budget authority is subject to an annual obligation limitation that may be established in appropriations law. Like the funding for certain other administrative or allocated programs (not apportioned to the States) that are subject to the annual Federal-aid highway obligation limitation, the amount of TIFIA budget authority that is available to fund credit instruments in a given year may be less than the amount originally authorized for that year. The extent of any budget authority reduction will depend on the ratio of the obligation limitation, which is determined annually in the appropriations process, to the contract authority for the Federal-aid highway program, which was established in TEA–21. For FY 2000, this reduction is 12.9 percent, or $11.6 million. The credit assistance amounts authorized in the TIFIA are not subject to this annual reduction.

The DOT expects that approximately $81 million in net budget authority will be available in FY 2000 to fund the TIFIA credit assistance program. This approximation takes into account unused FY 1999 budget authority, the reduction in FY 2000 budget authority due to the annual obligation limitation, and administrative expenses authorized by the TIFIA statute. The amount of net budget authority available for new TIFIA commitments in FY 2000 may also be affected by credit subsidy

adjustments to obligations for prior TIFIA commitments.

The total amount of Federal credit assistance available for new TIFIA commitments in FY 2000 is approximately $1.673 billion, which is less than the $1.8 billion authorization level as a result of TIFIA contingent commitments made in FY 1999. The size of the annual TIFIA program may be limited by either budget authority or credit assistance authorization, depending on the risk assessments made for individual projects selected for that fiscal year's program.

Credit Instruments

Three types of credit instruments are permitted under the TIFIA: secured (direct) loans, loan guarantees, and lines of credit, as provided for generally at 23 U.S.C. 183 and 184. More specific terms for individual projects will be determined during negotiations between the DOT and successful applicants.

Eligible Projects

Highway, rail, transit, and intermodal projects may receive credit assistance under the TIFIA. See the definition of "project" in 23 U.S.C. 181(9) and 49 CFR 80.3 for a description of eligible projects.

Threshold Criteria

Certain threshold criteria must be met by projects seeking TIFIA assistance. These eligibility criteria are detailed in 23 U.S.C. 182(a) and 49 CFR 80.13.

Limitations on Assistance

The amount of credit assistance that the DOT may provide to a project under the TIFIA is limited to not more than 33 percent of eligible project costs.

Rating Opinions

A project sponsor must submit a preliminary rating opinion letter from one or more of the nationally recognized credit rating agencies with its application, as detailed in 23 U.S.C. 182(b)(2)(B) and 49 CFR 80.11. The preliminary rating opinion letter will confirm the potential for the project's senior debt obligations to achieve an investment grade rating and provide an assessment of the default risk on the requested TIFIA credit instrument. Projects selected for TIFIA credit assistance must obtain an investment grade rating on the senior debt obligations and a revised opinion of the default risk on the TIFIA credit instrument before the DOT will execute a credit agreement and disburse funds.

Application Process

Detailed application information is contained in the TIFIA Program Guide and the TIFIA Application for Federal Credit Assistance, which are posted on the TIFIA web site at http://tifia.fhwa.dot.gov or which may be obtained through one of the DOT program contacts listed in this notice. From time to time, the TIFIA Program Guide and Application may be revised. Applicants are encouraged to refer to the TIFIA web site or to TIFIA program contacts for information regarding recent program clarifications.

Fees

The DOT requires payment of a non-refundable fee with each credit assistance application under the TIFIA. For FY 2000, the DOT will assess an application fee of $5,000 for each project applying for credit assistance; however, there will be no additional credit processing fee for FY 2000. For fiscal years 2001 and beyond, the DOT may adjust the amount of the application fee and will determine the appropriate amount of any potential credit processing fee or any other fee based on program implementation experience. The DOT will publish these amounts in each **Federal Register** solicitation for applications.

NPRM

The DOT published a notice of proposed rulemaking (NPRM) on May 30, 2000, in the **Federal Register** (65 FR 34428). Comments were filed by the Florida Department of Transportation, Scully Capital Services Inc., and the Washington State Department of Transportation. The DOT is now issuing this final rule concerning administration of the TIFIA credit assistance program. This rule reflects the DOT's consideration of the comments filed in response to the NPRM.

Discussion of Rulemaking Text

The following discussion summarizes the comments submitted to the DOT by the three commenters on the NPRM, notes where and why changes have been made to the rule, and, where relevant, states why particular recommendations or suggestions have not been incorporated into the following regulations.

Discussion of Comments and Responses by Section

Section 80.5 Limitations on Assistance

Section 80.5(g). One of the commenters voiced concern about the DOT's intent to establish the timing of loan disbursements in the credit agreement. The commenter indicated its supposition that the motivation for the language appearing in Section 80.5(g) was to preclude cash advances to project sponsors that would subsequently bank and earn interest on the funds. The commenter suggested that the section be modified to allow for changes to project schedules after execution of the credit agreement. Further, the commenter recommended that it may be more appropriate for the credit agreement to include a tentative funding schedule, a set of conditions necessary to modify the schedule, and a review process for parties to approve modifications to the credit agreement.

DOT Response: The commenter's characterization of the primary intent of section 80.5(g)—namely, to prevent circumstances in which a sponsor would request that the DOT advance all cash up front, irrespective of the project's actual funding requirements, so that the sponsor could bank the proceeds—is accurate. To this end, the DOT drafted Section 80.5 to specify that the credit agreement shall indicate scheduled disbursements that align with the project's actual needs. Nothing in the proposed language states or implies that the schedule of disbursements appearing in the credit agreement is permanently fixed, and in practice, the DOT will implement the section much as the commenter has suggested. To underscore the flexibility necessary to respond to a particular project's funding requirements, the DOT has modified the language in this section.

Section 80.11 Investment-Grade Ratings

Section 80.11(a). One commenter stated that the DOT should not rely on a senior debt rating (as an indicator of the TIFIA instrument's credit quality) if that rating is based on a revenue source that is unrelated to or of a materially different credit quality from the revenue source that will repay the TIFIA instrument. The commenter suggested that the rule clarify whether the senior debt rating is related to (*i.e.*, based on) the source of funds that will repay the TIFIA instrument.

DOT Response: The DOT agrees with the commenter's point that an investment-grade rating on a project's senior obligations is not a meaningful indicator of a TIFIA obligation's creditworthiness if the two sets of obligations are backed by different sources of repayment. The DOT believes that the proposed language, which defines senior obligations as those which have "a lien senior to that of the TIFIA credit instrument on the pledged security," underscores this point, and

the DOT will interpret the language appearing in section 80.11(a) as such.

Section 80.11(b). Three commenters voiced concern regarding the DOT's proposal to require project sponsors to provide the DOT with an investment-grade rating not only prior to the execution and initial funding of a credit agreement but also prior to each subsequent draw on the credit instrument.

DOT Response: Upon review of statutory language appearing in the TIFIA and comments to the NPRM, the DOT concurs with the comments. Accordingly, relevant language proposed under the NPRM has been dropped, and section 80.11(b) of 49 CFR remains unchanged.

Section 80.11(d). Two commenters responded to section 80.11(d) but offered differing views. One commenter linked its approval for this section to its objection to the proposed Section 80.11(b), stating that ongoing credit surveillance would obviate the need for a project sponsor to provide a new investment grade rating prior to each disbursement of funds. This commenter also stated that project sponsors are prepared to fund on-going surveillance on an annual basis, described the practice as normal and customary, and indicated that this action would cost significantly less than updating the debt rating prior to each loan disbursement. In contrast, another commenter stated that rating agencies already monitor the creditworthiness of the issues they rate on an ongoing basis and of their own accord. In this commenter's opinion, the DOT's requirement for project sponsors to pay for this service throughout the life of a TIFIA credit agreement was unnecessary.

DOT Response: The commenters appear to have differing views on what services rating agencies provide on a fee basis. It is not the DOT's role to advise project sponsors what services ought or ought not be provided by rating agencies and at what cost. Rather, section 80.11(d) is intended to make two points: First, that recipients of TIFIA credit assistance must furnish information deriving from ongoing credit surveillance of all debt obligations (including the TIFIA instrument) throughout the life of the TIFIA instrument; and second, that this information is to be provided by the project sponsor at no cost to the Federal Government. To underscore these points and avoid any implications regarding the costs of credit surveillance services, the DOT has modified this section as follows: "The project sponsor must annually provide, at no cost to the Federal Government, ongoing credit evaluations of the project and related debt obligations, including an annual assessment of the TIFIA credit instrument. The evaluations are to be performed by a nationally recognized credit rating agency and provided to the DOT throughout the life of the TIFIA credit instrument. In addition, the project sponsor will furnish the DOT with any other credit surveillance reports on the TIFIA-assisted project as soon as they are available."

Section 80.15 Selection Criteria

Section 80.15. Two commenters addressed the DOT's proposed weighting of project selection criteria. Both commenters specifically suggested that the DOT reduce the proposed weight of 20 percent for the criterion concerning the extent to which the project helps maintain or protect the environment.

One commenter expressed concern that the proposed weighting of the environmental criterion unfairly favors projects that are environmental in nature, and therefore alters the ultimate purpose and goals of the TIFIA program. This commenter also drew a parallel between the criteria related to creditworthiness and environmental impacts, noting that the DOT proposed a weighting of 12.5 percent for creditworthiness given that obligations of TIFIA credit assistance are conditioned on a preliminary rating opinion letter, and that similarly, the DOT should set a lower weight for the environmental criterion given that obligations are also to be conditioned on projects having received an environmental Categorical Exclusion, Finding of No Significant Impact, or Record of Decision.

The other commenter suggested that weightings be dropped altogether, or alternatively, that the weights assigned to both creditworthiness and the use of new technologies (such as intelligent transportation systems) be elevated.

DOT Response: The DOT disagrees with the commenters and believes that the proposed weights properly reflect the program's goals, will maximize the effectiveness of the program's credit assistance, and are consistent with the DOT's overall strategic and performance goals. In special regard to the comparison between creditworthiness and environmental benefits, the DOT believes that the parallel drawn by the first commenter is not accurate. While the DOT is highly concerned with a project's capacity to repay the TIFIA instrument, the Department also recognizes that a project with very high creditworthiness is probably one that could advance without any credit assistance whatsoever, and thus might not represent the best use of limited TIFIA funds. In contrast, projects with very high environmental benefits, balanced with other attributes, almost always represent a desirable Federal investment. The system of weights appearing in this rule affirms the DOT's view that the evaluation process should and will support projects that maintain or improve the environment.

Section 80.19 Reporting Requirements

Section 80.19. One commenter suggested that the 180-day financial reporting period is unusually long for commercial practice and renders the statement six months from the period to which it pertains.

DOT Response: While eager to gather financial information that is as current as possible, the DOT recognizes that 180 days is the reporting period recommended by the Government Finance Officers Association. To balance the desire for timely information with a recognition that some governmental borrowers have had difficulty meeting the 120-day reporting period, the DOT has modified the language in this rule to state that audited financial statements must be furnished to the DOT within no more than 180 days.

Section 80.21 Use of Administrative Offset

Section 80.21. One commenter approved the proposed clarification that administrative offsets will be employed only in cases of fraud, misrepresentation, false claims, or similar criminal acts or acts of malfeasance and wrongdoing, and will not be employed as a result of revenue shortfalls.

General Comments

One commenter requested clarification as to whether this rule applies to the applications solicited under the Notice of Funds Availability (NOFA) published in the **Federal Register** on May 10, 2000 (Vol. 65, No. 91).

DOT Response: As stated explicitly in the NOFA, "the Final Rule as published in the **Federal Register** on June 2, 1999 remains applicable to this notice [published May 10, 2000]." The DOT re-emphasizes that the modifications to the rule will apply only to future application cycles occurring after the effective date of this rule.

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

The DOT has determined that issuance of a rule is necessary to implement the TIFIA, and has concluded that this action does not represent a "significant regulatory action" within the meaning of DOT's Regulatory Policies and Procedures (44 FR 11034, February 26, 1979) and Executive Order 12866.

This regulation would affect only those entities that voluntarily elect to apply for TIFIA assistance and are selected to receive assistance through a Federal credit instrument. It would not impose any direct involuntary costs on non-participants.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (Public Law 96–354, 5 U.S.C. 601–612) requires an assessment of the extent to which proposed rules will have an impact on small business or other small entities. Consistent with the Regulatory Flexibility Act, the DOT has evaluated the effects of this rule on small business or other small entities. The DOT hereby certifies that this action would not have significant economic impact on a substantial number of small entities because this rule simply clarifies or makes minor modifications to the TIFIA credit assistance program.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. This rule would not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Rather, this rule clarifies certain provisions of a Federal credit assistance program.

Executive Order 12372 (Intergovernmental Review)

Given that projects receiving assistance under the TIFIA may fall under the programmatic jurisdiction of the Federal Highway Administration, the Federal Railroad Administration, or the Federal Transit Administration, the relevant Catalog of Federal Domestic Assistance Program Numbers are: 20.205 highway planning and construction; 20.310 rail rehabilitation and improvement; and 20.500 transit capital improvement grants. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This document does not contain information collection requirements for the purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

National Environmental Policy Act

As specified under section 1503 of the TIFIA, and codified under section 182(c)(2) of title 23, U.S.C., each project obtaining assistance under this program is required to adhere to the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*). This rulemaking simply proposes to clarify the procedures to apply for credit assistance and therefore, by itself, will not have any effect on the quality of the environment.

Executive Order 13132 (Federalism)

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

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

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

Executive Order 12630 (Taking of Private Property)

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

Regulation Identification Number

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

List of Subjects in 49 CFR Part 80

Credit programs—transportation, Highways and roads, Mass transit, Railroads, Investments, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, the Office of the Secretary of Transportation amends 49 CFR part 80 as follows:

PART 80—[AMENDED]

1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 1501 *et seq.*, Pub.L. 105–178, 112 Stat. 107, 241, as amended; 23 U.S.C. 181–189 and 315; 49 CFR 1.48, 1.49, and 1.51.

2. Amend § 80.3 by adding the definition "administrative offset" and by placing it in alphabetical order to read as follows:

§ 80.3 Definitions.

* * * * *

Administrative offset means the right of the government to apply moneys held by the government and otherwise owed to a debtor for the extinguishment of claims due the government from the debtor.

* * * * *

3. Add § 80.5(g) to read as follows:

§ 80.5 Limitations on assistance.

* * * * *

(g) The Secretary shall fund a secured loan based on the project's financing needs. The credit agreement shall include the anticipated schedule for such loan disbursements.

4. In § 80.11 revise paragraph (a) and add paragraph (d) to read as follows:

§ 80.11 Investment-grade ratings.

(a) At the time a project sponsor submits an application, the DOT shall require a preliminary rating opinion letter. This letter is a conditional credit assessment from a nationally recognized credit rating agency that provides a preliminary indication of the project's overall creditworthiness and that specifically addresses the potential of

the project's senior debt obligations (those obligations having a lien senior to that of the TIFIA credit instrument on the pledged security) to achieve an investment-grade rating.

* * * * *

(d) The project sponsor must annually provide, at no cost to the Federal Government, ongoing credit evaluations of the project and related debt obligations, including an annual assessment of the TIFIA credit instrument. The evaluations are to be performed by a nationally recognized credit rating agency and provided to the DOT throughout the life of the TIFIA credit instrument. In addition, the project sponsor will furnish the DOT with any other credit surveillance reports on the TIFIA-assisted project as soon as they are available.

* * * * *

5. Amend § 80.15 by revising paragraph (a) set forth below; by removing paragraphs (c) and (d); and by redesignating paragraph (e) as paragraph (c).

§ 80.15 Selection criteria.

(a) The Secretary shall assign weights as indicated to the following eight selection criteria in evaluating and selecting among eligible projects to receive credit assistance:

(1) The extent to which the project is nationally or regionally significant, in terms of generating economic benefits, supporting international commerce, or otherwise enhancing the national transportation system (20 percent);

(2) The creditworthiness of the project, including a determination by the Secretary that any financing for the project has appropriate security features, such as a rate covenant, to ensure repayment (12.5 percent);

(3) The extent to which such assistance would foster innovative public-private partnerships and attract private debt or equity investment (20 percent);

(4) The likelihood that such assistance would enable the project to proceed at an earlier date than the project would otherwise be able to proceed (12.5 percent);

(5) The extent to which the project uses new technologies, including Intelligent Transportation Systems (ITS), that enhance the efficiency of the project (5 percent);

(6) The amount of budget authority required to fund the Federal credit instrument made available (5 percent);

(7) The extent to which the project helps maintain or protect the environment (20 percent); and

(8) The extent to which such assistance would reduce the contribution of Federal grant assistance to the project (5 percent).

* * * * *

6. Revise § 80.17 to read as follows:

§ 80.17 Fees.

(a) The DOT will require a non-refundable application fee for each project applying for credit assistance under the TIFIA. The DOT may also require an additional credit processing fee for projects selected to receive TIFIA assistance. Any required application initiation or credit processing fee must be paid by the project sponsor applying for TIFIA assistance and cannot be paid by another party on behalf of the project sponsor. The proceeds of any such fees will equal a portion of the costs to the Federal Government of soliciting and evaluating applications, selecting projects to receive assistance, and negotiating credit agreements. For FY 2000, the DOT will require payment of a fee of $5,000 for each project applying for credit assistance under the TIFIA, to be submitted concurrently with the formal application. The DOT will not impose any credit processing fees for FY 2000. For each application and approval cycle in FY 2001 and beyond, the DOT may adjust the amount of the application fee and will determine the appropriate amount of the credit processing fee based on program implementation experience. The DOT will publish these amounts in each **Federal Register** solicitation for applications.

(b) Applicants shall not include application initiation or credit processing fees or any other expenses associated with the application process (such as fees associated with obtaining the required preliminary rating opinion letter) among eligible project costs for the purpose of calculating the maximum 33 percent credit amount referenced in § 80.5(a).

(c) If, in any given year, there is insufficient budget authority to fund the credit instrument for a qualified project that has been selected to receive assistance under TIFIA, the DOT and the approved applicant may agree upon a supplemental fee to be paid by or on behalf of the approved applicant at the time of execution of the term sheet to reduce the subsidy cost of that project. No such fee may be included among eligible project costs for the purpose of calculating the maximum 33 percent credit amount referenced in § 80.5(a).

(d) The DOT will require borrowers to pay servicing fees for each credit instrument approved for funding. Separate fees may apply for each type of credit instrument (*e.g.*, a loan guarantee, a secured loan with a single disbursement, a secured loan with multiple disbursements, or a line of credit), depending on the costs of servicing the credit instrument as determined by the Secretary. Such fees will be set at a level to enable the DOT to recover all or a portion of the costs to the Federal Government of TIFIA credit instruments.

7. Revise § 80.19 to read as follows:

§ 80.19 Reporting requirements.

At a minimum, any recipient of Federal credit assistance under this part shall submit an annual project performance report and audited financial statements to the DOT within no more than 180 days following the recipient's fiscal year-end for each year during which the recipient's obligation to the Federal Government remains in effect. The DOT may conduct periodic financial and compliance audits of the recipient of credit assistance, as determined necessary by the DOT. The specific credit agreement between the recipient of credit assistance and the DOT may contain additional reporting requirements.

8. Add § 80.21 to read as follows:

§ 80.21 Use of administrative offset.

The DOT will not apply an administrative offset to recover any losses to the Federal Government resulting from project risk the DOT has assumed under a TIFIA credit instrument. The DOT may, however, use an administrative offset in cases of fraud, misrepresentation, false claims, or similar criminal acts or acts of malfeasance or wrongdoing.

Issued this 14th day of July, 2000 at Washington, D.C.

Rodney E. Slater,

Secretary of Transportation.

[FR Doc. 00–18314 Filed 7–18–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Federal Railroad Administration

Federal Transit Administration

Office of the Secretary of Transportation

Applications for TIFIA Credit Assistance

AGENCIES: Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), Federal Transit Administration (FTA), Office of the Secretary of Transportation (OST), U.S. Department of Transportation (DOT).

ACTION: Notice of availability of funds inviting applications for credit assistance for major surface transportation projects.

SUMMARY: The Transportation Equity Act for the 21st Century (TEA–21) created the Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA). The TIFIA authorizes the Department of Transportation (DOT) to provide credit assistance in the form of secured (direct) loans, lines of credit, and loan guarantees to public and private sponsors of eligible surface transportation projects. The revised TIFIA regulations (49 CFR Part 80, as published elsewhere in this issue of the **Federal Register**, provide specific guidance on the program requirements.

These revised regulations, which will apply to applications filed under this notice, amend the June 2, 1999 rule to: clarify that funds will be disbursed based on the project's anticipated financing needs; clarify that the borrower must obtain ongoing credit surveillance for the life of the TIFIA credit instrument; assign specific weights to each of the eight statutory selection criteria; specify that loan servicing fees are to be paid by the borrower; modify the time period for audited financial statements from 120 days to within no more than 180 days; and provide that administrative offsets will be employed only in cases of fraud, misrepresentation, or criminal acts.

Funding for this program is limited, and projects requesting assistance will be evaluated and selected by the DOT on a competitive basis. Following selections, term sheets will be issued and credit agreements will be developed through negotiations between the project sponsors and the DOT. The TIFIA statute provides budget authority of $110 million for FY 2001 to fund the subsidy costs of up to $2.2 billion in credit assistance. However, as described below, the amount of actual net budget authority available in FY 2001 depends on several additional factors.

DATES: For consideration in this application cycle, letters of interest must be submitted by 4:30 p.m. EDT on Thursday, August 17, 2000. The deadline for receipt of the completed application and the non-refundable $5,000 application fee is 4:30 p.m. EDT on Wednesday, September 6, 2000. Applications received in the offices of the DOT after that date and time will not be considered. Applications sent to the DOT electronically or by facsimile will not be accepted. Applicants should refer to the TIFIA Application for Federal Credit Assistance, which specifies the number of hard copies (plus original) required for each section of the application as well as those sections of the application requiring electronic versions.

ADDRESSES: Both the letters of interest and completed applications should be submitted to the attention of Ms. Stephanie Kaufman, Office of Budget and Program Performance, Department of Transportation, Room 10105, B–10, 400 Seventh Street, SW., Washington DC, 20590.

FOR FURTHER INFORMATION CONTACT: FHWA: Mr. Max Inman, Office of Budget and Finance, Federal-Aid Financial Management Division, (202) 366–0673; FRA: Ms. JoAnne McGowan, Office of Passenger and Freight Services, Freight Program Division, (202) 493–6390; FTA: Mr. Paul Marx, Office of Policy Development, (202) 366–1675; OST: Ms. Stephanie Kaufman, Office of Budget and Program Performance, (202) 366–9649; Department of Transportation, 400 Seventh Street, SW, Washington, D.C., 20590. Hearing-and speech-impaired persons may use TTY by calling the Federal Information Relay Service at 1–800–877–8339. Additional information, including the TIFIA program guide and application materials, can be obtained from the TIFIA web site at http://tifia.fhwa.dot.gov.

SUPPLEMENTARY INFORMATION:

Types of Credit Assistance Available

The DOT may provide credit assistance in the form of secured (direct) loans, loan guarantees, and lines of credit. These types of credit assistance are defined in 23 U.S.C. 181 and 49 CFR 80.3.

Program Funding and Limitations on Assistance

The TIFIA provides annual funding levels for both total credit amounts (*i.e.*, the total principal amounts that may be committed in the form of direct loans, loan guarantees, or lines of credit) and subsidy amounts (*i.e.*, the amounts of budget authority available to cover the estimated present value of the Government's expected losses associated with the provision of credit instruments, net of any fee income). Funding for the subsidy amounts is provided in the form of budget authority funded from the Highway Trust Fund (other than the Mass Transit Account). Total Federal credit amounts authorized for the TIFIA program in FY 2001 and beyond are $2.2 billion in FY 2001; $2.4 billion in FY 2002; and $2.6 billion in FY 2003. These amounts lapse if not awarded by the end of the fiscal year for which they are provided.

To support these credit amounts, the TIFIA provides budget authority to fund the maximum subsidy amounts of $110 million in FY 2001; $120 million in FY 2002; and $130 million in FY 2003. Of these amounts, the Secretary may use up to $2 million for each of the fiscal years for administrative expenses. Any budget authority not obligated in the fiscal year for which it is authorized remains available for obligation in subsequent years.

The TIFIA budget authority is subject to an annual obligation limitation that may be established in appropriations law. Like the funding for certain other administrative or allocated programs (not apportioned to the States) that are subject to the annual Federal-aid highway obligation limitation, the amount of TIFIA budget authority that is available to fund credit instruments in a given year may be less than the amount originally authorized for that year. The extent of any budget authority reduction will depend on the ratio of the obligation limitation, which is determined annually in the appropriations process, to the contract authority for the Federal-aid highway program, which was established in TEA–21. The credit amounts authorized in the TIFIA are not subject to this annual reduction.

As noted above, the TIFIA statute provides budget authority of $110 million for FY 2001. The DOT will determine the amount of net budget authority available in FY 2001 to fund the TIFIA credit assistance program by taking into account unused FY 2000 budget authority, any reductions necessitated by the FY 2001 obligation limitation, and administrative expenses

authorized by the TIFIA statute. The amount of net budget authority available for new TIFIA commitments in FY 2001 also may be affected by new obligations (if any) for projects that received conditional approval in the previous fiscal year and credit subsidy adjustments to obligations for prior TIFIA commitments.

The total amount of Federal credit assistance available for new TIFIA commitments in FY 2001 may be less than the $2.2 billion authorization level, as a result of contingent TIFIA commitments made in FYs 1999 and 2000.

The amount of credit assistance that may be provided to a project under the TIFIA is limited to not more than 33 percent of eligible project costs.

Eligible Projects

Highway, rail, transit, and "intermodal" projects (including intelligent transportation systems) may receive credit assistance under the TIFIA. See the definition of "project" in 23 U.S.C. 181(9) and 49 CFR 80.3 for a description of eligible projects.

Threshold Criteria

Certain threshold criteria must be met by projects seeking TIFIA assistance. These eligibility criteria are detailed in 23 U.S.C. 182(a) and 49 CFR 80.13.

Rating Opinions

A project sponsor must submit with its application a preliminary rating opinion letter from one or more of the nationally recognized credit rating agencies, as detailed in 23 U.S.C. 182(b)(2)(B) and 49 CFR 80.11. The letter must indicate the reasonable potential for the senior obligations funding the project (those which have a lien senior to that of the TIFIA credit instrument on the pledged security) to receive an investment grade rating. This preliminary rating agency opinion will be based on the financing structure proposed by the project sponsor. A project that does not demonstrate the potential for its senior obligations to receive an investment grade rating will not be considered by the DOT.

The DOT will also use the preliminary rating opinion letter to assess the potential default risk on the requested TIFIA instrument. Therefore, the letter should also provide a preliminary assessment of the strength of either the overall project or the requested TIFIA instrument, whichever assessment best reflects the rating agency's preliminary evaluation of the default risk on the requested TIFIA instrument.

Each project selected for TIFIA credit assistance must obtain an investment grade rating on its senior debt obligations and a revised opinion on the default risk of its TIFIA credit instrument before the DOT will execute a credit agreement and disburse funds.

Application and Selection Process

Each applicant for TIFIA assistance will be required to submit a letter of interest and subsequently an application to the DOT to be considered for approval. The following describes the application process:

1. *Letter of Interest.* Initially, any applicant seeking TIFIA assistance must submit a brief letter of interest to the DOT by Thursday, August 17, 2000. The letter of interest should include a brief project description (including its purpose, basic design features, and estimated capital cost), basic information about the proposed financing for the project (including a preliminary summary of sources and uses of funds and the type and amount of credit assistance requested from the DOT). and a description of the proposed project participants. The letter also should summarize the status of the project's environmental review (*i.e.,* has the project received a Categorical Exclusion, Finding of No Significant Impact, or Record of Decision, or at a minimum, has a draft Environmental Impact Statement been circulated). The letter of interest should not exceed five pages. A multi-modal DOT Credit Program Working Group will review this preliminary submission to ensure that the project meets the most basic requirements for participation in the TIFIA program. The Working Group will then designate a lead modal agency (FHWA, FRA, or FTA) for the project.

2. *Application.* Once approved for further review, the applicant will be notified by a representative from the designated modal agency of its eligibility to submit a formal application. The applicant must submit all required materials (generally described in 49 CFR 80.7 and detailed in the TIFIA application) to the DOT by Wednesday, September 6, 2000. The TIFIA application and additional program information may be obtained from the TIFIA web site at http://tifia.fhwa.dot.gov or through one of the program contacts listed in this notice.

3. *Sponsor Presentation.* Each applicant that passes an initial screening of the application for completeness and satisfies the threshold criteria will be invited to make an oral presentation to the DOT on behalf of its project. The DOT plans to schedule presentations within two weeks of the application deadline, and will discuss the structure and content of the presentation with the applicant at the time of the invitation.

4. *Project Selection.* Based on the application and oral presentation, the DOT will evaluate each project according to specific weights assigned to each of the eight statutory selection criteria described in 23 U.S.C. 182(b) and 49 CFR 80.15 as follows: National or regional significance, 20 percent; creditworthiness, 12.5 percent; private participation, 20 percent; project acceleration, 12.5 percent; use of new technologies, 5 percent; consumption of budget authority, 5 percent; environmental benefits, 20 percent; and reduced Federal grant assistance, 5 percent.

The Secretary of Transportation intends to make final project selections within five to eight weeks of the application deadline.

Fees

For this application cycle, the DOT will require each TIFIA applicant to pay a non-refundable application fee of $5,000. Checks should be made payable to the Federal Highway Administration. The project sponsor applying for TIFIA assistance must submit this payment by the application deadline of September 6, 2000. There will be no credit processing fee for this application cycle. Selected applicants will, however, be required to pay fees for loan servicing activities associated with their TIFIA credit instruments. For subsequent application cycles, the DOT may adjust the amount of the application fee and may establish a credit processing fee (to recover all or a portion of the costs to the DOT of evaluating applications, selecting projects to receive assistance, and negotiating term sheets and credit agreements) on the basis of its program implementation experience. The DOT will publish these amounts in each **Federal Register** solicitation for applications.

Applicants shall not include application or credit processing fees or any other expenses associated with the application process (such as charges associated with obtaining the required preliminary rating opinion letter) among eligible project costs for the purpose of calculating the maximum 33 percent credit amount.

If there is insufficient budget authority to fund the credit instrument for a qualified project that has been selected to receive assistance under the TIFIA, the DOT and the approved applicant may agree upon a supplemental fee to be paid by or on behalf of the approved applicant at the

time of execution of a term sheet to reduce the subsidy cost of that project. No such fee may be included among eligible project costs for the purpose of calculating the maximum 33 percent credit amount.

Dated: July 14, 2000.

Rodney E. Slater,

Secretary, U.S. Department of Transportation.

[FR Doc. 00–18315 Filed 7–18–00; 8:45 am]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 4425/P.L. 106–246

Making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 2001, and for other purposes. (July 13, 2000; 114 Stat. 511)

Last List July 12, 2000

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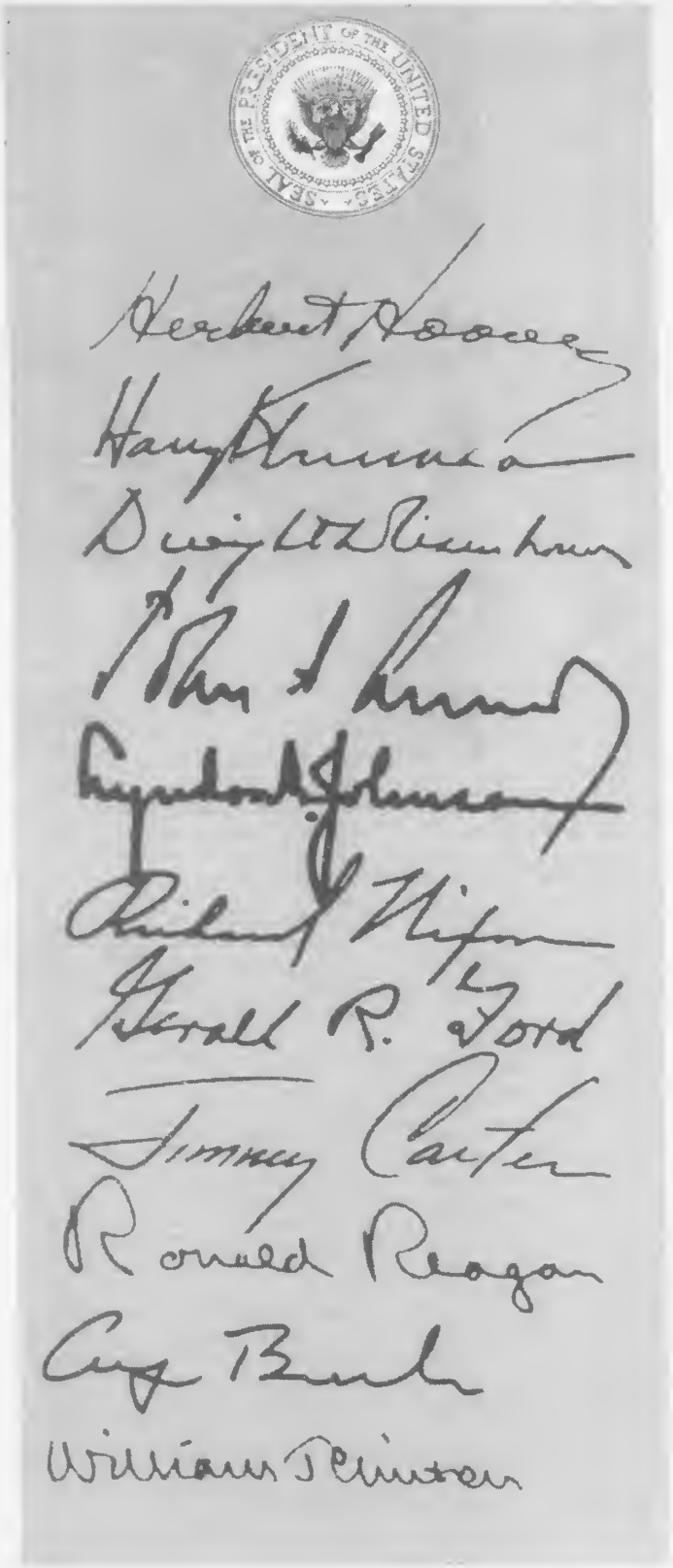

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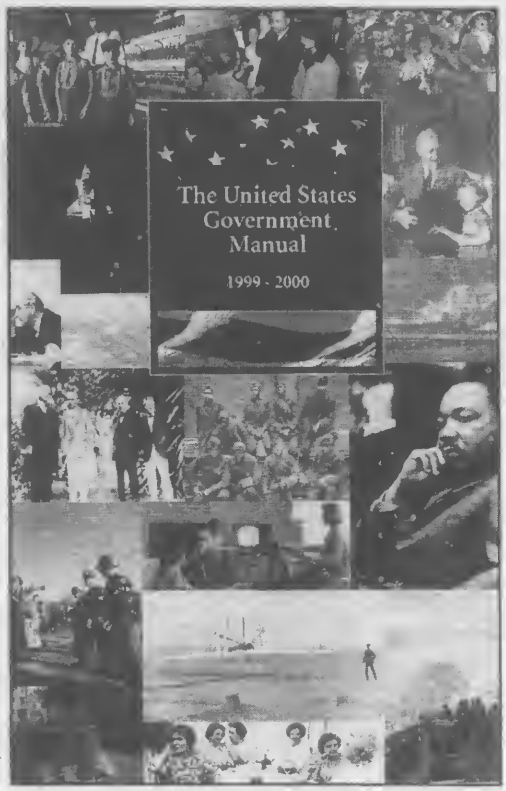

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